# AN ANALYSIS OF UNITED NATIONS CONVENTIONS ON PREVENTION AND CONTROL OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES: A CASE STUDY OF DOMESTIC IMPLEMENTATION IN NIGERIA.

**BY**

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**LL.B., LL.M., BL.**
**PhD/LAW/2256/2011-2012**

**A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF A DOCTOR OF PHILOSOPHY IN LAW (Ph.D.)**

**DEPARTMENT OF PUBLIC LAW**
**AHMADU BELLO UNIVERSITY, ZARIA.**

**APRIL , 2017.**

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**APRIL, 2017.**

## DECLARATION

I declare that the work in this dissertation titled- An Analysis of United Nations Conventions on Prevention and Control of Narcotic Drugs and psychotropic Substances: A case study of Domestic Implementation in Nigeria, has been carried out by me in the Department of Public Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

Musa Muhammad AUDI _____ _____

Signature Date

## DEDICATION

This Ph.D. research is dedicated to the service of Almighty Allah *Ta'ala*.

## CERTIFICATION

This dissertation titled- *An Analysis of United Nations Prevention and Control of Narcotic Drugs and Psychotropic Substances. A case study of Domestic Implementation in Nigeria*, by Musa Muhammad AUDI meets the regulations governing the award of the degree of Doctor of Philosophy in law (Ph.D.) of Ahmadu Bello University and is approved for its contribution to knowledge and literacy presentation.

| | | |
|---|---|---|
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## TABLE OF ABBREVIATIONS

| | | |
|---|---|---|
| A.B.U | - | Ahmadu Bello University, Zaria |
| A.D. | - | Year of Our Lord |
| AC | - | Appeal Cases |
| All ER | - | All England Report |
| All NLR | - | All Nigeria Law Report |
| C.A. | - | Court of Appeal |
| CAMA | - | Companies and Allied Matters Act |
| Cap | - | Chapter |
| Ct | - | Court |
| e.g. | - | For example |
| etc. | - | And so forth |
| FHC | - | Federal High Court |
| Fn | - | Footnote |
| FRN | - | Federal Republic of Nigeria |
| i.e. | - | That is |
| Ibid | - | Same as the reference citation immediately preceding it |
| JSC | - | Justice of the Supreme Court |
| L.F.N | - | Laws of the Federation of Nigeria |
| NDLEA | - | National Drug Law Enforcement Agency |
| Nig. | - | Nigeria |
| NWLR | - | Nigerian Weekly Law Report |
| *op. cit*. | - | Opere Citato, same as the reference cited earlier |
| p | - | Page |
| R | - | Rex/Regina |

| | | |
|---|---|---|
| S. | - | Section |
| S.C. | - | Supreme Court |
| Supra | - | Reference previously cited or mentioned earlier |
| U.K. | - | United Kingdom |
| U.N. | - | United Nations |
| U.S.A | - | United States of America |
| UNODC | - | United Nations Office on Drug and Crime |
| *v* | - | Versus |
| Z.A. | - | South Africa |

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## ABSTRACT

*Narcotic drugs and Psychotropic substances are illicit drugs regulated under international law. They are harmful and they cause mental injury to individuals that abuse them. This is mainly because of the dangerous effect of the toxic resin contained in narcotic plants such as opium and cocaine. They are also addictive so much that illicit drug users become very dependent on them. This makes the drugs to be high in demand and therefore a lucrative business for drug traffickers. The harmful effect of narcotic drugs and psychotropic substances such as causing insanity, problems of addiction and a motivation of violent crimes, in addition to being a highly lucrative business, has made many countries in the world to pass laws aimed at preventing and controlling these illicit drugs. The challenges presented in these illicit drug activities include cultivating, processing, manufacturing, storing, transporting, selling and thereby making money quickly, has made it a global malaise or problem. For instance, cocaine produced in Columbia (producing state) are trafficked through Nigeria via Murtala Muhammad Airport in Lagos (transit state) to Europe where it is sold, (consumer states) which makes it difficult for any one country to succeed in a single effort aimed at preventing drug trafficking and drug abuse. This makes it necessary for countries as members of the international community to combine their efforts under treaty agreement and international law to prevent drug trafficking and drug abuse. In this regard, the United Nations Convention against Drug Traffic and Abuse of Narcotic Drugs and Psychotropic Substances, amongst other conventions, provides a legal and institutional framework for countries to adopt and implement in their domestic legal systems to prevent and control illicit drug activities. The aim of this is to enable countries such as Nigeria, solve the problems of drug abuse and drug trafficking. However, despite these efforts, there is a rise in drug abuse and drug trafficking in the country. This is a major issue that this research addressed, as it has identified lapses in the law that have failed to proscribe emerging kinds of drugs. These lapses are the primary cause of the rise of drug abuse in Nigeria. For instance, cough syrup with codeine is widely abused in Nigeria and the law is unable to respond appropriately because there is no enabling statute or legislation that out rightly outlaws the abuse of cough syrup in the same way as Indian hemp is outlawed. The problem of this research is to analyse the nature and extent of the drug problems in Nigeria in relation to obligations that international law on illicit drugs requires Nigeria to perform. To also analyse the challenges hindering the successful performance of these obligations. The objective of this research is to consider how the Federal Government of Nigeria has implemented the international law with a view to address and solve the drug problem in the country. In view of the powers conferred by the international treaties on drug trafficking and drug abuse on the Federal Government of Nigeria, the Government has put in place institutions and has enacted laws for combating the drug problem in the country. Some of the institutions include the National Drug Law Enforcement Agency (NDLEA), the Federal High Court as the court with original jurisdiction on illicit drug matters, and also Rehabilitation Clinics and Centres for treating and counselling drug addicts. The National Drug Law Enforcement Agency Act is the primary legislation on combating illicit drug activities in the country. Some key findings from this research are that there are no enabling laws that empower the NDLEA and the Federal High Court to arrest and prosecute individuals abusing certain kinds of drugs such as cough syrup with codeine, e.t.c. which in turn leads to the increase in drug abuse in the country. The inability of the Federal Government of Nigeria to enhance the capacity of the NDLEA, through sufficient funding so as to counter drug trafficking has led to less policing by the NDLEA and increased illicit drug activities. Along with the lack of sufficient rehabilitation centres across the country for the sake of removing drug addicts from dependence on illicit drugs, presents a major challenge to Government efforts aimed at solving the drug problem in the country. As solution to these drug problems, it is therefore recommended to the Federal Government of Nigeria to amend the NDLEA Act with a view to proscribe emerging drugs and substances capable of abuse that are not illicit presently, to increase its funding of the NDLEA to enable it*

*counter the activities of drug traffickers and to also build rehabilitation centres for addressing the problem of drug addiction in the country.*

# CHAPTER ONE

## 1.0 GENERAL INTRODUCTION

### 1.1 Background to the Study

> *As the fear of the holocaust of a world war due to ideological differences subsides; as the cold war which has now and again brought the world to the brink of annihilation through nuclear weapons enters into a welcome détente, the world has found itself grappling with a new type of war caused by a cankerworm which is gradually nibbling at its generation of humanity…this is the effect of narcotic drug abuse and trafficking in countries around the world.*[1]

Drug use has been a part of human culture since antiquity[2]. Right from the earliest of time, humans, world over, have depended on the use of drugs for medicinal, recreational and spiritual purposes. For instance, the Bible mentions '*mandrake'*, which is a drug of plant origin.[3]The Bible states that Rachael allowed Leah to sleep with Jacob in exchange for a portion of '*mandrake'* brought to Leah by Reuben[4]. This seemingly indecent affair shows just how coveted *mandrake* is to the ancient people. Again, under Islamic jurisprudence, the use of drugs has always found justification on the basic belief that for every ailment on earth, there is a cure[5]. There has also been the allegation that the ancient Muslim *Shi'ite* Sect called the *Nizari Ismailis*, who are also called the *Hashshashin* or Assassins, may have utilized *hashish* (a drug derived from *cannabis*) in their rituals to invoke mystical experiences in their quest for esoteric knowledge[6]. Medieval Muslim scholars had carried out much experimentation with various drug-

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[1] Oyakhilome, F.E. (1990) 'Keynote Address' Delivered at the National Seminar on Drug Law Enforcement Organised by the Nigerian Bar Association, held at the Main Auditorium of the Nigeria Law School, Victoria Island, Lagos, 9th-11th, May, , p. 3.

[2] Emafo, P. (1990) *Drug Regulation and Social Policy*, Federal Ministry of Justice Law Review Series, Bencod Press Ltd. Ikeja-Lagos, p. 63.

[3] Holy Bible, Genesis 30:14.

[4] Ibid.

[5] *Sahih Al-Bukhari* 7-71:582.

[6] Szczepanski, K., (2015) *History of the Assassins or Hashshashin,* ISBN 978-0-83121-1414-7. Retrieved January 6, 2017.

producing plants, including the *Cannabis* plant, which produces '*hashish'*, for the purpose of curing ailments, reducing pain and for other purposes[7].

It soon became apparent, however, that despite all their perks, some drug producing plants possess a chemical compound known as toxic resin[8]. Toxic resin of drugs can be fatally harmful to the individuals who ingest it. With this discovery, it became necessary for authorities to regulate their use in order to protect the wellbeing of individuals and the society at large. Therefore, even in the olden days, community leaders controlled the use of such plants. In the Muslim world, such drugs are considered primarily as intoxicants due to their psychoactive effect, and therefore, are classified in the same category as alcohol. It is regarded as a sin in Islam for a Muslim to be intoxicated[9]. Hence, drugs are proscribed under Islamic Law as alcohol because they are intoxicants[10]. Allah *Ta'ala* states in the Holy Qur'an: O you who believe! Intoxicants and gambling, stone idols and divination are an abomination of Satan's handwork. Avoid (such abominations) that you may prosper[11].

The Holy Prophet Muhammad (pbuh) said in a narration reported by *Ibn* Umar that: Every intoxicant is *Khmar* (wine) and every intoxicant is *Haraam* (unlawful). Whosoever drinks wine in this world and dies whilst consumed in it (unrepentant) will not drink it in the next world[12].

[7]Clarke, R.C., *Hashish,* ISBN 0-929349-05-9. Retrieved January 6, 2017.
[8]A semi-solid substance secreted in the sap of plants and trees.
[9]Windle, J., (2013) *How the East Influenced Drug Prohibition,* The International History Review. Vol. 35. Issue 5. Published online. Retrived January 6, 2017.
[10]*Ibn* Taymiyyah observed an intoxicant is like wine in Islam.
[11]Q 5: V 90.
[12]*Sahih* Muslim

Based on the effects of drugs, it can be concluded that illicit drugs are intoxicant and are therefore prohibited under Islamic Law. In modern times, law makers began enacting specific laws aimed at preventing and controlling the use of potentially harmful drugs[13]. Initially, the regulation of drug use was a task unilaterally undertaken by individual states. However, the global nature of illicit drug activities such as drug production, consumption and trade, made international law regulation in the area inevitable. A series of events, spanning three different periods in world history, namely, the pre League of Nations era, the League of Nations era and the post League of Nations era, eventually culminated into an extensive regime of international law preventing and controlling harmful drugs which the law regards as illicit. International law regulation of harmful drugs stem from the need to protect individuals in the international community from the adverse effects of drug abuses and to prevent illegitimate profit derived from illicit drug trafficking.[14]

Nigeria has ratified some of these international laws, in the form of the United Nations Conventions against illicit drugs. The process of the domestic implementation of these conventions is carried out with a view to solve the problems of drug addiction and drug trafficking in the country.

However, there is a rise in drug addiction in Nigeria. Some of the drugs commonly abused, such as cough syrup containing codeine, are not proscribed by law. This is because the law, such as the National Drug Law Enforcement Agency (NDLEA) Act, which is derived from the United Nations Conventions against illicit drugs, does not classify cough syrup as a narcotic drug or a psychotropic substance. The result is that

[13] This idea is based on the Utilitarian School of Thought especially as it relates to Criminal Liability. See. Chukkol, K.S. (1990) *Law of crimes*, A.B.U Press Ltd. p. 17.

[14] See Article 3 (1) (ii), the United Nations Convention against Illicit Trafficking and Abuse of Narcotic Drugs and Psychotropic Substances of 1988.

the NDLEA cannot prosecute an individual for such an act. Consequently, the rate of cough syrup abuse increases, leading to the rise of drug abuse in the country. There are other drugs and substances that are commonly abused in the country apart from Indian Hemp and Cocaine. But the same problem arises in the event that the case gets to the NDLEA for prosecution.

This matter is tied to the fact that, whatever is considered a narcotic drug or a psychotropic substance, is subject to international law definition, interpretation and control[15]. The United Nations Conventions determine what drug is illicit or licit. Therefore, since the Conventions do not classify cough syrup or solution or second die etc, (common drugs and substances abused in Nigeria), the NDLEA finds its power limited as such. It takes a lot for the NDLEA to handle such matters, making it possible for drug abuse to increase in the country.

Therefore, this research will analyse the domestic implementation of the United Nations Conventions against illicit drugs and conclude with findings and recommendations.

## 1.2 Statement of the Research Problem

The problem that drug abuse and drug trafficking pose to Nigeria is that the consequences are capable of breaking down and ultimately destroying the existence of the society affected. This can happen by undermining the ability of individuals in the society to contribute meaningful efforts for the progress of their community and the nation as a whole. Where the society needs professionals such as doctors, lawyers, engineers, judges, artisans, teachers, etc, so that essential services are rendered for the

[15]It is the United Nations that determines what drug and substance is illicit.

benefit of everyone, the individuals involved in drug abuse and drug trafficking cannot become any of this because of the problems of addiction.

The problem here also involves the consequences of taking illicit drugs. They are many and they include the following. The first problem of drug abuse in Nigeria is poor academic performance that can cause a student to drop out of school due to drug addiction because the student cannot pay proper attention in class as a result of the effects of intoxication and emotional instability. Secondly, the problem of poor parental and marital responsibility that can cause a parent or spouse to abdicate important duties and lead to the irretrievable breakdown of the family because of coping with illicit drug addiction such as idleness, low sexual libido, low morale and low self-esteem. Thirdly, the problem of poor social responsibility that can cause an individual to resolve to criminal activities that are related to drug abuse such as violent crimes and property related crimes like stealing, cheating, etc, because drug addiction is an expensive habit and drug addicts may resolve to any means to support their addition. These three problems directly affect the individual in the society because they relate to the immediate consequences of drug addiction and its devastation of individual, family and communal life. Since the family is the basic unit of the nation, or as it is said, the state of the nation begins at home, the law will play the role of safeguarding this basic unit of the nation from destruction caused by drug abuse. There is however other problems that contributes to illicit drug activities in the country.

The first is that cultivation of Indian Hemp in Nigeria is on the rise[16].This is mainly because of the profit involved in the activity. It is a lucrative activity and a huge profit for the farmer involved. It is the main reason why farmers in Nigeria will want to venture into it. Weed, as Indian hemp is popularly called, requires little efforts on the

[16]The National Drug Law Enforcement Agency Annual Law Report, 2011, p. 33.

part of the farmer. The seeds are available from any drug dealer because the hemp is always sold along with the seeds attached. An Indian hemp smoker will have to remove or sieve the seeds from the hemp leaves anytime time he buys it and any farmer can collect the seeds for the sake of cultivation. The farmer needs little or no fertilizer to add nutrient to the soil for healthy harvest because the Indian Hemp plant is rugged. He doesn't have to keep grooming the plants like other vegetable shrubs such as bitter leaf or *Ugu* shrubs. The hemp leafs can be picked while the plant remains and continue to produce leafs. It is this leaf that the farmer sells and make much more than his peers make cultivating other legitimate crops. However, the profits derived from the farming of Indian Hemp keeps up the supply of narcotics in the country.

This pervasive effect of illicit drug activities on Nigerian and on the international community at large requires urgent government intervention. The intervention must be on both the domestic and international fronts. This in turn, exposes Nigeria to a plethora of legal difficulties mostly associated with successful domestication and adequate compliance by Nigeria to current objectives and obligations of International instruments, conventions, treaties and norms on prevention and control of narcotic drugs and psychotropic substances. The conventions as earlier mentioned, provides a framework upon which illicit drug problems can be solved.

This study seeks to explore these challenges in the process of domestication in Nigerian of the body of these international laws and conventions, including, in particular, the inadequate compliance with the following important provisions of international law;

1. The provisions of Article 3 of the 1988 Convention on Narcotic Drugs[17] whose provisions requires member states to limit the production, cultivation and distribution of narcotic plants except for medical care and scientific pursuit.

   The reality on ground in the country today is that narcotic plants, most especially Indian hemp are cultivated nationwide and are increasingly abused by members of the society including public officers, civil servant, security and military personnel, etc. This is because they are readily available. The NDLEA chairman in an interview in the Daily Trust Newspaper mentioned that the rate at which rural farmers were cultivating illicit narcotic plants (Indian hemp) was alarming. He attributed the proliferation of narcotic plant cultivation to poverty and the lucrative profits made there from[18]. The problem here is that farming of Indian hemp takes place in the rural areas where there are no access roads and minimal presence of the NDLEA and other law enforcement personnel. This makes it difficult for the NDLEA to police rural areas and prevent illicit cultivation of Indian Hemp.

2. The provision of Article 3(4) of the Single Convention on Narcotic Drugs requires that illicit drug users be regarded as clinically sick persons that require medical attention, treatment, care and rehabilitation[19].

   There is no provision in the National Drug Law Enforcement Agency Act or any statute for that matter in Nigeria which classify illicit drug users as anything else but criminal offenders[20]. This is in clear violation of the international convention to which Nigeria has signed, ratified and supposedly domesticated[21].

[17]The Convention for Limiting the Manufacturing and Regulating the Distribution of Narcotic Drugs of 1931, and maintained in the 1988 Convention.
[18] Daily Trust , Thursday 17 March (2012) p. 33
[19] The Single Convention on Narcotic Drugs of 1960.
[20]Section 3, National Drug Law Enforcement Agency Act. Cap. N. 30 L.F.N 2004.
[21]Nigeria is a signatory to the 1988 Convention on Drug by the U.N. This Convention incorporates the 1961 Convention which requires that illicit drug users be treated as clinically sick people.

3. The provisions of the Single Convention of Psychotropic Substances which requires member states to prohibit the advertisement, sale, export and import of psychoactive drugs except for medical care and scientific pursuit. It also requires member states to take any means necessary to curtail the diversion of psychoactive drugs intended for medical care or scientific pursuit to illicit drug activities.

   There are a number of medications sold at most pharmaceutical outlets around the country, which contain strong psychoactive ingredients. The most common are codeine based cough syrup. The existence of such drugs for legitimate sale has contributed to the rise in drug abuse by youth in Nigeria. They ought to be properly regulated and controlled but are not.

4. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, requires that member states shall establish a special department for coordinating all illicit drug activities[22]. This special department is the NDLEA in Nigeria by virtue of Section 3 of the NDLEA Act.[23]

   In response to this Convention and that of other pressing demands, the then Federal Military Government established the National Drug Law Enforcement Agency in 1989. Section 3 (1) (b) of the NDLEA Act states that the NDLEA shall have the responsibility for; The coordination of <u>all drug laws</u> and enforcement functions conferred on any person or authority, including the Ministers in the Government of the Federation, by any such laws.

This section of the Act empowers the NDLEA to enforce all drug laws in Nigeria, even if a law confers the power on any authority other than the NDLEA. The aim of this section is to make the NDLEA primarily responsible for combating illicit drug activity in the country. The Nigeria Police Force, along with other law enforcement bodies in

[22] This led to the establishment of the National Drug Law Enforcement Agency in Nigeria in 1990.
[23] National Drug Law Enforcement Agency Act CAP. N. 30. L.F.N 2004.

the country has limited powers with regards to enforcement of drug laws. Where a suspect is arrested by the police or other law enforcement bodies in Nigeria, they are required to hand over the suspect to the NDLEA for prosecution accordingly.

The aforementioned Convention also required member states to provide the department concerned, with adequate and necessary resources, for the successful implementation of the law. But if the Orosanye report on re-structuring the Federal Civil Service, submitted to the President of the Federal Republic of Nigeria, calling for the overhaul and dismantling of the NDLEA, is to be carried out, the effect would be a clear violation of the 1988 Convention cited earlier. The report suggests that all functions of the NDLEA are to be transferred to the Nigeria Police Force. Unfortunately, the police who were the main Government Agency responsible for the prevention and control of illicit drug activities prior to the establishment of the NDLEA were found to be grossly insufficient and incapable of successfully implementing such a task. The then Federal Military Government therefore resolved to heed the advice offered by Mr. George Schultz (the USA Secretary of State) to enter a mutual legal assistance treaty (MLAT) with the United States of America for establishing a security agency capable of effectively combating illicit drug activities like the USA Drug Enforcement Agency. Thus, the Nigerian NDLEA was created.

5. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 which requires member states to enter bilateral treaties including Mutual Legal Assistance Treaty amongst states with a view to strengthen international efforts aimed at combating illicit drug activities[24].

[24] Article 21 of the Convention of 1988.

As a result of this Convention, Nigeria has entered into numerous bilateral and multilateral treaties with various countries of the world[25]. Most of these treaties lay dormant except those subsisting between Nigeria and the United States of America and Nigeria and the United Kingdom[26]. It has been observed that the main cause of this dormancy has been the lack of adequate funding for the necessary operations that can give efficacy to the provisions of the treaty[27]. A number of these treaties require the sharing of information on the activities of suspected drug traffickers. This would translate into intelligence gathering, which is very expensive. And as long as lack of adequate funding remains the norm for Nigeria's bilateral partnership in efforts aimed at preventing illicit drug activities, the purpose of the treaty would be meaningless.

Another important challenge which this study seeks to investigate, are the problems facing those institutions in Nigeria, such as the NDLEA, the Judiciary and health officials from the Ministry of Health, the National Assembly, etc, who are responsible for the enforcement of laws on the prevention and control of narcotic drugs and psychotropic substances and in combating the drug problem in the country.

Finally, this study also seeks to explore the failure of the Nigerian government to ensure and safeguard adequate compensation for injury and loss to innocent individuals resulting from convicted illicit drug offenders. Presently, there is little compensation available to victims of illicit drug crimes under Nigerian criminal law. The failure to adequately compensate such victims contributes immensely to their suffering.

[25]The National Drug Law Enforcement Agency Annual report, 2009.
[26]Ibid.
[27] Ibid.

### 1.2.1 Research Questions

The following Questions will form the basis for which this research will intend to find solutions to:

1. Why effectively preventing and controlling production, transportation and circulation of narcotic drug and psychotropic substances have not succeeded in Nigeria?
2. What are the objectives and scope of the United Nations Conventions with regard to the framework for prevention and control of narcotic drugs and psychotropic substances?
3. What are the obligations contained in the Conventions, which the Government of Nigeria is required to perform?
4. How has the Government of Nigeria domesticated and implemented the Conventions and what Government institutions are responsible for implementing them?
5. What are the issues and challenges hindering the domestic implementation of the Conventions in Nigeria? And what are the modalities for compensation and remedy for victims of crime in Nigeria and whether such forms of compensation and remedy are adequate for victims of narcotic crimes?

## 1.3 Aim and Objectives of the Research

In view of the problems mentioned above, it is the aim of this research to analyse the conventions and the NDLEA Act controlling narcotic drugs and psychotropic substances. And to proffer solutions to these problems with a view to achieve the following objectives:

1. To analyse the rising drug problem in Nigeria.

2. To analyse the legal and institutional framework on prevention and control of narcotic drugs and psychotropic substances under the United Nations Conventions and under Nigerian Law.

3. To analyse the problems and challenges in domestic implementation of the conventions relating to the prevention and control of narcotic drugs and psychotropic substances in Nigeria.

4. To analyse the problems and prospects of compensating victims of illicit drug crimes under Nigerian criminal law and International law.

5. To make findings and proffer recommendations on how to address the drug problems in Nigeria.

### 1.4 Scope of the Research

This research is limited to the study on prevention and control of narcotic drugs and psychotropic substances under Nigerian and International laws with particular reference to Nigeria's treaty obligations under the Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol. The 1971 Convention on Psychotropic Substances and the United Nations Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances of 1988. The research will also cover some provisions of the National Drug Law Enforcement Agency Act, The Criminal Code, The Penal Code, The Administration of Criminal Justice Act of 2015, The English Criminal Justice Act and the Constitution of the Federal Republic of Nigeria (1999 as amended).

The research will be limited to Nigeria as a country under study and the operation of the laws and treaty agreements will be based on the experience in Nigeria. This is so because narcotic drugs are matters within the exclusive legislative jurisdiction of the Federal Government of Nigeria. Thus, the application of Federal Laws covers the entire country. It is therefore prudent that the research is based on Nigeria. However, reference may be made to other countries, such as the United States of America because of the role of its Drug Enforcement Agency in the formation and establishment of Nigeria's NDLEA.

## 1.5 Justification for the Research

The justification for this research is based on two important issues. The first is the importance of complying with rules and norms of international law, particularly those obligations relating to prevention and control of narcotic drugs and psychotropic substances, which affects Nigeria. The second is the importance of enacting laws in Nigeria that proscribe emerging illicit drugs that are not found under the United Nations Conventions and also laws that grant remedies and compensation for victims of crime in Nigeria, with particular reference to victims of illicit drug trafficking and drug abuses.

This research would therefore make adequate analysis on factors necessitating the need to comply with provisions of international law that have been domesticated in Nigeria on prevention of narcotic drugs and psychotropic substances and also on the need to establish a commission charged with the responsibility of compensating victims of illicit drug crime and illicit drug related crime in Nigeria. Adequate recommendations would be made elaborating scenarios of how to achieve this and the dire consequences if these issues continue to be neglected.

## 1.6 Research Methodology

This research adopts the doctrinal method. This is because, the doctrinal method which is mainly a theory based research, will enable this researcher to review, refer and improve on the works of authors contained in text books, journals, the internet, etc, with a view to complete a well conducted research work on illicit drugs. The National Drug Law Enforcement Agency Annual Reports and the United Nations Office of Drug and Crime (UNODC) Reports will be studied with a view to utilize information on combating drug offences in Nigeria and the world at large.

In the process of conducting this research, the following means will be employed. Materials used for this research are classified into two major relevant categories. They are-

a) Primary sources. This consist of the following;
    I. Statutes (Local)
    II. Case Law (Local and Foreign)
    III. International Instruments( Conventions, Treaty, etc)
b) Secondary sources. This consist of the following;
    I. Textbooks
    II. Journals and Seminar Papers
    III. Newspapers and Magazine
    IV. Official Reports, i.e. Annual Reports (NDLEA and UNODC)

The library, Internet and personal contacts are the means used to obtain material for this research.

## 1.7 Literature Review

The domestic implementation of international law (conventions, treaty, etc.) on the prevention and control of narcotic drugs and psychotropic substances in Nigeria is based upon the obligations, which those international instruments imposed on member states (in this case, Nigeria) and the necessity of complying with the rules contained therein.

These international instruments aim at providing member states with a legal and institutional framework that would collectively (i.e. through the unified efforts of the international community) lead to a successful effort against illicit drug trafficking and drug abuse. The importance of international law in this area lies in the fact that illicit drug trafficking is a global problem, and it is international law that determines what drug and substance is illicit or licit.[28]This situation equally gives rise to the problems of compensating victims of drug abuses and also the proper preventive and punitive measures against illicit drug trafficking offenders under the law.

In light of the above, some writers in Nigeria and abroad have focused on various aspects of the global drug problem. Drug trafficking is a subject of intense international effort by members of the international community due to its devastating effect as already mentioned, and also as a result of the responsibility placed on the members of the United Nations treaty agreement on drug abuse and drug trafficking under international law. If any such effort at the domestic level by the Government of Nigeria is to succeed, then it must first of all address the causes leading to illicit drug activities.

[28]See the preamble to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 which stated the importance of international law in combating illicit drug activities in the world at large.

The first factor causing illicit drug trafficking is the profit involved in it. **John Gillis,** in the paper '*Narcotics Abuses Prevention Programmes: What works?'*[29]Stated that:

> *...it is sad, and I don't want to inspire any entrepreneur drug baron – but it is said that if one had two thousand dollars to invest in heroin, he could expect that amount in street value, to yield a million dollars with the two thousand dollars investment. If the same two thousand dollar investment were made in the equipment necessary to produce fentanyl (a synthetic drug), the street value will be one billion dollars – a billion dollars!*[30].

Thus, very high profits are made from selling any form of narcotic drugs such as Indian hemp or cocaine. It would seem that for more than any other reason, the profits gained in drug trafficking is the major reason causing it.

**John** did not however make any attempt to provide any form of solution to this problem apart from describing it. The difficulty in making such suggestions is the same difficulty there is in solving it. The reality is that drug trafficking is a lucrative venture. This researcher suggests that the need to make money at all cost by drug traffickers may be a major factor in illicit drug trafficking. Drug traffickers are attracted to the money or profit involved in drug trade. Therefore, tracing the source of drug trafficker's finances and the financial institutions involved, with a view to confiscate and deny them the illegitimate profit can be a solution to problems of drug trafficking in the world at large.

The second factor causing the spread of illicit drug trade and abuse is the problems of addiction. A first time user of illicit drug may find the feeling unbearable. Others will be hooked from the first experience. Drug addiction is actually a habit of dependence on illicit drugs. One cannot feel comfortable without having it, constantly and regularly.

[29] John, S.G. (1990) '*Narcotics Abuse Prevention Programmes: What works*?' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 53-55.
[30] The United States of America Drug Enforcement Agency Annual report (2010) p. 33.

The continued desire to use or abuse an illicit drug creates the demand for it. While the drug dealers and peddlers keep on supply and make huge sums of money from it, more innocent individuals fall victim of it and become helpless and hopeless addict to the illicit merchandise. **John Gillis** stated that as a result of the question -how easy is it to become addicted to drugs? Said that the bottom line on this is that the drugs that are available today are of potency unknown in history, and it's easy, indeed, to become addicted. He goes further to state that American soldiers in Vietnam were using heroin mainly as stimulants, anti-depressants and generally as pain killer during the war. Studies conducted of the possibility of addiction revealed that if a soldier used heroin more than five times over any period of time, the possibility of addiction is 70%. The study also revealed that any individual who used heroin or medicines containing heroin for more than once a month, the possibility of addiction is also 70%[31]. Using cocaine and its derivative -'crack' within ten weeks for up to five times can cause immediate addiction. These two drugs are the only substance till date that most animals (including humans) would choose over food in life threatening starvation. That is to say when a person who has become addicted to them is starving and then offered to choose between food and cocaine or crack, the later would be chosen[32]. The case of Indian hemp is very similar to that of cocaine in that it takes almost the same number of time for an individual to get addicted to it, i.e., used five times in over ten weeks. But it does not cause excessive dependency like cocaine or crack yet it is known to cause neural damage leading to insanity in some users within the first five years of frequent use[33]. This researcher suggest that establishing drug rehabilitation centres where drug users and drug addicts can be treated and counselled will reduce the number of drug users and hence reduce the demand for illicit drugs.

[31] The University of Penang, Malaysia Annual Medical Report, (1990) p. 67.
[32] Ibid.
[33] Ibid.

Two immediate results of the devastating effect of illicit drug trafficking are; firstly, it confers on the traffickers a source of enormous illegitimate wealth and wrongful gains that would further finance illegal drug activities and other illegal ventures such as illegal arms trade and illegal human trafficking[34]. The profits derived from this trade are also used by some rebel groups and armed insurgents to sustain their resistance against the government. Therefore, it is in the interest of the government of any nation, and especially that of Nigeria to prevent drug trafficking in its borders, otherwise, the threat to national security and public safety and morals would be highly endangered. The risk of causing the many unemployed youths to join the trade in an attempt to make quick and easy money is present. Thus, there has to be sufficient ways to solve it.

Secondly, the devastating effect of drug abuse on victims put greater responsibility on the Government to pursue a policy of rehabilitation that can cater for the addicts, and efforts involved must be capable of halting the supply of illicit drugs on the streets and also of sustaining the health of the victims. Already, there is the Polio Vaccination and Eradication Programme going on in Nigeria presently. The aim is to stop the spread of polio. It is therefore very possible that a similar programme on illicit drugs can be initiated in the country along with more drug rehabilitation centres.

But then, how exactly can the drug problem in Nigeria be solved? Writers have made some suggestions in the area as highlighted below.

**Mohammed Bello,** in the paper *'Perspective and Strategies in the Control of the Trafficking in Narcotic Drugs and Psychotropic Substance's*[35] stated that; individuals, private organisations and different governments hold different views as to the best way

[34]Ibid

[35] Mohammed, B.H. (1990) '*Perspectives and Strategies in the Control of the Traffic in Narcotic Drugs and Psychotropic Substances'*Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 45

to fight drug trafficking with its attendant phenomena. One school of thought holds that the source of illicit supply of drugs should be eliminated so that supply of those drugs would halt, leading to diminished trafficking. Another school of thought holds that efforts should be focused on the demand of drugs and the market so that once the market is eliminated; there would be no where to traffic illicit drugs. Hethen goes further to describe the process involved in trafficking illicit drugs without necessary stating how it can stopped. The researcher suggests that a concerted effort must combine reducing both supply and demand of illicit drugs, rather than concentrating on a single approach.

However, **Oyakhilome Fidelis,** in the paper '*Perspectives and Strategies in the Control of the Traffic in Narcotic Drugs and Psychotropic Substances'*[36] observed that, illicit drug trafficking is a global problem and that this global problem of illicit drugs has led to the conclusion of various treaties with an emphasis on co-operation between sovereign states at the international level. Therefore, for him, the first strategy requires international cooperation by states at all levels of government with their foreign counterparts. This can be done through treaty agreement under international law. Secondly, a strategy is required on public enlightenment and creating awareness on the dangers of illicit drug. This may be done through the medium of seminars, workshops, open lectures and their continual publication on the mass media. The third strategy is to discourage individuals from going into illicit drug activities. The researcher suggests that public enlightenment and creating awareness is done with a view to actually discourage illicit drug trade and abuse, by way of television and radio jingles on the mass media.**Oyakhilome** further observed that the original objective of the Nigerian

[36]Oyakhilome, F.E. (1990) '*Perspectives and Strategies in the Control of the Traffic in Narcotic Drugs and Psychotropic Substances'*Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 3.

citizen in entering the illicit drug business was not for the purpose of consumption, but a consideration for the profit element. The drug trafficker becomes very affluent within few years of illicit drug activities, flooding the country with luxury cars, building expensive mansions in the midst of poverty and squalor of a majority of their kiths and kin's who are honestly battling against those effects of the dwindling economy. Negatively, this can motivate others to join without caring about the consequences. The fourth strategy is the need to change the individual and national orientation away from a lifestyle of emphasis on materialism and extravagant luxury without the need for legitimate hard work. **Oyakhilome**[37] is of the opinion that Nigerians got involved in the luxury of materialism and extravagant living habits occasioned by the oil boom from the beginning of the 1970s until the dawn of the 1980s when there were jobs galore. Almost every able bodied person not interested in government appointment had an alternative in business. He goes further to say that the culture of false affluence thus developed, but this soon turned out to be short lived. The collapse of the oil economy brought in its trail such serious reverse that Nigerians were caught unprepared. The problem of re-adjustment was one they could not immediately solve. So, alternative means of maintaining the status quo were sought as there were no longer jobs to go round. Retrenchments instead of appointments become the order of the day in the public sector. Many industries were grounded to a halt and only the petty trader was left to survive. The government was then forced to introduce the Structural Adjustment Programme, but before it had a chance to show positive results, impatient Nigerians looked beyond the frontiers of their nation for quick money-spinning business, no matter how obnoxious, the answer was -amongst others -the illicit drug trade. This researcher finds a striking relation between poverty and the rise in narcotic crimes. Although it is true

[37]Ibid.

that the oil boom in the 1970s and 1980s with its subsequent collapse in the mid 1980s caused a sudden palpitation in the nation's economic heart beat. Its effect on individuals and families across Nigeria was traumatic. A person, who suddenly got rich overnight as a result of the oil boom, buying expensive cars and houses, suddenly struggled to keep the basic meal on the table. Even the prices of staple food such as rice, cassava, *gari*, palm oil, etc went up! Not everybody could cope with such social dilemma and those who could qualify sought for appointment in government services. The size of the public service increased many fold in an attempt to solve un-employment in the country, the result of this was the wasteful increase in the public service. Today, the Government of Nigeria is the largest employer of labour in the country with over 65% of wage earners working for the Government[38]. While those who had business skills tried to utilise it by doing something else. The impatient ones mustered their business talent and became the favourite courier of the drug barons. The dexterity of the Nigerian courier in concealment of drugs and his ability to beat law enforcement agents at entry and exit points earned him the notoriety of being the most ingenious and resourceful drug peddler. **Oyakhilome[39]** suggests that at that time, Nigerians were mainly drug couriers and peddlers and so the country was considered a transit state. Again, that the demands for drugs in Nigeria on the other hand can be said to be a fallout of the trafficking business as exportation became more difficult due to intensified law enforcement both in Nigeria and abroad. There was a build up of un-exported drugs, which began to find local markets for domestic consumption. The drug distributor in search of patronage usually begins by offering the substance on a complementary basis for experimentation purposes. By so doing, the gullible youths who succumbs to peer group pressure and at

[38] Uvieghara, E.E. (2005) '*Labour Law in Nigeria*', Malthouse Press Ltd. Lagos, p. 65.
[39]Oyakhilome, E.E. op.cit. Fn. 72. P. 28.

no expense to them at first, gradually develop an addiction which ensnares them to the drug dealers.

The researcher is of the opinion that**Oyakhilome**[40] that drug trade and abuse started on a wide scale after the collapse of the oil boom in Nigeria is somewhat true. However, this researcher will add that illicit drug activity had been in the country albeit on a lesser scale earlier than the oil boom or its collapse. The colonial administration in Nigeria had passed the Dangerous Drug Ordinance in 1922, even before the oil boom started, making it a crime to cultivate, process, trade and consume illicit drugs (mainly cannabis or Indian hemp). The very nature of the Drug Ordinance reveals that illicit drugs were rife in Nigeria at that time. Again, the returning military personnel of the African contingent under the British forces that fought before and during the Second World War (WWII) were exposed and introduced to all sort of sophistication including drug use. It should be stated here that even heroin abuse developed from addiction by soldiers as a form of pain killer for their injuries sustained on the war front. Cannabis was widely known in parts of Asia including India. And so the Nigeria contingents that were stationed at Burma (on the Indian subcontinent) came to adopt the use or abuse of Indian hemp[41]. It is widely believed that some of these returning soldiers brought back Indian Hemp seeds, which they planted and which later became the source of most of the Indian hemp abused in Nigeria today[42]. This researcher is of the opinion that the actual history of illicit drug activity in Nigeria goes back and deeper than what he **Oyakhilome Fidelis** seeks to assert. While he omits to trace the actual genesis and historical development of drug trade and abuse in Nigeria into colonial era, he also lost the chance to adequately describe other factors that led to illicit drug activity other than

[40]Ibid.
[41]Oyakhilome, F. E. op.cit.
[42] Ibid.

the oil boom. The importance of an accurate historical background on Nigeria's drug problem lies in its ability to reveal how the then colonial administration handled the matter. This would enable stakeholders have an idea of what eventually needs to be done to solve the problem. It is also important to state here that the very first legislation on illicit drugs in Nigeria by the Colonial administration, the Dangerous Drug Ordinance (Amendment) in 1935-is the basis of the National Drug Law Enforcement Agency Act presently in operation as the pre-eminent statute against illicit drug activities in the country today[43].

**Iyamabo,** in the paper*Perspectives and Strategies in the Control of the Traffic in Narcotic Drugs and Psychotropic Substances*[44] observed that Article 4 of the 1971 SingleConvention on Narcotic Drugs which spells out the general obligation of the parties to the convention requires cooperation by member states in the execution of the provisions of the convention.It also limits exclusively to medical and scientific purpose the production, manufacture, export, import, distribution, trade and possession of drugs. She concluded that the government of Nigeria had given effect as far as possible the intendments of that convention by incorporating their provisions in our domestic law which are to be found in Section 3(1) and (2) of the NDLEA Act. The stringent provisions aimed at tackling laundering, tracing and confiscation of drugs, substances, property and money from traffickers had given effect to that treaty. But Iyamabo has not indicated how successful these stringent measures are especially after so many instances where confiscated drugs and substances are sold by officers of the Agency back to drug peddlers or that money and property that have been confiscated were misappropriated

[43] The NationalDrug Law Enforcement Agency Annual Report, (2009) p.91.
[44] Iyamabo, J.A. (1990) '*Perspectives and Strategies in the Control of the Traffic in Narcotic Drugs and Psychotropic Substances'*Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 17.

by such officers. For instance, Oyakhilome who was the first chairman of NDLEA had to be dismissed due to such similar corrupt practices.

**Messrs Martin & Hugh**, in the paper*Combating Drug Trafficking - The UK Experience*[45] while sharing the experience of the U.K. Government in combating drug trafficking stated that, firstly, it must be understood and accepted as such that drug trafficking and those involved in it is truly international in scope that many countries are used as transit states for the purpose of transporting drugs and substances to the country of destination. That since transportation of drugs is done by couriers, and then the most reliable approach in combating it is by having well trained law enforcement officers to be stationed at ports where suspected couriers would pass through. But it is hardly possible for such a simple remedy to apply in Nigeria. Firstly, no matter how well trained an officer of the NDLEA is, whenever an offer of millions is made to him or them so that they can turn a blind eye to enable couriers to pass on as the high rate of poverty in the nation makes it likely that the officers will be susceptible to bribery and corruption. Secondly, Nigeria has over two thousands porous borders[46] which have no security presence and so it is very easy for couriers who are aware of them to bring in or take out drugs. This dissertation would make recommendations on how such problems can be prevented and controlled.

**Emafo Phillip,** in the paper '*Drug Regulation and Social Policy'*[47] suggested that apart from narcotic drugs and psychotropic substances presently under legal control, other substances which are essentially drugs have notoriously grown to be socially accepted with very dire consequences for the society. He cited tobacco (cigarette) and alcohol as

[45] Messrs Martin Denton and Hugh Ryan, (1990) '*Perspectives and Strategies in the Control of the Traffic in Narcotic Drugs and Psychotropic Substances*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 37.
[46]The Nigeria Immigration Service Annual Report 2011.
[47] Emafo, P.O. (1990) "Drug Regulation and Social Policy" *Federal Ministry of Justice Law Review Series.* Bencod Press Ltd. Ikeja-Lagos p. 65

two types of drugs that ordinarily deserve to be made illegal, arguing that they have as much contributed to the devastation of health as cocaine or Indian hemp. He concluded that if the law can take a bold step in making them illicit, the society would be protected from such terminal sickness as cancer, and liver cirrhosis. Although this position is a good and prudent one, it would only ignite a debate on what extent should the law regulate human conduct? The researcher finds that the use of alcohol has been with almost all human societies since antiquity. When should the law prohibit a society acceptable culture? But even if alcohol is banned, can it be properly enforced and will the ban be socially observed? The same goes for tobacco, which is seen as a past time or a harmless vice (although it is medically harmful). A law against them would risk being a dead law.A law that cannot be effectively enforced on the society.

**Cukwurah Oye,** in the paper '*Bilateral and Multilateral Co-operation in the Control of Drug Trafficking'*[48]observed that between the years 1919 to 2000, it is very evident for a keen observer to see that daunting magnitude on the war on drugs by the international community through international law. He further remarked that presently, it is not the international legal instruments that is lacking but the necessary political will to perform those obligations under those treaties. He also cited corruption, poverty and determination by drug barons to continue their trade as obstacles. He concluded that unless there is sense of commitment by nations to win the battle against illicit drugs, the future remains hopeless. It can be seen how honest an analysis of the drug problem is, and what was observed are essentially true, but the little efforts seen on the part of the governments to tackle the problem should only raise hope and not a sense of despair as observed above.

[48] Cukwurah, A.O. (1990) '*Bilateral and Multilateral Co-operation in the Control of Drug Trafficking*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 89

**Alemika Etannibi,** in the paper '*Narcotic Drug Problem in Nigeria'*[49] was able to discuss the impact of the drug problem in Nigeria and he concluded that the effect of such problem is particularly in terms of the bad image created for the country and her citizens abroad. While that may be true, the researcher finds that there are much graver effects of the drug problem in Nigeria than her image abroad. Firstly, the rate of drug addicts would continue to rise. Secondly, the youth who are more susceptible to drug abuse would be sucked into a culture of drug abuse which is capable of destroying generation after generation of youths. Thirdly, that crime rates would sore high as offenders are accustomed to drug abuse. Again, since the drug problem is global or universal, it involves almost every other nation as thus, Nigeria cannot be singled out and therefore a bad image for the country is a farfetched effect of the drug problem in Nigeria.

**Oluruntimehin Olufunmilayo,** in the paper '*Sociological and Psychological Implications of Drug Trafficking'*[50]examined the socio-psychological implication of drug trafficking and abuse. She observed that efforts have been made to demonstrate the common reasons given for the persistence of drug trafficking and abuse. She noted that there is a need to introduce another explanation which is driven from Merton's perspective on anomie (psychological evaluation), particularly, that which focused on the imbalance between goals and institutionalised means. That it is on one hand, the adoption of innovation have been used to explain the activities of drug traffickers while on the other hand, the adoption of *retreatism* has been used to explain the activities of drug addicts. She further stated that a successful policy should make a distinction between drug traffickers and drug abuses. She concludes that such a policy for solving

[49] Alemika, E.O. (1990) '*Narcotic Drug Problems in Nigeria*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 111

[50] Oloruntimehin, O.O. (1990) '*Sociological and Psychological Implications of Drug Trafficking*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos, p. 123.

the drug problem in Nigeria should particularly classify drug trafficking as criminal act, while drug abuse as a clinical problem. This position is proper and prudent. And even as the 1961 convention of Dangerous Drugs make a similar declaration, the reality is that both drug abuse and drug trafficking are offences under Section 3 of the NDLEA Act in Nigeria. It would be recommended in this research that drug abuse should be removed from being a criminal act and be made a clinical condition subject to rehabilitation.

**Ahire Phillip,** in the paper '*Drug Abuse in Nigeria: Facts, Causes and Remedies'*[51] noted that a patently prohibitionist and legalistic approach to drug control is fraught with problems. He further noted that one of the problems of drugs, particularly tobacco and alcohol.The issue of their use or abuse borders on morality and some, like Professor Hart has argued that law should keep a safe distance from the enforcement of private morality. He concluded that unless the society is willing to accept tobacco and alcohol as illicit, it would be futile to ban them. However, the issue of prohibiting such drugs as tobacco and alcohol goes beyond the realm of private morality into one of public safety.Since tobacco is known to cause lung disease even for those who are non-smokers but who only passively inhale it[52]. Alcohol also causes so many illnesses, from liver diseases to psychological diseases such as alcoholism. Both end up causing social dilemma for both victims and their relatives. And a good number of homes have been destroyed from such practices.It is often believed that the state of the nation begins at home and that the family is the basis unit of the nation.The researcher suggests that the law must, therefore safeguard this national treasure i.e. the home or family and the notion that the law has no business enforcing private morals must not extend to any

[51] Ahire, P. (1990) '*Drug Abuse in Nigeria: Facts, Causes and Remedies*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 139
[52]Ibid.

attempt by the law to ban socially acceptable drug such as alcohol and tobacco. The only problem is that whether the ban can in fact succeed.

**Uche,** in the paper '*Drug Abuse at the University-A Case Study of Benin Students'*[53] observed that there are various types of drugs such as tranquilisers, hypnotics, analgesics, narcotics and stimulants that are currently used by students particularly at the tertiary institutions. He noted that family instability and peer pressure as the most common causes for drug abuses by students. He then concluded that it is necessary to identify correctly what drugs are being abused, where they are obtained from, when and where they are abused etc to be able to effectively so prevent further abuses. This conclusion could never be a lasting solution to the common causes of drug abuse by students at the tertiary institutions. It would only solve the problem of supply but not at the demand. The issue of demand is from family instability and peer influence as he rightly noted. Surely, it becomes important that those customary institutions that manage matrimonial problems must be strengthened and schools must be proactive in checking and counselling unruly students regularly and this duty cannot be left on the family or parents alone. The process of achieving this would be recommended in this dissertation.

**Taiwo,** in the paper '*Forensic Aspects of the Investigation of Drug Related Offences'*[54] remarked that the forensic science laboratory *Oshodi*, which was first established in 1953, is the only type of its kinds operating in West Africa up till the early 2000. The laboratory did not get involved specifically in drug analysis until late 1982. That the laboratory analyst would receive drug exhibits, analyse them, write report on them and

[53] Uche, C. (1990) *'Drug Abuse at the University-A Case Study of the University of Benin'* Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 157

[54]Taiwo, M.O. (1990) *'Forensic Aspects of the Investigation of Drugs'* Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 171

then dispatch both the report and the remaining exhibit under seal to the station of origin. The analyst would also appear before the court as expert witness to give evidence when summoned to the court. He then noted that the police, customs and NDLEA officers often conduct field test i.e. test done at the spot where drugs are confiscated to determine their nature and chemical compound with a view to discovering whether or not they are illicit substances. He concluded that such field test often produce inconclusive result and an average of over one-quarter cases that tested positive of the field test, turns out to be negative in laboratory test. Again not all cases are sent for confirmation after initial field test, just a fraction are. The researcher finds that the immediate problem affecting field testing is the possibility of innocent suspects being wrongfully prosecuted. It would be noted in this research that since field testing is usually inaccurate and inconclusive, it must be rarely relied upon, instead, drugs and substance exhibit should be taken to the laboratory for confirmation as a matter of standard operation procedure always especially in view of Taiwo's revelations above.

**Godwin Ovbiagele,** in the paper '*Forensic Aspect of The Investigation of Drug Related Offences'*[55] observed that the provision of the NDLEA Decree 48 of 1989, now section 3 NDLEA Act outlaws the importation, manufacturing, sale, possession, etc of drugs popularly known as cocaine, *LSD*, heroin or any similar drug. He said that all drugs confiscated as exhibits must be forensically proven positive to be regard as illicit drugs. That the interpretation forensically of the term "other similar drugs" contained in the provision of the Act creates a lot of uncertainties. Does the similarities relate to pharmacological profiles, or to chemical structures or to addictive properties? He further observed that both cocaine and heroin are pharmacologically and chemically dissimilar. The similarity is thatthey are both highly addictive. He concludes that instead of the

[55]Godwin, E.O. (1990) '*Forensic Aspects of the Investigation of Drugs'*Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 175

section adopting the *ejus dem generis* rule, that it would be better for there to be a list of comprehensive illicit drugs and substances for definite and clear identification. The researcher finds that while much of **Godwin**'s observations are shared by this researcher, it is not so desirable that the *ejus dem generis* rule be substituted for an all inclusive list or a comprehensive list. This is because, illicit drug traffickers, the drug barons are always innovative in creating new or hybrid substance and thus, if new drugs or substances that can cause health hazards and are addictive are manufactured, given the time it takes to amend legislations, the purpose of safe guarding the society from falling victims of drug abuse become defeated. This is tied to the fact that the Nigeria constitutions disallowed the prosecution of an act or omission unless such act or omission has been legislated upon[56].

**Adetona Ade,** in '*Traditional Healers on Drug Law Enforcement'*[57] noted that behind every successful drug pusher or drug trafficker, there is always a traditional healer. He further noted that traditional healers have the ability to make a pusher invisible or to command obedience. That the many murder victims who are found missing body parts such as breasts, genitals, eyes, etc are victims of ritual murders. He concluded that traditional healers are a part of the problem because they provide assistance such as amulet and charms, incantations and other rituals to enable a trafficker succeed. **Adetone Ade** is a traditional healer, and he recommends that whenever suspects are arrested and prosecuted, any traditional healer who is found assisting suspected drug traffickers should also be prosecuted. But to what extent can traditional healers be actually prosecuted to a guilty verdict when their actions rest upon the supernatural? The researcher finds that the proof of it is very difficult and going by the conditions

[56]Section 36 (8) and (12) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[57]Adetona, A. (1990) '*Traditional Healers on Drug Law Enforcement'*Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 183

necessary for the proof of crime under Nigerian criminal law (the proof of *actus reus*), it is unlikely that such a move would succeed. Perhaps offences like conspiracy and aiding criminal acts which is established when two or more persons agree to do an act which is an offence under the law when invoked against such traditional healers can succeed.

**Eze Osita,** in the paper '*Political-Economy Aspects of Drug Trafficking and Narcotics Abuse'*[58] commented on the Conference on Drug Abuse held in New York by which some state officials participated from Nigeria. He stated that while the benefits derived from training abroad cannot be ignored, that Nigeria should avoid the temptation of over reliance on U.S. Government becausetheir specific problems might be different from ours (in Nigeria). He stated further that we (in Nigeria) should develop the culture of solving our local problems locally as much as possible. He then concluded that by this way, our appreciation of our local problems and their solution will be indigenous based lending themselves to easy adaptation and progressive development. The researcher finds that **EzeOsita** has missed the point. The very purpose of that particular conference is to provide various nations the opportunity to share information relating to the progress, challenges, intentions and efforts for the common benefit of the participants at the conference. Again ideas would be shared and familiarity between parties can strengthen work bond and comrade ship that are very crucial to the survival of international relations by member states. **Eze**'s opinion contradicts the continued call by stakeholders for nation states to unite against illicit drugs and substances. Such an opinion cannot be justified and should be rejected.

[58]Eze, O.C. (1990) '*Political and Economy aspects of Drug Trafficking and Narcotic Abuse'*Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 189

**Asuni Tolani,** in the paper '*Treatment and Rehabilitation of Drug Offenders and Abusers'*[59]mentioned that voluntary treatment is the most successful in rehabilitating victims of drug abuses. He said that if an addict is not motivated to give up his addictive behaviour and enters into treatment voluntarily, it is a waste of time as that amounts to treatment against his will. He concluded that voluntary rehabilitation should be encouraged and adopted as government policy. The researcher finds that the problem with this position held by **Asuni** is that the victim may not be in the proper state of mind to appreciate making the right decision like voluntarily accepting rehabilitation. Also, other psychological factors contributing to his addictiveness such as frustration, trauma, abject poverty and even peer influence would prevent such voluntary move. The victim may end up destroying himself or doing something criminal which offends the law, his family and the society. Thus, none voluntary treatment must be applied in appropriate cases so that parents, guardians, the authorities and even the court of law can be able to order an addict to rehabilitation with or without the victims consent.

**Osinbajo Yemi,** in the paper '*The Legal and Institutional Framework for the Eradication of Drug Trafficking in Nigeria'*[60]observed that a definite problem with the efficacy of Nigeria's anti drug laws and policies, including the implementation of its treaty obligations was the absence of a central agency for the coordination and monitoring of these efforts. He further observed that the formulation and implementation of policy developed into a sort of rivalry between the numerous government agencies sharing that responsibility. He concluded that the establishment of the National Drug Enforcement Agency was the answer to those problems earlier cited. The researcher finds that that may not be the case precisely because all that the NDLEA

[59] Asuni, T. (1990) '*Treatment and Rehabilitation of Drug Offenders and Abusers*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 199

[60]Osibanjo, Y. (1990) '*The Legal and Institutional Framework for the Eradication of Drug Trafficking in Nigeria'*Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 223.

was able to do was to focus the major responsibility of administering the Act. No law existed up till date that has removed the initial role of those bickering agencies from performing the duties relating to prevention and control of drugs and substance in Nigeria. Therefore, if the multiplicity of government agencies was a major problem hindering the state's efforts against illicit drug activities in the country, then on one hand the problem is reduced by focusing the responsibility on one agency. On the other hand, another agency is added to the multiple players, and the bickering and rivalry has not gone away. It is difficult to conclude that the problem is solved. The researcher suggests that except where the NDLEA is given sole jurisdiction over all preventive and control measures on illicit drugs, no meaningful solution to that problem can be found.

**Atta,** in the paper '*Drug Trafficking and its Implication for Nigeria and its image Abroad'*[61] noted that drugs were first introduced into Nigeria in the mid 1940s soon after the Second World War (WWII). The demobilised soldiers who had fought in India and Burma had returned with marijuana seeds back home to Nigeria. He concluded that, that was the genesis of Nigeria's drug problems. Also, it is an accurate report that demobilised soldiers brought back Indian hemp seeds that later lead to wide spread used of it in Nigeria. Butit was not in the 1940s thatillicit drugs were introduced into Nigeria. The researcher finds that in 1925, the Colonial Government had passed the Dangerous Drug Ordinance and again in 1935 the Dangerous Drug (amendment) Ordinance was passed. Both statutes were passed in response to the rise of drug use by some communities in colonial times. This occurred at least 10 years before the end of the Second World War to which **Atta** allude to. Again, it would have taken a concerted effort by those retired soldiers to spread Indian hemp from a handful of seedlings. Thus, it is doubtful that most of today's Indian hemp originated from those soldiers. It must be

[61] Atta, A.I. (1990) 'Drug *Trafficking and its implications for Nigeria and its image abroad*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos. P. 250.

noted here that illicit drug trafficking is a global venture where drugs like Indian hemp are for instance planted in Cameroon to be sold specifically in Nigeria.

**Okonkwo Clifford,** in the paper '*Death Penalty: Myth or Reality'*[62] suggested the application of the death penalty against convicted drug traffickers, so that, as he puts it,'we can mobilise all the weapons at our disposal to fight these evils of drug abuses and save our nation'. But at a time like this, so many human rights activists have been clamouring for the complete abolition of the death sentence. The researcher finds that even if such a recommendation is made in this dissertation, it is even doubtful that the Federal Government of Nigeria would heed such a call to add to the list of capital offences carrying the death sentence, especially when no international instrument require or even allow the death penalty for illicit drug and substance offences.

**Adeyemi Adedokun,** in the paper '*Death Penalty in Nigeria; Criminological Perspectives'*[63] commented on why African nations continue to retain the death penalty when their colonial masters are shedding the death sentence from their criminal system.He stated that it is within the context of low level societal resource development in the African countries, and the attendant inability of most of them to deal with the problems of serious crimes that their retention of the death penalty is viewed. **Adeyemi** is suggesting that under development, poverty and high crime rates are the reason that the death penalty is retained in Africa. The researcher finds that this is hardly an accurate observation because most African countries still retain the received corpus of colonial laws in their legal systems. There are so many issues that need to be reviewed and amended and not just the criminal law or particularly the death penalty. Therefore,

[62] Okonkwo, C.O. (1990) '*Death Penalty: Myth or Reality*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 263.
[63] Adeyemi, A. (1990) '*Death Penalty in Nigeria: Criminological Perspectives*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 281.

the lack of proper democratic progress in the political realm is the main cause of such problem. This is because with a government that listens to the voice of the people and acts on the majority will of the people; such legal reforms would be a thing of the past.

**Chukkol Kharisu,** in the paper '*Towards a National Drug Control Strategy - A Blueprint'*[64] commented on Section 4 of the NDLEA Act which stated that

> the Agency has the power to cause investigations to be conducted into properties of any person if it appears to the Agency that that person's life style and extent of his properties are not justified by his ostensible source of income,

Recommended that the Agency should start off right there as there are so many people whose life style and extent of properties are incompatible with their legitimate income. No matter what intentions the Government of Nigeria has and to which Chukkol rightly share, such a move must be done with outmost caution as individuals risk being subjected to an inquisition and the resultant persecutions. The researcher suggests that it is advisable that such power be exercised only on justified grounds such as where suspicion is glaring. However, any person who feels his rights may be in danger can seek for their enforcement. The Nigerian Legal System is not inquisitorial in nature. It is wrong to suspect a person of drug trafficking simply because his source of income is not known.

**Isabella,** in the paper '*Death Penalty as an Effective Deterrent to Drug Abuse and Drug Trafficking'*[65]cautioned on the need to apply the death penalty on drug offender. She said that the move towards progressive increase in the severity of penalties is based on the simplistic view that the more severe a punishment, the greater it's subsequent deterrence. She concluded that this view has never been demonstrated to have any basis

[64] Chukkol, K.S. (1990) '*Towards a National Drug Control Strategy – A Blueprint*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 211.
[65] Isabella, O. (1990) '*Death Penalty as an effective Deterrent to Drug Abuse and Drug Trafficking*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 317.

in reality. As such, the death penalty should be rejected altogether. The researcher finds that whether the death penalty is actually effective or not as deterrence capable of preventing illicit drug offences remains debatable. At least, first of all, it has deterred permanently the said offender from committing any further offence. Secondly, it has greater socio-economic advantages to the nation such as its being a measure of shifting the more dangerous members of the society from cultivation and that it is much more economical than the cost of imprisonment on the nation's coffers.

**Azinge Ephipany,** in the paper '*The Death Penalty: An Effective Deterrent to Drug Trafficking and Abuse'*[66] mentioned that punishment of offenders for illicit drug offences must not be given undue prominence in the war against drug traffickers. To do so, could be tantamount to accepting the futility of all attempts to dissuade people from trafficking in drugs. He concluded that greater emphasis be placed on more effective preventive measures since preventions, as they say, is better than cure. The researcher finds that this comment is very accurate, however, it is in the interest of deterrence that penal threats against drug offences are publicized.

**Ladan Tawfik,** in the paper'*Crime Prevention and Control And Human Rights In Nigeria'*[67] commented on the sociological viewpoint of crime. He quotes **Paul Tappan** who defines crime as an 'intentional act' in violation of criminal law, committed without defence or excuse and penalised by the state as a felony or misdemeanour. This definition does not however consider other states of mind of an accused person other than intention. For instance knowledge, i.e. where a person knows that his conduct is at least capable of leading to an offence. Negligence, i.e., where a person who is required

[66] Azinge, E. (1990) '*The Death Penalty: An Effective Deterrent to Drug Trafficking and Abuse*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 350.
[67] Ladan, M.T. (1998) *Crime Prevention and Control and Human Rights in Nigeria,*JUSTICE WATCH PUBLICATION*,* Abuja p. 4.

to observe a reasonable degree of care in his conduct, but he neglect to do so.Then due to the duty of care which he fails to observe, his conduct becomes blameworthy.Recklessness, i.e., where a person fails to properly consider the consequences of his conduct.He becomes unjustifiably rash or taking unwarranted risk. Ladan should have commented as thus, if a man does not only need to intend an act in violation of criminal law to commit a crime. This definition of crime is strictly based on intention alone as the ingredient of *mens rea*. If a scenario occurs such as where a person exports narcotics drugs to a foreign country through a commercial airline courier, if he is arrested, the airline operators would also be investigated on the event as Section 25 of the Act[68] requires all commercial transporters to be vigilant and prevent the use of their transport system from being used by drug traffickers. A duty of care is place on commercial transporters by the section. Now according to Section 25[69], if the operators of such transport system were negligent and reckless in their conduct, it would be said that they were responsible for allowing transportation of narcotics due to negligence. In this regards, even if intention is not established, negligence may prove the blameworthiness of the airline operators.

**Bowett David,** in the book '*The Law of International Institutions'*[70] stated that treaty is an agreement in written form governed by international law concluded between two or more states, or other subjects of international law, possessed of treaty-making capacity. He observed that while treaty-making power is clear evidence of international personality it is an infinitely variable concept and it does not in the least follow that every international person has capacity to make treaties. All entities having treaty-making capacity necessarily have international personality. On the other hand, it does

[68]National Drug Law Enforcement Agency Act, Cap. N. 30. L.F.N 2004.
[69]Ibid.
[70]Bowett, D.W. (2008) *The Law of International Institutions*, Stevens & Sons Ltd, London p. 304.

not follow that all international persons have treaty-making capacity. He concludes that whether or not any given international organisations have treaty-making power can only be determined by reference to the constitution of the organisation. But of course the constitution of an organisation cannot limit the legitimate and lawful rights and powers of such similar bodies as is customary under law. If the law actually permit it, no organisation can prohibit. The court would simply not affirm such a limitation unless on good cause.

**Olufumilayo,** in the paper '*Victims Remedies in cases of illegal Trafficking and Usage of Drugs: Who should Compensate Victims'*[71] Stated that in an attempt to determine or identify a victim of drug abuse and drug crime, it is necessary to identify the kind of drug involved in the case. That if hard drugs such as cocaine and heroin are involved, then there is infact no victim since it can be said that a wiling transaction between the user and the peddler had occurred. She concluded that the so called victim should even be regarded as an accomplice to the trafficker. The researcher finds that this view, no matter how sincere it seems, must be discarded for two reasons. First, the Convention on Narcotic Drugs of 1961 had specifically mentioned that all drugs users are to be considered as clinically sick persons entitled to medical rehabilitation and not as criminals. This provision was restated in the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance of 1988 and this is in fact the trend in Europe and some states in the United States of America. Secondly, it has not been an acceptable position in criminal law that a person can contribute, accept or permit a criminal conduct against his person. For instance, in an offence of causing bodily hurt, it is no defence that the victim permitted or even monetarily motivated the accused person to cause hurt to his person. Not even a case of contributory negligence is accepted under

[71] Olufunmilayo, O. (1990) '*Victims Remedies in cases of illicit trafficking and Usage of drugs: Who should Compensate Victims'*Federal Ministry of Justice Law Review Series. (No Publisher stated) p. 215.

the Nigerian criminal law. Thus, the victim becomes entitled to compensation where it is available[72].

**Leroy Lamborn,** in the paper '*Victims in the Criminal Justice Process: The American Perspective'*[73] described the modern trend in developed countries on the issue of compensation and remedies for victims of crime. He stated that in 1957, **Margery Fry**, a British social reformer, when informed that court ordered restitution payment for offences could not be completed unless the victim lived for 442 more years, began a movement for the establishment of a special program of compensation of crime victim by the state. That the interest engendered by that movement prompted **Stephen Schafer**to survey the means of making reparations to victims around the world. This movement for reform continued mainly in Europe and in 1983, New Zealand established the first comprehensive state criminal victim compensation programme, which made awards to victims of violent crime for medical and funeral expenses and for lost earnings and support. In 1984, the United Kingdom established a similar program which was adopted subsequently in Australia, Canada, the United States and Western Europe. He concluded that as a consequence of the interest in the psychological support and reparation offered by those various programs, increased attendance came to be focused on the responsibility of the criminal justice system to victims. The researcher finds that the position in Nigeria is rather distant from these commendable achievements. No proper statutory law adequately cater for victims of crime in Nigeria today.

[72] Chioma, K.A. (2011) '*Nigerian Employment and Labour Law and Practice*', Concept Press Ltd, Lagos, p. 206

[73] Leroy, L.L. (1990) '*Victims in the Criminal Justice Process: An American Perspective*' Federal Ministry of Justice Law Review Series. (No Publisher Stated) p. 90.

**Gavin,** in the book '*Law, Justice and Politics'*[74], commented on the obstacles of getting justice.He stated that, law tends by its very nature, to be a conservative force, cushioning society from the impact of rapid change and to lag behind the prevailing values and attitudes in society. This has two consequences.The first is that, law and the machinery of justice tend to be imbued with values peculiar to middle-class and better educated people. Secondly, much law is out of date and tends to change only belatedly and then only in response to almost irresistible pressure from return. This characteristic of the law is evident in Nigeria. For instance, by 1985, nearly two-third of countries in the British Commonwealth had made legislations recognizing the rights of victims of crimes to receive compensation and remedies either from the state or from the convicted offender. Not so in Nigeria. The country was moving from one military dictator to another.The prospect of having a similar legislation was dim lit. The jittery military would not allow such a law to be made so much that from 1990 onwards, so many stake holders, including the Federal Ministry of Justice noted how long overdue the need for such legislations was. One could only imagine the barrage of petitions and the continued litigation against the military regime from the civilian population assuming such a law was made. The only option for the nation is to make that irresistible pressure on the government by any means necessary.

**Dennis,** in the book'*The Idea of the Law'*[75],commented on the necessity of law in the society and cited David Hume who observed that without law, government and coercion, human society could not exist and so in this sense law was a natural necessity for man. He further cited an Indian philosophy which maintained that men are by nature passionate and covetous and that if left to them the world would resemble a devils workshop where the logic of the fish would reign, that is, the big ones would eat

[74] Gavin, D. (2009) *Law, Justice and Politics*, Longman Press Ltd, London, p. 17.
[75] Dennis, L. (1995) *The Idea of the Law*, Penguin Press Ltd, England, p. 37.

up all the little ones. But more than anything else is the need to maintain the law properly. This brings up the four institutions that are accustomed to doing that namely; the legislator, the judiciary, the executive and the police. But in almost every society where these four exist, including where they are fused or shared and not necessary separated, it seems obvious that their inadequacy has continued to cause ever louder consternation amongst the populace. The ongoing *Arab Spring* which is essentially a social revolution against such inadequacies of maintaining the law proves this fact. However, nothing really exists today that can supplant these institutions except for a change in the caliber of men handling the sectors. Thus, these institutions remain a necessary evil as the human society do not do too well with them and cannot do without them.

**Clement,** in the book'*Nigeria: The Limits of Justice'*[76] observed that courts exist to dispense justice. Where the citizens of a country lose faith in the ability of the judiciary to effectively dispense justice, they begin to place little reliance or confidence in the judiciary.Thus, reducing recourse to the law courts and the law enforcement system. He concluded that in Nigeria, the courts are increasingly becoming a bottleneck in the process of dispensation of justice. Litigants go to court expecting the worst, citing delayed justice and the judicial attitude to human rights as the chief cause of the problem. But **Clement**should also have stated that this problem was originally brought about by the nature of Nigeria's procedural law from the Evidence Act to the Court Rules and Procedures Codes. For as long as cases are adjourned incessantly for want of sufficient evidence in Nigeria and so far as the judiciary remains reliant on the executive for funding and for the judges' personal security, the enforcement of human rights by the not so independent court would remain a problem.

[76] Clement, N. (1993) *Nigeria: The Limit of Justice*, Constitutional Rights Project Press, Lagos, p. 11.

**Harry,** in the book'*Freedom, the Individual and the Law'*[77]commented on personal freedom and police powers. He cited lord Devlin who stated that, 'you may sometimes read in novels and detective stories perhaps written by people not familiar with police procedure, that persons are sometimes taken into custody for questioning'. There is no such power in this country (U.K.). A man cannot be detained unless he is arrested. Harry then observed that courts in the U.K. from the House of Lords downwards have frequently had to make it clear that the police have no power to require a person to go to the police station in order to answer questions. He concluded that even the Lord Chief Justice of the U.K. is on record in ruling that a man who refused to tell a policeman his destination and his name and address was not guilty of an offence because a citizen had no legal duty to answer the policeman's questions. Any law that allows a different position from this would endanger the personal freedom of citizens. The NDLEA in Nigeria have the power to exercise all police duties and powers. They can also investigate a person they suspect has wealth or property derived from illicit drugs trafficking. But the right to personal liberty of a suspect is fundamental which the NDLEA Act cannot override, especially when Section 39 of the Constitution of Nigeria 1999 is considered.

**Fitzgerald,** in the book'*Voluntary and Involuntary Acts'*[78] stated that where an accused person is seen to have lacked the ability to control his conduct, the law should not consider his act as a crime. He concluded that for this reason, the courts usually lean towards allowing drunkenness as a defense. This position best describes voluntary intoxication as a defense to a crime in Nigeria. Only the Criminal Code admits voluntary intoxication as a defense in certain instances, the Penal Code does not. Again, since intoxication can come about through hard drugs induced intoxication, it can avail

[77] Harry, S. (1992) *Freedom, the Individual and the Law*, Penguin Books Press Ltd, England, p. 33.
[78] Fitzgerald, P.J. (1998) *Oxford Essays in Jurisprudence,* Oxford University Press, Oxford, p. 37.

an offender as a defense for intoxication. This is rather unfortunate as the Criminal Code does not limit the cause of intoxication to alcohol only. But such a position should not be accepted by our courts since it would only permit or tolerate drug abuse which is wrong.

**Turner,** in the book'*The Mental Element in Crimes of Common Law'*[79] recommends that henceforth, negligence as an element of mens rea has no place in the common law as basis for criminal responsibility, that the idea is even nonsensical and concludes that negligence as such imports in to the realm of criminal law, the doctrine of strict liability. But then how can criminal liability for failure to perform a required duty are established in situation's lacking intention and knowledge? It seems that turner in an attempt to prevent the criminal law from adulteration by tort has created a larger *lacuna*. As even gross misconduct is itself proved where there is a duty to perform along with a duty of care. Negligence seems to be the only mental state of mind to prove it and as such must be retained.

**Melissa,** in the book'*Governing the Heroin Trade: From Treaties to Treatment'*[80] observed that methadone (popularly known as crystal meth) is a controlled substance listed in schedule 1 of the Single Convention on Narcotic Drugs.But unlike heroin, it is however not included in schedule IV of the same Convention. The level of control required for drugs listed under schedule 1 is negligible as compared to those listed in schedule IV of the Single Convention. She concluded that this position make the law regulating the content of these drugs to vary while methadone is considered a minor offence, heroin is considered a major one. The effort is that the availability of methadone becomes common and easy when compared with heroin, thus leading to the

[79] Tuner, D.(1996) *Oxford Essays in Jurisprudence*, Oxford University Press, Oxford, p. 59.
[80] Melissa, B. (2008) *Governing the heroin trade: From treaties to treatment*, Stanford University Press, Stanford, California. p. 97.

wide spread abuse of methadone or crystal meth in most countries around the world. **Melissa** however failed to suggest the step needed to address this problem, leaving it to the imagination of the reader. The researcher suggests that if the reverse of the situation is to be achieved, then there is the need to include methadone in schedule IV of the Single Convention with a view to strengthen regulation and control of it.

**Weisheit**, in the book'*Methamphetamine: Its History, Pharmacology and Treatment*'[81] noted that one of the most important achievement of the United Nations Convention Against Traffic and Abuse of Narcotic Drugs and Psychotropic Substance, is the increase annually since 1989 of illicit drugs world wide as a result of legal and institutional innovations contained in the Convention. The researcher concludes here that what was missing before the convention was a unified international effort with clear legal rules for the prevention of illicit drug trafficking in the world at large. This shows again that international corporation is the most important avenue through which global drug problems can be solved.

Finally, this researcher has reviewed 35 various materials that had analysed and discussed narcotic drug problems, its prevention and control through domestic and international law. Nigeria faces a drug problem involving illicit traffic and abuse of narcotic drugs and psychotropic substances. Since the drug problem is essentially a global malaise, the role of international law in the global efforts against this problem is an important avenue through which meaningful developments can be made on solving this drug problem.

Therefore, a case study of Nigeria's domestic implementation would be done with this view in mind. This dissertation would attempt to achieve just that, and it would be

[81] Weisheit, R.A. (2013) *Methamphetamine: Its history, pharmacology, and treatment*, Hazelden Press Ltd, Minnesota-USA, p. 23.

significantly different from the works of authors reviewed as such by providing different approach to the solutions of Nigeria's illicit drug problems.

## 1.9 Organisational Layout

This dissertation contains six chapters. Chapter one gives an outline of the dissertation. Chapter two contains the Historical Development of the Law Regulating Narcotic Drugs and Psychotropic Substances in Nigeria and conceptual clarification of key terms used in this dissertation. Chapter three contains a analysis on the prevention and control of narcotic drugs and psychotropic substances under international law. Chapter four contains the challenges facing the domestic implementation of international law on the prevention and control of narcotic drugs and psychotropic substances in Nigeria. Chapter five contains a discussion on the compensation and remedies for victims of crimes in Nigeria. Chapter six contains the findings and recommendations of the research, it is the concluding Chapter.

# CHAPTER TWO

## 2.0 HISTORICAL DEVELOPMENT OF THE LAW REGULATING NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES IN NIGERIA, AND CONCEPT OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, DEFINITIONS AND CLARIFICATION OF KEY TERMS.

### 2.1 Introduction

This chapter provides a historical development of the law regulating narcotic drugs and psychotropic substances in Nigeria and conceptual clarification of some key terms and concepts used in this study. These include terms and concepts such as International law, Nigerian law, Narcotic drugs, Psychotropic substances, Prevention, Control, etc. Unless where the context suggests otherwise, the meaning of each term or phrase used in this research shall assume the meaning ascribed to them in this chapter.

### 2.2 Historical Development of the Law Regulating Narcotic Drugs and Psychotropic Substances in Nigeria.

In the era before the establishment of the League of Nations (i.e., pre-1945), individual nation states took unilateral effort aimed at curtailing the ill effects of drug abuse. The most important example of a unilateral effort by an individual nation state was the case of Imperial China. In 1796 the authorities of Imperial China (as it then was) promulgated a law prohibiting trade in Opium within its territorial jurisdiction[82]. Following this, in 1839, the Chinese authorities seized and destroyed a large stock of Opium brought into China by American and British merchants[83]. This was done to enforce the ban placed earlier by the Chinese authorities. Consequently, the British

[82]op.cit.

[83]The merchants were the trading company of Messrs Jaden & Matheson Inc.

colonial regime in the Indian sub-continent declared war on China in 1840[84]. The war declared by Britain was supposedly justified upon the lawful presumption that the conduct of the Chinese authorities was hostile, unfriendly and a pretext to suppress the lucrative Opium trade engaged by European merchants without due and proper warning[85]. This armed confrontation, later known as the Opium War, ended in 1842 with Imperial China losing to Britain. Part of the terms of surrender was the handing over of Hong Kong to Britain in perpetuity, while Opium trade within mainland China remained illegal[86]. Although this event was tragic, it laid the foundation for the evolution and development of international law action in the area of global drug use regulation as it prompted the first ever, international conference to discuss international trade in opium[87]. Thirteen nations participated in the conference, paving the way for the introduction of the first international treaty (The Shanghai Conference of 1908) in modern history aimed at preventing and controlling drugs, which are considered harmful and declared as illicit drugs[88]. This treaty was later concluded in Hague, the Netherlands. The objective of this treaty was to prevent international trade in narcotic drugs of plant origin, notably Opium[89] by all signatory members. This marks the end of the pre-league of nations era.

During the League of Nations period, international law regulation was extended to cover more drugs, which are considered harmful to individuals and the society. A total number of three conventions and one agreement were adopted on prevention and control of illicit drugs[90]. The first convention during this period was concluded in 1925[91]. This

[84] Emafo, P. *op.cit.*
[85] Ibid.
[86] Ibid.
[87] The Shanghai Conference, 1908.
[88] The Hague Convention, 1912.
[89] Article 1, the Hague Convention, 1912.
[90] The International Convention on Narcotic Drugs of 1931.

Convention aimed at introducing a system of import certificates and export authorizations for international trade in opium, coca bush and Indian hemp. The convention also introduced a statistical control system and established a permanent central board to supervise the statistical control system. This effort was to a large extent successful. Certificates authorizing export of drugs under international control such as the ones mentioned above were issued on good cause, usually on medical grounds and for scientific research. While data collected on the flow or movement of narcotic producing plants provided a reference point on who was involved, when imports were made, what narcotic plants or drug was involved and where the drugs came from or going to.

The second international convention on narcotic drugs occurred in 1931[92]. It was aimed at limiting the manufacturing and regulating the distribution of narcotic drugs. This convention therefore introduced a compulsory estimate system and it limited the world production of opium, coca bush and Indian hemp to what was needed for medical care and scientific pursuits. A drug supervising body was established to monitor the estimate system. Yet again in 1931, another International Agreement on the Control of Opium Abuse in the Far East was concluded in Bangkok, Thailand[93]. This Agreement introduced measures such as enhanced policing and law enforcement capabilities for preventing and controlling the smoking of Opium. By 1936, the third International Convention on Narcotic Drugs was concluded with a view to suppress the illicit traffic in dangerous drugs, i.e., those drugs that are seen to cause serious health hazards[94]. This convention was additionally backed by severe legal penalties such as extended prison sentence for illicit traffic in illicit drugs which were mainly of narcotic plant origin.

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[91] The International Convention on Narcotic Drugs of 1925.
[92] Op. cit.
[93] Ibid.
[94] The International Convention on Narcotic Drugs of 1936.

The post League of Nations period, which started in 1946 and continues on till today[95] saw the formal transfer of functions carried out initially by the League of Nations, to the jurisdiction of the newly formed United Nations[96]. The United Nations (or U.N) also acquired the authority to control and regulate international drug activities[97] there under. Up till the formation of the United Nations, all international efforts aimed at preventing and controlling harmful drugs were generally restricted to drugs of narcotic plants origin. However, in 1948 the first U.N. Protocol On Illicit Drugs which exceeded those drugs of narcotic plant origin to include synthetic drugs was concluded.[98] This Protocol considered as illegal, those synthetic and semi-synthetic narcotic analgesics, which are not previously subject to international control.

In 1953, a U.N. Protocol On Illicit Drugs limited the continued production of Opium to countries considered to be original producers.[99] This makes it illegal under international law for any cultivation to occur in any other place. In 1958, members of the U.N. expressed the desire to codify all previous existing international law efforts aimed at prevention and control of harmful drugs[100]. In 1961, the U.N adopted a convention on drugs, which was a realization of the desire, 3 years earlier (1959) by the international community[101], to address global illicit drugs activities. This convention introduced a number of changes on measures and methods on preventing and controlling harmful drugs through the avenue of international law. These measures include establishing a Commission on Narcotic Drugs as one of the Commissions of the Economic and Social

[95] Emafo, P. op.cit.fn. 2. p. 3.
[96] Articles 1-7 of the League of Nations protocol of 1946 which transferred the functions of the League of Nations to the newly established United Nations.
[97] Ibid.
[98] Articles 1-3 of the United Nations Protocol on Drugs of 1948.
[99] Articles 3-5 of the United Nations Protocol on Drugs of 1958.
[100] Resolution 689 J (XXVI) of the Economic and Social Council of the United Nations of 1958.
[101] The United Nations Convention on Narcotic Drugs of 1961.

Council of the United Nations[102]. An obligation was placed on states signatories to the Convention to establish a special administration for coordinating drug control activities. The Convention also limited the production of narcotic drugs exclusively to what was needed for medical care and scientific pursuit. However, the Convention also retained many provisions from previous Conventions deemed adequate and sufficient by representatives of participating states. For instance, the estimate system was retained. The statistical return system was similarly retained. It is also important to note here that this was the first Convention which recognized that drug addicts were clinically sick people that needed rehabilitation and not criminals as such that should be incarcerated or severely punished.

In 1971, the Psychotropic Substances Convention was concluded[103]. At this convention, psychoactive drugs other than narcotic drugs were brought under international legal control. This includes drugs that have been synthesized by scientifically altering the chemical composition of plant resin to produce psychoactive drugs, for instance *Fentanyl*.[104] Henceforth, advertisement for products of such drugs under international legal control was made illegal. Signatory states to this Convention were required to restrict the import and export of all drugs under international legal control.

In 1972, a Protocol to the Single Convention on Narcotic drugs was adopted at the United Nations by states signatory to the 1961 Single Convention on Narcotic Drugs[105]. The Protocol was necessary in that it sort to breach a lacuna or gap which remained in the previous conventions namely; how to effectively enforce the ban placed on production of narcotic plants, except of course for medical care and scientific pursuit.

[102]The International Narcotic Control Board (INCB).
[103] The Single Convention on Psychotropic Substances of 1971.
[104] Article 1-3 of the Single Convention on Psychotropic Substances of 1971.
[105] The United Nations Protocol to the Single Convention on Narcotic Drugs of 1972.

The means adopted to solve this problem was to form a major part of the 1972 Protocol. It required member states to strengthen law enforcement efforts and police powers to an extent that is capable of preventing illicit trafficking in those drugs and substances. The Protocol made provisions for preventing illicit cultivation, production, manufacture, illicit trafficking and use of narcotic drugs. Other provisions contained in the Protocol were grants of technical and financial assistance to governments in support of their efforts to enforce the provisions of the Single Convention by the United Nations. There were encouragements as well for states to enter bilateral and multilateral agreements on efforts to combat illicit drug abuse and traffic.

In 1988, the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was concluded in Vienna to address issues arising from the previous Conventions[106]. The issues addressed at the Convention include;

1. Documentation of international trade in narcotic drugs.
2. International cooperation in combating illicit drug abuse and trade.
3. Extraditable offences.
4. Seizure and confiscation of drugs, substances and equipments used in illicit production.
5. Financial operations in illicit drug trafficking and prohibition of financial institutions from participating in money laundering of illicit drug trade proceeds.
6. Mandatory supervision and control of drugs under international legal control by governments.
7. Prohibition of the use of post office box in all sort of export or import of drugs under international legal control.

[106] The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

The 1988 Convention also provides for prevention of trade in materials and equipments used for illicit producing, processing or manufacturing of narcotic drugs and psychotropic substances under international cooperation in a manner consistent with the respective domestic legislative system and the principle of sovereign equality and territorial integrity of states. Furthermore, the convention required commercial carriers and transporters to show greater commitment in preventing their vehicles from deliberately being used for illicit drug traffic[107], a duty of care is placed on commercial carriers to ensure that they don't aid in transporting illicit drugs to any place.

It should be stated here that the 1988 Convention referred to above actually maintains almost every extant provision contained in previous conventions. This was done by collecting them into a single instrument, also referred to as the 1988 Vienna Convention, because it was held in the Austrian capital (Vienna).

In 1997, the United Nations Office on Drug and Crime (UNODC) was established, following a merger between the United Nations Drugs Control Programme and the Centre for International Crime Prevention[108]. The jurisdiction of the UNODC extends to all regions of the world through an extensive network of field offices. The primary duty of the UNODC is to assist member states in their struggle against illicit drugs, crime and terrorism. The UNODC also carries out field based technical cooperation projects to enhance the capacity of member states to counteract illicit drugs, crime and terrorism. Research and analytical work to increase knowledge and understanding of drugs and crime issues and expand the evidence base for policy and operational decisions are offered to member states by the UNODC. Yet again, it offers normative work to assist states in the ratification and implementation of relevant international

[107]Emafo, P. op.cit. fn. 2. p. 3.
[108] The United Nations General Assembly Document 950 session 51.

treaties, the development of domestic registration on drugs, crime and terrorism, and the provision of secretariat and substance services to the treaty-base governing bodies[109].Today, the UNODC is the main avenue where international treaty on illicit drug abuse and trafficking is regulated. Drugs that are subject to international regulation and control are classified as follows[110];

a. Drugs that act on the central nervous system producing stimulation, depression or hallucination. (e.g. Heroine)
b. Drugs that have abuse potential. (e.g. Painkillers)
c. Drugs that are known to be widely abused. (e.g. Codeine)
d. Drugs that their abuse has international consequences on health, economy and social well being. (e.g. Opium and Indian Hemp)

As noted above, the UNODC assists member states to implement treaties against illicit drug activities by offering and providing expert resources to meet demands of states[111]. In 2009, the UNODC published a report[112] on '*Drug Trafficking As A Security Threat in West Africa'* which stated that Latin American drug cartels are preying on West African countries and that most of the countries were unable to control their maritime and airspace, while local police are helpless against well equipped and well connected traffickers. That this dire situation has led to a dramatic growth in drug seizures with at least 46 tons of cocaine being seized on route to Europe via west Africa since 2005. The report concludes that West African prosecutors and judges lack the will to bring to justice powerful criminals. Nigeria being a part of West Africa shares this experience. In

[109] Ibid.
[110] Emafo, P. op.cit., p. 65.
[111] Ibid.
[112]Drug Trafficking as a Security Threat in West Africa, a Publication of the United Nations Office of Drug and Crime, 2009. p. 37.

the past, at least two former heads of the NDLEA were indicted for collusion with drug traffickers[113].

Nigeria, being an important signatory to the treaty has enjoyed and continues to enjoy the assistance of the UNODC in confronting the challenges facing illicit drug activities within its sovereign territory[114]. This assistance includes among other things, the provision of monetary grants for anti drug trafficking operations, personnel and staff capacity building, and sharing important information with the Government of Nigeria on illicit drug activities. The National Drug Law Enforcement Agency Annual Report of 2009 named Nigeria as the West African regional centre for the coordination of efforts aimed at preventing illicit drug trade and abuse[115]. Thus, Nigeria plays host to the regional centre for training and capacity building of personals of the various countries government department responsible for curtailing illicit drug traffic and abuse[116]. Thus, Nigeria hosts the regional centre for training and capacity building of personnel of the various countries' government department responsible for curtailing illicit drug traffic and abuse[117].

Domestication of international law on Narcotic Drugs and Psychotropic Substances in Nigeria dates back to the colonial era[118]. When the League of Nations passed and adopted the International Convention on Narcotic Drugs of 1925 and two such conventions in 1931[119]. The British colonial administration in Nigeria passed the Drug

[113]Ibid.
[114] The National Drug Law Enforcement Agency Annual Report, 2011. P. 13.
[115] Ibid.
[116] Ibid.
[117]Ibid.
[118] Iyamabo, J.A., (1990) '*Perspective and Strategies in the Control of the Traffic in Narcotic Drugs and Psychotropic Substances-the Police View point'*, Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos. p. 20.
[119]A total number of three Conventions and one agreement were concluded by the League of Nations.

Ordinance in 1922 and the Dangerous Drug (Amendment) Ordinance in 1935[120]. These two legislations on illicit drug activities would form the basis of future Nigeria's drug laws on prevention and control and in fact, was the main inspiration as model legislation for the National Drug Law Enforcement Agency Act CAP. N. 30. L.F.N. 2004 or simply the (NDLEA Act)[121].

The Government of Nigeria had ratified the international treaties, conventions and protocol e.t.c. originating from the United Nations (U.N) on the control of drug abuse and drug trafficking[122]. This includes the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971, the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

The 1988 U.N. Convention on Illicit Drugs reiterated the need for member states to establish government administration for the regulation and control of treaty agreement on illicit drug abuse and drug trafficking[123]. This call by the U.N. led to the establishment of the NDLEA by the Government of Nigeria[124]. The NDLEA Act CAP. N.30. L.F.N. 2004, is the latest case of domestication of an international treaty on illicit drug activities by Nigeria under the then Military Government. By making a decree promulgating the law, the treaty thereby became domesticated. This law actually states that the provisions of the two earlier Conventions on Narcotic Drugs and Psychotropic Substances shall apply uniformly in Nigeria[125].

[120] These two laws were the first legislation on prevention and control of harmful drugs in the history of Nigeria.
[121] The Dangerous Drug Ordinance of 1922 and the Dangerous Drug (Amendment) Ordinance of 1935.
[122] The National Drug Law Enforcement Agency Annual Report, (2009) p. 30.
[123] The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.
[124] Iyamabo, J.A., op.cit. Fn. 39. p. 12.
[125] S. 3 (1), National Drug Law Enforcement Agency Act, Cap N. 30, L.F.N 2004.

The National Drug Law Enforcement Agency is the main government agency in Nigeria statutorily responsible for the domestic implementation and enforcement of international law on the prevention and control of narcotic drugs and psychotropic substances. Section 3 (1) (m)[126] provides that the:-

> NDLEA shall have the responsibility for reinforcing and supplementing the measures provided in the Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 as adopted by the Nigeria domestic law, in order to counter the magnitude and extent of illicit traffic in narcotic drugs and psychotropic substances and its grave consequences.

This section actually spells out the extent of domestication of international law and commitment of the Government of Nigeria in fulfilling its obligations under the international instrument cited above. Thus in the case of ***FRN v. Bashiru Sanni***[127], the Federal High Court stated that it is the primary duty of the NDLEA to coordinate and enforce all laws on the prevention and control of narcotic drugs and psychotropic substances as required under those international conventions which are binding on Nigeria. The responsibility or power to prevent and control narcotic drugs and psychotropic substances is included in the Exclusive Legislative List, item 13 of the Constitution, which confers the Federal High Court with the original jurisdiction to try offences concerning drug abuse and drug trafficking. The Supreme Court in the case of ***Obi v. Federal Government and 6 Others,***[128]ruled that it shall be within the exclusive original jurisdiction of the Federal High Court to hear matters relating to offences in the NDLEA Act CAP. N. 30, L.F.N. 2004. The NDLEA also has the duty to collaborate on

[126]National Drug Law Enforcement Agency Act, Cap N. 30, L.F.N 2004.
[127] FHC/J/34C/2011 (Unreported)
[128] NWLR (2008) 7 S.C. 286, 112.

behalf of the Government of Nigeria with government bodies within and outside Nigeria concerning preventive efforts on illicit drug activities[129].

It is necessary that the domestic implementation of international law be done in tandem with the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Section 12 (1) of the Constitution states that: "*No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly*". It should be noted that the domestic implementation of the conventions on illicit drugs has been done in accordance with the provision of the Constitution of the Federal Republic of Nigeria of 1999, (as amended).

In interpreting this section of the Constitution, the then Chief Justice of Nigeria, Maryam Alloma Mukhtar, stated that what the legislature meant or intended is that for a treaty to be valid and enforceable, it must have the force of law behind it, albeit it must be supported by a law enacted by the National Assembly[130]. Therefore, whatever obligation a treaty would create for Nigeria under international law, such treaty must be enacted in to law by the National Assembly before it can have force of law and be able to operate in Nigeria. Similarly, where a treaty creates obligations for Nigeria, such obligations must not be inconsistent with the provision of the Constitution. This is because the issue of justiciability of the provisions of the treaty and the enforcement of it would be impossible if it is inconsistent with the provisions of the Nigerian Constitution. In the case of ***Olawoyin v. Attorney-General***[131], the court stated that in Nigeria, the invalidation of a law would derive from the courts order. It further observed that the provisions of the constitutional are to have effect all over Nigeria and that they

[129]S. 3 (1) (p), National Drug Law Enforcement Agency Act, Cap N. 30 L.F.N 2004.
[130]Registered Trustees of National Association of Community Health Practitioners of Nigeria and 2 others v Medical and Health Workers Union of Nigeria & Others. (2009) 37 W.R.N 1 SC 9.
[131] (1990) NNLR 53.

cannot have effect if an ordinance or law is inconsistent with them and blocking them so long as it remains in force. When a court in Nigeria finds a law to be inconsistent with the constitutional provisions, then something remains to be done. That law must be declared void and it rests on the courts to do so.

## 2.3 Concept of Narcotic Drugs and Psychotropic Substances: Definitions and Clarification of Key Terms

### 2.3.1 International Law

International law is defined as law applicable to nation states in their mutual relations and to individuals in their relations with states[132]. It is very common to refer to a law, whose origin are the obligations stipulated in the content of a treaty as international law. This is generally an accurate description of treaty-based laws. But once such law of treaty origin become domesticated and incorporated into the legal system or laws of a state, they may no longer be called international law but rather be called national or domestic states laws. At times, such laws may well be referred to both as international law and domestic state law[133]. This occurs in a situation where a treaty is made with a view to regulate conduct of states and individuals, and the treaty is backed up by legal sanctions and enforcement bodies operating at the international level. And in an attempt to expand the scope of the treaty, member states of the international community ratify and incorporate the content of the treaty into their domestic legal system[134]. In this case, the provisions of the treaty operate at two levels, that is, at the international level and at the state domestic level.

[132]Bryan, A.G. op.cit. P. 58.
[133] Ladan, M.T.(2001)*Introduction to International Human Rights and Humanitarian Law*, ABU Press Ltd, Zaria. p. 13.
[134] Ibid.

International law is also the legal system governing the relationship between nations, participants (such as international organization) and individuals (such as those which involve their human rights or who commit war crimes)[135].

International law comprises of rules that relate to the functioning of international organisations and institutions, their relation with each other and their relation with states and individuals[136]. Furthermore, certain rules of international law extend to individuals and non-state actors (transnational corporations) in so far as the right or duties are the concern of the international community. International law, inter alia lays down rules concerning the territorial rights of states (relating to land, sea and space), the international protection of the environment, international trade and commercial relations, the use of force by states human rights and humanitarian law[137].

Although international law lacks the proper characteristics of a municipal law, that is, want of sanctions, the fact that each country is a sovereign nation, defeats the possibility of sanctioning disobedience to the provisions of international law, nonetheless sanctions are passed against erring states under international law with varying degree of success. Again, since laws are made by the legislature, and the fact that no legislature makes international laws from the outset except at the stage of domestication, the character of international law as a law has been seen as defective.

Nation states generally observe international law because it serves their interest and it eventually becomes a part of their local or national legal system. Thus, international law shall be seen as law with its own characteristic since courts at the

[135]Bowett, D.W., (2008) *The Law of International Institutions*, Stevens & Sons Ltd, London. P. 37.
[136]Ibid.
[137]Ibid.

international level, such as the International Court of Justice treat international law as a legally binding treaty[138].

In this research, the term "International law" refers to the provisions of those treaties, conventions, protocols, etc dealing with narcotic drugs and psychotropic substances, and compensation for victims of crime especially the contents of the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971 and the Convention against Illicit Traffic in Narcotic Drug and Psychotropic Substances of 1988, and also the United Nations Declaration on Victims of Crime. However, where the term "International law" is used in this research differently in any other manner, it shall be clearly indicated in the context in which it is used.

### 2.3.2 International Treaty

A Treaty is defined as an agreement formally signed, ratified or adhered to between two nations[139]. Treaty also means an international agreement concluded between two or more states, in written form and governed by international law.It may be embodied in a single instrument or in two or more related instruments.Whatever its particular designation is,bilateral or multilateral treaties form an important basis for the determination of rights and obligations of parties to them. One characteristic of a treaty is that treaty construction is frequently used for the conduct of international transactions of various kinds.It is also used to impose rules of precision and detail in various areas of international law. Another characteristic of a treaty is that it codifies and supplements customary International Law[140].

[138] Ibid
[139]Bryan, A.G. op.cit. P. 58.
[140] Ladan, M.T. op.cit. P. 122.

A treaty is also an official written agreement between two or more countries[141]. Whenever national leaders negotiate a treaty, they discuss it before reaching any agreement, and when they ratify a treaty, they give it their formal approval, usually by signing it or voting for it.

Treaties are thus agreements of contractual character between different countries or organisations or states, creating legal rights and obligations between the parties[142]. Treaties are part of the laws at the international level that govern the legal relations between nations[143]. They also form part of the rules and principles of general application dealing with the conduct of nations and of international organisations and with their relations, as well as with some of their relations with persons.

The term 'treaty' is used in this research to refer to the three conventions on narcotic drugs and psychotropic substances in particular and all other international instruments on illicit drugs in general, including mutual legal assistance treaties.

### 2.3.3 Nigerian Law

Nigerian law refers to the body of laws that form the entire legal rules and regulations made for the purpose of operating within the territory of the Federal Republic of Nigeria[144]. This body of laws are wide, varied and many. However, due to the federal character of Nigeria, they may be classified into Federal Acts, State Laws and Local Government Bye-laws. Nigeria's Federal Laws, which form part of the Nigerian Law comprise of Acts of the National Assembly and a few but declining number of decrees made by the erstwhile military regimes. A good number of those military decrees have been re-enacted, with some modifications, by the Nigerian National Assembly. These

[141] Zakaria, K.G. (2012) *The process of Domestication of International Treaties: A case Study of the Nigeria National Assembly*, (Unpublished Theses), Faculty of Law, ABU Zaria. P. 12.
[142] Ladan, M.T., op.cit.
[143] Ibid.
[144] Park, A.E.W. (1963) *The Sources of Nigerian Law*, Sweet & Maxwell, London. P. 1.

include, amongst others, the National Drug Law Enforcement Agency Decree of 1989, now cited as the National Drug Law Enforcement Agency Act. Cap. N. 40, L.F.N 2004.

Nigeria's Federal laws or Acts are made by the National Assembly pursuant to Section 4 of the Constitution of the Federal Republic of Nigeria 1999. Section 4(1) states that: "The Legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives". The Constitution also grants the National Assembly a specific but wide jurisdiction within which it has powers or scope to make law. Section 4(2) and (3) spells of this scope. They state as follows;

> *The National Assembly shall have powers to make laws for the peace, order and good government of the federation or any part thereof, with respect to any matter included in the Exclusive Legislative List set out in part I of the second Schedule to this Constitution.*
>
> *The power of the National Assembly to make laws for peace, order and good government of the federation with respects to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.*

The power to legislate on Drugs is vested in the National Assembly as it is a subject matter under the exclusive legislative list in Part 1 of the Second Schedule of the Constitution. The 36 states in Nigeria similarly have law making functions and powers. Laws made by any of the 36 states in Nigeria are called state laws, as opposed to Acts of the National Assembly which are federal laws. The power to make laws in a state in Nigeria is granted by the Constitution to the House of Assembly of the State. Section 4(6) of the Constitution states that; "the legislative power of a state of the federation (of Nigeria) shall be vested in the House of Assembly of the State". The scope of the law making powers of the House of Assembly of States is further enumerated by the Constitution. Section 4(7) of the Constitution states that:

> *The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters. That is to say;*
>
> *(a) Any matter not included in the Exclusive legislative list set out in Part I of the Second Schedule to this Constitution;*
>
> *(b) Any matter included in the concurrent legislative list set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and*
>
> *(c) Any other matter with respect to which it is empowered to make laws in accordance with the provision of this Constitution.*

While both the National Assembly and House of Assembly of a State have similar functions over making laws on peace, order and good government, their powers are by no means equal. For instance section 4(6) of the Constitution states that;

> "If any law enacted by House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void".

It can be concluded that the aforementioned constitutional provision is an enactment of the trite Constitution law (Federalism) doctrine of covering the fields. This doctrine stipulates that whenever a state legislature enacts a law which borders on similar or exact matters while an enactment made by a Federal Legislature exist, the Federal Legislation shall supersede and override the state legislature.

A third part of Nigerian law consists of those laws made by the local government authority legislative council. Section 7(5) of the Constitution states that: "the functions to be conferred by law upon local government councils shall include those set out in the fourth Schedule to this Constitution". These functions include legislative powers over items listed in them. Laws made by the local government legislative council are call bye-laws.

Notwithstanding these three components of Nigerian law or laws. Other laws do exist, which operate side by side with those mentioned above. They include the following[145];

1. The Constitution of Nigeria
2. Received English laws comprising of the rules of Common law, Doctrine of Equity, English Case laws and English Statutory laws subject to the statute of General Application.
3. Customary laws of the various communitiesin Nigeria
4. Islamic law.
5. International law.

Nonetheless, it shall be within the context of this research that the term "Under Nigerian Law" as used in the title of this dissertation refers to those bodies of laws discussed herein generally and particularly to the Constitution of Nigeria, Acts of the National Assembly and bindingtreaties on Nigeria that have been incorporated by Acts of the National Assembly. It also means a law that is applicable in Nigeria.

### 2.3.4 Domestication of International Law

To domesticate means to bring something home that was not originally at home. For example, the domestication of animals relates to training such animals to live or work for human beings.[146]

In legal terms, domestication relates to the incorporation or adoption of laws made under international law into national or municipal laws. This process is further defined as the method of making one document or any kind become a part of another separate

[145]Ibid
[146] Randolph, Q. op.cit. P. 58.

document by referring to the former in the latter, and declaring that the former shall be taken and considered as part of the latter the same as if it were fully set out therein.[147]

Various countries have their national laws. Thus, where these countries become parties to international agreements, which are governed by international law, such agreements have to be adopted into their national laws. This process is known as domestication of treaties.[148]

Domestication of international law in Nigeria is carried out subject to the provision of the Constitution. Section 12 of the Constitution provides for the implementation or domestication of international treaties. Section 12(1) state that:

> "No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly".

As far as the Constitution of Nigeria is concerned, no treaty, no matter how binding on Nigeria, shall be operational i.e. have lawful effect within Nigeria, unless and until the content of the treaty has been enacted as law by the National Assembly.

In the case of ***Registered Trustees of National Association of Community Health Practitioners of Nigeria and 2 others v. Medical and Health Workers' Union of Nigeria and others***[149], **Mukhtar** CJN, while interpreting Section 12 of the Constitution, said:

> "In essence, what the legislature meant or intended is that for a treaty to be valid and enforceable, it must have the force of law behind it, albeit it must be supported by a law enacted by the National Assembly".

The process of domestication of international treaty or law in Nigeria involves the same procedure of legislation concerning how a bill becomes a law. However, this process

[147] Bryan, A.G. op.cit. P. 58.
[148] Zakaria, K.G. op.cit. P. 127.
[149] (2009) 37 WRN 1 SC 9.

does not stop with the legislators, it continues down to the implementation of it by the executive and its interpretation by the judiciary.

Therefore, domestication of international law is used in this research to include the legislative process, the executive implementation and judicial interpretations.

While legislative process means the procedure of passing a bill into law, executive implementation means the process of law enforcement by law enforcement bodies having similar functions over enforcing the NDLEA Act. The judicial process include the entire range of activities from the moment a suspect is charged for an offence under the NDLEA Act throughout the court proceedings until judgement and either conviction or acquittal.

The subject matter for domestication in this research are the three conventions on narcotic drugs and psychotropic substances and there promulgation of the NDLEA decree by the Federal Military Government of Nigeria[150].

### 2.3.5 Drugs and Drug Abuse

Adrug is defined as a medicine, or substances for making medicines[151]. It also refers to such substances as tobacco, coffee, or alcohol that makes a person who takes it, to want more and more of it (Addiction). Any substance that is intended for use in the diagnosis, cure, treatment and prevention of disease, natural or synthetic substance that alters a person's perception or consciousness is a drug[152].

There are two classes of drugs under the law. The first class is the licit types of drugs. The second is the illicit type of drugs.

[150]Paragraph 7-8 to the Convention of 1988, op.cit.
[151]Randolph, Q. op.cit. P. 58.
[152]Bryan, A.G. op.cit. P. 58.

In the first category, a licit drug is any type of drug that producing, manufacturing, selling and using etc is allowed by the law. In this category of drugs, a further division is noted, that is, under licit drugs, these are controlled and un-controlled kind of licit drugs. Controlled drugs are those types of licit drugs that are subject to prescription and may be used only with a physician's certified approval. An un-controlled drugis the type of licit drug that is readily available to anyone who is in need of them without the prior approval of a physician, such as paracetamol and aspirin. Illegal (illicit) drugs are those kinds of drugs that are entirely illegal or those that have been fashioned specifically for illicit abuse, such as heroin, crack, etc.

Drug abuse refers to the practice of consuming or taking or using illicit drugs[153]. It also refers to taking licit drugs without prescription or approval of a certified medial practitioner. Using drugs in violation of prescribed dosage such as taking larger or lesser quantity is drug abuse. It also means making use of drugs contrary to the way it should be used.

However, the most common use of the term "drug abuse", refer to using illicit drugs, especially those types of drugs that are harmful and dangerous to health such as cocaine and heroin. In this regard, drug abuse is the detrimental state produced by the repeated consumption of a narcotic or psycho-active drug that are potentially dangerous to the health and sanity of a user[154]. The consumption of an illicit drug in whatever quantity is drug abuse.

[153] ibid

[154]United Nations Convention against Illicit Traffic and Abuse in Narcotic Drugs and Psychotropic Substances of 1988

Therefore, wherever drug abuse is mentioned in this research, it refers to consuming or taking or using illicit drugs. The term is used in this research to refer to the consumption of narcotic drugs and psychotropic substances.

### 2.3.6 Narcotic Drugs

A narcotic drug is defined as a typically addictive drug, especially one derived from opium[155]. It is a drug that can produce different effects ranging from pain relief to sleep, stupor, coma and convulsions[156].

Narcotic drugs in this research refers to any substances, natural or synthetic as provided or specified in the first schedule of the Single Convention of Narcotic Drug 1961 and the Convention as Amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, and as amended in the second schedule to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Narcotic drugs include the following[157];

(a). Opium, the coagulated juice of the poppy plant scientifically known as *papaver somniferon*, opium alkaloids (morphine and codeine) and other morphine derivatives like heroin and synthetic narcotics like *pethidine* and *methadone*.

(b). Cannabis, that is, the products of the plant *cannabis sativa L*, which according to the single convention of 1961 means "the flowering or fruiting tops of the cannabis plants (excluding the seeds and leaves when not accompanied by the tops)from which the resin has not been extracted, by whatever name they may be designated. "Cannabis" can differ from this definition. The expression "cannabis", "marijuana" or "hashish" embraces a range of different preparation.

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[155] Randolph, Q., op.cit.
[156] Bryan, A.G., op.cit.
[157]Section 3 (1) (m), National Drug Law Enforcement Agency Act, Cap. N.30. LFN 2004.

(c). Coca leaf of the evergreen shrub for making medicines, also refer to such substances as tobacco, coffee, or alcohol that makes a person who takes it, to want more and more of it. It is the main source of cocaine. Any substance that is intended for the diagnosis, cure, treatment and prevention of diseases, whether a natural or synthetic substance,which can alter a person's perception or consciousness[158].

### 2.3.7 Psychotropic Substances

A psychotropic substance is defined as any drug that is capable of affecting the mind, and is used in the treatment of mental disorders. Such kinds of drugs are also called psycho-active drugs as they act on the mind of a person who uses or abuse them[159].

Psychotropic substances in this research means any substance, natural or synthetic or any natural material specified in schedule I, II, III, and IV of the provision of Psychotropic Substances Convention. They include the following[160];

(a) Hallucinogens, especially *LSD* (*lysergicacid diethylamide*); *mescaline*, which is the active principle of the *peyotl* (peyote) plant; *psilocybin Mexicana*; *DMT* and *DET*; which are abbreviations for *dimethyltrptamine* and *diethyltroptamine* respectively; *STP* (serenity, tranquillity, peace) which designate a synthetic compound produced in "underground" laboratories, and *THC* or *tetrahydrocannabinol*, one of the active principle of cannabis.

(b) Stimulants, the most important of which are the *amphetamines*, a term which includes compounds belonging to one chemical group which stimulate the central nervous system.

[158] Ibid.
[159]Bryan, A.G., Op.cit.
[160]Section 3 (1) (m), Op.cit.

(c) Depressants, in the form of hypnotic and sedatives, the most employed of which belong to the group of *barbiturates*, which in turn can lead to combined abuse when used in conjunction with other substances like heroin, alcohol or stimulants.

(d) Tranquilizers, which are used to eliminate anxiety and nervousness, also belong to the class of depressants, requiring control against abuse.

### 2.3.8 Prevention

Prevention is defined as stopping someone from doing something or stopping something from happening. It also means to hinder or impede something bad from happening[161].

Prevention of an offence means to hinder or impede an offence from taking place[162]. Preventing offences or criminal conduct does not necessarily mean stopping offences or crimes. To actually impede or hinder an offence or a crime means to prevent an offence or crime from taking place.

In this research, prevention is used to refer to the process of stopping, hindering or impeding a crime involving illicit drugs, particularly narcotic drugs and psychotropic substances under international law. This involves stopping, hindering and impeding trafficking, abuse, cultivating and manufacturing of narcotic drugs and psychotropic substances.

[161]Randolph, Q. (2007) *The living English Dictionary,* New Edition, Pearson Education Ltd. p. 1297.
[162]Bryan, A.S. (2004) *Black's Law Dictionary,* Eight Edition, Thomas West Ltd, Opperman Drive, USA. p. 1226.

### 2.3.9 Control

Control is defined as an action, method or law that limits the amount of growth of something, especially something that is dangerous[163]. It also means to regulate or govern something dangerous from growing into a threat.

Control of an offence means regulating the conduct of individuals from taking actions or making omissions in violation of a law[164]. Control is used in this research to mean the process of state power in applying the law to govern conducts and regulate behaviours of individuals on abuse, trafficking and other illicit activity involving illicit drugs, particularly narcotic drugs and psychotropic substances. The control of illicit drugs is done by state or government powers through enactment of laws that proscribe activities in illicit drugs such as production, cultivation, procession, storage and transaction in narcotic drugs and psychotropic substances. Control is used in this research to refer to the power of the state to limit the threat of illicit drugs.

### 2.3.10 Drug Trafficking

Trafficking is defined as the buying and selling of illegal goods. It also refers to the passing or exchange of goods or commodities from one person to another from an equivalent in goods or money. Drug trafficking is defined as the selling and buying of illicit drugs[165].

Drug trafficking refers to the trade or dealing or any form of business transaction involving illicit drugs, especially narcotic drugs and psychotropic substances[166].

[163] Randolph, Q., Op.cit.
[164] Bryan, A.G., Op.cit.
[165] Bryan, A.G. Op.cit. P. 58.
[166] United Nations Convention against Illicit Traffic and Abuse in Narcotic Drugs and Psychotropic Substances of 1988.

Therefore, anywhere the term "drug trafficking" is used, it refers to trading or selling or exchanging illicit drugs. While the term "drug trafficker" refers to a person who indulges in trafficking or selling, trading in, exchanging for illicit drugs, money or other commodities or services[167]. In this research, drug trafficker refers to a person who trades in narcotic drugs and psychotropic substances, while drug trafficking refers to trading in narcotic drugs and psychotropic substances.

### 2.3.11 Compensation and Remedy

The word 'compensation' is the noun form of the verb 'compensate'[168]. To compensate means to pay someone money because they have suffered injury, loss or damage. It also means to replace something bad with something good or to balance the effect of something bad with something good. Compensation will thus mean that money paid to someone because they have suffered injury or loss or because something they own has been damaged[169].

From a legal position, compensation refers to payment of damages or any other act that a court orders to be done by a person who has caused injury to another[170].

The word 'remedy' generally means a way of dealing with a problem or making a bad situation better[171]. It also means to deal with a problem with a view to finding solution to it or to improve a bad situation.

In law, a remedy is anything a court can do for a litigant who has been wronged or is about to be wronged. The two most common remedies are judgements that a plaintiff are entitled to collect sums of money from defendants and orders to defendants to

[167] Ibid.
[168] Bryan, A.G. Op.cit. P. 58.
[169] Ibid
[170] Ibid
[171] Ibid

refrain from their wrongful conduct or to undo its consequences. Remedy also refers to the means of enforcing a right or redressing a wrong[172].

In this research, compensation and remedy are used together to refer to a state of claim as a result of loss suffered due to the act or omission of an individual or the state. The two terms are used also with regards to criminal law and criminal proceedings. While the Nigerian criminal law offers little compensation and remedy to victims of crimes, attempts would be made to adequately discuss this issue. Therefore, whenever compensation and remedy is used in this research, it concerns victims of crimes, particularly narcotic or illicit drug crimes.

[172] Ibid

## CHAPTER THREE

# 3.0 DOMESTIC IMPLEMENTATION OF INTERNATIONAL LAW ON PREVENTION AND CONTROL OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES IN NIGERIA

## 3.1 Introduction

The domestic implementation of international law in Nigeria is the obligation of the government of Nigeria in the enforcement of international law[173]. This is so because the very act of signing and ratifying a treaty creates an obligation on the part of the (signing/ratifying) state party concerned to take further steps towards giving its meaning and its implementation. Subsequently, the treaty is incorporated into the municipal legal system[174]. The implementation of an international treaty is an exclusive responsibility of the implementing state party. Nonetheless, there are guiding principles that inform the exercise and especially the context within which it is to be carried out[175]. These principles are wide and diverse but there are three of them that are of utmost importance in this research[176].

### 3.1.1 Guideline in a Treaty

The first is the guideline contained in the treaty itself. In this case, the treaty will attempt to provide a framework for its implementation. For instance, under the United

[173]Ladan, M.T. (2013) "*Domestic Implementation of International Humanitarian Law (IHL) Treaties in Nigeria*" Lectures Delivered at the PGD-JAGBC Training Workshop for Officers of Legal Services Wing, Nigeria Army School of Military Police, Zaria,. Pp. 13-14.
[174]ibid
[175]Ibid
[176] Bowett, D.W. (2008) *The Law of International Institutions*, Stevens & Sons Ltd, London p. 304.

Nations Convention Against Illicit Traffic and Abuse of Narcotic Drugs and Psychotropic Substances, it allows state parties the discretion on whether to enter any form of extradition agreement with any other country while stating that no individual shall be extradited to a foreign country unless such an agreement (extradition treaty) exists between the countries in question[177]. The aforementioned convention also requires the exchange of information between states that are party to it on the activities of individuals suspected to have been involved in illicit drug activities. However, such exchange of information shall be based on a mutual legal agreement treaty between the countries concerned. This sort of guideline will ultimately put the exercise in perspective and upon a frame work. One can say, it helps the implementing state to know how to do what to do with regards to the implementation exercise.

### 3.1.2 The Principles of *Jus Cogens*

The second is the principles of *jus cogens* which serve as source of customs and usage on matters concerning and affecting international law[178]. *Jus cogens* or customary international law has a strong moral and even legal force in matters affecting the rights of people under international law and as such provide states with guiding principles on how to implement international law, especially, as it affects the rights of people[179]. The ultimate objective of it when it comes to implementation of international law is that it seeks to protect the rights of people so that the law is not enforced in a manner that is prejudicial to their wellbeing and livelihood of people.

[177] Article 7 of the United Nations Convention against Illicit Traffic and Abuse of Narcotic Drugs and Psychotropic Substances of 1988.
[178] Bowett, D.W. (2008) *The Law of International Institutions*, Stevens & Sons Ltd, London, p. 19.
[179] Ibid.

### 3.1.2 The National Measures for Treaty Implementation.

The third is the national measures for treaty implementation as found in the domestic laws of a country. In Nigeria, the constitution contains provisions that specify how a treaty can be implemented[180]. This provision requires that treaties be enacted into law in the manner of legislation by the National Assembly before it can operate in the country. The exact process has been discussed earlier in this research but suffice to mention that the constitution requires that a treaty be made into an Act of the Federal Legislature with a view to incorporate it into the countries legal system. There is also the Treaty Making Procedure Act[181] which regulates the process too.

The importance of implementing international law, particularly those on narcotic drugs and psychotropic substances are numerous. Firstly, the implementing state will enjoy the support of the international community. This is really not a simple advantage because illicit drug problem is a global malaise affecting every country in the world today. The cooperation that this implementation exercise brings about between countries is one that ultimately creates a bond of alliance as it encourages countries to assist and rely on one another in the efforts against their drug problems.

Secondly, it allows the state party to a treaty to present a unified and formidable front against the people involved in producing and trafficking illicit drugs. This enables the law and those in law enforcement to operate in the places where the treaty operates with a view to carry out their duties of prevention and control of illicit drugs. This means there is a lesser safe haven for the traffickers to freely operate. It also suggests that Nigeria is committed to the fight against the global illicit drug activities.

[180]Section 12, Constitution of the Federal Republic of Nigeria, 1999, (as amended).
[181]Cap. T. 20. L.F.N. 2004.

Thirdly, the Federal Government of Nigeria will be performing its obligation as contained in the treaties on illicit drugs. The foremost of it will be to implement the provisions of the treaties. As mentioned earlier, the very act of ratifying a treaty usually creates a duty on the party to abide by the obligations in the treaty. But apart from performing a duty, the implementation of a treaty such as the one under study here, presents the state party with an opportunity to enjoy some advantages or incentives that may be in the form of monetary grants from international donors, (for example, the United Nations training of Nigerians on illicit drug crime prevention techniques etc, sponsored by the United Nations). There may be some level of exchange of information as noted above on illicit drug activities. This will serve as an important source of intelligence report that contributes to the strengthening of security. Not the least, the importance of domestic implementation of International law on Prevention and Control of Narcotic Drugs and Psychotropic Substances by the Federal Government of Nigeria lies in its ability to present the people of Nigeria with an opportunity to adopt a more deliberate and systematic approach towards solving the illicit drug problem confronting Nigeria. The advantage here is that these treaties provide adequate measures that will serve as strategies in combating illicit drug activities for the implementing state. These measures adopt some multi-facet strategies such as reducing the demand for illicit drugs, reducing the supply of illicit drugs, eliminating some root causes of illicit drugs, proper rehabilitation measures and a practical legal regime for the regulation of illicit drug activities.

### 3.1.3 The Process of Domestic Implementation of International Law in Nigeria

Another issue that need to be put into proper perspective here is with regards to what constitute the process of domestic implementation of international law or treaty in Nigeria.

The procedure for making and implementing treaty in Nigeria is regulated by the Treaties Making Procedure Act[182]. This Act classifies treaty into three classes.

1. The first is the law making treaty.
2. The second is the obligation creating treaty.
3. Third is the mutual exchange of culture and education treaty.

The reason for this classification has to do with their effect on the law in the country. For instance, a law-making treaty needs to be domesticated. This means, all law making treaties have to comply with the provisions of Section 12 of the Constitution of Nigeria[183]. Thus, it has to be enacted into law by the National Assembly. However, obligation creating treaties need not be domesticated but rather, once they are ratified then it becomes enforceable in the country. The ratification of a treaty refers to the affirmation of the content of a treaty and the willingness to abide by its obligation. The three international laws on illicit drugs may be classified as law-making treaty as seen from their contents. This means they have to be domesticated before they can be enforced.

From the previous chapters in this research, it can be concluded that the treaties in question have infact been domesticated by virtue of Section 3 of the NDLEA Act. The NDLEA Act incorporates the three Conventions on illicit drugs into the Act. The section requires the NDLEA to be guided by the obligations contained in the Act with a view to enforce and implement the provisions of the Conventions accordingly. Therefore this chapter (chapter 3) will discuss the following,

a. To analyse the three current international treaty on illicit drugs. These treaties are;

[182]Section 3, Treaty Making Act, Cap. T 20 L.F.N 2004.
[183]Constitution of the Federal Republic of Nigeria (1999 as amended).

i. The Single Convention on Narcotic Drugs of 1961, and the Protocol to the Single Convention on Narcotic Drugs of 1972.

ii. The Single Convention on Psychotropic Substances of 1971.

iii. The Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances of 1988.

b. To review Nigerian Statutory law on prevention and control of Narcotic Drugs and Psychotropic Substances. The scope of this review will be limited to the provisions of the National Drug Law Enforcement Agency Act 2004.

c. To analyse the role and responsibility of the institutional mechanism responsible for implementing the provision of the three International Conventions, and the National Drug Law Enforcement Agency Act 2004.

## 3.2 Analysis of Domestic Implementation Treaties on Narcotic Drugs and Psychotropic Substances

The Government of Nigeria has over the years signed five treaties on narcotic drugs and psychotropic substances. They include; The Hague Convention of 1912[184], the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971, the Protocol to the Single Convention on Narcotic Drugs of 1972 and the United Nations Convention Against Illicit Traffic and Abuse of Narcotic Drug and Psychotropic Substances of 1988. Out of the five treaties, only the Hague Convention is out of use or not in force since it has been overtaken by the Single Convention on

[184]Signing and ratification of this treaty was done by the British Government at the time. The promulgation of the Dangerous Drug Ordinance of 1920 by the British Colonial Administration at the time in the Colony of Nigeria was the result of the Shanghai Conference which gave birth to the Hague Convention.

Narcotic Drugs of 1961 and it's Protocol of 1972. All these treaties have been implemented in Nigeria in the form of the Dangerous Drug Ordinance of 1920 and its amendment of 1935, the Indian hemp Decree of 1966, the Food and Drug Decree of 1974, the Special Tribunal (Miscellaneous Offences) Decree of 1984 and its amendments of 1986, and the National Drug Law Enforcement Agency Decree of 1989 respectively.

These treaties aim at providing solutions to the drug problem in Nigeria and the world at large. The content of the treaties creates obligation for member states to perform the stipulations of international treaty, the establishment of governmental agencies and institutions capable of executing the law against illicit drug activity, the promotion of programmes, events and activities with a view to raise public awareness on the harmful effect of dangerous drugs and the legal sanction available to any individual violating the law. Other obligations include the rehabilitation of drug addicts and compensation, restitution and remedy for victims of crimes generally and illicit drug crime in particular, by the state, courts or offenders as the case may be.

The Federal Government of Nigeria is duty bound to comply with the treaty agreement as required under international law and as part of laws of Nigeria, particularly the constitution and also the NDLEA Act. In this regard, the Federal Government of Nigeria has signed ratified and incorporated the three treaties along with the protocols to the treaty with a view to join and participate in the international efforts aimed at solving the harmful effect of dangerous drugs on individuals in the world at large. This international effort involves the performance of obligations contained in the treaties on governments of member states. This is usually through the exercise of state powers, such as legislative intervention of the treaty into an Act of the National Assembly, as an important step in the enactment of treaty or domestication of treaty. The execution of

treaty obligations by state agencies such as the NDLEA and the Police with a view to enforce it. The interpretation of the law by the courts with a view for adjudication of guilt and innocence of persons as a key role of the judiciary, particularly the Federal High Court of Nigeria on matters involving the NDLEA Act. And notwithstanding the existence of laws aimed at solving the illicit drug problems in Nigeria and the world at large, a number of issues pose a challenge to any meaningful effort to solve the drug problem. The best scenario that comes to mind in an attempt to understanding the drug problem is to consider any community in Nigeria or abroad without hard drugs abuse and trafficking. The health benefits to individuals is enormous since there will not be any ingestion of dangerous toxin derived from narcotics plants and psychotropic substance. The need to rehabilitate drug addicts becomes unnecessary and the idea or effort is simply discarded. The monetary aspect of it is that the loss of sustaining illicit drug addiction is expensive and difficult. The stigma that family and friends of drug users and drug addicts go through is a painful one.

### 3.3 Compatibility of Nigerian Domestic Laws with United Nations Conventions on Prevention and Control of Narcotic Drugs and Psychotropic Substances

International Instruments on narcotic drugs and psychotropic substances here refers to the three[185] most current conventions which seek to prevent and control drug trafficking and drug abuse and other similar illicit drug activities, both at the international level and at state domestic level[186].

[185] The Government of Nigeria Acceded to the Single Convention on Narcotic Drugs on 24th June 1961, the Single Convention on Psychotropic Substances on 23rd June 1971 and the United Nations Convention against Illicit Traffic and Abuse of Narcotic Drugs and Psychotropic Substances on 1st March 1988.
[186]These are the single Convention on narcotic drugs of 1961 and it protocol of 1972, the single Convention on psychotropic substances of 1971 and United Nations Convention against illicit traffic and abuse in Narcotic drugs and psychotropic substances of 1988.

### 3.3.1 The Single Convention on Narcotic Drugs

Amongst the conventions referred to in this research, the earliest Convention in operation today is the Single Convention on Narcotic Drugs of 1961. The aim of this treaty is to provide solutions to the problems of narcotic drugs at the global stage by articulating for the first time in history, a single international instrument which contains all important provisions of previous treaties against illicit drug activities (including cultivation, processing, drug trafficking and drug abuse) by members of the international community.

In 1958, the Economic and Social Council of the United Nations by resolution 689J (xxvi) decided to convene in accordance with Article 62 of the Charter of the United Nations, and with the provisions of the General Assembly Resolution 366 (IV) of 1949. A Plenipotentiary Conference for the adoption of a Single Convention on Narcotic Drugs to replace by a Single Instrument the existing multilateral treaties in the field, to reduce the number of international treaty organs exclusively concerned with the control of narcotic drugs, and to make provision for the control of the production of raw materials of narcotic drugs[187]. Within the years cited above, the Economic and Social Council of the United Nations had produced a Final Draft Act for adoption at the United Nations Conference in 1961. A total of seventy-three nation-states were represented at that conference including Nigeria[188].

A number of issues were addressed at the Conference. Firstly, the Conference declared that the fulfilment by the developing countries of their obligations under the convention will be facilitated by adequate technical and financial assistance from the international

[187]The Single Convention on Narcotic Drugs of 1961.
[188]The list of signatory to this Convention is found in the preamble to the Single Convention on Narcotic Drugs of 1961.

community[189]. This declaration is arguably one of the most important provisions contained in the Single Convention. A number of reasons make it so. One reason is that cultivation, production and trafficking of narcotic drugs are mostly done in developing countries. Afghanistan which was represented at the United Nations Convention is a developing country and world's foremost cultivator and producer of opium. Jamaica is a world leading consumer of cannabis (marijuana or Indian hemp), and it is a developing country. It was also represented at the Convention. Colombia is the home to the infamous Medellin Cartel (a secret association of mafia dons, gang leaders, and drug dealers who control the production and sale of cocaine), is a developing country and was represented at the Conference. The Government of these countries added their voices to the calls that an international convention be concluded to lend global cooperation to the fight against illicit drugs. The Governments of these countries did not hide their need for assistance in this efforts and the provisions of the convention turned out to be sufficient in assisting the weak states accordingly. Especially in funding the security operations against illicit drug traffickers.

The Second reason is that political instability, weak economy, high level of poverty and records of institutional corruption in government bodies in most third-world countries amount to an inability and incapacity of the governments of these countries to fulfil their obligations under international law in the form of preventing illicit drug activities and prosecuting offenders[190].

The third reason is that Europe and North America are the favourite destination market for narcotic drugs. This is mainly because, the currency value of these countries compared to that of the third-world, shows a much higher exchange margin. This

[189]The preamble to the Single Convention on Narcotic drugs of 1961.
[190]United Nations Office of Drug and Crime Report, 2011.

translates to high profits. Therefore, the assistance offered by the United Nations can facilitate sufficient response to checking the activities of illicit drug production and trafficking.

Although at that time in 1961, Nigeria was basically a transit state.[191]And as a developing country, it faced some of the problems affecting third-world and developing countries. Especially the problems commonly faced by nations with weak economy, such as the inability to fund and sustain funding for operations aimed at combating illicit drug activities. The in-ability of the government of Nigeria (at the time), to effectively prevent illicit drug traffickers from using Nigeria as a transit route to Europe and America stems from this problems. All these proved the need for granting developing countries essential technical and financial aids in their efforts against illicit drug activities[192].

In Russia for instance, the Russian Minister of Interior Affairs, Boris *Grylov* told the State *Duma*[193]that the total prohibition of illicit drug use was not the governments own initiative but rather the result of Russia's responsibility to implement the UN Drug Conventions of 1961, 1971, 1972 and 1988[194]. This goes to show further that Nigeria and all parties to the Conventions have an obligation to implement them and to benefit from the implementation.

The resolution on the three Conventions maintained that since the primary objective of the Convention itself is to fight the spread of illicit drug use, parties to the convention should develop leisure and other activities conducive to the sound physical and

[191]Mohammed, B.H. *op.cit.*
[192]All these three reasons are views of this writer and are supported by the works of Mohammed, B.H. Oyakhilome, E. amongst others as cited in this research.
[193]The National Parliament of Russia.
[194]Fazey, C. (2004) The Mechanics and Dynamics of the UN System for International Drug Control, Pelican Press, New York, p. 14.

psychological health of young people[195]. This resolution is basically an attempt to provide solutions to factors that cause individuals, especially the youth to drug abuse. It would seem that by suggesting leisure and similar activities as a way to solve the problem of drug usage, the draft committee at the Single Convention had identified that 'idleness' or something similar, is responsible for drug abuse among the youth. However, this researcher believes that enrolment in schools, employment and even devotional acts of worship would be much more durable and effective in solving the problem of idleness that may lead to drug abuse rather than leisure as suggested by the convention[196]. Yet again, sports and games for the youth is the best of leisure activity as it channels that youthful exuberance and energy to physical fitness and thus, good health. But to what extent has the government of Nigeria performed this obligation? Very little is the answer! In the United States of America for instance, most neighbourhoods with high concentration of middle class and lower class citizens have sports facilities such as basket ball and football fields built by the municipal government council. This keeps the youth busy after school and on weekends. In Nigeria, except for schools and other institutions, sports facilities are not available. Thus, the youth in Nigeria usually hang out on streets corners and adopt whatever habit boys practice amongst them.

The Single Convention on Narcotic Drugs of 1961 requires parties to the convention to take every effort to prevent cultivation, production and trafficking of illicit drugs, including the use of countries as transit countries or states[197]. Here, a number of recommendations were made. This includes strengthening the law enforcement bodies of member countries to prevent illicit drug activities by identifying suspects and

[195] As stated in the preamble to the three Conventions.
[196]That is as alternative to, or instead of 'leisure' and similar activities as suggested in the Convention.
[197]Article 1 of the Single Convention on Narcotic Drugs of 1961.

arresting them. Again, member countries were to pass laws that enable the states to prosecute offences related to illicit drug activities. It should be mentioned here that this Convention oblige member states to treat drug abusers that have become so dependant of drugs that there heath is poor, as clinically sick persons in need of rehabilitation and not punishment in prison.

In Nigeria, the Government promulgated the Indian Hemp Decree in 1966. This was the first law, post independence in Nigeria, dealing with narcotic offences. It was made in response to the growing abuse of Indian hemp in the country at the time and particularly because the Single Convention of 1961 to which Nigeria is a party require it.

### 3.3.2 The Protocol to the Single Convention on Narcotic Drugs

In 1972, a Protocol was adopted by the United Nations Conference on the Single Convention on Narcotic Drugs of 1961[198]. This Protocol amended the 1961 Convention by providing that a permit or licence shall be granted to any individual or persons (real or corporate) for the cultivation, production, manufacturing and sale of narcotic substances and drugs for scientific and medical purposes[199]. The aim of this amendment provision in the 1972 Protocol was to control the availability and use of narcotics[200]. It was argued that since narcotic plants do have properties that may be used in scientific research and medical use, then only for such purpose shall it be lawful or permitted[201]. This provision is perhaps the most important amendment contained in the 1972 protocol to the Single Convention on Narcotic Drugs of 1961 because without it, all the use of narcotic drugs and psychotropic substances will be illegal. This will have been retro-progressive to scientific research and medicine for the benefit of Mankind. Another

[198]The Protocol to the Single Convention on Narcotic Drugs of 1972.
[199]Article 5 of the Protocol to the Single Convention on Narcotic Drugs of 1972.
[200]Ibid.
[201]Ibid.

equally important provision contained in the 1972 Protocol was the recommendation to member states for cooperation with other states in the execution of the provisions of the convention. These provisions require member states to enter into bilateral and multilateral relations on the need to fulfil obligations contained in the Single Convention. In response to this provision, the Government of Nigeria concluded the Tripartite Agreement with Niger and Chad in 1979[202].

The Protocol also recommended that proper efforts should be carried out by governments to prosecute offenders of narcotic law anywhere in the world[203]. In response to this recommendation, the then government of Nigeria passed the Indian Hemp (amendment) Decree of 1975. This legislation sought to address two main issues[204]. The first is to strengthen state efforts against Indian hemp offences that seemed inadequate under the 1966 Decree. This was mainly because Indian hemp continued to be cultivated and abused in Nigeria notwithstanding the 1966 Decree. The second was to bring the Indian Hemp Decree in line with the provisions of the 1972 Protocol to the Single Convention on Narcotic Drugs of 1961.

In a nutshell, the Single Convention on Narcotic Drugs of 1961 aims at[205] replacing the existing treaties on illicit drugs, extending control of narcotics to include cultivation of plants that produce opium, cocaine, and cannabis; and simplifying the International control machinery of Narcotic Drugs. The 1972 protocol amending the Single Convention on Narcotic Drugs of 1961 similarly sought to achieve the following aims. To strengthen international legal control over narcotics use. To extend and encourage bilateral and multilateral relations among members and to ensure that offenders of

[202]Cukwurah, A.O. *op.cit.* p. 34.
[203]Article 7. Protocol to the Single Convention. *op.cit.* p. 83.
[204] Emafo, P. o*p.cit.* p. 3.
[205]Ibid.

narcotic law are properly prosecuted.

### 3.3.3 The Single Convention on Psychotropic Substances

The second and current international treaty on illicit drugs amongst the three International Conventions mentioned earlier is the 1971 Convention on Psychotropic Substances. This Convention was made necessary by a number of reasons[206]. The first reason was that the Single Convention on Narcotic Drugs failed to consider and thus legally regulate any other type of drug other than narcotics. The second was that a number of substances which were not properly regarded as drugs *per se* were becoming popular among drug users. For instance, LSD had by 1963 become a notorious psycho-active drug among drug traffickers and drug addicts. The third reason was that governments could not deal with the problem of abuse of such types of psychotropic substances and similar psycho-active drugs alone without international cooperation and action. These three reasons, amongst others, consequently led the Economic and Social Council of the United Nations to begin an effort to properly address the problems of illicit drug activities other than narcotic drugs. A Commission was then set up and in conjunction with the World Health Organisation. It produced a draft resolution which was later adopted at the plenipotentiary conference for the adoption of a Protocol on Psychotropic Substance in 1971[207]. This Conference was attended by representatives of 71 countries (including Nigeria), along with observers from four countries, the World Health Organisation (WHO), the International Control Board (INCB), and the International Criminal Police Organisation (INTERPOL)[208]. At the end of the Conference, the treaty was adopted and opened for signature by members of the United

[206]The Preamble to the Convention on Psychotropic Substances of 1971.
[207]The Commission on Narcotic Drugs in 1963 was mandated to find ways and measures on how to prevent the abuse of psychotropic substances, mainly barbiturates, amphetamines and tranquilizers. It submitted its report to the Economic and Social Council and the World Health Organization, which was adopted by member states of the United Nations in Vienna on 21st February 1971.
[208]See. Preamble to the Single Convention of Psychotropic Substances of 1971.

Nations.

Some time thereafter, the Secretary-General of the United Nations lent an *aide-memoire* to various state governments around the world. In it, he described the situation concerning the proliferation of psychotropic substances and then the principles of action regarding solutions to those concerns. The then Secretary-General of the United Nations stated thus[209]:

> In the past ten years, drug abuse and drug addiction have taken on increasingly dangerous proportions in many parts of the world. The situation is aggravated by the continuous introduction of new psychotropic substances which are liable to be misused[210]. This trend has affected not only developed countries but also developing countries, and is especially dangerous to the latter because they have limited resources to deal with the situation. The reasons for the spread of drug abuse are complex and are different in different countries, and some of them are very difficult to remove; nevertheless, effective remedial action can and must be taken. It is clear that the problem requires international measures to deal with it... Simultaneous action must be taken on the supply of drugs for purposes of abuse, on the demand for such purposes and on the illicit trafficking which serves as channel connecting production with demand[211].

This statement contains a number of important observations that makes it necessary to maintain an international treaty on illicit drugs generally, and particularly on psychotropic substances. Firstly, drug abuse and drug addiction has become more prevalent around the world. The problem here is that drug abuse is a dangerous practice that often destroys lives due to the harmful and toxic content of drugs. This will also lead to a breakdown of family units as a result of such factors as death of family

[209]The United Nations and the Fight against Drug Abuse, A publication of the United Nations, New York-USA, (1992) p. 19.frv`
[210]Underline mine.
[211] Ibid.

members, coping with addiction habit and similar problems of family member, the cost of rehabilitating an addicted family member, the loss of sexual libido of couples who may be addicts and the constant apprehension of the police and the state. Once the family unit of a society is threatened, the society is itself threatened. Lest we forget that the state of the nation begins with the family. Secondly, almost every time, a new substance capable of abuse is discovered[212]. There is thus, no limit to what can be properly identified as drug capable of being abused. Thirdly, the devastating effect of illicit drugs is mostly felt in developing countries because the countries have the least capacity to deal with the problem caused by illicit drug activities. Fourthly, the factors leading to or causing drug abuse and drug trafficking are many and differ from society to society. But in developing countries, poverty has been identified as a leading factor in cases of drug abuse and drug trafficking. Poverty is a complex problem and also difficult to remove. Fifthly, that a concerted international effort can be made by members of the international community to prevent the supply and demand of illicit drugs.

This Convention is the first treaty that regulates and controls psychoactive drugs and substances other than narcotics[213]. It provides a programme for the rehabilitation of drug users. It prohibits advertisement for products of drugs under control and further provides for parties to the convention to prohibit or restrict import and export of drugs under control[214].

The domestication of the Convention on Psychotropic Substances of 1971 in Nigeria started with the repeal of the Amphetamine and Other Drugs (Control) Decree[215] by the

[212]This situation is the main reason why drug abuse is rising in Nigeria.
[213] Cukwurah, A.O. *Op.cit.* p. 34.
[214]Article 3, Convention on Psychotropic Substances 1971.
[215]Decree No. 27 of 1984.

Foods and Drugs law in 1974. This law was passed to give effect to the obligation placed on Nigeria under the Convention of 1971. Its aim is to control the importation, exportation, manufacture, sale or distribution of amphetamine, *secobartical*, *methaqualone* and other drugs[216]. Section 3 of the Foods and Drugs Act provides that: Except as authorised by the regulations, no person shall import into Nigeria or export there from, manufacture, sell, distribute or cause to be distributed (whether as samples or otherwise) any of the drugs specified in schedule 2 of this Act[217].

This section limits the ability of an individual to manufacture, produce, sell distribute, export, or import, etc. any drug specified in schedule 2 of the Act. The limitation is based on an authorisation by the government of the state to grant licence. The list of drugs in schedule 2 of the Act as essentially psycho-active drugs and such similar substances that act on the central nervous system of a person including hypno-sedatives, stimulants, hallucinogens, tranquilizers, and anti-depressants[218].

The problem of illicit drug trafficking and abuse in Nigeria has become significantly disturbing by 1983[219]. Thus, the then Federal Military Government promulgated the Special Tribunal (Miscellaneous Offences) Decree of 1984 (now repealed). This Decree sought to fill both legal and administrative *lacuna* contained in the Food and Drugs Act of 1974 and in the Indian hemp (Amendment) Act of 1975. The Decree of 1984 made general penal provisions regarding both Narcotic Drugs and psychotropic substances[220].

This Decree is the final law in Nigeria which although a product of or inspired by two distinct legislations which were the result of domestication of international law, yet it sought to combine narcotic drugs and psychotropic substances under a single statute.

[216]Preamble to the Food and Drug Act Cap. F. 13, LFN 2004.
[217]Food and Drug Act. Cap F. 13, LFN 2004.
[218]Ibid.
[219]Oyakhilome, F. op.cit. P. 3.
[220]ibid

The most important aspect of the decree was that it introduced capital punishment for offences related to the violation of the Indian hemp (Amendment) Decree, particularly, transactions in cocaine, heroin, and similar substances and drugs.

In 1984 again, an amendment was made to the Special Tribunal (Miscellaneous Offences) Decree of 1984[221]. That same year, the Special Tribunal (Miscellaneous Offences) (Amendment) Decree introduced the forfeiture of both movable and immoveable property of persons convicted of offences connected with illicit transactions in cocaine, heroin, and similar drugs[222]. In 1986, a further amendment was made to the 1984 decree. Thus, the Special Tribunal (Miscellaneous Offences) Decree of 1986 introduced a number of changes[223]. Firstly, it removed the capital punishment for those offences specified in the 1984 decree, and instead, replaced them with life imprisonment[224]. It will be recalled that the Special Tribunal (Miscellaneous Offences) Decree of 1984 decreed that:

> Any person who deals with, sells, buys, exposes or offers for sale, smokes, drinks, or inhales, or induces any other person to so deal with the drugs popularly known as cocaine or any such similar drug shall be guilty of an offence and liable on conviction to suffer death by the firing squad[225].

Several persons were convicted and three executed for importing cocaine contrary to the terms of this decree. One person was infact executed retroactively for an offence he was accused of committing before the aforementioned decree was promulgated[226]. The severity of the punishment contained in the decree and the outcry that followed the operation of this law was loud. In 1986, the General Muhammadu Buhari regime was ousted for being oppressive and responsible for such kinds of irresponsible laws

[221]Decree No. 20 of 1984.
[222]Decree No. 31 of 1984.
[223]Decree No. 22 of 1986.
[224] S. 3 Special Tribunal (Miscellaneous Offences) Decree No. 22 of 1986.
[225] S. 6(3) (k) Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1984.
[226]Owoh v. FGN (1986) 12 All N.L.R 457

(amongst others).The General I.B. Babangida regime constituted the Dr. T. A. Aguda Tribunal of 1986 to review the 1984 Decree which it did and recommended imprisonment instead of the death sentence as a punishment for offences on illicit drugs.

Secondly, persons convicted of offences against the provisions of the Special Tribunal (Miscellaneous Offences) Decree of 1986 in respect of cocaine, heroin, LSD, and similar drugs or substances were to forfeit all their movables and immoveable assets including motor vehicle to the government.[227] A person would also forfeit his international passport if he imports or exports such drugs and substances out of or into the country[228].

### 3.3.4 The United Nations Convention against Illicit Traffic and Abuse of Narcotic Drugs and Psychotropic Substances

The third International Convention on Prevention and Control of Illicit Drugs was concluded in Vienna, Austria. It is called the Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of 1988, or the Vienna Convention. This convention is the result of the Narcotic Commission's report to the Economic and Social Council of the United Nations. The Economic and Social Councils were earlier on required by the United Nations General Assembly to present a Draft Resolution on illicit drugs. The Draft was to address a number of issues which the members of the General Assembly perceived as crucial and necessary to the achievement of any success in the efforts against illicit drugs. These issues include the following;[229]

Firstly, all areas not expressly covered by the existing instruments on illicit drug activities. Secondly, new measures should be used to prevent illicit drug trafficking.

[227]Section 2, Special Tribunal (Miscellaneous Offences) Decree No. 22 of 1986.
[228]Ibid.
[229]As stated in the preamble to the United Nations Convention against Trafficking and Abuse of Narcotic Drugs and Psychotropic Substances of 1988.

Thirdly, any other measure which is capable of supplementing and reinforcing existing instruments aimed at preventing and controlling narcotic drugs and psychotropic substances under International Law.[230] With 106 delegates from various countries and a number of specialised bodies and institutions, the draft resolution was adopted as the Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances in 1988.[231]

This convention had a number of objectives. They include the following.[232] One, to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol and the Convention on Psychotropic Substances of 1971. The aim of this is to counter the rising magnitude of illicit drug activities as stated under the two previous instruments[233]. The measure for achieving this is through preventing trafficking in such illicit drugs especially at the international level[234].

Two, to encourage cooperation among the members of the international community through the states so that countries can join efforts aimed at preventing international drug trafficking. The aim of this is to foster close coordination by governments.[235] The measure for achieving this objective is through bilateral and multilateral treaty agreement between countries that seek to join efforts with a view to prevent illicit drug trafficking.[236]Three, to take all measures that are capable of eradicating cultivation of narcotic plants[237]. The aim of this is to solve the problem of supply of illicit drugs and

[230]Ibid.
[231] The Convention was adopted on 19th December, 1988 and initialled on the 20th December, 1988.
[232] Article 1, Convention against Illicit Trafficking and Abuse in Narcotic Drugs and Psychotropic Substances of 1988.
[233]Section 3 (1) (m), *op.cit.* p. 60.
[234] The World Drug Report, (2009). p. 12.
[235]Section 3 (1) (o), National Drug Law Enforcement Agency Act, Cap. N. 30 LFN 2004.
[236] The World Drug Report, (2009). P. 15.
[237] Section 3 (1) (d), ibid.

consequently, of trafficking illicit drugs. The measure for achieving this is by preventing farmers from growing narcotic plants. And although in developing countries where poverty is rife, growing Indian hemp or opium or coca plants is profitable, therefore, governments are expected to provide adequate subsidies for agricultural farmers with a view to reduce the cultivation of illicit crops such as Indian hemp and coca plants[238].

### 3.3.5 An Analysis of the United Nations Convention against Illicit Traffic and Abuse in Narcotic Drugs and Psychotropic Substances

The preamble to this convention provides an insight into the factors and reasons why it was made. The most important reason is the deep concern expressed by member states of the United Nations General Assembly on the magnitude and growth of illicit production of, demand for and traffic in narcotic drugs and psychotropic substances which pose a serious threat to the health and welfare of human beings and adversely affected the economic, cultural and political foundations of the society.

In any case, the proceeds of drug trade provide individuals with money to finance their activities. The threat posed to government authorities by such criminal groups is an existential one as it is capable of bringing down the state[239]. In Nigeria recently, the President stated that both *Boko-Haram* and the Movement for the Emancipation of the Niger Delta (MEND) relied on proceeds of drug trade to finance their activities[240].

The need for the international community to come together to solve this problem must also be seen to be mainly based on the nature of illicit drug activities such as the traffic in narcotic drugs and psychotropic substances, (e.g. Coca plants cultivated in Columbia

[238] The World Drug Report, (2009). P. 19.
[239]"Drug Trafficking as a security Threat in West-Africa", United Nations Office of Drug and Crime Publication, (2008), p. 35.
[240]Ibid

is processed and made into Cocaine). It becomes a product although an illicit one, which is trafficked to Italy through Murtala Mohammed Airport in Lagos, Nigeria[241]. A triangular stage is formed here. Cocaine is produced in Columbia; here Columbia becomes the producing state. It is trafficked through Nigeria. Nigeria becomes the transit state. And it is sold in Italy. Italy becomes the market or consumer state. And the profit is sent back to Columbia, thus completing the triangle. A similar trend applies to opium which is the raw material for making heroin. It is cultivated in Afghanistan. It is trafficked through Pakistan, Iran, Iraq, and Turkey where it finds its way into the European market[242]. Columbia and Afghanistan are not the only producers of cocaine and heroin respectively. However, this only illustrates how illicit traffic is an international network, an international malaise[243]. Therefore, this convention against illicit traffic of narcotic drugs and psychotropic substances aims at combating the international trade of illicit drugs through international law as this kind of law which is based on treaty agreement is the more prudent approach to solving the problem[244]. This convention thus, focuses on two issues.[245]The first is, introducing measures which will most effectively combat illicit drug trafficking. The second is, reinforcing and supplementing the provisions of the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances in order to counter the magnitude and extent of illicit traffic and its grave consequences.

Article 1 of the Convention contains the definition of key terms such as the meaning of Indian hemp, narcotic, psychotropic substances etc. These have all been discussed under Chapter two of this dissertation. Article 2 contains three paragraphs. It provides a limit

[241]Ibid
[242]This place is also referred to as the golden triangle.
[243]The world Drug Report, a publication of the United Nations office of Drug and Crime (2009), p.49.
[244]Cukwurah, A.O. *op.cit.* p. 34.
[245] Ibid.

on the application of the convention. Paragraph 1 states that, the purpose of the convention is to promote corporation among the parties so that they may address more effectively the various aspects of the illicit traffic in narcotic drugs and psychotropic substances having an international dimension in carrying out their obligations under the convention. The parties shall take necessary measures including legislature and administrative measures, in conformity with the fundamental provisions of the respective domestic legislative systems. This paragraph has two objectives. The first encourages member states or countries to join efforts aimed at addressing problems of illicit traffic in narcotic drugs and psychotropic substances. The second is to draw attention to member states on the need of incorporate legal and administrative measures in form of obligations into their respective domestic legislative systems. Paragraph 2 provides that, parties shall carry out their obligation under this convention in a manner consistent with these principles of sovereign equality and territorial integrity of states and that of non intervention in the domestic affairs of the other states. This paragraph requires member states to respect the independent and sovereignty of other states and discourages the undue interference of states by other states in an attempt to fulfil obligations or carry out any effort aimed at giving effect to the provision of this convention. Instances where so called first world countries begin to meddle in the affairs of third world countries by conducting security operations within their territory without legal justification was disallowed. For instance, if the United Kingdom (UK) Government find course to believe that the cocaine brought into England actually come from Columbia and are able to trace the source of it, the UK Government cannot proceed to unilaterally arrest and bring the cocaine producers from Columbia to UK for trial. They must request the assistance of the Columbian Government which has discretion on the matter. Again, when an individual suspected of involvement in illicit

drugs activities evade arrest, say from the UK and hides in Columbia. The UK Government cannot request from the Columbian Government to hand the suspect except an extradition treaty exists between the two countries. The Columbian Government also has discretion on the matter. Paragraph 3 provides that a party shall not undertake in the territory of another party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other party by its domestic law. This paragraph reserves the exercise of state power and authority to the government of the country concerned. It shall not be lawful for a foreign government to so exercise such power and authority. This includes law enforcement, prosecution, and trials, rendition and extradition of suspects etc.

Article 3 contains the provisions on offences and sanctions. Paragraph 1 provides that each party shall adopt measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

> (a) (i) The production, sale, delivery, transportation, importation or exportation of any narcotic drug or psychotropic substance under their respective conventions.
>
> (ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 convention as amended by the 1972 protocol.
>
> (iii) The possession or purchase of any narcotic drug or psychotropic substances for the purposes of any activities enumerated in (i) above.
>
> (iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table 1 and Table II, knowing they are to be used in or for illicit cultivation, production, or manufacture of narcotic drugs and psychotropic substances.
>
> (v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii), or (iv) above.

The provisions contained in paragraph 1(a) (i-v) are part of the obligations on the

criminalisation or proscription of a number of activities. The activities that have become criminal offences under the convention and hence under domestic laws includes: production, manufacture, extraction, preparation, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, transport, importation, or exportation of any narcotic drug or any psychotropic substances. This provision is also contained in section 11 of Nigeria's National Drug Law Enforcement Agency Act which makes it an offence to engage in such actions[246]. As to the issue of which court is competent to try a case involving the citizen of another country who is involved in illicit drug activity, the United States Supreme Court in the case of ***Austin v. United States,***[247] stated that the United States Supreme Court has competent jurisdiction over matters contained in the Controlled Substances Act (US), which reinforces the provisions of the Convention Against Illicit Traffic and Abuse in Narcotic Drugs and Psychotropic Substances. The laws (both the Controlled Substances Act and the 1988 U.N Convention) are intended to deter and punish acts of possession, transportation, sale etc of dangerous drugs under the laws. The court is empowered to confiscate assets of offenders in this section. The purpose of this is to take over assets belonging to individuals who are involved in, and have benefited from the enormously profitable trade in dangerous drugs. In ***FRN v. Aliyu Mustapha***[248], the defendant, a roadside fuel vendor (popularly known as black market petrol dealer) doubled as an Indian hemp seller in *Yan Awaki* area of Jos, Plateau State. In a twist of fate, the defendant offered to sell Indian hemp (*wiwi*) to a motorist seeking to buy petrol, unknown to the defendant, the motorist was a police officer. The defendant was arrested on the spot and taken to the police station where he was charged with possession of unlawful drugs under section 20 (1) (c), and offering for sale of an unlawful drug under section 20 (1) (a) of

[246]op.cit.
[247]509 US 602, 113 S. Ct. (2003)
[248]FHC/J/19C/2011 (Unreported)

the NDLEA Act. Due to the circumstances of the defendant's arrest, he pleaded guilty and was sentenced to 4 years imprisonment. The quantity of drugs (Indian hemp) found in the possession of the defendant was over 500g or half a kilogram, which is a substantial quantity, considering the fact that the drugs were in form of dry leaves.

In ***Austin v. United States,***[249] the court observed that both the Controlled Substances Act and the Convention Against Illicit Drugs authorize the confiscation of any property or money derived from or belonging to a person involved in violations of the laws. Subparagraph (i) considers property derived from an act of omission constituting an offence under subparagraph (a). This includes; any property derived as a result o the production, manufacture, extraction, preparation, offering, offering for sale, distribution sale, delivery, importation or exportation of narcotic drugs or and psychotropic substances, as under 3(1) (a) (i). Any property derived as a result of the cultivation of opium, poppy, coca bush or cannabis plant for the production of narcotic drugs and psychotropic substances under 3 (1) (a) (ii). Any property derived as a result of possession or purchase of any narcotic drug or psychotropic substances under 3(1) (a) (iii). Any property derived from the manufacture, transport or distribution of equipment, materials or of substances listed in Table I or Table II, knowing that they are to be used in or for illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances under 3 (1) (a) (iv). Any property derived as a result of the organisation, management of financing of any of the offences enumerated in (i) (ii) (iii) and (iv) above. Subsection (ii) prescribes the concealment or disguise of the ownership or location of any property derived from an illicit activity stated in sub (i) above. In ***FRN v. John Okafor***[250], the court made a forfeiture order on the defendant who was found guilty for violating section 11 of the NDLEA Act. The order was made pursuant to

[249](supra)
[250]FHC/J/52C/2012 (Unreported)

section 27 of the NDLEA Act which empowers the court to take over assets of any person convicted of an offence under section 11 of the said Act[251].

Both (i) and (ii) above deal with offences relating to laundering money, property derived from illicit drug activities as mentioned in 3(1) (a). This obligation in the convention against illicit traffic in narcotic drugs and psychotropic substances also found in section 13 (i) of the NDLEA[252]. It states that, "whoever, knowing that the property involved in a financial transaction represents the proceeds of some of some form of unlawful activity, conducts or attempts to conduct such a specified unlawful activity.

In ***FRN v. Sani Bulus***[253], the court held that the defendant had used his Pharmacy to store and sell various types of illicit drugs without proper authorization from the Government. That his pharmacy and everything in it was subject to forfeiture under section 27 of the NDLEA Act.

The subparagraph 3 (1) (b) (i-ii) refers to properties involved in financial transactions of which is derived from illicit drug activities, while S 13 of the NDLEA Act cited above specifically concerns instances of money laundering. S 24 of the NDLEA Act concerns the activities of corporate bodies in dealing with property, including cash money, shares and other chooses in action and assets that are derived from illicit drug activities with regards to companies registered under Companies and Allied Matters Act (CAMA)[254]. It is trite law in Nigeria that the involvement of such company in illegal activities can lead to a number of sanctions against it. For instance, SECTION 408(e) of the CAMA

[251]National Drug Law Enforcement Agency Act, o*p.cit.*
[252]Ibid
[253]FHC/k/12d/2012 (Unreported)
[254]op.cit.

provides that; if the court is of the opinion that it is just and equitable that the company should be, would be wound up" it is both just and equitable for a company to wound up, if the executives of the company engage in any activity that is in violation of any law, and in this situation, the provisions of the NDLEA Act states

Where a company is involved in wrong doing or illicit activities, two major actions can be taken against by the courts. The first is lifting the veil of incorporation as in ***Salomon v. Salomon & co***[255]. When the veil of the incorporation is lifted, it allows the court to pursue and hold accountable the management of the company so that if the burden of responsibility is seen to fall upon their shoulders alone, the company itself will not be touched, but the directors and member of the company management will be held accountable, to the extent of their individual or collective responsibility. If for instance, ABC Inc., a registered company, is suspected of violation of section 24 of the NDLEA Act[256], as it is under Article 3 (1) (b) (i-ii) of the United Nations Conventions Against Illicit Traffic and Abuse of Narcotic Drugs and Psychotropic Substances[257], the prosecutor can ask the court or the court may decide to, lift the veil of incorporation and instead of placing ABC Inc. on trial (being a body corporate, hence and artificial person), it may decide to place the management officers of ABC Inc. themselves. This approach allows innocent shareholders and employers of ABC Inc. to escape legal sanction. Thus when the veil of incorporation is lifted, liability usually affects the management officers alone and not the company entirely.

The second is winding up of a company in ***Ebrahimi v. Westbourne Galleries Ltd***[258], the court noted that since a company cannot begin to engage in the use of a property

[255] (1897) A.C. 437.
[256] *op.cit.*
[257] *ibid*
[258] (1973) A.C 79.

derived from illicit drug activities by itself being an artificial entity, only the company management can move the company to such a transaction. And what the court is seeing in the case cited above is that if a director or anyone involved in running the company acted in such a manner as to engage in financial transactions with property (money, assets, shares etc.) derived from illicit drug activities, any person with an interest in the .company has the right to seek an order for winding up of the company. Although this decision would seem to suggest the kind of instances of citations that an order for winding up of a company would be granted to a person having interest in the company, it must be seen to also mean that even a prosecutor or the court could wind up a company in such similar circumstances. In ***South Africa v. Sero Mala***[259], Van der Heerer. J, stated that when a corporate person (company) is proved to be involved in illicit drug activities, the directors would be held accountable and the company may be wound up.

In ***FRN v. TOKCHEN***[260], the accused, a rural dweller was found in possession of over 600g of Indian hemp and seven hectares of farm land upon which Indian hemp and cannabis plant were grown. The accused pleaded guilty but asked the court for leniency, saying he was a poor farmer and could not afford to obtain chemical fertilizer to grow other lawful agricultural produce. The court rejected his plea for leniency and convicted him without an option of fine. The court remarked that although the accused was a farmer, that his conviction was based upon the fact that he cultivates cannabis without lawful authority from the government. Lawful authority here means a license granting permission for cultivation.[261]It is obtained from or granted by the government and almost solely for scientific research or medical purpose. An application for license,

[259] (2007) 201. S. Ct. 190, 790.
[260]FHC/A/41f/2012 (Unreported)
[261] United States v. Oakland Cannabis Buyers Cooperative (2011) 532 US 483 S. Ct. 1711

granting lawful authority for cultivation of any narcotic plant is made to the Minister of Justice in the prescribed form. The Minister may grant or withhold the license and his decision is final[262].

For liability to be established for the offence of possession of narcotic drug or psychotropic substance, the prosecution must prove the following[263];

(a) Possession of narcotic drugs or psychotropic substances.

(b) Without lawful authority.

(c) For the purpose of production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery, brokerage, dispatch, transportation and importation or exportation.

In the first instance, possession of narcotic drugs or psychotropic substances means either physical control of the drugs at the time of arrest before or after or at the accused command, though not out his physical control. This narcotic drugs or psychotropic substances may be said to be in possession of the accused person if the accused has physical control (such as when it is on his person, inside his pocket, in his bag, by his side etc.) or when the drugs are under his command (such as being in his car, his house, on his property or premises, his safe deposit box etc.).In the second instance, unlawful authority means, the accused had not obtained the required permission from the public authority or government, to so possess the illicit drugs. A duly signed license is prima facie evidence of lawful authority. Its absence or inability to produce it or show it exist that no such license, hence lawful authority exists, and in which case, be unlawful. Both

[262]See. Section 17, NDLEA Act. op.cit.
[263] FRN v. Audu Gyang FHC/J/37c/2009 (Unreported)

possession of illicit drugs and unlawful authority constitute the *actus reus* form the criminal offence. The third instance which shows the purpose for which the accused person wants to use the illicit drugs for which he has no lawful authority to so possess and to use them for any of the purposes enumerated above, i.e., production, manufacture, extraction etc. In ***FRN v Eloka Uzokwe***[264] the accused was found in possession of 150g of Indian hemp in a car he was driving on the public high way between *Nasarrawa* and Plateau states. He testified that he obtained the drug from the former state, intending to sell them in the latter state. In convicting the accused, the court stated since the accused was the owner of the vehicle conveying the illicit drug, that it satisfied the requirement of possession. That is, not having lawful authority or license to be in possession of such a drug, and the fact that he was found transporting the drugs from *Nasarrawa* State to Plateau State, fulfilled the conditions of an offence under Section 11 of the NDLEA Act[265].

Article 3 (3) of the United Nations Convention states that knowledge, intent or purpose required as an element of an offence set forth in paragraph (1) of the Article may be inferred from factual circumstances. This paragraph of Article 3 refers to the general mens rea of the offence for criminal liability. Perhaps it limits to object factual circumstances the establishment of mens rea. This means, in proving the state of mind of the accused person, the circumstances within which his actions occurred is what will be used to establish mens rea. Thus, proof of mens rea is based on actual conduct of the accused person rather than subjective deductions from the conduct. Yet, the proof of intention short of outright confession is difficult. But given the requirement of Article 3 and section 11. If Mr. A is found in possession of Indian hemp in his luggage, the fact that he himself packed his things into his luggage might suggest, he intends to place or

[264]FHC/J/17c/2011 (Unreported)
[265]op.cit.

hide or carry the drug. But if it was done by someone else, it may suggest that he did not intend to carry or did not know drugs were placed in the luggage. This form of *mens rea* would depend on factual circumstances surrounding the case to establish as is the position of a decided case[266].

Section 11(3) provides that, the court before which an accused is being convicted may in addition to the punishment prescribed in subsection (2) of this section; make an order requiring an offender to undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration[267]. This provision is essentially based on Article 3(4) of the United Nations Convention. The practise and attitudes of the .court has always been to imprison or offer fine to a convict. The majority of cases involving illicit drugs offences end up in either prison sentence or fine, even though the possibility of an alternative to prison or fine exist. In ***FRN v Ndong Fom[268]***, the court sentenced the accused to compulsory rehabilitation until he no longer suffers from addiction to illicit drugs. This type of a case is rare. In fact, the main reason for this order of the court in this case cited above is that the accused appeared to be suffering from mental delusion while in detention for using (abusing) illicit drugs. The judge could visibly see how delusional and probably insane the accused was during court proceedings. It may even be stated that the provisions of Section 11(3) of the NDLEA Act and also of Article 3(4) of the Convention is made for drug users who have been convicted of an offence involving using illicit drugs.

Section 11(4) provides that, notwithstanding subsection (2) and (3) of this section, the court before whom a minor is being convicted may, in an appropriate case, make an order as the circumstances may determine-

[266] **DPP v. Smith** (1968) 2 Q.B 367
[267]NDLEA Act. op.cit.
[268]FHC/J/19e/2012 (Unreported)

(a) Either as an alternative to conviction or punishment; or

(b) For treatment, education, aftercare, rehabilitation, social reintegration of the offender.

This provision reflects the spirit of Article 3(4) (c) which requires member states to provide alternatives to imprisonment or conviction and punishment.

Article 4 of the Convention contains the provision on jurisdiction. It state that;

> 1. Each party
>
> (a) Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with Article 3, paragraph, when:
>
> i. The offence is committed in its territory;
>
> ii. The offence is committed on board a vessel flying its flag or aircraft which is registered under its laws at the time the offence is committed.
>
> (b) May take such measure as may be necessary to establish its jurisdiction over the offences it has established in accordance with Article 3, paragraph 1, when;
>
> i. The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;
>
> ii. The offence is committed on board a vessel concerning which that party has been authorized to take appropriate action pursuant to Article 17, provided that such jurisdiction shall be exercised only on the basis of agreements referred to in paragraphs 4 and 9 of that Article.
>
> iii. The offence is one of those established in accordance with Article 3, paragraph 1, subparagraph (c) (iv), and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with Article 3, paragraph 1.

Much of Article 4 is codified under National Drug Law Enforcement Agency Act.[269] With regards to paragraph 1 of Article 4, the NDLEA Act under section 26 confers the Federal High Court of Nigeria with exclusive original jurisdiction to try offender under

[269] Iyamabo, J.A. o*p.cit.* p. 12.

the Act.[270] Thus, any offence committed within Nigeria's territory as in (1) is table or within jurisdiction of Federal High Court. An offence committed on board a vessel flying its flag or an aircraft which is registered under Nigerian law (as in (ii)) is also within the competent jurisdiction of the Federal High Court. Since Nigeria is mainly a transit state for illicit drugs such as cocaine[271], the use of commercial carriers operating under Nigerian law or territory becomes the most frequent mode of transportation, exporting and trafficking illicit drugs. Subparagraph (ii) of paragraph (i) (a) contemplates two scenarios that eventually grants jurisdiction to the Federal High Court as mentioned earlier. The first scenario occurs when the vessel flying Nigeria's flag is used to traffic illicit drugs. This may mean either the shipping lines owned by government of Nigeria or an aircraft such as the Moribund Nigerian Airways or similar aircraft owned solely or jointly by the government of Nigeria. The second scenario contemplated under the aforementioned subparagraph is the case of a vessel or aircraft registered in Nigeria. The first scenario concerns a public vessels or aircraft while the second scenario contemplates a private owned vessel or aircraft registered in Nigeria. And except for emergency situations, almost every vessel or aircraft that ferry passengers and goods into or out of Nigeria is registered with the government of Nigeria. Registration to conduct business in Nigeria, when granted, allows the vessel or aircraft the legal license to carry out its business. It can be concluded that whether the vessel or aircraft is a public or private carrier is not essential but rather has the carrier been used to commit an offence under the NDLEA Act? If yes, then the NDLEA can make arrest and prosecute suspects at the federal High Court. Section 25 of the NDLEA Act, places a duty of care on every commercial carrier to take reasonable precaution to ensure that its means of transport is not used to commit an offence under the Act. The

[270]Section 26 of the National Drug Law Enforcement Agency Act, Cap. N. 30, L.F.N 2004.
[271]Mohammed, B.H. *op.cit.* p. 27.

exact words used in the NDLEA Act states that;

> "it shall be the duty of every commercial carrier to take reasonable precaution to ensure that its means of transport is not used in the commission of offences under the NDLEA Act and also, comply with stipulated security measures at entry and exit points in Nigeria and to prevent unauthorized cargo in its means of transportation"[272].

Only countries with bilateral or subsisting treaty agreement allowing for extradition of offender can in fact extradite offender.[273]. But the aforementioned paragraph presents another dimension on cases concerning extradition of offenders for illicit drug offences subject to existing treaty agreements between countries, a country may decide to prosecute an offender instead of extraditing him, if he commits such an offence as provided.

1. That the offender commits an illicit drug offence.

2. That the offender commits the offence on Nigerian territory or on a vessel or aircraft registered under Nigerian law.

3. That the government of Nigeria decides to prosecute the offender in Nigeria.

It can be stated that under Nigerian criminal law, jurisdiction to try a crime in a given court is established either where the offence is committed wholly in the territory concerned or part of the crime has been so committed in the said territory[274].

Paragraph 3 states that the convention does not exclude the exercise of any criminal jurisdiction established by a party in accordance with its domestic law. Therefore, the provisions of the convention, along with the NDLEA Act shall only be interpreted to

[272]Section 25 of the National Drug Law Enforcement Agency Act, Cap. N. 30, L.F.N 2004.
[273]Caplin & Drysdale Chartered Ltd. v. United States (1989) 491 U.S. 617 No. 87-1729.
[274] Chukkol, K.S. . (1990) LAW OF CRIMES IN NIGERIA, A.B.U. Press Ltd, p. 30-36. See also S. 4 Penal & S. 12 Criminal Code.

support the existing criminal laws and practise in Nigeria. They could not change or alter it significantly.

Article 5 of the Convention provides for Confiscation order. It state that;

> 1. Each party shall adopt such measures as, may be necessary to enable confiscation of;
>
> (a) Proceeds derived from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;
>
> (b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offences in accordance with Article 3, paragraph 1.

This Article of the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, place an obligation on member states as signatory to the Convention to make any effort or measures with a view to confiscate either proceeds and property derived from illicit drug activities, or illicit drugs (narcotic drugs or psychotropic substances) and anything that maybe used to process the drugs, proceeds and property included cash money, monetary remuneration, non-hard currency such as diamond, silver , gold or any precious metal. It also include shares, bonds, financial interest in trade or commerce, goods such as real estate, vehicle and vessels, aircraft, electrical and electronic devices such as smart phones, computers, clothing and accessories etc. The basic requirement is, had these things been derived from illicit drug activities? If the prosecution, upon whom the burden of proof lies, can adduce sufficient evidence to the court, proving that such proceeds and property were in fact derived from illicit drug activities, then upon conviction, the court is required to, amongst other actions it can take (such as punishment, rehabilitation, etc.) make an order confiscating the proceeds and property.

It is hard not to see the striking similarities between Article 5, paragraph 1(a) & (b) of

the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and Section 18 of the National Drug Law Enforcement Agency Act[275]. Perhaps one may point out that the provisions of the Convention are much more exhaustive than the provision of the NDLEA Act.[276]Nonetheless, they both serve the same purpose and have the same objective. Minor differences exist, though, between the two, for instance, the Convention tries to differentiate between proceeds and property. Under the Convention, proceeds refers to money and monetary values manifest in shares, debentures, bonds etc. and precious metals such as diamond, silver and gold etc. While under the NDLEA Act, proceeds include money and things of monetary valuables, but also what would have been separately referred to as property. Thus, under the NDLEA Act, proceeds generally mean any property derived or obtained directly or indirectly through the commission of an offence, i.e. illicit drug offences. But this must be seen as differences in legal drafting styles rather than differences in aims and objectives. The draftsman for the Convention tried to be as clear and concise as possible, while the draftsman for the NDLEA Act tried to be as clear as possible with use of brevity. Both styles are accepted styles of legal drafting and in fact, other styles do exist.

Again, the Convention under Article 5, paragraph 1 (b) mentions that illicit drugs are subject to confiscation. The NDLEA Act does not specifically or expressly mention that Narcotic drugs or psychotropic substances shall be confiscated. But the Act makes provisions referring to that, when in section 18 (1) (a), the Act states that all the assets and properties which may or are the subject of an interim order of the court as attached by the Agency, being a subject of confiscation. This must include such attachments as exhibits tendered in evidence by the prosecution who invariably is the Agency's legal officers. And since confiscation or forfeiture only occurs upon conviction on illicit drug

[275]Op.cit.
[276]*Op.cit.*

offences, it is hard to see where the Agency fails to tender narcotic drugs and psychotropic substances, found with the offender. Since the NDLEA Act does not mention confiscation of illicit drugs specifically, as the convention does, section 18 (1) (a) is the most available channel through which such confiscation can be made. Even if that is not the case, one would be out of point to suggest that illicit drugs found with an offender cannot be confiscated simply because it is not expressly stated in the NDLEA Act. Firstly, it must be taken into consideration that Section 3 of the NDLEA Act states that: subject to this Act, and in addition to any other functions expressly conferred on it by other provisions of this Act, the Agency (NDLEA) shall have responsibility for:

> (m) reinforcing and supplementing the measures provided in the convention on Narcotic Drugs of 1961, as amended by the 1972 protocol, the 1971 convention on psychotropic substances and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988…in order to counter the magnitude and extent of illicit traffic in Narcotic Drugs and Psychotropic substances, and its grave consequences[277].

This provision confers on the Federal Government of Nigeria and particularly, the NDLEA to reinforce and supplement the measures for prevention and control of illicit drugs and illicit drug activities as provided under the Conventions. The process of reinforcement and supplementation include acting within the spirit or objectives of the conventions mentioned above. But to what extent is the absence of such an express obligation of the convention in the Nigerian NDLEA Act fatal to law enforcement or court order? Would it be said, again, that since such an obligation is not expressly contained in the NDLEA Act that it means it has not been domesticated and thus cannot operate domestically in Nigeria? No! Is the definite answer. Section 12 of the Constitution provides that: "No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been

[277]S. 3 (1) (m) National Drug Law Enforcement Agency Act, Cap. N. 30. L.F.N. 2004.

enacted into law by the National Assembly"[278].

In the case of ***Registered Trustees of National Association of Community Health Practitioners of Nigeria & 2 Others v. Medical and Health Workers Union of Nigeria & 2 Ors,*** (Supra)Mukhtar Alloma JSC, interpreting Section 12 of the Constitution said:

> ...in essence, what the legislature meant or intended is that for a treaty to be valid and enforceable, it must have the force of law behind it, albeit it must be supported by a law enacted by the National Assembly, not bits and pieces of provisions found here and there in the laws of the land, but not specifically so enacted to domesticate it, to make it a part of our law. To interpret similar provisions as being part of the International Labour Organization Convention just because they form part of some other enactments like the African Charter and Peoples Rights, e.t.c will not be tolerated.

In the case cited above, the Supreme court was called upon (on appeal) to decide on whether the provisions of the International Labour Convention on Minimum Age for workers, which is stated as 15 years (in the Convention), differs from the position under the Nigerian Labour Act which states 18 years as the minimum age for workers, so that since Nigeria is a member of the(ILO), and had signed the Convention, but is yet to domesticate it, will the provisions of the convention on 15 years minimum age operate in Nigeria as opposed to the 18 years found under the Labour Act. The Supreme Court ruled that the 15 years minimum age for workers will not operate in Nigeria. This Supreme Court decision, reinforce the position that a treaty signed by Nigeria must be domesticated by the National Assembly to have effect and operate in Nigeria in the regular courts.

But again, the many omnibus provisions of the NDLEA Act such as Section 3 (g) which states that: "it shall be the responsibility of the Agency for the adoption of measures to increase the effectiveness of eradication efforts", could be interpreted to mean so many

[278]Constitution of the Federal Republic of Nigeria (as amended), 1999.

things. We must conclude here that confiscation of narcotic drugs and psychotropic substances from illicit drug offenders is one of the ways to eradicate illicit drugs. In the ***FRN v. Umar Musa***[279], the Federal High Court made order confiscating over 18 kg of cocaine found with the accused person as was tendered in evidence by the prosecutor (NDLEA) and later returned to the Agency (NDLEA) for possible destruction. And of over 2,000 cases on illicit drugs tried by the Agency in the Federal High Court between 2007 and 2010, none of the illicit drugs tendered as evidence by the prosecution in support of the facts presented against the accused person was ever returned to the offender.They are placed in the custody of the Agency for destruction (usually by way of burning).

Under Paragraph 2, each party shall also adopt such measures as maybe necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this Article, for the purpose of the eventual confiscation.

The nature of obligation in the paragraph cited above is one that requires member states to empower a public body to have the necessary authority to identify, trace, freeze & seize proceeds, property, and instrumentalities of illicit drug activities for eventual confiscation. This paragraph concerns the need for a competent public authority that will carry out the function of investigating and subsequently identifying, tracing, freezing and seizing of proceeds, property etc. of illicit drug activities.

The NDLEA Act confers this power on the General and Asset Investigation Unit of the NDLEA. Section 7(1) (f) of the NDLEA Act state that: The general and assets investigation unit shall be charged with responsibility for- identifying and tracing of

[279]FHC/Z/17d/2011 (Unreported)

proceeds involved in any offence under this Act and effecting forfeiture of such proceeds"

It must be stated here that there are a number of cases, such as this, in which suspected drug offenders are investigated using such cloak and dagger antics. It is basically an intelligence operation. It is also commonly referred to as a string operation or undercover work.

The only problem with this kind of activity is the issue of entrapment, where an individual is instigated by the police or other security officers to violate the law, for the purpose of holding the person responsible, solely, for the offence. It is an unethical practice and many countries frown at such practice. In the United States of America, it is a defence to an offence[280]. But in Nigeria, the matter is not so expressly clear. For instance, where several persons are jointly charged for an offence and that the offence was actually committed upon an instigation by the principal suspect, now if it turns out that the principal offender is an undercover officer, bent on finding the party with criminal responsibility, if he is set free due to his official status, it would be wrongful to convict the others.

In order to carry out the measures referred to in this article, each party shall empower its court or other competent authorities to order the bank, financial or commercial records be made available or be seized. A party shall not decline to act under the provisions of this paragraph on the grounds of bank secrecy.

Article 6 makes provision on Extradition of offenders[281]. This article shall apply to the offences established by the parties in accordance with Article 3, paragraph 1 of the

[280]This refers to 'sting operations' conducted by law enforcement officers in the States. Under U.S.A Federal Law, entrapment is illegal under S. 47 of the U.S.A Criminal Justice Act, 1964.
[281] (Supra)

Convention. The offences referred to in Article 3, paragraph 1, relate to these offences that we considered as serious or grave offence. Thus, under the NDLEA Act, Section 44 (1) provides that; "the offences under Part II of this Act shall, for the purpose of the Extradition Act, as amended, be regarded as extraditable offences under the Act".

Section 12 of the NDLEA Act contains extraditable offences, it provides that;

> Any person who being the occupier or is concerned in the management of any premises, unlawfully permits or causes the premises to be used for the purpose of storing, concealing, processing or dealing in the drug popularly known as cocaine, LSD, heroin or any other similar drug, shall be guilty of an offence under this Act and liable on conviction to be sentenced to imprisonment for a term not exceeding 25 years[282].

Under this Section, i.e. Section 12, an offence is committed in the following situation;

1. that a person is an occupier or is concerned in the management of a premises.
2. that a person unlawfully permits or causes the premises to be used for;
    a. storing illicit drugs
    b. processing illicit drugs
    c. dealing in illicit drugs
3. that the illicit drug include cocaine, heroin, LSD, or other similar drugs. The *actus reus* under Section 12 is established when a person occupying or managing a premises allows or uses the premises for storing, processing or dealing illicit drugs.

The *mens rea* for this offence is- 'knowledge' that the premises is used as mentioned above without lawful authority.

Section 13 of the NDLEA Act similarly contains an extraditable offence it provides that;

[282] (Supra)

> Any person who is unlawfully concerned in the storage, custody, movement, carriage or concealment of the drug popularly known as cocaine, LSD, heroin, or any other similar drug and who, while concerned, is armed with any offensive weapon or is disguised in anyway, shall be guilty of an offence….

Under this section, i.e. Section 13 an offence is committed in the following situation;

1. that a person is unlawfully concerned with the storage, custody, movement, carriage, or concealment of an illicit drug.
2. that the person is armed with an offensive weapon in open or disguised
3. that the illicit drug includes cocaine, heroin, LSD, or any similar drug.

This offence concerns a drug dealer who is armed, it is common to find drug dealers armed with offensive weapons. Thus, the offence specifically is designed for such categories of drug dealers. It should be noted that the section is not interested in whether the weapon is used or not. It also is immaterial whether the person referred to as in Section 13 is experienced in using the weapon or not. Thus the *actus reus* for this offence includes the following;

1. that a person is concerned with storing etc. of illicit drugs.
2. that the person is armed with an offensive weapon, either in open or disguised.

The *mens rea* for the offence is that the person knows or otherwise has no lawful authority to carry out any activity as mentioned in the section.

However, it is essential to identify what constitutes offensive weapon. Anything that can be used to attack and cause hurt or harm or death to other persons would be considered as offensive weapon. But would it be right to conclude that a person holding a hoe and is concerned with storage of illicit drug is aimed with an offensive weapon? Although a hoe can be used to attack a person and cause hurt or harm or death, yet it would definitely not constitute an offensive weapon. A hoe is a farm implement and not a weapon. On the other hand a machete or cutlass which have combat capabilities, would

constitute and offensive weapon. In any case, the circumstances of every situation would be judge accordingly.

Section 14 of the NDLEA Act provides for the offence of conspiracy, which is an extraditable offence. It provides that any person who:

> incites, promises or induces any other person by any means whatsoever to commit any of the offences referred to in this Act, or conspires with, aids, abets, counsels, attempts to commit or is an accessory to any act or offence referred to in this Act. Shall be guilty of an offence under this Act and liable on conviction to be sentenced to imprisonment for a term not less than fifteen years not exceeding twenty-five years[283].

The offence of incitement is committed through the act of persuading another person to commit a crime. Glanville Williams states that an inciter is one who counsels, commands or advices the commission of a crime[284]. That it will be observed how this definition is much the same as that of an accessory before the fact… but an accessory before the fact is party to consummated mischief, an inciter is guilty only of an inchoate crime[285]. Inciting a person is similar to aiding and abetting and also close to inducing, counselling etc. therefore it can be said that what would constitute one may constitute the others[286]. They are all inchoate offences; as such the requirement for a *mens rea* is unnecessary. Thus, anyone of these offences can be committed once it is shown that the accused person had made another person to commit a crime, it could be done by spoken words, written text, conduct through action or commission or any other conceivable manner.

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[283](Supra)
[284]Williams, G. Textbook of Criminal Law, (2nd edition), London (1993).
[285] ibid
[286]Chukkol, K.S. *op.cit.* p. 3.

The offence of conspiracy on the other hand is committed as Willies J. observed in ***R. v Mulcahy***[287] that the offence of conspiracy does not lay in the doing of the (criminal) act but in the agreement between the parties. Thus, criminal conspiracy occurs when two or more persons agree to commit an offence. Due to the ubiquitous nature of conspiracy and its role in criminal activities, it would be hard to imagine a situation where incitement, promises, inducement, aiding, abetting and counselling occurs without a conspiracy amongst the actors involved. And since conspiracy involves agreement, it is settled then that where two or more persons agree to commit a crime, the offence of criminal conspiracy is committed in the process of making the agreement. What is essential is a kind of consensus ad idem or a meeting of the minds. For instance, where two or more persons communicate a desire to transport Indian hemp from Kaduna to Abuja, the mere acceptance of this proposition by the persons involved is sufficient to serve as proof of agreement, as transporting Indian hemp is a crime, the agreement to thus commit a crime is a conspiracy.

The offence of Attempt is done when a person intending to commit an offence begins to put his intention into execution by means adapted to its fulfilment and manifests his intention by some overt act but does not fulfil his intention to such an extent as to commit the offence[288]. Thus, of the four stages undergone in the commission of any crime, at least the first three must be done, if the offence of attempt is to be committed. First, an intention to commit an offence is established. Second, some preparations are embarked upon towards carrying out the intention. Third, an attempt was be made to commit an offence and fourth, the offence is actually committed[289]. If the *actus reus* of Attempt is to be established, then it must be as Baron Parke. J, puts it in the case of ***R. v***

[287] (1868) 3 H.L. 306
[288]See. Chukkol, K.S. *op.cit.* p. 3.
[289] ibid

***Eagleton***[290], not remote to the actual offence but very proximate to it. Again, the nature of the attempted offence must be unequivocally clear. Also that anyone who has sufficient degree of reason must be able to discern that if the attempted act had succeeded, a certain crime or offence would have been committed (cinematographic theory)[291]. The fact that the offence or crime attempted is an impossible one would not vitiate nor mitigate the culpability of the offender. However, it is important to mention here that where the impossibility is a physical one, it will not render the act legal. Where the impossibility is a legal one, then it would only be said that an imaginary crime was attempted and as such, no crime is committed. To illustrate this position, Mr X supplies Mr Y with 3 kilos of white substance, purported to be pure cocaine. Mr Y was to export same to Italy. While passing through customs at the Airport at Lagos, the white substance was discovered and after a series of interrogation. Mr. Y confessed that the substance was cocaine which he received from Mr X to be delivered to someone in Italy. But upon clinical examination, it was concluded that the substance was not cocaine but harmless white powder. Here Mr Y would still be charged for attempt to export illicit drugs.

Section 15 provides for unlawful assumption of character of officer of the Agency[292]. Any person who, with intent to deceive, unlawfully assumes the name, character or description of an officer of the Agency shall be guilty of an offence. This is an extraditable offence under the Convention.

This section relates to the problem of impersonation of an officer of the Agency. It refers to a situation where a person falsely represents himself as another person, in most cases, (a law enforcement officer) for the purpose of deceiving another. The *actus reus*

[290](1963) 7 All E.R 37
[291]ibid
[292]*op.cit.*

for this offence is false representation of oneself as someone else or impersonation. The *mens rea* is the intention to deceive another person by such false representation.

Section 17 of the NDLEA Act prohibits escaping or permitting the escape from lawful custody of officers of the NDLEA[293]. It states that whoever being in lawful custody, escapes or aids anyone in lawful custody to escape is guilty of an offence. Escaping or permitting escape from lawful custody is a very serious crime. It can be seen how Section 33 (2) of the Constitution states that a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of such force as is permitted by law and reasonably necessary in order to prevent the escape of a person lawfully detained[294]. This is an extraditable offence under the NDLEA Act.

Section 19 of the NDLEA Act prohibits the unlawful possession of cocaine. It states that any person who, without lawful authority, knowingly possesses the drugs popularly known as cocaine, LSD, heroin, or any other similar drugs shall be guilty of an offence. This is an extraditable offence. It should be noted that extradition which refers to the process where a person is moved from one territory or jurisdiction to another for the purpose of standing trial, must be done on legal grounds. This means that before a person can be moved from one territory to another, the authorities doing the moving must have lawful powers to do so. Failure to lawfully extradite a person amounts to a crime. In most instances, the source of lawful authority is the extradition treaty. With regards to extraditable offences under this convention, it must be stated here that the convention does not create an automatic extradition treaty for member states or between member states. Instead, it list offences that will be subject of extradition only where an

[293]op.cit.
[294]Constitution of the Federal Republic of Nigeria, 1999 (as amended).

extradition treaty already exist between the countries concerned. In the case of ***Sosa v. Alvarez-Machain Et Al***[295]**,** the United States Supreme Court held that the Drug Enforcement Administration or DEA had no power to demand the transfer of Alvarez-Machain to stand trial from Mexico to the United States without observing the provisions of the extradition treaty. That the actions of the DEA amounted to an abduction of Alvarez-Machain and therefore illegal.

Article 7 makes provisions on Mutual Legal Assistance. Paragraph 1 states that the parties shall afford one another, pursuant to this Article, the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to criminal offences established in accordance with Article 3, paragraph 1. This paragraph refers to the importance given to international cooperation in criminal matters with particular reference to those offences mentioned in Article 3, paragraph 1 of the Single Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. In this regard, parties to the Convention are encouraged (if not required) to provide assistance to one another in areas relating investigation, prosecutions, and judicial proceeding on criminal offences bordering on the manufacturing, production, processing, cultivation, planting, exporting, importing , etc. of drugs such as cocaine, heroin, LSD, etc. and also coca bush, opium plant and Indian hemp.

The objective of this paragraph is to foster mutual assistance between parties in terms of legal processes including intelligence and police investigations, preparing charges against suspected offenders toward prosecution and the court proceedings from arrangement to conviction or acquittal.

[295](2004) 542 U.S. 692 S. Ct. No. 03-339.

This form of assistance, often referred to as Mutual Legal Assistance Treaty or MLAT, is usually a bilateral agreement between two countries. It covers wide areas only limited by the demands of parties and subject to international law. The agreement allows staff and personnel of the two countries to work together in areas ranging from joint training and capacity building to sharing information on activities of suspected offenders and possible joint operations whether security or legal in nature. In 1988, the government of Nigeria singed a MLAT with the government of the United States of America on law enforcement efforts against illicit drug activities[296].

Section 3 (1) (o) of the NDLEA Act contains a similar provision to that effect of Article 3 paragraph 7 of the Single Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. "…the Agency (NDLEA) shall have responsibility for strengthening and enhancing legal means for international cooperation in criminal matters for suppressing the international activities of illicit traffic in narcotic drugs and psychotropic substances.

Amongst the Mutual Legal Assistance Treaty signed between Nigeria and other countries are the treaties between Nigeria and the United States of America, between Nigeria and South Africa, and Nigeria and the United Kingdom.

Paragraph 2 states that, mutual legal assistance to be afforded in accordance with this article may be requested for any; taking Evidence or Statements from Persons.

Section 3 (q) of the NDLEA Act states that the Agency (NDLEA) shall have responsibility for taking charge, supervising, controlling, and coordinating all the responsibilities, functions and activities relating to arrest, investigation and prosecution

[296]This MLAT follows the visit of Mr. George Shultz, the then USA Secretary of State.

of all offences…and to collaborate with government bodies both within and outside Nigeria.

This section allows for collaboration between the Federal Government of Nigeria and any government or government body outside Nigeria on the investigation and prosecution of persons suspected to have committed an offence under any law against illicit drug activities.

Taking evidence from persons is usually or commonly done in the process of investigation and prosecution of suspects. In this regards, Governments can conclude a Mutual Legal Assistance Treaty on Investigation and Prosecution of Suspects, especially as it relates to taking evidence or statements.

The purpose or aim of this provision is to enhance the capacity of legal and security officers in applying the institution of the law to prevent and control illicit drug trafficking and abuse. Since the drug problem is a global malaise, international cooperation becomes inevitable. Thus, sharing information on matters like content of evidence or statement of persons to that effect remains useful.

Article 3, paragraph 1 of the Mutual Legal Assistance Treaty on Trafficking and Abuse of Narcotic Drugs and Psychotropic Substances between Nigeria and the United States of America requires the exchange of information relating to investigation and prosecution of suspected offenders including copies of evidence and statements derived from such investigation and prosecution.

Judicial documents include court summons, motions of court, bench warrant, and any other court records on the judicial proceedings[297]. Those judicial documents that require service in a foreign jurisdiction is made easy with a subsisting treaty between the

[297]Angbazo v. Ebye (1993) 1 N.W.L.R. 133-260 C.A. 133.

serving country and the country of residence of the person to be served.

Section 3 (1) (o) of the NDLEA Act mentions that the functions of the NDLEA shall include strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing the international activities of illicit traffic in narcotic drugs and psychotropic substances.

Article 3 paragraph 2 of the Mutual Legal Assistance on Narcotic Drugs and Psychotropic Substances between Nigeria and the United States of America requires that both countries to enter and accept services of judicial documents within Nigeria by the United States of America and vice versa.

Article 7 paragraph 3 of the Single Convention states that parties may afford one another any other form of the mutual legal assistance allowed by the domestic law of the requested party. This paragraph is more or less an omnibus provision in that it intends to cover a wider area than what had been expressly contemplated by the draftsmen of the convention. It also allows member states to enter into mutual legal assistance treaties based upon individual needs. One thing is certain though, that is, that member states are not limited in the scope of what they can agree with their bilateral partners when it comes to prevention and control of trafficking and abuse of narcotic drugs psychotropic substances.

Paragraph 6 mentions that a party shall not decline to render mutual legal assistance under Article 7 on the ground of bank secrecy. Some countries around the world have laws that require confidentiality and secrecy on financial statements of customers by banks such as the Swiss banking policy. The above provision creates a legal obligation on member states to alter their domestic banking laws with a view to enable countries to share information, including financial statements of persons from banks as required by

the contents of a subsisting mutual legal assistance treaty[298].

Article 8 makes provisions on Transfer of Proceedings. It provides that parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with Article 3, paragraph 1 of this convention, in cases where such transfer is considered to be in the interest of a proper administration of justice.

There are situations that could warrant the need for a country to transfer criminal proceedings to another country especially on narcotic drug offences. For instance, where it is not safe to conduct trials in a country due to security threats or where the judicial system has been compromised, it becomes inevitable to transfer such proceedings in the interest of justice.

There is however, no express provision under Nigerian law generally that allows for the transfer of criminal proceedings to another country. Since the NDLEA Act in particular is silent, it would be proper to assume that framers of this Act deliberately omitted this provision. The reasons are best known to the framers. But one problem of transfer of proceedings is the question of similarities and differences of legal systems.

Since transfers of criminal proceedings suggests that actual trial has commenced and at some point, it becomes impossible to continue due to one reason or the other. In Africa, for instance, the Francophone countries have much similar legal system and it would be technically easier to say, transfer criminal proceedings from Chad Republic to Cameroun or even to France. In 2007, a number of French aid workers were arrested by Chadian security forces on charges of trafficking young African children to Europe. The evidence adduced against the aid workers was strong and just before conviction; the trial

[298]Section 14 of the Economic and Financial Crimes Commission Act, Cap. E. 17, L.F.N. 2004.

was transferred to France where the aid workers were found guilty and sentenced to various terms in prison for their role in human trafficking offences[299]. It suffices to conclude that this practice, although strange as it seems, actually occur around the world.

In the U.S.A. case of ***Carlos Mendez v. The United States[300]***, the suspect, an American citizen had been making travel trips from California to Medellin in Columbia. In one of such trips, the US customs, upon a tip off from an anonymous informer, took the suspect into custody, and although no drugs were found either on his person in his luggage, a large quantity of cocaine were later found in his home. The suspect gave statement that he obtained the illicit drugs from his contacts in the Medellin cartel, an infamous drug syndicate. The Columbian authorities got information of the suspects arrest and the Columbian embassy in the United States moved a formal request to the United States Government to extradite the suspect, Carlos Mendez to Columbia, to enable the Columbian authorities identify the person involved, their whereabouts, and the nature of their illicit activities. Although the Medellin cartel had become much elusive to the Columbian authorities, the pervasive corruption of the Columbian government was a major obstacle hindering the prosecution of the members of the Medellin cartel. The United States government, sensing foul play, declined to oblige to Columbia's request, citing certain sections of the criminal justice Act which prevents the united state government from taking any action that could endanger any criminal proceedings. The trial judge at the time observed that, extraditing Carlos Mendez to Columbia, even if he would be returned could severely damage the proceedings as the suspect could be compromised or even assassinated while in Columbia.

[299]This incidence was reported by various world media such as the BBC, VOA, France24, DWTV, 2007-2008 etc.
[300](2009) 309 U.S. 101

The subparagraph of Article 9 of the Convention was replicated by section 3(1) (p) (i) of the NDLEA Act which states that, it shall include collaborating with government bodies both within and outside Nigeria on the identities, whereabouts and activities of persons suspected of being involved in offences mentioned in this Act (NDLEA Act)

The second of the situations contemplated by the Article 9 (1) (b) (ii) involves matters concerning the movement of proceeds or property derived from the commission of offences established in Article 3, paragraph 1 of the convention. This subparagraph corresponds to section 3 (1) (p) (ii) of the NDLEA Act. It provides that the movement of proceeds or property derived from the commission of offences under the NDLEA Act is a basis for collaboration between the government of Nigeria and other governments outside Nigeria.

The term proceeds will include money in form of legal tender in hard currency or in any kind. The movement of it, through banking channels, wire or electronic transfer or smuggling of it from one location or country to another. Where banks or financial institutions are involved, Article 8 of the convention states that no country shall withhold information bordering on criminality when it comes to banking transaction on the basis of secrecy of the banking practice whether or not such a law exists that guarantees bank secrecy[301]. The other term, property, would include the entire range of the word such as tangible and intangible, moveable and immovable, real or artificial etc. It suffices that such type of property is derived from illicit drug activity or any act or omission that amounts to an offence under the NDLEA Act. In a South African case, the court observed that any business outfit that benefits, promotes, or is involved in illicit drug activities shall risk compulsory winding up order of the court[302]. The purpose of

[301]Section 14, EFCC Act. *op.cit.* p. 149.
[302]South Africa v. Sero Mala (2007) 201 S. Ct. 190, 790.

course is to confiscate any property, investigation has shown is derived from illicit drug activities.

The third of the three situations contemplated in subparagraph (iii) of article 9 (1) (b) refers to the movement of narcotic drugs and psychotropic substance which is used or intended to be used for the commission of an offence. This subparagraph corresponds to section 3 (i) (p) (iii) of the NDLEA Act which provides that the NDLEA can collaborate with other governments outside Nigeria to on matters concerning the movement of narcotic drugs and psychotropic substances used or intended to be used for the commission of an offence.

Drugs by themselves cannot move, unless some external factors force them to move. It would seem that transportation of narcotic drugs from one location to another is included here. Since movement encompasses transportation, they both indicate the *actus reus* for this offence, the *mens rea* would be intending (intention) to move drugs with a view to commit an offence under the Act. This situation is thus, one of the three, contemplated under Article 9, requiring the governments of various countries to cooperate with a view to prevent illicit drug activities. Rendering of assistance is encouraged towards developing countries by the Convention. This term is commonly used to refer to countries whose national economy has not been fully developed with regards to utilization of human and material resources. The paragraph also makes mention of a transit state. This term refers to any country whose territory is used to transport illicit drugs or the consumer state of the drugs. The assistance and support will be done through programmes of technical cooperation on interdiction and other related activities. Technical matters in this regard refer to those areas where practicality of operation of some sort is carried out. In the legal field, technical matters relate to the procedural aspect of the law. In law enforcement, technical matters relate to the training

and utilization of skilled personnel and officers in areas such as crime detection by detectives, crime prevention by intelligence and police duties, crime control by arrest, detention and prosecution of offenders. Interdiction refers to an official order from the court telling a person not to do something. It is different from an injunction in that it is used as a form of punishment by the courts, while injunction are served to keep a matter on pause or on hold pending the final outcome of inquiries or investigation or examination etc. during court proceedings[303]. The omnibus clause and other related activities refer to any other court order or judicial processing requiring international support to give effect and meaning to it.

The provisions of Article 10 paragraph 1 corresponds to section 3 (1) (0) of the NDLEA Act. It states that, the agency shall have responsibility for strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing the international activities of illicit traffic in narcotic drugs and psychotropic substances.

Paragraph 2 of the Article 10 provides that the parties may undertake, directly or through competent international or regional organisations to provide financial assistance to such transit states for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.

In paragraph 1 of Article 10, the nature of assistance to be rendered to transit states are technical with regards to legal processes and proceedings. In paragraph 2, however, the assistance if financial in nature and the purpose is to augment and strengthen infrastructures necessary for effective control and prevention of illicit traffic. Financial assistance refer to monetary imbursements given to another as aid or to help the recipient move ahead in whatever he may need the money for. But in this paragraph,

[303]Sotumino v. Ocean steamship (1992) 5 N.W.L.R. 129 S.C. 1.

financial assistance is rendered only for augmenting or strengthening infrastructures. It must be noted that under this paragraph, money is not given to start a new project or new infrastructure, it is clear that the careful choice of words, augment or strengthen, clearly indicate that if refers to existing projects or infrastructures already on ground.

An infrastructure refer to the basic systems and structures that a country or organisation needs in order to work properly. In this regards, infrastructure for effective control and prevention of illicit traffic will include vehicles, vessels and aircraft for surveillance, security post and stations at airports, seaports and border crossing. Surveillance equipments such as closed circuit television (cctv), x-rays devise, forensic laboratory kits etc.

Article 19 considers the measures to eradicate illicit cultivation of narcotic plants and to eliminate illicit demand for narcotic drugs and psychotropic substances. Paragraph 2 of this article states that each party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances such as opium, cola bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect human rights and shall take due account of traditional uses, where there is historic evidence of such use as well as the protection of the environment.

This article correspond to section 3 (1) (d) of the NDLEA Act which states that the NDLEA shall be responsible for adopting measures to eradicate illicit cultivation of narcotic plants and to eliminate illicit demand for narcotic drugs and psychotropic substances with a view to reducing human suffering and eliminating financial incentives for illicit traffic in narcotic drugs and psychotropic substances.

However, the NDLEA Act does not consider two factors which the Convention had encouraged, the first is that no express provision in the entire NDLEA Act, cautions for the adoption or respect for the fundamental human rights of individuals in an attempt to give meaning or enforce this provision. It can be said that since the NDLEA Act itself was made by a military dictatorship in Nigeria at a time when Fundamental Rights were suspended, it comes as no surprise that the framers of the NDLEA Act refused to include it in the legislation. It now remains necessary that in the process of democratization, such military era decrees must be amended to conform to the universal principles of justice and respect for human rights.

The second factor or item missing in this subsection is the fact that historic uses of such plants by community must be respected. The use of Indian hemp or narcotics by group such as the Rastafarians, even in Nigeria must accord them immunity from prosecution. It is however required that they make a case for themselves but the appropriate avenue. Since the convention recognises their historic claims, it will be very easy to get immunity from prosecution in the event that they smoke marijuana as they customarily do base on their historic religious beliefs.

Article 15 of the convention considers commercial carriers as a means to transport illicit drugs. It states that, parties shall respond appropriately to ensure that means of transport operated by commercial carriers are not used in the commission of offences established in accordance with article 3 paragraph 1.

## 3.4 An Analysis of Domestic Statutory Law Derived from International Law on Narcotic Drug and Psychotropic Substances

### 3.4.1 The Dangerous Drug Ordinance

The earliest domestic statutory law in Nigeria derived from international law is the Dangerous Drug Ordinance of 1920. It was also the first colonial legislation in Nigeria

aimed at preventing drug activities, including trafficking and abuse of dangerous drugs. The Ordinance was itself derived from the contents of such treaties as the Shanghai Conference 1909 and the Hague Convention of 1912. By 1932, the colonial administration in Nigeria passed the Dangerous Drugs Ordinance. An in 1935, the Dangerous Drug (amendment) Ordinance was promulgated.

The aim of the Dangerous Drug Ordinance and later the Dangerous Drugs (amendment) Ordinance was to prevent illicit activities in illicit drugs or those so called "dangerous drugs". Section 1 of the Ordinance[304] defines dangerous drugs as a drug that has potential for abuse or injury, the use of which, if without prescription, will cause harm to the user" and it include controlled substances such as heroin, cocaine, Indian hemp, etc.

It would mean therefore that the category of drugs contemplated under the ordinance includes heroin, cocaine, LSD and any similar drug or substance.

Section 3 of the ordinance states that: "No person shall sell, buy, offer for sale, possess or use any dangerous drug"[305].

This section prohibits the selling, buying, possession and use or abuse of a dangerous drug. It checks drugs abuse and drug trafficking as an objective. The Dangerous Drugs Regulations Ordinance of 1932 aims at regulating and control of dangerous drugs. Section 3 of the ordinance provides that: No person shall supply or procure, or offer to supply or procure, raw opium or cola leaves to or for any person except he is licensed by appropriate authorities"

[304]No. 43 of 1932.
[305]Ibid.

This provision intends to limit activities such as procurement, supply and offers of raw opium or cola leaves with authorised government licensing. Thus, to engage in any such activities, an individual must seek permission and gain approval from government authorities. The lack of license, which is a conclusive evidence of necessary permission, constitutes the mens rea for the offence under this ordinance. And of course, engaging in these activities including procurement and supply of raw opium or cola leaves establish the *actus reus* for the offence.

It should be noted that since these statutes basically concern opium and coca leaves, the root of this is the Shanghai Conference and later, the Hague Convention. They essentially deal with the two drugs. Indian hemp did not feature prominently in those earlier treaties nor were they so featured in the colonial era, dangerous drugs ordinances.

### 3.4.2 The Indian Hemp Decree

The statutory prevention and control of Indian hemp was to become the primary focus of the government of Nigeria thereafter.[306] Opium and cocaine were brought into Nigeria from foreign countries; Indian hemp was later cultivated in the country[307]. In 1966, the Indian Hemp Decree was passed. It was partly in response to widespread abuse of it, in the country. And partly, in fulfilment of the obligation the government of Nigeria is subject to be based on the Single Convention of Narcotic Drugs of 1961 as signed and ratified by Nigeria. The Indian Hemp Decree essentially amended certain provisions of the Dangerous Drug Ordinance. It was observed by the Federal Military Government, at the time, in 1966, that the penal provisions of the Dangerous Drug Ordinance did not serve as sufficient deterrent to illicit drug activities in the country.

[306]Oyakhilome, F.E. (1990) '*Perspectives and Strategies in the Control of the Traffic in Narcotic Drugs and Psychotropic Substances'*Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos, p. 7.
[307]ibid

The Indian Hemp Decree therefore introduced capital punishment for planting, cultivating, importing and selling of Indian hemp. The Indian Hemp Decree however allowed lenient penalties for possession or smoking of Indian hemp. In 1975, the Indian hemp (amendment) act was passed. The aim of this legislation was to address those lapses found under the Indian hemp decrees of 1966. These lapses include reduction of punishment, introduction of alternative procedure other than punishment and the nature of offences and what constitutes liability for offences. For instance, section 1 of the Indian hemp (amendment) Decree provides that cultivation, sale, importation, exportation shall attract imprisonment for a term not exceeding 10 years. This provision is actually an amendment to section 2(1) and 3(1) of the Indian Hemp Decree of 1966 which provides for death sentence and life imprisonment for cultivation and importation of Indian hemp respectively. Smoking and possession of Indian hemp which under section 4 of the Indian Hemp Decree was punishable with up to 14 years imprisonment, the provision under section 1 of the Indian Hemp (amendment) Decree was reduced to six months or a fine or N200.00.

### 3.4.3 The Food and Drug Act

In 1974, the Food and Drug Decree, which repealed the Amphetamine and Other Drugs (Control) Decree of 1968 was promulgated. It aimed at controlling the importation, exportation, manufacturing, sale, or distribution of amphetamine, *secobarbital methaqualone* and other drugs. Amphetamines and similar drugs are essentially psycho-active drugs and would be classified as psychotropic substances.

Section 3 of the Food and Drug Act[308] States that: except as authorised by the regulations, no person, shall import into Nigeria or export there from, manufacture, sell,

[308]Cap. F. 5. L.F.N. (2004).

distribute or cause to be distributed (whether as sample or otherwise)any of the drugs specified in schedule 2 of this act.

This provision makes it an offence to transport (into or out of the country), manufactured, sell, or distribute psychotropic drugs such as amphetamines without authorised permission.

Section 5 of the Food and Drug Act states that whoever possess or use any drug specified in schedule 2 of the Act shall be liable to imprisonment for up to 10 years. The types of drugs specified in schedule 2 are amphetamines, *serobarbital methaqualone* and other similar drugs.

### 3.4.4 The Special Tribunal (Miscellaneous Offences) Decree

In 1984, the Special Tribunal (Miscellaneous Offences) Decree was passed[309]. It basically repeated major provisions of the Indian hemp (Amendment) Act of 1975. Section 6(3) (k) of the Act provides that

> any person who deals with, sells, buys, exposes or offers for sake, smokes, drinks or inhales or induces any other person to so deal with the drug popularly known as cocaine or any such similar drug shall be guilty of an offence and liable on conviction to suffer death by firing squad.

This provision evidently depart from section 7 of the Indian Hemp (amendment) Decree of 1975 and section 5 of the Food and Drug Decree of 1974, in that it introduces capital punishment again upon the assumption that harsher penal laws would solve the drug problems in Nigeria at the time.

The provisions of the Special Tribunal (Miscellaneous Offences) Decree were to operate retroactively[310]. This saw up to five individuals punished retroactively for various

[309]Decree No. 22 of 1984. (Now repealed).

offences under the 1984 Decree. One certain ***Mr. Owoh***, was shot dead for an offence committed before the 1984 Decree was made[311]. But many had argued that since the provisions of the constitution (Suspension & Modification) Decree 1984 had provided that any law or portions of the 1979 constitution which was inconsistent with the provisions of any Decree in force is suspended for the time being. The retroactivity of the 1984 Decree was legal though immoral and irregular from the point of view of the legal profession[312].

In 1986, the Special Tribunal (Miscellaneous Offences) (Amendment) Decree was made. Section 3 of the Decree reduced the capital punishment as found in the 1984 Decree from the death sentence to life imprisonment. Again, the Decree was no longer required to operate retroactively.

### 3.4.5 The National Drug Law Enforcement Agency Act

At this time in 1986, the Government of Nigeria called for general review of Nigeria's drug laws from 1922 to 1986. While the review was taking place, the international community was busy at the United Nations doing a similar job; the result was the adoption of the Single Convention Against Traffic and Abuse of Narcotic Drugs and Psychotropic Substances of 1988. But in 1988, an August visitor came calling; he was the Secretary of the United States of America, Mrs George Schultz. At a meeting with the Head of State of Nigeria, General I.B. Babangida, the United States Government signed a mutual legal assistance treaty with Nigeria, a bilateral treaty which aimed at solving the problems, relating to illicit drug activities in the country. Under this treaty, the United States Drug Enforcement Agency (DEA) shall provide Nigeria with

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[310]Quoted by Chukkol, K.S. (1990) '*Towards a National Drug Control Strategy – A Blueprint*' Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 211

[311]Owoh v. FGN (1986) 12 All N.L.R 457.

[312]Chukkol, K.S., Op.cit.

assistance on the framework for establishing a law enforcement Agency, wholly committed to illicit drugs prevention and control[313]. These three factors are as follows:

1. The need for review of Nigeria's Drug Law
2. The adoption and ratification by Nigeria of the Single Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988
3. The Mutual Legal Assistance Treaty on Drug Law Enforcement between Nigeria and the United States of America in 1988.

In 1990, the National Drug Law Enforcement Agency Decree was promulgated by the Military Government of Nigeria. The aim of this Decree is to establish the National Drug Law Enforcement Agency to enforce laws against the cultivation, processing, sale, trafficking and use of hard drugs and to empower the Agency to investigate persons suspected to have dealings in drugs and other related matters.

## 3.5 An Analysis of Domestic and International Institutions Responsible for Implementing Laws against Narcotic Drugs and Psychotropic Substances.

There are some important institutions that enforce the law against illicit drug activities. These institutions exist both in Nigeria and under the United Nations. They will be analysed below.

### 3.5.1 The National Drug Law Enforcement Agency (NDLEA).

The National Drug Law Enforcement Agency Act is an Act made to establish the National Drug Law Enforcement Agency or NDLEA with a view to enforce laws against the cultivating, processing, selling, trafficking and using of illicit drugs. The Act

[313]Article 7 of the Mutual Legal Assistance Treaty Between The Government of the Federal Republic of Nigeria and The Government of the United States of America (Ratification and Enforcement) Act, 2004.

also empowers the NDLEA to investigate persons suspected of dealing in drugs and other related matters.

The National Drug Law Enforcement Agency Act is divided into five parts, four schedules and a total number of 53 sections.

Part 1 of the NDLEA Act covers matters relating to the establishment of the NDLEA. This part contains ten sections in all. Section 1 of this Act provides for the establishment of the National Drug Law Enforcement Agency which section refers to simply as the Agency and not NDLEA. This is to avoid any confusion that the term Agency would create especially taking into consideration that in law generally, Agency has many other meaning. Therefore, under this subchapter, i.e. 3.2 of this research/dissertation the term Agency refer to the NDLEA and vice versa.

Section 2 provides for the composition, proceedings, etc of the Agency. It states that the agency shall consist of the following

1. A Chairman
2. Representatives of the Nigeria police force, not below the rank of an Assistant Inspector-General of Police
3. The Director, Military Intelligence
4. The Comptroller General of Customs
5. The Director, State Security Service
6. A representative of the Federal Ministry of Justice not below the rank of a director.
7. The director General, National Intelligence Agency
8. A representative of the Ministry of Foreign Affairs and Health not below the rank of Director

9. Three other persons.

The President of Nigeria shall appoint, on the recommendation of the Attorney-General of the Federation, the chairman of the NDLEA who becomes the chief Executive officer of the Agency and its accounting officer.

Section 3 of the Act provides for the functions of the Agency. This section is further divided into two subsections. Subsection 1 of the section 3 contains 18 subsections running from a-r, with subsection (p) having a further subsections from i-v.

Section 3(1) states that, subject to this Act and in addition to any other functions expressly conferred on it by other provisions of this Act, the Agency shall have responsibility for the following.

a. Enforcement and due administration of the Act
b. Coordination of all drugs laws and enforcement functions conferred by law in Nigeria
c. Adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from drug-related offences or property derived from such proceeds.
d. Adoption of measures to eradicate illicit cultivation of narcotic plants and to eliminate illicit demand of narcotic drugs and psychotropic substances.
e. Taking such measures which might require the taking of reasonable precautions to prevent the use of ordinary means of transport for illicit traffic in narcotic drugs.

Under subsection (1) (a) mentioned above, the Agency has the responsibility to enforce the provisions of the Act.

Under (b) the Agency shall coordinate all drug laws and enforcement functions conferred on any person or authorities. It should be noted here that before 1989, all drug laws enforcement functions were mainly bestowed on the Nigeria police but also shared by the customs, immigration, ministries of health, justice and at time along with personnel of Nigeria's armed forces. While the endemic corrupt practices by the Nigerian police made it grossly inadequate and incapable of drug law enforcement, the other agencies constantly bickered and would not cooperate with one another, giving rise to the need to establish a single agency responsible for coordinating all rug law enforcement functions in Nigeria. Subsection (1) (b) is aimed at doing just that. This provision excludes the Nigeria Police Force from the prosecution of drug offences. It also excludes other institutions such as the military and paramilitary bodies in Nigeria from the prosecution of drug offences. The practice currently going on is that when the police or other institutions find drug offence cases, the cases are transferred to the NDLEA for prosecution.

Under (c) the Agency is expected to adopt measures aimed at curtailing or combating proceeds of and properties derived from illicit drug activities. Proceeds will include any form of gains such as cash, hard currency, jewelleries, shares, bonds, etc while property will include moveable, immoveable, tangible, intangible, etc properties. The Agency may freeze, confiscate or seize these proceeds.

Under (d) the Agency is requires to eradicate the supply and demand of illicit drugs while such a function is a necessary one, it can be stated here that achieving such a goal, or even carrying it out is more than a herculean task. It means eradicating factors such as greed, poverty, broken homes, peer influence, etc. One good thing though is that this provision provides the Agency with an enabling law to at least attempt these functions, whether or not they succeed is perhaps an entire different matter. Nothing however,

prevents the Agency from influencing the policy of the government of Nigeria at any level to focus on such efforts such as reduction of unemployment, campaign against greed and similar base desires; professional counselling to repair broken homes and reduce negative or bad peer influence.

Section 4 of the Act provides for the special powers of the Agency. This section is further divided into five subsections. Subsection one of the section 4 is further divided into subsection (a) & (b)

Section 4(1) (a), provides that the Agency shall have power to cause investigation to be conducted as to whether any person has committed an offence under this Act.

This provision accords the NDLEA or Agency the power to conduct investigations on any person with a view to finding out whether or not the person has committed an offence under the Act. These powers to conduct investigation may be done through a number of ways which are traditional in common law. This includes such approach as the usual police methods, the intelligence method, the administrative method and etc.

Under the police method, a suspect is taken to the police office and asked to make statement with regards to his conduct which the Agency finds suspicious. Further information is obtained through more interrogations. The Agency personnel responsible for investigations would crosscheck the statement of the suspect with the account of witnesses or any credible sources of information that would corroborate or vitiate it. This is basically the police method of investigation and it is the result of this investigation that would form the basis of prosecution or release as the case may be. Thus, where the result of the investigation provides sufficient grounds of showing that the suspect had committed an offence under the Act, the Agency would initiate criminal

prosecution of the suspect at the Federal High Court of the state where the offence is thought to have been committed.

It should be noted that section 4 (4) of the Act empowered all officers of the Agency to have and exercise the same powers, authority and privileges as are given by law to members of the Nigeria police. Therefore, the Agency has the lawful authority and legal powers to conduct investigation of suspected offenders using the police method approach.

Under the Intelligence method, a person who is to be investigated is invited to meet the officers of the Agency and to discuss with them what may had occurred that is the subject of the investigation. This approach is the most civil method of investigation. The suspect is not forced to appear in the Agency's office. Instead he gives a date and time when he would meet the Agency voluntarily at his convenience, although the Agency may fix a time frame within which the meeting shall take place. During the meeting session, the suspect is not hassled or molested in any way. He is sure to be free from allegations of torture and obtaining reports by force. This method is often used when important or distinguished or notable individuals are involved in the breach of the law, in this case the NDLEA Act.

Under the administrative method, most often than other times, the suspect is a personnel of the Agency. In this regard, an officer of the Agency who is suspected to have committed an offence goes through this investigation process. A panel is set up to investigate the suspected officer, with a view to ascertain whether or not the officer had committed an offence. The method used by the panel may either take the form of an ad hoc tribunal but akin to a military court martial. No sentence is passed by panel, like a court martial, at the end of the proceedings. The panel may also adopt a police method

approach as mentioned earlier. Either approach will be sufficient, if the result of the investigation is expected to establish evidence or lack of evidence of the suspect having committed an offence.

This power of investigation of the Agency shall be carried out on any person. Except a person enjoys some immunity by the provision of any law, such as persons below 7 years old, executive public officers under the constitution (President, Vice-President, Governor, Deputy-Governor), Diplomats enjoying diplomatic immunity, etc, all persons coming under the jurisdiction of Nigeria Federal Law Enforcement Agencies can be investigated.

Section 4(1) (b) states that the Agency shall have power with a view to ascertain whether any person has been involved in offences under this Act or in the proceeds of any such offences, to cause investigations to be conducted into the properties of any person, if it appears to the Agency that that person's life style and extent of the properties are not justified by his ostensible source of income.

This researcher wish to state that subsection (1) (b), is unnecessary because subsection 1(a) had already empowered the Agency to investigate any person it sees as a suspect involved in illicit drug activities. This is a general and wide scope of exercise of investigative powers and thus, limiting it to a few specifications again, as is done in subsection (1) (b) becomes irrelevant to the provision. It is suggested that it be removed or merged with subsection (1) (a) for clarity purpose only.

Section 4(2) empowers the Agency to call upon any person to furnish it with such information, returns, accounts, books or other documents in custody for the purpose of exercising its investigative powers under subsection (1) (a) and (1) (b) as mentioned earlier.

The Agency can do this by a written notice. The notice will clearly state what the Agency wants and also a time frame for when the information etc is required.

Thus the power to obtaining any information from any person by the Agency is limited to the exercise of its investigative powers under subsection (1) (a) and (1) (b).

Section 4(3) of the Act empowers the Attorney-General of the Federal Government of Nigeria to either grant or withhold approval over exercising the powers of investigation under subsection (1) (b).

Section 4(4) of the Act empowers the Agency to exercise the same powers, authority and privileges, including power to bear arm as are given by law to the Nigerian police. This subsection essentially lays down a rule that allows the Agency to act as if it were the Nigeria Police in the process of enforcing the provision of the NDLEA Act. Therefore, the power to bear arms, conduct searches, makes arrest, detain suspects, prosecute suspects, etc are powers that can be exercise by the Agency in the process of enforcing the provisions of the NDLEA Act.

Section 4(5) of the Act allows the Agency to pay reward to any person who although is not employed by the agency, but nonetheless provides any information or renders any services to the Agency. The payment of such reward is a discretionary power conferred by this section to the Agency. This means, the Agency can decide when to pay reward and when not to pay reward, it can also decided who to pay reward. The amount to be paid and the frequency in which it should be paid. It should be noted here that all payment of reward must be done only to those persons who assist the Agency in the enforcement of the provisions of the NDLEA Act.

Section 5 of the Act provides for the secretariat and appointment of Secretary and other Staff of the Agency. This section establishes a secretariat for the Agency which shall be

headed by a secretary who is appointed by the head of State or president of Nigeria. The secretary has a rank equivalent to a director general in the civil service and shall be responsible for the administrative duties of the Agency. The appointment of staffs into the Agency shall be determined by such conditions as laid down by the Federal Civil Service Commission and shall be deemed to be public officers as defined in the constitution of Nigeria. It shall be noted here that the secretary of the Agency is subject to the supervision and control of the chairman of the Agency.

Section 6 of the Act provides for the application of the pensions Act. This section states that the provisions of the Pension Act shall cover staff of the Agency.

Section 7 of the Act provides for the establishment of special units of the Agency. It states that for the purpose of effective conduct of the functions of the Agency, there shall be established three special units. They are as follows:

(a) General and Assets Investigation Unit

(b) Prosecution Unit

(c) Counselling Unit

The Agency may also set up any technical committee to render assistance in the performance of duties and functions under the NDLEA Act.

### 3.5.1.1 General and Assets Investigation Unit

Section 8 of the Act provides for the duties of the special units[314]. It state that the General and Assets Investigation Unit shall be charged with the responsibility for the prevention and detection of offences in violation of the Act. It shall work in collaboration with the Nigeria Customs Services in monitoring the movement of goods

[314]NDLEA Act. Op.cit.

and persons, and detecting consignments suspected of containing illicit drugs. It shall maintain surveillance in harbour and dock areas. It shall investigate assets and properties of persons arrested for committing any offence under the act. It shall identify and trace proceeds involved in any offence under the Act and it shall deal with matters connected with extraction and mutual assistance in criminal matters.

From the aforementioned provision, it would seem that the most important duties of the Agency, namely, that of prevention and control of illicit drugs, rest on the General and Assets Investigations Unit. In 2012 alone for instance[315], the General and Assets Investigation Unit had investigated several people in connection to violations of the Act. The number was around 5,000 persons, including several tons of properties in relation to violation of the Act. Over the past five years, the unit had achieved remarkable success in carrying out its activities. This includes recovery of properties at customs areas such as sea ports, airports and border crossing. The cordial relations existing between the customs service and the Agency account for the success in these duties. Again, a number of suspects had been transferred from Nigeria to other countries where a mutual legal assistance treaty subsists. In 2009[316], the United Kingdom security personnel participated in a joint exercise with the Agency at the Murtala Muhammad Airport at Lagos which led to the arrest of a number of suspects who had been wanted by the United Kingdom authorities in connection with criminal activities, including trafficking of illicit drugs. In recognition of the efforts of the general and special assets investigations units, the United States of American Government had since year 2000, been consistently awarding the Agency with its special merits awards for its efforts aimed at combating illicit drugs activities in the country[317]. In 2007, the spoke person

[315]The National Drug Law Enforcement Agency Annual Report, 2012.
[316]Ibid.
[317]Ibid.

for the United States of American Government, in the event of presenting the special merit award stated that the efforts of the Agency had reduced incidences involving illicit drug activities where persons from Nigeria would travel to America intending to commit an offence[318].

### 3.5.1.2 Prosecution Unit

The Prosecution Unit is charged with the responsibility for prosecuting offenders under the Act. It supports the General and Assets Investigation Unit by providing the unit with legal advice and assistance. It conducts legal proceedings as may be necessary towards the recovery of any asset or property forfeited under the Act. It performs other legal duties as the Agency may refer to it, from time to time.

The function of the prosecution unit is essential to prosecute offenders under the Act. The unit also renders other legal services to the Agency as may be required from time to time. In the past ten years, the Agency had prosecuted over 8,000 persons in relation to offences contained in the Act[319]. This is in addition to several thousand tons of illicit drugs, mainly Indian hemp and cocaine seized as exhibit in the offence.

### 3.5.1.3 Counselling Unit

The Counselling Unit works in collaboration with the Ministry of Health. It has the responsibility for stimulating interest in, and awareness about, drug-related problems. It offers after-care rehabilitation, social reintegration and education of addicts and the promotion of the welfare of convicts.

The functions of the Counselling Unit in collaboration with the Health Ministry, is to offer medical services to victims of drug abuse. It also raises public awareness against

[318]Ibid,
[319]Ibid.

drug abuses. This unit provides services that are important to the eradication of illicit drug activities. It also creates public awareness by way of advertisement in the mass media, seminars and workshop, with a view to educate the public on the dangers of drug abuses. This is done with the intention to solve the problem of illicit drugs in the country. The unit provides health services to victims of drugs abuses. This also solves the problem of further demand for illicit drugs in the society.

### 3.5.1.4 Eight Key Training Programme

Section 9 of the Act provides for training programme of the Agency. It states that the Agency shall initiate, develop or improve specific training programme for its law enforcement and other personnel charged with responsibility for the suppression of offences created by the Act. There are eight key programmes mentioned in this section with regards to areas for training of the Agency's staff. They include the following. The methods used in the detection and suppression of offences under the Act. The routes and techniques used by the persons involved in offences under the Act. The monitoring of the importation and exportation of narcotic drugs and psychotropic substances to Nigeria. The detecting and monitoring of the movement of proceeds and property derived from narcotic drugs, psychotropic substances and instrumentalities used or intended to be used in the commission of offences under the Act. The methods used for the transfer, concealment or disguise of such proceeds and instrumentalities. The collection of evidence. The law enforcement techniques. And the dissemination of information about drug laws.

The provision of this section is aimed at enhancing the capacity of personnel of the Agency to effectively respond to challenges facing combating illicit drugs activities. Notwithstanding the basic or preliminary training which every individual joining the Agency has to go through and which may last for up to six months at the initial stage. The need to have regular training sessions for personnel remains vital for the success of government efforts aimed at preventing and controlling illicit drugs in the country.

The eight key programmes mentioned in this section is not an exhausted list, but rather a priority list of programmes most deserving of institutional policy and concerted efforts by Federal Government of Nigeria.

The process of training of personnel of the Agency is a continue exercise, so that during the entire years of service of an Agency staff, he/she goes through numerous course of training with a view to enhance his/her capacity.

#### 3.5.1.5 The West African Regional Training Centre

As part of the strategic importance of Nigeria in the global effort against trafficking and abuse of narcotic drugs and psychotropic substances, the United Nations Office of Drug and Crime (UNODC) established the West African regional training centre in Jos, Plateau State, Nigeria. The centre occupies the former signals corp. barracks of the Nigeria Army. It provides training for all eight key programmes mentioned earlier to both Nigerian and other West African security personnel in relation to combating illicit drugs activities. In addition to the eight key programmes mentioned in Section 9[320], the centre referred to above also caters for training programmes in emerging fields such as illicit drugs and terrorism, illicit drugs and financial crimes, etc.

[320]NDLEA Act. op.cit.

In a keynote address, the former Chairman of the Agency, ***Alhaji Giade*** observed that the West Africa Regional Training Centre in Jos has provided Nigeria and other West African region an important institution for strengthening the capacity of individuals with the necessary skill and techniques useful for combating narcotic drugs and psychotropic substances trafficking and abuse with a view to give meaning to the provision of the law preventing and controlling illicit drugs activities[321].

No doubt, the reference to the provisions of the law by the former chairman of the agency would invariably include section 9 of the Act, the entire Act and the provisions of any law to which the Agency is bound to abide by.

### 3.5.1.6 Power of the Attorney-General of the Federation

Section 10 of the Act provides for the power of the Attorney General of the Federation to give directives to the Agency. It states that the Attorney-General may from time to time give general policy guidelines to the Agency. This is a power the Attorney-General can exercise at his discretion and is not a failure on his part if he neglect or fails to so give general policy guideline to the Agency. The guideline mentioned here is essentially one relating to standard operations of the Agency and the operating procedure as well. The way and manner by which the agency carries out its functions will be provided by the general policy guideline from the Attorney-general. The Attorney-general may also give a general or specific directives relating to a particular matter or case. In the event that the Attorney-General makes a directive to the Agency. It shall be the duty of the agency to comply accordingly.

These are the ten sections contained under the Part I of the NDLEA Act. Part II of the Act dealing with offences under the Act contains 2 sections in all. This part had been

[321]The National Drug Law Enforcement Agency Annual Report, 2009. p. 37.

discussed previously in this research work and it would be inappropriate to discuss them here again. Nonetheless, a few sections will be mentioned here with a view to discuss matters earlier left out.

### 3.5.1.6 Jurisdiction of the Federal High Court

Section 26 of the Act provides for jurisdiction of the court. It states that the Federal High Court shall have exclusive jurisdiction to try offenders under the Act and to also impose penalties provided for those offences as found in the Act.

Therefore, all criminal proceedings relating to offences contained in the NDLEA Act shall be carried out in the Federal High Court. Appeal can go on to the Court of Appeal and finally the Supreme Court. Section 26(3) of the Act further states that:

> In any trial for an offence under this Act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his source of income, or that he had or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the Federal High Court as corroborating the testimony of any witness in such trial.

The intention of this provision is to make the Federal High Court accept as admissible evidence as proof of an offence whenever a witness testifies to the involvement of an accused person in an offence under the NDLEA Act, and that the said accused person cannot give a satisfactory account of any property or pecuniary resources in his possession.

It can thus be said that this provision places a burden of proof on an accused person suspected to have committed an offence under the Act, and that the accused person in possession of property or pecuniary resources such as money in a bank account, and the neither the property nor the pecuniary resources match the accused persons source of

income. It is expected that the accused person here, give a proper account of how he acquired those things. If he fails to give a proper account, it will be seen as corroborating any testimony by any witness to the effect that the accused person is involved in violation of the NDLEA Act.

Section 27 of the Act states that any person convicted of an offence under this Act shall forfeit to the Federal government any property which is subject to an interim order of the Federal High Court and any asset or property obtained as a result of such offence.

Any person whose property falls within either or both categories mentioned above shall forfeit their property upon conviction by the Federal High Court for an offence under the NDLEA Act.

Section 34 of the Act states that where a person is arrested to an offence under the Act the Agency shall immediately trace and attach all the assets and properties of the person and shall thereafter cause to be obtained an interim attachment order by the Federal High Court.

Section 35 of the Act states that where a person is arrested for an offence under the Act, he shall be obliged to fill and complete the Declaration of Assets Form as contained in the Third Schedule to the NDLEA Act. Any false or disclosure or failure to make full and proper completion of the form will lead to further prosecution and upon conviction, to a prison sentence of up to ten years imprisonment.

Section 36 of the Act states that an interim forfeiture order is made by the Federal High Court where assets or properties of any person arrested for offences under the Act or where any assets or property has been seized by the Agency. In such a situation, an application for an interim forfeiture order shall be made by the Agency to the Federal High Court, and the Federal High Court, if satisfied, may issue an order to that regards.

Section 37 of the Act states that a final order for forfeiture will be made if the accused person is finally convicted, an application shall be made by the Agency to the Federal High Court and the court shall so grant a final order.

Section 40 of the Act states that where an interim order is revoked by the Federal High court for any reason, including the fact that the accused person was acquitted, all assets and property, subject to the interim order shall be released to the person from whom they were taken.

Section 42 of the Act states that the chairman of the Agency may, upon an approved application to the attorney General of the federation, require any bank to be freeze,, the account of any person believed to have committed an offence and is arrested by the Agency as required or provided for under the NDLEA Act..

Section 43 of the Act states that the Agency may seek the permission of the President of the Federal Republic of Nigeria, to conduct investigation on any person whose lifestyle appears to the Agency to be beyond his source of income.

**3.5.1.7 Prevention of Illicit Drug Offences by the NDLEA**

The stated objectives and functions of the NDLEA are wide and varied. Apart from the coordination of all drugs laws and enforcement functions conferred on any person or authority, including ministries in the government of the federation, the adoption of measures to eradicate illicit cultivation of narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating the financial incentives for these offences are onerous, an almost herculean task for it. The NDLEA is also expected to device and use measures which would include coordinated preventive and repressive action, introduction and maintenance of investigative and control techniques. These obligations can best be performed through the 3 units mentioned earlier. It will

then be prudent to appraise these units with a view to understand the extent to which they can achieve the objectives of the NDLEA.

Under section (8) (1) (a), the General and Assets Investigation Unit is responsible for preventing offences in violation of the NDLEA Act. This is the most important unit of the NDLEA because the NDLEA itself is set up primarily to prevent criminal activities involving illicit drugs in its efforts against violations of the Act; the NDLEA prevents offences through a variety of activities that is undertaken to regulate the conduct of individuals.

Prevention of offences involves enforcing such measures that are adequate in hindering obstructing or making it really difficult for potential offenders to violate the provisions of the NDLEA Act. According to Ladan,[322] this calls for a programme of methods to prevent socially undeniable events from occurring, and the reduction of the risk of crime being committed and limitation of the material and non-material damages against the commission of crime and reduction of high rates should not be directed against the potential criminal, rather they should be directed towards eliminating the factors that could force the potential criminal to commit crime, and to block any existing opportunity that would create contact between the potential criminal and the victim. This researcher concurs with the view stated above. This is because any meaningful efforts aimed at preventing crime and especially narcotic or illicit drug criminal activities must focus on the two parties involved. This means, the potential drug offender and the potential drug abuser.

One of the measures used by the NDLEA in crime prevention relating to illicit drug criminal activities is by curtailing the ability of potential drug offenders such as

[322]Ladan, M.T. (1998) *Crime Prevention and Control and Human Rights in Nigeria,* Justice Watch Publication, Abuja. P. 23.

cultivators of narcotic plants, drug traffickers etc from gaining access to narcotic plants or the drug itself. In this regard, stringent law enforcement operations are used to eradicate narcotic producing farming activities and the arrest and prosecution of traffickers. This is all done with a view to suppress the supply of illicit drugs into society. Whenever these operations succeed, the demand for illicit drugs is greatly reduced and one can easily conclude that illicit drug crimes have been prevented. Crime detection on the other hand refers to the process of identifying the exact violation of the law, the level of involvement of the parties to the crime and the nature of their liability under the law.

Therefore, section 8(1)(a) requires the NDLEA to hinder the violation of the Act and also to determine whether or not an individual or persons have in fact violated the Act. In the case of **FRN v. Bashiru Sanni**[323], the Federal High Court observed that it is the duty of the NDLEA to make it difficult for persons to violate the provisions of the Act and when the Act is suspected to have been violated, then to identify the extent of that violation with a view to arrest, detain and prosecute the suspected offender or offenders.

Section 8(1) (b) requires the NDLEA to collaborate with the Nigeria Customs Services, by monitoring the movement of goods and persons at custom designated areas such as airports, seaports, border areas, etc.

The NDLEA is also conferred with the power to search incoming and outgoing vessels, aircraft, vehicles and crew members, passengers and their baggage. This provision is intended to complement the preventive and detective role of the NDLEA and by giving it access to customs areas and granting it the power to conduct searches, the ability of the NDLEA to carry out its functions and duties is greatly enhanced. This is so,

[323]FHC/j/34c/2011 (Unreported)

especially when one considers the fact that illicit drug trafficking involves movement of people and illicit drugs into and out of the country.

Section 8(1) (c) requires the NDLEA to detect consignments believed to contain narcotic drugs and psychotropic substances coming into and going out of customs designated areas. This provision seems to further adumbrate the previous one. That is to say when monitoring the movement of goods and peoples coming into and going out of customs designated areas in Nigeria, the NDLEA is required to identify whether such transit of goods and people has in any way violated the provisions of the Act.

Section 8 (1) (d) requires the NDLEA to maintain surveillance in harbour and dock areas and at airport and border points. Here again and in addition to monitoring the customs designated areas, the NDLEA is empowered to maintain surveillance of such areas but particularly at seaports and airports. Maintaining surveillance of this form involves two methods. The first requires trained persons to be physically present at these areas. These trained officers may carry some detection gadget or hold in rein and leash sniffer dogs for the purpose.

Section 8 (1) (f) requires the NDLEA to identify and trace proceeds involved in any offence under this Act and effecting for forfeiture of such proceeds. Where in the process of monitoring and surveying customs designated areas, the NDLEA detect that certain property or money is serviced as proceeds from activates in violation of the Act, this provision empowers the confiscation of such proceeds.

Section 8(1) (g) requires the NDLEA to handle matters on extradition of individual and cooperation with other parties or nationals based on the obligations included under a mutual assistance treaty. The General and Assets Investigation Unit in a joint operation with the UK government Department for Drug Enforcement arrested and detained a

foreign national suspected of trafficking illicit drugs at the Murtala Muhammed Airport, Lagos. This operation was made possible by the obligations placed on the Federal Government of Nigeria to cooperate with the United Kingdom on a mutual legal assistance treaty.

Section 8(2) makes provisions for the Prosecution Unit. It provides that the prosecution unit is responsible for-

(a) Prosecuting offenders under the NDLEA Act
(b) Supporting the General and Assets Unit by providing the unit with legal advice and assistance whenever it is required
(c) Conducting such proceedings as may be necessary towards the recovery of any assets or property for forfeiture under the Act
(d) Performing such other legal duties as the Agency may refer to it from time to time.

Under Section 8(2) (a), the NDLEA through its prosecution unit has the responsibility to prosecute offenders in violation of the NDLEA Act.

Section 8(2) states that there shall be a prosecution unit charged with the responsibility for the following:

Section 8(2) (a) requires the prosecution unit to prosecute offenders under the NDLEA Act. Prosecution generally refers to the commencement and carrying out of any legal action in the court. In criminal law, it means a criminal proceeding or trial in which an accused person is tried for violating or committing (allegedly) a crime. The prosecution of offenders is essentially a matter of judicial proceedings. As such, the prosecution unit is the branch of the NDLEA that is concerned with the extent of liability of an alleged offender. Any suspected offender arrested by the general and assets

investigation unit shall be handed over to the prosecution unit to commence judicial proceedings against the suspect or defendant.

As of December 2009, the NDLEA had prosecuted over 10,000 suspected offenders and had also recorded over 85% conviction of these suspects[324]. It can be safely estimated that from 2009 to 2015, the number of suspect prosecuted by the prosecution unit of the NDLEA would rise to about 13,000 offenders if an average of 50 persons are prosecuted annually throughout the 36 states plus the Federal Capital Territory in Nigeria[325].

### 3.5.2 The Federal High Court

Another important institution having the responsibility of implementing (interpreting) the law in Nigeria's domestic courts on matters relating to narcotic drugs and psychotropic substances is the Federal High Court.

Section 249 of the Constitution establish the Federal High Court which consists of a Chief Judge of the Federal High Court and such number of judges of the court as may be prescribed by any Act of the National Assembly. There is only one Federal High Court which consists of numerous divisions across the Federation. Appointments to the offices of Chief Judge and judges of the Federal High Court are made by the President on the recommendation of the National Judicial Council. In the case of the Chief Judge, the appointment is subject to the confirmation of the Senate while no such confirmation is required in the case of appointment to the office of a judge of the court.

Section 251 of the Constitution confers jurisdiction to the Court to the exclusion of other courts on drug related matters. In the case of ***Ali v. Central Bank of Nigeria***[326], it was held by the Court that there are some jurisdiction of the Court which has not be

[324]The National Drug Law Enforcement Agency Annual Law Report, 2009. P. 37.
[325]*Ibid.*
[326](1993) 7 N.W.L.R. 34, 158.

expressly covered by the provisions of the Constitution. They nonetheless, bestow the court with original or exclusive jurisdiction in so many matters.

The Constitution states that the Federal High Courts has exclusive jurisdiction in civil cases and matters relating to a number of matters listed in subsections (a)-(s). In subsection (m), drugs are mentioned. That notwithstanding, Section 26 of the NDLEA Act confers exclusive jurisdiction on the Federal High Court to try offenders under the NDLEA Act. Section 26 states that:

> (1)The Federal High Court shall have exclusive jurisdiction to try offenders under this (NDLEA) Act.
>
> (2)The Federal High Court shall have power to impose the penalties provided for in this (NDLEA) Act.
>
> (3)In any trial for an offence, under this Act; the fact that an accused person is in possession of pecuniary resources of property for which he cannot satisfactorily account and which is disproportionate to his known source of income, or that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be proved and may be taken into consideration by the Federal High Court as corroborating the testimony of any witness in such trial.

In ***Obi v. Federal Government and 6 others***[327], the Supreme Court commenting on the jurisdiction of the Federal High Court, observed that the court alone, to the exclusion of other courts had the exclusive and original jurisdiction in matters relating to drugs and person generally and more particular to the National Drug Law Enforcement Agency Act.

Again, in ***Ali v. Central Bank of Nigeria***[328], the Court of Appeal stated that there was nothing in the paragraphs (subsections) to suggest that both the Federal High Court and the State High Court have concurrent jurisdiction to entertain matters specified in

[327] (2008) N.W.L.R 7 S.C 286, 112.
[328] (1993) 7 NWLR 34, 158.

section relating to drugs. In ***National Electric Power authority v. Edegbero***[329], the Supreme Court stated that the aim of section 251 and the paragraphs were to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its Agents is a party. This will suggest also that where a treaty has been domesticated (incorporated in to Nigeria's Laws) by the National Assembly and that it creates obligations on the Federal government, in an effort to interpret the given treaty or its domesticated version, the court with the original jurisdiction is the Federal High Court.

The interpretation of the 1961 Convention and its 1972 Protocols, the 1971 Convention and the United Nations Convention of 1988 and any other treaty such as Mutual Legal Assistance Treaty, etc between the Federal Government of Nigeria and the appropriate foreign third party will be within the jurisdiction of the Federal High Court to interpret and make appropriate ruling, judgement and decision.

The Federal High Court has discretionary power under Section 20 of the NDLEA Act to sentence a convicted offender to either imprisonment of Compulsory rehabilitation. If the court will sentence more drug users and addicts to compulsory rehabilitation, it will assist in reducing the number of individuals that use and depend on drugs, thus eliminating the demand of illicit drugs in the country. This in turn will reduce the supply of illicit drugs, hence curtailing illicit drug activities in Nigeria.

### 3.5.3 The National Assembly

The Constitution of Nigeria grants legislative powers of the nation to a bicameral National Assembly consisting of the Senate and the House of

[329] (2003) 5, N.W.L.R. A.C. 321

Representatives[330]. These powers which have been expressly stated in the Constitution are conferred on the National Assembly so as to enable it perform its functions without hindrance.[331]

The legislative powers of the National Assembly can be classified into three.[332]

i. Express powers by the Constitution;
ii. Implied powers arising from extensions of the provisions of the Constitution;
iii. Assumed powers as a result of lacunae in the constitutional provisions.

In ***Attorney General of Abia State & 35 Others v. Attorney-General of the Federation***[333], it was held that the power of the National Assembly under section 4(2) of the Constitution to make laws "for the peace, order and good government of the Federation" does not entitle the National Assembly to pass unconstitutional legislation. ***Kalgo*** JSC at pages 288-289 held thus:

> Subsection(1)-(4) of section 4 above set out all the powers of the National Assembly to legislate for the peace, order and good government of the federation of Nigeria. The legislative powers set therein do not cover every topic under the sun which affects the whole Nigerian nation. Therefore, the use of the words "for the peace, order and good government of the federation of Nigeria" did not and was not intended to give the national Assembly blanket power to legislate on every topic affecting the federation particularly under the presidential system of government articulated by the Constitution.

[330]The Constitution of the Federal Republic of Nigeria, 1999.
[331]Hon, S.T. (2004) *Constitutional Law and Jurisprudence in Nigeria*, Pearl Publishers Ltd, Port Harcourt. P. 152.
[332]Ibid.
[333](2002) 3, S.C.N.J. 13.

On subsection (3) and (5) of the section 4, his Lordship held at page 289 that these subsections "affirm the legislative supremacy of the National Assembly but that is clearly subject to the enumerated exception within the constitution itself"

But in ***Attorney-General of Lagos State v. Attorney-General of the Federation and 35 Others***,[334]the Supreme Court has cause to interpret the phrase "any other matter" in Section 4(4) (b) of the Constitution. It held that when any power to legislate is claimed in Section 4(4) (b), under "any other matter", it must be clear beyond dispute that such power exists in relation to a particular matter or it must be regarded as the residual legislative power or the National Assembly in respect of the Federal Capital Territory, Abuja, as if Abuja were one of the States of Nigeria by virtue of section 299(1) of the Constitution. Therefore that, the provisions of section 4(4) and 4(7) (b) cannot be read as if they confer concurrent legislative powers on the Federation and the State.

The responsibility of the National Assembly in combating illicit drug activities is to be pro-active in making laws that responds to the challenges facing law enforcement of drug laws in Nigeria. It has been observed that the rise of drug abuse in Nigeria is linked to the reality that some of the substances commonly abused are not illicit. The National Assembly must rise to the challenge and enact laws that proscribe any drug and substance that has abuse potential in Nigeria.

### 3.5.4 The Commission on Narcotic Drugs

The Commission on Narcotic Drugs was created at the first session of the United Nation's Economic and Social Council or ECOSOC in February, 1946. Its members are elected from among members of the United Nations and from specialized agencies and

[334](2003) 5, F.W.L.R. (pt. 168) 909 S.C.

all parties to the Convention on Narcotic Drugs[335]. The Commission is charged with the responsibility of performing the following functions[336];

1. Assisting the ECOSOC in exercising such powers of supervision over the application of international conventions and agreements dealing with narcotic drugs as may be assumed by or conferred on the Council.
2. Carrying out such functions entrusted to the League of Nations Advisory Committee on Trafficking in Opium and other Dangerous Drugs by the international conventions on narcotic drugs as the council has found necessary to assume and continue.
3. Advising the ECOSOC on all matters pertaining to the control of narcotic drugs and preparing such draft conventions as may be necessary.
4. Considering what changes may be required in the existing machinery for the international control of narcotic drugs and submits proposals to the council.
5. Performing such other functions relating to narcotic drugs as the council may direct.

The United Nations Convention Against Illicit Traffic and Abuse of Narcotic Drugs and Psychotropic Substances grant the Commission certain powers. These include the following[337];

1. Collect information by member states and use such information to review the operation of the convention.
2. Make suggestions and recommendations on the examination of the information received from the parties.

[335]The United Nations and the Fight against Drug Abuse, (1972). p. 12.
[336]Ibid.
[337]Article 21 of the United Nations Convention against trafficking and Abuse of Narcotic Drugs and Psychotropic Substances, 1988.

3. To call the attention of the board to any matter which may be relevant to the functions of the board.
4. To take appropriate action as it deem fit on matters referred to it by the board.
5. To amend the provisions of Table I and Table II of the convention.

### 3.5.5 The International Narcotic Control Board

The International Narcotic Control Board or the Board is the independent and quasi-judicial control organ of the United Nations Drug Conventions[338]. It plays an important role in monitoring enforcement of restrictions on narcotics and psychotropics and in deciding which precursors should be regulated. The board shares responsibility with the Commission on Narcotic drugs. While the Commission has power to influence drug policy, the enforcement of drug policy is the major functions of the Board. The functions of the Board include the following[339];

1. Limiting the cultivation, production and manufacture of illicit drugs, except what is required for medical and scientific purpose[340].
2. Preventing illicit traffic and abuse of drugs[341].
3. Issuing annual reports on its works and activities[342].
4. Reporting annually to the commission the types of substance frequently abused globally[343].
5. Reporting annually to the commission the issue of health of people involved in drug abuse globally[344].

[338] The United Nations Report. *Op.cit.* p. 220.
[339] Ibid.
[340] Article 9, Single Convention on narcotic drugs, 1961.
[341] Article 12, convention on Psychotropic Substances, 1971.
[342] Article 18, ibid.
[343] Article 12, United Nations Convention Against Illicit Trafficking and Abuse in Narcotic drugs and Psychotropic Substances, 1988.

On the powers of the Board to enforce certain provisions of the convention, especially with regards to limiting cultivation of drugs and preventing trafficking and abuse, the decision of the U.S. Supreme Court in the case of ***Gonzales v. Raich***[345], which held that the board has powers to prevail on the government of any country to stop the cultivation of any drug producing plant even if its cultivation is for medical purpose, and even if state laws permit it.

[344]Ibid.

[345] (2005) 545 U.S. 1 S. Ct. 125, 2195.

## CHAPTER FOUR

# 4.0 PROBLEMS AND CHALLENGES HINDERING THE SUCCESSFUL DOMESTIC IMPLEMENTATION OF INTERNATIONAL LAW ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES IN NIGERIA

## 4.1 Introduction

This chapter aims at identifying those factors that make it difficult to successfully domesticate and implement treaty obligations on narcotic drugs and psychotropic substances by the Federal Government of Nigeria. It also discussed problems of inadequate compliance with treaty obligations and other related problems faced by the Federal Government of Nigeria in an attempt to solve the drug problems in the country. This includes the lack of availability of funds to invest in drug prevention effort. The rise of illicit drug trafficking in Nigeria, and the problems caused by illicit drug traffickers of Nigerian origin at the international scene. Finally this chapter will consider the positive impact of compliance with international law by the Government of Nigeria on solving the countries drugs problems.

## 4.1 The Problems Caused by Inadequate Compliance with the Rules and Obligations of International Law on Illicit Drugs

In 1958, the United Nations General Assembly passed a resolution expressing the desire to codify as a single document on rules and regulations relating to prevention and control of illicit drug activities existing under international law starting from the pre-league of nation's era, to the league of nation's era, up till the creation of the United Nations[346]. These rules and regulations which had been discussed earlier in this dissertation varied in scope and nature. Some of it, such as the Shanghai Convention,applied to particular countries, namely Great Britain, (as it then was) and

[346] See, pages 3-7 of this research.

her overseas territory, the United States of America and certain other countries such as China.

The United Nations Protocol on illicit drugs of 1948 was opened to all members of the United Nations for ratification and adoption. Again, treaties such as the Shanghai Convention specifically proscribed opium and any of its derivatives such as hashish[347]. Even the United Nations treaty of 1948 specifically proscribed illicit drugs of plant origin which covers opium, coca leaf, Indian hemp, and other similar plant based drugs.

Therefore, the 1961 United Nations Single Convention on Narcotic Drugs was a realisation of that codification effort[348]. Domestic implementation of this treaty in Nigeria began with the Indian hemp Decree of 1966. While it took five (5) years for the Government of Nigeria to domesticate the Single Convention on Narcotic Drugs, the Nigerian Statute i.e. the Indian hemp Decree was essentially a codification of the content of the Convention[349].

### 4.2.1 The Legal Status of Illicit Drug Users under the NDLEA Act

A key provision was absent from the Indian Hemp Decree which is to be found in the Single Convention on Narcotic Drugs of 1961. The provision was that illicit drug users shall be treated as clinically sick individuals rather than criminal offenders. The reason for the exclusion of such an important provision from the Indian hemp Decree remain speculative but one may infer that the framers of the Decree saw punishment rather than rehabilitation would solve the rising drug problem in Nigeria at the time. But

[347] Ibid.
[348] The preamble to the Convention on Narcotic Drugs 1960.
[349] Oyakhilome, F.E. (1990) '*Keynote Address'* Delivered at the National Seminar on Drug Law Enforcement Organised by the Nigerian Bar Association, held at the Main Auditorium of the Nigeria Law School, Victoria Island, Lagos, 9th-11th, May, p. 3.

nonetheless, it was an inadequate compliance with the provisions of the treaty[350]. The problem caused by this somewhat lacuna came to bear on the moral conscience of the Government of Nigeria, in particular and the Nation in general over a decade later. But before that problem is discussed, it will be prudent to explain the rationale behind the decriminalisation of drug abusers under international law[351].

The idea of law and justice for many legal experts is one that must resonate with addressing the exigencies of human society, where such law applies. Notwithstanding the position of classical schools of thought of law and jurisprudence, such as the positivist school, the law must necessarily address a social situation, for it to retain its efficacy and most importantly its legitimacy[352]. So that whatever the school of thought that influenceslegislation may be, the driving force of the law must be one that serves the interest of the society and nation as a whole. The downside of this is that if the law does not have this character (of social benefit), it may fail to command obedience and invariably end up a dead law as it is said[353].

With regard to the position of illicit drug users, abusers and addicts, it remains to be asked; what practical purposes will the law that punishes drug addiction serves? The answer is obviously none! And if the notion of contributory negligence is foreign to criminal law (the branch of law that concerns the regulation of conduct with threat of legal sanction), then it must be extended to cover the reality that it must make little difference as to the fact that an individual who voluntarily consumes any illegal substance, if such individual were to be punished, the grounds on retributive justice,

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[350] Iyamabo, J.A. (1990) '*Perspective and Strategies in the Control of the Traffic in Narcotic Drugs and Psychotropic Substances-the Police View point'*, Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos. p. 20.

[351] See. The Single Convention on Narcotic Drugs of 1961.

[352] Dennis, L. (1995) *The Idea of the Law* Penguin Press Ltd, England, P. 37.

[353]Ibid.

upon which it can be safely assumed that necessitated the punishment in the first place is evidently misplaced. This means that the most practical solution to the legal position of a drug user must be discovered and addressed from the position of corrective justice instead.

The idea of retributive justice stems from the ancient law of *lex talionis*, or the law of vendetta. For example, an eye for an eye. Or a tooth for a tooth and an ear for ear[354]. But it would seem reasonably clear that such a law should have no place in instances dealing with individuals that violate the law of the state, including abuse of illegal substances[355].

The proper position, and the right one taken by the framers of the Single Convention on Narcotic Drugs, is that such individuals are more dealt with through corrective rehabilitation in medical facilities rather than being made to suffer corporal and capital punishment in prison confinement.

One argument that may sound proper in support of punishment for drug abuse is that, drug abuse is contagious, and the risk of engendering a culture of drug abuse requires the prompt execution of offenders. This will better serve the purpose of sanitising the society from the contagion of drug abusers with a view to protect the youth who are more vulnerable to succumb to societal influence or peer pressure towards illicit drug abuse. The argument that scarce resources of the Nation is saved when drug abusers are executed (Capital Punishment) instead of imprisonment and rehabilitation which is an expensive option must be disregarded. This researcher states here that this argument is (to put it mildly) nonsense! It makes no sense at all that

[354] From the *Code of Hammurabi* to the *Hebraic* Bible to the Gospel and the *Quran*. Such forms of provisions are common.
[355] Ladan, M.T. (2004) *Introduction to Jurisprudence, Classical and Islamic*, Malthouse press Ltd, Lagos, p. 14.

saving life is expensive. After all the most basic and primary duty of any government is to safeguard the lives of her citizens.

If we were to assume again that the intensity of a given punishment will serve as a deterrent to others nursing the idea of committing an offence, then it must be stated here that such a belief is merely a speculative one. No conclusive study up to date had ever produced a result suggesting or confirming that punishment for offenders can deter other potential offenders from committing any offence. This researcher agrees that drug abusers must be classified as victims of drug abuse rather than criminal offenders.

In 1983, the then Federal Military Government of Nigeria, being disturbed with the rise in illicit drug activities in Nigeria, promulgated the Special Tribunal (miscellaneous offences) decree in 1984. This decree introduced capital punishment for offences connected with cocaine, heroin and similar substances. Capital punishment was introduced presumably to deter further violations of the law against illicit drugs. But in 1984 again, an amendment was made to the decree and thus, the Special Tribunal (Miscellaneous Offences) (amendment) Decree was passed. This decree introduced a forfeiture clause on property belonging to any person convicted of an offence under the law. In 1986, a second amendment was made to the decree. Thus, the Special Tribunal (Miscellaneous Offences) (amendment) Decree of 1986 was promulgated. This decree introduced a forfeiture clause on any property belonging to any person convicted of an offence under the law. Section 2 of the Special Tribunal (Miscellaneous Offences (No. 2)) (Amendment) Decree of 1986 states that smoking, inhaling, injecting or possessing any drug in any unlawful manner is punishable by a term of imprisonment of not less

than 2 years but not more than 10 years. **Philip Emafo** while commenting on the Special Tribunal Decree observed as follows[356]:

> *The penal sanctions imposed by our domestic law appeared severe; the penal punishment against similar offences in Europe and the United States of America appeared lenient in comparison. Therefore, the Nigerians engaged in illicit drug traffic prayed not to be arrested and if at all arrested, preferred arrest in Europe and the United States to arrest in Nigeria. The consequence of this attitude is that the number of Nigerians arrested worldwide countries to rise from year to year. In 1984 it was reported that 159 Nigerians drug traffickers were arrested. In 1985, the number increased to 425 and in 1986 it was 549. The figures of arrest are disquieting having regards to the fact that the number of arrest is not a true reflection of the number of persons actually involved in illicit drug traffic. Also disquieting is the large number of Nigerians no known to abuse cocaine and heroin. The fact that the decrees did not appear to reduce illicit drug traffic among Nigerians may have informed the review of the Special Tribunal (Miscellaneous Offences) Decree 1984 and the subsequent amendment to the Decree.*

This goes to prove that the so called leniency observed in foreign laws such as that of European Countries and the United States of America must be understood to go beyond acts of kindness by the Government of those countries. The notion of retributive justice had appeared increasingly useless to the efficacy of a modern justice system. As such, no amount of harsh legislation can solve a legal problem such as illicit drug abuse and trafficking.

It was further observed that while it may appear plausible that the introduction of capital punishment may reduce illicit drug activities, it is not convincing that such severe punishment may in fact increase the level of corruption associated with enforcing laws against illicit drugs traffic[357].

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[356] Emafo, P. (1990) '*Drug Regulation and Social Policy'*, Federal Ministry of Justice Law Review Series, Bencod Press Ltd. Ikeja, Lagos, p. 63.

[357] ibid

Therefore, it must be seen that no matter the severity of punishment, what eventually serves as deterrent is the seriousness of enforcement of the provisions of the law. While the Special Tribunal Decree has been repealed altogether, the problem of criminalising drug abusers remains presently in the NDLEA Act. Section 11(d) of the NDLEA Act states that:

> *any person who, without lawful authority knowingly possesses or uses the drug popularly known as cocaine, LSD, heroin 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 25 years.*

The problem caused by inadequate compliance with the obligation of the Single Convention on Narcotic Drugs relates to the legal position of illicit drug abusers. Proper compliance with the Convention requires that such people be regarded as clinically sick in need of medical rehabilitation rather than be proscribed as criminal drug abusers or addicts. It can be said that this can cause Nigerians to seek out safe heavens where even if arrested, would be treated more leniently than they would have been treated in Nigeria. Thus increasing the number of Nigeria getting involved in international illicit drugs activities since a drug user will necessarily buy illicit drugs, the transaction itself is illegal and it amount to trafficking. Therefore, the severity of the law on drug users must be seen to be one of the less visible but real factor behind the involvement of Nigerians in international illicit drug trafficking. To put it clearly, this problem of inadequate compliance has contributed to Nigerians involvement in international illicit drug activities. This view conforms to the observation of **Philip Emafo** stated above.

When the provisions of Article 3(4) of the Single Convention On Narcotic Drugs require member states, who are signatory to the convention, to treat illicit drug users as clinically sick persons deserving medical attention, treatment care and rehabilitation was

made at the United Nations, it created an obligation on those states to conform as required by the objective of the Convention. It remains for the govt of Nigeria to fulfil their obligations.

It has been observed that if you ask an average Nigerian, especially a member of the legal profession, as to what should be done to curb a particular activity which undermines the peace and security of his nation or its citizens, in ninety per cent of cases the answer you will get will run something like this "enact a law against it with stiff penalties and kill or send to prison those convicted for violating its provisions"[358].

It was further observed that this common belief in the efficacy of the criminal justice system and popular perception that it is the panacea for all undeniable activities of some of our citizens is still very much in vogue[359]. It was concluded that Nigeria does not suffer from paucity of law[360]. As this researcher had stated earlier, laws are made with a view to respond effectively to society problems. Making the wrong law would end up aggravating the problem it is suppose to solve or address. For instance, Section 6 of the Special Tribunal (Miscellaneous Offences) Decree No. 2 state that[361]:

> *Any person who deals with, sells, buys, exposes or offers to sale, smokes, drinks or inhales or induces any other person to so deal with the drug, popularly known as cocaine or any such similar drug shall be guilty of an offence and liable on conviction to suffer death by firing squad.*

The expression, 'any similar drug' covers heroin, *LSD*, and Indian hemp. Thus under the Decree, smoking Indian hemp was punishable with death. This tough response may be based on the erroneous belief that the severity of legislation is an efficacious solution

[358]Chukkol, K.S. op.cit. p. 44.
[359] Chukkol, K.S. op.cit. p. 44.
[360]ibid
[361] No. 22 of 1986.

to the drug problem in the country at the time. Again, the same Decree contained a retroactive clause which extends capital punishment of any case by an offender even before it was promulgated. As such, in the case of ***Obi v. Federal Government and 6 others***(Supra), the defendant was arrested and charged for trafficking in cocaine three years before the Decree was enacted. At the conclusion of the trial the Decree had to be enforced retroactively. The defendant was executed by firing squad as judgement at the court ruled against his innocence. This case is an extreme application of severe penal sanctions with a view to correct conduct or behaviour in the society.

### 4.2.2 The Obligation on Nigeria to establish the NDLEA as required by International Convention

Another problem caused by inadequate compliance with the rules and obligations of international law on illicit drugs and substance is one that concerns Article 3 of the 1988 Convention Against Illicit Traffic and Abuse in Narcotic Drugs and Psychotropic Substances. This section requires member states to establish a domestic institution that is solely committed to regulation and control of illicit drugs and prevention of illicit drugs activities. Again, the Mutual Legal Assistance Treaty between Nigeria and the United States of America of 1989 similarly required the Federal Government of Nigeria to increase its efforts against illicit drug activities by establishing an agency which will be responsibility for coordinating such effects. But in late 2011 to early 2012, the Federal Government of Nigeria, in an attempt to regulate government spending, introduced a policy aimed at merging and dissolving certain departments and agency of the Federal Government. A committee was set up to achieve that aim[362]. The result of the committees report, popularly known as the **Orosanye Report**[363]amongst other

[362]Weekly Trust, Saturday, September 15, (2012) p. 33.
[363]The Report is named after the Chairman of the Nigeria's Presidential Committee on the Rationalization and Restructuring of the Federal Government Parastatals and Commissions, Mr. Steve

things, called for the dissolution of the NDLEA and transferring the functions and duties of it to the Nigerian police. While the Federal Government of Nigeria is yet to implement this very recommendation, it has nonetheless received the report in good faith with a commitment to act upon it as soon as it can. But any attempt to dissolve the NDLEA will be a contravention of Nigeria's obligations to the 1988 Convention and also the Mutual Legal Assistance Treaty.

The problem posed by this decision (should the govt choose to implement it) is that firstly, the attempt to dissolve the NDLEA will be a violation of the Convention. This is because the creation of the NDLEA is a fulfilment of an obligation by the aforementioned Convention. Its violation will lead to an imposition of sanctions from both the United Nations and the United States of America. As sanctions can cause further pressure to Nigeria's economy and increase suffering of the people of country. Secondly, it will be a draw back on the efforts of the Government of Nigeria in its fight against illicit drugs activities. The capacity of the Nigerian police to handle the duties and carryout the functions of the NDLEA had been discussed earlier in this dissertation. The police have been seen to be grossly inadequate and incapable of handling such a task. Thirdly, the over ten thousand staff and personnel of the NDLEA would have to be laid off. This will place a difficult strain on the economy as more people will be rendered unemployed, thus adding to the problem of unemployment in the country. Fourthly, the experience, skill and expertise acquired by the NDLEA in its 25 years of service cannot be achieved overnight by the Nigeria Police.

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Oronsaye a former head of the civil service. In the Economist Nigeria blog page, it was revealed that close to 220 bodies of the Federal Government will be scrapped altogether.

### 4.2.3 The Inability of the Government of Nigeria to Prevent Illicit Drug activities

The problem of inadequate compliance with the provisions of the 1971 Convention on Psychotropic Substances which require states to prohibit the sale, export and import of psychoactive drugs is perhaps one of the most telling scenarios of Nigeria attitude to its treaty obligation[364].

A number of medications containing psychoactive ingredients as sold unregulated in Nigeria with impunity. The two most common of such category of medications are cough syrups and pain killer. Due to the dusty weather of Nigeria, especially during the *harmattan* seasons, catarrh and cough or influenza is a regular ailment to many people living in Nigeria. It has been observed that only next to malaria fever and headache, cough and catarrh is the most health hazard sickness affecting Nigerians. Drug stores nationwide are always stocked up with cough syrup. The vast majority of such syrups contain codeine which is derived from opium. It is the ingredient that causes drowsiness and tiredness and fatigue to the user. Consuming any codeine based cough syrup in over dose cause a euphoric feeling that is very addictive and toxic to the body system of human beings. Any illness from mental sickness to kidney failure to stomach ulcer etc can be contacted by using these drugs. The harmful effects of these drugs are the primary reason for their proscription. The problem with this is that these drugs are sold freely and unregulated. Some drug stores even stock pile refrigerators with cough syrup in the same way that soft drinks are chilled for better enjoyment. The Convention on Psychotropic Substances require that sale of drugs that are otherwise legal, but can be subject to abuse must be regulated and can only be sold with prescription from a certified medical practitioner. Regrettably this is not the case in Nigeria.

[364] Article 9 of the Convention on Psychotropic Substances. Op.cit. P. 5.

## 4.3 The Challenges Facing Nigeria's Government Institutions Responsible for the Domestic Implementation of International Law on Prevention and Control of Narcotic Drugs and Psychotropic Substance

Drug trafficking and abuse is on the increase in Nigeria. The National Drug Law Enforcement Agency Annual Report of 2012 shows that there has been increase in the supply of and demand for illicit drugs. There is also increase in local production and processing of certain categories of narcotic drugs in Nigeria. The report also shows that hundreds of Nigerians are serving various jail sentences in countries around the world.

Although the consequences of drug trafficking and abuse are multifaceted and touch on various areas of Nigeria's cultural, social and political aspects, the need to effectively combat drug trafficking and drug abuse makes it necessary to identify its roots causes and set in motion adequate legal, administrative, social and political measures to solve them.

Drug trafficking and drug abuse are proscribed as crimes or offences against society both under domestic law such as the NDLEA Act and under international law. The reasons are that narcotic drugs and psychotropic substances contain toxic resins which are dangerous and harmful to the human body. If the law, through the institutions of government is to safeguard the life and property of people and also the wellbeing of the society, then it is necessary that harmful activities are effectively proscribed[365]. This ultimately includes illicit drug abuse and drug trafficking.

In this endeavour, it is stated that Nigeria, in its efforts to prevent illicit drug activities, does not lack or suffers from paucity of laws[366]. Therefore, the law as machinery for correcting social behaviour with a view to safeguard society in general against harmful

[365]Drug Trafficking as a Security Threat to West Africa. op.cit. P. 119.
[366] Chukkol, K.S. op.cit. p. 44.

activities has sufficient provisions in Nigeria to confront the rising menace of illicit drugs. If we are to successfully identify challenges facing government institutions responsible for domestic implementation of international law on prevention and control of narcotic drugs and psychotropic substances, then the law must be the starting point from which our research must begin. Notwithstanding the volume of treaties against illicit drugs that had found domestic implementation in Nigeria, the drug problems continue to rise in the country. Perhaps the statement of a researcher should serve as an important indication. It states that crime prevention involves a variety of activities that people can undertake individually or collectively, to affect directly their probability of being victimised by certain types of crime[367]. It further states that a programme of methods to prevent socially undeniable events from occurring, and the reduction of the risk of crime being committed, and limitation of the material and non-material damage that may arise from crimes and concludes that the prevention measures against the commission of crime and reduction of high crime rates should not be directed against the potential criminal, rather they should be directed towards eliminating the factors that could force the potential criminal to commit crime, and to block any existing opportunity that would enable the potential criminal commit crime.

The bulk of the NDLEA Act provisions deal with offences and the offender. The Act however lacks proper provisions that touch at the root causes of drug trafficking and drug abuse. This however may not be on entirely a problem caused by the framers of the NDLEA. It is the same if one were to critically study the content of the treaties against illicit drugs to which Nigeria is bound by.

[367] Ladan, M.T. "Crime Prevention and Control and Human Rights In Nigeria" Op.cit. p. 45.

It was[368] stated that the tendency in some jurisdictions is to explain the causes of criminality in subjectivist and on individualised basis. That people commit crimes because they are evil, wicked, or envious or because it gives them psychological or material pleasure or are simply unwilling victims of biological, psychiatric, developmental, personality and or character maladjustment. It further stated that these explanations are rather too particularistic to offer a sound framework for understanding the basis of criminality that are society based. That it makes little sense to analyse these subjective factors outside the framework of the society which the subject matter is being considered. It concluded that member state of the United Nations had already recognised that socio-economic factors primarily determine the nature of the *criminogenic* tendencies of any society. And thus, any action taken with a view to eliminate the traffic and abuse of narcotic drugs and psychotropic substances must be accompanied by economic and social development of the affected areas or society.

The notion of an economic and social development of a society intending to get rid of illicit drug activities is one that opens up a dimension where law, justice and economy overlaps. It suggests that a society with a viable economy should have little or no drug problem. But what sort of economy is the researcher contemplating[369]. He states that in order to fully appreciate the impact of the economic factor on crime prevention in a given society it is necessary to bear the following point in mind.

That emphasis on economic growth without due regard to its social aspect often leads to concentration of wealth in the hands of a few and a corresponding mesmerisation of the majority. This suggests that wealth is concentrated in the hand of a few while the majority languish in poverty. The economic and social policy of the state directives

[368]Eze, O.C. (1990) '*Political and Economy aspects of Drug Trafficking and Narcotic Abuse'*Federal Ministry of Justice Law Review Series. Bencod Press Ltd. Ikeja-Lagos p. 199.
[369]Ibid

policy of the Constitution of Nigeria categorically prohibits the concentration of wealth in the hands of a few individuals to the detriment of the majority of people living in Nigeria. It called for distribution of national resources and wealth amongst Nigerians. Why the disparity between a Constitutional directive and the practical reality exist in the country remains debatable. Nonetheless, the economic system of a country will give a clue or an idea on why wealth is concentrated in the hands of a few. He continued pointing out that the pattern of development such as industrialisation and modernisation aspects may often lead to increased urbanisation and migration to urban centres of teeming young people seeking entry into the labour market, who end up creating social instability due to the pressure on the economy of the urban societies such as criminal activities[370]. This view suggests that government driven development in the major sectors of the economy cause rural to urban drift. People who seek employment move to urban society and as their number rise, so will criminal activities rise.

He further observes that in addition to stimulating the emergence of perverse values which enthrone primitive accumulation of wealth by any means, fair or foul, as a major factor contributing to the rise of criminal tendencies and activities where rural/urban drift has ensued. He concludes that even with increase in *per capita* income, GDP and other opportunities of modernisation such as industrial plants, improved communications etc, unless there is equitable distribution of national resources, the society is likely to promote rather than reduce criminality.

On the 7th of April 2014, the Federal Government released report which shows that the Gross Domestic Product (GDP) of Nigeria has overtaken that of South Africa, thus making Nigeria the biggest economy on the African continent[371]. However, the United

[370]ibid
[371]Daily Trust, Monday, April 7, (2014) p. 41.

Nations Secretary General through the spokesman for the office observed that the vast majority of people in Nigeria live below one dollar in a day on average[372].

If the need to acquire sustenance through gainful employment is the cause of migration, then the availability of employment will determine how wealthy or poor individuals migrating to urban centres are. Apart from scarce gainful employment in the country as a whole, the peculiar nature of illicit drug activities is that it is tremendously lucrative. The reality is the same, from Afghanistan to Columbia, cultivation and trafficking in narcotic drugs and psychotropic substances is enormously lucrative when the researcher identified poor economic conditions as a factor in a society leading to illicit drug activities, he refers to poverty. On the other hand, the fact that drug trafficking is very lucrative shows how economic factors contribute to the rising drug problem in the country.

### 4.3.1 The Poor State of the Economy and the Rise in Illicit Drug Activities in Nigeria

The first challenge facing the government at all levels in Nigeria is the solution to economic problems of the society. The fundamental objectives and directive principles of state policy, under the Constitution of Nigeria, advocates for the absence of the concentration of wealth and means of production in the hands of a few. This policy has not received least attention by the public officers in the country. Legally, the directive is not *justiceable,* the chances are dim that much can be done to solve poverty in Nigeria.

### 4.3.2 The Capacity of the NDLEA to Effectively Perform its Functions

The second challenge facing Government institutions responsible for implementing the law against illicit drug activities lies within the NDLEA itself. It is the problem relating

[372] Ibid.

to implementing the NDLEA Act. It was[373]observed that the functions, powers and enforcement mechanisms of the Agency are rather elaborate. Perhaps even too extensive, as they tend to subordinate and even leave unclear the functions of other bodies and organs (such as the police), connected with law enforcement related to illicit drugs activities. For instance the responsibility of enforcing and administering the provisions of the NDLEA Act, which is to coordinate all drug laws and enforcement functions conferred on any person or authority including ministers in the government of the federation[374]. Although this function is likely to be facilitated by the multi-sectoral membership of the Agency, what is not clear is whether the coordinating function of the Agency places it, in terms of ultimate authority (the powers of Agency) above the ministries and other related organs and bodies. If this is the case, it may lead to conflict of authority.

Offences contained under the NDLEA Act are similar to those contained in the Single Convention on Narcotic Drugs as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances as supplemented by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. On the face of it (the NDLEA), the law covers and reach out to all segment of society. It is however evident, particularly in societies without strong democratic traditions that the poor who may act as drug traffickers or consumers will often lose out when it comes to implementation. The practice where individuals from amongst the nations elites manipulate the justice system and law enforcement official so that they go scot free in the event that they are found to be in breach of the NDLEA Act while other persons who lack such sophisticated leverage end up amongst the over ten thousand persons convicted of illicit drug offence since 1989. The doctrine of the rule of law presupposes

[373]Osita, E. Op.cit. p. 47.
[374]Section 3 (1), National Drug Law Enforcement Agency Act, Cap. N. 30. L.F.N 2004.

that every citizen of Nigeria is equal before the law. In ***FRN v. Omar Mosa***[375], the accused was an Inspector in the NDLEA. He was charged with aiding and abetting offences under the NDLEA Act including taking bribe. When asked why he accepted the bribe, his reply was that only an insane person could refuse such a huge sum of money and that he was not insane. This kind of reasoning is telling of the reality in the country.

This brings us to another challenge facing the government in its attempt to implement the law against illicit drug activities, the problem of tackling bribery and corruption. It was noted that tackling bribery and corruption is perhaps one of the daunting problems that we as a nation face[376]. It is true that successive governments have declared a war against this malaise and our law (even the Codes provision) are adequate if they to be effectively enforced. Only recently, two former heads of the NDLEA, **Oyakhilome** and **Lafiagi** were arrested and charged for taking huge sums of money as bribe with a view to facilitate illicit drug trafficking[377]. But this malaise runs from top to bottom of the NDLEA's hierarchy. Just like the accused in the case cited earlier who said that it would be insane for anyone to refuse such large sum of money as bribe, perhaps many more will be willing to do just that.

The problem of lack of enabling laws granting the NDLEA the power to prevent the abuse of those drugs and substances that are capable of being abused contributes to the rise of illicit drugs in Nigeria. It is a major challenge faced by the NDLEA in its fight against illicit drugs in Nigeria.

[375] FHC/K/18b/2010. (Unreported).
[376] Chukkol, K.S. Op.cit. p. 44.
[377] Daily Trust, Thursday, October 13, (2011) p. 27.

### 4.3.3 The Rehabilitation and Treatment of Victims of Drug Abuse in Nigeria

The third challenge facing the government in its efforts against illicit drug activities in Nigeria is the matter of rehabilitation and treatment of drug addicts. The importance of rehabilitation and treatment of drug addicts lies in its ability to reduce the demand for illicit drugs, resulting in a decrease of supply of illicit drugs, thus curtailing the trafficking of drugs. It also provides succour and relief to the suffering caused by illicit drug addiction on the victim and those responsible for the victims care and concern.

The NDLEA Act which domesticates the United Nations Convention of 1988 formulates this importance and thus, requires that treatment and rehabilitation of drug users be a matter of legal directive.

It is[378] observed that the inclusion of rehabilitation and treatment of narcotic drug abusers or addicts as an alternative to or in addition to penal measure is a relatively new development in Nigeria's domestic narcotic control legislation. That Nigeria being a party to the Single Convention on Narcotic Drugs had agreed that it would give special attention to the provision of facilities for medical treatment, care and rehabilitation of drug addicts.

Again, Article 20 of the 1971 Convention states that all parties shall take practical measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, aftercare rehabilitation and social integration of the persons involved. This Convention also required state parties to it, to promote the training of personnel in the treatment, after care, rehabilitation and social integration of abusers of psychotropic substances.

[378] Osibanjo, Y. (1990) The Legal and Institutional Framework for the Eradication of Drug Trafficking in Nigeria, Bencod Press Ltd,Lagos, p. 223.

Article 18 of the United Nations Convention similarly requires that parties may provide, in addition to conviction or punishment or as an alternative to punishment, that the offender shall undergo measures such as treatment, education, rehabilitation or social integration.

It should be noted that, one significant achievement of this convention is the agreement reached by member states to balance the approach needed to tackle the problem and that the rehabilitation of drugs abusers be accorded the same importance in policy and action as the effort for reduction of supply and illicit traffic. Following this international objective concerning treatment and rehabilitation of illicit drugs users, Nigeria domestic legislation on control of narcotic drugs offences has responded to this with the establishment of the aforementioned counselling unit of the NDLEA.

The modern trend at the international community level varies with regards to achieving the stated objectives of the 1988 United Nations Convention. Countries such as China, Columbia, Nigeria, etc continue to impose capital punishment (such as life imprisonment and death penalty) on illicit drug use. Other countries such as Spain and some states in the United States of America had not only abolished the capital punishment but have reduced the intensity of punishment for illicit drug abuse with treatment and rehabilitation such as the famous 'AA' or Alcohol Anonymous (an N.G.O) where addicts undergo therapy resulting to over 85% success rate of complete treatment of addiction. Other alterative punishment in the U.S. include community service, injunction, house arrest, wearing of tracking device to monitory the movement of suspected offenders/convicts and also short term imprisonment.

The major challenge hindering successful rehabilitation and treatment of offenders in Nigeria is that over 90% of Rehabilitation Programme is carried out in mainly public

hospitals in the outpatient wards by the Federal Government[379]. This is a futile exercise because drug users and addicts are treated as patients of psychiatric illness and are discharged once the obvious signs of addiction are treated. This is neither a sustainable nor an achievable exercise. Thus, there is the need to establish purpose built rehabilitation centres, and bring along private practitioners who are willing to provide quality service and standard facilities for the purpose. The idea in the mind of the researcher here is to apply this as an ubiquitous policy of the Government of Nigeria at all levels of the federation. There is also the ongoing public private partnership (PPP) policy by the Government of Nigeria. Under this policy, private medical service providers can be contracted to assist the Federal Government to achieve this objective.

### 4.3.4 Challenges Facing the Federal High Court

There are two major challenges facing the Federal High Court. The first is that the NDLEA Act grants the court discretionary powers with regards to sentencing convicted offenders under the NDLEA Act. Section 20 (3) provides that:

> The Federal High Court before whom an accused is being convicted may in addition to the punishment prescribe in the Act, make an order requiring an offender to undergo measures such as treatment, education, aftercare, rehabilitation, or social reintegration.

Section 20 (4) further provides that:

> notwithstanding the subsections (2) and (3) of this section, the Federal High Court before whom a minor is convicted may, in an appropriate case, make an order as the circumstances may determine-
>
> (a) Either as an alternative to conviction or punishment; or
> (b) For treatment, education, after care, rehabilitation, social reintegration of the offender.

[379]The National Drug Law Enforcement Agency Annual Report, 2012.

The challenge here, which the Federal High Court faces, is that of sentencing offenders to prison majority of the time. Where the offence concerns only drug abuse, the court ought to exercise its discretion to sentence the offender to compulsory rehabilitation instead of prison due to the obligation of the Convention requiring the treatment of drug abuse users to rehabilitation rather than prison sentence. The aim of rehabilitation is to remove the drug user from dependence on drugs and thereby reduce the number of drug users, thus, reducing the demand for drugs in the country. It is seen that the less there are drug users, the less there are drugs in circulation. Therefore, rehabilitation of drug users can contribute to the reduction of drugs available for abuse. The problem with imprisonment is that it lacks the proper facility to treat the case of drug addiction. It only confines the prisoner to the prison but does don't deal with other issues that proper rehabilitation will, such as counselling of the drug user and the administering of other drugs that will flush out the toxic residue in the addicts system. The result is that the prisoner may relapse back to drug abuse should he/she find drugs close by.

The second challenge confronting the court is that there are cases of drug use that appear before the court from time to time. And the drugs in question are not classified as either narcotic drug or psychotropic substances. The court finds it difficult to prosecute such a case because it has no power to try an offender over a matter that is technically not an offence. The court may only discharge the case at best.

### 4.3.5 Challenges Facing the National Assembly

The National Assembly has not been able to amend the NDLEA Act with a view to incorporate other new drugs and substances that have abuse potential in Nigeria. This diminishes the ability of the National Assembly to respond to the rise in drug abuse in the country.

For instance, Section 20 (1) state that any person who without lawful authority (the proof of which shall be on him) commits any of the following offences, that is to say-

> Engages in the production, manufacture, extraction, preparation, offering for sale, distribution, sale, delivery on any terms whatsoever, brokage, dispatch, transportation, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provision of the 1961 Convention and its Protocols, or the 1971 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
>
> Shall be guilty of an offence under this Act and subject to the provision of the subsection (3) of this section, be liable on conviction to the penalties provide in subsection (2) of this section.

The offences contained in the conventions have not changed ever since. Therefore, the National Assembly must add to the list of offences to include new drugs and substances that are abused in the country or that have abuse potentials.

The National assembly ought to grant the Federal High Court the power to sentence a convict compulsory rehabilitation instead of prison if the offence is one of drug abuse only. Under the NDLEA Act, Section 11 states that any person who, without lawful authority-

> (d) Knowingly possesses 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 term not less than fifteen years but not more than 25 years.

A prison sentence for up to 15years for drug abuse is too harsh especially taking into consideration that there are other alternative means for proper response to the case. Where the offence involves drug abuse only, it is advised that compulsory rehabilitation ought to be awarded by the court.

## CHAPTER FIVE

# 5.0 COMPENSATION AND REHABILITATION FOR VICTIMS OF NARCOTIC DRUG AND PSYCHOTROPIC SUBSTANCES CRIMES IN NIGERIA

This chapter aims at identifying the nature of compensation and rehabilitation available to victims of crime generally and of narcotic crimes in particular. This is with a view to analyse the legal framework of compensation in Nigeria. An overview of some of Nigeria's laws for compensation of victims of crime will be included under this chapter.

## 5.1 An Analysis Of Compensation For Victims Of Crime Under International Law

Due to the lack of technical formalities attached to the making of international law, such as the legislative process and procedure, the development of international law has been much more rapid than most other laws made by the state legislature. Some countries have been un-able to keep pace with this rapid development and other countries have had to incorporate international law just to meet up with the need to reform law with a view to respond to social necessities. Nigeria has been one of the countries that seem to rely on incorporation of international law to keep pace with the changing law[380]. In the area of compensation of victims of crime under the criminal law, a number of researchers and members of the legal profession have been calling for an enabling law that allows victims of crimes to receive compensation for injury and loss sustained from

[380]During the era of military rule in Nigeria, the absence of a traditional legislature meant that the military governing council had to make laws and also implement them. The law making power of this council was different from what would ordinarily exist in democratic legislatures such as the presentation of a bill, the first, second and third reading, the drafting process, etc. this means, the council had to borrow or copy laws from other jurisdictions, both within the common wealth and outside it. With regards to international law, the council found it too easy to incorporate treaty and other international laws into Nigeria's legal system. This scenario is a reality that existed during the countries military regime.

the crime[381]. It is however proper that a study of the development of international law on compensation for victims of crimes be made here.

### 5.1.1 The Development of the Law on Compensation for Victims of Crime

Traditionally, criminal justice system the world over has for centuries focused on the major question of how to deal with offenders[382]. Over the years, the system in most parts of the world has laid emphasis on the discredited idea that the only way to show society's aversion for crimes and criminals is heavy exertion of punishment[383]. Thus, it can be said that until recently, the common denominator of various criminal justice systems is punishment or retribution. Perhaps the ancient law of *lex talionis* or the law of revenge may be responsible for this position[384]. Whatever the cause may be, the modern trend has been to shift towards a more humane and practical solution as a proper response to matters of crime and criminal responsibility. Despite the de-emphasis on retribution as a philosophical justification of punishment, there has not been corresponding change in the treatment of victims of crimes[385]. This is more so when we consider the fact that many criminal offences produce victims who suffer loss or injury as a result of crime. Therefore, there is the need to offer humane and sympathetic treatment or remedy to victims of crime. The situation as it is in Nigeria is that if a victim of crime desires compensation, he has to resort to the institution of a civil action.

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[381]The Administration of Criminal Justice Act, 2015 has empowered the federal courts to award commensurate compensation to victims of crime generally.

[382]Babangida, I. B. Address Delivered by the President, Commander in Chief of the Armed Forces, Federal Republic of Nigeria at the National Seminar on Criminal Justice, Restitution, Compensation and Victims Remedies, Abuja Between 28th and 30th of June 1989.

[383] Bola, A. (2010) Compensation and Remedies for victims of crime in Nigeria. Concept Publications Ltd, Lagos-Nigeria, p. 10.

[384]This law is based on retribution as the basis for punishment of offenders. An eye for an eye, a tooth for a tooth e.t.c.

[385]Karibi-Whyte, A. (1989) Groundwork of Nigerian Criminal Law, Heinemann Educational Books (Nig) Ltd, Ibadan p. 93.

**Leroy Lamborn**[386] stated that the modern worldwide interest in improving the situation of victims of crime is often attributed to the efforts of **Margery Fry**, a British social reformer in 1957. **Fry** began a movement for the establishment of a special programme of compensation for victims of crime when she came across a court declaration that court ordered restitution payments from certain offenders could not be completed unless the victim lived for 442 more years as provided under some aspects of English criminal law.

Later that year, **Stephen Schafer** who was prompted by **Fry's** movement, initiated a survey on reparations to victims of crime around the world. The efforts of both **Margery Fry** and **Stephen Schafer** amongst others, led to the first modern reform concerning the compensation of victims of crime in the country of New Zealand in 1983. A comprehensive state crime victim compensation programme was established in that country. This programme made compensation awards available to victims of violent crime by offering a range of remedies such as medical expenses, funeral bills, and monetary compensation due to loss of earning or wages and financial support where it becomes clear and necessary. In 1984, the United Kingdom establishes a similar programme along the New Zealand initiative and other countries such as Australia, Canada, the United States of America and States in Western Europe will establish similar programmes.

Another matter that received greater attention in these countries apart from the compensation of victims of crime is the restitution for victims of crime[387]. Thus, a comprehensive programme beyond mere return of property to their owners in crimes involving stealing or thefts, extortion, obtaining by false pretence etc was established.

[386] Lamborn, L.L. , (1990) *Victims in the Criminal Justice Process: An American Perspective,* Federal Ministry Of Justice Law Review Series Publication, Lagos, p. 90.
[387] Ibid.

Under this initiative referred to as the offenders restitution programme, property is returned to the original owner, his estate or legal dependents and in addition to this, payments were also made to the victim for damage to property, medical expenses, lost of income and even community service where is becomes appropriate as sufficient restitution to a community if such community suffers loss as a result of the offenders crimes.

In situations where financial compensation or restitution was insufficient or inadequate, other forms of compensation were available. For instance, victims of rape and women who are victims of violence were offered rehabilitation in crisis centres to assist recuperation and recovery from ill health.

### 5.1.2 The Nature, Scope and Trend of Compensation under International Law

In an attempt to understand and appreciate the need for adequate compensation under the criminal justice system, it is necessary that we analyse the trend existing under international law and the international community.

These changes (cited earlier) to the nature of criminal justice systems in the developed countries led to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[388]. This Declaration establishes standards concerning the prevention of victimisation, access of the victim to justice and fair treatment, restitution from offender, compensation from the state and social assistance towards recovery. Moreover the Declaration provides standards regarding the victims of power abuse. Thus any country desiring to improve the situation of victims can consider not only the experience with such efforts in a variety of individual's lands but also standards that have been developed through the cooperation of many states.

[388] Ibid.

It is however, prudent that an overview of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of power be made. The General Assembly of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that the United Nations should continue its present work on the development of guidelines and standards regarding abuse of economic and political power[389]. It state that:

> *Cognizant that millions of people throughout the world suffer harm as a result of crime and that the rights of these victims have not been adequately recognised.*
>
> *Recognising that the victims of crime and the victims of abuse of power are unjustly subjected to loss, damage or injury and that, they may, in addition, suffer hardship when assisting in the prosecution of offenders.*
>
> *1. Affirm the necessity of adopting national and international measures in order to secure universal and effective recognition of and respect for the rights of victims of crime and abuse of power.*
> *2. Stresses the need to promote progress by all states in their efforts to that end without prejudice to the rights of suspects or offenders.*
> *3. Adopts the declaration of basic principles of justice for victims of crime and abuse of power, annexed to the present resolution, which is designed to assist governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power.*

The above Article 1-3 of the United Nations Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power forms the basis and importance of it.

Article 1 intends to establish the basis of the Declaration, that it is necessary for nations and the international community to protect the rights of victims of crime.

Article 2 intends to call all nations to end any unlawful prejudice against the right of suspect and offenders.

[389]United Nations, Department of Public Information, DPI/895-August 1986 (General Assembly resolution 40/34).

Article 3 intends to provide a framework to assist governments and the international community with a view to support their efforts for securing justice and assistance of victims of crime and victims of abuse of power.

Article 1 requires member states to be proactive in taking steps for the purpose of preventing the victimization of people and to put in place adequate welfare provisions for the interest of people. The article states that the U.N.:

> *1. Calls upon member states to take the necessary steps to give effect to the provisions contained in the declaration and in order to curtail victimisation as referred to hereinafter endeavour;*
> *a. To implement social, health, including mental health, educational, economic and specific crime prevention policies to reduce victimisation and encourage assistance to victims in distress;*

Article 4 provides a list of guidelines or standards concerning the conduct of governments towards its citizens, subjects and individuals living under their jurisdiction or territory.

Article 4(a) requires government to carryout steps or measures towards reducing victimisation of individual and group victims in distress as a result of matters affecting social, health, mental health, educational, economic and general crimes.

Article 4(b) requires members' states to promote community efforts and public participation in crime prevention. There are laws already in force in Nigeria that allow private citizens to arrest any person who is believed to have committed an offence. This type of law invariably allows community participation in crime prevention.

Article 4(c) requires members' states to review periodically their existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing acts that violate internationally recognised norms relating to human rights, corporate conduct, and other abuses of power. With regards to law

proscribing acts that violate norms relating to human rights, there is an entire chapter in the Constitution of Nigeria that aims at safeguarding human rights. With regard to corporate conduct, the Company and Allied Matters Act, the Economic and Financial Crime Commission Act, the Penal and Criminal Codes and even the NDLEA Act all aim at safeguarding internationally recognised norms on the matters. Laws on the abuse of power may also be found in the constitution as well[390].

Article 4(d) requires members' states to established and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes. The Nigeria police along with other agencies such as the NDLEA, the Department of State Security, etc have been given adequate power and authority to detect crimes through legislation such as the Police Act, the Penal Code Act the NDLEA Act, etc.

The police prosecutor, the state council, the NDLEA prosecutor along with the regular courts of law continues to perform such functions as prosecution of offenders. The courts in particular as required by the various rules of court and also based on the penal code or criminal code continue to sentence convicted offenders as the case may be.

Article 4(e) requires member states to promote disclosure of relevant information to expose official and corporate conduct to public scrutiny and other ways of increasing responsiveness to public concerns. The Freedom of Information Act which was enacted in 2011 aims to provide the legal basis for disclosure of information for public concern. This law allows individuals and groups to request any information from a public authority for public or individual use.

Article 4(f) requires members' states to promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants

[390] Chapter 4 of the Constitution of Federal Republic of Nigeria, 1999 as amended. *op.cit.* p. 119.

including law enforcement, correctional medical, social service and military personnel, as well as the staff of economic enterprises. The Code of Conduct Act which is implemented by the Code of Conduct Bureau promotes the observance of ethics by public servant in the country.

Article 4(g) requires member states to prohibit practices and procedures conductive to abuse, such as secret places of detention and *in communicado* detention. The provision of chapter four of the Constitution of Nigeria actually proscribes such infringements on the personal liberty and movement of individuals.

Article 4(h) requires member states to cooperate with other states through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution of the victims. The NDLEA Act for instance, makes provisions for the detection and pursuit of offenders, on extradition and seizure of assets, it is however silent on the use of seized assets for restitution of victims. It recommends that, at the international and regional levels, all appropriate measures should be taken.

Article 5(a) to promote activities designed to foster adherence to United Nations Standards and norms and to curtail possible abuses.

Article 5(b) to sponsor collaborative action-research on ways in which victimisation can be reduced and victim aided, and to promote information exchanges on the most effective means of so doing.

Article 5(c) to render direct aid to requesting governments designed to help curtail victim and alleviate plight of victims.

Article 5(d) to develop ways and means of providing recourse for victims where national channels may be insufficient.

The provisions of Article 5 refer to obligations placed on the international and regional organisations such as the African Union and the ECOWAS. At the African Union level, there is the African Charter on People and Human Rights which cover those issues and obligation contained under Article 5. The African Charter has been incorporated into the laws of Nigeria by Act of the National Assembly. Article 5:

> *1. Requests the Secretary-General to invite member states to report periodically to the General Assembly on the implementation of the Declaration as well as on measures taken by them to the effect.*
> *2. Also requests the Secretary-General to make use of the opportunities, which all relevant bodies and organisations within the United Nations system offer, to assist member states, whenever necessary, in proving ways and means of protecting victims both at the national level and through international cooperation.*
> *3. Further requests the Secretary General to promote the objectives of the declaration, in particular by ensuring this widest possible dissemination;*
> *4. Urges the specialised agencies and other entitles and bodies of the United Nations System, other relevant intergovernmental and non-governmental organisations and the public to cooperate in the implementation of the provisions of the declaration.*

Articles 6-9 are provisions that border on procedures for member states to follow when interacting with the United Nations. There is the requirement by the Secretary General of the United Nations for member states to submit or make periodic report on measures taken with regards to implementation of the declaration. The Secretary General may also offer assistance to member states on improving the ways and means of protecting victims of crimes and abuse of power. There is also the dissemination of the objectives of the declaration by the Secretary General and the need to promote the widest implementation of the declaration by member states.

### 5.1.3 The Victims of Crime

Under this Declaration, a victim of crime means any person who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power[391].

The declaration also states that a person is considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim. The term victim also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress o to prevent victimisation.

### 5.1.4 Access to Justice and Fair Treatment

The Declaration places a duty on member states to treat victims with compassion and respect of their dignity[392]. They are entitled to access to the mechanisms of justice and prompt redress, as provided for by national or domestic legislation, for the harm they have suffered. Member states shall also strengthen judicial and administrative mechanisms with a view to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Similarly, victims shall be given sufficient and adequate information concerning their position in the proceedings taking place. The views and concerns of the victims shall also be presented during the proceedings with outmost regard. Victims will be entitled to assistance

[391]Part A, Article 1. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Op.cit.
[392]Ibid

during proceedings and without delay, victims shall be granted any award as a result of the proceedings.

### 5.1.5 Access to Justice

As part of the requirement for access to justice and fair treatment, member states are encouraged to utilise alternative dispute resolution and other customary means for settlement of dispute to facilitate conciliation and redress for victims.

### 5.1.6 Restitution for Victims of Crime

The declaration states that offenders or third parties responsible for their (offenders) behaviour should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. The declaration also requires government to review their practices, regulation and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions. Similarly, where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the state whose officials or agent were responsible for the harm inflicted. In cases where the government under whose authority the victimisation act or omission occurred is no longer in existence, the state or government successor in title should provide restitution to the victims.

### 5.1.7 Compensation for Victims of Crime

The Declaration provides that when compensation is not fully available from the offender or other sources, states should endeavour to provide financial compensation to victims who have sustained significant body injury or impairment of physical or mental

health as a result of seriousness and the family and dependants of persons who have died or become physically or mentally incapacitated as a result of such victimisation.

Article 13 of the Declaration states that the establishment, strengthening and expansion of National Funds for Compensation to Victims (NFCV) should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the state of which the victim is a national is not in a position to compensate the victim for the harm. This article calls for the establishment of a fund where the government can collect money for the purpose of providing compensation to victims of crime.

### 5.1.8 Assistance for Victims of Crime

The Declaration states that member states through their government shall provide the following assistance to victims.

1. Victims should receive the necessary material, medical, psychological and social assistance through government, community and indigenous means
2. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
3. Police, justice, health, social service and other personnel concerned should receive training to sensitise them to the needs of victims and guidelines to ensure proper and prompt aid.
4. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted.

This Declaration provides a comprehensive recognition of the rights of victims of crime to receive compensation and protection under the law. The Government of Nigeria, back in 1987 signed this declaration. But the manner of its implementation has been

discouraging. It was[393] observed that the declaration on justice goes beyond a call for paying damages to victims of crimes. That starting from arrest to sentencing and after, the offender or victim as the case may be shall have the right to be cautioned before making a statement, the right to remain silent, the right to bail, the right to innocence until proven guilty, the right to fair hearing, the right to counsel, the right to appeal and be heard, the right to human and decent treatment in prison, the right to remedy, compensation and restitution and the right to protection against victimisation and abuse of power, etc. It was[394], further observed that in Nigeria, the majority of crime victims play a secondary role in the sense that they only report the [395]crime against them to the public officials and then leave it to them to decide whether the offender should be prosecuted or not. Most often than not, the victim of crime who reports the crime to the police is told that criminal is not his case and that he is not a party to the prosecution and thus has no standing in the criminal case. It was concluded that the laws in Nigeria with regards to crime, especially the criminal code and the penal code are to blame for failing to consider the plight of victims of crime in criminal proceedings. The **Hon. Justice Nasir[396]** while commenting on the criminal law in Nigeria with regards to compensation for victims of crime remarked that in criminal law, the victim receives little attention in the criminal procedure. That even though the state, due to its monopoly of punishment sets itself up as the avenger in lieu of the victim, it seems to have forgotten only too often the victim's tragic fate as well as his interest in satisfaction and even more important, the victims material compensation. In the case of **Ishola v. The**

[393] Odekunle, F. (1990) *Restitution, Compensation and Victims Remedies: Background and Justifications*, Compensation and Remedies for Victims of Crime, Federal Ministry of Justice Publication, Lagos, p. 152.
[394] Fattah, E.A. (1987) The *Plight of Crime Victims in Modern Society*" Macmillan Press, Basingstoke, p. 17.
[395]Ibid.
[396] Hon. Justice Nasir Mamman, , (1990) *Criminal Justice: Restitution, Compensation and Victims Remedies* Compensation and Remedies for Victims of Crime, Federal Ministry of Justice Publication, Lagos, p. 21.

**State**[397] the court in a matter involving causing injury to a victim of the accused act stated that it will not grant the victim of the offence monetary compensation because the criminal proceedings lacks a legal backing to do so. This type of case comes up now and then in courts in Nigeria and the court seems to have their hands tied because of lack of enabling laws.

The Declaration[398] is meant to redress this lacuna in Nigeria's criminal justice system but as it will be seen from the provisions of Nigeria's primary statutes on compensation for victims of crime, the situation is rather dire.

## 5.2 THE FRAMEWORK FOR COMPENSATION AND REHABILITATION OF VICTIMS OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES CRIMES UNDER NIGERIAN LAW

Compensation and rehabilitation for victims of narcotic drugs[399] and psychotropic substances crime[400], (otherwise known as illicit drug offences or hard drug offences)[401] are important features of the criminal justice systems of common law countries in the world today.[402] This is because of the recognition of the rights of victims of crime under international law by these countries which is based on the need to provide humane and sympathetic treatment to victims through the law.[403] The role of the law here is to restore the victim of crime to the status quo *ante* the crime.[404]

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[397](1978) 9 and 10 SC 81 at 108

[398]op.cit.

[399]A narcotic drug is defined as a typically addictive drug, especially one derived from opium. It is a drug that can produce different effects ranging from pain relief to sleep, stupor, coma and convulsions. It is an illicit drug.

[400]Psychotropic substance is defined as any drug that is capable of affecting the mind, and is used in the treatment of mental disorders. Such kinds of drugs are also called psycho-active drugs as they act on the mind of a person who uses or abuse them.

[401]The terms 'Illicit drugs' and 'hard drugs' will be used in place of narcotic drugs and psychotropic substances in this paper.

[402]Lamborn, L.L. (1990) *Victims in the Criminal Justice Process: An American Perspective,* a publication of the Federal Ministry of Justice (Law Review Series), Lagos, p. 90.

[403]Articles *1,2 & 3,* Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1986.

[404]Adedola, I.O.A. (2001) *Criminal Justice: Restitution, Compensation and Victims Remedies', Some Neglected Views,* Bencod Press Ibadan. p. 6.

When people commit offences, particularly illicit drug offences such as drug trafficking[405] , there are situations where the traffickers end up causing injury or loss of property to some third party. For instance, where the traffickers are trying to escape from arrest by law enforcement officials and in the process, caused damage to road side shops or parked and moving vehicles or knock down innocent pedestrians walking along the road. Since these people suffered some loss one way or the other, as a result of the offender's criminal activities, they invariably become victims of illicit drug related offences. Similarly, the drug user who suffers personal injury as a result of using drugs is also a victim of illicit drug offence[406]. The drug user may also cause injury or loss of property to another person as a result of the influence of hard drug use on him.[407]

The problem that this paper seeks to address concerns the treatment of victims of illicit drug offences under the law in Nigeria especially as it affects the capacity of the law to remove the victims from the hardship they suffer as a result of the injury they sustain and their loss of property. The hardship that victims of crime suffer include physical and psychological pain which demands medical attention, the cost of treatment and therapy, the loss of earnings as a result of inability to undertake gainful employment due to injury or loss of property used for gainful employment etc. Other hardships that victims may suffer include the pain of dealing with drug addiction by hard drug users and the pressure on their parents and family, the pressure that people in the society have to put up with as a result of illicit drug activities such as living under fear, intimidation etc of drug traffickers and drug addicts. Although the law provides for compensation for such victims, they are hardly compensated in reality for a number of reasons that will be discussed as part of the problems in this paper.

[405]Drug trafficking is defined as the selling and buying of illicit drugs.
[406]A drug user is anyone who either takes lawful drug or takes unlawful and illicit drug.
[407]The effect of drug abuse on a drug user is capable of producing rage which can lead to violent behaviour.

It is the aim of this paper to analyse the legal framework on compensation, remedy and rehabilitation for victims of illicit drug offences and illicit drug related offences with a view to proffer solutions and recommendations.

### 5.2.1 Determination of Victims of Illicit Drug Offences

The process of determining the victims[408] of illicit drug offences begins with clearly identifying what illicit drug offence an offender has committed, and then identifying the nature and extent of injury or loss of property the offender while committing the offence has inflicted on an innocent third party, who thereby becomes the victim of illicit drug offence or illicit drug related offence.[409] This work has to be carried out by the prosecutor who will rely on the statement of facts provided by anyone who has suffered injury or loss of property[410]. With the support of evidence such as medical report on the injury sustained, and police report on the case, the prosecutor will be able to put up a case for the victim of crime. It is this case that the prosecutor puts together that will further provide the court with facts which are essential in determining the victims of illicit drug offenses and the commensurate compensation, remedy or rehabilitation for the victim[411].

While it is trite law that it is the court that makes the final decision as who a victim of illicit drug offense is, there is nothing preventing the prosecutor from making any legitimate attempt to identify and include a person or a group of people as victims of

[408]A victim of crime also means any person who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, economic and property loss or substantial impairment of his fundamental rights through acts or omissions that are in violation of the law. All references to the term victim or victims in this paper means victim or victims of narcotic drugs and psychotropic substances crime or illicit drug offences.
[409]Nwadialo, F. (2010) Compensating Victims of Arson and other offences to property, Malthouse Press, Lagos, p. 201.
[410]It is the court that makes the final decision on the question of who a victim is, and whether the victim deserves compensation. The role of the prosecutor is only to presents convincing facts to the court on behalf of a potential victim of crime.
[411]Ibid.

illicit drug offences during proceedings. However, it is necessary that the prosecutor is guided by the law or rules of law in making such an attempt. An important principle of law on the question of determining who a victim of crime is can be derived from the English case of ***Rookes V. Barnard***[412]. In this case, the House of Lords (UK), per Lord Devlin, laid down three (3) rules on the determination of who a victim of unlawful and criminal action is. The three rules are that victims of crime include:

i. Persons who have suffered from the oppressive, arbitrary and unconstitutional actions of a public servant.

ii. Persons who have suffered as a result of the defendants actions where the defendants conduct was calculated to make a profit for himself through any unlawful means.

iii. Where a statute expressly recognizes the victim's right and is regarded by statute as a victim of crime.

The first rule relates to acts or omissions done by public servants, and will not immediately fall within the principles of law canvassed here as a useful guide for the prosecutor in attempting to determine whether or not a person or group of people are victims of illicit drug offences. However, there are instances where public servants particularly personnel of law enforcement in Nigeria such as the National Drug Law Enforcement agents that are charged for criminal conspiracy or abetment of an illicit drug offence (like drug trafficking) can fall within this rule.

The second rule relates to instances where the defendants caused injury or loss of property while gaining profits through an unlawful means. This situation will best describe the activities of illicit drug traffickers, including those involved in the cultivation, manufacturing, processing, storing, transporting and selling of illicit drags.

[412](1964), All ER 367.

And it is so because the entire activity is profit driven, meaning that the objective and intention of the people involved is to make profit albeit through unlawful means.

The third rule relates to those categories of people who have been recognized as victims of crime because their suffering is the result of injury or loss of property satisfies the condition laid down in the statute concerned. In this situation, the prosecutor will have to rely on those conditions provided in the statute to determine whether or not the person's injury loss allows him to quality as a victim under the statute.

Going by the principles lay down in the case of ***Rookes v. Barnard***(Supra), the prosecutor can rely on the three rules as the guiding principles for the determination of who a victim of illicit drug offence is. There are some categories of people who can easily qualify as victims of illicit drug offences based on the three rules as discussed below.

### 5.2.2 Drug Users

The efforts of a prosecutor in an attempt to join a drug user as a victim of illicit drug offence will not always be an easy one[413]. This is because in considering who a victim is, it is necessary to differentiate two types of drug users.

The first is the hard drug user. In the case of users of hard drugs such as cocaine, heroin, Indian hemp etc, it can be said that there is in a sense a victim involved who deserves compensation[414]. This is because illicit drug abuse usually involves a transaction between a willing seller and an addicted buyer. Since the hard user does not always buys his illicit drugs from a trafficker voluntarily, no one can claim that he had not been

[413]Aguda, A.T. (1979) Principles of Practice and Procedure, Sweet & Maxwell, London. P. 118.
[414]Odekunle, F. (1990) Restitution, Compensation and Victims Remedies: Background and Justifications Compensation and Remedies for Victims of Crime, Federal Ministry of Justice Publication, Lagos, p. 152

wronged, because the suffering is not entirely self inflicted[415]. A hard drug user cannot be seen as an accomplice to drug trafficking and also cannot be seen as an offender for buying and using illicit drugs. Hard drug users therefore can be regarded as victims of illicit drug offences for the sake of compensation. The injury to the hard drug user's health and the suffering he goes through as a result of drug addiction and other health complications will qualify him for remedy under the law. The remedy for hard drug users is available in form of treatment for his addiction. The second kind of drug users are those people involved in use of inappropriate or fake or expired drugs. Users of these drugs are usually unaware of the status of the drugs they consume.

Since the consumption of these kinds of drugs cause health problems in the form of injury to some part of the human body, anyone who suffers in this regard is a victim of illicit drug offence and deserves compensation for his injury because sale of fake and expired drug is also an illicit drug offence[416].

### 5.2.3 The Third Party Victim

The links between drug use and crime are dearly established[417]. This link usually manifest in the form of violent crime affecting the human body and those affecting property. It is established that hard drug users are prone to violent out-burst against innocent people even without provocation when they are under its influence[418]. Due to the expensive cost of sustaining drug addiction, hard drug users are similarly prone to commit property offences in their efforts to have enough money to buy illicit drugs.

As a result of hard drug use, innocent third parties suffer some form of injury or loss of property caused by the hard drug user. An innocent third party who experience violence

[415]Ibid.
[416]S. 3(1), Op.cit.
[417]O'Connell, M. (2015) Victims of Drug-related Crime: The Untold Story, Hilton Press, Adelaide, Australia, p. 30.
[418]Ibid.

in the form of being hit on the head or any other part of the body becomes a victim of physical assault, bodily hurt or harm etc which was caused by the action of the offender that is labouring under the influence of hard drags. Other innocent people may lose property taken away from them without their consent by some other hard drug user with view to sell or pledge or exchange for some illicit drugs[419]. This scenario portrays instances of stealing or theft by hard drug users for the sake of sustaining the cost of hard drug. The injury and loss of property by the innocent third party qualify him as a victim of crime who deserves compensation.

### 5.2.4 The Society at Large

Illicit drug offences such as drug trafficking and drug abuse have an impact on crime rates that can threaten the well being and safety of people living in the society[420]. Residents of neighbourhoods where illicit drug offences are committed face a number of worrying and stigmatizing experiences[421]. This will range from being denied the use of some places such as public roads or streets because drug trafficking takes place there, to being put under fear of hurt or death or loosing property to those involved in drug trafficking and abuse. It is known that residents of neighbourhoods where illicit drug activities take place have to put up with actual or perceived intimidation, various forms of violence, extortion, robbery etc[422]. In**, *United States v. Cardoze*[423]**, the 1st circuit court observed that residents of neighbourhoods where drug trafficking thrive usually end up feeling isolated, powerless and fear retaliation in the event of making any attempt to confront those involved. The society therefore becomes a victim of illicit

[419]O'Connell, M. Op.cit.
[420]Schneider, T. (2009) Criminal Victimization and the Victim of Crime, Pelican Press, Australia, p. 3.
[421]The Mexican drug cartel for instance have come under international condemnation after 17 university students protesting against illicit drug activities were found dead recently. This is an example of how drug traffickers cause worries and anxiety to the society at large.
[422]Ibid.
[423]No. 13-2145 (1st Cir. 2015).

drug offences or illicit drug related offences and deserves compensation, remedy or restitution as the case may be.

### 5.2.5 Legal Representative of Dependants and Relatives of a Deceased Victim

The legal representative of dependants and relatives of a deceased victim have a *locus Standi*, to recover compensation that would have been awarded to the deceased victim of illicit drug offences[424]. But this does not actually make the relatives or dependants victims as such. They may collect compensation instead of the deceased victim, thus collecting compensation on behalf of the original victim[425].

After determining the victim of illicit drug offence and illicit drug related offence by the prosecutor, it is prudent that the illicit drug offence or related offence be clearly identified. The offences that can cause a victim of crime to suffer injury or loss are as follows:

i. Offences that are the result of the offenders hard drug use. This class of offences includes violent crimes such as physical assault, aggravated sexual, assault battery etc. The link between violent crime and hard drug use has been established and who ever suffers or sustains physical injury from the offender becomes a victim of drug related crime[426]. Under this class of offence, the hard drug user can himself become a victim as a result of his drug addiction which may have caused damage to his body or system or organ. For instance, the hard drug user may become HIV positive as a result of using un-sterilized needle to inject hard drugs, or he may become mentally ill as a result of drug abuse. Being that the use of hard drug is illegal, the user will be regarded as an offender but

[424]Nwadialo, F. (2010) Compensating Victims of Arson and other related Offences to Property, Malthouse Press, Lagos, p. 201. Section 12 (1) of the Employees Compensation Act 2010 also allows close relatives of deceased victims to recover compensation.
[425]Nwadialo, F. op.cit.
[426]O'Connell, M. op.cit.

the law usually treats hard drug users by sentencing them to compulsory rehabilitation rather than imprisonment. Therefore, the hard drug user will be considered a victim of crime notwithstanding the fact that he is also an offender.

ii. Offences that occur prior to or subsequent to the offenders need to support his hard drug habit or addiction. This class of offences relates to property offences such as stealing, criminal conversion, obtaining by false pretence etc. In this regard, the hard drug user may resort to taking another person's property with a view to sell or pledge or exchange for illicit drugs[427]. The motivation on the part of the hard drug user in unlawfully taking another person's property (including money), is to sustain the expensive cost of hard drug abuse. Any person who suffers the loss of his property to a hard drug user in- such a situation is a victim of hard drug related offence.

iii. Offences that are committed as a result of drug trafficking. This class of offences usually involves intimidation, extortion, robbery, obstruction of the use of public roads and other public places, etc. In this regard, hard drug traffickers are known to intimidate the residents of a given neighbourhood where their illicit drug activity takes place[428]. Again residents of the neighbourhood where these activities take place may be unlawfully prevented from using certain streets or roads or places like public schools, some places in markets etc. because drug traffickers use these roads or streets or places for distributing and trafficking illicit drugs. This situation makes the residents of a neighbourhood and by extension, the society at large, to suffer the hardship of loosing property or injury thereby becoming victims of drug related offences. There are so many other offences that may be committed but suffice to mention here that the society

[427]ibid.
[428]Ibid.

can be regarded as victims of illicit drug offences or related offences and are eligible for remedy in the event that the Court finds the offender guilty of crimes such as intimidation or obstruction from the use of pubic road and places. The point made here is that hard drug users are perpetrators of crime that is related to drug abuse or drug trafficking, and it is the society where such drug activity takes place that suffers.

After the prosecutor has determined the victim of crime, with a view to join them as parties to Court proceedings, the major challenge is one that affect the ability of people in the society to join the prosecution as victims of drug relate crime. This challenge is a real one because when someone is reported or arrested and then possibly charged with a drug offence, the residents and people in the society are not usually informed. Later however, if the offender is convicted and sentenced, most people are unaware, and are also not invited to participate in the court process that will lead to compensation and remedy. This means that the status of the society as victim of crime is not easily resolved as the affected people remain unaware of the Court proceedings thus, limiting their ability to claim or recover compensation[429].

### 5.2.6 Legal Provision for Compensation Remedies and Rehabilitation of Victims of Illicit Drugs in Nigeria

After determining who the victim or victims of illicit drug offences or illicit drug related offences are, the next stage for the prosecutor is to join the victims as parties to the proceedings with a view to present the court with sufficient evidence beyond reasonable doubt that the offender is guilty of inflicting injury or loss of property as the case may be. If the court finds the offender guilty, it will proceed to make an order for

[429]This is one reason why victims of illicit drug related offences receive no compensation for their injury. This issue was raised in page 2 of this paper under problems of the research.

compensation or remedy or rehabilitation, depending on what the prosecutor ask the courts and also the power's given to the court by law.

In this regard, there are four major laws that directly regulate the court's power to make any order on compensation, remedy and rehabilitation in Nigeria. These laws are almost exclusively applicable to criminal proceedings except for one which applies to any court proceedings in Nigeria. The court also has the power to make orders such as injunctions and prohibitions as remedies against illicit drug activities.

### 5.2.7 The National Drug Law Enforcement Agency Act.

This Act is enacted to establish the National Drug Law Enforcement Agency with the aim of enforcing the law against cultivating, processing, selling, trafficking and using of hard drugs in Nigeria[430]. This Agency[431] has the primary responsibility of reinforcing and supplementing the measures provided in the Convention on Narcotic Drugs of 1961; as amended by the 1972 Protocol, the Convention on Psycho tropic Substances of 1971 and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 for the purpose of countering the magnitude and extent of illicit traffic and abuse of Narcotic Drugs and Psychotropic Substances in Nigeria[432].

Under this Act, there are two sections relating to Compensation and Rehabilitation respectively. The first is section 4(5) of the Act. It provides that; "the Agency may at its discretion pay reward to any person, not a person employed by the agency, in respect of any information or service rendered to the Agency which may be of assistance to the Agency in the performance of its duties under this Act."

[430]op.cit.
[431]The National Drug Law Enforcement Agency Act, op.cit. 2004.
[432]S. 3 (1) (m) National Drug Law Enforcement Agency Act, op.cit.

This section allows the Agency to reward people who are not members of the Agency for information or service rendered to the Agency. The information or service rendered must be one that is capable of assisting the Agency in the performance of its duties.

It can also be said that the Agency may reward a person as compensation for injury or loss of property, where the person suffers injury or loss as a result of the information or service he rendered while assisting the Agency in performing its duties.

In the case of ***FRN v. Joseph Gorije***[433], the Federal High Court sitting at Jos observed that the due enforcement and administration of the provisions of the NDLEA Act is the duty and responsibility of the Agency and although the court cannot compel the Agency to exercise its discretionary power under Section. 4(5) of the Act, nonetheless the court can make a declaration as to whether a person is qualified for reward under the section, if the court deems it fit that the person is so qualified, that court may exercise it's power's on compensation without relying on the provision of Section. 4(5)[434].

This case shows that section 4(5) of the Act contemplates compensation as reward for information and services rendered to the Agency by any person who is not an employee of the Agency, where the information and service has assisted the Agency to carry out their duties. The problem with this is that the court cannot order a public servant or institution to exercise its discretionary power. This means that the Agency may refuse to reward a genuine case deserving compensation with little or no consequences.

The second section of the Act relates to Rehabilitation. Section 20 (3)[435] states that the Federal High Court before whom an accused person is being convicted may in addition to punishment prescribed in subsection (2) of this section, make an order requiring an offender to undergo measures such as treatment, education, after care, rehabilitation or

[433]FHC/J/19d/2011 (Unreported)
[434]National Drug Law Enforcement Agency Act, op.cit. p. 2.
[435]Ibid.

social reintegration. Section 20 (4) further provides that where the offender is a minor, the Federal High Court may instead of conviction, order rehabilitation of the minor as an alternative to conviction or punishment.

Both subsections (3) and (4) of section 20 relate to an offender who is guilty of any offence under the Act. Under subsection (3), the offender may be asked to undergo rehabilitation as part of his punishment, while under subsection (4), the offender who is a minor may be ordered to undergo rehabilitation instead of outright conviction or where convicted, instead of punishment.

The rehabilitation of offender's convicted of hard drug abuse is supposed to serve as a legal remedy for their medical treatment because the state recognizes their suffering as required by the Fundamental Objectives and Directive Principles of State Policy under section 16 (1) (b)and (d) of the Constitution[436]. The Federal Government of Nigeria has an obligation to help drug addicts notwithstanding the fact that they are offenders and their suffering is mainly self-inflicted[437].

It is observed that the majority of treatment and rehabilitation of drug users and addicts are carried out in public hospitals at the outpatient wards. This practice records little success as addicts treated in such facilities tend to return to drug addiction after living the hospital[438].

[436]Constitution of the Federal Republic of Nigeria, 1999.
[437]Oluruntimehin, O. (1990) Victims ' Remedies in Cases of Illegal Trafficking and Usage of Drugs: Who Should Compensate Victims?A publication of the Federal Ministry of Justice, Lagos, p. 214.
[438]Ibid.

In the case of ***FRN v. Clement Daniel***[439]the Federal High Court held that the proper order for an offender convicted of hard drug use is compulsory rehabilitation for the period that is sufficient for his recovery.

It will be appropriate to conclude here that imprisonment of a hard drug user is not in the best interest and spirit of the law. If the offender is not a minor, the court may sentence him to serve prison sentence instead of rehabilitation but this will not contribute to the effort of the state aimed at preventing drug abuse since the offender may be able to get access to some hard drug while incarcerated and there is the possibility of him returning to drug abuse when he is released from prison[440].

### 5.2.8 The Criminal Code

Under the Criminal Code, compensation is payable in case of false and vexatious charge under section 256[441]. The section provides that if in any case before a court one or more persons is or are accused of any offence and the court by whom the case is heard discharges or acquits any or all of the accused and the judge or magistrate presiding over the court is of the opinion that the accusation against any or all of them was false and either false or vexatious, the judge or magistrate may for reasons to be recorded, direct that compensation be paid to the accused or to each or any of them by the person upon whose complaint the accused was or were charged.

This section concerns cases of false accusation. Where the judge or magistrate is of the opinion that the accusation against the accused person as it concerns illicit drug offences or any other offence is either false or vexatious, he may direct that compensation be paid to the accused by the person making the accusations. Any sum so awarded as

[439]FHC/J/23e/2013 (Unreported)
[440]Oluruntimehin, O. op.cit. p. 14.
[441]Criminal code Act, op.cit. p. 2.

compensation shall be specified in the order of discharge or acquittal as the case may be. On default of payment within such time as the court deems proper, the court may order that the person making the default shall be imprisoned with or without hard labour. The person to whom this compensation is awarded may refuse to accept it. But where he receives it, or where the person ordered to pay it suffers imprisonment for non-payment thereof, the receipt of such compensation or the undergoing of such imprisonment, as the case may be is a bar to any action for the same injury. Before making an order under these provisions, the court shall explain their full effect to the person to whom compensation would be payable.

### 5.2.10 The Penal Code

Under the Penal Code, Section 78[442] states that any person who is convicted of an offence under the Code may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to or in substitution for any other punishment.

The provision of section 78 of the Penal Code seem to apply only to instances where the accused person is convicted of an offence and it appears to the court that the offender had caused injury to any person. Where the offender inflicts injury on the victim while under the influence of hard drugs, the case becomes one of drug related offence. An injury is damage to a person caused by physical or psychological harm. It includes any trauma that affects the mind of a person. It can thus be said that the type of injury contemplated under section 78 as amounting or deserving of compensation is one that affects the body or mind or property of any person who falls victim to the actions of the offender. It can then be concluded that loss of property or loss of earnings by way of trade or employment or any other loss occasioned by the offender will also deserve

[442]Penal Code, Cap. P. 17, L.F.N. 2004.

compensation[443]. The victim of the offender includes anyone who suffers injury as a result of illicit drug induced violence. It can also be said that where the victims are many, then each individual will be equally entitled to the compensation. Due to the dichotomy in Nigeria's criminal law, the availability for compensation is applicable to those areas where the Penal Code applies only. This includes only those 19 states forming part of northern Nigeria. Therefore the kind of compensation available under section 78 is only applicable in the north of Nigeria and no corresponding section is to be found in the Criminal Code which applies to the south of Nigeria.

### 5.2.11 The Administration of Criminal Justice Act, 2015

This law provides for the administration of criminal justice on offences enacted by the Federal Government (federal offences such as illicit drug, sedition, treason or terrorism etc) in Federal High Courts, Court of Appeal and Supreme Court in Nigeria with a view to promote efficient management of criminal justice institutions, speedy dispensation of criminal justice, protection of the society from crimes and protection of the rights and interest of the suspect, the defendant and victims of crime[444].

This law recognizes that the victims of crime should be awarded compensation as appropriate to the case[445]. Therefore, section 314(1) of this Act provides that; "Notwithstanding the limit of its civil or criminal jurisdiction, a court has power in delivering its judgments, to award to a victim commensurate compensation by the defendant or any other person or the state."

[443]Nwadialo, F. op.cit.
[444]S. 1 (2), Administration of Criminal Justice Act 2015.
[445]Ibid

Subsection (2) further provides that; "The court in considering the award of compensation to the victim may call for additional evidence to enable it determine the quantum of compensation to award in subsection (1) of this section."

This means that irrespective of the civil or criminal powers of the court, this section empowers a court in Nigeria to award compensation as part of the court's judgment. It also means that the court may require the defendant or any other person or the state to pay compensation to the victim. The 'other person' contemplated here may be someone the doctrine of vicarious liability can operate against or in the case that a minor is the defendant, then his parent or guardian. The court can allow further evidence in its attempt to determine the amount of compensation to be awarded in a case.

This section effectively allows a court in Nigeria to award compensation to a victim. The term 'commensurate' will indicate that the court can grant sufficient compensation. This section is a commendable solution to any problem the courts in Nigeria face with regard to awarding compensation because it does not limit the grounds for compensation to injury as the Penal Code Act provides.

Compensation and rehabilitation for victims of narcotic drugs and psychotropic substances crime under the law in Nigeria and some common law countries provide relief for victims of illicit drug crimes. The aim of the law in this regard is to restore the victims of crime *ante* the crime. Narcotic drugs and psychotropic substances crimes includes crimes that are the result of the offenders drug use such as drug abuse (e.g. smoking Indian hemp, injecting heroin etc) and violent crimes induced by drug abuse (e.g. assault, battery, murder, rape etc). It includes selling fake and expired drugs to innocent un-suspecting people. It also includes crimes that occur prior to or subsequent to the offenders need to support his drug use or addiction such as stealing, criminal

conversion, obtaining by false pretence etc with a view to sustain the cost of addiction or hard drug use. Crimes that occur as a result of drug trafficking such as extortion, intimidation & obstruction of the use of public places by residents of a neighbourhood or people in the society at large where drug trafficking takes place. The victims of narcotic drugs and psychotropic substances crimes are usually drug users. This includes hard drug users who are regarded as offenders for drug abuse and also as victims of drug abuse because of the risk of addiction to their health. It will include users of inappropriate, fake and expired drugs because they are unaware of the harmful effect of the drug they take which damages their health and thus making them victims of drug use.

Innocent third parties such as individuals who suffer as a result of the violent crime or crimes against his property, like robbery by an offender either acting under the influence of hard drugs or steals property including money just to support his illicit drug habit or addiction.

The society at large, particularly people living in neighbourhoods where drug trafficking takes place. Residents of such neighbourhoods are forced to cope with living in fear and apprehension of some harm to their person or property. Some are intimidated by drug traffickers while other's fall victim of extortion or are prevented from use of public places like roads where drug peddlers sell their drugs mostly at night so that people are forced to turn back on their way otherwise they get assaulted.

The law in Nigeria awards compensation remedy and rehabilitation for victims of crime in three major circumstances. Firstly, Compensation is awarded either by the Agency under the National Drug Law Enforcement Agency Act, or by the Courts when delivering it's judgment. Going by the provisions of the Administration of Criminal

Justice Act, a court in Nigeria may award compensation to a victim of crime at the instance of the defendant or any other person or the state. Secondly, Rehabilitation of a victim of crime is mainly awarded to the hard drug user or drug addict as provided under the National Drug Law Enforcement Agency Act. It is an order made either as alternative to conviction, or punishment, where the drug user/offender is minor. But where the drug user is an adult, then rehabilitation is ordered by the Court as part of the offender's punishment. The purpose of rehabilitation is to remove the hard drug user from a habit of dependence on illicit drug and return him as a healthy and productive member of the society. The majority of treatment and rehabilitation of drug users and addicts are carried out in public hospitals at the outpatient wards. This practice records little success as addicts treated in such facilities tend to return to drug addiction after living the hospital. Thirdly, Remedy is available to the society through the courts order prohibiting any group of people from further obstructing any public place usually through an order of prohibition. Where the Court is able to recover money or property as proceeds from drug trafficking, people that have suffered extortion, intimidation etc may receive some money as restitution from the illicit proceeds or profits. However, the people who can receive compensation in this situation seldom do because they are not informed of prosecution of drug traffickers who have caused them injury. They remain unaware of the courts proceedings that would have provided them with an avenue to press the court for compensation.

## 5.3 Why Nigeria Needs a Comprehensive Legal Regime on Compensation For Victims of Drug Crimes

It would be established by now that Nigeria’s Criminal Justice System offers some compensation to victims of crimes generally and victims of illicit drug crimes in

particular. It was[446] stated that whatever may be its historical origins; Nigerian criminal law is the product of statutes. Statutes that may be described loosely as forming the corpus of Nigerian criminal law define crimes as reprehensible and deserving penal sanctions. The criminal law provide for the apprehension of offenders since crimes are those wrongs which the state chooses to prohibit on the penalty of sanctions, the primary preoccupation of the criminal law should not be limited to the ascertainment of guilt and the imposition of punishment. The state must allow and empower the courts to award compensation to victims of crime during criminal proceedings so as to remove the victim from any hardship brought about as a result of a crime committed by an offender, as restore the victim to the status quo *ante* the crime.

The question of what provision the law has for victims of crimes is best expressed in this observation that, although the criminal law in Nigeria is not entirely oblivious of the plight of victims of crimes but rather, and even more surprising, is the fact that the state sees itself as the victim of crime since the ultimate result of unpunished crime is the break-down of law and order and a return to the law of the jungle or anarchy. The logic behind this position is that crimes are violation of state laws and as such to violate the law against crimes is to violate the state. This logic is a true one but an awkward one since the state is an abstract thing and at best, an artificial person. Therefore, the focus of who a victim of crime is should remain within the limit of the real person and those individuals who suffer harm, loss or infringement of their rights, since they are the ones most in need of assistance, compensation, restitution and even compassion.

The analysis of the scope and nature of compensation available for victims of crime in Nigeria had been done in the previous chapters and pages of this dissertation, what

[446] Soetan, O. S.(1990) Problems of Victims in the Administration of Justice: The Legal View Point, *Compensation and Remedies for Victims of Crime*, Federal Ministry of Justice Publication, Lagos, p. 83.

remains now is to consider the necessity of enacting an adequate comprehensive law concerning the compensation and restitution for victims of crime in Nigeria. It is also prudent to give a brief summary of the nature of compensation measures provided for under Nigeria's criminal law. They include the following.

1. Where a person is acquitted or discharged haven been accused of an offence the prosecution of which was instituted on a summons or a warrant issued by a court on the complaint of a private prosecutors.
2. Where a person is acquitted or discharged on a charge and the court is of the opinion that his accusation was false or frivolous or vexatious.
3. In respect of stealing or related offences
4. Following the making of probation orders in certain cases.
5. At the instance of the court concerned in its bid to promote amicable settlement of the proceedings where the offence concerned does not amount to a felony
6. In cases involving enforcement of fundamental human rights against the state where the victim suffers loss, damage or hurts on matters relating to crime.
7. Where a person offers assistance to the NDLEA in furtherance of their statutory duties.
8. Where a person suffers injury and loss of property as a result of a crime under the Administration of Criminal Justice Act, 2015. This law applies to federal courts only.

All of the above instances are usually restricted in the sense that the laws or legislation only apply in specific situations. For instance, where the compensation or restitution provision is contained in the Penal Code, then it can only be available to individual covered by the penal code jurisdiction, namely the northern part of Nigeria.

The need to provide compensation to victims of crimes generally and to victims of illicit drug crimes in particular must go beyond what the criminal law in Nigeria allows or recognise. A number of reasons make this very necessary.

First, that the recognition of the plight of victims of crime has become customary to many legal systems amongst nations of the international community. The vast majority of countries even in the commonwealth nations have legislation recognising the rights of victims to compensation. The United Nations declaration of basic Principles of Justice for Victims of Crimes and Abuse of Power requires the recognition and the provision of compensation as of right to victims of crime. Nigeria is a member of the declaration and should be expected to live up to the requirement to perform the obligations contained in the declaration.

Second, that since the constitution of Nigeria requires the states to promote the principle of social welfare, nothing could be more important as social welfare than the recognition of the fact that millions of Nigeria through the years till data have suffered as a result of crime and abuse of power. As such, they are more deserving of compensation, restitution and remedy which is one of the privileges all citizens of Nigeria have.

Third, the present form of compensation and remedy for victims of crime in Nigeria has been proved to be insufficient and inadequate. Various stake holders have continued to call on the government to make the law more responsive to the needs and rights of victims of crimes.

Fourth, the victims of illicit drug activities and crimes are left to despair in anguish as they and their dependents continues to suffer the pain of loss without any assistance

from either the offenders of the state except for cases where the court order rehabilitation for drug addicts.

Fifth, there are examples of measures for compensation of victims, though not of crimes, which the state have made comprehensive provision for. This includes legislation such as the Employees Compensation Act 2010[447] where a fund is set up by the federal government to provide compensation for workmen that suffer injury at work in the course of employment. The point here is that the fund is made up of contributions by employers in Nigeria along with the government of Nigeria. Therefore, a similar fund should be created by the government to be financed jointly by the state and any convicted offender.

The need for the state to enact laws on compensation for victims of illicit drug activities is based on the fact that such category of victims suffers a peculiar harm and loss which is mainly psychological and materials in nature.

A victim of illicit drug crimes most include the drug addict, the dependants of the drug addict, the individual who sustains injury as a result of illicit drug activities and the individual who suffers loss of material property as a result of illicit drug activities.

The ascertainment made by some writers that drug addicts who engage in drug abuse must be seen as offenders rather than victims should be rejected and discarded. The provisions of the single convention on narcotic drugs make it clear that any drug user is to be considered as victim rather than an offender.

The family and dependants of a victim of drug abuse must be allowed to claim compensation in place of the victim. This is especially where the principal victim is deceased or incapable o instituting actions for the claim. This position is not unknown

[447] Employees Compensation Act, Cap. E. 30, L.F.N. 2004.

to the Nigeria legal system and as such ought to be extended to the case of victims of drug abuse or illicit drug activities or crimes[448].

There are other persons that can suffer some form of loss or harm as a result of illicit drug activities. Hypothetically, if a person owing an estate lets it out to another who is involved in illicit drug activities such as processing illicit drugs or manufacturing illicit drugs or trafficking illicit drugs. Should be property or estate be confiscated or damaged by the NDLEA or even the offender, it should be that the owner of the property be allowed to recover his loss from the offender.

While it is true that there are countries in the world where laws on illicit drugs activities and the position of drug users as offenders exist, such as China, it is equally true that the countries in the western democracies such as Spain, Canada and the United States of America have moved or are moving towards decriminalising drug abuse.

It should be noted that the process of decriminalising of drug abuse is made with a view to change the status of the offence from one attracting penal sanction to the person in need of medical rehabilitation.

Where individuals are convicted for illicit drug crimes other than drug abuse, it should be made possible that they should be made to provide compensation to any person who fall victims of their offence.

[448]It presents an excellent example of how a comprehensive frame work for compensation of Victims ought to be made as suggested under this research.

# CHAPTER SIX

## 6.0 SUMMARY, CONCLUSION, FINDINGS AND RECOMMENDATIONS

### 6.1 Summary

This dissertation, titled; "An Analysis of Prevention and Control of Narcotic Drugs and Psychotropic Substances under International Law: A Case Study of Domestic Implementation in Nigeria" is a study on the efforts of the international community and international law to combat on illicit drug activities with particular emphasis to the domestic implementation of international law in Nigeria. In an attempt to protect the well being of individuals living in society from harm; the law becomes useful tool in safe guarding the public from injurious and detrimental practices such as illicit traffic and abuse of harmful drugs particularly narcotic drugs and psychotropic substances.

The research considered the modern attempt to safeguard the health and lives of people from the harmful effect of dangerous drugs through international law which started with the Shanghai Conference, leading up to the United Nations Conventions on Illicit Drugs. The Conventions are the Single Convention Narcotic Drugs of 1961 and the Protocol to the Single Convention on Narcotic Drugs of 1972, the Single Convention on Psychotropic Substances 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

In this research, the researcher analysed the historical development of international law regime on Narcotic Drugs and Psychotropic Substances. From the Shanghai Conference of 1908, up to the United Nations Convention against Illicit Traffic and Abuse of Narcotic Drugs and Psychotropic Substances of 1988. The research considered the three major factors that contributed to this development. The first factor is the need to safeguard the health and wellbeing of people generally from the dangerous effect of

drug abuse and to prevent others from making wrongful gains from the proceeds of illicit drug trafficking. The second factor is the need to include members of the international community to join efforts aimed at combating illicit drug activities. Being that drug trafficking is a global malaise; it can best be solved through global efforts. The third factor is the need to enhance and strengthen legal measures aimed at preventing and controlling illicit drug activities through international law.

In this research, attempts were made to analyse the conceptual clarification of key terms used. The prevention and control refers to the effort made by government and other non-state entities such as the United Nations to hinder the individuals from participating in undesirable activities by way of placing limitations on what a person can and cannot do with a view to regulate peoples conduct. Narcotic drug and psychotropic substances refer to those drugs that are addictive, and capable of affecting the mind. While narcotic drugs can produce different effect ranging from pain relief, sleep, stupor, vertigo, coma and convulsions, psychotropic substances act upon the mind and can produce feelings of euphoria, anxiety, hallucination, etc. A list of what actually constitute narcotics rugs and psychotropic substances can be found in the single convention of narcotic drugs and the single convention on psychotropic substances. Narcotics generally include opium, cannabis and coca leaf, while psychotropic substances are commonly hallucinogens, stimulants, depressants and tranquillizers. International law is the legal system governing the relationship between nations comprising of rules that relates to the functioning of institutions and organisations that concern the relationship between nations and non-state entities. Domestication of international law is the incorporation of an international law usually derived from treaty into the legal system of a sovereign state or nation. The process will apply so that the National Assembly will have to legislate and the treaty will become law in Nigeria. Where the treaty doesn't require the

country to enforce a law, the by virtue of the Treaty Making Act, the treaty will operate as binding on the Government of Nigeria. A 'case study' is a type of research that records details of how a situation develops over a period of time. This dissertation research on how the government of Nigeria incorporates those rules of international law that seek to hinder, impede and limit activities involving opium, cannabis, coca leaf, hallucinogens, stimulants, depressants and tranquillisers by way of legislation and the process involved in implementing this piece of law with a view to solving the drug problems in Nigeria.

Furthermore, the researcher analysed a number of challenges and problems that hinder the successful domestic implementation of the three conventions mentioned earlier. A key problem caused by inadequate compliance with the provisions of the convention has been the issue of the status of drug addicts and drug users. While the Single Convention on Narcotic Drugs of 1961 recognised that drug users are victims of drug abuse and ought to be granted medical rehabilitation rather than criminal sanction in form of prison sentence or fine or even execution. The NDLEA Act considers drug abuse as a serious offence and the punishment for it is imprisonment. Although the judge has discretion to order that a convicted drug user undergo rehabilitation in addition to imprisonment or instead of imprisonment, the convention on narcotic drugs requires that such individual be made to go through medical rehabilitation.

The researcher analysed the NDLEA as an institution with regards to the challenges that hinders its performance on carrying out its functions. Some of these challenges are financial, others are operational and yet others are reality issues. The reality issues or practical problems that affect the NDLEA include its ability to solve the root cause of illicit drug abuse and drug trafficking in society. This is a complex

problem as it includes poverty, peer influence, broken homes and poor parenting, etc. These are clearly beyond the capacity of the NDLEA.

The researcher analysed the need for compensation and remedy for victims of illicit drug crimes by analysing the provisions of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of the United Nations to which Nigeria is a party. A significant provision in this declaration is the definition of a victim. A victim under the declaration means persons who, individually or collectively have suffered harm, including physical and mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within members' states. A person may also be considered a victim, under this declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered in intervening to assist victims in distress or to prevent victimisation. The Declaration, while commenting on compensation stated that when compensations is not fully available from the offender or other sources, states should endeavour to provide financial compensation to; victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crime; the family in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimisation. The declaration further requires the establishment, strengthening and expansion of national funds for compensation to victims. The rehabilitation of drug users and addicts is usually done in regular hospitals. Hospitals are not proper ideal for rehabilitation of drug addicts. The state most address this issue properly.

The situation in Nigeria is however inadequate and insufficient because none of the statutes on crime recognises the need to fully provide compensation for victims of crime in the same way as the declaration requires. The Criminal Code and the Criminal Procedure Act only recognised restitution in such a way as to return certain property back to the real owner, where such property is a subject of crime. The Penal Code and the Criminal Procedure Code recognise same level of remedy and restitution but are still insufficient when compared to what the declaration requires. The NDLEA Act only provides discretionary compensation to persons who are not members of the Agency but have provided services in furtherance of the performance of the functions of the Agency.

## 6.2 Conclusion

It is observed that the purpose of international law on prevention and control of narcotic drugs and psychotropic substances is to safeguard the health and wellbeing of people globally and to prevent illicit drug traffickers from enjoying the proceeds of their illicit trade. A society that is free from illicit drugs is guaranteed many safeguards and enjoys protection from the harmful and dangerous practices of drug abuse and drug trafficking. Drug money are spent to throw parties, buy expensive cars and consumable goods which in total aggregate does no add to any capital formation which Nigeria needs for development. The false and voracious life-style of the drug traffickers create an artificial demand on the economy when the industrial production base has not been properly harnessed, this type of lifestyle fuel liquidity crunch in the economy where money float without any useful production backing. The government on its part loses millions of naira in an illegal transaction where taxation could not be effected in any way. The people living in the society succumb or get bothered by the amount of narcotic being trafficked. And the government loses revenue from the loss of taxation on the huge sum

of money derived from illicit drug trade and activities. The image of Nigeria in the eyes of the world at large becomes poor due to the role of Nigerians in the global trade in illicit drugs. These are general problems which this study has addressed and as such relate to the impact of illicit drugs in the society.

## 6.3 Findings

The research found that in the process of incorporating the provisions of the three conventions against illicit drugs and also the declaration of victims' rights, the government of Nigeria incorporated the Single Convention on Narcotic Drugs by enacting the Indian Hemp Decree of 1966. It failed to classify drugs users as victims of drugs abuse and instead, made drug abuse a criminal offence. The criminal liability for drug abuse ranged from the death sentence (as seen under the Special Tribunal (Miscellaneous Offences) Decree) to 25 years (presently under the NDLEA Act).This position creates a number of problems. The first is that the government of Nigeria maintains a position contrary to the stated objective of the convention on narcotic drugs. Secondly, it resonates with the discredited idea of criminal responsibility that harsh punishment deters potential offenders. Thirdly, the role of the law as a viable instrument in positive social change, engineering and development has failed because a proper solution to the issue of a drug user is rehabilitation with a view to prevent further abuse which fuels the demand and hence the supply of illicit drugs.

It was found that the incorporation of the Single Convention on Psychotropic Substances of 1971 into Nigerian law by enacting the Amphetamine and Other Drugs Control Decree and the Foods and Drugs Act failed to properly regulate other substances such as adhesive gum (the so-called *solucho* or solution), strong anti-sceptics used in washing human corpse (*sucudie* or second dye) and cough syrup containing codeine. Thus concentrating on sophisticated substances that have little or no presence

in the drug abuse scene in Nigeria such as cocaine. The result is that law enforcement agencies find it legally challenging to properly control or prevent these types of substances because they are not properly regulated by law in Nigeria.

It was found that government policy on the drive to cut down government spending has led the Federal Government of Nigeria to begin an exercise towards dissolving or merging some governmental organisations, agencies and parastatal. One of the government agencies short listed for dissolution or merger is the NDLEA where it was recommended by the **Orosoye** committee to either dissolve it or merge it with the Nigerian police. Now, the provisions of the United Nations Convention Against Illicit Traffic and Abuse of Narcotic Drugs and Psychotropic Substances requires that every member state to set up a 'distinct organisation' capable of coordinating and enforcing the provisions of the Convention. If the NDLEA were to be so dissolved or merged, it would not only be a contravention of this convention, but it will also be a step backward away from the fight against illicit drug activities in Nigeria. As a mark of encouraging efforts of Nigeria's NDLEA, the United States Government had bestowed on it (NDLEA) the best practice award consecutively since the year 2000 till date.

The research found that the actual reality on ground in Nigeria is one that continues to hinder successful compliance with the provisions of the convention mainly because at the time that Nigeria incorporates the Convention into domestic laws, the military dictated the manner and content of the decree and the martial spirit of Nigeria's laws against illicit drugs such as harsh punishment, retroactive provisions, disregard to rehabilitation and compensation, feature prominently as major causes hindering successful implementation of those conventions.

The research found out that some important and crucial operations of the NDLEA have to be abandoned as a result of inadequate funding. That the NDLEA cannot arrest and prosecute certain offenders because the offences are not offences per say as the law does not regards such action or conduct as offensive to the law, for instance, the abuse of *Panadol Extra* or *Valium 5* or cough syrup containing *codeine* or adhesive glue or strong and pungent anti-sceptics, etc. That the funding of the NDLEA's activities depends on available money derived from the national budget and thus, so many necessary operations have to be discarded for lack of funds.

The research found that other law enforcement agencies in Nigeria that are required by law to follow the command of the NDLEA for the sake of combating illicit drugs activities such as the Police, Custom Service, Immigration, the Ministries of Health and Foreign Affairs and the Armed Forces fail to accept the superior position of the NDLEA and thus no meaningful corporation between these agencies exist. This means the NDLEA has to proceed alone and the task of solving the drug problem in the country becomes increasingly difficult to achieve.

That the Federal High Court as shown by recent studies maintains an over seventy (70%) imprisonment sentence for drug users rather than rehabilitation in medical facilities.

The research found that Nigeria's criminal law is one that fails to take into account the right of the victim of crime to adequate compensation. None of Nigeria's criminal law or statute adequately caters or provides for compensation to victims of crime and their dependants. Section 68 of the Penal Code may seem sufficient, but this researcher believes that an entire legislation on compensation for victims of crime be enacted instead of relying on isolated provisions of the law. The Penal Code is a law that applies

only in the North of Nigeria and thus a national legislation must be enacted. This is true notwithstanding the binding obligation on the government of Nigeria to recognise and provide adequate compensation to victims of abuse of power and crimes as is stated under the Declaration of Basic Principles of Justice. A significant provision in this declaration is the definition of a victim. A victim under the declaration means persons who, individually or collectively have suffered harm, including physical and mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within members' states. A person may also be considered a victim, under this declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered in intervening to assist victims in distress or to prevent victimisation.

The research found that the objective of the Single Convention on Narcotic Drugs is to prevent the cultivation, production, storage, sale and use of narcotic throughout the world. It also aimed at controlling the manufacturing and selling of any form of narcotics except for scientific research and medical purposes. The measures for achieving this is by implementing legal and institutional law aimed at combating narcotic drug activities. This is achieved through concerted efforts by members of the international community who are expected to take every step necessary to execute the law with a view to solving local and international illicit drug problems.

The research found that the objective of the Single Convention on Psychotropic Substances is to deter trafficking and abuse in psychotropic substances. It takes similar approach to prevention and control measure with the Single Convention on Narcotic

Drugs. The only difference is that the Single Convention on Psychotropic Substances covers non-narcotic drugs and non-narcotic plants. Instead, it considers the effect of a given substance on the mind of a person. Therefore, this Convention classify psycho-active or mind affecting substances into stimulants, anti depressant, hallucinogens and tranquillisers. And since there are over a dozen substances that can act as either a stimulant or any other psycho-active agent, the convention provides a list or table of such substances that are classified as controlled substance and dealing in such substance without authority is illegal or illicit.

The research found that the primary objective of the United Nations Convention Against Trafficking and Abuse of Narcotic Drugs and Psychotropic Substances is to provide a legal basis under international and domestic law that empowers governments to regulate and control every activity in narcotic drugs and psychotropic substances. It requires member states to incorporate provisions from it with a view to empower national institutions such as law enforcement agencies and the courts to enforce and apply the laws. The NDLEA Act provides that the agency shall have responsibility for enforcing and supplementing the measures provided in the Convention on Narcotic Drugs, the Convention on Psychotropic Substances and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in order to counter the magnitude and extent of illicit traffic in narcotic drugs and psychotropic substances.

The research found that the three conventions require member states to perform some obligations which are absolute and binding. For instance, under the Single Convention on Narcotic Drugs, member states must make laws prohibiting any sort of activity with narcotic whether it is cultivating or processing or manufacturing or storing or transporting or selling or consuming. The only exception is that firstly there must be an application in a prescribed form to the state authorities granting permission to engage in

any of the activities mentioned above. Where such activity is for scientific research or medical purpose, the state will grant permission accordingly.

Other obligations are discretionary, for instance, under the single convention on psychotropic substance, caffeine is classified as a psychotropic substance due to its effect as a stimulant. However nothing is said about the source of it such as kola nut, tobacco, coffee, etc. This allows states governments to consider the reality on ground before making laws that regulates caffeine. For instance, the ban on cigarette smoking in public areas is borne out of its hazardous effect as a pollutant to non-smokers and its contribution to cancer and similar health problems. The ban is however less of a result of tobacco being a stimulant due to its caffeine. But the major obligations in all three conventions are;

I. That member states are to incorporate the provisions of the convention into domestic law
II. That member states are to cooperate between and amongst their various governments with a view to prevent offenders from violating the law and prosecuting offenders appropriately.
III. That member states to establish institutions that are specifically committed to the enforcement of the provisions of the treaty such as the NDLEA.

The research found that the manner in which the Government of Nigeria carried out the domestic implementation of the three convention shows on one hand that the government of Nigeria had been very committed to applying the provisions of the convention in solving the drug problem in the country. The fact that all three conventions had been incorporated into Nigeria's statutory laws by way of legislation in the form of the NDLEA Act reveals the level of commitment to the obligation of international law, for the Single Convention on Narcotic Drugs; Nigeria enacts the

Indian Hemp decree. For the single convention on psychotropic substances Nigeria enacts the amphetamine and other dangerous drugs decree and also the food and drug Act. While the United Nations convention against illicit traffic in narcotic drugs and psychotropic substances gave rise to the enactment of the National Drug Law Enforcement Agency Act.

The research found that on what challenges hinder the domestic implementation of treaties on illicit drugs on the rights of victims of crimes to compensation shows that criminal compensation in Nigeria is grossly inadequate and neither the Criminal Code nor the Penal Code nor the NDLEA Act provides sufficient compensation to victims of crime. There is no law that recognise the rights of victims of crimes in Nigeria in the sense that it specifically defines who a victim is with a view to granting compensation. All we can find are specific provisions dealing with instances where restitution or compensation may be granted by the court.

The research found that compensation for victims of crime under Nigerian law is available in the following circumstances.

1. Where a person is acquitted or discharged having been accused of an offence the prosecution of which was instituted on a summons or a warrant issued by a court on the complaint of a private prosecutor.
2. Where a person is acquitted or discharged on a charge and the court is of the opinion that accusation was false or frivolous or vexation
3. In respect of stealing or related offences
4. Following the making of probation orders in certain cases
5. At the instance of the court concerned in its bid to promote amicable settlement of the proceedings where the offence concerned does not amount to a felony.

6. Under the NDLEA Act, a private person can receive compensation for any services rendered to the NDLEA in furtherance of their duties and functions.
7. Under the Administration of Criminal Justice Act 2015, the Federal Courts can award commensurate compensation to a victim of crime during criminal proceedings.

This study reveals that the rehabilitation of drug addicts is unsuitable to be carried out in hospitals.

## 6.4 Recommendations

Domestic implementation of International law in Nigeria on Prevention and Control of Narcotic Drugs and Psychotropic Substances has been mainly a successful endeavour. Nigeria has participated in the global efforts of combating illicit drug activities starting from the Pre-League of Nations era down to contemporary times. Following the findings made here, it is important that a number of recommendations be made to the appropriate body for actions that will enhance the law in the country with a view to achieve the aim of the international community on illicit drug activities prevention.

### 6.4.1 The National Assembly

The incorporation of international law into Nigeria domestic laws is done through the legislative process of the National Assembly. The constitution of Nigeria requires that no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. This is in relation to the power of the National Assembly as the apex legislative body in Nigeria, to make laws by enacting acts for the federation or any part thereof. There are three recommendations to the National Assembly they are as follows;

1. That whenever the National Assembly is incorporating or domesticating a treaty into Nigerian law, the process must be done in tandem with the aim and objective of the treaty. The bill that may be tendered for the treaty must be as close to the original content as possible, i.e, the charter, convention and declaration that is the subject of legislation under section 12(1) of the constitution of Nigeria. Where the convention or declaration allows for discretion in some form or the others, the legislators most bear in mind the objectives for which the law was made in the first place so as to avoid significant departure from the treaty. Nothing however stops the legislators from taking local reality or the reality on ground into consideration with a view to alter the law to address the peculiarities of the Nigerian scene.
2. That the National Assembly most amend some existing statutes if any meaningful effort is to be achieved on the fight against illicit drug activities. The first statute that ought to be amended is the NDLEA Act. The provision for amendment shall include the following. Section 11(a) states that:

> *Any person who, without lawful authority knowingly possesses or uses the drug popularly known as cocaine, LSD heroin 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 25 years.*

This section contains two separate but similar conducts that the law prohibits. They are possession and use of drugs while a person can be in possession of drugs without using the drug, anyone who is actually using a drug is at that time said to be in possession of the drug.

The first conduct which the law prohibits is the possession of the drugs popularly known as cocaine, LSD, heroin, or any other similar drugs. Cocaine and heroin are essentially narcotic drugs, as such, the phrase any other similar drug shall include other

types of narcotics such as Indian hemp and opium. The word possession can be given a restricted or wide meaning. Any of the instances of possession will suffice. If for instance, Mr. 'A' possesses cocaine because the substance is on his hands or 1 in his pocket. Again, Mr. A possesses cocaine because it is in his car, or his luggage or hidden in his toilet. In any case, to be in possession or LSD may refer to having physical control over the drug or having command over the drugs.

The purpose for such lengthy prison sentence for being in possession of illicit drugs is unjustifiable. Even under the United Nations convention against illicit drug trafficking and abuse, a seven (7) years prison sentence is the maximum that is recommended.

Therefore, it is necessary that the NDLEA and not make a much lengthier punishment than the maximum that has been recommended. The more extreme case is that of imprisonment for using cocaine, heroin or any other similar drug by smoking, inhaling, or injecting for up to 25 years and not less than 15 years.

It does not serve any meaningful practical purpose whether for the society or the state or the individual. Since the user have harms himself, no direct harm is caused to society. The state will have to spend public find in funding the prisoner for such a long time and the prisoner does not receive any counselling except at the discretion of the authorities.

It is therefore recommended here that the offence of possession of cocaine etc be made a separate offence and the punishment should exceed seven years.

Again, the use of cocaine etc be made a separate provision and it should lead to compulsory rehabilitation rather than imprisonment. Any reasonable person will see that rehabilitation of a drug user is more meaningful in term of preventing illicit drug activities than imprisonment.

Section 20(3) states that:

> The Federal High Court before whom an accused is being convicted may in addition to imprisonment; make an order requiring an offender to undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

It has been cited earlier that the court commonly send offenders in cases of illicit drug use to prison rather than rehabilitation centres. This discretionary power must be regulated so that the punishment becomes clearer for stance, offences ranging from possession of illicit drugs to trafficking such drugs, including manufacturing, storing, etc may attract prison sentence. While other conduct such as using illicit drugs should attract compulsory or supervised treatment, education, aftercare, rehabilitation or social reintegration.

The second section for amendment is section 4(5) of the NDLEA Act. This section grants discretionary powers to the NDLEA on the award of compensation. It is recommended that the section be amended to become a mandatory duty instead of a discretionary one.

The third statutes for amendment are the Penal Code and the Criminal Procedure Code; it should be done in such a way as to take the following into consideration.

1. Compensation should be available to victims of crime of illicit drugs and illicit drug related crimes.
2. Compensation should be made by the offender to the victim of the illicit drug offence.
3. The value of amount payable as money compensation should not be specified so as to avoid value variation in currency and the time it takes to amend a law. Instead, the value should be made discretion of the court.

4. The statutory control of the use of drugs and substances capable of abuse, such as adhesive gum, second die, cough syrup and similar things.

These laws have little provisions for remedy, restitution and compensation for victims of crime. It is recommended that their amendment be made in light of what is obtainable in the Penal Code and the Criminal Procedure Act. The provision of section 78 of the penal code can be amended to better cater for situation other than 'injury' to the human body to include loss of property. The only corresponding section in the criminal code is section 256.

It is recommended that the courts in Nigeria sitting in their criminal jurisdiction during criminal proceeding be empowered by enabling law to grant compensation to victims of illicit drug crime in addition to or instead of imprisonment. This will solve the problem of victims of crime having to institute a civil action to recover compensation.

The fourth provision for amendment is the section that limits illicit drugs to the four Conventions on narcotic drugs and psychotropic substances. Section 20 (1) (a) states that any person who without lawful authority (the proof of which shall be on him) commits any of the following offences, that is to say-

> Engages in the production, manufacture, extraction, preparation, offering for sale, distribution, sale, delivery on any terms whatsoever, brokage, dispatch, transportation, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provision of the 1961 Convention and its Protocols, or the 1971 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
>
> Shall be guilty of an offence under this Act and subject to the provision of the subsection (3) of this section, be liable on conviction to the penalties provide in subsection (2) of this section.

The offences contained in the conventions have not changed ever since. Therefore, the National Assembly must amend the list of offences to include new drugs and substances

such as cough syrup with codeine, adhesive gum, second dye, etc, that are abused in the country or that have abuse potentials.

2- The National Assembly should enact laws that enable the establishment of institutions that are necessary in the fight against illicit drug activities. The institutions may include the following.

1. Modern rehabilitation centres capable of catering for up to 500 patients in each state of the federation.
2. A board, such as a victim compensation trust fund management board should be established at the national level. It shall receive an appropriate starting grant, not less than one percent annually from crude oil revenue and such fund as may be paid into the trust fund especially from the assets and property of offenders. And the victims that can access this trust fund must include drug addicts and drug users in case of rehabilitation or medical purpose and other victims together with their dependants.
3. The National Assembly should give greater attention to certainty and celerity rather than extremity of punishment for offences under the NDLEA Act whenever it is going to amend to Act. The 15 years prison sentence for drug abuse ought to be reviewed to not more than 2 years.
4. The National Assembly should amend the provision which confers on the President of Nigeria the power to permit investigation to be carries out on certain individuals and instead, the power be bestowed on the Federal High Court. The court should be empowered to issue a warrant to the NDLEA where there is a *prima facie* evidence of violation of the law in this regard as it concerns the rights of individuals.

### 6.4.2 The Federal High Court

It is recommended to the Federal High Court that when it comes to sentencing of offenders for offences committed under the NDLEA Act, that the courts should exercise their discretionary power on cases involving drug users towards treatment, education, aftercare, rehabilitation and social reintegration instead of imprisonment. Perhaps imprisonment may be reserved for recalcitrant drug users who willingly refuse rehabilitation. This is to reduce the burden of overcrowded prison population in Nigeria. It will also allow the Federal Government to use tax payers' money for other more meaningful projects instead of prison upkeep and management. It is also based on the researcher's belief that rehabilitation of a drug user is more desirable than incarceration because rehabilitation is the proper response to the drug user's state of health and the government has a Constitutional duty to cater for the wellbeing of the citizens of the country under chapter two of the Constitution. The solution to drug abuse is not prison sentence but rather, it requires rehabilitation of drug users.

### 6.4.3 The NDLEA

The NDLEA as an institution is the single most important agency of the Federal Government in the fight against illicit drug use. As such it is recommended that the following be properly addressed.

1. That individuals wishing to serve the nation as personnel of the NDLEA be made to undergo rigorous screening with a view to short listing only fit and proper persons for the job.
2. That the welfare of personnel of the NDLEA should be given the utmost importance so as to motivate commitment to the fight against illicit drug activities.

3. That the funding of the NDLEA may not be sufficient if it only comes from budgeting allocations. It is therefore necessary that the NDLEA device legitimate means of extra-source of funding so as to allow it performs any meaningful activity for the purpose of performing its functions under the Act. It is recommended that when monetary assets are confiscated from offenders who have been convicted of drug related crimes, the interest of the money that has accrued to the bank that keeps same on behalf of the NDLEA be given to the NDLEA as cost of operation and running its affairs.
4. The NDLEA must also be very articulate in performing field testing of illicit drugs. Any suspected illicit drug substance must be taken to a standard laboratory facility to confirm whether or not the substance is an illicit drug or not.
5. The NDLEA must also develop cordial relations with other departments of the Federal Government that are legally required to assist it in performing its functions or duties. It must avoid confrontation with other departments because the lack of cooperation between the NDLEA and the department can only hinder any meaningful effort against illicit drugs activity.

### 6.4.4 The Federal Government of Nigeria

The Federal Government must support, with every means at their disposal, the efforts of the NDLEA, the legislature, the Federal High Court etc, against illicit drug activities.

Based on the state of affairs of the drug problem in the country, the following are recommended to the Federal Government of Nigeria.

1. That all recommendations made in this research be given the utmost consideration in policy making on illicit drug prevention and control and also the status of victims of crime.
2. That the Federal Government through its appropriate agencies should assist all institutions and organisations involved in the treatment and rehabilitation of drug patients, and treatment of drug abusers should be made compulsory.
3. That the Federal Government should intensify drug abuse education in our schools, with the teaching of social skills in the handling of social or private problems without using drugs.
4. That the Federal Government should adequately train health professionals in the treatment and rehabilitation of drug abusers.
5. That the Federal Government should train the personnel of the NDLEA on the use of modern technologies that are useful in combating trafficking illicit drugs.
6. That the Federal Government should provide better funding to the NDLEA for welfare of personnel and operations purpose.
7. That the Federal Government should involve the academia in research efforts on the best means of eliminating the demand and supply of illicit drugs in Nigeria.
8. That the Federal Government should take proper measure as to prevent Nigeria being used as a transit state by international drug traffickers.
9. That the Federal Government should bear in mind that the extremeness or harshness of a law will not cause it to be effective. More efforts must be made in addressing the root causes of the offences rather harsh punishment for it.
10. That the Federal Government must eliminated the root causes of drug abuse in Nigeria. Poverty alleviation, mass literacy, civic education, a functioning

democracy and a very committed government can produce the proper situations that eliminate those causes of illicit drug activities.

11. That the Federal Government should make provisions for sport facilities and also encourage the popular participation of people in sport activities nationwide. This is in view of the obligation imposed by the three conventions on Nigeria to provide leisure and sport activities as a means of engaging people in useful activities.
12. The Federal Government of Nigeria should establish a body similar to the UK's Criminal Injuries Compensation Scheme Board with a view to provide victims of crime with an avenue for claiming compensation.

### 6.4.5 The United Nations

The United Nations has done a lot in bringing different nations together to cooperate in efforts against the global problem of illicit drugs.

The United Nations has also convened the making of Conventions, Protocols Declarations etc for the sake of combating illicit drug activities. The United Nations has also established the United Nations Office of Drugs and Crime (UNODC). This office must be further empowered to monitor the activities of nation's states by establishing offices in the capital of every member state. The offices shall monitor the commitment of the government, the efforts of the government and the rise and fall of illicit drug activities in the country of the member state. Such evaluation can serve as important information that the United Nations can use in advising the government of the country concerned on appropriate steps to take towards preventing and controlling illicit drug activities. The two bodies under the United Nations that regulate and control the implementation of the three Conventions must be made to be more involved in the domestic implementation by the governments. The two bodies referred to here are the

Commission on Narcotic Drugs and the International Narcotic Control Board. They should be able to work with the NDLEA directly by providing assistance on all levels of illicit drugs prevention and control at their means and disposal.

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