NIGERIA, DRUG OFFENCES AND THE WAY FORWARD*

Abstract

Drug trafficking and unlawful dealings on prohibited drugs undermine development by eroding social and human capital available for a country. Although drug offences are not usually violent in nature, hundreds of persons are executed yearly in an effort to curb the menace of drug trafficking and attendant consequences. The question is to what extent does imposition of death penalty and other hard sanction on offenders achieve the anticipated reduction in the use and illicit trafficking in hard drugs? What are the best possible ways of handling or tackling illicit dealings in hard drugs to achieve the anticipated reduction in trafficking and use of hard drugs? The authors adopted doctrinal research method while the approach was analytical. Materials used include both primary and secondary research materials such as statute, case laws, text books and online materials from reputed authors. The authors found that imposition of harsh punishment in drug related offences has not resulted in reduction of use or trafficking in hard drugs. The authors suggested among other things that positive approach such as creation of jobs and employment will serve as panacea in relation to drug dependent persons.

Keywords: Drug Offences, Penalty, Nigeria, Panacea

1. Introduction

The United Nations Office on Drug and Crime (UNODC) defines drug trafficking as the illicit global trade that deals with the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws. These include cocaine, heroin, morphine, cannabis sativa (Indian hemp) and methamphetamine which are the most commonly trafficked drugs.[1] This includes other narcotic drugs and psychotropic substances such as amphetamine, ephedrine et cetera. The Act[2] defines 'Narcotic Drug' as any substance, natural or synthetic in the First Schedule of the single Convention on Narcotic Drugs 1961 and the Convention as amended by the 1972 Protocol as amended in the Second Schedule to the Act including the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1989. Psychotropic Substance is define by the Act to mean any substance natural or synthetic or any natural materials specified in Schedule I,II, III and IV of the Convention on Drugs or Psychotropic Substances 1971. Cannabis (Sativa) Plant is defined to mean any plant of the genius of cannabis.

The international efforts to combat illicit trade in drugs started with the International opium Commission held in Shanghai, China in Febuary 1909. The recommendations of the commission led to the making of the International Opium Convention of 1912. This action, aimed at addressing the growing international use and trade in Opium, particularly in China, Great Britain and United States of America, brought to an end decades of inaction to the problem of illicit drugs and laid the foundation for the current international drug control system. This was followed by the first Geneva Conventions of 1931, the convention for the suppression of illicit traffic in Dangerous Drugs of 1936, the single convention on Narcotic Drugs of 1961 and its protocol of 1972, the convention on psychotropic substances of 1971 and the convention against illicit Traffic in Narcotic Drugs and Psychotropic substances of 1988 (the Vienna convention). These conventions continued to impose obligations on state parties to fight both the illicit traffic and abuse of narcotic drugs and psychotropic substances by fostering international cooperation and exchange of operational and scientific information on patterns and trends in the international narcotics trade. It is within this framework that Nigeria's counter narcotics strategy evolved. The drug control strategies of Nigeria were intended to address both her international obligations and local concerns to ensure that the country does not become a drug haven. Thus, at every point in time, the country tried to discharge her international obligations and put in place enforcement structures that could meet the societal needs of the moment.

2. Brief History of Drug Offences in Nigeria

The history of drug trafficking war in Nigeria started with the establishment of the Dangerous Drugs Ordinances of 1935. This ordinance guided the then Board of Customs and Excise (now Nigerian Customs Service) and the Nigerian Police to tackle drug trafficking locally. Another important period in Nigerian war against illicit and

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[1] Chris A, Maxi S, (2013) South Africa in the Company of Giants: The Search for Leadership in Transforming Global Order. (International Affairs, cited by Nwanneya C and Abiodun T.F., Illicit Drug Trafficking in Nigeria: Obstacle to National Development and Security in *Journal of Political Science & Public Affairs* at http://www.omicsonline.org visited on 24th September,2018.

[2] National Drug Law Enforcement Agency Act Cap. N30 LFN, 2004

dangerous drugs was in 1984 when Decree No. 20 which prescribed death penalty for all those involved in drug trafficking.[3] It is worthy to note that due to public outcry, the death penalty sanction was reduced to term of imprisonment of between two years to life imprisonment, depending on the nature and circumstances of the offence committed. In 1989, Decree 48 was promulgated through which the Federal Military government established an independent body known as the National Drugs Law Enforcement Agency (NDLEA) to handle the menace of drugs abuse and trafficking[4]. The NDLEA was charged with the responsibility of eliminating the growth, possession, manufacturing, selling, exporting, trafficking or unlawful use of hard drugs. The notable legislation against illicit cultivation, trafficking and abuse of illicit drugs in Nigeria include:

1. The Dangerous Drugs Ordinance of 1935 enacted by British Colonial administration.
2. The Indian Hemp Decree No.19 of 1966 enacted by the Military administration of Major General Aguiyi Ironsi with life imprisonment for illicit trafficking.
3. The Indian Hemp (Amendment) Decree No.34 of 1975 enacted by the regime of Major General Murtala Mohammed that reduced the term of imprisonment from life to 6 months imprisonment
4. The Indian Hemp (Amendment) Decree, and the Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1984 enacted by the regime of Major General Mohammed Buhari to prescribe death penalty for illicit traffic in narcotics drugs.
5. The Special Tribunal (Miscellaneous Offences) (Amendment) Decree of 1986 that replaced the death penalty with life imprisonment and the National Drug Law Enforcement Agency Decree NO 48 of 1989 (as amended by Decree No.33 of 1990, Decree No 15 of 1992 and Decree No. 62 of 1999) all of which harmonized as Cap. N30 Laws of the Federation of Nigeria(LFN) 2004 that established the NDLEA, enacted by the regime of General Ibrahim Babangida
6. The Money |Laundering (Miscellaneous Offences) Decree No. 3, 1995 enacted by the regime of General Sani Abacha.
7. The Money Laundering (Prohibition) Act of 2004 enacted by the civilian administration of General Olusegun Obasanjo (Rtd); and
8. The Money Laundering (prohibition) Act of 2011 enacted by the administration of President Goodluck Ebele Jonathan to repeal the Act of 2004

3. The National Drug Law Enforcement Agency Act 1989 Cap N30 LFN 2004

The Preamble to the National Drug Law Enforcement Agency Act is almost comprehensive as regards what the organization is established to achieve. It states that it is an Act to establish the NDLEA to enforce law against the cultivation, procession, sale, trafficking and use of hard drugs and to empower the Agency to investigate persons suspected to have dealings in drugs or other related matters. By section 3 of NDLEA Act, some of the functions of the Agency include but are not limited to:

i. To adopt measures necessary to identify, trace, freeze, confiscate or seize proceeds derived from drug related offences or property whose value corresponds to such proceeds;
ii. To adopt measures necessary to eradicate illicit cultivation of narcotic plants and illicit demand for narcotic drugs and psychotropic substances with a view to reducing human suffering and eliminate financial incentives for illicit traffic in narcotic drugs and psychotropic substances.
iii. To adopt measures necessary for early destruction or disposal of the narcotic drugs and psychotropic substances which has been seized, confiscated or forfeited;
iv. To reinforce and supplement the measures provided in the Convention on Narcotic Drugs 1961 as amended by the 1972 Protocols and the 1971 Convention on Psychotropic Substances, the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1989 which have been adopted and domesticated by Nigeria, in order to counter the magnitude and extent of illicit traffic in Narcotic drugs and psychotropic substances and its grave consequences;
v. To take such measures that will ensure the elimination and prevention of the root causes of the problems of narcotic drugs and psychotropic substances;
vi. To strengthen and enhance effective legal means for international cooperation in criminal matters for suppressing the international activities of illicit traffic in hard drugs;
vii. To collaborate with government bodies both within and outside Nigeria, that carries out the functions wholly or in part, analogous to those of the NDLEA in Nigeria concerning among other things:

(a) The identities, where-about or activities of persons suspected of being involved in offences mentioned in NDLEA Act;
(b) The movement of the proceeds or property derived from the commission of any of the offences prohibited by the NDLEA Act;

[3] Cressey DR (1969) Theft of the Nation: The Structure and Operation of Organized Crime in America
[4] The National Drug Law Enforcement Agency Act Cap N30 LFN 2004

(c) The movements of narcotic drugs and psychotropic substances as specified in the 2nd Schedule to NDLEA Act and instrumentalities used or intended for use in the commission of such offences;
(d) Exchange of personnel and other experts in relation to giving full effect to the Act and its major aims;
(e) Establishment and maintenance of a system for monitoring international dealings in hard drugs in order to identify suspicious transactions and persons engaged in them;

viii. To take charge, supervise, control and coordinate all the responsibilities, functions and activities relating to arrest, investigation and prosecution of all offences connected with or relating to illicit traffic on hard drugs, notwithstanding any law to the contrary;

ix. To strengthen cooperation with the office of the Attorney General of the Federation, the Police Force, Customs and Immigration Agencies, Health Officials and other law enforcement agencies in the eradication of illicit traffic in hard drugs.

To ensure that the possibilities of overlap or conflict in function in relation to offences under the NDLEA Act does not affect the operation of the Agency, section 3(2) of the Act provides that all drug units under any existing law or institutions dealing with offenders or offences connected with or relating to illicit traffic in hard drugs, shall relate and be responsible to the Agency in the performance of their duties and functions. To ensure the effective operation of the Agency, special powers are reserved for the Agency to arrest, investigate persons, properties, or proceeds of illicit traffic in hard drugs and prosecute offenders. Subject however to the approval of the AGF in section 4(3) of the Act.[5] To enhance the performance of the officers of the Agency and to promote specialization for effective operation in the performance of their onerous functions, section 7 establishes special Units which include - the General Assets Investigation Unit; the Prosecution Unit and the Counseling Unit. This is to ensure early and easy discovery of activities of those who engage in drug trafficking activities, take preventive and pre-active measures against their actions or intended actions. To ensure proper prosecution of offenders and take adequate measure to educate, rehabilitate and possibly reintegrate drug dependent persons into the society a better people. Section 8 species the areas of concentration of each of the units. These units are arranged in a way that while the General Asset Investigation Unit faces the field to discover, investigate and arrest persons, property and proceeds of offences under the Act, expose how, when and where the offences are committed and who played what part in the commission of the offence. The Prosecution Unit is mainly committed to prosecution of offender because their area of interest is in the court; they also advice the General Assets Management Unit on legal issues and implication about their operations. The Counseling Unit is committed to educating people on the dangers inherent in engaging in prohibited drug related activities of whatever guise or nomenclature. It is also its duty to carry out after care functions of trying to rehabilitate and reintegrate drug addicts and dependants into a better society as better people for useful maximization of their potentials.

4. Drug Offences under NDLEA Act

Part II and III of the Act, that is sections 11 to 49 of the Act create offences under the Act. The offences under section 11(a) to (c) include importation, manufacturing, producing, processing, planting or growing; exportation, transportation or trafficking in hard drugs; selling, buying, exposing or offering for sale or any similar dealing in the hard drugs such as Cocaine, heroine, LSD, Cannabis Sativa or any other similar drugs prohibited under the Act. Punishment is life imprisonment. The offences created under section 11(d) carries minimum of 15 years and maximum of 25 years imprisonment and include illegal possession or use of hard drugs prohibited under the Act either by smoking, inhaling, injecting or in any other way. Offences under section 12 of the Act cover unlawful use or permission for the use of their premises or premises under their management for drug related activities such as storage, concealment, processing, or for any illegal dealing howsoever in hard drugs. Offences under this section carry maximum punishment of 25 years imprisonment. Section 14 of Act covers such act as conspiracy, incitement, promise or inducement, aiding or abetting, counseling or attempt to commit drug offences already specified, or being an accessory after the fact to the offences under the NDLEA Act. Punishment under this section is minimum of 15 years and maximum of 25 years. Section 15 covers unlawful assumption of the character of an officer of NDLEA. Simply put - impersonation of an NDLEA official either by claiming to bear his name, have a particular rank, or illegally assuming their duty for personal reasons. This section prescribes maximum punishment of 10 years. Section 16 of the Act covers such act as tampering with drugs. It includes unlawful removal, concealment, and destruction of or tampering in any other way, any drugs prohibited in the Act and seized by the Agency. Liability for offence under this section is 25years imprisonment. By section 17 of the Act, escaping from custody or aiding the escape of any person held in custody in connection with the commission of any of the offences listed under NDLEA Act is an offence. Punishment under this section carries maximum of 7 years imprisonment. Section 18 of the Act makes it an offence for any person to prevent witness from coming to court to give evidence in a case involving commission of offence under NDLEA Act or from producing or tendering any evidential material useful for the proper prosecution of an offender under the Act. This section

[5] Section 4(1) and (2) of the NDLEA Act 2004

prescribes 7 years imprisonment as maximum punishment. Section 19 is a reproduction of section 11(d) that is unlawful possession of hard drugs and punishment is the same as that of section 11(d) – minimum of 15 years and maximum of 25 years imprisonment. By section 20 of the Act, the following acts constitute serious offences: that is any person who

(a) Engages in the production, manufacturing, extraction, preparation, offering for sale, distribution, sale or delivery on any term whatsoever, brokerage, dispatch, and dispatch in transit, transportation, import or export of narcotic drugs or psychotropic substances contrary to the 1961 Convention and its Protocols or the 1971 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1989. Punishment here is life imprisonment.
(b) Engages in cultivation of opium, opium poppy, coca bush or cannabis sativa plant (Indian hemp) for the purposes of production of narcotic drugs or psychotropic substances contrary to the 1961 Convention. Punishment for offences under this paragraph carries life imprisonment.
(c) Has in his possession or engages or purchases any narcotic drugs or psychotropic substances for the purposes of any of the activities enumerated in paragraph (a) above. Punishment of offences under this paragraph carries minimum of 15 years and maximum of 25 years imprisonment terms.
(d) Engages in the acquisition, possession or use of property knowing at the time of such acquisition, possession or use that such property was derived from any offence under this section.
(e) Engages in the possession of equipment or materials or substances listed in the Second Schedule to this Act, knowing same to be used in or for the illicit cultivation, production or manufacturing of narcotic drugs or psychotropic substances. Punishment under this paragraph carries life imprisonment.
(f) Engages in the manufacturing, transportation or distribution of equipment, materials or any other similar substances listed in the Second Schedule to this Act and knowing same to be used for the illicit cultivation, production or manufacturing of narcotic drugs or psychotropic substances. Punishment here is life imprisonment.
(g) Engages in the management, organization, or financing of any of the offences under paragraphs (a) to (f) of this subsection. Punishment here carries between 15 years and 25 years imprisonment.
(h) Engages in the conversion or transfer of property knowing that such property is derived from any of the offences under paragraphs (a) to (f) of this subsection. Punishment here is life imprisonment.
(i) Engages in the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property knowing that such property is derived from any offence referred to in this section. Punishment here carries not less than 15 years and maximum of 25 years imprisonment. Punishment of offences under this paragraph carries life imprisonment. Punishments for offences under section 20(1) as enumerated in paragraphs (a) to (i) are well specified under subsection (2) of section 20 of the Act.

Section 21 described what constitutes importation of Narcotic drugs or psychotropic substances under the Act. It also provides that a person found guilty of counseling or procuring the commission of offences under the Act shall be punished as though he had actually committed the said offence[6]. Then section 22 makes it an offence for any citizen of Nigeria to import into another country any drug prohibited under the NDLEA Act which is also prohibited in that other country. Under this section, the fact that the person have been convicted and punished in that other country does not exonerate him from criminal liability for that crime for exporting prohibited drug out of Nigeria. Under section 22(2), any person being a Nigerian Citizen who is convicted of drug offence in a foreign country shall be guilty of an offence and shall be liable to punishment for bringing the name of the country to disrepute. Punishment under section 22(1) and (2) is 5 mandatory five years imprisonment without option of fine[7]. Section 22 provides a double jeopardy situation which is in clear violation of section 36(9) and (10) of the 1999 constitution as amended. Section 23 is on attempt to commit the offence and what should follow where the person charged with attempt is actually found to have committed the full offence and vice versa. Section 24 covers where an offence under the Act is committed by a body corporate. It provides that where an offence under this Act was committed by a body corporate and it is proved that the commission of the offence was done on the instigation, with the connivance of or attributable to any neglect on the part of a director, manager or Secretary or other similar officer of the body corporate or any person purporting to act in any such capacity – such person as well as the body corporate, where applicable, shall be deemed to have committed the offence and shall be punished accordingly. The section empowers the Federal High Court adjudicating on such matter upon conviction to make an order winding up the corporate body and even make order the assets and properties of such corporate body be forfeited to the Federal Government. There should be lesser punishment for negligence resulting in the commission of the offence under this section where it is shown that there was no intention to commit the offence. Section 25 places a duty on commercial carriers of goods to take reasonable caution in ensuring that their vehicle

[6] Section 21(3) of the NDLEA Act, Cap N3o LFN, 2004
[7] Section 22(3) of the NDLEA Act, Cap N30 LFN 2004

and other means of carrying goods are not used in committing any of the crime enumerated under the Act. Any commercial carrier found guilty of this offence shall in addition to punishment for committing the offence be guilty of another offence. Then where the commercial carrier is a body corporate, every person who is a proprietor, director, general manager, Secretary, or other similar officer, servant or agent of that body corporate or any person acting in such capacity, may be deemed to have committed the offence and upon conviction be liable a fine not exceeding N100,000. The provision of section 25 subsection (4) creates a loophole for punishment of innocent person who not be aware of the commission of an offence under this section. The seriousness and the damaging effect of drug related offences is so much that the law empowers the Agency to seize, confiscate and where necessary destroy any property or assets, including those in a foreign country[8] which are connected, used or derived from the commission of an offence under this Act[9].

It is an offence punishable by 10years imprisonment for any person arrested or detained in connection with any offence under this Act to refuse to make full disclosure of his assets and liability for proper investigation by the General Assets Management Unit, or to make false declaration or fails to answer any question regarding such assets or property, or fails, neglects or refuses to make declaration, give information as required in the Assets Declaration Form[10]. Section 39 makes it an offence for any person to unlawfully, without authorization, deal with, sell or otherwise dispose of any property or assets which the subject of an attachment, interim order or final order made under this Act. Punishment is 5 years imprisonment. Subsection (2) of section 39 prescribes punishment of one year to maximum of three (3) years for any bank manager or person in control of the head office or branch of a bank who fails to pay over to the Agency upon being served with the final order made by the court in relation to any money in any account connected with offence under the Act which is the subject of such final order of the court. Under section 41 of the Act, the Police, Customs services, officials of the Agency and other security apparatuses saddled with enforcement of offences under the Act have the power to enter and search with or without warrant any land, building, vehicle, aircraft, ship train, container or person suspected of being used or involved in the commission of offence under the Act. The power includes take sample and conduct test on any substance suspected to be related to offence under the Act. They can seize any item suspected on reasonable ground to be used in the commission of offence under the Act. Section 42 empowers the Chairman of the Agency to freeze any account he is satisfied on reasonable ground contains money of any person arrested which the person made through illicit dealing or trafficking in narcotic drugs and or psychotropic substances. Finally, section 49 of the Act makes it an offence for any person to willfully obstruct the agency or its authorized officer in the exercise of any of the powers conferred on them by the Act or the person willfully fails to comply with any lawful enquiry or requirements made by an authorized officer in accordance with the provisions of this Act. Offences under this section carries maximum punishment of 5 years or fine of not more than N20,000 or both.

5. Analysis on Punishment for Drug Offences

The law seems to pay more attention to the destructive effect of illegal use of hard drugs that severe punishments are attached to deter people from venturing into it. By all means, the law seeks to regulate and to possibly reduce the rate of illicit drug activities, hence, almost in every part of the world today, drug offences are not treated with kid's gloves. In many countries of the world, life imprisonment is reserved for drug related offences. As at 2016, over 32 countries reserved and imposed death penalty for drug smuggling and other illicit dealings in hard drugs. The countries include – China, Cuba, Democratic Republic of Congo, Egypt, India, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Malaysia, North Korea, Qatar, Pakistan, Saudi Arabia, Singapore, Sri Lanka, Sudan, Syria, Taiwan, Thailand, United Arab Emirate, USA, Victorian, etc.[11] It is worthy of note that USA Supreme Court has in the case of *Kennedy v Louisiana*[12] struck down the death penalty for crimes for drug and other crimes that do not result in the death of a victim and death was not intended.

6. Conclusion and Recommendations

It can easily be concluded that Poverty, corruption, lack of employment and equal opportunity are some of the factors that breed and facilitate drug trafficking in Nigeria as in other parts of the world. There is a global recognition that organized crime, corruption, insecurity and illicit drugs are the major impediments to the achievement of the Millennium Development Goals. As economic development is threatened by these menaces,

[8] Section 29 of the NDLEA Act

[9] Sections 27 to 33, 35(4), 36, to 38 of the NDLEA Act

[10] Section 35(3) of the NDLEA Act

[11] The Economist Explains: Which Countries have Death Penalty for Drug Smuggling? Available at https://www.economist.com/the-economist-explains/2015/04/28/which-country-have-the-death-penalty-for-drug-smuggling Accessed 27/9/2018 and Capital Punishment for Drug Trafficking available at http://en.m.wikipedia.org/wiki/Capital_punishment_for_drug-trafficking visited

[12] 554 US 407 2008

countering them should form part of the development agenda. Then, if we must achieve the MDGs, there is need to strengthen strategies to deliver these goals including stepping up efforts to address issues of illicit drugs and their adverse effect on the nation's development plan especially with the youths as the most vulnerable targets and victims. This spells doom and serves as impediment to rule of law and sustainable development and drives fragile economies like Nigeria towards irredeemable quagmire. Establishment of counseling and rehabilitation centers for addicts and dependent persons and training of personnel whose works shall revolve around counseling, rehabilitation and reintegration of drug dependent persons into the society and to help them stay off drugs. The authors recommend that employment of youth will help to reduce the level of dependence in drugs. This is because most of the people who are drug dependants are people who are not gainfully employed and as the saying goes: idle mind is the devil's workshop. To make meaningful progress in the implementation of drug laws, adequate funding and training of drug officers and involving men and women of high moral integrity in the job will help to achieve the reduction in drug offences in Nigeria; that will guarantee probity and effectiveness in discharging their duty and reduce the chances or possibility of compromise. Orientation and education of youths = enacting good drug laws and establishing reliable implementation mechanism will go a long way. Adequate intelligence gathering on drugs trafficking and effective monitoring of our borders and ports will serve positively. Employment of persons with strong moral value and integrity is very necessary to foreclose curb the damaging effect of officers compromising their official duties for personal gain. Imposition of death penalty and other harsh punishment should be discouraged except where the crime results in the death of person.