

Decree No. 48

[29th December 1989]

Commencement.

WHEREAS the Federal Military Government

(a) is deeply concerned about the magnitude of and the rising trend in the demand for and traffic in narcotic drugs and psychotropic substances which adversely affect the international image of Nigerians and Nigeria;

(b) recognising the links between illicit traffic in drugs and psychotropic substances and other related organised criminal activities which undermine the legitimate economy and threaten the stability and security of the country;

(c) recognising also that illicit traffic in narcotic drugs and psychotropic substances is an international criminal activity, the suppression of which demands urgent attention and highest priority;

(d) is aware that illicit traffic in narcotic drugs and psychotropic substances generates large financial profits and wealth enabling transnational criminal organisations to penetrate, contaminate and corrupt the structures of governments, legitimate commercial and financial business and society at all levels;

(e) is determined to deprive persons engaged in illicit traffic in narcotic drugs and psychotropic substances of the proceeds of their criminal activities and thereby eliminate their incentives for so doing;

(f) is desirous to eliminate the root causes of the problem of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived therefrom;

(g) is determined to improve its international co-operation in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea, road and air;

(h) recognising that eradication of illicit traffic in narcotic drugs and psychotropic substances should be vigorously pursued by reinforcing and promulgating a comprehensive legislation to supplement international measures already taken towards effective and meaningful eradication of the illicit traffic, misuse and abuse of narcotic drugs and psychotropic substances:

NOW THEREFORE THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows:

PART I ESTABLISHMENT OF THE NATIONAL DRUG LAW ENFORCEMENT AGENCY, ETC.

1. Establishment of the National Drug Law Enforcement Agency.

There is hereby established a body to be known as the National Drug Law Enforcement Agency (hereafter in this Decree referred to as "the Agency").

2. Composition and proceedings, etc.

(1) The Agency shall consist of the following

(a)

a Chairman;

(b)

a representative of the Nigeria Police Force, not below the rank of an Assistant Inspector-General;

(c)

the Director, Military Intelligence;

(d)

the Director of Customs and Excise;

(e)

the Director, State Security Service;

(f)

a representative of the Federal Ministry of Justice not below the rank of Director;

(*g*)

the Director-General, National Intelligence Agency;

(*h*)

a representative each of the Ministries of External Affairs, and Health not below the rank of Director; and

(*i*)

three other persons.

(2) The President, Commander-in-Chief of the Armed Forces shall appoint the Chairman and the members specified in paragraph (*i*) of subsection (1) of this section on the recommendation of the Attorney-General of the Federation.

(3) The Chairman of the Agency shall be the Chief Executive of the Agency and shall be the Accounting Officer of the Agency.

(4) The provisions of Schedule 1 to this Decree shall have effect with respect to the proceedings of the Agency and other matters mentioned therein.

3. Functions of the Agency.

Subject to this Decree and in addition to any other functions expressly conferred on it by other provisions of this Decree, the Agency shall have responsibility for

(*a*)

the enforcement and the due administration of the provisions of this Decree;

(*b*)

the co-ordination of all drug laws and enforcement functions conferred on any person or authority, including Ministers in the Government of the Federation, by any such laws;

(*c*)

adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from drug and drug-related offences or property whose value corresponds to such proceeds;

(*d*)

adoption of 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;

(*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 including making special arrangements with transport owners;

(*f*)

adoption of measures which shall include co-ordinated preventive and repressive action, introduction and maintenance of investigative and control techniques;

(*g*)

adoption of measures to increase the effectiveness of eradication efforts;

(*h*)

the facilitation of rapid exchange of scientific and technical information and the conduct of research geared towards eradication of illicit use of narcotic drugs and psychotropic substances;

(*i*)

taking measures for the early destruction or disposal of the narcotic drugs and psychotropic substances which have been seized, confiscated or forfeited;

(*j*)

facilitation or encouragement of the presence or availability of persons, including persons in custody who consent to assist in investigations or participate in proceedings relating to narcotic drugs and psychotropic substances;

(*k*)

enhancing the effectiveness of law enforcement to suppress illicit traffic in narcotic drugs and psychotropic substances;

(l)

establishing, maintaining and securing communication to facilitate the rapid exchange of information concerning offences and improving international co-operation in the suppression of illicit traffic in narcotic drugs and psychotropic substances by road, sea and air;

(m)

reinforcing and supplementing the measures provided in the Convention on Narcotic Drugs 1961, as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1989 as adopted by the Nigerian domestic law, in order to counter the magnitude and extent of illicit traffic in narcotic drugs and psychotropic substances and its grave consequences;

(n)

taking such measures that may ensure the elimination and prevention of the root causes of the problem of narcotic drugs and psychotropic substances;

(o)

strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international activities of illicit traffic in narcotic drugs and psychotropic substances;

(p)

collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous to those of the Agency concerning, amongst others

(i)

the identities, whereabouts and activities of persons suspected of being involved in offences mentioned in this Decree;

(ii)

the movement of proceeds or property derived from the commission of such offences;

(iii)

the movement of narcotic drugs and psychotropic substances specified in Schedule 2 to this Decree, and instrumentalities used or intended for use in the commission of such offences;

(iv)

the exchange of personnel and other experts;

(v)

the establishment and maintenance of a system for monitoring international dealings in narcotic drugs and psychotropic substances in order to identify suspicious transactions and persons engaged in them;

(q)

taking charge, supervising, controlling, co-ordinating all the responsibilities, functions and activities relating to arrest, investigation, prosecution of all offences connected with or relating to illicit traffic in narcotic drugs and psychotropic substances, notwithstanding any law to the contrary, all drugs units under existing institutions dealing with offenders

or offences connected or relating to illicit traffic in narcotic drugs or psychotropic substances shall relate and be responsible to the Agency in the performance of their duties and functions; and

(r)

strengthening co-operation between the office of the Attorney-General of the Federation, the police force, customs agencies, immigration agencies, welfare officials, health officials and other law enforcement agencies in the eradication of illicit traffic in narcotic drugs and psychotropic substances.

4. Special powers of the Agency to investigate.

(1) The Agency shall have power

(a)

to cause investigations to be conducted as to whether any person has committed an offence under this Decree; and

(b)

with a view to ascertaining whether any person has been involved in offences under this Decree 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.

(2) For the purpose of inquiring into and ascertaining whether an offence under paragraph (b) of subsection (1) of this section has been committed, the Agency may, by notice in writing call upon any person to furnish to it within a time specified in the notice, such information, returns, accounts, books or other documents in custody of such person as the Agency may consider fit and proper within the circumstances.

(3) The Agency shall not exercise the power conferred upon it by paragraph (b) of subsection (1) of this section without first obtaining the approval of the Attorney-General of the Federation.

5. The Secretariats appointment of Secretary and other Staff of the Agency.

(1) There shall be established a Secretariat for the Agency.

(2) There shall be appointed for the Agency a Secretary whose rank shall be equivalent to that of Director-General in the civil service of the Federation and who shall be appointed by the President, Commander-in-Chief of the Armed Forces.

(3) The Secretary shall be the head of the Secretariat of the Agency.

(4) The Secretary shall be responsible for the administration of the Secretariat, keep the books and records of the Agency and shall be subject to the supervision and control of the Chairman and the Agency.

(5) The Agency may, from time to time, appoint such other staff, as it may deem necessary, to assist the Agency in the performance of its functions under this Decree.

(6) The staff of the Agency appointed under subsection (5) of this section shall be appointed upon such terms and conditions of service as the Agency may, after consultation with the Federal Civil Service Commission, determine.

(7) The staff of the Agency shall be public officers as defined in the Constitution of the Federal Republic of Nigeria 1979, as amended.

6. Establishment of special units, etc.

(1) For the effective conduct of the functions of the Agency, there shall be established the following units, that is to say

(a) general and assets investigation unit;

(b) prosecution unit; and

(c) counselling unit.

(2) Notwithstanding the provisions of subsection (1) of this section, the Agency shall have power to set up any technical committees to assist it in the performance of its duties and functions under this Decree.

7. Special duties of the units.

(1) The general and assets investigation unit shall be charged with the responsibility for

(a)

prevention and detection of offences in violation of the provisions of this Decree;

(b)

working in collaboration with the Department of Customs and Excise in monitoring the movement of goods and persons in any customs area, customs stations, customs ports or customs airports and searching cargoes and incoming and outgoing vessels, including pleasure crafts, and fishing vessels, as well as aircrafts and vehicles and when appropriate searching crew members, passengers and their baggages;

(c)

detecting consignments suspected of containing narcotic drugs and psychotropic substances coming into or out of a customs area, customs station, customs port or customs airport;

(*d*)

maintaining surveillance in harbour and dock areas and at airports and border control points;

(*e*)

investigating assets and properties of persons arrested for committing any offence under this Decree;

(*f*)

identifying and tracing proceeds involved in any offence under this Decree and effecting forfeiture of such proceeds; and

(*g*)

dealing with matters connected with extradition and mutual assistance in criminal matters.

(2) The prosecution unit shall be charged with responsibility for

(*a*)

prosecuting offenders under this Decree;

(*b*)

supporting the general and assets investigating 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 forfeited under this Decree;

(*d*)

performing such other legal duties as the Agency may refer to it from time to time.

(3) The counselling unit shall, in collaboration with the Federal Ministry of Health, have responsibility for

(*a*)

campaigns, seminars and workshops aimed at educating the public on the danger of narcotic drugs and psychotropic substances thereby stimulating interest in and awareness about drug related problems;

(*b*)

after care rehabilitation, social reintegration and education of addicts;

(*c*)

the promotion of the welfare of convicts.

(4) There shall be appointed for each of the units a principal officer who shall be known by such designation as the Agency may determine.

8. Training programme.

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 this Decree and such programme shall include

(*a*)

methods used in the detection and suppression of offences under this Decree ;

(*b*)

routes and techniques used by persons involved in offences under this Decree and appropriate counter-measures ;

(*c*)

monitoring of the import and export of narcotic drugs and psychotropic substances ;

(*d*)

detection 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 this Decree ;

(*e*)

methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities ;

(f)

collection of evidence ;

(g)

law enforcement techniques ; and

(h)

dissemination of information about drug laws.

9. Power of the Attorney-General of the Federation to give directives to the Agency.

(1) The Attorney-General of the Federation may, from time to time, give general policy guidelines to the Agency.

(2) Without prejudice to the generality of the provisions of subsection (1) of this section, the Attorney-General of the Federation may give to the Agency directives of a general nature or specific directive relating generally to a particular matter or case, as the case may be.

(3) It shall be the duty of the Agency to comply with any policy guideline or any directive given by the Attorney-General of the Federation pursuant to subsection (1) or (2) of this section.

PART II OFFENCES *A Offences relating to drug abuse or trafficking*

10. Interpretation, etc. of cocaine, heroine, or similar drugs.etc.

Any person who, without lawful authority

(a)

imports, manufactures, produces, processes, plants or grows the drugs popularly known as cocaine, LSD, heroine or, any other similar drugs shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life ; or

(b)

exports, transports or otherwise traffics in the drugs popularly known as cocaine, LSD, heroine or any other similar drugs shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life ;

(c)

sells, buys, exposes or offers for sale or otherwise deals in or with the drugs popularly known as cocaine, LSD, heroine or any other similar drugs shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life ; or

(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 a term not less than fifteen years but not exceeding twenty-five years.

11. Offences in relation to drug abuse and penalties.

(1) Any person who, without lawful authority (the proof of which shall lie on him) commits any of the following offences, that is to say

(a)

engages in the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transportation, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention and its Protocols, or the 1971 Convention and its Protocols or the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1989;

(b)

engages in the cultivation of opium, opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the 1961 Convention;

(c)

has in his possession or engages or purchases any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in paragraph (a) of this subsection;

(d)

engages in the acquisition, possession or use of property knowing at the time of its acquisition, possession or use that such property was derived from any offence referred to in this section ;

(e)

engages in the possession of equipment or material or substance listed in Schedule 2 to this Decree knowing that such equipment, material or substance are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(f)

incites or induces any person by any means whatsoever to commit any of the offences referred to in this section ;

(g)

conspires with, aids, abets, counsels or attempts to commit any of the offences referred to in this section;

(h)

engages in the manufacture, transportation or distribution of equipment, materials or of any substance listed in Schedule 2 to this Decree knowing that such equipment, material or substance are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances ;

(i)

engages in the management, organisation or financing of any of the offences under paragraphs (a) to (e) and (h) of this subsection;

(j)

engages in the conversion or transfer of property knowing that such property is derived from any offence under this subsection;

(k)

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, shall be guilty of an offence under this Decree and subject to the provisions of subsection (3) of this section, shall be liable on conviction to the penalties provided in subsection (2) of this section.

(2) The penalties for offences under subsection (1) of this section shall

(a)

in respect of an offence under paragraphs (a), (b), (d), (e), (h) and (j) thereof, be imprisonment for life;

(b)

in respect of offences under paragraphs (c), (f), (g) and (i) thereof be imprisonment for a term not less than fifteen years and not exceeding twenty five years.

(3) The Tribunal before whom 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 re-integration.

(4) Notwithstanding subsections (2) and (3) of this section, the Tribunal before whom a minor is being 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, aftercare, rehabilitation, social integration of the offender.

12. What constitutes exportation, etc.

(1) A person shall be deemed to have exported a narcotic drug or psychotropic substances under this Decree if he brings to or deposits the narcotic drug or psychotropic substance concerned at anytime at any customs area, customs station, customs airport, customs ports or any other custom point generally.

(2) A person shall be deemed to commit an offence under this Decree if

(a)

he actually does the act which constitutes the offence ; or

(b)

he does or omits to do any act for the purpose of enabling or aiding another person to commit the offence; or

(c)

he aids another person in committing the offence ; or

(d)

he counsels or procures any other person to commit the offence in which case he may himself be charged with committing the offence or with counselling or procuring the commission of the offence.

(3) Any person convicted of counselling or procuring the commission of an offence under this Decree shall be liable to the same punishment as is prescribed under this Decree for the commission of the offence.

B Offences Relating to Laundering of Monetary Instruments

13. Laundering of funds obtained through unlawful activity; penalty and forfeiture.

(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of a specified unlawful activity

(a)

with the intent to promote the carrying on of a specified unlawful activity ; or

(b)

knowing that the transaction is designed in whole or in part

(i)

to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of a specified unlawful activity; or

(ii)

to avoid a lawful transaction under Nigerian law, shall be guilty of an offence under this Decree.

(2) A person guilty of an offence under subsection (1) of this section shall be liable on conviction

(a)

in case of a financial institution or corporate body, to a fine of N2 million; or

(b)

in the case of a Director, Secretary or other functionary of the financial institution or corporate body, to imprisonment for a term not exceeding 25 years.

(3) Whoever transports or attempts to transport a monetary instrument or funds from a place in Nigeria to or through a place outside Nigeria or to a place in Nigeria from or through a place outside Nigeria

(a)

with the intent to promote the carrying a of a specified unlawful activity ; or

(b)

knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part

(i)

to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of a specified unlawful activity; or

(*ii*)

to avoid a lawful transaction under Nigerian law, shall be guilty of an offence under this Decree and liable on conviction to a fine of N 1,000,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for a term not exceeding 25 years or to both such fine and imprisonment.

(4) As used in this section

(*a*)

the term "knowing that the property involved in a financial transaction represents the proceed of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes an offence under this Decree;

(*b*)

the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(*c*)

the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument, or any other payment, transfer, or delivery by, through; or to a financial institution, by whatever means effected;

(*d*)

the term "financial transaction" means

(*i*)

a transaction involving the movement of funds by wire or other means or involving one or more monetary instrument, which in any way or degree affects foreign monetary instrument the licence of such financial institution shall be withdrawn and the institution shall be closed down; or

(*ii*)

a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, foreign commerce in any way or degree ;

(*e*)

the term "monetary instruments" means coin or currency of Nigeria or of any other country, traveller's cheques, personal cheques, bank cheques, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery;

(*f*)

the term "financial institution" means a bank as defined in the Banking Act 1969; 1969 No.1

(*g*)

the term "specified unlawful activity" means

(*i*)

any act or activity constituting an offence under this Decree;

(*ii*)

with respect to a financial transaction occurring in whole or in part in Nigeria, an offence against the laws of a foreign nation involving the manufacture, importation, sale, or distribution of a narcotic drug or psychotropic substance;

(*h*)

the term "proceeds" means any property derived or obtained, directly or indirectly through the commission of an offence under this Decree ;

(*i*)

property" includes assets, monetary instruments and instrumentalities used in the commission of an offence under this Decree.

14. Attempts.

(1) Where a person is charged with any of the offences under this Decree and the evidence establishes an attempt to commit that offence, he may be convicted of having attempted to commit that offence although the attempt is not separately charged and such a person shall be punished as prescribed for the offence under this Decree.

(2) Where a person is charged with an attempt to commit an offence under this Decree, but the evidence establishes the commission of the full offence, the offender shall not be entitled to acquittal but shall be convicted of the offence and punished as provided under this Decree.

15. Offences by bodies corporate.

(1) Where an offence under this Decree which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, where practicable, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where a body corporate is convicted of an offence under this Decree, the Tribunal may order that the body corporate shall thereupon and without any further assurance, but for such order, be wound up and all its assets and properties forfeited to the Federal Military Government.

16. Commercial carrier

(1) It shall be the duty of every commercial carrier to take reason-able precaution to
(a)

ensure that its means of transport are not used in the commission of offences under this Decree ;

(b)

comply with appropriate security measures at points of entry and exit in the Federal Republic of Nigeria and other customs control areas to prevent unauthorised cargo in its means of transportation.

(2) Such precautions as are referred to in subsection (1) of this section shall include

(a)

the training of personnel to identify suspicious consignment or persons ;

(b)

promotion of integrity of their personnel;

(c)

submission of cargo manifests in advance;

(d)

use of tamper-resistant, individually verifiable seals on containers;

(e)

reporting to the Agency at the earliest opportunity all suspicious circumstances relating to drug trafficking.

(3) Any commercial carrier which violates the provisions of subsection (1) of this section shall, in addition to any other penalty provided in any other Act, Decree or enactment, be guilty of an offence.

(4) Where an offence under subsection (3) of this section is committed by a body corporate, every person who at the time of the commission of the offence was a proprietor, director, general manager, secretary or other similar officer, servant or agent of the body corporate (or a person purporting to act in any such capacity) he, as well as the body corporate, shall be deemed to be guilty of the offence and may be proceeded against and liable on conviction to a fine not exceeding N100,000.

17. Jurisdiction, etc.

(1) The Tribunal established under the Special Tribunal (Miscellaneous Offences) Decree 1984, as amended, shall have jurisdiction to try offenders under this Decree.

1984 No.20

(2) The Tribunal shall have power, notwithstanding anything to the contrary in any other enactment, to impose the penalties provided for in this Decree.

(3) The Tribunal shall try and determine proceeding in respect of any offence brought before it under this Decree within three months of the date of commencement of the trial.

(4) In any trial for an offence under this Decree, 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 known sources 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 taken into consideration by the tribunal as corroborating the testimony of any witness in such trial.

(5) In the exercise of its jurisdiction under this Decree or any other Act, Decree or enactment, the Tribunal seized with jurisdiction for the trial of offences under this Decree or any other Tribunal established pursuant to the provisions of any other Decree for the trial of any other offences under such Decree shall not be subject to any order of certiorari, mandamus or prohibition of any High Court or any other court order.

(6) The provisions of subsection (5) of this section shall apply notwithstanding the provisions of the Constitution of the Federal Republic of Nigerian, 1979, as amended wheresoever or any other enactment or law including any inherent power of any High Court or any other court howsoever.

18. Forfeiture after conviction in certain cases.

(1) Any person convicted of an offence under this Decree shall forfeit to the Federal Military Government

(a)

all the assets and properties which may or are the subject of an interim order of the Tribunal after an attachment by the Agency as specified in section 25 of this Decree.

(b)

any asset or property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of such offence not already disclosed in the Assets Declaration Form or not falling under paragraph (a)of this subsection;

(c)

any of the person's property or instrumentalities used in any manner to commit or to facilitate the commission of such offence not already disclosed in the Assets Declaration Form or not falling under paragraph (a) of this subsection.

(2) The Tribunal in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to sections 9 and 10 of this Decree, that the person forfeit to the Federal Military Government all property described in subsection (1) of this section.

(3) In this section "proceeds" means any property derived or obtained, directly or indirectly, through the commission of the offence.

19. Forfeited property.

For the avoidance of doubt and without any further assurance than this Decree, all the properties or a Person convicted of an offence under this Decree and already the subject of an interim order shall be forfeited to the Federal Military Government.

20. Foreign assets.

(1) Where it is established that any convicted person has assets or properties in a foreign country, such assets or properties, subject to any treaty or arrangement with such foreign country, shall be forfeited to the Federal Military Government.

(2) The Agency shall, through the office of the Attorney-General of the Federation, ensure that the forfeited assets or properties are effectively transferred and vested in the Federal Military Government.

21. Forfeiture of passports.

The passport of any person convicted of an offence involving the illegal importation or exportation of any narcotic drug or psychotropic substance shall be forfeited to the Federal Military Government and shall not be returned to that person unless or until the President, Commander-in-Chief of the Armed Forces directs otherwise after the grant of a pardon or on the exercise of the prerogative of mercy under the Constitution of the Federal Republic of Nigeria 1979, as amended.

22. Property subject to forfeiture.

The following property is subject to forfeiture to the Federal Military Government and no other proprietary right shall exist in them

(a)

any property, real or personal, which represents the gross receipts a person obtains directly as a result of the violation of this Decree or which is traceable to such gross receipts;

(b)

any property within Nigeria which represents the proceeds of an offence under the laws of foreign country involving the manufacture, importation, sale, distribution, illicit traffic, abuse or misuse of any narcotic drug or psychotropic substance within whose jurisdiction such offence or activity would be punishable by imprisonment for a term exceeding one year and which would be punishable by imprisonment under this Decree if such act or activity had occurred within Nigeria.

23. Further provisions as to forfeiture of property.

Without prejudice to the provisions of any other law permitting the forfeiture of property, the following shall also be subject to forfeiture under this Decree and no proprietary right shall exist in them

(a)

all narcotic drugs or psychotropic substances which have been manufactured, distributed, dispensed or acquired in any manner in violation of this Decree;

(b)

all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any narcotic drug or psychotropic substance;

(c)

all instrumentalities of conveyance, including aircrafts, vehicles, or vessels Which are used or are intended for use, to transport, or in any manner, to facilitate the transportation, sale, receipt, possession or concealment of substances described in paragraph (a) or (b) of this section, except that

(i)

no means of conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this section unless it shall appear that the owner or other person in charge of such means of conveyances was a consenting party or privy to a violation of this Decree ;

(ii)

no means of conveyance shall be forfeited under this section by reason of any act established by the owner thereof to have been committed by any person other than such owner while such means of conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of Nigeria or any part thereof; an

(iii)

no means of conveyance shall be forfeited under this section to the extent of an interest of an owner, by reason of any act established by that owner to have been committed without the knowledge, consent or wilful connivance of that owner;

(d)

all books, records, and research, including formulae, microfilms, tapes and data used or intended to be used in violation of any provision of this Decree;

(e)

all moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for any narcotic drug or psychotropic substance in violation of this Decree or all proceeds traceable to such an exchange, and all moneys, negotiable instruments and securities used or intended to be used to facilitate any violation of this Decree;

(f)

all real property, including any right, title and interest (including any leasehold interest) in the whole or any piece or parcel of land and any improvements or appurtenances which is used or intended to be used, in any manner or part to commit, or facilitate the commission of, an offence under this Decree.

24. Seizure of property.

(1) Any property subject to forfeiture under this Decree may be seized by the Agency in the following circumstances

(a)

the seizure is incidental to an arrest or search;

(b)

in the case of property liable to forfeiture upon process issued by the Tribunal following application made by the Agency in accordance with the prescribed rules.

(2) Whenever property is seized under any of the provisions of this Decree, the Agency may

(a) place the property under seal;

(b) remove the property to a place designated by the Agency.

(3) Property taken or detained under this section shall be deemed to be in the custody of the Agency, subject only to orders of a Tribunal.

PART III FORFEITURE OF ASSETS OF PERSONS ARRESTED FOR OFFENCES UNDER THIS DECREE

25. Investigation of assets and properties of persons arrested of an offence under this Decree, etc.

Where a person is arrested for an offence under this Decree, 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 Tribunal.

26. Disclosure of assets and properties by arrested person, etc.

(1) Where a person is arrested for committing an offence under this Decree, it shall be obligatory for such person to make a full disclosure of all his assets and properties by completing the Declaration of Assets Form contained in Schedule 3 to this Decree.

(2) The Declaration of Assets Form shall be forwarded to the Agency for full investigation by the general and assets investigation unit of the Agency.

(3) Any person who

(a)

knowingly fails to make full disclosure of his assets and liabilities; or

(b)

knowingly makes a declaration that is false; or

(c)

fails to answer any question;

(d)

fails, neglects or refuses to make a declaration or furnish any information required, in the Assets Declaration Form, shall be guilty of an offence under this Decree and liable on conviction to imprisonment for a term of 10 years.

(3) Subject to the provisions of section 24 of this Decree, whenever the assets and properties of any person arrested under this Decree has been attached the general and assets investigation unit shall apply to the Tribunal for an interim forfeiture order under the provisions of this Decree.

27. Interim forfeiture order.

Where

(a)

the assets or properties of any person arrested for an offence under this Decree has been seized ; or

(b)

any asset or property has been seized by the Agency under this Decree, the Agency shall cause an application to be made to the Tribunal for an interim order forfeiting the property concerned to the Federal Military Government and the Tribunal shall, if satisfied that there is *prima facie* evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Military Government.

28. Final order.

Where an arrested person is convicted of an offence under this Decree, the Agency, or any authorised officer shall apply to the Tribunal for a final order of confiscation and forfeiture of the convicted person's assets and properties already subject to an interim order under this Decree.

29. Final disposal of forfeited property.

(1) A copy of every final order forfeiting the asset and property shall be forwarded to the Agency.

(2) Upon receipt of a final order pursuant to this section the Secretary, to the Agency shall take steps to dispose of the property concerned by sale or otherwise and where the property is sold the proceeds thereof shall be paid into the Consolidated Revenue Fund of the Federation.

(3) Where any part of the property included in a final order is money in a bank account or in the possession of any person, the Agency shall cause a copy of the order to be produced and served on the manager or any person in control of the head office or branch of the bank concerned and that manager or person shall forthwith pay over the money to the Agency without further assurance than this Decree and the Agency shall pay the money received into the Consolidated Revenue Fund of the Federation.

(4) The Attorney-General of the Federation may make rules or regulations for the disposal or sale of any property or assets forfeited pursuant to this Decree.

30. Offences in relation to forfeiture orders.

(1) Any person, who without due authorization by the Agency, deals with, sells or otherwise disposes of any property or asset which is the subject of an attachment. interim order or final order shall be guilty of an offence and liable on conviction imprisonment for a term of five years without the option of a fine.

(2) Any manager or person in control of the head office or branch of a bank who fails to pay over to the Agency upon the production to him of a final order shall be guilty of an offence under this Decree and shall be liable on conviction to imprisonment for a term of not less than one year and not more than three years, without the option of a fine.

31. Consequence of an acquittal in respect of assets and properties.

(1) Where a person is discharged or acquitted by a Tribunal of an offence under this Decree, the Tribunal may make an order of revocation or confirmation as the case may be, of an interim order made pursuant to this Decree whichever order is considered

just, appropriate or reasonable within the circumstances : Provided that property may still be attached where an acquittal is merely given on technical grounds.

(2) Where an interim order is revoked by a Tribunal under subsection (1) of this section, all assets and properties of the person concerned shall be released to him by the Agency.

32. Power to search seize and arrest.

(1) For the purpose of this Decree

(a)

any police officer, customs officer or any member of the armed forces; or

(b)

the Director and any officer of the Agency authorised by regulations in that behalf

(i)

may, without warrant, enter and search any land, building or carrier, including aircraft, vehicle or container or any other instrumentalities whatsoever which he has reason to believe is connected with the commission of an offence under this Decree;

(ii)

may perform, test and take samples of any substances relating to the commission of an offence which are found on the land, building or carrier, including aircraft, vehicle, container or any other instrumentalities whatsoever searched pursuant to paragraph (a) of this subsection;

(iii)

arrest any person whom he has reason to believe has committed an offence under this Decree;

(iv)

seize any item or substance which he has reason to believe has been used in the commission of an offence under this Decree.

(2) A written receipt of the Agency shall be given for any item, substance or thing seized under subsection (1) of this section.

33. Freezing order on banks.

(1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other Act, Decree or enactment, where any person is arrested under this Decree, the Chairman of the Agency and believes that the money in the account of an arrested person is made through illegal dealing in trafficking in narcotic drugs

or psychotropic substances, he may issue, or instruct a bank examiner to issue an order addressed to the manager of the bank where the account is or is believed by him to be or the head office of the bank.

(2) The Chairman of the Agency or bank examiner may be by the order issued under subsection (1) of this section or by any subsequent order direct the bank to supply any information and produce books and documents relating to the account and to stop all outward payments; operations or transactions (including any bill of exchange) in respect of the account of the arrested person.

(3) An order under subsection (1) of this, section shall not be issued or made without prior written approval of the Attorney-General of the Federation and shall be in the form prescribed in Schedule 4 to this Decree.

(4) The manager shall take necessary steps to comply with the requirements of this order made pursuant to subsection (2) of this section.

(5) In this section,

(a)

"bank" has the meaning given to it in section 41 of the Banking Act 1969;

(b)

the reference to an order issued includes a reference to any order, direction or requirement addressed to the manager of a bank or any other officer of bank which

directs or purports to direct the manager or such officer to stop all outward payments, operations or transactions in respect of any account with that bank.

34. Application of Decree to certain persons.

The Agency may seek the authority of the President, Commander-in-Chief of the Armed Forces to conduct investigation on any person whose life-style appears to the Agency to be beyond his source of income and the provisions of this Decree, including declaration of assets and forfeiture of assets and properties, shall apply to such person as if he were a person committing an offence under this Decree.

PART IV APPLICATION OF CERTAIN ENACTMENTS

35. Application of certain enactments.

(1) 1966 no. 87

The offences under Part II of this Decree shall, for the purposes of the Extradition Act 1966, as amended, be regarded as extraditable offences under that Act.

(2) The President, Commander-in-Chief of the Armed Forces may by order published in the *Gazette* extend the provisions of

(a)

1988 No. 5

the Transfer of Convicted Offenders (Enactment and Enforcement). Decree 1988; and

(b)

1988 No. 13

the Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Decree 1988 to apply to any country outside the Commonwealth, and, accordingly the provisions of the enactments mentioned in paragraphs (a) and (b) of this subsection shall have effect in their application to this Decree.

36. Information to be supplied by Nigerian diplomatic mission.

(1) Every head of any Nigerian diplomatic mission abroad shall, at least once in every six months, forward to the Agency information and documents about Nigerians convicted and sentenced for drug offences in their country of accreditation.

(2) The information and documents referred to in subsection (1) of this section are as follows

(a)

the name, date and place of birth of the convicted offender;

(b)

the address (if any) of the convicted offender;

(c)

a certified copy of the judgement;

(d)

a statement of the facts upon which the conviction and sentence were based if not contained in the judgement;

(e)

the nature, duration and date of the commencement of the sentence;

(f)

whenever appropriate any medical or social reports on the convicted offender and any information concerning his medical treatment in the sentencing country and any recommendation for his further treatment.;

(g)

identities and whereabouts of persons suspected of being involved with the convicted offender ;

(h)

information about the proceeds or property derived from the commission of such offence.

PART VMISCELLANEOUS AND SUPPLEMENTAL PROVISIONS

37. - Fund.

(1) The Agency shall establish and maintain a fund from which shall be defrayed all expenditure reasonably incurred by the Agency for the execution of its functions under this Decree.

(2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section, such moneys as may in each year be approved by the Federal Military Government for the purpose of the Agency.

(3) The Agency may accept gift of land, money or other property (whether within or outside Nigeria) upon such terms and conditions, if any, as may be specified by the person or organisation making the gifts provided that the terms and conditions are not contrary to the objectives and functions of the Agency under this Decree.

38. Accounts and audit.

The Agency shall keep proper accounts in a form which conforms with accepted commercial standards of its receipts, payments assets and liabilities and shall submit the accounts annually for auditing by a qualified auditor from the list of auditors supplied by the Auditor-General of the Federation.

39. Annual report.

The Agency shall, not later than 30th September in each year, submit to the National Council of Ministers, a report of its activities during the immediately preceding year and shall include in such report the audited accounts of the Agency.

40. Part-head proceedings.

Any part-heard proceedings pending before any tribunal on the date of the making of this Decree shall be continued and completed as if this Decree had not been made.

41. Obstruction of the Agency or authorised officers.

Any person who

(a)

wilfully obstructs the Agency or any authorised officer of the Agency in the exercise of any of the powers conferred on the Agency by this Decree; or

(b)

fails to comply with any lawful enquiry or requirements made by any authorised officer in accordance with the provisions of this Decree, shall be guilty of an offence under this Decree and shall be liable on conviction to imprisonment for a term not exceeding 5 years or to a fine of N20,000 or to both such imprisonment and fine.

42. Regulations.

The Attorney-General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or powers the Agency under this Decree.

43. Repeal.

Paragraph (k) of subsection (2) of section 3 of the Special Tribunal (Miscellaneous Offences) Decree 1984, as amended, is hereby repealed and consequentially, all the provisions of any amending Decrees relative to the aforesaid paragraph are hereby repealed.

44. Interpretation.

In this Decree, unless the context otherwise requires .

"Agency"

means the National Drug Law Enforcement Agency established by section 1 of this Decree;

"cannabis plant"

means any plant of the genus of *Cannabis*;

"coca bush"

means the plant or any species of the genus of Erythroylos;

"commercial carrier"

means any person or any public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit;

"confiscation"

includes forfeiture or the permanent deprivation of property by order of a Tribunal;

"freezing" or "seizure"

means temporarily prohibiting the transfer, conversion, disposal or movement of property, asset or money or temporarily assuming custody or control of them on the basis of attachment by the Agency;

"narcotic drugs"

means any of the substances, natural or synthetic in Schedule 1 of the single Convention on Narcotic Drugs 1961 and the Convention as amended by the 1972 Protocol Amending the single Convention on Narcotic Drugs as amended in Schedule 2 to this Decree including the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1989;

"opium poppy"

means the plant of the species of Papaver somniferum

" psychotropic substance"

means any substance, natural or synthetic, or any natural materials specified in Schedules I, II, III and IV of the Convention on Drugs or Psychotropic Substances 1971.;

45. Citation.

This Decree may be cited as the National Drug Law Enforcement Agency Decree 1989.

[...]