NDLEA Act and the Principle of Double Jeopardy: A Critical Analysis

Christine O. Ike*

Abstract

Section 22 of the Nigerian National Drugs Law Enforcement Agency Act of Nigeria, 2004 could aptly be described as a vindictive piece of legislation. It seeks to impose a second jail term of 5 years and assets forfeiture on Nigerian citizens(who have served prison terms abroard for importing hard drugs and psychotropic substances into foreign lands) for bringing the name of the country into disrepute. The section offends against the principle of double jeopardy . It is a legislative "overkill". When a Nigerian citizen runs foul of the law in a foreign land and has paid the price for his action, the least the home country can do is to try to rehabilitate and re-integrate the returnee criminal into the society; not clamp him back in jail. A second jail term only serves to breed embittered citizens who become problems to the country. In the light of the above, this paper proposes the review of section 22 of the Act and recommends that the offending section be expunged from the statute book.

1. Introduction

No matter what views one holds about the penal law, its importance to society is unquestionable. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. No where in the entire legal field is more at stake for the community or for the individual. The above words capture graphically the essence of criminal justice, *i.e*. the duty of the state to enact criminal laws and sanctions to punish offenders and protect society and the corresponding need not to inflict cruel and excessive punishment.

For a long time, societies have reacted in diverse ways towards those who violated their laws. The most common societal reaction towards

* LLM (London), Lecturer,Department of Public and Private Law University of Nigeria, Enugu Campus, e-mail: christineike2004@yahoo.com.

law-breakers being punishment. It is the price to be paid for non-conformity to the expected or prescribed standard of society.

An attempt will be made in this article to review the power of the Nigerian state to punish its citizens for crimes committed abroad under the National Drug Law Enforcement (NDLEA) Act[1] against its concomitant duty not to inflict excessive punishment in breach of the principle of double jeopardy.

The article will begin by tracing the origin of the National Law Enforcement (NDLEA) Act; the relevant provision of the Act as it relates to the topic, the sources of the principle of double jeopardy in municipal laws, international laws and conventions and human right treaties. The application of the laws will also be examined. It will conclude with recommendation for amendment of the provisions of the Act or its outright abrogation and a device for challenging the offending provision in the event that they are retained.

2. Origin of the NDLEA Act

Traditionally, states have jurisdiction over offences which occur in their territory or which involve their nationals. It usually does this by means of the criminal law. Through the criminal justice system, the victim or victims of a crime are avenged or compensated for the evil the offender has done to them through a public trial that is done justly. By trying and sentencing offenders, society is protected from further crime.[2] The end of justice is thereby served when the guilty are effectively punished.

Criminal trials in all judicial systems are conducted through state controlled prosecution. By this, the act of keeping the peace, ensuring security and order within society is transferred to the public authority away from private prosecution. This initiative is undertaken by a public institution in the form of either the public prosecutor or the police. When the criminal law of the state is applied to the offence in a formal and institutional procedure, the convicted person is publicly censured for his deviation from the law. By this process, the punishment of the offender is legitimized.[3]

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1 Cap. N30, Laws of the Federation of Nigeria, (LFN), 2004.

2 Christophe J. M. Safferling, *Towards an International Criminal Procedure*, (Oxford: University Press, 2001), p. 17.

3 N. Luhman, *Legitimation durch verfahen* (2nd edn.), (Frankfurt, 1989) p.7, sees in this gaining of legitimacy, the main sociological reason for criminal trials. No translation of this subject was available for this article..

There is no denying that there are people in our society who are born into crime or who have adopted crime as their profession. Therefore, if prosecution and punishment for crimes committed by citizens is the domain of the state, then the Federal Government of Nigeria is well within its right to make laws for all manner of crimes committed by its citizens. Because for far too long, the government and its citizens both at home and in *diaspora* have watched in embarrassment as the image of the country was systematically sullied and battered world-wide by drug traffickers who are arrested and paraded in foreign media. Time and time again this spectacle is replicated in country after country. It's citizens were humiliated at almost all entry points into foreign lands on suspscion of peddling drugs. It is therefore little wonder that the Federal Government of Nigeria in utter exasperation decided to weild the big axe to save the corporate image of the country from further bashing by the enactment of the NDLEA Act.

NDLEA Act was enacted to take effect on December 29, 1989. It is an Act 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; a very noble objective, no doubt, given the high incidence of substance abuse among its citizens and the social and diplomatic consequences and disgrace it has wrought on the nation. The political, social and health policy underlining this Act therefore has never been in doubt. Stemming as it did from the need to curb the menace of hard drugs and its diabolic effect on the physical, mental and moral health of the society where easy money made from trading in hard drugs has blinded people to its dire consequences

3. The Relevant Provisions

For the purposes of this article and for ease of reference, the full text of the relevant provision which calls for attention is hereunder reproduced. Section 22 (1) of the NDLEA Act provides that:

> Any person whose journey originates from Nigeria without being detected of carrying prohibited narcotic drugs or psychotropic substances, but is found to have imported such prohibited narcotic drugs or psychotropic substances into a foreign country, notwithstanding that such a person has been

tried or convicted for any offence of unlawful importation or possession of such narcotic drugs or psychotropic substances in that foreign country, shall be guilty of an offence of exportation of narcotic drugs or psychotropic substances from Nigeria under this section.

(2) any Nigerian citizen found guilty in a foreign country of an offence involving narcotic drugs or psychotropic substances and who thereby brings the name of Nigeria into disrepute shall be guilty of an offence under this section.

(3) any person convicted of an offence under subsection (1) & (2) of this section shall be liable to imprisonment for a term of five years without an option of a fine and his assets and properties shall be liable to forfeiture as provided under the Act.

The noble objective of this law notwithstanding, the very far reaching implication is of serious concern. The general principle is that criminal law and criminal jurisdiction are territorial, confined to acts done in the relevant country. But the government of Nigeria has in its efforts to rebrand itself, teach a valued lesson to its errant citizens, and hold them to account for the heinous crime of drug trafficking, vested its local courts i.e. the Federal High Court[4] with a modified form of "universal jurisdiction" over its citizens anywhere in the world subjected its convicted citizens to a second trial for the same offence in breach of the principle of double jeopardy under subsection (1) of section 22 of the Act, and ran foul of specific Fundamental Human Right Laws.

Also another consequence is that subsection (2) of the same section confers the national courts with jurisdiction outside the country on those responsible for tarnishing the good image of the country irrespective of whatever other forms punishment they may have endured at the forum of trial elsewhere in the world.

4. The Principle of Double Jeopardy

Double jeopardy is the exposure of the same accused person to double punishment for the same offence. It is a procedure that serves to diffuse a possibility of a repeated trial; a guarantee that no one can be tried twice for the same crime.

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[4] The Federal High Court is vested with the exclusive jurisdiction of trying the offences in breach of sections 22(1) 2, &3 of the Act.

The Black's Law Dictionary[5] defines double jeopardy as; a common law and constitutional right of defendant affording protection against the defendant being tried again for the same offence and not against the peril of second punishment. It is also known as former jeopardy. Jeopardy on its own means danger, hazard, peril. It means the danger of conviction and punishment which the defendant in a criminal action incurs when a valid indictment has been found.[6]

5. Sources

The principle of double jeopardy is enshrined in the major human rights treaties: e.g. Article 14 (VII) of the International Covenant on Civil and Political Rights states that:

> No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted accordance with the law and penal code of each country.

The Council of Europe accepted the rights against double jeopardy on November 22, 1984. Article 4 Protocol 7 of the European Commission of Human Rights provides as follows:

> No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same state for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that state. A person who has been finally judged by a contracting party may not be prosecuted by another contracting party for the same offence provided that, where he is sentenced, the sentence has been served or is currently being served or can no longer be carried out under the sentencing laws of the contracting party.[7]

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5 *Black's Law Dictionary*, 6th edn. (St.Paul Minn:West Publishing Co, 1990) p. 491.

6 *Ibid*.

7 *Ibid*. The Schengen agreement is between France, Germany, Belgium, Luxembourg and the Netherlands to remove all border controls between themselves and to exchange information on criminal activities first discussed at the Luxembourg village of Schengen.

In English Law, the prohibition of double jeopardy is a well accepted principle. The constitution of the United States of America also enshrines this principle in the Fifth Amendment: which states that no person shall be subject for the same offence to be put twice in jeopardy of life and limb. Likewise German law knows this as a constitutional principle embodied in Article 103 (III) GG. Article 10 International Criminal Court for Yugoslavia (ICTY) statute, also expressly addresses the issues of double jeopardy. Accordingly by Act 10(1) ICTY statute, a new prosecution for acts constituting serious violations of international humanitarian law under the statute of a national court is barred if there have already been a trial by ICTY. According to the letter of the provision, it is immaterial whether the procedure ended with conviction or an acquittal.

The Nigerian Constitution[8] also clearly provides that:

> No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and is either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

Additionally, the Criminal Procedure Act[9] also provides that:

> Without prejudice to section 171 of this Act, a person charged with an offence (in this section referred to as "the offence charged") shall not be liable to be tried there for if it is shown
> (a) that he has previously been convicted or acquitted of the same offence by a competent court; or
> (b) that he has previously been convicted or acquitted by a competent court on a charge on which he might have been convicted of the offence charged; or
> (c) that he has previously been convicted or acquitted by a competent court for an offence other than the offence charged being an offence of which apart from this section, he might be convicted by virtue of being charged with the offence charged.

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8 Section 36(9) 1999 Constitution of the Federal Republic of Nigeria Cap C 23, (LFN) 2004, hereinafter, 1999 Constitution.

9 Criminal Procedure Act, Cap C41, LFN, 2004.

All of the jurisdictions enumerated above apply the principle of double jeopardy from the moment it is believed that the trial is concluded; that is as soon as the matter is *res judicata.*

In common law jurisdictions, a trial is terminated when the accused is convicted or acquitted while in the civil law jurisdictions, the matter is regarded as settled after the last appeal decision is reached or when the time within which appeal must be lodged has expired.

6. Application of the Principle

For the principle to apply there must be a decision concerning the substantial facts. Any other decision like non-confirmation of an indictment or decision to discontinue proceedings does not affect the principle.

It also applies to persons who are actually indicted. Abettors or any other persons involved in the crime cannot claim double jeopardy. A false legal classification of the facts in issue is not important because this can be corrected on appeal. Therefore a second trial cannot be justified.

Safferling[10] had presented two interpretations of this princple thus:

> The first interpretation of the principle is to the effect that after the first decision, the state must treat the matter concerning the defendant as at an end.In this case the consequences are that no other court can initiate further proceedings . The case was heard, a judgment given, justice is done and the matter is *res judicata* and of no further interest to the prosecuting authorities unless new evidence emerges. In the case of new evidences when the interest of the prosecuting authorites is reignited, national states usually have exceptions and have ways of resuming the trial, in accordance with human rights treaties. He argues that in an international setting this approach leads to direct conflict with state sovereinty because traditionally states have

[10] Safferling, above note 2 at p.323.

jurisdiction over offences which occured in their territory[11] or which involve its nationals.[12]

States are obliged to protect their nationals as individuals and as part of society. States do this by means of criminal law. If two states have an interest in prosecuting a person, one for example because the offence occurred in its territory, the other because the offender is a national, they will both want to put the suspect to trial. If the rational for the right of a state to prosecute nationals who committed a criminal offences abroad is seen in the fact the other state did not make use of its righ to prosecute by virtue of the principle of territoriality, a prosecution after conviction or acquittal would be logically excluded. This is only true for the special case of the principle of personality in the passive sense.In other cses of conflicting interests the trial is considered to be the medium for estabishing peace under the law. If the suspect has been convicted or acquitted in one state and the other arrests him this state has two posibilities: either it hands the suspect over for new prosecution to its own authorities or it accepts the judgement of the state in which the trial wa held. In this case the state would have to utilise the foreign judgement for its own interior peace under the law. Most States are reluctant to do this and do not have the necessary trust in the judiciary of the other state.

Safferling continues the arguement by stating that the other way of applying the prohibition of double jeopardy would be to take sentences imposed by other states into account. This could only be done during the stage of enforcement,The state could hold a new trial and convict and sentence in the usual way, but the convicted person would have to suffer imprisonment to the extent that the sentence exceeds what he has already served in the firt state. The United Kingdom has applied this form of the principle in *R v Aughet*.[13] He further argues that he is not persuaded by this form of application having regard to the theory of criminal law. He argues that failure to give credit credit for a sentence already served in a foreign state

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11 Principle of territoriality. This principle is certainly a main pillar of modern international criminal law, though it has roots in English and Continental law.

12 Principle of personality. The idea of connecting jurisdictions to the person is of Germanic origin. It is nowadays part of almost every legal system.

13 [1918] 118 L.T. 658 C.C.A.

conflicts with the generic justification of punishment.The justification for punishment are more of less the same in every legal system. In general, the rational for criminal law is built on three pillars: special and general prevention and just desert. The prevailing view among scholars and the view of the legislator is that offenders are punished for a mixture of of utilitarian and repressive motives . In the functional sense, the state needs to establish peace under the law, that is promote a feeling of truth and reliability as well general deterence among itss nationals. These reasons nay make it necessary to hold a new trial. Through a new trial a state can stigmatise criminal offenders and spread a deterent effect among its citizens. It may be justifiable to hold a second trial specifically to censure the guilty again . From a retributive point of view, just deserts demands only as much sentence as deserved. It may well be that two states have diverging ideas of how much is justly deserved. Nevertheless there is no reason why what is deserved should be the sum if both ideas. It must necessarily be no more than the higher sentence.

Sometimes some states by virtue of the principle known as "principle of personality" in its active sense[14] justifies the punishing of their own nationals for committing crimes abroad. But the argument is that this principle of imposing another punishment on its citizens who commit crimes abroad when the other state has already made use of its right to prosecute by virtue of the principle of territoriality, runs against the principle of double jeopardy. The best the subject state should do for international harmony if it finds itself in this bind is to accept the judgment of the state in which the trial was held and utilize the foreign judgment for its own interior peace under the law. After all, there must be trust in the judiciary of the other state. This is the position that obtains in the Implementation Agreement of the Schengen Treaty where any further prosecution is prohibited whenever there has been a decision that terminates the proceedings according to the national law of a member state.

7. Double jeopardy as a human rights component

Protection against double jeopardy is not only a basic feature of our legal system, it is also a feature of basic human rights found in the International Convention on Civil and Political Rights, the 1999

[14] Linked to the principle of sovereinty this has also been introduced into English and related legal systems.

Nigerian Constitution and the African Charter on Human and Peoples Rights.

The African Charter on Human Rights and Peoples Right is an international treaty voluntarily entered into by Nigeria as a sovereign nation alongside other African countries desirous of protecting fundamental human rights in their respective domains.

It has its certain obligations and privileges to treaty members. Nigeria has even gone further in its quest for protection of the fundamental right of her citizens and other law abiding persons in its territory, by incorporating this Charter into our domestic law by virtue of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.[15]

When an international treaty entered into by Nigeria is a enacted into law by the National Assembly, as was the case with the African Charter on Human and People Rights which is incorporated into our domestic law, it becomes binding on both the Nigerian citizens, and government; and our courts must give effect to it like all other laws falling within the judicial powers of the courts. Bearing in mind the above observation, the African Charters on Human and People's Right, having been passed into our municipal law, our domestic courts certainty have the jurisdiction to construe and apply the treaty. It follows then that anyone who felt that his rights as guaranteed and protected by the charter have been violated, could resort to its provisions to obtain redress in our domestic courts.[16]

The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act is a statute with international flavour. Being so, if there is a conflict between it and another statute, its provision will prevail against those of that other statutes because it is presumed that the legislature does not intend to breach international obligation. This statute therefore possesses more force of law than any other domestic law. Nigeria has voluntarily surrendered its sovereignty in this respect. The assumption of voluntary surrender of a state's sovereignty by a state party to a treaty within limits is well recognized in international law.

Consequently, it is an exception rather than the rule for a state party to a treaty to contract out of it and defeat the legitimate

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15 Africa Charter on Human and Peoples Right (Ratification and Enforcement Act) Cap 10, LFN, 2004.

16 See *Abacha v Fawehinmi* [2000] 6 NWLR (Pt. 660) 228 at p. 257 per Ejiwuumi J.S.C.

operation of a treaty to which it is a signatory by derogating from the treaty through passing a municipal law which is inconsistent with the terms of the treaty. This is without prejudice to its right to withdraw its involvement in the treaty by enacting inconsistent legislations or by repealing or amending such previous commitments. But until such is done, Nigeria cannot plead any domestic law to defeat or undermine its international legal obligation. Specifically, the Vienna Convention on the Law of the Treaties provides in Article 27, that a party may not invoke the provisions of its internal laws as justification for its failure to perform a treaty. Nigerian courts are therefore bound to implement and enforce the provisions of the treaty for as Uwaifo J.S.C once said:

> It seems to me that where we have a treaty like the African Charter on Human and People's Right and similar treaties applicable to Nigeria, we must be prepared to stand on the side of civilized societies the world over in the way we consider and apply them, particularly when we have adopted them as part of our law.[17]

It is significant that the provision against double prosecution for the same offence is embodied in section 36(9) of the 1999 Constitution. Chapter IV of the Constitution deals exclusively with Fundamental Rights issues. These Rights are inherent in man because they are part of man. They are claimed to be inalienable principles that are to be respected by all state authorities. They are meant to be meta-positive rights unchangeable by government. They are described as a blueprint for constitutions; a model of relations between government and citizens covering all important aspects of social, political, economic and legal life.[18] There can be no derogation from these rights under any circumstance.

As Niki Tobi JSC said in *Federal Republic of Nigeria v Ifegwu*:[19]

> If a hierarchical order of our laws is drawn, fundamental rights will not only take a pride of place but the first place. Accordingly neither the court of law nor tribunals have the

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17 *Ibid,* pp. 342-343

18 Fox in S. Hashmi, *State sovereignty* (University Park, Pa., 1997) p. 105 at 126.

19 (2003) F.W.L.R. (Pt. 167)p.703 at pp. 778-779.

> right to encroach on the rights of the individual in the judicial process… such power is not available to them.

Individuals are therefore assured of these rights which they can seek to protect from being violated, and if violated to seek appropriate remedies if the case is established and enforced. A fundamental right is a right which stands above the ordinary laws of the land and which infact is antecedent to the political society itself. It is a primary condition to a civilized existence. The 1960 Nigerian Independence Constitution and subsequent constitutions have these rights entrenched so that they could be immutable to the extent of non-immutability of the constitution itself.

It is essential, if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Therefore, in every human right action, the courts are enjoined to constantly and conscientiously give effect to the overriding directives at every stage of every human right action. These overriding directives are the guiding principles and major premises of the Fundamental Rights (Enforcement Procedure Rules) 2008[20]. They include but are not restricted to the following:

(a) The Constitution, especially Chapter IV, as well as the African Charters, must be expansively and purposively interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protection intended by them.

(b) …..

(c) For the purpose of advancing but never for the purposes of restricting the applicant's rights and freedoms, the courts must respect the decisions of municipal, regional and *international tribunals* citied to it or brought to its attention or of which the court is aware.[21]

In litigating human rights cases, Nigerian courts are enjoined to pursue the speedy and efficient enforcement and realization of human rights. They must not under any circumstances allow procedural formulae or acid legalism to hamper, hinder, impede, inhibit, obstruct or stall human rights enforcement or advancement.

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20 Fundamental Rights (Enforcement Procedure) Rules, 2008 of the Federal Republic of Nigeria.

21 Emphasizes supplied.

Human rights suits take precedence and priority over all other business of the court. All human rights cases are to be treated as an emergency. A breach of any fundamental right guaranteed in the constitution in any trial nullifies the trial and any action take on them is a nullity.

It is not in doubt therefore that the Federal Government of Nigeria accords serious priority and importance to human rights issues inclusive of the rights under section 36(9) of the 1990 constitution.

The Constitution is the *Grundnorm* and the fundamental law of the land. All other legislations in the land take their hierarchy from the provisions of the constitution. By the provisions of the constitution, the laws made by the National Assembly come next to the constitution… By virtue of section III of the 1999 Constitution, the provisions of the constitution take precedence over any law enacted by the National Assembly even through the National Assembly has the power to amend the constitution[22].

A right conferred by the constitution cannot be taken away by any other legislation or statutory provision except by the constitution itself. Any other law purportedly made, abrogating a right conferred by the constitution will be void to the extent of its inconsistency.[23]

It is therefore, a paradox that a country that places so many premiums on fundamental human rights should have a provision of law that does violence to the principle that the same constitution seeks to protect. That is the tragedy of section 22 of the NDLEA Act. It is a law that is inconsistent with the constitution of the Federal Republic of Nigeria. It is an obnoxious piece of legislation. The state cannot approbate and reprobate. Any prosecution under these sections is an abuse of human right quite apart from the fact that it is a breach of the principle of double jeopardy.

Every instance of repeated trial sets two jurisdictions in conflict with each other. But since Nigeria cannot afford to be immuned from the progressive movements manifesting themselves in international agreements, treaties, resolutions, protocols and other similar understanding as well as in the respectable and respected voices of our other learned brethren in the performance of their adjudicating roles in other jurisdictions, it is suggested that the way

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22 *Orhiunn v F. R. N*. [2005] 1 NWLR (Pt. 906) p. 46 ratio 7.

23 *Osuagwu v Onyekigbo* [2005] 16 NWLR (Pt. 950) p. 80 at 85 ratio 5.

out for Nigeria is to recognize and accept sentences already served in a foreign state in these crimes. A second trial for the same offence smacks of vindictiveness and conflicts with the generic justification of punishment.

As has been stated before in this paper,if the rationale for the right of a state to prosecute its nationals who committed criminal offences abroad is seen in the fact that the other state did not make use of its right to prosecute by virtue of the principle of territoriality a prosecution after a conviction or acquittal would be logically excluded.

Therefore as long as conditions of impartiality, independence and effective means of adjudication were guaranteed in the proceedings of foreign courts, Nigeria should accept the verdict and apply it for its own internal peace and security. There must be acceptance and co-operation between nations.

8. Conclusion

Section 11(b) of the NDLEA Act (*supra*) prescribes adequate punishment for offenders caught exporting hard drugs at the port of exit. What happens at the port of entry to other states should be their concern. Although it is arguable that there is no likelihood of a trial brought under subsection (2) of section 22 of the Act in Nigerian courts being in breach of the principle of double jeopardy in the sense that the offence of "bringing the name of Nigeria into disrepute" is unknown to foreign jurisdiction. Any trial under this provision cannot escape the taint of double jeopardy crime because the crime under subsection (2) is an incidence of the crime provided for under subsection (1) for which the accused must have suffered jeopardy because the two crimes have the same ingredients. Any jeopardy suffered under subsection (1) should automatically be a bar for any other trial under sub-section (2). It is therefore submitted that the punishment endured in the first time crime should suffice for the second crime.

Section 26 of the NDLEA Act confers exclusive jurisdiction on the Federal High Court to try offences under this Act and to impose appropriate penalties. It is respectfully suggested that any prosecution under the section in reference should be challenged by invoking the special provisions of section181 of the Criminal Procedure Act (*supra*) which provides that:

> Without prejudice to section 171 of this Act, a person charged with an offence (in this section referred to as "the offence charged" shall not be liable to be tried therefore if it is shown.
> (a) that he has previously been convicted or acquitted of the same offence by a competent court; or
> (b) that he has previously been convicted or acquitted by a competent court on a charge on which he might have been convicted of the offence charged: or
> (c) that he has previously been convicted or acquitted by a competent court of an offence other than the offence charged being an offence of which apart from this section, he might be convicted by being charged with the offence.

Also an accused person can under section 221 of the Criminal Procedure Act *(supra)* raise the special pleas of *Autrefois acquit* or *Autrefois convict* as the case may be in the following terms:

> Any accused person against whom a charge or information is filed may plead;
> (a) that by virtue of section 181 of this Act he is not liable to be tried for the offence with which he is charged.

These defences of "previous conviction" and "previous acquittal" all come under the generic name of double jeopardy, and should be raised timeously as a preliminary objection. This is to enable an accused person who has been tried, convicted or acquitted for an offence and who may subsequently be charged for the same offence to regain his freedom by raising the plea.

9. Recommendation

Sentencing records from the NDLEA Head Office in Lagos for the year 1996 reveal that deportees receive terms of imprisonment ranging from 1-3 years on average[24]. In other words, there has been an active enforcement of this law. This has led not only to further congest our courts and meager prison facilities but also further increase the work load of the judges, a problem the country can do without.

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[24] These figures were obtained from NDLEA Head Office Lagos.The figure was supplied for this paper in 2009.

It is therefore recommended that the provision of section 22 NDLEA Act be expunged from the statute book for infringing on the fundamental rights of convicts, being inconsistent with the constitution and in breach of the principle of double jeopardy.

Generally, there is a presumption that a statute or an Act of parliament will not be interpreted so as to violate a rule of international law. In other words, the courts will not construe a statute so as to bring it in conflict with international law. But in the event that a convicted deportee is charged under this section, it is advised that the trial be challenged in limine. At the preliminary stage of his arraignment, the special pleas provided by the Criminal Procedure Act should be raised. This objection should be upheld by the court as sufficient to bar the second trial.

Nigeria should not allow national pride and the quest for international prestige to undermine the rights of its citizens criminals or not. There is no human being that does not have some value. National prestige is no justification for human right abuse. It is also the duty of the courts to uphold rights guaranteed by the constitution. Judging from the wording of the provision of section 36(9) of the 1999 Constitution, there is nothing to show that the provision is to apply territorially. There are no words to that effect. Therefore a new trial after the foreign trial is definitely a breach of the principle of double jeopardy.