

## THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) ACT, 1994

### No. 4 of 1994

*Date of Assent: 8th July, 1994*

*Date of Commencement: By Notice*

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FIRST SCHEDULE—List of Narcotic Drugs.

SECOND SCHEDULE—List of Psychotropic Substances.

THIRD SCHEDULE—Prohibited Plants.

**An Act of Parliament to make provision with respect to the control of the possession of, and trafficking in, narcotic drugs and psychotropic substances and cultivation of certain plants; to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances and for connected purposes**

ENACTED by the Parliament of Kenya as follows:—

#### **PART I—PRELIMINARY**

##### **1. Short title and commencement.**

This Act may be cited as the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions of this Act.

##### **2. Interpretation**

(1) In this Act, unless the context otherwise requires—

"addict"  
means a person addicted to any narcotic drug or psychotropic substance;

"bank"  
means a bank, financial institution or mortgage finance company as defined in section 2 of the Banking Act and includes the Central Bank of Kenya;

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"cannabis"  
means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by tops) from which the resin has not been extracted, by whatever name they may be designated;

"cannabis oil"  
means any liquid containing any quantity however small of tetrahydro-cannabinol;

"cannabis plant"  
means any plant of the genus cannabis by whatever name called and includes any part of that plant;

"cannabis resin"  
means the separated resin, whether crude or purified, obtained from cannabis but does not include cannabis oil;

"charge"  
includes a lien, hypothecation, pledge and other security on property or created to secure the payment of a debt or performance of an obligation;

"coca bush"  
means the plant of any species of the genus *erythroxylon* from which cocaine can be extracted;

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"coca leaves"  
means the leaves of the coca bush from which cocaine can be extracted either directly or by chemical transformation;

"Commissioner"  
means the Commissioner of Customs and Excise;

"conveyance"  
means a conveyance of any description used for the carriage of persons or goods and includes any aircraft, vehicle or vessel;

"court"  
means a court of competent jurisdiction;

"cultivate"  
, in relation to any plant, includes growing the plant, sowing or scattering the seed produced by the plant or any part thereof, nurturing or tending the plant or harvesting the flowers, fruits, leaves or seeds or the whole or any part of the plant;

"dentist"  
means a person registered as a dentist under the Medical Practitioners and Dentists Act;

"export"  
means the taking or conveying, or causing to be taken or conveyed, out of Kenya;

"illicit traffic"  
, in relation to narcotic drugs and psychotropic substances, means—

(a) cultivating any coca bush or gathering any portion of a coca plant;

(b) cultivating the opium poppy or any cannabis plant;

(c) engaging in the conveyance production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, importation, exportation or transshipment of narcotic drugs or psychotropic substances; or

(d) handling or letting out of any premises for the carrying on of any of the activities referred to in paragraphs (a) to (c);

other than as permitted under this Act or any regulations made, or any conditions of any licence, issued thereunder and includes—

(iii) harbouring persons engaged in any of those activities; means—

(ii) abetting or conspiring in the furtherance of, or in support of doing any of, those activities; and

(i) financing, directly or indirectly, any of those activities;

"international convention"  
(a) the Single Convention on Narcotic Drugs, 1954 adopted by the United Nations Conference at New York in March, 1954;

(b) the Protocol, amending the Convention mentioned in paragraph (a), adopted by the United Nations Conference at Geneva in March, 1955;

(c) the Convention on Psychotropic Substances, 1971 adopted by the United Nations Conference at Vienna in February, 1971;

(d) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted at Vienna on 19th December, 1988; and

(e) any other international convention or protocol or any other instrument amending an international convention relating to narcotic drugs or psychotropic substances which may be ratified or acceded to by Kenya after the commencement of this Act;

"manufacture"  
, in relation to narcotic drugs or psychotropic substances, includes—

(a) all processes other than production, by which such drugs or substances may be obtained;

(b) refining of such drugs or substances; or

(c) making of preparations (otherwise than in a pharmacy on a prescription) with or containing such drugs or substances;

"medicinal opium"  
means opium which has undergone the processes necessary to adapt it for medicinal use;

"medical practitioner"  
means a person registered under the Medical Practitioners and Dentists Act as a medical practitioner;

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"narcotic drug"  
means any substance specified in the First Schedule or anything that contains any substance specified in that Schedule;

"opium"  
includes raw opium, powdered opium, and opium wholly or partially prepared for any use or purpose, whatever its content of morphine may be;

"opium poppy" means—

(a) the plant of the species *papaver somniferum*; and

(b) the plant of any other species of *papaver* from which opium or any *pherianthrene* alkaloid can be extracted and which the Minister may, by notice in the Gazette, declare to be opium poppy for the purposes of this Act;

"poppy straw"  
means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered;

"premises"  
includes any land, building or other place;

"preparation"  
, in relation to a narcotic drug or psychotropic substance, means any one or more of such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more of such drugs or substances;

"proceeds"

, in relation to an act or activity, means property wholly or partly derived or obtained directly or indirectly from that act or activity;

"produce"

, where the reference is to producing a narcotic drug or psychotropic substance, means producing it by manufacture, cultivation or any other method and "production" shall be construed accordingly;

"prohibited plant"

means any plant specified in the Third Schedule;

"property"

means any movable or immovable property, and includes—

(a) any right, interest, title, claim, chose in action, power, privilege, whether present or future and whether vested or contingent, in relation to any property, or which is otherwise of value;

(b) any transfer executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the transfer is the proprietor or possessed of or wherein he is entitled to a contingent right, either for his whole interest or for any less interest;

(c) any monetary instrument;

(d) any other instrument or securities; and

(e) any other tangible or intangible property;

"psychotropic substance"

means any substance specified in the Second Schedule or anything that contains any substance specified in that Schedule;

"registered pharmacist"

means a person who is registered as a pharmacist under the Pharmacy and Poisons Act;

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"trafficking"

means the importation, exportation, manufacture, buying, sale, giving, supplying, storing, administering, conveyance, delivery or distribution by any person of a narcotic drug or psychotropic substance or any substance represented or held out by such person to be a narcotic drug or psychotropic substance or making of any offer in respect thereof, but does not include—

(a) the importation or exportation of any narcotic drug or psychotropic substance or the making of any offer in respect thereof by or on behalf of any person who holds a licence therefor under this Act in accordance with the licence;

(b) the manufacturing, buying, sale, giving, supplying, administering, conveying, delivery or distribution of any narcotic drug or psychotropic substance or the making of any offer in respect thereof, by or on behalf of any person who has a licence therefor under this Act in accordance with the licence; or

(c) the selling or supplying or administering for medicinal purposes, and in accordance with the provisions of this Act, of any narcotic drug or psychotropic substance or the making of any offer in respect thereof, by a medical practitioner or veterinary surgeon or dentist or by any other person qualified to do so on the instructions of the medical practitioner or veterinary surgeon or dentist; or

(d) the selling or supplying in accordance with the provisions of this Act, of any narcotic drugs or psychotropic substances by a registered pharmacist;

"veterinary surgeon"

means a veterinary surgeon licensed under the Veterinary Surgeons Act to practice veterinary surgery and medicine.

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## **PART II —PROHIBITION OF POSSESSION OF, AND TRAFFICKING IN, NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AND CULTIVATION OF CERTAIN PLANTS**

### **3. Penalty for possession of narcotic drugs, etc.**

(1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

(a)

in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and

in every other case to imprisonment for twenty years; and

(b)

in respect of a narcotic drug or psychotropic substance, other than cannabis, where the person satisfies the court that the narcotic drug or psychotropic substance was intended solely for his own consumption, to imprisonment for twenty years and in every other case to a fine of not less than one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, or to imprisonment for life or to both such fine and imprisonment.

(3) Subsection (1) shall not apply to—

1. a person who has possession of the narcotic drug or psychotropic substance under a licence issued pursuant to section 16 permitting him to have possession of the narcotic drug or psychotropic substance; or
2. a medical practitioner, dentist, veterinary surgeon or registered pharmacist who is in possession of a narcotic drug or psychotropic substance for any medical purposes; or
3. a person who possesses the narcotic drug or psychotropic substance for medical purposes from, or pursuant to a prescription of, a medical practitioner, dentist or veterinary surgeon; or
4. a person authorized under the regulations to be in possession of the narcotic drug or psychotropic substance.

### **4. Penalty for trafficking in narcotic drugs, etc.**

Any person who trafficks in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of

an offence and liable—

( a )

in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or

( b )

in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years.

## 5. Penalty for narcotic drugs, etc. connected to other acts

(1) Subject to this Act, any person who—

1. smokes, inhales, sniffs or otherwise uses any narcotic drug or psychotropic substance; or
2. without lawful and reasonable excuse, is found in any house, room or place to which persons resort for the purpose of smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or
3. being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of—
  1. the preparation of opium for smoking or sale, or the smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or
  2. the manufacture, production, sale or distribution of any narcotic drug or psychotropic substance in contravention of this Act; or
4. has in his possession any pipe or other utensil for use in connection with the smoking, inhaling or sniffing or otherwise using of opium, cannabis, heroin or cocaine or any utensil used in connection with the preparation of opium or any other narcotic drug or psychotropic substance for smoking,

shall be guilty of an offence and liable to a fine of two hundred and fifty thousand shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(2) Any person who, knowing or having reason to believe that a parcel, package, container or other thing contains any narcotic drug or psychotropic substance, handles the parcel, package, container or other thing, shall, except where such handling is by a public officer in the course of his official duties or a registered pharmacist, be guilty of an offence and liable to a fine of one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) Any person who commits any offence referred to in subsection (2) in relation to any narcotic drug or psychotropic substance with a view to aiding, abetting or procuring the trafficking in the narcotic drug or psychotropic substance shall be liable to the penalty prescribed by section 4.

## 6. Penalty for cultivation of certain plants.

Any person who—

1. cultivates any prohibited plant; or
2. being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of the cultivation, gathering or production of any prohibited plant,

shall be guilty of an offence and liable to a fine of two hundred and fifty thousand shillings or three times the market value of the prohibited plant, whichever is the greater, or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.

## 7. Forfeiture of land used for cultivation of prohibited plants.

(1) Where a person is convicted of an offence under section 6 with reference to the cultivation of the prohibited plant on any land, not being Government land, and that person was at the time of the commission of the offence—

( a )

the owner of the land on which the prohibited plant was cultivated; or

( b )

the holder of a lease, licence, permit or any other similar right in the land and he has carried on the cultivation of the prohibited plant with the consent, co-operation or assistance of the owner of the land,

then, the court convicting him shall, in addition to the penalty provided for that offence in section 6, order the land to be forfeited to the Government.

(2) Where a person is convicted of any offence under section 6 with reference to the cultivation of any prohibited plant on any land, not being Government land, and—

( a )

such person was, at the time of the commission of the offence, the holder of a lease, licence, permit or any other similar right in the land on which the prohibited plant was cultivated; and

( b )

the cultivation of the prohibited plant was carried on without the consent, co-operation or assistance of the owner of the land,

then, the court convicting him shall, in addition to the penalty provided for that offence in section 6, order that the lease, licence, permit or any other right in the land shall stand terminated forthwith and thereupon all the interest in the land of the person so convicted shall revert to the owner of the land, who shall, subject to the other provisions of this Act, be entitled to enforce the order as if it were an order for possession made in his favour by a tribunal under the Rent Restriction Act.

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Provided that the person so convicted shall not be entitled either to remove any prohibited plant from the land or to receive any sum by way of compensation for or otherwise in relation to the value of any such plant.

(3) Where a person is convicted of an offence under section 6, with reference to the cultivation of any prohibited plant on any Government land, and such person is the holder of a lease, licence, permit or any other similar right in the land, then, subject to subsection (4), the court convicting him shall, in addition to the penalty provided for that offence in section 6, order the lease, licence, permit or any other right in the land of the person so convicted shall revert to the Government.

(4) Where under this section—

( a )

any land, is forfeited to the Government, the holder of any mortgage or charge on such land, so forfeited shall, where such mortgage or charge was created *bona fide* and for valuable consideration, be entitled, notwithstanding such forfeiture, to enforce the mortgage or charge against the land so forfeited; or

( b )

any lease is forfeited to the Government or stands terminated, the holder of any mortgage or charge on the leasehold right shall, where such mortgage or charge was created *bona fide* and for valuable consideration be entitled, notwithstanding such forfeiture or termination, to enforce the mortgage or charge against the land to the extent of the value of the leasehold right on the date of the creation of the mortgage or charge:

Provided that this subsection shall not apply in the case of the holder of any mortgage or charge where he was concerned in, or was privy to, the commission of the offence of which the person referred to in section 6 was convicted and as a result of which conviction the land is forfeited to the Government or, as the case may be, the lease is forfeited to the Government or stands terminated.

## 8. Owner of land to inform police officer, etc.

For the purposes of sections 7 and 9—

( a )

where any person, having any interest in any land, and knowing that any prohibited plant is being cultivated on that land or that the land is being prepared for the purpose of cultivating any prohibited plant, does not promptly inform the officer in charge of the police station nearest either to the land on which the prohibited plant is being cultivated or to the ordinary place of residence or business of such person of that fact, the burden of proving that the person did not consent to, co-operate with or assist in the cultivation of the prohibited plant on that land shall be on that person;

( b )

any reference to cultivation of any plant shall be deemed to include a reference to all activities relating to the cultivation of that plant and harvesting or gathering of the plant or, any part thereof; and

( c )

any reference to the owner, or the holder of any lease, licence, grant, permit or other right in any land shall be deemed, where the land, or the lease, licence, permit or other right, is held by any person jointly or severally with any other person or persons, to be a reference to each other of such persons.

### **9. Publication of notice.**

(1) As soon as may be after the conviction of any person under section 6 and before the court makes any order under section 7 the court convicting him shall publish in a newspaper circulating in Kenya and in the Gazette a notice stating—

1. the particulars of the person convicted;
2. the particulars of the land on which the prohibited plant was being cultivated;
3. other relevant particulars relating to the offence;
4. the date fixed for the hearing of an application for an order under section 7;
5. the name and address and the nature of the rights of every person who, according to information available to the court, is the owner or is the intermediate lessee of or has any other right in the land or is in possession of the land at the time of the conviction of the person; and
6. such other particulars as may be prescribed by regulations or, subject to such regulations, by rules of court.

(2) The notice referred to in subsection (1) shall be served on all persons who are known to the court, at the time of the conviction of the person under section 6, as being the owners, or as having any interest in, or as being in possession of, the land in respect of which an order is proposed to be made under section 7, and every such person shall be given a reasonable opportunity of being heard before the order is made.

### **10. Notice where owner of land is holder of a lease.**

(1) Where the person convicted under section 6 and referred to in section 7 is the holder of a lease, licence, permit or any other right in the land granted by an intermediate lessee and the cultivation of the prohibited plant was carried on by that person without the consent, co-operation or assistance of the intermediate lessee, the intermediate lessee may, before an order of forfeiture is made under any of those provisions, apply to the court convicting the person before the date for hearing specified in the notice under section 9 praying that, instead of the land being forfeited to the Government or reverting to the owner of the land, as the case may be, the intermediate lessee may be allowed to be in possession of the land on the terms of the lease in his favour.

(2) If the court is satisfied of the facts mentioned in subsection (1) in relation to the applicant, and subject to subsection (3), the court may allow the application and thereupon all the interests in the land of the person so convicted shall revert to the intermediate lessee, instead of being forfeited to the Government or reverting to the owner of the land, as the case may be, and the intermediate lessee shall be entitled to enforce the order in the same manner as the owner of the land may enforce an order under section 7:

Provided that the person so convicted shall not be entitled either to remove any prohibited plant from the land or to receive any sum by way of compensation for or otherwise in relation to the value of any such plant.

(3) Where there are more intermediate lessees than one, an application under subsection (1) may be made by any of them and the court convicting any person may allow the application of the intermediate lessee who—

( a )

has not consented to, co-operated with or assisted in the cultivation of the prohibited plant by the convicted person; and

( b )

is among the intermediate lessees who have not so consented, co-operated, or assisted, the intermediate lessee nearest to the convicted person having regard to the order in which the sub-leases were executed.



(4) Upon the making of an order under section 7 the Commissioner of Lands or the Chief Land Registrar, as the case may be, or any officer nominated by him in that behalf shall, with such assistance as, in his opinion, is required or expedient, take possession of the land described in the order for and on behalf of the Government and for that purpose may, if need be, remove therefrom any person refusing to vacate such land and use such force as may be reasonable for that purpose.

(5) Where an order is made under section 7 or subsection (1) forfeiting any land or reverting any land to the owner or an intermediate lessee of the land, the order shall be treated for all purposes as if it were a transfer or other document effecting a transfer of immovable property or any interest therein and the Commissioner of Lands or Chief Land Registrar shall, on the production to him of the original order, take due notice thereof and shall make such annotations on the records as may be necessary.

#### **11. Power of entry in respect of Government land.**

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(1) Without prejudice to any other provision of this Act in relation to the power to enter or search, where the Commissioner of Lands or any officer authorized by him, any forest officer appointed under the Forests Act or any police officer has reasonable ground to suspect that—

(a)

any prohibited plant was or is being cultivated on any Government land, whether held by any person under a lease, licence, permit or any other right, or entered upon by any person without any right; or

(b)

that any prohibited plant is on that land,

he may, by himself or with such assistance as in his opinion is reasonable, enter upon and inspect such land.

(2) Without prejudice to any other provision of this Act, where any police officer or any other person authorized by the Commissioner of Police for the purposes of this section has reasonable grounds to suspect—

(a)

that any prohibited plant was, or is being cultivated on any land, not being Government land; or

(b)

that any prohibited plant is on the land,

he may, by himself or with such assistance as in his opinion is reasonable, enter upon and inspect the land.

#### **12. Power to court to order destruction of prohibited plants.**

(1) A court convicting any person of an offence under this Act shall direct the Commissioner of Police or any police officer authorized by him to destroy all the prohibited plants found on any land to which the offence relates and the Commissioner of Police or any such police officer, as the case may be, shall cause all such plants to be destroyed in such manner as may be prescribed by regulations.

#### **(2) Provisions relating to certain prescriptions.**

Where any police officer authorized in that behalf by the Commissioner of Police is, upon entry and inspection under section 11, satisfied that the plants found on any land, are prohibited plants, he shall destroy them in such manner as may be prescribed by regulations.

#### **13.**

(1) A medical practitioner or dentist shall not—

(a)

prescribe for, administer, sell or supply to, any person any narcotic drug or psychotropic substance; or

(b)

sign any prescription or order for the supply of any narcotic drug or psychotropic substance to any person,

unless the narcotic drug or psychotropic substance is required for the medical or dental treatment of the person.

(2) A veterinary surgeon shall not—

(a)

prescribe, administer, sell or supply any narcotic drug or psychotropic substance; or

(b)

sign any prescription or order for the supply of any narcotic drug or psychotropic substance,

otherwise than in accordance with the provisions of the regulations made under section 84.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine of not less than two hundred and fifty thousand shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

**14. Penalty for receiving additional narcotic drug or psychotropic substance or prescription without disclosure of earlier receipt.**

Any person who, in the course of treatment for any physical, dental or mental disorder is supplied with any narcotic drug or psychotropic substance, or a prescription therefor, by a medical practitioner or dentist treating him and who without disclosing that fact receives additional narcotic drugs or psychotropic substances, or a prescription therefor, from any other medical practitioner or dentist, shall be guilty of an offence and liable to a fine of not less than fifty thousand shillings and, in addition, to imprisonment for a term not exceeding ten years.

**15. Removal of name from register.**

Where a medical practitioner, dentist or veterinary surgeon is convicted of an offence under this Act, he shall, notwithstanding anything contained in any other written law, be liable to have his name removed from the register of those licensed or registered to practise within Kenya as a medical practitioner, dentist or veterinary surgeon, as the case may be.

**16. Board to issue licences for export, import, manufacture, etc.**

(1) The Minister shall establish a Board which shall consist of—

1. the Attorney-General or his representative;
2. the Permanent Secretary of the Ministry for the time being responsible for Provincial Administration and / or Internal Security or his representative;
3. the Permanent Secretary of the Ministry for the time being responsible for health or his representative;
4. the Commissioner of Police or his representative;
5. three other persons appointed by the Minister of whom one shall be appointed as the chairman.

(2) The Board shall—

1. issue licences for the importation, exportation, diversion, sale, manufacture, production or distribution (at stated places) of any narcotic drug or psychotropic substance;
2. name ports or places in Kenya where any narcotic drug or psychotropic substance may be exported or imported;
3. prescribe the manner in which any narcotic drug or psychotropic substance is to be packed or marked for export; and
4. prescribe the records to be kept by any person in connection with the export, import, receipt, sale, disposal or distribution of narcotic drugs or psychotropic substances.

**17. Penalty for obstruction, etc.**

Any person who—

1. delays or obstructs any police officer or any person authorized by the Commissioner of Police, the Director of Medical Services or any other person in the exercise of any of his functions under this Act; or
2. wilfully destroys or mutilates or attempts to destroy or mutilate any books or documents required, or liable to be produced before any police officer or any person authorized by the Commissioner of Police, the Director of Medical Services or any other public officer or any other person or any other authority or a court under any provision of this Act; or
3. refuses or fails to produce, or conceals, or attempts to conceal, any books or documents or stocks of narcotic drugs or psychotropic substances when their production is demanded by any person in the exercise of his powers under this Act; or
4. refuses or fails to comply with any lawful order or direction given by any public officer in the course of, or in connection with, the administration of any provision of this Act, not being a non-compliance referred to in paragraph (c),

shall be guilty of an offence and liable to a fine of not less than one hundred thousand shillings or to imprisonment for a term not exceeding five

years or to both such fine and imprisonment.

### **18. Penalty for failure to furnish information or to produce evidence, etc.**

Any person who—

( a )

fails or refuses to comply with any obligation to give information or to produce any book, record or other document, thing or other material to which he is subject under or by virtue of any provision of this Act or any order made thereunder; or

( b )

in purported compliance with any obligation to give information or to produce any book, record or other document or other material to which he is subject under or by virtue of any provision of this Act, gives any information which he knows to be false in a material particular or gives any information which he does not believe to be true, or produces or otherwise makes use of any book, record or other document or other material containing any statement which to his knowledge is false in a material particular or which he does not believe to be true; or

( c )

for the purpose of obtaining, whether for himself or any other person the grant or renewal of a licence or authority under this Act—

(i) makes any statement or gives any information which he knows to be false in a material particular or which he does not believe to be true; or

(ii) produces or otherwise makes use of any book, record or other document or other material containing any statement which to his knowledge is false in a material particular or which he does not believe to be true,

shall be guilty of an offence and liable to a fine of not less than one hundred thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

## **PART III —FORFEITURE OF NARCOTIC DRUGS, PSYCHOTROPIC SUBSTANCES, IMPLEMENTS AND CONVEYANCE**

### **19. Forfeiture of narcotic drugs, etc.**

Where—

1. any person is found in possession of any narcotic drug or psychotropic substance and—
  1. he has no legal authority for the possession of the narcotic drug or psychotropic substance; or
  2. the narcotic drug or psychotropic substance found in his possession is in excess of the quantity, or is of a quality different from the quality, he is authorized to have in his possession; or
2. any narcotic drug or psychotropic substance is found in a place, other than a place where it is authorized to be kept; or
3. a contravention of any provision of this Act is committed in relation to any narcotic drug or psychotropic substance,

all the narcotic drugs or psychotropic substances found in the possession of that person or found in that place or in relation to which a contravention of any provision of this Act is committed shall be forfeited to the Government.

### **20. Forfeiture of conveyance, implement, etc.**

(1) Any machinery, equipment, implement, pipe, utensil, or other article used for the commission of any offence under this Act shall be forfeited to the Government.

(2) Every conveyance used for the commission of any offence under this Act or for carrying any machinery, equipment, implement, pipe, utensil or other article used for the commission of any offence under this Act, or any narcotic drug or psychotropic substance, shall be forfeited to the Government:

Provided that where, on application made by the person who was the owner of the conveyance to the court in which any prosecution for any offence under this Act or before which any proceedings under this Act for the forfeiture and condemnation of any conveyance, not being a proceeding under Part IV is pending, the court is

satisfied beyond reasonable doubt that—

(a)

the person who was the owner of the conveyance; and

(b)

in the case of an aircraft or ship, every person who was a responsible officer thereof,

when it was made use of for such conveyance, was not concerned in or privy to such use, the conveyance shall be restored to the owner by the court.

## **PART IV — RESTRAINT ORDER, FORFEITURE OF PROPERTY AND PROCEEDS OF CRIME**

### **Interpretation**

#### **21. Interpretation of Part.**

(1) In this Part, unless the context otherwise requires—

"Court"

means the High Court;

"defendant"

has the same meaning as in the Civil Procedure Act;

[. 21.]

"respondent"

means the person against whom an application is made under section 22 (1);

"restraint order"

means any order under section 26 (1);

"revenue"

means all tolls, taxes, rates, duties, fees, fines, penalties, rents and other sums due to the Government or a local authority;

"specified offence"

means—

(a) any offence under sections 3, 4, 5 and 6 or any other offence under this Act specified by the Minister by order published in the Gazette for the purposes of this Part;

(b) a conspiracy to commit or an attempt to commit any offence referred to in paragraph (a);

(c) inciting another person or attempting to incite any person to commit any offence referred to in paragraph (a); or

(d) aiding, abetting, counselling or procuring any offence referred to in paragraph (a).

(2) For the purposes of this Part references to an "accused person" shall be deemed to include reference to any defendant in a complaint in respect of an offence under this Act.

### **Restraint Order**

#### **22. Application order, for restraint**

(1) Where there are reasonable grounds to believe that any person has committed a specified offence and investigation has commenced in relation to it, the Attorney-General may apply to the Court for a restraint order in respect of all or any of the property of the person.

(2) An application for a restraint order under subsection (1) may be made *ex parte* to the Court and shall be accompanied by an affidavit sworn on the information and belief of the Attorney-General deposing to the following matters—

(a)

the offence alleged to have been committed by the person and in relation to which investigation has commenced;

(b)

the grounds for believing that the person has committed the offence; and

(c)

a description, as far as possible, of the property in respect of which the order is sought.

(3) No application for a restraint order shall be entertained against any person—

(a)

after the investigation referred to in subsection (1) has concluded and it has been decided not to make any complaint or give any information, in respect of the commission of any specified offence by that person; or

(b)

where after the investigation referred to in subsection (1) a complaint has been made or information has been given, a final decision has been given in respect thereof by a court having jurisdiction to give it.

(4) In this section "final decision" in respect of any complaint or information means—

(a)

where there has been an appeal from a decision of a court, the decision on that appeal; or

(b)

where there have been more appeals than one from such decision, the decision on the appeal last made.

### 23. Transfer after notice of application for restraint order void.

Any transfer by any person against whom any application has been made under section 22 of any property to which the application relates or any right or interest in such property shall, while the application is pending and subject to the other provisions of this Part, be void:

Provided that where an application under section 22 is dismissed by the Court, and the Attorney-General intimates to the Court that he intends to appeal against the dismissal, the Court may direct that this section shall continue to apply in relation to the property in respect of which the application has been made until the appeal is finally disposed of.

### 24. Statement of assets and examination of respondent.

(1) The Court may, before or after an order is made on any application under section 22, direct the respondent to submit, within such time as is allowed by the Court, a statement of all his assets and liabilities.

(2) A respondent who, after being directed by the Court to do so under subsection (1)—

( a )

refuses or fails to submit a statement of all his assets and liabilities; or

( b )

submits a statement which is false or misleading in any material particular,

shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

### 25. Service of notice of application for restraint order.

(1) Subject to this Act, a copy of the application for a restraint order shall be served on the respondent in the same manner as if it is a notice of motion and the respondent shall be given by the Court a reasonable opportunity of being heard before a final order is made on the application in accordance with the rules of court made in respect thereof, or until rules are made, in accordance with the rules of court applicable to the hearing of motions.

(2) Nothing in subsection (1) shall be deemed to prevent the Court from making such interlocutory orders as it deems appropriate to meet the ends of justice and to prevent the respondent from defeating the purposes of the provisions of this Part before the service of notice under subsection (1) on the respondent.

(3) Without prejudice to subsection (2), the Court may, pending decision on an application under section 22, attach any movable property of the respondent including moneys payable to him.

### 26. Restraint order.

(1) Where an application for a restraint order has been made under section 22, and the Court is satisfied of the matters referred to in that section in relation to the respondent, the Court may make either or both of the following orders—

( a )

prohibiting the respondent or any other person on his behalf, from disposing of, or otherwise dealing with, the property specified in the order or any interest therein; or

( b )

prohibiting the respondent or the other person from disposing of or otherwise dealing with the property or interest therein otherwise than in such manner as may be specified in the order; or

( c )

directing the Official Receiver to take custody and control of the property specified in the order and to manage or otherwise deal with the property in accordance with the directions of the Court.

(2) Where an order has been made under subsection (1) ( b )—

( a )

every person who is in possession of any property to which the order relates shall forthwith hand over the property to the Official Receiver, failing which the Official Receiver shall have power to recover possession of that property and for that purpose to break open any lock and to use such force as he deems reasonable; and

( b )

without prejudice to subsection (1), a bank shall not pay to the respondent, or to any other person on the order or on behalf of the respondent any money from sums held in any current, deposit or other account in the bank in the name of the respondent.

**27. Notice of order under section 26.**

An order made under section 26 shall be served on the respondent in the same manner as if it is an order of injunction and shall be published in at least one newspaper circulating in Kenya and in the Gazette and, where any property to which the order relates is situated in a country outside Kenya on the date of the order, in at least one newspaper having circulation in that country.

**28. Effect of restraint order.**

(1) Where a restraint order has been made by the Court in respect of any property, all transfers of that property or any interest in that property, during the period when the restraint order is in force, shall be void.

(2) Nothing in subsection (1) shall prevent—

(a)

any court from enforcing a mortgage or charge against any property referred to therein where the Court is satisfied that—

(i) the mortgage or charge was created bona fide for valuable consideration; or

(ii) the person in whose favour the mortgage or charge was created and registered was not concerned in, or privy to, the commission of a specified offence by the person against whom the restraint order has been made; or

(b)

the recovery of any revenue due to the Government or a local authority by sale of any property referred to therein.

(3) Where a restraint order has been made in respect of any property, the Attorney-General shall be made a party to any action or other proceeding for the enforcement of any mortgage or charge against the property.

**29. Duration of restraint order.**

Subject to this Part, a restraint order in respect of any property shall remain in force until it is revoked by the Court or the property, in respect of which it has been made, is forfeited to the Government.

**30. Offences in respect of restraint order.**

Any person on whom an order made under section 26 is served and who, while the order is in force, contravenes, or fails to comply with the order shall be guilty of an offence and liable to imprisonment for a period not exceeding ten years.

**31. Management of property by Official Receiver.**

(1) Where the Court has directed the Official Receiver under section 26 to have the custody and control of any property specified in a restraint order, the Court may—

(a)

on the application of the Attorney-General, the Official Receiver or the person against whom the order has been made—

(i) give instructions to the Official Receiver in respect of the management of the property; and  
(ii) decide any question that may arise in the course of the management of the property by the Official Receiver; and

(b)

on the application of the Attorney-General or the Official Receiver direct the person against whom the restraint order has been made, to furnish to the Official Receiver, within such time as may be specified by the Court, such information and particulars relating to the property, in respect of which the restraint order has been made, as may be specified in the direction.

(2) The Official Receiver shall not be personally liable—

(a)

for any loss or damage, arising from his having taken custody or control of any property, sustained by a person claiming the property or any interest in the property; or

(b)

for the cost of proceedings taken to establish any claim to the property or to any interest in the property,

unless the Court is of the opinion that the Official Receiver has been guilty of negligence in respect of the taking of custody or control of the property.

(3) The Official Receiver shall not be personally liable for any taxes, duties, rates or other municipal or other statutory charges imposed by or under any law in respect of the property of any person of which he has been directed by a restraint order to take custody and control except to the extent, if any, of rents and profits received by the Official Receiver in respect of that property on or after the date of the restraint order.

(4) Where the Official Receiver has taken custody and control of the property of any person in accordance with a restraint order, he shall be entitled to receive, in respect of the exercise and the performance of his functions in relation to the property, fees equal to the fees that he would be entitled to receive if he were exercising and performing the functions in

consequence of his having taken custody or control of the property by virtue of a receiving order made under the Bankruptcy Act.

[. 53.]

### **32. Exclusion of property, recognition of claims, and revocation of restraint order.**

(1) Any person who has title to any property or claims an interest, including a mortgage or charge in or over any property in respect of which a restraint order has been made, may apply to the Court, within thirty days of the making of the restraint order, stating the particulars of his claim and if the Court is satisfied that the applicant has title to the property, the Court may exclude the property from the operation of the restraint order.

(2) An application under subsection (1) may be entertained by the Court after the expiry of the period of thirty days if the Court is satisfied that there are sufficient reasons to do so.

(3) No order in favour of any applicant under subsection (1) shall be made by the Court if there is reasonable ground to believe that the applicant was concerned in, or privy to, the specified offence alleged to have been committed by the person against whom the restraint order has been made.

(4) Where—

( a )

before the expiry of six months or such further time as may be allowed by the Court in that behalf, from the date of the restraint order, no complaint is made or information is laid before any Court in respect of any specified offence against the person against whom the restraint order is made; or

( b )

a complaint is made or information is laid against such person in respect of a specified offence and the complaint is dismissed or the person is discharged or acquitted by the court which tried him and there is no appeal from the dismissal of the complaint or the discharge or acquittal is confirmed on appeal,

the Court may, on the application of the person against whom the restraint order was made, revoke the restraint order.

### **33. Stay of hearing of application under section 22.**

Where an application has been made to the Court under section 22 against any person on the ground that he has committed a specified offence, the Court may, on the application either of the Attorney-General or of the respondent, or otherwise, stay the hearing of the application until a final decision has been made in respect of the complaint or information.

### **34. Death of person against whom restraint order has been made.**

(1) Where a person against whom a restraint order has been made dies within the period specified in section 31 (1) ( b ) or before the complaint made or information laid against him in any court in respect of a specified offence is finally decided or any appeal against any such decision is finally disposed of by the court to which the appeal is made, any of his legal representatives may apply to the Court within sixty days of his death for the revocation or variation of the restraint order.

(2) After hearing the Attorney-General and considering such evidence as may be produced by him and after hearing the legal representative who has made the application under subsection (1) and considering the evidence proved by him—

( a )

where the Court is satisfied that the person against whom the restraint order was made had committed the specified offence referred to in the application for the restraint order under section 22, the Court may make an order in accordance with the provisions of section 42, and the provisions of sections 36, 37, 38, 39 and 41 (3), (4), (5) and (6) shall *mutatis mutandis* apply to the proceedings under this subsection; and

( b )

in any other