

An Appraisal of the Legal Framework for Waste Managamenet in Enugu and Anambra States

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ABSTRACT

Waste is the greatest danger facing mankind in the world today, therefore, measures must be nationally taken to control disposal of such waste to save humanity from total extermination from the surface of the earth. This paper, therefore addresses the problem of waste (using Enugu and Anambra states as case study) and the effective legal framework for solving such environmental problems as well as the machinery for its enforcement. This work has discussed the conceptual clarification of key terms and equally provides analysis of legal framework for waste management. This work also considers institution responsible for waste management in Enugu and Anambra states. So many problems associated with the institutions have been critically analyzed in the findings and the prospects thereof have been elaborately highlighted. The research finally provides some recommendations in order to achieve the desired goals for a safer, sound and good environment, then conclusion.

Keywords: Appraisal, Legal Framework, and waste disposal.

INTRODUCTION

Waste management has been a major challenge in Nigeria, especially since post Independence era. It is present day environmental protection policies facing the nation. The then Minister of Environment, Mr. John Odey maintains this position, when he asserted that waste management had become a major environmental challenge in the country. Adding that a survey had revealed that per capital waste generation has increased nearly three folds over the last two decades.¹ A survey of industrial pollution was carried out in Anambra State of Nigeria between February 1992 and June 1993. The survey showed that Idemili Onitsha and Nnewi Local Government Areas have the greatest concentration of industries in the state and stand a high risk of industrial pollution unless steps are taken to put the issue of waste

disposal under strict check.² Also, the pollution of Ekulu River in Enugu was established as a veritable case of negative human impact on the environment.³

The problem of waste management has transcended national boundaries. Economic growth, prosperity and technological advancement have increased the sources of waste worldwide. Apart from the oil sector in the main, rapid industrial development in the developed nations as well as developing nations like Nigeria have increased waste generation several folds. The problem of waste management is as old as the nation itself. The waste problem has today, become the number one serious environmental problem facing this

¹ J.Aechenu, "Waste Management: Big Challenge Here". The Punch News Paper, Thursday, May 27, 2010, p.59.

² J.O Ogbuagu and another, "Industrial Pollution survey in Anambra State, Nigeria" Received: 9 July, 1997/accepted: 25 May, 1998.

³ E.E Ezenwa and others, "Pollution of Ekulu River in Enugu: A case of Negative Human Impact on the Environment", "Volume 8 issue 10 (Oct., 2014), pp83-92. www.IOSRjournals.org. (Accessed July,2015:time 3:00pm)

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country, not to mention its hazards to health and other natural resources of social and economic importance. However, in the year 1970, the environment was described as the issue of the year throughout the world and the United Nation's Conference on human environment was held in 1972. Nigeria though signatory to so many of these multilateral Treaties, and was attendant at so many United Nation organized conferences did not come up with a viable environmental policy or strong legal framework for the protection of her environment. Until the unfortunate incident of dumping of toxic waste from Italy at Koko part in the then Bendel state in 1988. Nigeria government in the late 1980s propelled a viable direction of positive environmental protection management and regulation towards sustainable development. This aspiration culminated in the establishment of the Federal Environmental Protection Agency (FEPA),⁴ and its inspectorate and enforcement department in 1991, this development provided an institutional framework, both legal and administrative for the enforcement and execution of environmental policies and legislations. Since the concept of environmental sustainability is a key criterion to design waste management systems. Recognizing the importance of waste management as an instrument of achieving sustainable development in Anambra and Enugu States. Government has intensified efforts to create wealth and job opportunities for the teeming unemployed youths in these states, for example; a sizeable portion of land has been acquired in Silas works, Fegge area in Onitsha, by the state government to establish a recycling plant; and there has been a plethora of legal framework that regulate waste management in these states.

⁴ The Act Regulations were repealed in 2007 by the NESREA Act

Statement of the problem

The intractable problem of waste collection and disposal has defied various solutions introduced by the state and local governments. One of the solutions introduced by some state governments is the setting up of bodies or organizations to be solely responsible for solid waste management. However, despite the efforts and financial investment made by these governments to solve the problems of waste collection and disposal, there is little to show that tangible results have been achieved. The reason is lucid, that is the increased rate of environmental pollution and degradation. Since poor waste disposal habit of the people, corruption, weak government regulation, poor working attitude, lack of fund, inadequate facilities such as plants and equipment among others are factors militating against effective waste management towards sustainable development in Nigeria as a whole. Also, there has been obstacles towards

achieving an effective sustainable environmental protection; such as problems of environmental protection claims/litigations (Locus standi, Standard and Burden of proving Damages, Quantum of compensation/damages), uncoordinated structure implementation of the existing environmental legislation (non availability of funds, inadequate qualified manpower, lack of functional equipments and laboratories, lack of staff discipline and corruptions and inadequate sanctions), lack of Genuine interest on the path of the government, ignorance on the part of the citizens, Nonchalance on part of the citizens, illiteracy among the citizens and the judicial attitude to cases on environmental protection. Therefore, if there is to be a sustainable development via waste management in Nigeria, the availability of land for landfill, human resources, adequate funds, plants and equipment, and other tools must be readily available.

Objectives of the Study

The broad objective of this work is to examine waste management in Enugu and Anambra states. The specific objectives of the work are:

1. To determine the legal framework for waste management.

Scope of the Study

This research focused on Appraisal of the legal framework for waste management in Enugu and Anambra states.

Research Methodology

The research methodology is empirical and doctrinal methods of Research. This is because, it involves collection of knowledge or information from first hand study, or primary data related to the legal framework for waste management. However, it equally involves theoretical study of secondary source of data used to answer one or two legal propositions or

questions or doctrines in relation to legal framework for waste management. The Research approach involves analytical and descriptive methods. This research begins with collecting, viewing, and analyzing the background information in relation to legal framework for waste management in Enugu and Anambra states.

LEGAL FRAMEWORK

Nigerian Constitution

The Constitution of FRN (as amended)¹ empowers the National Assembly to make

laws for the peace, order and good government of Nigeria. It also empowers States House of Assembly to make laws for peace, order and good government of

¹ Section 4 1999 constitution FRN as amended.

the states. These Section² provides two types of powers that is, Exclusive legislative list which involves the list of matter upon which the National Assembly have exclusive power to legislate solely; and under concurrent list the State House of Assembly has to exercise its legislative powers. The Constitution empowers the local government to legislate on matters that is contained in fourth Schedule of the Constitution³. The Constitution⁴ mandates the states of federation to make necessary steps in ensuring a safer, sound and good environment. It provides thus "*the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria*" This section made an implied provision for sustainable development, as it mentions components federation to protect and improve them. A careful perusal of sections⁵ of the constitution of the Federal Republic of Nigeria reveals that the issue of environmental protections and waste management in Nigeria falls within concurrent legislative list giving the federal and State government power to legislate on it. Therefore, there are several laws enacted both at federal and states levels to cater for the protection of environment and waste management. Also, the Local government pursuant to paragraph (h) of the fourth schedule of the constitution has the sole function to institutionalize waste management. It provides that: "*The main functions of a local government council are as follows: provision and maintenance of public conveniences sewages and refuse disposal*".

Other Enacted Legislation for Protection of the Environment Harmful Wastes (Special Criminal Provision etc) Act, 1988⁶

² Ibid

³ SECTION 7 1999 Constitution of FRN as amended

⁴ SECTION 20 Ibid.

⁵ SECTIONS 4,20, and part 1 and 11 of the second schedule of the Constitution FRN as Amended

⁶ Harmful waste (Special Criminal Provision) Act, cap H1. Law of the federation of Nigeria, 2004.

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This Act came into existence after the notorious dumping of toxic waste at Koko town of Delta State in 1988, to prohibit the carrying, deposition and dumping of harmful waste of any kind, into territorial waters and matters relating thereto. "Harmful Waste" here means any injurious, poisonous, toxic or noxious substance and in particular, includes nuclear waste emitting any radioactive substance if the waste is in such quantity. Whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, total injury or incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not itself be taken to exclude any risk which might be expected to arise from the harmful waste.⁷ This Act is essentially a Penal legislation. The offences are constituted doing any of the act or omission stated in the Act⁸. The Jurisdiction of the Act is far reaching as it sought to remove any immunity conferred by diplomatic immunities and privileges Act on any person for the purpose of Criminal prosecution. It is however important to note that despite its far reaching jurisdiction, it focuses mainly on criminal prosecution of damage and does not provide compensation to the victim of the damage. The Act⁹ provides a very stringent sentence of life imprisonment and in addition, the forfeiture of any aircraft, vehicle or land connected with or involved with the violation. However, it was observed that there had never been a decided case of any person whether natural or artificial, prosecuted pursuant to the provisions of this Act¹⁰. It is equally presumptuous to hazard, the assumption that no hazardous waste had found its way into Nigeria as contemplated by the Act since its enactment. The Act provides penalties for the commission of the crimes prescribed¹¹. The main objective of

⁷ **Section 15 of** Harmful Waste Act.

⁸ Section 12 of Harmful Waste Act, further provides for civil liability

⁹ Section 6 *ibid*

¹⁰ Dr. C. I. M Emelie, *op cit* at pg 80

¹¹ Section 1 of Harmful Waste Act

this Act is to prohibit the carrying, depositing and dumping of harmful waste on any land, territorial waters and matters relating thereto. The Act¹² prohibited and declared it unlawful all activities relating to the purchase, sale, importation, transit, transportation, deposit, storage of harmful waste and make the deposition, carrying, dumping, transporting, selling of harmful waste on any land, territorial waters, contiguous zone inland waters a crime. A person shall be deemed to deposit or dump harmful waste under the Act¹³, if he deposits or dumps the harmful waste, whether solid, semi-solid or liquid, in such circumstances or for such period that he may be deemed:

- a. To have abandoned it or
- b. To have brought it to the place where it is so deposited.

The Act¹⁴ empowers the minister for works and Housing to seal off any area or site which has been, is being, or will or might be used directly or indirectly for the purpose of depositing or dumping any harmful waste. Thorough study of this Act indicates that it aims at protecting environment by ensuring that harmful waste which has hazardous properties are not deposit and dump in Nigeria environment. The Act¹⁵ deals with the crime of body corporate is of great interest, as it lifted the veil of incorporate who contravened the provisions of the Act are proceeded against and punished accordingly.

Environmental Impact Assessment Act of 1992¹⁶

This is an Act to set out the general principles, procedure and methods to enable the prior consideration of Environmental Impact Assessment on certain projects. The Act stipulates (comprehensively) standards to be used in assessing the possible effects of industrial operation in Nigeria in relation

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to the Nigerian environment.¹⁷ It came as a fitting compliment to the defunct Federal Environmental Protection Act, in the important area of land utilization and sitting of industries. The principles goals of this Act was stated in section 1 which is to ensure that possible negative impacts of development projects are predicted and addressed prior to any project take-off. The effect of this is to promote sustainable development. The second phase of this assessment is referred to as environmental audit. This process which culminates in the writing of an environmental audit report compliments, the process of an environmental impact assessment and in some instances supplement it. No doubt, the Act is an embodiment of steps in enhancing the protection of the environment in the face of executing developmental protects. However, only some sections will be of reference point. The Act¹⁸ provides the goals and objectives of the environmental impact assessment Act as follows:

- i. To establish, before a decision is taken by any person, authority, corporate body or unincorporated body, including the government of the federation, state or local government intending to undertake or authorize the undertaking of any activity, those matters that may likely or to a significant extent affect the environment or have an environment effect on those activities and which shall first be taken into account.
- ii. To promote the implementation of appropriate policy in all federal lands (however acquired) states and local government area, consistent with all laws and decision making processes through which the goal and

¹² Section 1 *ibid*

¹³ Section 1(3) of Harmful waste Act

¹⁴ Section 11 *ibid*

¹⁵ Section 7 *ibid*

¹⁶ Environmental Impact Assessment Act Cap. E 12 laws of The Federation of Nigeria, 2004.

¹⁷ Okwu, Bethel Chimezie, "Impact of pollution on global warming: case study of Nigeria, Port Harcourt Journal, Vol. 7, No. 2 February, 2018. Page 334

¹⁸ Section 1 of E.I.A

- objective in paragraph (a) of this section may be realized.
- iii. To encourage the development of procedures for information exchange, notification and consultation, between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-state or on the environment of bordering town and villages.

The Act makes it mandatory for the public and private sectors of the economy not to undertake, embark, or authorize projects or activities without prior consideration, at an early stage of their environmental effect. Where the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental Impact assessment shall be undertaken in accordance with the provision of the Act.¹⁹ The criterion and procedure under the Act²⁰ shall be used to determine activity subject to an environmental Impact assessment and all agencies; institutions whether private or public except if exempted, shall before embarking on the proposed project, apply in writing to the agency.²¹ It is interesting to observe the obvious mandatory intention of the word "shall" in all the four sub-sections of the above section. It shows an honest quest to ensure the functionality of the Act. The Minimum content of E.I.A includes the following:

- a. Description of the proposed activities;

- b. Description of the potential affected environment, including specific information necessary to identify and assess the environmental effect of the proposed activities.
- c. A description of the practical activities as appropriate;
- d. An assessment of the likely or potential environmental impacts of the proposed activity and the alternatives including the direct or indirect cumulative, short-term and long-term effects;
- f. An indication of gaps in knowledge and uncertainty which may be encountered in computing the required information;
- g. An indication of whether the environment of any other state or local government area or areas outside Nigeria, is likely to be affected by the proposed activity or its alternative.
- h. A brief and non-technical summary of the information provided under paragraph (a) to (g) of this Section.

Also a simplified summary of the above matters save us from technicalities that would require the use of experts in understanding matters or facts. The Act²² which provides for the opportunity to have government agencies, members of the public, experts in any relevant discipline and interested groups make comment on the Environmental Impact Act of a project, shows openness and prevents arbitrary exercise of power by the Agency. The use of the word "Appropriate,"²³ agreeably is ambiguous and create problem of interpretation. It has been suggested that a specific period for which the Agency has to take a decision on any activity to which an environmental assessment is needed to provide for. A period ranging from 30 days, 60 days or 90 days were suggested as this will help the agency set its target and avoid unnecessary waiting on the side

¹⁹ Section 2(1) and (2) of the E.I.A

²⁰ Sub 3 Ibid

²¹ Section 2 (1) Ibid

²² Section 7 of E.I.A

²³ Section 8 ibid

of the interested person or persons²⁴. The Act²⁵ deals with cases which environmental assessment is required or mandatory. These are projects which their Environmental Impact Act must be conducted in avoidance with the conditions set out in the Act or any regulation made under it. In pursuance of the above section, the content of the Act as it relates to the mandatory projects is reproduced hereunder;

The mandatory study activities²⁶:

1. Agriculture
2. Airport
3. Drainage and irrigation
4. Land reclamation
5. Fisheries
6. Forestry
7. Housing
8. Industry
9. Infrastructure
10. Ports
11. Mining
12. Petroleum
13. Power generation and transmission
14. Quarries
15. Railways
16. Transportation
17. Resort and recreational development
18. Waste treatment and disposal
19. Water supply

The Act²⁷ states the projects, which are excluded from E.I.A as where:

- a. In the opinion of the Agency the project is in the list of projects which the president or the council is of the opinion that the environmental effects of the project are likely to be minimal;
- b. The project is to be carried out during national emergency for

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which temporary measure have been taken by the Government;

- c. The project is to be carried out in response to circumstances, that in the opinion of the Agency, the project is in the interest of public health or safety. It is important to observe that the Act²⁸, interpreted the word "Agency" unless the context otherwise provides, to mean the Nigerian Environmental Protection Agency established by the Federal Protection Agency Act. However, this Act now stands repealed by the National Environment Standards and Regulations Enforcement Agency (Establishment) Act, of July, 2007. By implication, it follows that this Agency will now take over the responsibilities of the former Agency for the protection and development of the environment, biodiversity, conservation and sustainable development of Nigeria's natural resources in general and environmental technologies, including co-coordinating and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.²⁹

From the above expositions, it will not be an exaggeration to assert that the country has laudable provisions for regulating environmental impact assessment, and that if the provisions are adhered to, high level of sustainable development of the environment will be achieved. To this end, environmental degradation and pollution will be reduced to the barest minimum, and the environment, preserved as a global heritage for both the present and the unborn generations.

²⁴ E.E okon, "The Legal Framework of Environmental Impact Assessment in Nigeria", Modern Practice Journal of Finance and Investment law, vol. 5, No. 2,(2001), 208

²⁵ Section 12 of E.I.A

²⁶ Section 12 of E.I.A

²⁷ Section14(1) of E.I.A

²⁸ Section 61 ibid

²⁹ Section 2 of National Environmental Standards and Regulation Enforcement (establishment) Act, 2007.

The Criminal Code Act³⁰
This is an act to establish a code of criminal law. The Act³¹ provides for the offence of “common nuisance” which correlates with the common law, offence of “public nuisance” as was held in the case of *Esso Petroleum v South-port Corporation*.³² This offence is committed where a person does anything which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all members of the public. An offender under this section is guilty of a misdemeanor and is liable to imprisonment for two years. It has been posited³³ that this offence which is closely related to the offence of public nuisance, should be invoked to punish unlawful discharge of oil pollutants on public land and water because it amount to “inconveniences and damage to the public in the enjoyment of these rights likely to be caused.” It is interesting to note that some pollution offences against public health attract criminal sanctions. For example, the Act³⁴ states that any person who corrupts or foul (pollutes) the water of any spring, well, tank, reservoir, or place, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanor and is liable to imprisonment for six months. The Act³⁵ provides that any person who vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way, or does any act which is, and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life, whether human or animal is guilty of a misdemeanor and its liable to imprisonment for six months.

³⁰ Criminal Code Act, cap, C38, laws of the Federation of Nigeria 2004.

³¹ Ibid at section 234

³² (1954) 2Q B, 182.

³³ G. Jaff, standing to sue in conservation suits.” *Law and Environment*,” Williams and co, Bahimand, 1970, 123.

³⁴ 245 of Criminal Code Act

³⁵ Section 247 ibid

The Petroleum Act³⁶

This is an Act which came into effect on the 27th of November 1969, to provide for the protection of environment during exploration of petroleum from the territorial water and the continental shelf of Nigeria and Petroleum activities. In order to ensure and safeguard the environment the Act³⁷ makes it mandatory that before any person, natural or legal participate in the oil exploration, oil prospecting and oil mining to apply and obtain licenses. Although the Act vested in the minister of power to make regulations for the prevention of pollution, such power is at most discretionary, and leaves the minister with the choice of either exercising his discretions or not. Little wonder that the Act³⁸ provides generally for the prevention of pollution of water courses and the atmosphere without providing for any detailed procedure on how to actually enhance and achieve the prevention of pollution, thus leaving such important and crucial issue as to the protection of the environment in the hands of a minister who may or may not decide to exercise his powers.

i. Petroleum (Drilling and Production) Regulations³⁹

By the provisions⁴⁰ of the above regulation, which deals with prevention of pollution, the licensee or lessee shall adopt all practicable precautions, including the provisions of up-to-date equipment approved by the Director of petroleum resources, to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it. In

³⁶ Petroleum Act, cap p.10 Laws of the Federation of Nigeria, 2004

³⁷ Ibid at section 2

³⁸ Ibid at section 9(b)(iii)

³⁹ Petroleum (Drilling and production) regulations, cap p 10, laws of Federation of Nigeria, 2004

⁴⁰ Ibid at Regulation 25

the same vein, the regulation⁴¹ which provides for maintenance of apparatus and conduct of operations stated that:

- a. To control the flow and to prevent the escape or avoidable waste of petroleum discovered in or obtained from the relevant area;
- b. To prevent damage to adjoining petroleum bearing strata;
- c. Except for the purpose of secondary recovery as authorized by the Director of petroleum Resources, to prevent the entrance of water through boreholes and wells to petroleum bearing strata;
- d. To prevent the escape of petroleum into any water, well, spring, stream, river, lake, reservoir, estuary or harbor; and
- e. To cause as little damage as possible to the surface of the relevant area and to the trees, crops, building structures and other property thereon.

Another regulation that seeks to prevent pollution under the Act is regulation 41 which requires that the licensee or lessee shall drain all waste oil, brine and sludge or refuse from all storage vessels, bore holes and wells into proper receptacles constructed in compliance with safety regulations, and shall dispose thereof in a manner approved by the Director of petroleum resources or as provided by any other applicable regulations. Furthermore, there is the power of the Director of petroleum resources to give certain directives as may in his opinions, be necessary from time to time, to ensure the proper exploitation of petroleum and to encourage good conservation practices in any licensed or leased lands; and for the licensee or lessee to comply with any such directions which affect him.⁴²

ii. Petroleum Refining Regulations

These are also some of the regulations made under the petroleum Act, and

⁴¹ Ibid at Regulation 37

⁴² Regulation 44 Petroleum(Drilling and Production)Regulation cap p 10,laws of the Federation of Nigeria

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merely guide the refining the petroleum products, that is to say that the Regulations on pollution prevention are just there as matters incidental to the refining activities. For example, the regulation⁴³ directs that residues, sledges, rusts and similar matter from tanks which may have contained loaded petroleum products shall be disposed of according to good refining practice and only to such places as have been approved by the Director. The regulation⁴⁴ also makes provisions for the notification of the inspector by the manager of any unprogrammed spillage of crude, products for chemicals inside the refinery immediately; and that such notice shall be followed within seven days after the spillage have occurred by a written report describing the cause and nature of the spillage, the amount of spillage recovered, precautionary measures taken since the spillage to prevent any hazard that may arise there from and precautionary measures taken to prevent such spillage in the future.⁴⁵In the same vein, the manager shall ensure the drainage and disposal of refinery effluent and drainage water shall conform to good refining practices, the specification of the effluent and the mode of disposal shall be subject to the approval of the Director⁴⁶ also complete analysis of the effluent and drainage water shall be performed at such regular intervals as the Director may prescribe and results of such analyses shall be clearly entered in a register specially kept for that purposes, every entry of which shall be duly signed by a competent person.⁴⁷ Furthermore, the manager shall adopt all practicable precautions including the provisions of up-to-date equipment as may be specified by the Director from time to time to prevent the pollution of the environment by

⁴³ Regulation 27 ibid

⁴⁴ Regulation38(1) ibid

⁴⁵ Regulation 38(2) of petroleum (Drilling and Production) Regulations, Cap P10,laws of the Federation of Nigeria

⁴⁶ Regulation 43(1) ibid

⁴⁷ Regulation 43(2) ibid

petroleum or petroleum products, and where such pollution occurs the manager shall take prompt steps to control and, if possible, end it.⁴⁸ It is obvious from the above regulations that a lot of responsibility is placed on the refinery manager, but whether these regulations are closely monitored and enforced is another matter entirely.⁴⁹ The Regulation⁵⁰ which deals with the offences stipulates the following penalties for those who contravene any of the provisions. By the Regulation⁵¹ if any person:

- a. Contravenes any provision of these regulations; or
- b. Fails to comply with any direction of the Director given in exercise of any of the powers conferred under these regulation; or
- c. Fails to comply with the terms of any warning notice displayed pursuant to these regulations. He shall be guilty of an offence to these regulations. He shall be guilty of an offence and liable on conviction of a fine of N1, 000.00 or imprisonment for a term of six months. Any ⁵² person who fails or refuses:
 - i. To appear as witness following a summon to do so issued by an inspector under these Regulation⁵³; or
 - ii. To produce any book or document required to be produced by an inspector for the purposes of an inquiry of these Regulations⁵⁴ shall be guilty of an offence and liable on conviction to a fine of N100 or imprisonment for a term

⁴⁸ Section 43(3) *ibid*

⁴⁹ Abimbola Salu, "Securing Environmental Protection", *Journal of Finance Investment law*, vol3, No.2, 1999, p.350

⁵⁰ Regulation 45 of Petroleum (Drilling and Protection) Regulation, Cap P10, laws of the Federation of Nigeria

⁵¹ Regulation 45(1) *ibid*

⁵² Regulation 45(2) of Petroleum (Drilling and Production) Regulations, Cap P10, laws of the Federation of Nigeria

⁵³ Regulation 18 *ibid*

⁵⁴ Regulation 18 *ibid*

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The Nigerian Urban and Regional Planning Act 1992

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The administration of physical planning has been the responsibility of all the three tiers of government in Nigeria over the years. The extent of involvement of each level of government is detected by the operations of the various town and country planning legislations as well as the federal constitution. The decree No. 88 of 1992 is the first ever post independence planning law in Nigeria. It came into force on 15th December 1992 repealed the 46 years old obsolete and moribund Town and Country Planning Ordinance of 1946 and corrected all the perceived weakness of other planning laws enacted before. The more interesting thing to observe in the law is that the control department at each level (federal, state and local government) shall have power over the development control of federal, state and local and estates respectively. The power and functions of development control departments are the same irrespective of the level. Approval of the planning authority (i.e commission, Board and local Authority) shall be sought on any land development, and the approval is given within

⁵⁵ Cap N138, LFN 2004

three months of submission of such proposal. It is worthy to note that government agencies are now to obtain planning approval of the control department in development of land. The Act⁵⁶ thus repeals existing law exempting government agencies from obtaining planning approval. It is a framework geared towards total and holistic environmental conservation, on which the ecological and aesthetic values of the nation are preserved and enhanced. It establishes that an application for land development would be rejected if such development would harm the environment or constitute a nuisance to the community⁵⁷. It is also an offence to disobey a stop work order. The punishment is under the Act⁵⁸

According to Tobi, JSC in *Ag Lagos State v. Ag of the Federation and 35 Ors.*⁵⁹:

“The effect or result of town planning qualities as physical and economic development within the meaning of environment as it enhances the value of land being property. In my humble view, the urban and regional planning Decree NO. 88 of 1992 is designed to improve the environment by protecting the land, thus coming within the purview, section 20 of the constitution. It is not my understanding of the Decree that any planning scheme carried out within the Decree will destroy or abuse the environment, on the contrary, such a

scheme will protect and carry out improvements on the environment.”

I totally agree with this submission in view of the fact that the basis of planning law is to control development whose essence is to improve and protect the environment. To do this, planning law employs the following measures:

a. Determining what is development

b. Adopting zoning policy and

c. Ensuring compliance with planning regulation, zoning, therefore, preserves the character of the neighborhood through the elimination of non conforming uses of land in designated areas, layouts, districts or zones. Planning ensures that the environment is protected from prodigious abuse of waste management whereby zoning the landfill method of waste management far away from where it will be hazardous to the environment and human being.

Domesticated charters/treaties on waste management

International law governs relationship between independent states. The rules of law binding upon states, emanates from their own free will as expressed in conventions or by usage generally accepted as expressing principles of law and establishing order to regulate the relation between co-existing independent communities or with a view of achieving common aims. An international environmental law instrument primarily includes; international conventions or treaties, customary international law, judicial decisions and writing of eminent jurists, United Nation General Assembly Resolutions. Therefore, international law assists in building and capturing consensus between nations/states or goals for environmental protection and resources, conservation and sustainable use. Before the Stockholm conference, the problem of environmental protection was considered first, a local problem for concerned states only, and secondly a

⁵⁶ Ibid section 29

⁵⁷ section 39 of the NURP

⁵⁸ Sections 59 and 72

⁵⁹ (2003) 13 NWLR pt. 833 pg. 241

prerogative developed countries. The so called "Third World" countries excised themselves out of the environmental question⁶⁰. Today however, it is now known beyond doubt that environmental law is basically an international law. This is rooted on the fact that there is no real boundary (national or international) in environmental matters for example, a polluted water or air in the Nigeria may also mean a polluted water or air in the Republics of Benin, Niger, Chad, and Cameroon within just a few hours. This is because a look from the air reveals no such demarcations. That inexplicably sheds light on the fact that the world's environment is one. Due to this international nature of environmental matters, the world body (the UN) and other international agencies have put the issue on the world agenda. Thus, in the preamble of the 1966 convention of the United Nations General Assembly. The world body affirmed that: "*National resources are limited and in many cases exhaustible. Their proper exploitation determines the condition of the economic development of the developing country both at present and in the future*"⁶¹. In the same breath, principle 2 and 3 of the epoch making Stockholm conference⁶² on June 1972 made it even more forceful. It takes that:

"The natural resources of the earth must be safeguarded for the benefit of the present and future generation through careful planning and management, and that

the capacity of the earth to produce vital renewable resources must be maintained whatever practicable restored or improved. What is need now is a new era of economic growth, a growth that is forceful and at the same time socially and environmentally sustainable"

The international nature of environmental law was even more re-echoed when in June 3rd to 14th 1992 the United Nations Conferences on Environmental and Development (UNCED) organized a significant international conference to address the growing global environmental degradation and development in Rio de Janeiro, Brazil. The Rio Declaration as it is popularly called proclaimed in its principle, and in principle 11⁶³, comprising those substantive, procedural and institutional rules of international law, which have as their primary objective the protection of the environment. The adoption of international environmental laws to suit domestic situations was stressed in "Rio Declaration"⁶⁴ where states were given the mandate to develop national law regarding liability and compensation for the victims of pollution and other environmental damages. The international environmental agreement consist primarily of treaties, charters, conventions, accords, protocols or some other term as a nation could obligate itself in an agreement with an organization. The international agreement on the environment employ a wide range of regulatory arrangement for structuring, monitoring and protecting the environment, such agreement shared concerns such as ocean pollution, endangered species protection, hazardous

⁶⁰ C.A Omaka, "*internalization of environmental laws: issues on Global and National Environmental protection*," kingdom age publication, Ebonyi state Vol. 1, No. 2, 2010, p.g 93

⁶¹ Cited from Professor Phillippe Sands: "*principles or International Environmental law*", 2nd Edition, Cambridge University Press, U.K (2004)

⁶² The Stockholm conference was convened by the United Nations in the city of Stockholm Sweden to consider the issue of sustainable development and how to collectively control growing global environmental problems by member nations

⁶³ Rio declaration of 1992

⁶⁴ Principle 7 of Rio Declaration

www.idosr.org

waste among others⁶⁵. Listed below are some of the international agreements on environmental protection signed by Nigeria, Albert not exhaustive.

⁶⁵ C.I.M Emelie, *“Environmental Law and Practice in Nigeria”*., Rhyce Kerex publishers, Enugu Nigeria, 3rd Edition (2016), p. 233.

Year	Convention/Treaty in force
1958	Convention for the prevention of pollution of the sea by oil
1963	Treaty banning Nuclear Test in the atmosphere in outer space and under water
1964	Act regarding navigation and economic cooperation between the states of the Niger Basin
1969	African convention on the conservation of nature and natural resources
1972	Convention on the protection of marine pollution by the dumping of wastes
1975	Convention on the prevention of marine pollution of dumping wastes and other matters
1978	Convention on the establishment of international fund for compensation for air pollution damage (as amended)
1981	The African Charter on Human's and People's Right
1982	The UN convention on the law of the sea
1983	Protocol concerning co-operation in combating pollution in cases of emergency.
1988	Vienna convention on the protection of the ozone layer of hazardous wastes
1989	The convention on the control of Trans-boundary movements of hazardous wastes and their disposal
1991	Convention banning outright import of all forms of toxic waste into Africa and the Management of Hazardous wastes within Africa
1995	Convention on civil liability for all pollution damages (as amended)

The above listed conventions are aimed at resolving particular environmental problems; they create obligations and norms of behavior for the states, which are parties to them. In principle, these conventions are binding only on the signatory states. Generally, they become binding on states only after they have been ratified (formally adopted) by a certain specified number of states. International environmental protection conventions, tend to require only a low number of ratification by the required number of states, the obligations become binding on all states who have expressly indicated by signing the treaty, that they wish to be bound by it when it comes into force.¹

¹ C.I.M Emelie op cit at pg 239

FINDINGS/SUMMARY

The level of urbanization and industrialization in Enugu and Anambra States are greatly sources of waste generation as well as factors of development. Development implies the transformation and distribution of economic resources in favor of a society. It is undisputable fact that the process of development has the effort of an unprecedented degradation of environment resulting from the waste, the development factors come along with, and which has the effect of posing serious threat to the environmental protection. A genuine quest for sustainable environmental protection no doubt needs a policy framework and collective sustainable environmental protection. To this end, this research attempt to look at the obstacles on the way of achieving an effective sustainable environmental protection. Problems of environmental protection claim/litigations have been one of the shortcomings of these legal frameworks. By the nature of environmental protection regulations, the enforcement of these regulations appears to be under the monopoly of the environmental protection control authorities or public officers. And sometimes, these environmental authorities or agencies either do not have the financial capability, man power resources or the will or zeal to push and ensure effective enforcement of the environmental protection control regulations. This might be as a result of corrupt interest among these various agencies; on which their illicit money matter than carrying out its ultimate function. For instance, an interview carried on, Chidimma, Rita, and Chinecherem (who were once victims of ESWAMA in Enugu Metropolis) revealed that they where once arrested and convicted on unknown offence, on which they were not given fair hearing by a magistrate. At the other hand, there was a demand of two thousand Naira for their acquittal; otherwise they will go in for the offence. Also, Ginikachukwu also testified that she was arrested and was not tried.

She was released on payment of two thousand Naira as demanded from those officials. Therefore, it happens that these environmental agencies misuse its authority to extort money from the citizens, instead of caring out its functions effectively. Regrettable, one is yet to see such provision, even in the most recent NESRAE Act which is the principal environmental protection regulation in the country. The burning question or issue with no visible attempt made at answering it, with regards to environmental protection in Nigeria is where the environmental agencies have knowledge of environmental degradation, and they refuse or neglect to perform their duty of prosecuting or enforcing environmental protection regulations, will the environment or the victims of environment degradation be allowed to "lick their wounds?". In the face of the above scenario, a legal person or pressure group should be able to bring a private action to address such environmental wrong. It is a notorious fact that the common citizens who are mostly affected by environmental degradation lack ready access to legal and/or administrative institutions to address these environmental wrongs. The reasons among officers are not far from the points articulated below¹;

- a. Doctrine of *locus standi*: the doctrine of *locus standi*, under the Nigerian legal jurisprudence and the hitherto stringent interpretation by the courts have greatly hindered the accessibility of the Nigerian Courts to the citizens. Under *ADESANYA V. PRESIDENT of NIGERIAN*², the Apex Court stated that in order to possess *locus standi*, a citizen must prove special interest in the subject matters as well as special damages resulting there from. And

¹ C.I.N Emelie Op Cit at P. 260

² (1982)3 ANLN 112 Amos V. SHELL DEVELOPMENT COMPANY (1977) SC. 109.

the plaintiff cannot bring an action against the defendant under public nuisance. However, there appears to be a wind of change, as courts in Nigeria are now more disposal to accept claim of environmental degradation from person or group of persons with interest in a particular subject matter. In *AKILU V. FAWEHINMI*³, the apex court widened the scope of the doctrine beyond the limited scope enumerated in *ADESANYA*. Thus in *ADEDIRAN V. INTERLAND TRANSPORT LIMITED*⁴, the supreme court of Nigeria allowed the plaintiffs standing to sue in respect of public nuisance. Karibwhyte JSC, specifically stated that by virtue of section 6(6) (b) of the 1977 constitution, entitle the private citizen to sue in public nuisance without obtaining the leave of the Attorney General or without joining him as a party. Encouragingly, subsequent judicial pronouncements have followed this progressive trend by relaxing and widening the scope of the application of the doctrine⁵.

b. Standard and burden of proving damages:

By the very nature of the tort of negligence on which most of the environmental degradation cases are premised, the plaintiff has the burden of proof as provided by the Act⁶, on which the court judgment depends on the existence of facts which legal right or liability, which he who asserts, must prove that those facts exist for in case of negligence e.g for the plaintiff must prove duty of care, breach and damages. The courts always insist that this requirement must

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co-exist and relate as between the plaintiff and defendants if liability in negligence is to be returned. Just as the courts have held, negligence cannot be committed in the air. The plaintiffs who failed to prove the essential element of negligence will invariably fail in their claims in spite of the fact that they indeed have sustained enormous losses arising from the actions of the defendant oil prospecting companies⁷.

The unenviable situation in which the victim/plaintiff of environmental degradation finds himself in the application of the rule of evidence or the doctrine of negligence is well illustrated in the cases of *Seismograph Service Ltd v. Akpruovo*⁸ and *Seismograph Services v. Onokpasa*⁹. In *seismograph service ltd v. Akpruovo*, where the respondent alleged that the appellant had caused damages to his building during the appellant's seismic operation. The respondent failed to call any expert evidence in support of the casual link between the damages and the appellant of claim. The appellant called a seismologist, who gave unchallenged, evidence that the appellants operations, did not caused the damages allegedly suffered by the respondent. Although the trial court of Nigeria reversed the decision of the trial court and asserted that the trial judge ought to have accepted and acted on the unchallenged expert evidence.

In *seismograph service V. Onakpasa*, the supreme court set

³ (1989) 2 NWLR (pt 102) 122 at pp 192- 193.

⁴ (1992) 6 NWLR (pt 314), 155

⁵ SPDC V. NWAUKSA (2001) 10 NWLR (pt. 720) 64 Fawehinmi v. president FRN, (2007) 14 NWLR (pt. 1054) at 274.

⁶ Sections 135 and 136 of Evidence Act, 2011.

⁷ Boadman V. Guinness (Nig) LTD, (1980) NWLR 109

⁸ "The onus of proof in case of environmental degradation in oil related litigations: A case for change in attitude of Nigeria courts" cited in L Atsegbua (Ed) op Cit 161.

⁹ (1972) 1 All NLR pt 1, p. 347

aside the judgment of the trial court which was in favor of the plaintiff, holding that the contention of each party is a "technical nature" and must necessarily be proved by experts, specially qualified in the particular field of science which in this case comprised of the knowledge and practice of seismology and Civil Engineering. Also the case of *Chinda and Others v. Shell B. P Petroleum Company of Nigeria*, where the court held that the plaintiffs complained of adverse impact of "Gas Flame" on their buildings, farm crops and other plants, and prayed the court, among others to restrain Shell- BP from operating a flare stack used during Gas flaming operations within "five miles" of the plaintiff's village. The judge refused to make an order of injunction as prayed, and described the relief sought as "an absurd and needlessly wide demand, because the plaintiff were unable to prove any negligence on the part of the defendant in the management and control of gas flare stack."

These cases show the position in which the victims of environmental degradation are placed. The result is that scientific evidence has become established, institutionalized and indispensable aspect of the evidence required to prove environmental claims, notwithstanding the enormous costs involved in procuring such evidence and the consequent inability of most claimants or victims (victims of environmental damage are mostly poor people) to pay the cost¹⁰.

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Condemning this kind of attitudes of environmental claims, professor Ajomo has rightly observed that "*what the judges fail to realize is that economic development can be compatible with Environmental conservation*"

¹⁰ A Nwaiwu, Environmental claims: The laws, regulations and practice paper presented at NBA Annual General conference, Enugu, 2003, 35.

Quantum of compensation/Damages

The purpose of awarding damages is not punishing, but with the goal of putting the plaintiff in the position he would have been, if the injury had not been suffered or injured. The test by which the amount of the damages is ascertained is measure of damages which should be equivalent to the loss suffered.

But in some cases the court may award exemplary damages not only as ways of compensation but as punishment.

At the other hand, the court seemed unwilling to penalize companies with equivalent monetary awareness of compensation to successful claimants in the case of oil related environmental damages as held in *Mon v. Shell- Bp Petroleum Development Company of Nigeria Limited*¹, the judge awarded ₦200,000 (Two hundred thousand naira) as general damages to the plaintiff for his injuries which resulted from oil pollution. This is indeed a peanut compared to what the victim suffered as a result of the oil pollution.

- c. Jurisdiction: in our legal system just like in every other legal system, jurisdiction is regarded as a fundamental issue, because it is the power of a court or judge to entertain an action, petition or other proceeding².

The constitution confer exclusive jurisdiction on the federal High Court with respect to “*mines and minerals and environmental matters*”³. No doubt, giving exclusive jurisdiction to the Federal High Court on

environmental matters is a major constraint because on these reasons among others: The court is located not in all the states of the federation, but in some states representing the different regions of the country⁴. Moreover, it is located in the state capitals, away from the rural communities where the effects of pollution are mostly felt. The victims of such may be compelled to resort to self help or extra-judicial actions. It is also a fact that the Federation High Court has the highest schedule of filing fees in the whole of the country. Which serve as a major constraint for the poor victim to gain access to court.

- d. The attitudes of the judges no doubt, have had harmful effect on plaintiff whose right has been violated as a result of environmental degradation. One reasons mostly attributed to this attitude of the judges is that most of them have no requisite training in environmental law and therefore do not appreciate the problems posed to man by environmental degradation⁵. They are also not rational and equitable as showed in the *Iron V. Shell BP*⁶, where the judge refused to grant an injunction in favor of the plaintiff whose land and fish pond had been polluted by the defendants operation for socio-economic reason. They lack pragmatic and activist approach which is now the order of the day in the world. They lack courage and prefer to be in the ancient rather than in the modern and jet age.

However, uncoordinated structure of the legal framework is

¹ (1970-1972) IRSLR 73-74.

² *Shell petroleum Development company of Nigeria Ltd V. Isaiah* (1995) 3 NWLR pt 338 pt 148 at 199.

³ Section 251 (1) (n) of 1999 constitution as amended

⁴ Ibid

⁵ Supra

⁶ *Supra*, SPDC V. Chief Tiebo and others (1994) 6 NWLR pt 350, 258

major problem in achieving an effective environmental protection. Although the structure of the environmental protection is based on the National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, it is true that this Act does not house all issues on waste management of the nation for example; the activities in oil and gas are excluded from the functions and powers of the agency and its council⁷. It is also a fact that environmental issues are addressed in other laws, such as the criminal code (to mention but a few) howbeit in comprehensive, archaic and thus not adequately able to protect the environment. Its provisions good as they are, are hardly invoked in pollution cases, as no known polluters have been prosecuted under these provisions. Again, the question is, will the Attorney General of Federation, the state and our court be disposed to do business? So far, they have all been found wanting in giving the head need for effective environmental protection.

The minister in many of the legal Framework is vested with the power to make regulations for the prevention of pollution, such power is at most discretionary, and leaves the minister with the choice of either exercising his discretion or not. The usual conflict between the federal and the state's legislative capacities with respect of environmental matters, and the often overlap of functions of the tripod level of governments, that is the Federal, State and Local Council environmental agencies does not speak well of an issue as important as environmental protection. For instance, the Enugu State Waste Management Authority (ESWAMA) a statutory body set up by the government of Enugu State, as did most other states of

Ugwu the federation⁸, under the law enacted by the State House of Assembly appears to have materialized from the exercise of both legislative and executive powers which are in direct conflict with the federal constitution of Nigeria⁹. Examining the functions of ESWAMA¹⁰ will show that they are the same with respect of the functions of the Local Government for the provision and maintenance of public conveniences, sewage and refuse disposal¹¹. It is thus submitted that the law establishing the Enugu State Waste Management Authority is inconsistent¹² with the fourth schedule of the constitution to the extent that it purports to have vested on the authority the function of sewage and refuse disposal specifically conferred on the local government by the constitution. The constitutional empowerment of the state government did not make it competent for the state government to derogate from the functions reserved by the constitution for the local government or to proceed further after conferring, the functions on the local government and confer the same functions or part thereof on another statutory body altogether¹³. These have deeply entrenched interests of political job seekers and beneficiaries as well as quasi-Judicial and other interests may not present a favorable environment for the scrap of the ESWAMA and repealing of its law as ought to be the case, leaving regard to the constitutional reality of the matter. Chinecherem, a girl who was once a victim of ESWAMA gave an account that

⁸ A.A Utaama, "waste management in Lagos metropolis: constitutional conflicts and resolution" Nigerian Current law journal, vol.2, No. 1, (1992), 21

⁹ Obunaeme Okafor: "the legal Regime for waste management in Enugu State: constitutional matters Arising", E.P. L.J, No. 1, Vol, 2011 at pg 126.

¹⁰ Sections 5(1), (a), (b), (c), (d), (i), (j), and (k) of ESWAMA Law, Cap 75, Revised laws of Enugu State 2004.

¹¹ Item 1(h) of fourth schedule, of the 1999 constitution as amended

¹² By virtue of section 1(3) of the 1999 constitution knight Frank V. Rutley (Nig) V.A.G of Kano State (1998) 7 NWLR part 556 pg 18-19.

¹³ Obunaeme Okafor, Op Cit, Page 138.

⁷ PART II of THE NESREA ACT, 2007

there is nothing like ESWAMA Court. She said that ESWAMA Court only exists in abstraction. There is no building or structure called ESWAMA Court and there is no custody where the victims stay, instead they stock the entire victim in an open place fenced with barbwire. And without coordinated structure for environmental protection will remain a theoretical goal which may get a lot of lip service from the government, companies and citizens, but the real task would continue to be postponed to a vague or unpredictable future. Furthermore, the environmental regulatory authorities are plagued with several issues that hamper their effective performance for example, there is duplicity in the function of regulatory bodies that heads to confusion regarding the proper authority to ensure compliance with regulations. Also, ineffective implementation of the existing legal frameworks has been a cloak or log in wheel of progress of environmental degradation. Where the legislation fails to adequately and appropriately address the subject matter, and there is no effective implementation of legislations however, does not stand alone, it is bedeviled by many factors, some of which are the following¹⁴.

1. Non availability and/or misapplication of funds: the environmental agencies or institutions can not readily or ably provide the much needed capital required for effective implementation of its numerous functions, they somehow look on the government to provide the required funds. However, either being ignorant or in total disregard for environmental protection value and sustainability, government either do not release the necessary fund or misapply fund meant for solving environmental problems¹⁵. The environmental protection

Ugwu agencies lack adequate funds which enhance the performance of their functions, for examples at 2009, the Anambra State Environmental protection Agency (ANSEPA) and the Anambra State Government are in court over non-payment of the staff salary. A state that cannot boast of payment of the salaries of workers of the environmental agency, tells the story better than we could imagine. This will amount to making of legislative of dull, ineffective and worthless legislature.

2. Lack of or Existence of Functional Equipments and Laboratories

Most, if not all the environmental protection agencies in the country lack the necessary equipment for effective implementation of the environmental protection regulations. A visit to the new NESREA laboratory, inherited from the then Federal Environmental Protection Agency, is a shadow and mockery of itself, it is ill-equipped and nothing seems to be going on there without these necessary and mandatory equipments at the disposal of these agencies, the agencies cannot perform magic.

3. Lack of self discipline and corruption

Corruption occurs at every level or facets of the society and in the environmental agencies in particular, even the legislative process and of course the government at the center of affairs in the nation is corrupt. It is common knowledge that environmental protection personnel collect bribes from companies and individuals that pollute and abuse the environment to circumvent the course of justice and prevent same from paying necessary compensation or rehabilitate the environment if need be. A shocking experience was witnessed by this research on a visit along the Nkpor/Onitsha

¹⁴ C.I.N Emelie, OP Cit, p- 296.

¹⁵ Environmental Sustainability, "Environment and planning law Review Journal, No.1, Vol. , (2005), p. 58

Express way, where an environmental officer stationed to prevent the dumping of refuse close to the road, collected between ₦300 and ₦500 naira from tippers with huge refuse and allow them dump their refuse at the unauthorized places. Also, an environmental scientist with the Anambra State Environmental Protection Agency while entertaining question from this research on how they exercise the power of arrest and prosecution conferred on them¹⁶ lamented that they have to bribe the law enforcement agents, before they would agree in assisting them to enforce the legislation against those who violate the laws.

Also, Ginikachukwu who was arrested by ESWAMA for throwing a refuse, said that she was released from been convicted for the offence she committed at the payment of ₦2000. With this level of corruption effective implementation of the environmental protection legislation is like asking the camel to pass through the eye of the needle. Lack of genuine interest on part of the government on environmental matters is a problem and could be attributed to the very high incidence of environmental degradation. The lackluster attitude of the government explains why there was no comprehensive and coordinated structure for the protection of the environment until the shock incident of koko. In response to this rude shame, the government hurriedly promulgated the Harmful waste (special criminal provision) Act and then Federal Environmental Protection Agency Act which has now been replaced by the NESREA Act. The inadequacy in these Acts already discussed further exposes the unpreparedness and unwilling of the government to effectively tackle environmental issues with the seriousness it deserves.

¹⁶ Section 34(1)(a)(b) and (2) of Anambra State Environment Protection Agency Edict, No. 7 of 1998.

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Ignorance on the part of the citizens is also another impediment. Ignorance they say is disease. Most Nigerians do not know their right from their left not to talk of knowing about their environmental rights. They do not also know about their existing environmental rights. Worst still, they do not know whether any law exist for the protection of the environment. They are also ignorance of the available environmental structure and agencies that exist for the protection of their environment or how the agency can assist in ensuring the observance of their environmental rights. Nonchalance on part of the citizens is another obstacle. The average Nigerian is claim, careless and does not feel any anxiety about his environment, not to talk about his to the environment. It is unfortunate that Nigerians are waiting to be dragged before they imbibe the culture of maintaining the environment and the rights of inhabiting in an un-degraded environment their orientation as it relates to cleanliness of the environment which of course include dumping of waste is close to nothing. The general feeling is that maintaining the environment or keeping it clean is not their business provided that their small environment is clean. This nonchalant attitude cuts across all, the rich and the poor, the educated and the illiterates, the good looking and the ugly, all is guilty of this sin even the researcher.

A particular incident plays back on my mind in the course of writing this sub-topic at Orba in Anambra State where my immediate elder brother lived. There was a particular refuse dumped along the entrance of the street. The air pollution of the waste notwithstanding, it tried to block the entrance of the street. The whole people living along the street which include, the educated and non-educated held a meeting and decided that the nuisance was getting out of hand and needed to be addressed. Among these people were lawyers, lecturers, chartered accountants, bankers, teachers, business men among others. The short and long of it was that nothing was done, nor has

been done up till then my brother was living there because of the reason of time, cost, nonchalance, etc. the level of illiteracy among the citizens of this country is a serious issue. This situation makes them timid and ever ready to treat the issue of environment degradation which affects their life and environment with waive of hand. This is so even when they have chances to go against persons, bodies and even governments who had violated their environmental rights in one way or the other. For sure, most of those illiterates are cowards and will rather exhibit "I do not care" or "it does not matter" attitude, than exposing themselves. This precarious position of the citizens is taking advantage of, by both the environment polluters and the environmental agencies that are in place. Knowledge indeed is power to the individual, the government and to the environment. However, looking at the provisions of the constitution, it is quite clear that no legal mandate places the responsibility of environmental protection on the shoulders of the federal government in particular and the state and local government in general. A mockery of a legal framework is seen under constitution¹⁷ regrettably, the provision of the constitution of FRN is an integral part of the fundamental objectives and directive principles of state policy, which are not law so called, as they are not justifiable¹⁸, with the effect that non observance of these provision cannot be challenged in any court of law in Nigeria¹⁹ except where the constitution otherwise provide so. In *MOREBISH V. STATE HOUSE OF ASSEMBLY*²⁰ where, it was held that the provisions of chapter 2 of the constitution of Nigeria which contains the fundamental objective and direction principles of state policy is not justiciable, although they remain

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pillars of guide and focus of attention of
all tiers of government.

¹⁷ Section 20 of 1999 constitution of FRN (as amended)

¹⁸ Ibid

¹⁹ Ibid at section 6(b)(c)

²⁰ (2000) 3 WRN 134, *OKOGIE V. ATTORNEY GENERAL OF LAGOS* (1980) FNR 445.

RECOMMENDATIONS

I humbly recommend that some of the problems of environmental protection especially that of laws and regulations of waste management could be properly addressed; if the following measures are adopted not only by Enugu and Anambra States, but also to other states of the federation and their various agencies and organs responsible for environmental protection through waste management.

- There is a need for high adherence to the provisions of environment impact assessment and if the provisions are adhered to, high level of sustainable development of the environment will be achieved. To this end, environmental degradation and pollution will be reduced to the barest minimum, and the environment as well as the global heritage will be preserved for the present and the future.
- The judicial process which the victim will readily fall back to in view of the above reason is shaking and there is need for urgent fortification of time. The insistence by courts in the operation of the irregular, standard of proof in environmental degradation cases which are usually between two unequal parties through lawful appears inequitable instead of allowing the plaintiff who has suffered losses from the hands of the defendant to go without remedy because of inadequate proof of negligence on the part of the defendant, now our courts are urged to fall back to the doctrine of *res ipsa loquitur* which means "the facts speaks for themselves".
- There should be proper and detailed distribution of duties of the environmental agency personnel to build trust and understanding among these personnel, in order to work in harmony and present an environmental friendly filed for

proper implementation of environmental protection goal.

- The enormous powers place on the hands of the federal agency merged to transcend states boundaries such that the agency can effect enforcement of the provision where the federal environmental body fails to act. Thus, it is anticipated that the agency would set up states and even local council environmental protection bodies, who will help to implement the functions of the agency within each state.
- There should be a harmonize implementation of our new environmental legislation. The Federal legislature in dealing with a concurrent matter may aim simply at providing a uniform framework within which the state legislatures are to provide the details and make the necessary adaptations to local institutions. Alternatively, the federal legislature may prove detailed regulations while at the same time expressly authorized further state regulations. By these options both laws complement themselves and operate "side by side as a composite body of regulations on the matter of environmental protections, subject to the fact that the state laws must not be at variance with the federal laws. One way of achieving a semi-balanced of validity in the matter is by the state government entering in to joint venture by which it will partner with all local government councils together on waste management and environmental protection. This is possible because the constitution contains no provision which could be construed as preventing the local government from carrying out their functions under a partnership or joint venture arrangement.

- The National Assembly should pursuant to their power under section 410 of the 1999 constitution, establish special National Environmental courts composed of judges highly qualified in environmental law. The court should apply innovative approaches to dispute resolution with respect to environmental protection cases. Some of the approaches should include prior consultation, fact-finding, commissions of inquiry, conciliation, mediation, non-compliance procedure, arbitration etc.
- The use of Alternative Dispute Resolution (ADR) is mostly advocated here to ensure speedy arbitration and dispensation of justice
- There is need for environmental education and awareness. Government should ensure that is adequate enlightenment of the populace as regard to environmental protection and environmental rights, through proper waste management.
- Government departments and agencies should from time to time review and report on the effectiveness of policies and plans.
- The processing fees should be such that victims of environmental pollution can readily have access to the court to pursue their acclaim. And the court should be located as close as possible to the source point of the major environmental pollution operating areas, so that the victims of such environmental degradation can access the court with less difficulty.
- The environmental rights and protection should be incorporated into the Nigerian constitution as fundamental right and made justiciable to achieve sustainable waste management practices in Nigeria, the constitution of the Federal Republic of Nigeria, 1999

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(as amended) should be further amended to make the right to a healthy environment justiciable and to be in line with the provisions of the African chapter on Human and People's Rights and the African Charter (Ratification and Enforcement) Act¹. This will enable citizens to better enforce their environmental rights through the courts and in the long run make the waste management agency more effective.

- The inadequacies of some of our environmental laws need to be urgently amended to make it more effective by way of higher punishment and payment of reasonable damages that would serve as deterrent to would be offenders and defaulters.
- Polluter pays principle should be strengthened. That is the governmental taxation or levy for industries in order to make them more liable in ensuring environmental protection of the area where they operate.
- Government should ensure that the beautiful statement on environment contained in its development plans are put into practice by ensuring impact assessments in all developmental plans as to achieve much needed sustainable development at the end of the day.
- Trade unions, Non-Governmental Organization (NGOs) and others must play fundamental roles in the promotion and protection of human rights to the environment through debates, seminars, symposia, public lectures and other publications via the mass media
- The supreme courts new stance in accepting claims from persons or groups with interest in a particular subject is commendable for in
ADEDIRAN V.INTER-LAND

¹ Laws of the federation of Nigeria 2004 Cap A9

*TRANSPORT LTD*², the Supreme Court allowed the plaintiff standing to sue in respect of public nuisance. This is a landmark to the principle of *locus standi*, and the court held that in the light of section 6(6) (b) of the 1979 constitution, a private person can commence an action on public nuisance without the consent of the Attorney General of the Federation or without joining him as a party.

- Government should adopt recycle as effective method of waste management. This is because; it will go a long way of making use of those waste materials again in production of new things and also create employment opportunity for the populace.

² (1992) a NWLR, (pt 814), 155 by per Karibi Whyte JSC (as he was then)

CONCLUSION

Nigeria is not lacking in terms of legislation that have the protection of the environment in view. The question is how have we faced with this, having been rudely awakened from the slumber of environmental activity by the discovery of hazardous waste dumped from outside Nigeria at Koko in the then Bendel State in 1988. The Government of the day must be commended for its swift reaction via promulgation of Harmful waste (special criminal provision) Act 1988 and other Acts. The importance of a structure ensuring a well-articulated plan of the

attribute of waste management system has been emphasized in this research. But there is still the problem of enforcement of these environmental laws. The major problem of waste management system in Enugu and Anambra States do not lie with the body but with the system and methods. The recommendation of this work, if adhered to, will not only make the practice of the waste management authority efficient and effective but also ensure and improve sustainable development and healthy environment for present and future generation.

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