



BAYELSA STATE COLLEGE OF ARTS AND SCIENCE ELEBELE.

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DIP/LAW/14/192

TOPIC:

**CHALLENGES OF ENFORCEMENT OF ENVIRONMENTAL LAWS IN
NIGERIA**

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BAYELSA STATE COLLEGE OF ARTS AND SCIENCE.
SCHOOL OF FOUNDATION STUDIES
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NIGERIA

CERTIFICATION

This is to certify that this research project was conducted by Mrs. Jokori .D Uwaba Mary under the effective supervision and guidance of Mrs. THOM OKORO ESQ in the Department of law, school of Foundation Studies Bayelsa State College of Arts and Science Elebele.

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APPROVAL

This project on an Appraisal of the enforcement of environmental laws in Nigeria has been supervised, approved, and accepted as meeting the requirement in part for the award of a National Diploma (N.D) in the Department of law, school of foundation studies Bayelsa State College of Arts and Science.

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TABLE OF STATUTE

- ❖ The constitution of the Federal Republic of Nigeria 1999 as amended.
- ❖ The Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2010.
- ❖ The Petroleum act 1969.
- ❖ Oil in navigable water Act 1968.
- ❖ The Environmental Impact Assessment Act 1992.
- ❖ The Federal Environmental Protection Agency Act 1998.
- ❖ The National Policy of Environment 1989.
- ❖ Harmful Waste (Special Criminal Provision ETC) Act Cap. 165 LFN 1990.

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DEDICATION

The project is dedicated to God Almighty for his infinite love, grace, and strength right from the very first day I started this program till date, helping me to scale through the challenges of life to the completion of this program.

BAYELSA STATE POLYTECHNIC, ALEIBIRI

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TABLE OF CONTENT:

Certification	iii
Table of content	iv
Table of cases	v
Table of statuses	vi
Dedication	vii
Acknowledgment	viii
Abstract	ix

CHAPTER ONE

1.0 Introduction	1
1.1 The evolution of Nigerian Environmental Laws	2
1.2 Nature of the Nigerian	4
1.3 Damages of the Environment	5
1.3.1 Domestic / Communal	6
1.3.2 Industrial (commercial) and Technological	7
1.3.3 Agricultural	9
1.3.4 International	10
1.4 Environmental issues	10

CHAPTER TWO

2.0 Nigerian Environment laws	13
2.0.1 Common law	13
2.0.2 Nuisance	14
2.0.3 Negligence	15
2.0.4 Trespass to laws Land	16
2.0.5 The Ryland Vs Fletcher Rule	16
2.1 Federal Environmental Protection Agency (FEPA)	18
2.1.2 The Oil In Navigable Waters Act 1968	19
2.1.3 The Harmful Waste	19
2.2 The National Policy of The Environment	23
2.3 The Environmental Impact Assessment Act	25
2.4 The Nigerian Constitution (1999 as amended)	27

CHAPTER THREE

3.0 Enforcement of laws	29
3.1 socio- political issues of enforcement	31

3.2 challenges with enforcement of environment legislation	33
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CHAPTER FOUR

4.0 Conclusion	36
4.1 Recommendation	37
4.2 Bibliography	40

BAYELSA STATE POLYTECHNIC, ALEBIRI

ABSTRACT

The environmental laws in Nigeria and its enforcement have remained problematic to the extent that the management of the environment and its regulations has been confronted with difficulties, although success has been recorded. Thus, it is necessary also to stress that the desire and quest for resources control by the Niger Delta states is attributive to lack of proper enforcement of the environmental protection legislations.

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CHAPTER ONE

1.0 Introduction:

This project tends to examine the challenges confronting the major Nigerian legislations on environmental protection, as well as its enforceability. It will also analyze the punishment stipulated in the various legislations and a breakdown of the effects of these penalties on individuals and corporate bodies.

An examination is also made of some key socio-political issues that have arisen as a result of the lack of proper enforcement of environmental protection right as well as attempt is made to define certain terms used in the project.

The word environment has its root meaning derived from the French word; 'Environment' or 'Environ' which literally means, 'Around' or 'Round About'. In its most general sense, environment refers to our surroundings.

Section 38 of the Federal Environmental Protection Agency (FEPA) Act defines

"Environment" Includes water, air, land, and all plants and human beings or animals living therein and the inter-relationship that exists among these or any of them. It simply means that man's environment comprises all that is about him: air, water, land, trees, plants, animals, human beings, etc. Hence, the term "environment" itself refers to the total sum of our surroundings.

Environmental law is a body of rules and regulations, orders, and statutes concerned with the maintenance and protection of the natural environment of a country. By a way of precise definition? "Environmental law is that branch of law which pertains to the maintenance of wholesome human environment". Thus, it means the environment.

1. See, section 38 of the federal environmental protection agency (FEPA) act 1988 of Nigeria.

2. Environmental law "the Nigerian Situation" second Edition (Nwosu, Uchechukwu Wilson); professor H.L.A. Hart, the concept of law 1961

1.1 Evolution of the Nigerian Environmental Laws:

The nature of ecology which is defined as "the science of correlations between all organisms living together in the same locality, and their adaptations to their surroundings.

In the light of the fore-going clarification, we will agree by a way of precise definition; "environmental Law is that branch of law which pertains to the maintenance of wholesome human environment, meanwhile the historical development of environmental law finds its antecedent in the 1972 united nations conference on the Human Environment which yielded, inter-alia, the now famous set of principles known as the Stockholm declaration. The conference adopted three non-binding instruments, namely;

1. A declaration of 26 principles.
2. An action plan containing 109 recommendations and
3. Resolution on institutional and financial arrangements.

The Stockholm Declaration, however, represents a formalization in the United Nations practice which is used only when principles of special importance are being laid down as professor John notes, "the general tone" (of the declaration) is one of a strong sense of dedication to the idea of trying to establish the basic rules of international Environmental law. After the Stockholm Declaration of 1972 there followed further developments in the evolution of international agreements on a wide range of issues, of both a general and specific nature as well as being global, regional, and bilateral in their application. Examples of these agreements include; the 1973 Convention for the Prevention of pollution from Ships, as modified by the 1978 Protocol; and the 1973 Convention on international trade in Endangered Species of wild fauna and Flora (cites).

The 1979 Geneva Convention on long-range transboundary air pollution; the 1989 Basel Convention on the control of transboundary, movements of Hazardous wastes and their disposal, and the 1991 Espoo Convention on Environmental impact assessment in a transboundary context. A major breakthrough in international Environmental law, however, was made at the 1992 UN Conference on Environment and Development (UNCED), the so-called "Earth Summit in Rio de Janeiro Brazil.

The UNCED adopted five instruments. The framework convention, 1992; the Rio declaration 1992: Agenda 21; and non-binding principles on sustainable development of forests.

The above developments in international environmental law have been copied in Nigeria where action to improve the environment has mainly been initiated by government with the launching of the Environmental sanitation program by the Buhari's Administration, most state governments have passed Edicts giving legal backing to the regulation of the environmental sanitation. These regulations have been done step by step without any central policy. The koko toxic waste dumping saga has, however, giving impetus to a central collective effort as seen in federal Governments regulation on the environment. Such regulation was pioneered by the Harmful waste (special criminal provision etc). Decree 1988; and the Federal Environmental Protection Agency Decree 1988. Other environmental regulations have these early legislations as a stepping stone.

1.2 Nature of the Nigerian Environment:

The environment is seen from nature, including the living world that is a planet, animals, fungi viruses, and all. Generally, life depends on the environment contrary to the attitude and belief of most people in developing countries that their life and livelihood depend entirely on their immediate neighborhood, it is

now realized that the environment extends beyond a people's immediate surroundings.

Furthermore, the environment is defined according to the FEPA® Act to "include; water, air, land, and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them".

Nigeria as a country is situated in West Africa, sharing borders with the following countries, the Republic of Cameroon, the Republic of Benin, the Niger Republic, and the Atlantic Ocean in the East, West, North, and South respectively.

Its temperature average ranges from 23 to 30 degrees in the South with relatively high humidity and 18 to 40 degrees in the North.

Nigeria is enriched with a lot of mineral resources, which include the following; crude oil, tar sands, coal, columbite, tin, natural gas, iron ore, etc.

The oil-rich Niger Delta region is the major oil-producing area and it is characterized by tropical rain forests which have rich ecological sensitivity and biodiversity while the general Nigerian environment has the following characteristic features;

- ❖ Poor Environmental sanitation and municipal solid wastes.
- ❖ Indiscriminate gas flaring associated with oil pollution.

- ❖ Pollution of the land surface and water systems through indiscriminate and accidental discharges of industrial effluents and oil pollutants.
- ❖ Indiscriminate bush burning and uncontrolled hunting and fishing to the destruction of indigenous wildlife and fish species.
- ❖ Deforestation and excessive pressure on available resources, infrastructure and space due to the high rate of rural-urban migration.

1.3 Environmental Damages:

In every society, competing demands are frequently made on society's natural resources, such competition is usually between the forces of deterioration whose dominant objective is to consume or deteriorate natural resources, and the conservationists whose primary concern is how to preserve society's natural resources. But people often lack honesty and objectivity in appraising the facts about pollution.

Environmental damages consist essentially in pollution in all its ramifications and some apparently innocuous activities of man contribute to the problem. Seldom is the damage viewed in terms of the aesthetics of the environment. These bits and pieces come together to cause grave environmental problems for the entire country. These could be discussed under four (4) headings viz; domestic/communal, industrial and technological; agricultural and international.

1.3.1 Domestic / Communal

The environment is damaged or problems result also from careless strewn of domestic refuse around residential areas such as, aerosol cans of cosmetics and insecticides in common use, construction of structures without appropriate authorization and compliance with health regulations. Sometimes human excreta are emptied into gutters and where even waste bins exist, they are almost always not cleared, spoiling their contents on to the streets. When refuse is cleared, it is transported in open vehicles through residential and busy commercial areas with the wind helping to blow it in all directions which results in waste dispersal and not disposal. Waste disposal most times consists merely in shifting the refuse from one part of the town to another without any plans for its management.

1.3.2 Industrial (commercial) and Technological

Man, since the industrial revolution has been better able to exploit natural resources for his advancement and comfort. Science keeps pushing further the horizon of knowledge, commercial activities also, are on the increase, and all these have been aided by the discovery of oil as the cheapest form of energy source.

Every industrial and technological venture which includes the prospecting for and refining of crude oil leaves in its wake sundry waste products which have adverse effects on the environment. The discharge of industrial effluents

routinely into drainage channels, fresh water, dangerous chemicals and solid industrial waste resulting from industrial activities are dumped surreptitiously on farmlands too in the country-side close to factories generating them. Most factories install electricity generating sets as a result of the unstable power supply by the National Electric Power PLC (NEP PLC) now Power Holding Company of Nigeria (PHN), which join other industrial plants in belching dangerous gases into the atmosphere.

At almost every stage of the oil production process, pollutes the environment one way or the other. For instance, pollution occurs from the explosives used to blast rocks during exploration, through oil spills and sludge's gas flaring and oil-well blow-outs, thus, the petroleum industry contributes a lot to environmental degradation. Farmlands are rendered useless, rivers, and creeks are polluted, aquatic life become dead and health problems multiply as a result of these activities.

Quite another important form of environmental damage, especially in urban centers in Nigeria is the indiscriminate use of bill boards and posters. Huge bill-boards advertising this product or that service. Posters show businesses, political, religious and educational information have been used to deface buildings and bridges.

1.3.3 Agricultural

Some agricultural activities which occasion environmental damage include: bush burning, fishing with dangerous chemicals, cattle grazing, misuse and abuse of acutely toxic organ phosphorus pesticides etc. Bush burning releases large

5. In March of 1978 the supertanker AMOCO Cadiz spilled over 200,000 tons crude oil into the sea off Brittany coast of France, killing some 10,000 disrupting the oyster industry's polluting over a gigantic oil slick. Also, in march 1989 oil spill accident in Valdez, Alaska (USA) Exxon the oil company involved spent over \$1 billion on clean up.

quantities of carbon monoxide, carbon dioxide and other carbonaceous gases into the atmosphere as well as, emitting large quantities of nitrogen, and sulphur too.

Misuse and abuse of pesticides result in pesticide poisoning and deaths and chemical fishing result in fish kills and destroy aquatic life generally. Over-grazing also aids erosion and desertification.

Where land is rendered unproductive and totally destroyed by erosion or desertification, the people move to new settlements and start all over which is not sustainable development, because sooner or later all available land will be exhausted and the people become environmental refugees⁶. Over-cultivation

and bush burning render most soils infertile and as such replacement of the essential minerals of the soil takes a very long period.

1.3.4 International

Heavy industrial activities and power generation produce toxic chemicals and solid wastes. Although, Nigeria has quite a number of industrial establishments spanning primary, secondary and tertiary industries which are potential environmental stressor industries, the danger or threat of toxic waste pollution comes from abroad than within. While some countries have facilities for deep burial of these wastes, some others or at least unscrupulous industrialists find it considerably cheaper to drum and dump them in territories and territorial waters far removed from their countries of origin.

1.4 Environmental Issues:

The main environmental issues that have attracted global attention in recent times include greenhouse effect, global warming, ozone depletion, acid rain, deforestation, pollution (land, water, air, noise, radiation, thermal), urbanization and population explosion, and technology.

Issues like pollution, deforestation and population explosion occurring as a result of man's activities exercise direct effect on sustainable development; this is because all other issues, though relevant, contribute in bringing about other issues like pollution.

Greenhouse effect is a natural effect which keeps the earth warm enough to support life; greenhouse effect is caused by an increase in atmospheric gases from industrial pollution. These gases form a chemical shield around the earth resulting in global warming and related atmospheric problems such as the depletion of the ozone layer and acid rain. It is in fact, noteworthy that because of the level of heat in Nigeria, environmentalists predict that the country may be affected by this greenhouse effect in the nearest future.

Global warming results from an increase in amount of greenhouses gases emitted into the atmosphere.

The Ozone layer prevents harmful ultra-violet rays of the sun from reaching the surface of the earth, thereby protecting man, animals and plants. Thus, some chemical substances containing chlorine and bromine released from industrial activities move up slowly into the upper atmosphere to deplete the ozone layer.

Urbanization and population explosion problems result as the rate of growth of the world population causing some concerns as regards the limited resources available for sustenance. Increase in population means an increase in goods consumed and subsequently an increase in solid waste, generating more environmental problems.

Pollution is caused when a change in physical, chemical or biological conditions in the environment affect the quality of human life, including effects on plants and other animals, industries and cultural and aesthetic assets.

FEPA ACT gives a statutory definition of pollution as follows;

"Pollution means the man-made or man-aided alteration of the chemical, physical or biological quantity of the environment to the extent that is detrimental to that environment or beyond acceptance limits..."⁹

Thus, pollution could be defined as the contamination of the environment. It follows, therefore, that any disturbance in the natural environment or anything that upsets the environment amounts to pollution. In its broadest sense, pollution is any process carried out by man which leads to an adverse change in our physical environment. Pollution problems had their beginning with the growth of cities and the messing of people and their related water, industrial and disposal needs. In other words, pollution has always been in existence, but it increased as civilization increased. The several types of pollution are usually grouped by the resources affected. Basically, there are three types of pollution, they are; land pollution, water pollution, and air pollution. Others include; noise, radiation and thermal pollution.

CHAPTER TWO

2.0 Various Laws on the Nigerian Environment

Nigeria like some other countries follows the example of the international agencies, mostly the United Nations (UN) by setting up laws and various agencies to act in an appropriate manner. The existence of environmental protection regulations in Nigeria consists of the English common laws and the Federal and State environmental related laws, but we shall be discussing only the Federal laws on the Environment.

2.0.1 Common law

The common law is a law which is common to the indigenous people of England.

This law came to Nigeria and was received through colonization. This law has been helpful in the protection of property of individuals in Nigeria and also limiting private property use.

Since the unrestricted use of property by owners will certainly lead to chaos, there ought to be restrictions and regulations placed, not only in the interest of other property owners but also in the interest of the public health, safety, environment, aesthetics, moral and general welfare of the society.

The question now is how does the common law relate or in harmony with the environment? In an attempt to find answer to this question, the common law

principles of Nuisance, Negligence and Trespass to land and the Rule in Ryland Vs Fletcher^o will be analyzed. These are the basic common law provisions which relates to the environment, particularly pollution.

2.0.2 Nuisance

Under the law of tort, Nuisance consists of the unlawful interference with the use or enjoyment of another person's land. Consequently, an act such as the emission of noxious fumes from a factory, the obstruction of a public highway, the destruction of a building through vibrations and interference with an easement of way are classified under this tort. It must be emphasized that the term is incapable of exhaustive definition which fits all cases as it is very comprehensive and includes everything that endangers life or health, give offense to senses, violates laws of decency or obstructs reasonable and comfortable use of property. The most important aspect of nuisance is that it must be continuing not sporadic.

It is relied upon victims of environmental hazards because it "has become a catch-all for a multitude of ill-assorted sins" such as emission of noxious fumes from a factory, the destruction of building through vibration etc. Nuisance could be private or public, to succeed in an action for nuisance, damage must be proved. In *Seismograph Service Ltd Vs Akporuovo* the plaintiffs claim that the defendant's operation caused damage to building and household goods failed because, damages were not proved.

Private nuisance consists generally of unlawful interference with the use or enjoyment of another person's land, private nuisance can be two kinds:

1. A wrongful disturbance of an easement or another servitude connected with land.
2. An act of wrongfully causing or allowing the escape of deleterious things into (onto) another's land.

Public nuisance is a crime actionable by the state through the Attorney-General, but only person who can show he suffers particular damage over and above that suffered by the general public can sue for public nuisance. He must also prove particular damage to himself. In *Amos Vs Shell B.P Nigeria Ltd.* The plaintiff claim in a representative capacity failed because there was particular damage could not be proved. It was held that the creek is a public water-way and that representative action for special damage was improper the interest and losses suffered by the victims were separate in character and not communal.

2.0.3 Negligence

Negligence is the breach of a legal duty which results in damage undesired by the defendant to the plaintiff, it may be an action or omission. To succeed in an action of negligence three elements must be proved or established.

1. A duty of care owed to the plaintiff by the defendants

In Onajoke Vs Seismograph Services Ltd. The plaintiff's action in negligence succeeded because the defendants owed a duty of care to anyone whose house was likely to be damaged by his blasting operation.

2.0.4 Trespass to Land

Here we are interested in the species of trespass to land committed where a person without lawful justification. Directly places or projects any material object upon land in the possession of another. Thus liability for trespass to land was established where noxious gas was blown into a house. For the defendants to be liable, the placing or projecting of the offensive object to the plaintiff land must be direct, an action for trespass, such as the deliberate dumping of industrial wastes on a farmland is direct.

2.0.5 The Ryland Vs Fletcher Rule

The rule of Ryland Vs Fletcher is a rule propounded by Blackburn J who said thus:

"The person who for his/our purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequences of its escape. Note, things within the rule include not only inherently dangerous materials such as explosives, petrol, and gas but also relatively innocuous things that only become hazardous when accumulated in large quantities such as water¹³, sewage and crude oil⁵.

For the establishment of liability under this rule, the defendant must;

1. Bring on the land and accumulate
2. In the course of a non-natural user of land.
3. Anything likely to do mischief if it escapes
4. Things must escape and cause damage.

The common law principles of nuisance, negligence, trespass to land and rule in Ryland Vs Fletcher relate to environmental protection to the extent that they are designed to protect public health and ensure safety of life and property since the protection of human health and their environment is the main focus of environmental protection and management. It becomes obvious that the above-mentioned principles are indeed necessary for the realization of the objectives of providing adequate protection to the environment.

Furthermore, there are some legislation that are added to these common law provision which could be describe as environmental law although they never dealt on the environment directly, they could be applied with some degree of success to environmental situations since they were made with the intention to protect the sea, land, air or persons. There were other enactments on the health and safety of life and property but our own in this work is majorly on the Federal Legislation that deals directly on the environment.

2.1 THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY ACT

The Federal Environmental Protection Agency Act (FEPA) was created primarily to setup a body with the duty to lay down the general regulatory framework on environmental matters and an effective implementation of its function. The FEPA Act has been amended by the FEPA (amendment) decree¹⁶

FEPA has a number of statutory functions to perform and these are laid down in the act. The agency has the duty to prepare a comprehensive national policy for the protection of the environment and conservation of natural resources, including procedure for environmental impact assessment for all development project. Its other duties is to prepare in accordance with the national policy on the environment, periodic master plans for the development of environmental science and technology, to advice the Federal Government on the national environmental policies and priorities, the conservation of natural resources and sustainable development and scientific and technological activities affecting the environment and natural resources

to promote co-operation environmental science and conservation technology with similar bodies in other countries and with international bodies.

FEPA also sets standards for the protection of the nation's air and inter-state waters as may be necessary to protect the health and welfare of the population from environmental degradation.

2.1.2 The Oil In Navigable Waters Act 1968

The oil in navigable waters Act is an Act to implement the terms of the convention on the prevention of pollution of the seas by the international organization in 1954 to 1962 and to make provisions for such prevention in the navigable waters of Nigeria.

Section 1 of this Act prohibits the discharge of certain oils into prohibited sea areas while section 3 prohibits the discharge of oil and mixtures containing oil into the sea.

The minister of petroleum makes important decisions under this Act, thus, the minister of petroleum resources may make regulations requiring ships to be fitted with such equipment and anyone or company who defaults the provisions found in section 1, 3 and 5 of the Act are liable to a fine.

2.1.3 The Harmful Waste

According to decree no. 72 of 1988, harmful waste is defined as including "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, fatal injury or incurable impairment of physical and mental health. The definition as provided under the act recognizes three constitutive elements:

1. The substance must be harmful
2. The danger posed by the substance must relate to a human being
3. The substance has to be a waste.

The act creates four offenses with penalties attached to each. These offenses are in section 1 (2) of the act. The section make it a criminal offense if without lawful authority, “any person who carries, deposits, dumps or cause to be carried deposited or dumped or is in possession, for the purpose of carrying depositing or dumping harmful wastes on any land or on any terrestrial waters or contiguous zone or exclusive economic zone of Nigeria or its inland water ways”.

Article 1 (5) of the convention on the law of the sea, 1982 gave a general definition of dumping as “any deliberate disposal of waste or other matter from vessels, air craft’s, platforms or other man-made structures at seas”. This definition represents the global consensus on the question of dumping, but the harmful waste act however limits the geographical jurisdiction to the Nigeria territory.

Secondly, offense under the act is committed when any person without lawful authority “transport or causes to be transported or is in possession for the purpose of transporting any harmful waste.

Thirdly, offense under this act is provided under section 1 (2) of the act. By virtue of this provision, it is a crime “to sell; offer to sale, buy or otherwise deal in any harmful waste”.

Finally, offense under this act is provided under section 1 (2) (d) of the act. By virtue of the provision, it is a crime “to sell; offer to sale, buy or otherwise deal in any harmful waste”.

Section 2 provides for parties to offenses following the principles laid down in the criminal code. It is, therefore, an offense for any person to aid, counsel or procure any person to commit any crime stipulated in this act. 2 (1), therefore makes the person who imports harmful waste without lawful authority, criminally liable just like the customs or security officer who negligently omits to check the cargo at the port before such cargo harmful waste is discharged. Section 3 deals with the question of joint liability where there has been a common intention to prosecute an unlawful purpose. This section is on the mode of execution of the crime while the offense of accessories after the fact is provided for under section 5. It is under the act to escape punishment.

The idea of including those who counsel procure or attempt to commit the offense arises from the need to attach liability to any person who is directly or Remotely involved in the process of dumping harmful waste within Nigeria or its territorial waters, contiguous and exclusive economic zone.

The penalty for the various categories of offenses under sections 1 to 5 is life imprisonment. It is perhaps, necessary to stress the importance of strict adherence, that any person convicted of committing any crime under the act or even attempting to is sentenced to life imprisonment.

The main problem with this law is that it does not extend its penalties to corporate bodies. Sec. 7 merely states that if any corporate body is found guilty, it would be “punished accordingly” There is an apparent lacuna here and it out to be filled before more change is done. It has been suggested that such corporations should be shut down permanently to stop further production of any harmful waste.

It is very necessary to note that no individual or corporate body hides under the cloak of diplomatic immunities. In sec. 9 states that the provision of the Diplomatic Immunities and Privilege Act should not extend or apply to crimes committed under the act.

In addition to criminal responsibility, the act also creates civil liability. Civil liability subsists for any damage caused by any harmful waste which has been deposited or dumped on any land or territorial waters or contiguous zone or exclusive economic zone of Nigeria or its inland waterways, and any person who deposited, dumped or imported the harmful waste shall be liable for the damage except where the damage was due wholly to the fault of the person who suffered it.

The principle of violent nonfit injuria; also applies to the person who has voluntarily accepted the risk. The act should probably have restricted itself to criminal liability since tortuous liability within the municipal system needs not be activated by legislation. The common law principle applied and there has been sufficient judicial authority to deal with civil liability in whatever form.

2.2 The National Policy On The Environment 1989

The national policy on the environment was promulgated in 1989, according to section 2 of this policy, its goals stated under the above-mentioned section are to achieve sustainable development in Nigeria and in particular to;

- ❖ Restore, and maintain the ecosystem and enhance its ecological process for the functioning of the biosphere to preserve biological diversity and the principle of optimum sustainable yield in the use of living naturally resourced ecosystem.
- ❖ Raise public awareness and promote understanding of the essential linkage between the environment and promote understanding of essential linkages between environment and to encourage individuals and community participations in environmental improvement effort.
- ❖ Co-operate in good faith with other countries international organizations to achieved optimal use of trans-boundary, natural

resources and effective prevention or abatement of transboundary environment pollution, and

- ❖ Conserve and use the environment and natural resources for the benefit of present and future generations.

Section 3, is on strategies for implementation and fourteen sections of interest to which environmental protection strategies have to be concentrated were listed. The policy encourages public participation to raise awareness and promote development. The means of creating this public awareness include, inter alia, intensifying the use of mass media at federal, state, and local government levels. Sec.5 provides that a policy formulation and implementation process requires the establishment of an effective institution, such as FEPA.

Section 6 states the need to provide legislation for environmental protection. The section provides inter alia, that action shall be taken to promulgate a series of appropriate environmental protection laws and also make it mental protection laws and also make it a constitutional duty of government to safeguard the environment and aspire to have a safe and healthy nation. The provision of sec. u states the need to ensure effective implementation of international treaties to which Nigeria has accepted and will accede in the future, and that national laws consistent with those treaties should be promulgated promptly.

Finally, section 8 emphasizes the need to ensure that the provisions of the policy are successfully achieved by the continuous monitoring and periodic evaluation of the overall programs and activities to be carried out.

2.3. The Environmental Impact Assessment Acts

The decree, among other things, sets out the procedure and methods to enable the prior consideration of environmental impact assessment on certain public or private projects. It also gives specific powers to FEPA to facilitate environmental assessment of the projects. Its goals and objectives are the following; to establish before a decision taken by any person, authority, corporate body, or unincorporated body including the government of the federation, state or local council intending to undertake or authorize the undertaking of any activity that may likely or to significant extent affect the environment or have environmental effects on these activities;

To promote the implementation of appropriate policy in all federal lands, state, and local government areas, consistent with all laws and decision-making processes through the goal and objective in the above paragraph may be realized.

To encourage the development of procedures for information exchange, notification, and consultation between organs and persons when proposed activities are like to have significant environmental effects on boundary or trans-state or on the environment of bordering towns and villages.

Section 2 of the decree places a restriction on public and private sectors of the economy not to undertake or embark on projects without due consideration of the environmental impact assessment (EIA). The schedule of the decree contains a list of 19 activities that require mandatory study and section 13 provides that no government at any level or any of their authority shall exercise any power that would permit any project listed for mandatory study to be carried out in whole or in part until FEPA has taken a decision that the project could be carried out”.

The statute also provides for cases where environmental assessment is required as well as the projects which are excluded from environmental assessment. Section 62 prescribes the penalty for failure to comply with its provisions and states that “an offender shall be liable on conviction in the case of an individual to #100,000.00 or 5 years imprisonment and in the case of firm or corporation to a fine not less than #50,000.00 and not more than #1,000,000.00”.

By the provisions of this Act (EIA), no new project or expansion of an existing facility should take off without a permit from FEPA after due scrutiny of the E.I.A report.

This is a welcome provision but there seems to be a problem in reaping the social benefits of this Act in the existing built-up industrial areas. For instance, if an industrial layout in Port Harcourt and such study reveals an overcrowding of facilities emitting dangerous substances beyond the forms should be shut

down or relocated. Notwithstanding this difficulty in built-up areas, the EIA acts is in the right direction and an effective implementation of its contents and the subsidiary legislation will surely result in large benefits for the present and future generations of Nigerians.

2.4 THE 1999 NIGERIA CONSTITUTION

The environmental laws in Nigeria would norm in Nigeria which other law derives their validity from. A constitution is a document embodying the fundamental principles and laws of a nation-state in a social group. Thus, the constitution is made up of a body of rules and regulations by which a nation is organized and governed. This constitution provides in section 20 as its environmental objectives that “the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”.

This particular provision is an improvement in the recent past when issues relating to the environment were not accorded the requisite importance in our society. It is, therefore, a thing of joy to live the protection of the nation’s environment being provided for in the present constitution.

Section 17 (3) also states as follows;

“the state shall direct its policy towards ensuring that the health, safety, and welfare of all persons in employment are safeguarded and not endangered or abused”.

The combined effect of these two provisions is a guarantee of every citizen's right to a clean environment. The constitution also gives each local government council the responsibility of maintaining a clean and healthy surrounding. The functions of the local governments are provided for in the fourth schedule of the constitution. These functions include, the establishment, maintenance, and regulations of markets, motor parks and public conveniences, sewage and refuse disposal paragraph two of the same schedule provides further that the local government is to participate in some matters such as the development of agricultural and natural resources, other than exploitation of minerals, and the provision and maintenance of health service.

It is important to note that, there is no specific mention of the words "environment" and "environmental protection", but looking at the functions of the local government critically and analyzing its functions as stated above reveals that these functions have a direct impact on the environment and can be used to achieve good environmental goals. However, there are other relevant legislations that can be referred to as environmental laws. All of these laws were enacted in order to improve the level of environmental consciousness within the society. Their proper enforcement is, however, very essential if the country is to reap the fruits of their positive effects.

CHAPTER THREE

3.0 ENFORCEMENT OF LAW

The existence of a rule does not automatically guarantee its enforcement. This is also true of environmental protection laws and regulations. Enforcement means compelling obedience to the enacted laws. Unfortunately, industries' reactions to legislation have always been influenced by the level of its enforcement.

Environmental protection laws differ from other laws in origin, philosophic method of enforcement, and the use of sanctions to punish violators. Before the Koko incident, several of the status regulations for environmental protection were related to the petroleum industry and as such created duties and offenses that were seldom respected due to the absence of effective enforcement provisions. However, this situation has been changed by the Koko incident and since then, there has been greater awareness of environmental issues.

Presently, in Nigeria, enforcement of environmental protection laws and regulations relies primarily on agencies that were created specifically for that purpose. These include the Federal Environmental Protection Agency (FEPA); various state environmental protection agencies, policies, ministry of Works and housing courts, tribunals, etc. All offenses against the environmental are crimes and as such offenders out to appear in a court of competent jurisdiction. Some states believe that the question of environmental protection law

enforcement is not amenable to the normal courts and so they created special courts with special powers to enforce branches of environmental protection laws, for instance, in Rivers state the Environmental Sanitation Edit created a tribunal to deal with environmental matters.

It could thus, be rightly submitted from the forgoing that there are two levels of enforcement. The Judicial and Administrative. The Harmful Waste (special criminal provisions, etc.) Act gives to the Federal High Court exclusive jurisdiction in respect of crimes related to harmful wastes. Although, the act is silent on who can initiate action, it is arguable that since it is a federal, the attorney general of the federation should prosecute. However, there would be an exception if the attorney general grants the power to the attorney general of the states.

By virtue of the provision of the act, the minister has the power to seal up any area of believers is being used to commit an offense under the act, the minister may also direct the distraction or disposal of any harmful waste in any manner he thinks is consistent with the circumstance. On the other hand, the police officer has the power to search without a warrant, any land, building, vehicle, etc. if he has reason to believe is related to the commission of a crime under act.

The police officer may further seize and arrest as the case may be.

Under the FEPA Act, the agency is vested with various enforcement powers which include the power to inspect, search, seize, and arrest.

Enforce could also be done via mass media, before 1988, it was not the case in Nigeria that the environment should feature prominently in news broadcasters or the newspaper. Unless of course, the story was associated with some impending disasters. Today, following the Koko incident, the print and electronic media are educating the public more about environmental hazards; it will enhance the environment of the enacted environmental protection laws. Thus, these factors do not stop the various environmental protection laws from being law whether they are obeyed or not.

3.1 SOCIO-POLITICAL ISSUE OF ENFORCEMENT

Socio-political issue of enforcement in Nigeria; apart from the axiom that laws do not operate in a vacuum, the enforcement of environmental laws has remained problematic. The management and regulation of the environment through the enforcement of environmental law is been beset with a host of problems and thus recorded very little success. These problems hindering the enforcement of sanctions on violators of the environment are political, social, and economic.

The problems or issues that affect the enforcement of environmental laws are viewed on the outcomes of the factors of history, the highly centralized nature of Nigeria's Federalism, the history and nature of environmental management strategies in the country, the pursuit of unsustainable forms of the economic and social developmental crisis of the urban centers, etc. therefore, any effort geared

towards the protection of the environment, people who live in and to the process of sustainable development.

Before the creation of the federal Environmental Protection Agency (FEPA) the task of monitoring, protecting, and management of the environment was dispersed amongst the three tiers of government, with little attention paid to environmental matters, thus, the creation of FEPA and the inspectorate and enforcement department within the agency in 1988 and 1991 respectively, marked the first coordinated institutional effort at the national level to regulate and manage the environment.

The pre-independence laws that concerned the environment were mainly health-related or geared towards the maintenance of safe sanitary conditions, but the discovery of oil in 1956, with it resulting as the nation's chief foreign exchange earner in the 1970s led to increased exploration and exploitation of oil with its attendant adverse environmental consequences. Hence legislations were introduced to protect the environment from pollution. Regulations level as in the forms of sanitation edicts and bylaws respectively, with confusing, overlapping, and conflicting jurisdictions and roles among the three tiers of government. Extra-legal variables in the form of the power and social relations that hinder enforcement, as well as the formulation of environmental policy and laws must therefore enter into the analysis of the problem and the formulation of its resolution.

3.2 CHALLENGES OF ENFORCEMENT OF ENVIRONMENTAL LAWS IN NIGERIA

To enable the authorities or agencies empowered under the various environmental legislations to effectively enforce the criminal sanctions, they need to rely on the police and federal or state Attorney general for the prosecution of offenders. This is so, because the enforcement powers of the environmental agencies under the law are usually investigative in nature, which when completed inevitably might lead to prosecution in the court of law. When the decision to prosecute is reached, it falls on the attorney general of the federal or that of the state under the 1999 constitution to decide whether or not to prosecute a particular environmental crime referred to his office for prosecution.²⁶ A problem arises here, because should the attorney general decide not to prosecute, that might be the end of the matter, except an individual citizen is prepared to go through the hurdles such as Chief Gani Fawehinmi underwent in the case of Chief Gani Fawehinmi Vs Halilu Akilu and Another²⁷. Even if the problem of standing arises, to succeed, the applicant must be able to show that he has standing to sue.

For the development of environmental law and towards protection of the environment, it is submitted that cases of environmental crimes which is ripe for persecution, if and when the attorney general expresses that he is unable to prosecute either personally or through other members of the staff acting under and in accordance with general or special instruction, he should in the public

interest and the interest of environmental protection and justice endorse a certificate on the information to that effect and permit a private citizen to prosecute. This is in line with the majority decision of the Supreme Court in Chief Gani Fawehinmi V Col. Halilu and Another²⁸, where Obaseki, JCS (as he then was) in the lead judgment said:

“The power to initiate criminal prosecution whether by the Attorney General or by a private prosecutor or other authority is a right in the broad sense. It is recognized by the laws and the constitution of the Federal Republic of Nigeria, 1979. It is in respect of the federation, recognized by section 160 of the constitution. While the right of any other authority or Person to institute criminal proceedings is recognized by the two sections, the two sections confer specific powers on the attorney general.

It is submitted that to overcome the problem of standing in the criminal prosecution of environmental crimes, resort should be had to the decision in Akilu’s case, as a binding judicial precedent and then to the revert provisions of criminal procedure Act or laws, and section 174 and or 211 of the 1999 constitution.

Apart from the limitation placed on the enforcement powers of the agencies by the problem of locus standi and criminal prosecution, is that of economic or monetary limitation. Most of the agencies lack the financial power to carry out civil and criminal prosecution of environmental; offenders. The scientific

facilities required to collate evidence are lacking. Thus, it becomes unimaginable how the authorized officers are expected to prosecute without financial resources as against the “oil-rich” industries they are supposed to prosecute. The willpower might be there to prosecute, but when the financial power is muscled, there is a great temptation on the part of the enforcement officers to succumb to malversation from those powerfully rich industries or persons, supposed to be prosecuted civilly or criminally. When this happens or “Ghana must go bag”³¹ has exchanged hands, the enforcement and prosecuting agencies are bound to look the other way, time reports are doctored and evidence files are destroyed. In effect, the public suffers in the long run.

There is yet another challenge. This is in the nature of injuries suffered as a result of environmental crimes or neglect as a result of environmental crimes or neglect that do not manifest immediately. For example, some injuries or damages associated with pollution do not manifest immediately until several years later.³² The authorities, in this situation are confronted with the problem of the appropriate charge or claim to draft and file in court.

That is not all; the problem of identifying the appropriate penalty and proving causation must also be taken into consideration.

CHAPTER FOUR

4.0 CONCLUSION

In conclusion, principle 10 of the Rio Declaration on Environment and Development is relevant and is quoted here in full. It says;

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level, at the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities in their communities, and opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”.

Paragraph 27.13 of Agenda 21 is also material. It states as follows;

“Government will need to promulgate or strengthen, subject to country-specific conditions, any legislative measures necessary to enable the establishment by non-governmental organizations to protect the public interest through legal action”.

It is submitted that based on the provisions of paragraph 27.13 of AGENDA 21, to which Nigeria is a state party, the federal government, through the National Assembly should promulgate a law that would confer standing on non-governmental organizations and consultative groups involved in the protection of the public interest in the environment, to litigate environmental issues before

the courts without having to face the problem of standing. They should be allowed to protect by means of litigation the environment that is about to be despoiled, and where injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to statutory or legislative conferment of standing on groups to sue for the preservation of the environment.

Those people who have a meaningful interest in the preservation of the environment and who are threatened by destruction should be allowed to sue. The required that a person seeking review must allege facts showing that he is His adverse effect does not augur well for the development of environmental law in this country.

This traditional concept of standing must be expanded to enable organizations, and individuals possessed of permanent, bona fide, and well-recognized attributes and purposes in the area of the environment, to litigate environmental issues.

4.1 RECOMMENDATION:

The following have been suggested to be used to overcome the challenges in the enforcement of environmental laws in Nigeria.

1. The application of the long-established principles of criminal law in tracking environmental problems in today's society is inappropriate. The cost involved in securing compliance with environmental laws and

regulations, such as in enforcement and prosecution is high, due to the sophisticated technological activities involved. In this regard, criminal sanctions would be employed only when the violations are shown to be willful or intentional.

2. It is better to adopt regulatory approaches rather than criminal or civil prosecutions, with its problems of standing prosecution.
3. Imposition of penalties in the form of fines, in so far as they are not objectionable must be made commensurate with the offense committed.
4. Administrative sanctions for example, suspension or revocation of licenses should be applied, and desist order; warnings and adverse publicity should be adopted and continuously monitored.
5. The fining of corporate bodies as evidenced in the Harmful Waste (special criminal provisions etc.) Act and the NESREA Act should be encouraged and further applied.
6. Indigenous people and their communities and other local communities should be involved, through mass mobilization, public campaigns, education, and awareness of the existing environmental regulations. These regulations should be translated and or communicated to them in their respective local dialects. Environmental legislation should take into consideration the traditional practices, identity and culture, and interests of the local people to enable them to participate meaningfully in the

achievement of sustainable development through environmental law and practice.

7. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided in line with the decisions in Senator Abraham Adesanya Vs the President.
8. Environmental legislation, in addition, should provide for liability and compensation for the victims of pollution and other environmental damage.
9. Independent environmental enforcement authorities should be established to educate the citizenry on the existing environmental legislations, environmental standards, management objectives, and priorities.
10. Full participation is essential, for consumers, women, and the youth in order to educate them on what forms of legal remedies are available, when faced with environmental breaches.

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