

ILLEGAL WASTE MANAGEMENT AND OTHER CHALLENGES FACE IN THE ENFORCEMENT OF ENVIRONMENTAL LAWS IN NIGERIA.

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Abstract

Illegal waste Management or illegal refuse dumping refers to the dumping of large items of rubbish in public areas such as roadsides or illegal landfills, private land where waste is dumped without Councils or Environmental Protection Authority Approval. This paper tends to look at this challenge and other challenges facing the enforcement of environmental law in Nigeria. The paper recommends among others the availability of fund, amendments of some of the laws on waste management as a means of tackling the said challenges faced in enforcement of environmental law.

Introduction.

In decades past, it was popularly thought that the environment had an infinite capacity to absorb environmental excess without any resultant harm. We now know better that irreparable damage will be done to the environment if the earth resources are not carefully managed. The problems of waste and illegal waste management are of greater significance more than ever before. Waste is something which the owner no longer wants, its management includes all steps taken to ensure that all forms of waste of a Community are Sanitarily stored in the generating premises, collected promptly, transported and finally disposed properly.¹

To clarify the concept used, illegal Waste Management also called flying dumping or tipping, is the dumping of waste illegally instead of using an authorized waste or rubbish dump.² It is the illegal deposit of any waste onto land, water among others. The term fly tipping is derived from the verb tip. Meaning “to throw out of a vehicle” and on the fly, meaning “on the wing” to throw away carelessly or casually.³ Here, illegal waste dumping is typically distinguished from littering by the type and amount of materials and /or the manner in which it is discarded. An example of littering could be throwing a cigarette on the ground. However, emptying a waste bin with no permission In a public or private area can be classified as illegal dumping.

Typical materials dumped include building materials from construction site, such as drywall, roofing shingles, lumber, brick, concrete, and siding. Other frequently dumped materials include automobile parts, household appliances, household waste, furniture, yard scraps and medical waste.⁴

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¹ E.S. SAVA. “The Impact of Recycling”.(1977) Department of Environmental, Health and Natural Resources, North Caroline, Vol. 8, No.37,11.

² C. Brampton. “illegal Dumping.” (2010) Wikipedia <https://en.m.org>. accessed 17th July, 2019.

³ Oxford English Dictionary, online edition, November 2010, accessed 17th July, 2019.

⁴ T. Maria, A. Rossella & Others. “ Environmental Pollution from Illegal Waste Disposal and Health Effects.” A Review on the “ Triangle of Death.” International Journal of Environmental Research and public Health. (2015) vol.12 (2). 1216-1236.

The reasons people illegally manage their waste vary; however, research indicates that lack of legal waste disposal options is a primary factor. A shortage of legal options drives demand for waste removal service.⁵ Apart from this, high level of disposal fees at waste management sites, people not understanding the importance of waste recycling are also reasons why waste are illegally managed or dumped.⁶

The effects of these illegal management of waste is that, illegal dumping damages the environment, can cause fire hazards, diminishes property value and affects tourism, possess health and safety risks, put the entire community at risks, taxpayers' money is committed towards cleaning up the mess brought about by illegal dispose waste.⁷

Development of waste Management

The history of and the development of Waste Management are complex and unique in every country of the World. It is thus, not possible to assign a specific date from which problems relating to Waste management started. However, the need to control the environment in the interest of public health has been evolving for a long time.⁸

In pre-industrial times, the main sources of waste were such things are ash from fires, unwanted wood, bones, and vegetable waste, and, of course, human and animal excreta. Waste was often disposed of into the ground, where it would act as compost and help to improve the soil⁹. During the Industrial revolution, new large scale manufacturing processes produced increased waste and waste of a different kind. The growth of towns led to an increase in domestic waste, but a decrease in the space available for disposal. Hence the need for waste management system, became necessary, and waste began to be regulated as an aspect of public health. The daily needs in technological knowledge and development basically have a concomitant effect on the environment as wastes also produced were of complex nature. Thus, it was expressed by the World Health Organization (WHO) expert committee in 1971, that at the rate the intense desire for industrialization is progressing, waste may far exceed economic benefit gained from such industrialization, therefore, there was need to establish or put in place a standard waste management practice that will equal the industrialization quest.

The volumes and toxicity of waste streams increased dramatically after World War II. Yet waste management became a national concern only after the consequences of past mismanagement of waste began to appear. For decades, waste was dumped in whatever location it was “out of sight, out of mind”. At this point the notion of waste management was just how to dispose the available waste, the system adopted was to simply drop the waste somewhere. It was purely waste eradication oriented.

This open, unregulated dumps are still the predominant method of waste management in most developing countries including Nigeria. Although most developed countries forbid open

⁵ Bureau of Street Services- Illegal dump report from- bss.lacity.org- retrieved 06-12-2018.

⁶ <https://www.Conserve-energy-future.com/causes-effects-solution-illegal-dumping>. Accessed 17th July, 2019.

⁷ *Ibid.*

⁸ M. Aniefiok, “Environmental Health Officers and the Society” Mandatory Continuous Education Programme (MCEP), Lecture note 2007.4.

⁹ J. Thornton & S. Beckwith, *Environmental Law in Nigeria*, Sweet and Maxwell, London. 2004. 176-177

dumping, at least in metropolitan areas, but illegal dumping is still a problem, as there are still undoubtedly obvious trash accumulating along roadsides and in vacant weedy lots in the poorer sections of the cities. As has been stated earlier, the system of waste development of almost all countries in the world has its root in public health control, as there are no legislations primarily concerned with waste production, control and disposal. For example, in United Kingdom, the 1848 and 1936, public Health Acts only enabled local authorities to remove house and trade refuse and to require removal of any 'accumulation of noxious matter' and to place the local authorities under a statutory duty to inspect their areas to detect 'Statutory Nuisances' including 'any accumulation or deposit which is prejudicial to health. However, the aim of this early legislation was to protect public health from the problems of disease and vermin associated with the Industrial Revolution rather than dealing with the environmental problems associated with waste management.

The concern in the early 1970s about the detrimental effects of waste led the United States Government to set up two working groups on refuse disposal and toxic waste. The reports of these two groups thus, provided the impetus for Control of pollution Act (COPA) 1974. This was the first attempt at achieving a degree of comprehensive waste management in the United State. The 1990 Environmental Protection Act (EPA) as amended by the Environmental Act 1995 (EA) was to replace the 1974 Act and addressed some of the defects in the replaced Act¹⁰. The current United Kingdom waste management policy is based on the modern principle that changes are necessary in terms of the amount of waste generation to the point of final disposal in an environmental friendly manner. Also, before 1970, waste management assured a local matter for all members states of the European Community (EC)¹¹. There was no legislation concerned with waste disposal under the European Community. The 1975 adopted waste framework directive was in part a response to the introduction by some member States of Legislation intended to provide a national framework for waste management. In 1977, the European Community waste management took a broader view of waste management than simply ensuring safe disposal. The new principle extended to the ambitious goal of conserving resources. On this principle, three major approaches of dealing with waste management was identified and adopted.

The approaches are known as the "Waste management hierarch" which are that:

The priority is to prevent waste from arising;

If prevention is not possible, waste should be recycled or otherwise reincorporated into the economic cycle. This is known as "waste recovery", a term which can encompass a number of different operations. For example, it can imply that materials should be transformed into a state in which they can be used, either wholly, or for the extraction of component parts or useful substances. These operations conserve natural resources by enabling waste, to serve as replacement for fresh raw materials;

As a last resort, waste, which cannot be recycled, should be disposed of in a manner, which does not cause environmental harm.

In Nigeria, the development of waste management was not radically different from that of other developing Countries, it has in fact had a more challenging history. As far back as the 18th

¹⁰ Susan Wolf, A. White, A. Stanly, Principles of Environmental Law. 3rd Edition, Cavendish Publishing Ltd, London, 2002. 112-115

¹¹ J. Thornton & S. Beckwith," Environmental Law," Sweet and Maxwell, London, 2004, 179-180.

century the Colonial government took the issue of preventive public health seriously, because of course, of the need to prevent the breeding of mosquitoes, (malaria), which was a major killer of the Colonial settlers. They in the process introduced the position of the then sanitary inspectors to the Colony of Lagos.¹² Basically, the notion of environmental management was seen as a public health issue, thus the public health laws of the difficult States were used as standards for the management of the Environment. Apart from the fact that there was the Criminal Code, which contains “penal provisions for the detrimental violation of the atmosphere” there were also Environmental Sanitation Laws or Edicts in almost every State in Nigeria, these laws were the first major efforts of the state Governments towards statutory regulation of the Environment. However, all these laws were promulgated primarily for public Health reasons. In spite of the efforts to manage the environment through the vehicle of public Health, it was observed that various diseases and toxic conditions were still inherent in the environment, and that the presence of waste was a constant threat to environmental management efforts. Indiscriminate generation, storage, dumping and disposal of wastes become a common practice in Nigeria cities and most of the waste dumps were located close to residential areas, markets, roadsides, open spaces, drains and streets all over the urban centers. Dumpsites adorn every street in the major towns of the country. Even the Federal Capital Territory, Abuja with all its pretentious and false glamour of being a “perfect” city, had accumulated heaps of waste at substantial portions of the city. Inadequate storage, collection, transportation, treatment and disposal of municipal wastes present significant threats to public health and the ecosystem.

Accumulated heaps of municipal wastes in dumpsites provide food and habitat for flies, rodents and reptiles with consequent proliferation of these vectors and their invasion of human habitat. Waste accumulation pose great problems; fouling of the air, fire hazard, water channels blockages, and pollution of the under-ground water. As it rots, it adds pollutants to the air. Also, since excreta disposal facilities and services are grossly inadequate in most municipalities, human faeces are invariably one of the constituents of the municipal wastes. This has made the wastes problematic because they have potentials for the spread of communicable diseases¹³. It has also been observed that, the way and manner waste disposal is handled in Nigeria, in general and the city centers in particular, help to encourage the breeding of disease vectors. Uncontrolled discharge of domestic and municipal wastes affects water, soil, food quality; and this remains the major problem of environmental pollution and disease vector menace¹⁴. The attitude people show towards waste management however, pollutes the atmosphere in such a ways that the ecosystem is affected. All these conditions are inimical to health and normal living of the people.¹⁵

Certain factors ranging from the distance from the house to the waste depot, attitude of the Environmental Agencies who allow waste generated to stay in bins for a long time before they are removed, population, poverty, decreasing standards of living, bad governance, rapid and

¹² M. Aniefiok, *op.cit* 5.

¹³ J.O. Ogbuagu et al, “Biogas Availability from organic Waste Deposit in Anambra State”. **Nigerian Journal of Renewable Energy**, Vol.11, Nos. 1 & 2, 1.

¹⁴ I.O. Nwimo & L.O. Omaka “Refuse Management. The Nigerian Cities Situation: **Nigerian Environmental Law Review**, *op.cit* 44

¹⁵ E.W. Lee, Environmental administration: Systems Approach and Intervention, Proces Model” **Philippine Journal of Public Administration**, No.26(1), 1982, 18.

haphazard industrialization and low level of environmental awareness has contributed greatly to non-actualization of proper waste management in the country.

Although, the nation had Plethora of laws and policies for environmental protection and waste management, the fact remains that the methods adopted for waste management in particular, were purely waste eradication oriented. The idea was total destruction of the waste and not “proper waste management for productive purposes”. Even the 1988 dumping of toxic waste at Koko in Delta State did not improve the situation. The present monthly compulsory environmental Sanitation exercise though of good intentions, seems to be bedeviled with its own problem. This is because the waste from the exercise are dumped by the roadside for the attention of the Environmental Agencies, who do not square up to the responsibility of disposing the said waste. The result is that these wastes are left to be eaten by animals, picked by scavengers, or washed away by rainwater or flood. In some cases, “these waste are carried away by the Fidel floods into the creeks and rivers thereby affecting surface water quality”¹⁶.

Where these waste are eventually cleared, the waste materials end up somewhere on the outskirts of town, for example, in abandoned excavation pits, river channels and even open spaces. This basically means a transfer of waste from locations where some people feel inconvenienced by its presence to other location where its nuisance value is believed to be lower.¹⁷ Here, little or no consideration is given to environmental consequences, it is simply a waste transfer practice. Presently, there seems to be a new orientation, there appears to be a shift from the general view of waste as a useless product, to a general acceptance of waste as a useful raw material for the production of many other products and services, the general concern has extended beyond the concern to eradicate waste from immediate environment to the possibility of utilizing such waste.¹⁸

In order to achieve the above seemly productive waste management, it is very important and necessary to have an adequate waste management contingency plan in place such plans are plan of action set out in preparedness to combat waste management complemented by environment sensitivity index, which will specify areas of priority among others. To meet this target, there is absolute need for good individual, public and community relation with the Environmental Agencies. All the parties must be fully aware of the consequences of improper waste management as well as their respective responsibilities. The need for this co-operation can, therefore, not be over-emphasized.¹⁹ All hands must be on deck for a successful environmental protection through waste management.

Most Common Illegal Waste Management/Disposal in Nigeria

The big question is what do we do with our waste or where do our wastes go? Waste management by virtue of the 4th schedule of the 1999 constitution is the prerogative area of the Local Government. Although Waste Management is a social service, it is not as attractive as

¹⁶ K. Stephen, “solid Waste Management, www.ehow.com.

¹⁷ C.N. Onyemelukwe, “Management of Waste Under the Nigerian Environmental law: A Case Study Under the Nnewi Urban”. Unpublished LL,B Thesis, Faculty of Law, Anambra State University, 2009.14

¹⁸ *Ibid* 27

¹⁹ J.O. Ogbuagu *et al*, “Pollution Control and Waste Emission Management in Petroleum Resources Industries. “**Environmental Review**. Vol.2, August 1998., 85

hospitals, schools, water, electricity, road, among others. To the politician and government, this may well explain the reason for the lip service paid to the issue of waste management by the government. The inability and failure of the Local Governments to perform its function in the area of waste management has occasioned the taking over of wastes management by the various State Government This take over still, is yet to yield the required result as our streets especially in the urban centers still witness giant of waste piles. Available record shows that 41.53% of the populace dispose their refuse within their premises, 37.8% dispose into the bush and only 13% use sanitary dustbin. In all, 79.4% of Nigerians use one method or the other adjudged as insanitary. The alarming rate at which heaps of solid wastes are occupying our cities, coupled with the fact that 79.4% of Nigerians use method adjudged as unsanitary has not only constituted visual blight and odor nuisance, but also encourages the breeding of rodents and mosquitoes and other pests or public health importance, with attendant disease outbreaks. (NDHS 2003).

The boxes below shows refuse disposal system in the country.

	Total
Government	4.88
Private collection	7.68
Government bin	1.98
Disposal within compound	41.5
Unauthorized heap	40.46
Others	3.45
Total	100

Source: FOS (Bureau of Statistics): Nigeria poverty profile 2004

The above picture calls for promotion of public/private partnership for effective waste management in the country. This will require adequate capital investment in plants, vehicles, essential equipments, acquisition of enough and suitable land, employment and deployment of adequate technical, administrative and other supporting staff; adequate recurrent budget. With this, appropriate technology will be chosen for the proper disposal of all forms of wastes.

Below are some of the Common Illegal Waste management system in Nigeria.

Open Dumps

People and even waste management contractors, dispose of their waste by simply dropping it someplace, open. The open drop system is the “most widely used method among the lot”. These unregulated dumps are still the predominant method of waste management in the developing countries like Nigeria, even the giant developing world megacities like Mexico city, Lagos and Manila in the Philippines, having at least ten huge open dumps. The most notorious of them is called “Smoky Mountain” because of its constant smouldering fires. Thousands of people are said to live and work on this 30m high heap of waste. They spend their days sorting through the waste for edible or recyclable materials. Health conditions are abysmal, but these people have nowhere else to go. The government would like to close the dumps, but how will the residents be housed and fed? Where else, will the city put its waste?²⁰,

²⁰ W.P & M.A. Cunningham *op.cit* 313

Although it has been argued that the economics of this type of dumping cannot be neglected, as it is use to reclaim valleys and low lying areas at low cost,²¹ yet it is primitive and the disadvantages outweighs any form of benefit derived from such unplanned and uncontrolled system.

Sea or River Dumps

This form of waste Management is essentially restricted to the coastal cities, such as Lagos, Calabar, Port-Harcourt, Onitsha to mention but a few. Although the Sea or River is vast, it is not so large to deserve the kind of treatment being meted it and carelessly so. It has been argued that about 25,000 metric tons of packaging, including half a million bottles, cans, and plastic containers are dumped at sea²². Also about 150,000 tons of fishing gear including more than 1,000 km of nets are lost or discarded at sea each year. Environmental groups estimate that 50,000 northern fur seals are entangled in this refuse and drown or starve to death every year in the North pacific alone. Although there are no statistics in Nigeria to show the rate of dumping going on in the country, one cannot pretend, such dumping do and is still going on in the country *albeit* illegally.

Sanitary Landfills

This is a common method for disposal of solid waste in most parts of the World including Nigeria. But in Nigeria, the method or notion of a Sanitary landfill is not different from the open dumps that are present all over the urban centers. The developed countries like America and Europe have long recognized the health and environmental hazards of open dumps, as is the case in Nigeria and have turned to Sanitary Landfills strictly speaking. Here solid waste disposals is regulated and controlled, this system decrease smells and litter and to discourage insect and rodent populations, the landfill operators are required to compact the refuse and cover it every day with a layer of dirt. According to Bruce,²³ the principle is to tip the mixed refuse compactly in layers not more than 2m deep, and to seal all exposed faces of each day's tipping with at least 0.25m of incombustible and non-putrescible (non-decomposing) material, such as earth or dust. A modern Secure Sanitary Landfills according to experts, possesses a thick bottom cushion of compacted clay that surrounds the pit like a bathtub. Moist clay is flexible and resists cracking if the ground shifts. It is impermeable to ground water and will safely contain wastes. A layer of gravel is spread over the clay liner, and perforated drainpipes are laid in a grid to collect any sewage that escapes from the stored material. A thick polyethylene liner, protected from punctures by soft padding materials, covers the gravel bed. Drainage systems are installed in and around the liner to catch drainage and to help monitor chemicals that may be leaking. The method of Tipping here is not "crude" as separation and segregation must have taking place before tipping is allowed into the sanitary landfills. With this controlled tipping, pollution is controlled, the site is not unsightly or offensive, and permits the reclamation of low lying or irregular areas for agriculture, playing fields or parks at low cost.

²¹ I.O. Nwimo & L.N. Omaka, *op.cit* 46

²² W.P. & M.A Cunningham, *op.cit* 46

²³ F.E. Bruce, "Water supply, Sanitation, and Disposal of Waste Matter". In W. Hobson (Ed), **The Theory and Practice of Public Health**, Oxford University Press London, 1999, 35-48.

Incineration

Unable to manage the growing piles of waste in our urban centers, the readily available options, is to set fire on the unsightly waste whether on the streets or in the dump sites. But in developed countries, incinerators are specially designed burning plants capable of burning thousands of tons of waste per day. It is composed of a furnace into which the refuse is charged and ignited, a secondary combustion chamber in which burning at a high temperature is continued to complete the combustion process, and flues wherein the gases of combustion are cleansed as they are conveyed to a chimney and thence to the atmosphere²⁴. In some incinerators, waste is sorted as it comes in to remove un-burnable or recyclable materials before combustion. This method is known as refuse – derived fuel because the enriched burnable fraction has higher energy content than the raw trash.

Another method of incineration is called Mass burn, involves the dumping of everything smaller than Sofas and refrigerators into a giant furnace and burn as much as possible. This method avoids the expensive and unpleasant job of sorting through the garbage for non-burnable materials, but often causes greater problems with air pollution and corrosion of burner grates and chimneys. Regrettably, Nigeria cannot talk with too much pride about a standard incinerator, the available make shift incinerators are usually unable to perform the required functions with result that highly inflammable objects are dumped and abandoned in the incinerators making subsequent burning impossible²⁵.

Challenges Faced in Enforcement of Environmental Regulations

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. However, these environmental authorities or agencies sometimes either do not have the financial capability, manpower resources or the “will” or zeal to push and ensure effective enforcement of the environmental protection control regulations. Where the above situation is the position, it is only proper, that, legal persons (such as individuals and companies) and even pressure groups should be allowed or permitted to prosecute and assist in the enforcement of environmental protection regulations. For example, this modern approach of enhancing effective environmental protection regulations is provided for in the European Community Environmental Protection Act of 1990. This provision enables citizens to bring their own prosecution against those who commit offences against the environment.

Regrettably, one is yet to see such provision even in the most recent NESERA Act which is the principal Environmental protection Regulation in the Country.

It is a notorious fact that the common citizens who are mostly affected by environmental degradation lacks ready access to legal and/or administrative Institutions to address these environmental wrongs. The reasons among others are not far from the points articulated below:

Locus Standi.

This is a major obstacle in the wheel of progress of environmental degradation control. It means a place of standing, that is, the right to be heard in court or other proceeding. This doctrine

²⁴ R.K. Turner, “Municipal Solid Waste Management: An Economic Perspective. In A.D. Bradshaw *et al* (eds.) **The Treatment and handling of wastes.** Chapman and Hall, London, 1992, 83-102.

²⁵ F.E. Bruce, *op.cit.*40

normally requires that a plaintiff has a personal or special interest that had been or is most likely to be affected or invaded by the action complained of. This interest must not be one generally shared with other citizen. However, this is against the concept of citizen's action which presumes that citizen generally should be able to bring actions in the public interest without having to show any individual harm over and above that of the general citizen. Thus as we have seen in *Amos v. Shell Development Company*²⁶, Holden C.J in dismissing the claim of the plaintiffs held among others that no individual can normally recover damages for injury done to a community (public Nuisance). Also, in *Shell Development Company of Nigeria Limited v. Otoko*²⁷, the court held that the Respondents who were from six different communities, were not one community, and that there was a diversity of interest. For there was a joint tort, and that for damages caused to each of them can only be personal to each of them. This outdated stand of the court in the issue of *Locus Standi* is not peculiar to Nigerian courts alone. For example, in the case of *U.S.A Sierra Club v. Morton*²⁸, the Supreme Court of that Nation denied the plaintiffs standing and held that a mere allegation of a sincere interest in a problem is not enough to constitute injury in fact upon which an action for judicial review could be based. In the *Kenyan Case of Wangari Mathai v. Kenyan Times Media Truist*²⁹, The Court upheld the objection of the defendant and struck out the suit on the ground that the plaintiff would not be affected more than any other Resident of Nairobi. However, there appears to be a wind of change, as Courts both in Nigeria and outside Nigeria are now more disposed to accept claim of environmental degradation from person or group of persons with interest in a particular subject matter.

Standard and Burden of Proving Damages.

By the very nature of the tort of negligence or nuisance on which most of the environmental degradation cases are premised, the Plaintiff has the burden of proof as provided by section 135 and 136 of the Evidence Act of Nigeria which is, to the effect that whosoever desires any Court to give Judgment as to any legal right or Liability dependent on the existence of facts which he asserts, must prove that those facts exist. This means that the plaintiff must prove, for example in an action for negligence, that the defendant owed him a duty to take care, for which he was negligent, that is, he failed to take that degree of care which was reasonable in all the circumstances of the case or failed to act as a reasonable man would have acted. Then if the defendant owed that duty, his negligence becomes a breach of that duty. The resultant damage on the Plaintiff would then become actionable.

A Learned Writer expressed this problem in the following terms:

Unlike other claims, proof of environmental claim generally, is scientific, you are expected to prove the effect of crude oil or gas flaring on the soil, water, environment, crops and other properties of the affected communities. It is not only difficult and tedious but very expensive. To prove an environmental claim due to oil pollution, plaintiff must show that he is the owner of the land and/or in possession of same and that the pollution has adversely impacted the land, crops, water thereon or that the pollution has contaminated the air, water and food of the plaintiff in such manner as to cause real or potential harm to human health or well being or damage or

²⁶ *Supra*

²⁷ *Supra*

²⁸ (1992) 405,US,727.

²⁹ (1992) NO. 5403 HCC,324.

harm to non-human nature with justification³⁰ The Courts always insist that these requirements must co-exist and relate as between the plaintiff and the defendants if liability in negligence is to be returned.

Jurisdictional Questions.

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 Proceeding. In the case of *Shell Petroleum Development Company of Nigeria Ltd v. Isaiah*³¹, it was defined as the authority, which a court has to decide matters litigated before it, or to take cognizance of matters presented in a formal way for its decision.

Before 1990, Jurisdiction was not a problem in pursuing environmental claim, as environmental claims were invariably filed and heard in the High Courts of the States of the Federation which was by virtue of Section 236 of the then 1979 Constitution of Nigeria invested with general and unlimited Jurisdiction. The Federal Military Government of Nigeria in 1991 promulgated a Decree called the Federal High Court (Amendment) Decree, No.60 of 1991 with a new Section 7, in line with Section 7 of the principal Act (the Federal High Court Act). The new section 7(1) of the said Decree provides as follows:

The Court shall to the exclusion of any other Court have original Jurisdiction to try civil causes and matters connected with or pertaining.. Mines and minerals, including oil Fields, oil mining, geological surveys and natural gas.

7(3) Where jurisdiction is conferred upon the Court under subsections (1) and (2) of this section, such jurisdiction shall be construed to include jurisdiction to hear and determine all issues relating to, arising from or ancillary to such subject matter.

7(5) Notwithstanding anything to the contrary contained in any other enactment or rule of law, including the Constitution of the Federal Republic of Nigeria, any power conferred on a State High Court or any other Court of similar jurisdiction to hear and determine any civil matter or proceedings shall not extend to any matter in respect of which Jurisdiction is conferred on the Court under the provisions of this section.

7(6) Any decision made after the commencement of this Section by any Court of law in any purported exercise of any Power under the Constitution of the Federal Republic of Nigeria or of any Federal or state law shall, as from the date of making of the decision be null and void.

This new posture of the then Federal Military Government was fortified by the promulgation of the Constitution (Suspension and Modification) decree 107 of 1993, this particular Decree amended the provisions of section 230(1) of the 1979 constitution of Nigeria, the said Section 230 (1) which vested exclusive civil jurisdiction on the Federal High Court on matters relating to mines and minerals.

This present position of the Jurisdiction of the Federal High Court in oil pollution cases and by extension environmental claims, has been judicially Settled in a number of cases. For example in

³⁰ A. Akpomudje, "Environmental Claims Resulting from Oil Exploration in Nigeria" Paper presented at the NBA

Annual Conference, Enugu 27th August, 2003, 12.

³¹ [1995] 3NWLR pt.328 148 at199.

the case of *Shell Petroleum Development Co. Ltd v. Isaiah* ³², the Supreme Court held per Muhammed JSC as follows:

It is clear from the pleadings that the spillage and Pollution occurred when the appellant was trying to repair the indented pipeline by cutting off the said Section and installing a new Section.. I think it cannot be disputed if I say that installation of Pipeline, producing treating and transmitting of crude oil to the Storage tanks are part of Petroleum Mining operation. Therefore if an incident happens during the transmission of Petroleum to the Storage tanks, it can be explained as having arisen from or connected with or pertaining to Mines and Mineral including oil fields, and oil mining. I therefore agree that the subject matter of the respondent's claim falls within the exclusive Jurisdiction of the Federal High Court.

No doubt, giving exclusive Jurisdiction to the Federal High Court on environmental matters is a major constraint.

Non Availability and/or Misapplication of fund.

Effective implementation of environmental legislations is a capital intensive venture and thus requires huge amount of money. Since 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 fund. However, either being ignorance or in total disregard for environmental protection value and sustainability, government either do not release the necessary fund or misapply funds meant for solving environmental problems³³. This smacks of gross insensitivity to environmental problems and environmental friendly actions that will enhance environmental sustainability..³⁴

Inadequate Qualified Manpower

Inadequately trained manpower in all sectors of environmental protection is another problem militating against effective implementations of the environmental regulations. By the functions and duties of the National Environment Standards and Regulation Enforcement Agency provided for under section 7 of the Act for example, it is expected that well qualified personnel are to be put in place to carry out these functions that seem scientific in nature and thus requires the knowledge of an expert in the same vein. Funning enough, this does not obtain in the various environmental protection bodies, although it is expected that some non-professional should be employed in the said bodies, the fact remains that majority of these officials should be professional on the subject matter.

³² [2001]FWLR Pt.56,608.

³³ C.C. Obeagu, "Development and Economic Interest versus Environmental Sustainability, Environmental and Planning Law Review No.1,vol.2,2005 58

³⁴ *Ibid*

Lack of Staff Discipline and Corruption

Another evil of problem working against effective implementation of environmental protection Legislations is corruption. It is said to be the “root from where grows out the trunk, the stem, the branches and the leaves” that makes environmental protection legislation ineffective and at times impossible to implement or enforce. corruption occurs at every level or facet 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 a cankerworm that has eaten deep into the fabrics of the society.

Lack of Genuine Interest on Part of The Government

The want of genuine interest on the part of Government on environmental matters is a problem and could be attributed to the very high incidence of environmental degradation. The task of halting degradation and reversing pollution trends hinges on the enactment of Action Enforcing Policy³⁵ In Nigeria and in most developing country, environmental legislation are products of the colonial masters which was principally dominated by political and economic gain. What is uppermost in the mind of the government, is not the protection of the environment and the citizens, but in making laws that are not “counter-productive if not repugnant to the political, economic and social gain. The citizens or would be victims of environmental degradation are not carried along or considered by the government in making the environmental Laws.

The it does matter 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, (the popular dumping of Toxic Wastes) which spurred the government to action. This incident created greater environmental awareness in the society and also exposed the fact that environmental protection of the country was not part of the business of the Government.

Illiteracy among the Citizens

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 environmental degradation which affects their life and environment with a wave 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 these illiterates are cowards and will rather exhibit “the 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. This reason explains why the environmental havoc in Ogoni land went on for so long until it took the likes of Late Ken Saro- wiwa and others, who cried out to the world for the environmental degradation going on in Ogoni land, although the Nigeria government reacted by taking their lives, the degradation is now open secret in the world. Knowledge indeed is power to the individual, the government and to the environment.

Poverty:

The inference is that poverty generally connotes the inability to command basic necessity of life. It also means lack of income to satisfy the essential of life. Poverty, which has been an issue of

³⁵ F.Dimowo, “Enforcement of Environmental law in Nigeria” **Nigeria Contemporary Law Journal** University of Benin, vol.2,2005,103

social concern from ancient times has many roots and causes³⁶ which is not intended to be discussed in this work. The poverty level of the Nigeria is very high and this accounts for the standard of living which is still below the hunger level. The common language of the people is survival first, thus environmental protection, right or concern do not mean much or even anything to them, as their pre-occupation is how to feed in these hard times.³⁷ With the hard times challenges before them, the people are much concern with their existence and survival. As a result, the citizens lives and contend with all forms of environmental degradations.

It is a living fact, that the economic activities and the welfare of the people bears so much on the quality of their immediate environment, hence the suggestion that there is a link and relationship between poverty and environmental degradation³⁸. Sustainable development is all round development, reduction of poverty will obviously less environmental degradation, while increase in poverty level as the situation seems now in the country, poses a bleak future for the environment and whatever environmental protection structure that is, and would be, in the future.

Judicial Attitude to Cases on Environmental Protection

The judiciary is an arm of the Government and by the provision of section 6 of the 1999 Constitution of the Federal Republic of Nigeria, It has the power to exercise judicial functions vested on the courts of records. While the truth that the judiciary is the last hope of the masses cannot be totally challenged, the fact remains that accessibility to Court and attitude of the court to an aggrieved person seeking redress remains a mirage³⁹. World over, the civil justice system is a costly one and Nigeria is no exception⁴⁰. The victim of environmental degradation have this high cost of litigation which includes the mandatory filling fees, lawyers professional fees among others to contend with. When the victim is able to overcome these initial or teething problems and is before the Court properly, the Judges dispositions to the subject matter, the plaintiff (victim) and the defendant most times, the giant national and multinational companies becomes the next hurdles for the environmental victim to cross. These hurdles are usually not easy one for the victim of environmental degradation.

The attitude of the Judges no doubt, have had harmful effect on plaintiff whose right have been violated as a result of environmental degradation. The reasons mostly attributed to this attitude of the Judges are that most of them have no requisite training in environmental law and therefore do not appreciate the problems posed to man by environmental degradation⁴¹

The Way forward for Illegal waste Management in Nigeria

Illegal waste Management will be reduce to its lowest ebb if the below suggestions are put into consideration.

Eco-responsibility

Eco- responsibility concerns the 4Rs. That is, reduce, re-use, recycle and restore. There is, therefore, need for more education on waste management. With the implementation and

³⁶ A.O. Muzan, *op. cit* 71

³⁷ F.E Nlerum, *op. cit* 338.

³⁸ A.O. Muzan, *op. cit* 74

³⁹ A.A Adedeji, *op. cit* 433

⁴⁰ B.B Kanyipe, "Consumer Redress" **MPJFIL**, Vol.2, No. 2, 1998, 91

⁴¹ A.O. Okukpon, *op. cit*, 34

consistent practice of the 4 Rs, all stake holders will not only be able to manage waste but also move in the direction of achieving zero waste.⁴² Emphasis should be placed on responsible resource use with an objective of avoidance, maximizing recycle and reduction which involves repair of broken things, purchasing and re-using second- hand items, and designing reusable and recycle products.

Waste Diversion Plan

Different approach should be applied on waste transfer and diversion in terms of more hygienic and efficient waste disposal. The objective is to make sure that there are convenient and proper waste disposal at landfill and waste transfer facilities. There is need for mandating equipment standards and re routing of refuse collection and transfer.

Improvement of Thermal Waste Treatment.

Thermal waste treatment have been proved not to be 100% green as they are normally pronounced. This is to mitigate the problem associated with thermal waste treatment such as emission of toxic gases.

Polluter pays Principle

This requires the polluter to pay for the impact caused the environment. For waste management, it will require that who so ever generate waste should pay for the suitable disposal of non reclaimable materials or waste.

Education

Education, awareness creation and publicizing success in proper waste management and highlighting the adverse effect of the activity of illegal waste management will apurs positive involvement and increase number of resident who will volunteer to monitor and report illegal dumping.

Law Enforcement

Laws against illegal waste dump should be strictly enforced. There is also need for surveillance by the law enforcement officers. Enforcement and prosecution of offenders is fundamental in solving the problem of illegal dumping.

Control and Monitoring of Landfill

There is need to control and monitor landfill and fly- tipping activities. Construction and demolition materials generated by construction industries should be re-used, reclaimed or recycled in other projects such as landscaping, village houses, and roads.⁴³ Land fils should be purposefully located to ease waste collection, transfer, and monitoring. This will be achieved through implementation of waste disposal plan.

There is also need for the provision and improvement of new and cost effective facilities which will aim to encourage higher environmental protection standards. Low disposal fees should be

⁴² Waste disposal problems and some Fantastic Solutions. [https\\www.conserve-energy.future.comm](https://www.conserve-energy.future.comm) accessed 19- 11-2019.

⁴³ *ibid*

introduce and high fine put in place for illegal dumping of waste as this will encourage legal disposal.

Finally, Cooperate and collective responsibility of reporting illegal dumping will help reduce illegal dumping. The menace of illegal waste dump should be the concern or everybody business. Existing illegal waste dump site should be cleared.⁴⁴

Conclusion

Environmental non-compliance is affected by poor environmental policy by the government, and lack of enforcement by the environmental agencies. There is need for waste policy enforcement. The promotion of recycling initiatives such as the opening up of various designated areas for free collection of used and absolute appliances, furniture and other home products for recycling can reduce illegal dumping. The practice of the 4Rs should be seriously encouraged, as this will cut back on illegal dumping.

⁴⁴ *ibid*