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## **Legal Framework for the Regulation of Waste in Nigeria**

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### **Abstract**

*Waste is the greatest danger facing mankind in the world today therefore measures must be nationally and internationally taken to control disposal of such waste to save humanity from total extermination from the surface of the earth. The paper, therefore, addresses the problem of waste and the effective legal framework for solving such environmental problems as well as the machinery for its enforcement .And the conclusion and recommendation made*

### **Introduction**

Environmental problem is now a subject of serious international concern. These problems include atmospheric pollution, marine pollution, global warming, and ozone depletion, the danger of nuclear and other extra-hazardous substances that threatened wild life species. Such Environmental issues have assumed a global character as Environment is said to be beyond peoples immediate surrounding, sometimes assuming international dimensions.

There is no doubt whatsoever that the industries and their waste play dominant role in the state of Environment at any given time in Nigeria. This it does by the inherent environmental problems associated with its operation especially in the chain process of exploration, extraction and processing which involves the ultimate manufacture of goods and services. It is therefore

a development dilemma that the necessary product of industry is invariably obtained with the risk of Environmental pollution.

In Nigeria, there exist plethora of legislations covering entire range of laws, concerned with regulation, management and protection of the Environment. These laws touch on pollution of air, water, soil, food, waste management, land use and conservation and so on. Ajomo identified about fifty Federal legislations related to environmental issues. It is practically impossible to consider all the environmental related laws in Nigeria in this work. On this note we shall consider some of the national environmental legislations. It has also been contended that 70% of environmental legislation applied in Nigeria today are derived from norms and principles of international laws in form of treaties, conventions, customary international law, protocols and other agreements of a binding nature.

Nigeria and other third world governments initial attitude towards environmental concerns generated in the 1970's by the developed world was that of suspicion. Suspicious in the sense that the industrialized world sudden concerns to protect the environment was the fear that environmental concern would be merely the rich clearing house, diverting economic and technical resources from developmental needs to pollution abatement, a situation largely seen by third world as likely to affect their development adversely. However in the year 1970 the environment was described as the issue of the year throughout the world and the United Nations Conference on human environment was held in 1972. Nigeria though signatory to so many of these multilateral treaties and was attendant at so many United Nation organized conferences did not come up with a viable environmental policy or strong legal framework for the protection of her environment until the unfortunate incident of dumping of toxic waste from Italy at Koko port in the then Bendel state in the 1988. It is in the light of this reality that very interesting strides were taken by Nigeria government in the late 1980's to propel Nigeria in the enviable direction of positive environmental protection management and regulation towards sustainable development. This aspiration culminated in the establishment of the Federal Environmental Protection Agency and its inspectorate and enforcement department in 1991. This development provided an institutional framework, both legal and administrative for the enforcement and execution of environmental policies and legislations.

### **Environmental Legislation**

Environmental legislations are enactments and regulations embodying provisions concerned with environmental issues as they broadly affect land, water and air. These laws impose sanctions in form of fines, imprisonment or damages which are subsequently enforced against persons (natural or legal) who infringe the provision of these laws. In Nigeria environmental problems which we are confronted with include those arising from mines and mineral exploitation, oil exploration, desertification, deforestation and problems associated with industrialization and urbanization as well as the problems of environmental consideration in health care.

According to Black's Law Dictionary, "Legislation is the act of giving or enacting laws, the power to make laws, the act of legislating, preparation and enactment of laws."

From the above definition, it is noteworthy to say that legislations are laws made or passed by the appropriate organs invested with the powers to make such laws for the regulation of human conducts and behavior

Legislations as said earlier are geared towards addressing the above problems. The aim of these legislations would not be achieved, if they are not properly implemented or enforced. The question now remains, how far has existing framework in matters of environmental protection been addressed, tackle, halt or otherwise abate the problem of environmental pollution in its entire ramification? It is clear that uncontrolled industrial activities pose greater danger to the environment than any other activity. The problem of Nigeria is the problem of enforcement and implementation of the environmental laws.

On the above in his write up on political and social consideration in the enforcement of environmental laws has this to say;

*The enforcement of environment laws in Nigeria has been problematic. Apart from the axiom that laws do not operate in a vacuum, the management and regulation of environment, through the enforcement has been beset by a host of problems, and has met with limited success.*

Given the above background, it is hardly arguable that environmental policies and legislation no matter how beautifully conceived towards the protection of the Nigerian environment will at its best be an exercise in futility and of little

significance unless and until they are accompanied by effective means of enforcement and compliance.

The relevance of environmental legislations to the economic, social and political well being and development of Nigeria cannot be over –emphasized. Development implies the transformation and distribution of economic resources in favor of a society and economically underdeveloped segments of the society or region. It is an undisputable fact that the process of development has the effort of an unprecedented degradation of the environment .An over exploitative development plan undoubtedly poses serious threat to human and material environment every developmental plan and programme, which is primarily premised on the human urge for material needs and comfort, poses some threat to the environment. This urge for development, coupled with the need for a pollution free environment raises a basic question “do we want development or do we want a clean environment” to make a choice between the two is a difficult task for we cannot say that we want development if the result would be an extreme degradation of the environment. We also cannot opt for a clean environment if the result is underdevelopment. A pollution free environment may perhaps be only an ideal dream far from realization in the industrial age; efforts therefore have to be made for a eco-friendly development. The task undoubtedly is to ensure a proper balance between developmental policy and environmental policy.

In light of the above therefore no Nation can remain indifferent to its surrounding environment. Any attempt to neglect the environment at this age and time would amount to gradual albeit inadvertent degradation of the environment, the danger posed by waste is so real and the effect so deleterious that in the modern age concern for the problem of the environment transcends national boundaries. it is now a global issue. There must also be a change in attitude which hitherto failed to take into account the relevance and cost of the environment in development.

The paper addresses the issues of waste, how waste affects the environment, its regulation in other to achieve a sustainable development. But for proper understanding of the nature of waste, it is necessary to look at the main concept of the environment, then the nature of waste. and the sources of environmental legislations.

### **Environment**

The environment is defined by the S.38 of the FEPA Act in a rather inclusive sense. The Act defines environment as follows: “environment includes water,

air, land and all plants and human beings and animals living therein, and the inter-relationships which exists among these or any of them.

It goes without saying based on the foregoing definition that the environment relates to the natural condition in which man lives, composed of land, air and water as mentioned earlier. This includes man, plants and animals and the complex relationship existing between them, otherwise referred to as the ecosystem.

### **Nature of Waste**

Waste is generally categorized into two broad areas: namely solid or liquid. Liquid is that which is in form of water and flows freely and is neither solid or gas. While solid waste is the direct opposite of the liquid waste. Waste can also be said to be toxic or radioactive. Waste can also be classified into several headings for example industrial waste, consumers waste etc. this paper will however limits its discussion on the laws regulating industrial and hazardous waste. Both national and international laws regulating waste will be looked at.

### **Some Major International Instruments**

For the purpose of this work some international instruments binding on Nigeria shall be identified. After the Stockholm conference of 1992, United Nations Assembly adopted a number of resolutions concerning the environment. The United Nations environmental programme was established after the conference. This has proved particularly an important agency in the evolution of conventions and instruments in the field of environmental protection. The UNEP has been responsible for the development of a number of initiatives including the 1985 Vienna Convention for the protection of the ozone layers. The 1988 Basel Convention dealt with transboundary of toxic and hazardous waste. In May 1988, the organization of African Unity adopted a resolution proclaiming the dumping of nuclear and industrial waste in Africa to be a crime against Africa and its people. In 1991 the OAU adopted the Bamako convention on the ban and import into Africa of hazardous waste and the control of transboundary movement and the management of hazardous waste within Africa, under which parties prohibit the importation of all hazardous waste for any reason into Africa by non-parties and to prohibit dumping at sea of such waste. Then there was the earth summit which gave birth to the Rio Declaration of 1992 and the broad objectives of the government on the environmental issues and the more recent international convention on the conservation of biological Diversity

aimed at management and exploitation of biological resources in a sustainable way. These international and regional conventions, agreement and protocols ratified by Nigeria, as well as local statute enacted by Nigerians are thus some of the laws regulating waste in Nigeria.

Nigeria being a Federation set out a broad outline under the Constitution government responsibilities and jurisdiction of its different organs. According to Akande whilst referring to the 1979 Constitution has this to say;

*...Cursory look at the relevant portion of the constitution in relation to allocation of responsibilities does not seem to deal specifically with the environment but there are definitely portions which are relevant to the environment issues.*

The Federal system under the 1979 constitution expressly or impliedly set out the legislative powers of the Federal, State and even the Local Government. But under the 1999 constitution of the Federal Republic of Nigeria, there is no specific allocation of responsibilities either to the federal, state or the local government just as was the case under then 1979 Nigerian constitution. Indeed, there is no specific mention of environment as a subject either on the Exclusive Legislation or the Concurrent Legislation List both of which appear in the second schedule to the 1999 constitution which deals with matters relevant to the environment. Section 4 of the 1999 Constitution vests in the National Assembly the power to make laws for the peace, order and good government of the Federation in respect to any matter covered by the Exclusive Legislation list to the exclusion of any State House of Assembly. The National Assembly has Concurrent Legislative power in respect of items specified under the Concurrent Legislative lists and all other residual matters are vested in the National Assembly. Pursuant to these provisions various legislations dealing with environment have been enacted. This position is further enhanced by Section 20 of the Constitution which provides that “they shall protect and improve the environment and safeguard the water air and land, forest and wild life in Nigeria.

The paper shall briefly look at some of the environmental legislations in Nigeria

### **Some Existing Federal Environmental Legislations Federal Environmental Protection Agency (FEPA)**

The first enactment that readily comes to mind is the Federal Environmental Protection Agency (FEPA) Act of 1988. FEPA was established by Decree 55 of December 30<sup>th</sup> 1988. FEPA vested with the statutory responsibility for overall protection of the environment. The FEPA decree is probably the most comprehensive and far-reaching legislation that will ever be adopted specifically on the environment in Nigeria to the extent that it covers sectors whose law was to be found in scattered enactment. It is a piece of consolidating legislation. The Decree contains penal provisions against offenders discharging hazardous substances in harmful quantities into the air, land and water.

The decree requires FEPA to issue environmental guidelines and standards for the abatement and control of all forms of pollution. These guidelines, the first ever of its type was launched in 1990 and it is hoped that they will be religiously administered to ensure that industrial activities and waste management practices are compatible with the overall goal of bequeathing a clean and safe environment to prevent Nigerians and generation unborn.

In 1991, FEPA established an inspectorate and enforcement department with divisions for standard regulation, chemical tracking and compliance monitoring. All these were directed by exercising control and preventing hazards. This stems from a realization of the fact that no matter how well articulated the laws are without enforcement and compliance, they amount to nothing.

### **The Environmental Impact Assessment Act**

The environmental assessment Decree No 86 of 1992 has come as a fitting compliment to the FEPA Decree in the important area of land utilization and siting of industries. The principal goal of this enactment was stated under section 1 which is to ensure that possible negative impacts of development projects are predicted and addressed prior to any project take-off. The effect of this is to promote sustainable development. The second phase of this assessment is referred to as environmental audit. This process which culminates in the writing of an environmental audit report compliments the process of an environmental impact assessment and in some instances supplement it. In furtherance of the objectives of this Act, FEPA established an environmental impact assessment department in 1993. The department was

saddled with the responsibilities of ensuring enforcement and compliance with provision of the act in every aspect of the nation's development efforts.

It is clear that this Act provides machinery for enhancing sustainable development in Nigeria but how far has this been achieved not to be exercised arbitrarily. There is a provision for giving a hearing to interested parties and members of the public if their interest would be injuriously affected.

### **The Mineral and Mining Act**

The process of minerals and mines exploration and exploitation is one that can result in serious environmental degradation and damage. S.65 of the Act prohibits the pollution and causing to be polluted any water or water course by any person in the course of mining or prospecting for minerals. Furthermore, section 33(4) mandates any holder of a prospecting right upon completion of prospecting operations to fill up any shafts wells, holes or trenches made by him and to restore the land to its original state.

Section 254(1) of the Act provides for the establishment of the mines field police (drawn from Nigerian police) for the purpose of enforcing compliance with the provision of the Act and of regulation made there under. All the above provisions, inter alia, are geared towards sustainable use and exploitation of the environment. We however wonder as to the failure to establish the minefield police as provided under the section. One then wonders if all the minefield which has constituted into death of many were not dug by miners and are they not still there. And the important question at this juncture is, how many arrest have been made by mine police since the inception of the above provision.

### **The Harmful Waste (Special Criminal Provision Etc) Act 1988**

The Act was enacted with the specific object of prohibiting the carrying, depositing and dumping of hazardous wastes on any land, territorial waters and matters relating thereto. This Act is essentially a penal legislation. The offences are constituted doing any of the act or omission stated in the section 12 of the act. The jurisdiction of the Act is far reaching as it sought to remove any immunity conferred by diplomatic immunities and privileges Act on any person for the purpose of criminal prosecution. It however important to note that despite its far reaching jurisdiction, it focuses mainly on criminal prosecution of damage and does not provide compensation to the victim of the damage.



Section 6 of the Act provides a very stringent sentence of life imprisonment and in addition the forfeiture of any aircraft, vehicle or land connected with or involved with the violation. However it was observed that there had never been a decided case of any person whether natural or artificial, prosecuted pursuant to the provision of this Act. It is equally presumptuous to hazard the assumption that no hazardous waste had found its way into Nigeria as contemplated by the Act since its enactment.

The legislation regulating the oil industry in Nigeria shall be briefly considered in this juncture. It is noteworthy that this is the aspect that has been subject to federal government attention prior to consciousness on environmental issues of the 80;s as mentioned earlier. The reason for this state of affairs is not far fetch. The Petroleum Act and regulations made there under provided a regulatory framework for enforcement of positive environmental legislation.

According to Etikerentse “a certain amount of pollution is concomitant of petroleum production. Spillages and pollution occurs in the best of oil field practice”

The magnitude of the problem would be better be appreciated against the background that upto recently, the control of this critical section had been in the hands of the profit driven investors and of the fact that oil revenues constitute about 90% of Nigeria’s earnings. The minister of petroleum resources in the exercise of the power conferred on him under S.9 of the Petroleum Act can make some subsidiary legislation to curb the problem of water pollution and other harmful effect of oil pollution. There exists other legislation, such as The Associated Gas Re-injection Act. This Act was aimed at prohibiting gas and flaring by oil companies in the course of oil exploration. This activity constitutes a serious threat to atmosphere and the ozone layer. It was contemplated by the Act that as at year 1984, gas flaring shall cease in Nigeria. The enforcement of the Act is still a mirage.

### **Oil in Navigable Water Act**

The Act was enacted pursuant to the adoption of the International Convention for the prevention and control of pollution of the sea by oil. The Act is in fact the first law that deals specifically and solely with the industrial waste generated by oil production. The Act has created some offences in respect of oil pollution for the purpose of reducing the incidence of pollution of the world high sea generally and particularly Nigeria waters. The enforcement of

this legislation has been watered down by several loopholes in its provision through which offenders may wriggle through. It is indeed a comical rhetoric to assume that there does not seem to be many differences between legislation riddle with lacunas and the water tight legislation in the absence of concrete steps towards the latter's enforcement.

### **Conclusion**

Nigeria is not lacking in terms of legislation that have the protection of the environment in view. The question is how have we fared with having been rudely awakened from the slumber of environmental inactivity by the discovery of hazardous waste dumped from outside Nigeria at Koko in the then Bendel State in 1988. The Government of the day must be commended for its swift reaction via promulgation of the Harmful Waste (Special Criminal Provision etc) Act 1988 and the Federal Environmental Protection Agency Act of the same year. There is still the problem of enforcement of environmental laws and this appears to be a lack of political will on the part of government and subsequently the failure of government to enlighten the populace on the existing environmental laws and stringently enforce same. This is also further compounded by the much touted "Nigeria factor" corruption whereby some polluters, especially those in the corporate category, get away with flagrant breaches of our environment legislation. Lack of awareness on environmental issues in Nigeria is also one of the problems in the effective Regulation and Management of environment pollution. Illiteracy and ignorance constitute a great obstacle to the regulation and enforcement of environmental legislation and the remedies available at law. People need to know the consequences of their acts or omissions or that of other persons or institutions on the environment and how it affects their existence. The lack of effective implementation on existing law on pollution and waste management in Nigeria is also contributory. Another problem is the jurisdiction to try all cases under FEPA Act and the Harmful Waste Special Criminal Provision cases is vested on the Federal high court. The court is already over-burden with other cases on which it has exclusive jurisdiction and as such imposing environmental pollution cases on it would stretch it to a breaking point resulting in congestion and delay of trials.

### **Recommendation**

It is humbly recommended that some of the problems of environmental protection especially that of regulation and waste management could be properly addressed if the following measures are adopted by the Federal,

State and Local Government and their various agencies and organs responsible for environmental protection. First and foremost, Government should ensure that the beautiful statement on environment contained in its developmental plans are put into practice by ensuring a thorough environmental impact assessment in all developmental plans so as to achieve the much needed sustainable development at the end of the day. Secondly, the inherent inadequacies of some of our environmental laws need to be urgently amended to make it more effective by way of higher punishment and payment of reasonable damages that would serve as a deterrent to would be offenders. Thirdly, since the international instruments considers polluters pay principles, government should introduce a form of environmental taxation or levy for industries operating in Nigeria in order to make more funds available for environmental management. Finally the exclusive jurisdiction in environmental pollution cases conferred on the Federal High Court should be abolished and Government can extend such jurisdiction to try environmental cases on state high courts or on the alternative establish environmental protection courts with exclusive jurisdiction to try all environmental pollution cases.

### **Reference**

- Akande, J.O.; (1994). Allocation of Environmental Responsibilities, Institutional Challenges and Conflicts in Ajomo M.A. and Adewale O., p35-36.
- Black H.C.; *Black's Law Dictionary*. 4<sup>th</sup> edition (St Paul Minn Publishing Co.1990) at 899.
- Etikerentse (1985) Nigerian Petroleum Law (Lagos: Macmillian Publishers) p. 73
- Malcom & Shaw (1997). *International Law*. 4<sup>th</sup> edition. Cambridge University Press, p.586
- Obi C.I.; (1994) Political and Social consideration in the Enforcement of Environmental Law in Ajomo M.A. & Adewale, O., *Environmental Law and Sustainable Development in Nigeria*.(Lagos NAILS and British Council) p.67.
- Ola, C.S.; (1984) Town Planning & Environmental Law in Nigeria (Ibadan Press Ltd) p.155.
- Salu A.O. (1999) *Searing Environmental Protection in the Oil Industry* Vol. 3 No. 2 MPJFIL.