

APPRAISING APPLICABLE LAWS ON WASTE MANAGEMENT IN NIGERIA

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ABSTRACT

The laws governing waste management in Nigeria were investigated in this paper. For Nigeria's long-term development, waste management is critical. Waste management has been a reoccurring decimal in Nigeria without a solution. What are the possible causes of Nigeria's ineffective waste management? There is a lack of enforcement of laws governing waste management in Nigeria, owing to inadequacies in the several environmental legislations on waste management in Nigeria. This paper suggests that effective waste management laws should be based on both the availability of enforcement provisions and the political and/or administrative will to implement them.

Keywords: Waste, Waste Management, Disposal, Applicable Laws, Nigeria.

INTRODUCTION

The Federal Republic of Nigeria's Constitutionⁱ of 1999, as amended, took effect on May 29, 1999. It ensures that the state would protect and improve Nigeria's environment.ⁱⁱ The Black's law dictionaryⁱⁱⁱ defines waste as:

Because of its quantity, concentration, or physical, chemical, or infectious characteristics, refuse or superfluous material, especially that left over from a manufacturing or chemical process... may cause or significantly contribute to an increase in mortality or harm to human health or the environment.

Refuse or excess material, particularly left over from a manufacturing or chemical process may cause or significantly contribute to an increase in mortality or harm to human health or the environment due to its quantity, concentration, or physical, chemical, or infectious qualities. The evolution of waste management has been intrinsically linked to its impact on health and the environment, both good and harmful, throughout human history. The current waste management sector has come a long way, and it is ready to go even further with developments in recycling and other technologies.

In 1985, the federal government launched an environmental clean up operation. Its goal is to reduce the growing volume of municipal and rural garbage, as well as to instill environmental awareness and cleanliness in all Nigerians. The initiative stipulated that all citizens of the country clean up their properties, as well as their streets and gutters, on the last Saturday of each month.

Nigeria, being a developing country, has its fair share of waste management issues. The disaster at the Koko toxic waste dump in 1988 was a turning point in the year. The toxic waste dump prompted the Nigerian government to seriously explore drafting environmental protection legislations. The Harmful Waste (Special Criminal Provisions and Other Provisions) Act was enacted as a result of this incident^{iv}. This Act makes it illegal to engage in hazardous waste-related operations. In Nigeria, the Criminal Code Act^v also governs the regulation of industrial water pollution. The Oil in Navigable Waters Act was enacted in Nigeria in response to the indiscriminate disposal of garbage^{vi}. The National Environmental Standards and Regulations Enforcement Agency (NESREA) was established in 2007 by the Nigerian Federal Government through the National Assembly (Establishment Act, 2007).

People in Nigerian society, to put it bluntly, constantly have things to throw away. These products or things are frequently undesired. As the world's population grows, so does the amount of waste produced. The task now is to properly dispose of these trash so that the ecosystem can be preserved for future generations to enjoy. Waste disposal is not an easy job. This is because it could affect the environment and human health if not properly disposed of. Individuals, communities, corporations, the nation, and society all have an interest in waste management. It has been noted that the amount of garbage generated does not truly cause an issue. Rather, it is the government, corporations, individuals, communities and waste disposal companies' incapacity to deal with the task of waste management on the environment. The federal and state government have also made efforts to address the issue of trash disposal and management head on.

As a result of the foregoing, this work is separated into five (5) sections. The first part is the introduction. The concept of waste is discussed in the second part. Part three delves into Nigeria's legal framework for garbage management. Waste management under common law will be explored in connection to nuisance, negligence, trespass, the Rule in Rylands v Fletcher, and Chapter 2 of the Federal Republic of Nigeria 1999 as amended. Part three includes the National Environmental Standards and Regulations Enforcement Agency (Establishment Act 2007), the Oil in Navigable Water Act of 2004, the Harmful Waste (Special Criminal Provisions etc) Act of 2004, and the Criminal Code Act of 2004. The legal remedies available to waste victims are discussed in part four, and the conclusion is presented in part five.

CONCEPT OF WASTE

The Oxford Advanced Learner's Dictionary^{vii} categorizes the term "waste" into two categories. Waste that is "not used well" and waste that is "not good use." The former refers to doing, using, giving, or saying something that isn't necessary or useful, or where it isn't valued as it should be. As a result, when people say things like "why waste money on clothes you don't need," it's understandable. "Trying to explain it to him is a waste of time since he won't comprehend." "You should have been an actor instead of a sales manager," she says. It's important to remember that the term is being used in the context of the "doesn't work" category. The latter, on the other hand, considers waste to be resources that are no longer useful and are discarded. The authors will examine the term waste from the standpoint of the latter in this dissertation.

On his part, Akinwale defines waste as rubbish or materials that are not needed and are economically unusable without further processing^{viii}. According to him, something must be economically unusable before it can be classified as a waste. To put it another way, it's unproductive since the economic value(s) it once held have vanished.

According to Ogwueleka,^{ix} there is no comprehensive list of what constitutes garbage and what does not. He goes on to say that whether a substance is dumped as garbage and whether waste ceases to be waste are questions that must be answered based on the facts of the case and legal interpretation. He is of the opinion that whether or not a substance is discarded as waste rests on one hand with the producer or holder of such substance to decide whether it is being discarded as waste or not.

The aforementioned waste definitions demonstrate that one basic issue is the lack of a practical meaning of the term. Another issue is that one person's trash could be another person's raw material. With recycling, determining what comprises waste and what does not become increasingly complicated. This scenario inspired the United Kingdom's^x Department of Environment to define waste as "those chemicals or things that have exited the commercial cycle or the utility chain." As a result, even if it is dumped by its owner, a material meant to be an issue of a recycling product does not qualify as waste because it is still in the business cycle or utility chain. Under the Control of Pollution Act 1974 in England, the courts have defined waste on the premise that if a material's producer uses it, it is not a waste. However, even if a person had a need for a material he did not make, that material could be considered waste.^{xi}

The defendants in *Meston Technical Services Limited vs. Wright V. Warwickshire County Council*^{xii} bought liquid trash and processed it into materials, which they subsequently sold. Drums were used to store waste after it was collected but before it was treated. They were charged under the Control of Pollution Act of 1974 for failing to comply with the terms of their waste disposal license, which did not include the storage of the barrels. The Divisional Court decided that once a manufacturer discards a substance, it stays waste until it is converted into a different material through the recovery process for which it was intended.

Two Italians were prosecuted in the case of *Vessoso v. Zanetti*^{xiii} for illegally collecting, transporting, and storing rubbish in violation of an Italian Presidential Decree. Both defendants maintained that the item was not garbage at all, but rather recyclable raw material. The European Court of Justice, while deciding the issue from a European viewpoint, determined that, while recycling should be encouraged, the item might still be considered waste

notwithstanding its intended use. It's worth noting that, as much as the Vessoso's case attempted to solve the intractable problem of defining waste, it may be difficult to sustain in the future, especially as recycling technology improves to the point where most wastes are viewed as raw materials that don't require treatment before being recycled.

Regardless, the following conclusions might be drawn about the notion of waste in the above-mentioned example. To begin with, the identity of the thrown substance as garbage is derived from the subjective perspective of the individual throwing it as such, rather than from an objective perspective. Second, an item that has been dumped as trash stays waste until it is positively reconditioned and so reconstructed as value. It is insufficient that a process of sorting has taken place. Finally, wastes are not residual products from industrial processes that are still considered useful or desired by the process.

LEGAL FRAMEWORK FOR WASTE MANAGEMENT IN NIGERIA

The common law as well as pertinent statutes will be discussed. The application of related common law principles to the concept of waste, such as carelessness, negligence, and so on, will also be examined.

Waste Management at Common Law

There are numerous examples of judicial rulings that have considerably aided in the fight against waste concerns under common law. Consider the pollution of water caused by the discharge of industrial effluents into it. Control over water under common law are nearly entirely focused on two things: first, fresh water, and second, person rights to it. Water pollution can, in that sense, be considered a nuisance under common law. Landowners on the bank of a stream or river have a right to flowing water, which cannot be impeded or harmed in flow or quality by adding foreign matter, for example, such behaviour is punishable. The level of fouling must, nevertheless, be intolerable and irrational, according to common law.

The control of environmental pollution is primarily prescribed by tort, which is a legal wrong that urges the aggrieved party to seek damages or seek a court order. The four specific torts of negligence, nuisance, trespass, and the strict liability rule in *Rylands v Fletcher* are frequently relevant. They are part of the English laws that were brought into Nigeria by Ordinance No. 3 of 1863, and they will be explored in terms of environmental preservation.

- **Nuisance**

In the current meaning, the tort of annoyance is strongly linked to environmental protection. A nuisance, according to Black's legal dictionary,^{xiv} is a circumstance that interferes with the use or enjoyment of property, and liability may or may not emerge as a result of the condition or situation. It could also be roughly defined as an action or inaction that interferes with the use or enjoyment of property. The phrase refers to the action that causes the interference rather than the subsequent condition in this context. When a person uses his property in a way that disrupts the use and enjoyment of another person's property, the tort of annoyance is committed. Laws dealing with oil pollution or toxic vapors interfere with nuisance activities, such as disagreeable odours from animal-keeping facilities or noise from industrial facilities, both of which fall under the statutory definition of annoyance.

In law, the term "nuisance" has a very broad definition. As a result, it could be a private nuisance, which is defined as interference with a person's enjoyment of their property that does not constitute trespassing. However, it is a tort for which the person who has been harmed may seek damages or an injunction. On the other hand, there is public nuisance, which is an unjustified interference with the general people's right to common property. This is a health hazard. It is illegal to restrict the public's free use of public property or offends community moral norms. A civil injunction or criminal prosecution may be sought in such a case. It is important to remember that whether the annoyance is private or public, the same rules apply.^{xv} The main difference between the two is that public nuisance is a criminal offence. Normally, a person does not have the *locus standi* to a suit as a tortfeasor. However, this could be mitigated if he can show that the damage he has incurred is greater than that which the general public has endured. Damages must be proven in order for a nuisance lawsuit to succeed. The plaintiff's claim that the defendants' operations caused damage to buildings and household items failed in *Seismograph Service Ltd. vs. Akporuovo*^{xvi} because damages were not proven. The action was brought by the Attorney General. In the matter of *Amos v Shell BP Nigeria Ltd.*^{xvii} the plaintiff alleged that the respondent business constructed a massive earth dam over their creek during their oil mining operations. Flooding upstream and drought downstream ensued as a result of this. The community's canoeing business, and agricultural operations all came to a halt. The creek constituted a public nuisance, therefore the court decided that a class action for special damages was unconstitutional because the victims' interests and losses were distinct and not communal. The plaintiffs in *Sullivan v Desrosiers*^{xviii} filed a lawsuit alleging that the foul odour from the defendant's farm sewage was interfering with their use and

enjoyment of their land. The defendant's defence was that he could not be found guilty in nuisance because he followed all government norms and regulations.^{xix} The claim was dismissed on the grounds that following government rules and regulations did not absolve him of the common law requirement to conduct his business in a manner that did not cause public disturbance. The defendant's appeal was also unsuccessful. The stench was strong, according to the court, and the injury to the respondents was more than they could take.

In *Chief Ejowhomu vs. Edok-Eter Mandilas Limited*^{xx}, the defendant/respondent demolished three bridges that were the only way to cross the river to the plaintiff/appellant chicken farms while constructing the Kokori/Eku road. The plaintiff had experienced damages that were greater than those sustained by other members of the public, according to the court, and was thus entitled to file the lawsuit. In *Jumoh Lawani and Others v The West African Portland Cement Company Limited*,^{xxi} residents of five villages in the defendant's neighborhood filed a lawsuit alleging that the defendant's company damaged plaintiffs' crops, buildings, and other property. This was due to the defendant's cement business causing a nuisance. The plaintiffs claimed that the defendant installed a chimney in the plant that emitted fumes and dust into their buildings, crops, farms, and stream. The plaintiff had no right to file a lawsuit since it constituted a public nuisance, according to the court.

Another disadvantage of nuisance is that, prior to the decisions in *Adediran v Interland Transport Limited*^{xxii} and *Umuedje v Shell B.P Petroleum Development Company of Nigeria Limited*,^{xxiii} the Attorney-General's assent was required for competence to intervene in public nuisance cases.

- **Negligence**

The tort of negligence is another important tort to consider. It is based on the idea that everyone should conduct themselves in a way that is not harmful to others. Those who are most likely to come into contact with the action in question. Only on the basis of a breach of the duty of care due to the other person may he be held accountable. It's when you don't use the level of caution that a reasonably reasonable individual would use in a similar scenario. Except for action that is knowingly, wantonly, or willfully disregarding others' rights, any conduct that falls below the legal level imposed to protect others from undue danger of harm.^{xxiv} Negligence is a legal term that refers to guilty carelessness. This might range from a purely unintentional inadvertence to a wicked disregard for others' safety.^{xxv} It might also be argued that negligence is a sign of behaviour that should be recognized as posing an unjustifiable risk of harm to others.

In the case of environmental protection, the plaintiff must establish that the polluter owed him a duty of care as a matter of fact. More importantly, he is in violation of that obligation. Furthermore, the plaintiff suffered predictable damages as a result of the breach. The court may grant remedies such as damages or injunctions if the plaintiff succeeds in his lawsuit by establishing his case.

In *Onajoke v. Seismograph Service Ltd*,^{xxvi} the plaintiff was victorious in his negligence lawsuit for damage to his building caused by the defendant's blasting activity. This is because the defendant owed a duty of care to anyone whose property was in danger of being harmed.

- **Trespass**

Trespass is also a significant tort. It's a crime committed against someone else's person or property. In particular, trespassing on someone else's real estate. It is the legal action under common law for harm caused by such an unlawful act. It could be viewed from three perspectives, namely: In the widest and original significance, any wrongful act- any infringement or transgression of the rule of right; in a narrower significance- that is in true legal sense, any legal wrong for which the appropriate remedy was a writ of trespass resulting from any direct and forcible injury to person, land or chattels and the third and narrowest meaning is that in which it is limited to one particular kind of trespass in the second sense with regard to tort of trespass to land (*trespass quare clausum fregit*) which is interpreted to mean “why he broke the close”. A person's unlawful access into another's land that is plainly confined is known as trespass

Although there is no historical history of using the tort of trespass to safeguard the environment. It is proposed that where hazardous wastes are dumped on land, tortfeasors could likewise depend on it if the situation is meritorious. The 1988 Koko garbage dumping would have been a resounding success. In *Frieston v. Forest Protection Limited*,^{xxvii} the defendant used an airplane to spray insecticide into the forest to combat spruce budworm. This was something that the plaintiffs did not desire. The defendant, on the other hand, sprayed the plaintiffs and their property, and the plaintiffs were injured and irritated as a result of the insecticide exposure. Following the incident, one of the plaintiffs' children developed asthma, and the court determined that the spraying contributed to the severity of the illness. In the absence of statutory authority, the court determined that the Defendant had committed trespass.

- **The Rule in Rylands v. Fletcher**

The rule proposed by Blackburn J. is also significant. According to the rule in *Rylands v Fletcher*,^{xxviii} a person is strictly accountable for any damage or harm caused to another person

if he stores or accumulates anything on his premises that, if it escapes, will cause damage or injury to the other person. This is also known as strict liability in which the House of Lords in the United Kingdom had stated inter alia; “We think that the rule of law is that the person who brings on his land, 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 damages which is the natural consequences of the escape”.^{xxix} As noted in *Read v Lyons and Company Limited*, the technique for proving strict liability is somewhat complex^{xxx} that:

1. There was a hazardous thing that could cause havoc if it escaped.
2. That the perilous creature was brought to the land
3. That the hazardous thing had gotten away
4. A non-natural user is the most dangerous thing.

It appears that when personal injuries arise from the escape of things from the land, there is an exclusion. Proving that the escaped thing is a non-natural user is damaging as a result of this. It can be determined that relying on strict responsibility as a tort has shown to be most beneficial in courtroom environmental control cases, particularly those involving oil pollution. The guidelines' scope is not restricted to fundamentally risky materials like chemicals, says Atsegbua.^{xxxi} It includes items like water, sewage, and unpleasant gases that are largely harmless until they are gathered in vast numbers."

Succinctly, the plaintiff in *Unudje v Shell BP Nigeria Limited*,^{xxxii} claimed that the defendants had blocked and diverted a natural stream, infringing on his fishing rights. It collected oil waste on defendant's land, which had escaped and caused harm to his property. Except for his defences of act of God, consent of the plaintiff, and default of the plaintiff, the defendants were deemed not liable for the first complaint but liable for the second stranger's act and statutory authority.

It is argued that the strict liability approach established in *Rylands v. Fletcher* is limited in the sense that substance held on land must have been retained by "non-natural users." There would be no culpability if it was used for natural purposes. Private civil actions have long been used under this rule and the nuisance tort to rectify different environmental wrongs that result in damages or injury to the plaintiff as a result of the defendant's activity or negligence. This is especially true, according to Fubara,^{xxxiii} in civil cases brought against oil firms for damages caused by pollution.

However, there are several flaws in these common law requirements. The torts of negligence, nuisance, and the *Rylands v Fletcher* rule have not been of much help to the victims of oil

contamination,^{xxxiv} Atsegbua claims. The different limitations in the provisions are the reason for this. There is a duty of care given by one person to another in a claim filed under negligence. It must be proven that there was a violation of that responsibility. This was established in the classical case of *Donoghue v Stevenson*,^{xxxv} where it was held per Lord Akin that “a manufacturer of products which sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparation or putting up of the products properly, owes a duty to the consumer to take reasonable care”.^{xxxvi} As a result, the producer owes the ultimate consumers of the items a responsibility not to hurt them as a result of any product-related negligent failing. Establishing that the defendant owes the plaintiff such a duty in the case of environmental damage would be necessary. Even if the harm is proven in the absence of a duty of care, negligence liability does not emerge. Another restriction on a claim brought under the tort of negligence is the level of proof that the plaintiff must prove. Typically, a plaintiff who has been harmed by industrial activity is not well-educated or wealthy enough to bring a claim. Polluting industries with a healthy financial position engage specialists to testify in court. Typically, the plaintiff will not have the financial resources to employ experts to testify in court to challenge or refute the polluting businesses' findings. The plaintiff alleged in *Atubin v Shell BP Petroleum Development Company of Nigeria Ltd*^{xxxvii} that the defendant caused crude oil, gas, and chemicals to leak from pipes under their control, killing fish in the lake and ruining their farmland. The petitioner failed to establish that the defendant was careless, according to the court.

Instead of depending on the degree of proof, the court frequently applies the *res ipsa loquitor* doctrine. As a result, the defendant has the burden of proof. Polluting firms have gotten around this obstacle by hiring specialists to testify about their complete proof manufacturing system. The court must consider such testimony if the waste victims do not object.

The judgment of whether the usage is natural or non-natural is normally made in light of human actions, according to the criteria set in *Rylands v Fletcher*. Water was the object obtained in the case of *Rylands v Fletcher*. Although water is natural, it might be claimed that it becomes non-natural when it is deposited on land through any method other than rainfall. The act of putting the thing onto the ground and the consequences of an escape, according to Rosalind Malcolm,^{xxxviii} are crucial in deciding culpability. As a result, any non-natural use of land that escapes and causes damage is subject to strict liability. Due to statutory defences that are

commonly accepted and implemented by courts, the ruling in *Rylands v Fletcher* has become less effective.

In the case of *Ikpede v Shell BP Petroleum Development Company Ltd.*,^{xxxix} plaintiff's fish marsh was damaged by crude oil leaking from defendant's pipelines. Even though all of the rule's prerequisites were met in Ryland's case, the court determined that the defendant could not be held accountable under the rule. This is due to the fact that it laid pipelines under the Oil Pipelines Act, which required a license. Giving with the right hand and taking with the left is the case in this situation. In order to establish uniformity, the government should guarantee that judicial and legislative requirements complement rather than contradict one another. The plaintiff was granted damages in the aforesaid instance because of the Oil Pipelines Act's strict liability requirements.

The Constitution of the Federal Republic of Nigeria 1999 as Amended

It's worth noting that the Federal Republic of Nigeria's Constitution, when it was changed for the first time, includes environmental protection. The 1999 Constitution stipulates this in section 20. "Nigeria's water, air, land, forests, and wildlife will be protected and improved by the state." It should be noted that this is the first attempt to include environmental provisions in the Nigerian Constitution. Such provisions were not included in previous constitutions from 1979 and 1989. This is understandable, given the lack of environmental consciousness at the time. Unfortunately, the clause is unjustifiable^{xl} because it is found in chapter 2 of the 1999 Constitution's dealing with Fundamental Objectives and Directive Principles of State Policy. Section 6(6)(c) of the 1999 Constitution provides thus: "The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter 2 of this Constitution. The authors believe that chapter 2 of the 1999 Constitution should be changed to allow environmental victims to seek justice in a court of law. Chapter 2 of the 1999 Constitution, on the other hand, should be repealed.

National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 (NESREA)

The Federal Government of Nigeria established the NESREA Act, 2007 in response to the FEPA Act 1988 because of its inability to adequately handle the myriad concerns of environmental protection in Nigeria. The Agency is responsible for enforcing environmental standards, regulations, rules, laws, policies, and recommendations, according to section 1(2)(a) of the NESREA Act. Section 2 states that the Agency is responsible for environmental preservation and development, including biodiversity conservation and the sustainable development of Nigeria's natural resources in general, as well as environmental technology, according to the provisions of the Act. These include coordinating and liaising with relevant parties both inside and outside Nigeria on environmental standards, regulations, rules, laws, policies, and guidelines enforcement.

The Agency's and Council's functions and powers are covered in Part II of the Act. A person who violates the provisions of the regulations made pursuant to subsection (3) of this section commits an offence and, upon conviction, is liable to a fine of not more than #200,000 or to imprisonment for a term not more than 2 years, or to both such fine and imprisonment, plus an additional fine of #5,000 for each day the offence continues. Section 24(5) states that if a body corporate commits an offence under paragraph (3) of this section, it faces a fine of up to \$1,000,000 and an additional fine of \$50,000 for each day the offence continues. Section 27(2) states that anyone who violates subsection (1) of this section commits an offence and is subject to a fine of not more than \$1,000,000 or a sentence of imprisonment of not more than 5 years if convicted. A body corporate that commits an offence is subject to a fine of not more than \$1,000,000 and an additional fine of #50,000 for each day the offence continues, according to section 27(3).

It is stated that the fines and prison terms imposed on violators are insufficient in comparison to the magnitude of the damages sustained by the victims. It is proposed that fines and prison terms be increased to reflect the severity of the harm caused to victims.

The Oil in Navigable Water Act, 2004

The oil pollution of water is the subject of this Act.^{xli} A Nigerian ship is breaking the law if it discharges oil into a "prohibited maritime area,"^{xlii} according to the Act. Section 4 of the Act establishes defences in the event of a vessel discharge. Despite the fact that this Act was enacted

to reduce oil pollution in the high seas and Nigerian national waters, the defences contained in the Act have rendered it ineffective. These broad defences allow those accused of the crimes to flee with ease.

The Harmful Waste (Special Criminal Provisions etc) Act 2004

Following the toxic waste catastrophe at Koko in 1988, this Act was enacted. This Act ^{xliii} makes it illegal to engage in hazardous waste-related operations. Section 15 defines hazardous waste as "any hurtful, poisonous, toxic, or noxious substance that could be expected to result from the hazardous waste." Section 6 states that anyone convicted of a crime under sections 1-5 of this Act will be punished to life in prison, as well as the following: -

- a. any carrier, including aircraft, vehicles, containers, and any other means of transporting or importing hazardous waste; and
- b. Any land on which hazardous material has been stored or dumped shall be forfeited to the Federal Government without other assurance than this Act.

The protection from prosecution conferred on certain persons or under the Diplomatic Immunity and Privileges Act shall not extend to any offence committed under this Act by any of those persons, the Act states.^{xliv} The Act gives the police the authority to search, seize, and arrest people. There is also a mechanism for dumping sites to be sealed.^{xlv} In addition to criminal culpability, the Act also imposes civil liability on anybody who deals in hazardous waste.^{xlvi} The Act's provisions are laudable in that the penalties are severe, which would help assure adequate compliance. The exclusion of immunity is particularly notable because it assures that no environmental crime involving hazardous waste is performed under the guise of diplomatic immunity.

The Act, however, contains flaws as well. One example is its inability to define "waste" before moving on to "harmful waste." There are no provisions for hazardous waste generated in the country, with the focus instead on hazardous waste imported into the country. Industrial operations generate a large amount of hazardous waste in the country. The majority of our brewing industries do not properly dispose of the waste they produce. As a result, the ecology suffers greatly. A visit to Coca-Cola and Guinness Industries revealed that the waste that leaves their facilities is not properly managed. It's even causing houses in the area of their operations. A review of the Act is required to ensure that hazardous waste created within the country is properly managed.

The Criminal Code Act

This Act^{xlvi} regulates water contamination caused by industry. Any person who corrupts or fouls the water of any spring, stream well, tank reservoir, or site so that it is less suited for the purpose for which it is generally used is guilty of a misdemeanor and is liable to jail for six months, it states.^{xlvii} The handling of industrial waste is governed by these regulations and others.

LEGAL REMEDIES TO VICTIMS OF WASTE

The Constitution, legislation (criminal law remedies and civil law remedies), common law, and human rights can all be used to pursue legal remedies in environmental law. A remedy, according to Black's law dictionary, is "the mechanism by which a right is enforced or a violation of a right is prevented, redressed, or compensated." As opposed to a right, which is a well-founded or recognised claim, these are the methods used to enforce rights or repair a damage. It's also known as the legal right granted to a party to exercise in the event of another party's default or the commission of a tort (wrongdoing). Compensation is frequently used as a remedy for environmental harm.

The Nigerian Constitution includes provisions for the enforcement of rights under the heading of constitutional remedy.^{xlix} This may not be appropriate in the case of environmental rights remedies. The application of these general constitutional provisions to offer remedies for victims of environmental violations may rely heavily on the judges' discretion and ingenuity. Despite the aforementioned, several countries' constitutions have broadened the definition of right to life to include the non-justiciable right to a clean and healthy environment. This interpretation is increasingly being used by the judiciary to enforce environmental rights.

In the case of *Kendra v Uttar Pradesh*,^l the Supreme Court of India affirmed the right to live in a healthy environment and ordered mining operations to be halted.^{li} In environmental matters, Pakistani courts have supported Article 9 of the Pakistani Constitution, which protects the right to life. The petitioner in *Shela Zia v WAPDA*^{lii}, asked the court whether citizens were entitled to legal protection from electro-magnetic field hazards or any other such hazards arising from the installation and construction of any grid station, factory, power station, or similar installation under Article 9 of the Constitution. Article 9 of the Pakistan Constitution includes all such amenities and services that a person born in a free country is legally and constitutionally entitled to enjoy with dignity.

As a result, environmental rights remedies can be pursued by asserting a breach of the fundamental right to life. A Federal High Court in Nigeria has ruled that the constitutionally guaranteed fundamental rights to life and dignity of human persons enshrined in sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria 1999, as well as articles 4, 16, and 24 of the African Charter on Human Procedure Rules (Procedure and Enforcement), inevitably include the right to a poison-free, pollution-free, and healthy environment.^{liii} This approach, it is argued, is consistent with justice.

The common law principles of nuisance, trespass, carelessness, and the strict responsibility rule in *Rylands v Fletcher* are all included in the set of environmental laws under the heading of common law remedies.^{liv} Under these areas of common law, private individuals can enforce their environmental rights. These torts may be very useful in combating pollution and, as a result, ensuring some level of environmental protection. Common law remedies, on the other hand, are primarily available to benefit applicants. It is not concerned with environmental restoration. Furthermore, damages may be awarded based on technicalities, and even if damages are awarded, they may not be sufficient to compensate for the injury. A willing and capable plaintiff is likewise required in common law torts. Meanwhile, the average Nigerian litigator lacks the necessary sophistication. Due to the requirement of proving culpability in most cases, common law torts are unable to handle severe environmental issues of the twenty-first century.^{lv} These and other factors explain why environmental law is mostly reliant on statutes. The insufficiency of common law remedies forced the use of statutes to protect environmental rights, which falls under the heading of statutory remedy. In Nigeria, the majority of environmental regulations have been passed while the country was ruled by the military.^{lvi} By virtue of section 315(1) of the 1999 Constitution, several legislation were passed down as "existing law."^{lvii} Whereas, as previously noted, the majority of the torts covered by environmental law are either fault-based or need significant proof. The majority of environmental laws impose strict liability or/and provide for compensation rather than monetary damages. Criminal law and civil law remedies can both be used to obtain statutory remedies. The most common types of remedy accessible under criminal law are imprisonment and fines. While this may provide psychological relief to the sufferer, it does not restore the victim's financial situation. Alternatively, civil reliefs may be used to rehabilitate the victim financially, at least to some extent. Damages, injunctions, abatement, and a variety of additional remedies are included.

Environmental rights have been connected to human rights by the International Court of Justice and various regional human rights courts. Weeramantry J of the International Court of Justice in his separate opinion in the case of *Gabcikovo-Nagymaros* stated that “the protection of the environment is likewise, a vital part of contemporary human rights doctrine for it is *sine qua non* for numerous human rights such as the right to health and the right to life itself... as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.”^{lviii}

The regional courts have followed the same path. The African Commission on Human and Peoples Rights ruled in the case of the *Social and Economic Rights Action Centre and Others v. Nigeria*^{lix} that the Ogoni community had been denied their rights to health under article 16 and to a generally satisfactory environment conducive to development under article 24^{lx} of the African Charter.^{lxi} This is due to the Nigerian government's failure to protect the population from pollution and environmental deterioration caused by oil drilling.^{lxii}

When a government domesticates the statutes that established international or regional courts, international human rights rulings may become enforceable. The African Charter has been adopted by Nigeria.^{lxiii} As a result, under the African Charter, Nigerians can litigate for their environmental rights. The right to a suitable environment under the Charter can be used in Nigerian domestic courts, according to the *Social and Economic Rights Action Centre and Others v Nigeria* decision,^{lxiv} because the Charter has been incorporated into Nigerian domestic law. In *Jonah Gbamre v ShellPDC Ltd. and Ors*,^{lxv} Nwokwie J granted leave to the applicant to file environmental actions on behalf of himself and every member of the Iweherekan community in Delta State, Nigeria, in 2005. The court determined that the rights to a clean, poison-free, and pollution-free healthy environment are intrinsically linked to those protected by Nigeria's 1999 Constitution's sections in sections 33(1) and 34(1), as well as the African Charter on Human and Peoples Rights' paragraphs 4, 16, and 24.^{lxvi} The right to a clean, poison-free, and pollution-free environment are inextricably linked.^{lxvii}

Human rights and environmental preservation have similar goals under current legislation, although not all environmental challenges can be classified as violations of human rights.^{lxviii} The decision in *Gbemre's* case is widely regarded as a watershed moment in the application of fundamental human rights to environmental situations, as is the case in other jurisdictions.^{lxix}

CONCLUSION

In Nigeria, it is well known that people dispose waste indiscriminately without regard for the health and safety of others. They do this with complete impunity, at the expense of other people's health. It is horrifying, unfathomable, and unacceptable that those tasked with environmental preservation are often the most guilty.

Despite the fact that several laws have been enacted to govern waste management. The State, as custodian of the people's interests, must demonstrate via its ostensible acts (effective enforcement) that every Nigerian's health and safety, regardless of age, gender, tribe, religion, or social standing, is actually important. Chapter 2 of the Federal Republic of Nigeria's Constitution, as amended, should be repealed so that a more realistic approach can be taken to save Nigerians through efficient legislations and enforcement of waste management laws in Nigeria.

ENDNOTES

ⁱ Cap. C23 Laws of the Federation of Nigeria 2004.

ⁱⁱ See CFRN, 1999 section 20.

ⁱⁱⁱ Garner BA (ed) *Black's Law Dictionary* (9th edn.) (West Publishing Co., 2009) 1728.

^{iv} Cap H1, Laws of the Federation of Nigeria, 2004.

^v Cap. C. 38 L.F.N 2004.

^{vi} Cap 06, Laws of the Federation of Nigeria, 2004.

^{vii} Hornby A.S, *Oxford Advanced Learner's Dictionary of Current English* (8th ed.) (Oxford: Oxford University Press, 2010) p1676-1677.

^{viii} Akinwale A. 'Waste Management in Nigeria Local Governments' International Conference on Energy, Environment and Disaster held in Charlotte, New-York, United States of America from 24-30 July, 2005.

^{ix} Ogwueleka T.C, 'Municipal Solid Waste Characteristics and Management in Nigeria' *Iran Journal on Environment and Health Science* vol. 6. No. 3, (2009) p173-180.

^x This is the circular of November 1994 of the Department of Environment, UK

^{xi} Thorton J. and Beckwith S., *Environmental Law* (London: Sweet and Maxwell, 1997) p.178.

^{xii} [1995] *Env. L.R.D* 36.

^{xiii} [1990] L.M.E.L.R 133.

^{xiv} Garner n.3.

^{xv} *Read v. Lyons Co; Ltd.* [1945] KB 216 p.236.

^{xvi} (1974)6 S.C 199.

^{xvii} (1974)4 E.C.S.L.R 486.

^{xviii} (1987)76 New Brunswick Reports 271.

^{xix} Esavwede J.P, 'A Critical Approach of the Impact of Common Law Torts on Environmental Protection in the Niger Delta' *DELSU Law Review*, Environmental Law Edition, vol. 2 No. 2. 2006 p. 334.

^{xx} (1986) 9. S.C 41.

^{xxi} (1973)3 I.L.R (part iv) 459.

^{xxii} (1986)2 N.W.L.R (part 20) 78.

^{xxiii} (1975) 9-11 Sc. 172.

^{xxiv} Garner n.3 p1133.

^{xxv} *Ibid.*

^{xxvi} Suit No. SHC/28/67. Sapele High Court, Delivered on January 29, 1971.

^{xxvii} (1978) 22 N.B.R 146.

- xxviii [1866] L.R.I Ex. 265.
- xxix *Ibid* p279-280.
- xxx (1947) A.C 156.
- xxxi Atsegbua L *et al.* *Environmental Law in Nigeria: Theory and Practice* (Benin City: Ambik Press, 2010) p 239.
- xxxii (1975)11 S.C 153.
- xxxiii Okorodudu M.T -Fubara, *Law of Environmental Protection: Materials and Text* (Ibadan: Cactop Publishers (Nigeria) Ltd., 1998) p.388
- xxxiv Atsegbua L “Oil Pollution: The Future of Law” (1998)3 Mil BQ 12.
- xxxv (1932) AC 562.
- xxxvi *Ibid* 599.
- xxxvii Unreported Judgment of the Ughelli High Court in Suit No. UHC/48/73 delivered on November, 12 1974.
- xxxviii Malcolm, *A Guide Book to Environmental Law* (London: Sweet and Maxwell, 1994) p.45.
- xxxix (1973) All N.L.R 61.
- xl See CFRN, 1999 section 6(6)(c).
- xli See n.6.
- xlii *Ibid* section. 1.
- xliiii See n.4.
- xliv *Ibid* section. 9.
- xlvi *Ibid* section 11.
- xlvii *Ibid* section 12.
- xlviii See n.5.
- xlviii *Ibid* section. 245.
- lix See CFRN, 1999 section 46.
- l Air 1985 SC. 625.
- li Similarly, in *Mathur v Union of India*, the Supreme Court used the right to life as a basis for emphasising the need to take drastic steps to combat air and water pollution.
- lii [1994] SC 693.
- liii See *Gbemre v Shell & Ors* Suit No. FHC/B/C5/53/2005.
- liv See Supreme Court Ordinance of 1914, section 14.
- lv Ladan M.T, ‘Status and Trend of Environmental Law in Nigeria’ Proceedings of the first Seminar of Environmental Law in Africa Universities held in Nairobi, Kenya from 29 September-2 October, 2014.
- lvi Cap. F10 Law of the Federation of Nigeria, 2004 now replaced by NESREA Act 2007, Harmful Waste Act, Environmental Impact Assessment Act.
- lvii 1999 Constitution, section 315(1).
- lviii Separate Opinion of Judge Weeramantry p. 91-92 <<http://www.icjciJ.org/docket/files/93/7883.pdf>>
- lix Communication 155/96.
- lx See African Charter on Human and People’s Right, article 24.
- lxi See African Charter on Human and People’s Right, 1981.
- lxii Akinbola R.B and Onifade T.T ‘Legal and Administrative Remedies in Environmental Law in Nigeria: Reform in Proposition’ *Afe Babalola University Law Journal*, vol. 1. No. 1. 2013 p. 337.
- lxiii African Charter on Human and People’s Right (Ratification and Enforcement Act) of 1983.
- lxiv See n.59..
- lxv See n.53.
- lxvi Cap. A9 Laws of the Federation of Nigeria, 2004
- lxvii *Gbemre v. Shell* n.53.
- lxviii Akinbola and Onifade n.62 p.339.
- lxix *Ibid*.