LEGAL FRAMEWORK FOR WASTE MANAGEMENT IN NIGERIA: A CASE STUDY OF EBONYI STATE OF NIGERIA

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INTRODUCTION

Our environment *stricto sensu* constitutes man’s greatest assets endowed to him by nature. A clean environment is essential to man. Same guarantees healthy living. Lack of same is therefore not only injurious to health, but may also occasion heavy disaster on the environment. In order words, the need to harness our environment in terms of waste management cannot be over flogged. Waste implies any materials, be it biodegradable or non-biodegradable, which are not a valueable to man and therefore not in use. Lack of proper waste management is not only injurious to man, but his entire environment. Its effect could be so devastating. It poses a threat to life. It therefore became so imperative that adequate mechanism be put in place for the management and
control of man’s waste, so as to safe guard him and his generation from total extinction.

Over the years therefore, governments at all levels in Nigeria have at one time or the other rolled out her blue prints for an effective waste management in our society as well as the combat of the menace. These mechanisms range from the enactment of several legal instruments/frameworks to, sensitization of the public on their roles and obligation, as well as the dangers and the control thereof.

In Ebonyi State in particular, different administrators at their tenure of governance have enunciated different policies and programmes, and legal enactment in the area of waste management and control. One of such enactments is the Ebonyi State Environmental Protection Agency Law, Chapter 53, Volume II, and Laws of Ebonyi State of Nigeria, 2009. This law is therefore the crux of this academic discourse. In other words, we shall x-ray this legal framework with a view to ascertain how effective this legislative tool has assisted
Ebonyians in the war against waste management in our society.

**Origin of Legal Framework on Waste Management**

The Common Law rules and the evolution of waste management laws are traceable to Britain.¹ Thus, Britain’s position as the cradle of industrial evolution led to the very early development of public controls specifically related to environmental protection. Amongst all the most significant provisions were developed in response to public health problem culminating in the landmark Public Act, 1875.² The modern era of legislative controls over waste can be traced back to the series of Public Health Acts, which date back to the late nineteenth century. These provisions were not primarily environmental in nature being based around the concept of statutory nuisance, which depended largely upon harm to human health or the common law tort of nuisance³. In Nigeria, under the Common Law, it is possible for victims of environmental abuse to seek remedy under the law of torts pleading nuisance or negligence. Perhaps more likely is the tort of nuisance under which the victim can make claim of

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¹ Nigeria’s former colonial master
² An Act of the British parliament as far back as the year 1875.
damages against the person who generated the nuisance from which he has become a victim. In this respect therefore, the legal principles enunciated in the case of **RYLANDS vs. FLETCHER**\(^4\) (**1880** LR 3 HC 330) is available to a person who suffers harm as a result of pollution caused by another person.

It is instructive to note that hitherto, environmental issues were regarded purely as private affairs, which did not require the intervention of the State. Consequently, an aggrieved party’s only redress was to sue the polluter in tort and claim damages under nuisance.

However, where the nature of the nuisance was such that it could be classified as public nuisance, then the aggrieved party had the herculian task of having to prove that the damages suffered by him was over and above that suffered by the ordinary members of the public. In deed, there was little or no legislative activity during this period. More so, the little activity was concentrated on the criminalization of pollution.

\(^4\) (1880) L.R. 3 Hc. 330.
This underscores the essence of the enactment of the Criminal Code of 1916\(^5\).

Down the memory Lane, one would vividly observe that a year after the enactment of the Criminal Code, the Public Health Act\(^6\) was enacted. The Act also prohibited the fouling of water and the introduction of any vitiating thing into the atmosphere. The said Public Health Act is more expensive in scope but less stringent in the penalties stipulated for violation of the provisions\(^7\).

Earlier, the Water Works Act, 1915 was enacted to prohibit the pollution or introduction of noxious or injurious matter to waterworks, public fountain, streams or water supplying a waterworks. The penalty for contravention was N40 fine and a further N20, for each subsequent day the offence continues.

Also in the year 1958, the Mineral Act\(^8\) was enacted.

Further to these development, the Act\(^9\) provided further regulation of activities in the petroleum industry and then

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\(^5\) See S. 245 of the Criminal Code, 1916. Note also that this Code has been amended as Cap 77LFN 1990, in Nigeria.

\(^6\) See the Public Health Act of 1917.

\(^7\) See S. 13 (1) of the Act.

\(^8\) See the Mineral Act, Cap 206, LFN 1990; S. 118 (2) xix.

\(^9\) Ibidi.
empowered the Minister of Petroleum Affairs to make regulations for the disposal of sludge, silt etc. In 1969, the Petroleum Act was enacted. The Act\textsuperscript{10} empowered the Minister for Petroleum Resources to make regulations for “the prevention of pollution of watercourse and the atmosphere”. Also in 1969, the Petroleum (Drilling and Production) Regulation was made, pursuant to the Petroleum Act and Licences and lessees are obliged to ensure proper drainage of waste oil, sludge etc\textsuperscript{11}.

Judicially, Nigerian Courts have adopted the same approach and demonstrated a lot of commitments and activism in resolving waste management issues in the country\textsuperscript{12}.

**Legislations on Waste Management**

As earlier canvassed, Nigeria has rolled out several legislative enactments in area of Waste Management. These parliamentary enactments have wide and far-reaching effects. Some of these laws include the following:

- The constitution of the Federal Republic of Nigeria, 1999\textsuperscript{13}.
- The Federal Environmental Protection Agency Act\textsuperscript{14} (FEPA)

\textsuperscript{10} See S. 8 of the Petroleum Act, 1969.
\textsuperscript{11} Petroleum (Drilling and Production) Regulation, 1969, Reg. 40.
\textsuperscript{13} See S. 20 CFRN, 1999.
Be that as it may, it is instructive to note that our scope of discourse in this work has been narrowed to the Ebonyi State of Nigeria. It is against this background that while outlining the various enactments with respect to waste management; among all the various State Laws in that regard, it is only the Ebonyi State Environmental Protection Agency (EBSEPA) Law that was mentioned. The various laws of other states are so to speak outside the scope of this work.

**The Ebonyi State Environmental Protection Agency Law, Cap 53, Lesn**⁶, 2009.

By way of history, the geographical entity referred today as the Ebonyi State⁷ of Nigeria were the remnants of what was hitherto left of the old Abia and Enugu States before the 1st day of October 1996. Simply put, on the 1st day of October, 1996, Ebonyi State was carved out of the then Abia and Enugu States by the then military rule of late General Sani Cap. 131 LFN, 1990⁴. See Particularly S.4.

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⁴ Cap. 131 LFN, 19901. See Particularly S.4.
⁶ Located at the South-Eastern part of Nigeria, with 3 states of Abia, Anambra, Enugu, and Imo States, making up the part.
Abacha. As we are already aware, the two States of Abia and Enugu, had their own laws governing issues on waste management. The necessary implication is that upon creation, Ebonyi State inherited these Laws\(^{18}\).

However, with the advent of a new era of democratic governance in Nigeria, Ebonyi State inclusive, coupled with the yearnings and dynamism of the society, there became a compelling need to strengthen, amended and streamline these two laws into a single working document that will be comprehensive and encompassing, while meeting up with the challenges of the Ebonyi people as it stands at present. This situation became the intellectual midwife of what is today referred to as the Ebonyi State Environmental Protection Agency (EBSEPA) Law, Cap 53, Laws of Ebonyi State of Nigeria, volume 2 of 2009\(^{19}\).

Consequentially, Ebonyi State House of Assembly, having passed this law and achieved this feat, repealed all other laws.

\(^{18}\) Enugu Law was known as the Enugu State Environmental Protection Law, 1998.

\(^{19}\) Recently Ebonyi Stat of Nigeria collated and complied all her laws into a single working document divided into six (6) volumes. It is called the Laws of Ebonyi State of Nigeria, 2009.
The provision of Cap 53 is quite copious and more detailed than the patents laws.

By way of analysis, the EBSEPA Law is broadly, divided into five major parts spanning into sixty-two (62) sections. The law as it was passed is modeled to assume a retrospective effect, when it had her commencement of democracy in the State. Part one is the establishment part. The part covers areas like Establishment, Membership, Functions and Powers of the Agency under which the Law was made. Part one has twenty (20) sections, beginning from the citation section to the section (20) on Proceedings at the meeting of the Technical Advisory Committee.

The next is part two which deals on issues of the State Environmental Standards. It is made up of Twelve (12) sections. It began with section 21 dealing on the function of the Agency (EBSEPA) and ended on section 33, which is the offences section.

Next is part three. This part contains provisions on Enforcement Powers. It is made up of thirteen (13) sections.
The part began with section 34. Section 34 deals on the establishment of compliance monitoring team. The last section under part three is section 47 which clearly states that the prosecution of offences shall not operate as a bar to any civil proceedings against anybody who has so contravened the law. In other words, the intendment of this particular section pre-supposes that regardless of the fact that EBSEPA has arrested you on any environmental offence, the agency is still at liberty to maintain a law suit against you if need be. When this is done, section 47 is to the effect that you cannot raise estoppel or double jeopardy as a defence. By virtue of section 47, such a defence may not avail such a person.

Also, we have part four of the law which is the litigation part. It is the part that established what we call the EBSEPA Court. This part centres on the establishment of the Ebonyi State Environmental Protection Agency Court. The part may be referred to in a lay man’s parlance as the EBSEPA Judiciary part. It covers from section 48 to section 56. Section 48 established the EBSEPA Court. More clearly, section 49 provides for the composition of the court thus:

Section 49
(1) \(^{20}\) The Environmental Protection Agency Court shall
a. be presided over by a magistrate or;

b. a legal practitioner of at least 7 years post call experience.

(2) The presiding officer of the court shall be known as “The chairman and shall be appointed by the Governor of the State on the recommendation of the Honourable Chief Judge of Ebonyi State.

(3) The Honourable Chief Judge of Ebonyi State shall, for administrative convince, demarcate the state into zones and recommend any person who satisfies the provisions of subsection (1) of this section within such zones for appointment as chairman of the court for that zone”.

Note that section 50 of this law empowered any EBSEPA staff to prosecute any person who contravenes this law. In addition, any legal practitioner is conferred with such powers and privileges, except that it must be by authorization of such a practitioner by the agency. Note equally, that all magistrates are not precluded from exercising jurisdiction as the chairman of the EBSEPA Court. They are equally empowered to generally enforce the provisions of this law whenever the need arises.

\(^{20}\) See S. 49 of EBSEPA Act.
Also, instructive is the juridical days of the EBSPEA court. By this we mean the sittings days, which the court is empowered to conduct her proceedings. The law provides that the court shall sit on all sanitation days, and any other days of the week that the chairman shall designate as convenient. A perusal of this provision implies that the ESBEPA Court are empowered to sit on non-juridical days, i.e., Saturdays and Sundays. The condition precedent going by the clause contained therein is that such non-juridical days must be a sanitation day. In other words, assuming sanitation day is held on a Sunday, the court is at liberty to sit lawfully. Same applies if the sanitation day is a Saturday.

However, it does appear that the reverse might be the case if sanitation day is not held in any of the two days—Saturday or Sunday but the court sat. Such a sitting may not have come within the purview of section 52 (2) of the law. The necessary inference is that such a sitting may be illegal, null and void. Note too, that the court is equally empowered to sit on any day of the week, in the event that the court did not exhaust the
business of the day on such a sanitation day as earlier on primarily empowered.

In addition to the provision relating to sitting days, the law stipulates that the practice and procedures adopted at the magistrate courts in Ebonyi State shall apply to EBSEPA Court. However, this provision shall be subject to apply mutatis mutandis as is convenient and necessary for the smooth running of the court in question.

Take notice that the EBSEPA Court is robbed of the jurisdiction to try offences, which the fine is in excess of N1,000,000.00 (One Million Naira) only. The same is the case for offences, which the terms of imprisonment exceed 10 years.

Finally, we have part five of the law. Part five is the very last segment of the said law and thus the closing part. It deals with supplementary issues of waste management. Indeed, it could be safely referred to as the miscellaneous provisions or part.
Part five deals on issues such as the establishment of Local Government Environmental Protection committees and zonal offices of the agency, functions, meetings of the committees and repeals. The part began with section 57 and ended with the very last section of the law, which is on repeals i.e. section 62.

**Other Legislations on Waste Also Applicable in Ebonyi State**

a. The 1999 constitution: Our groundnorm¹, the constitution of the Federal Republic of Nigeria (CFRN) 1999 also made provision relating to the protection of our environment technically referred to as waste management. Section 20 of the said 1999 constitution states:

“the state shall protect the environment and safeguard the water, air and land, forest and wildlife of Nigeria²”.

In the annals of history of Nigeria, before now (1999 constitution) there was no national environmental policy for Nigeria until recently. There was also no standard for measuring, preventing and controlling myriads of damages

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¹ Groundnorm means supreme law of the land
² Section 20 CFRN 1999.
inflicted on the Nigeria environment. Environmental legislation thus consisted only of scattered and sporadically enacted provisions in various statutes\(^3\).

However, the decade of the 1980’s witnessed upsurge of environmental consciousness and the demand for legislation. This upsurge was accentuated by the worsening of the environment brought about by the oil boom of the 1970’s and the rapid industrial development, which accompanied it\(^4\). In the year 1984, the then Federal Military Government of Nigeria in response to the hue and cry of the citizens promulgated a Decree to check the worsening state of the nation’s environment. This Decree was known as “the constitution Suspension and Modification” Decree\(^5\). The said Decree empowered all the three tiers of Government (Federal, State and Local Governments) to regulate environmental matters including waste management and control. The Federal

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\(^4\) Ibid

\(^5\) Decree No. 1 of 1984.
Government was vested with powers to make laws for the peace, order and good government of Nigeria and part thereof with respect to any matter whatsoever\(^6\). In other words, going by the wordings of section 2(1) of the decree, environmental matters are therefore inclusive. In a similar vein, the State Governments had the power, under the Decree, to regulate environmental matters subject to the authority of the Federal Government. The Local Government matters, subject to both the Federal and State Governments also could regulate environmental matters subject to both the Federal and State Governments authority.

It is worthy of note that in the year 1988, precisely in the month of June, our country was thrown into one of the most devastating environmental grief and mourning ever recorded in her history. An Italian ship dumped tons of hazardous toxic wastes in the little town of Koko, Delta State. The waste

\(^{6}\text{Ibid section s. 2(1).}\)
included radioactive wastes, which were secretly freighted into Nigeria as ordinary items of harmless merchandise\textsuperscript{7}. The Koko incident was regarded by the Nigeria Government as a challenge to its territorial integrity by Italy\textsuperscript{8}. Consequently, the incident therefore created much environmental awareness among the citizens. It made the Federal Government to become aware of its vulnerability to similar incidents. It therefore, became necessary to strengthen the Legal Framework on environmental protection in the country. Thus, the Federal Government therefore enacted the Harmful Waste (Special Criminal Provisions etc) Act, 1988\textsuperscript{9} and the Federal Environmental Protection Agency (FEPA) Act, 1988\textsuperscript{10}. These Acts came into force on 25th November, and 30th December, 1988 respectively.

Historically therefore, these two Acts became the most monumental and comprehensive environmental regulation ever recorded in Nigeria’s history.

\textsuperscript{7} Newswatch Magazine, Lagos Nigeria July 4, 1988, p.10
\textsuperscript{8} Guardian Newspaper, Lagos, Nigeria July 19, 1988, p. 5.
\textsuperscript{9} Cap. 165, Laws of the Federation 1990.
\textsuperscript{10} Cap 131, Laws of the Federation, 1990.
B. The Federal Environmental Protection Agency (FEPA) Act.

The FEPA Act, a leading Federal Government enactment on environmental matters came into force on 30th December 1988. It is aimed at combating environmental abuse centrally. Section 1 of the Act, established the body known as Federal Environmental Protection Agency and maked it a body corporate with perpetual succession and a common seal. Its functions as enumerated in section 4 of the Act include the responsibility for the protection and development of the environment in general and environmental technology, as well as the initiation of policy in relation to the environmental research and technology. The duties of the Agency as provided in section 4 of the Act include advise to the Federal Government on national policies and priorities and on scientific and technological activities affecting the environment.

\[11\] The FEPA Act, Cap. 131.
By the Act, the agency is required by section 4 of the Act to prepare periodic master plans for the development of environmental science and technology and to advise the Federal Government on financial requirements for the implementation of such plans. It is also the duty of the Agency under this section, to promote co-operation in environmental science and technology. This duty is to be carried out in conjunction with similar bodies in other countries, and with international bodies connected with the protection of the environment. The section further requires the Agency to co-operate with Federal and State Ministries, Local Governments, Statutory bodies as well as research agencies on matters and facilities relating to environmental protection\textsuperscript{12}.

The Agency is required to carry out such other activities as are necessary or expedient for the full discharge of its functions. The foregoing provisions reveal that the functions of the Agency are national in outlook, wide in scope and difficult in application.

\textsuperscript{12} Ibid
Curiously, as it relates to Ebonyi State, the Agency is empowered by the Act to give grants to suitable authorities (states) the execution of its prescribed functions under section 4 and other provisions of the Act. Furthermore, section 5 empowers the Agency to enter into agreement either with public or private organizations or with individuals so as to be able to develop, utilize, co-operate and share environmental monitoring programmes.

In order to protect the health and welfare of the citizens from environmental degradation, the agency has power under section 5 to establish criteria, guidelines, specification or standards for the protection of the nation’s air and inter-state waters. The Agency has powers to advise on national environmental standards in the area of water quality, air quality and atmospheric protection house and hazardous substances. The Acts stipulates that the discharge of such harmful quantities of any hazardous substances into the air or upon the land and waters of Nigeria or of the joining

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13 Section 5, FEPA Act, Cap. 131.
14 Sections 15 – 20 FEPA ACT
sharelines is prohibited except where such discharge is permitted or authorized under any law in force in Nigeria\textsuperscript{15}.

Punitively therefore, the Act stipulates that a violation of section 20(1) makes any person liable for the offence to pay, upon conviction a fine not exceeding N100,000.00 (One hundred thousand naira) or imprisonment for a term not exceeding 10 years or both. However, where the offence is committed by a corporate body, it shall be liable upon conviction to a fine not exceeding N500,000.00 (five hundred thousand naira) and an additional fine of N1,000.00 (one thousand naira) for every day the offence subsists.

**Conclusion**

Nigeria is today very much committed to a national environmental policy that would ensure sustainable development based on proper management of the environment. This no doubt, requires positive and realistic planning that balances human needs against the carrying

\textsuperscript{15} See particularly s. 20 FEPA Act.
capacity of the environment. The mission statement for “Agenda 21” is to integrate environment into economic development planning, sectional policies and decision-making processes. It intends to harness both Federal and State responsibilities for environmental management and to monitor and enforces environmental quality standards and regulations as may be designed by FEPA to states.