

Land Pollution in Nigeria: Reflection on The Legal Frameworks

By

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Abstract

Land pollution is defined as any changes in the physical or chemical composition of land which render it incapable of beneficial treatment. Land is one of three key factors of production in orthodox Economics (along with labor and capital) and a crucial and indispensable resource for housing and food production. Thus, it is the backbone of agricultural economies, and it provides significant economic and societal benefits. Land pollution therefore will endanger economic development and social progress. Pollution is usually seen as land-based due to the fact that a good number of pollutions are land generated. Even air pollution is mostly generated from land. In Nigeria, land pollution is on the increase due mainly to the surge in industrial activities, leading to monumental environmental degradation with the attendant health implications to humans. However, there is no dedicated legislation regulating land pollution in Nigeria. It is against this background that this paper examines the legal frameworks on land pollution in Nigeria. The paper recommends the need to enact legislation or amend the existing environmental laws to reduce cases of land pollution in Nigeria.

Keywords: Pollution, Environment, Land, Drought, Desertification, Degradation

Introduction

Land pollution has been defined as the deposition of solid or liquid waste materials on land or underground in a manner that can contaminate the soil and groundwater, threaten public health, and cause unsightly conditions and nuisances.¹ Land, as one of the elements of nature, deserves a sustainable and deliberate protection. The sustainable use of land is fundamental to the future success of numerous environmental schemes. It has been acknowledged that the planet is made up of three interconnected natural resources: air, water, and land. Of the three, land has remained more challenging to the protection of environment unlike the other two environmental life support systems, air, and water. The control of private land use to attain protection of the environment objectives receives little attention in contemporary environmental law. Most of the foremost ecological challenges such as the regulation of nonpoint source water pollution, the preservation of biodiversity, and the limitation of automobile emissions, including carbon dioxide, are at the nucleus of land use control problems. Nevertheless, in the main, we continue to develop and misuse land, despite the consequences of environmental pressures that development causes. As environmental protection once again rises on the political agenda, the demand to tackle the gap between land use regulation and environmental protection is becoming more decisive. Land is fundamental to human existence because it provides food, water, energy, clothing, and shelter. Land resources, however, are limited and becoming scarce in Africa and

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¹ Nathason J.A. Land Pollution Land pollution | Britannica accessed on 12th June 2021

elsewhere. The challenges of unsustainable land uses, population growth, over-exploitation of natural resources and environmental pollution are multifaceted and long-term. They are intensified by their relationship with poverty, inequality, and social conflicts because several citizens have inadequate access to land or to the benefits from its use. Consequently, its protection against activities likely to hinder or affects its productivity becomes necessary so as not to unduly restrict and compromise the rights and option available to the future generation. In Nigeria, there is no dedicated legislation on the regulation of land pollution. The existing environmental legislations do not adequately make provision for the protection of land resources from land-based pollution.

This paper examines the concept of land pollution in Nigeria, causes and effects and the existing legal frameworks on land pollution protection. The limit of the existing laws in preventing land pollution.

Land Pollution: Caused and Effects

Most human or natural activities need space for their location and development, which is provided by land. The various purpose for which land can be used, include agriculture, human dwelling, industrial purpose, forests, etc. However, the inappropriate, or unsustainable use of land to render it incapable of meeting its original purpose or diminish its quality and output is referred to as land pollution. Land pollution is caused by the man-made chemicals or other alteration in the natural soil environment. This kind of pollution usually arises from the rupture of underground storage links, percolation of contaminated surface water to subsurface strata, oil and fuel dumping, leaching of wastes from landfills or direct discharge of industrial wastes to the soil. Causes of land pollution are generally classified into four: agricultural activities, mining activities, urbanization, and nuclear waste.² The happening of this phenomenon is linked with the extent of industrialization and concentrations of substance emission. Pollution of land depreciates and deteriorates the quality, texture and mineral content of the soil and thus disrupts the biological stability of the organisms in the soil.³

Land pollution has become a common occurrence in Nigeria. For instance, in the Niger Delta Region where oil exploration activities take place, the livelihood of the inhabitants have been marginally affected due to the indiscriminate disposal of industrial waste and spillage of oil. Oil spillage resulting from the activities of the oil exploitation in the region has contaminated the land and renders it unfit for farming and habitation. The main occupation of the Niger Delta people is farming and fishing. They depend on agriculture for income, food, and livelihood. The major crops grown in the region include yam, cassava, pumpkin, and fruits. Oil spillage has continued to have tremendous adverse consequences on agricultural products either from the point of view of relative effects on the soil or growing crops. When oil spills into the land, it automatically blocks air space in the soil, thereby reducing the air content of the soil which affects a lot of soil reaction. It affects the soil structure and soil texture thereby reducing the fertility of the soil. With this, the land becomes harden and no crop can grow in such environment.

² What is Land Pollution What is Land Pollution? - Causes, Effects & Solutions with Videos (byjus.com) accessed on 12th June 2021

³ Ibid.

With regards to the crop cultivation, studies have shown that several or hundreds of crops have been destroyed in the Niger Delta due to oil spillage. Farmers have suffered a lot from this. Immediately oil spills into the farms, it automatically stops the growth of these crops. When this happens, the productivity of the farmers become low and the right to standard of living will be affected. This has a long-term effect both to the nutrient content of the soil and to those who relies on it for means of sustenance. It has recently been projected that it will take between 25-30 years for most lands in the Niger Delta to be brought back to its original status.

Policy Consideration on Land Pollution

Policy is defined to mean a pledge of action to tackle any given problem. The nature of policy depends on the nature of the problem. Thus, land pollution policy refers to any measures or steps purposely taken to address the use and management of land. Land pollution control is usually addressed through the formation of environmental legislation and action plans and within the structure of land resources management planning. Thus, land pollution control policy can either be placed within a land resources policy document or within an environment policy document. Policy represents the starting point for a cause of action to tackle an incident.

In September 1988 the Federal Ministry of Works and Housing (Environmental Planning and Protection Division) and the United Nations Environment Programme (UNEP) organised the International Workshop on the Goals and Guidelines of the National Environmental Policy for Nigeria.⁴ This marked the first major step taken by a committed administration to readjust the nation's relationship with its environment based on the principle of sustainable development and proper management of the environment and its resources.⁵ It should be noted that Nigeria formulated its first national policy on the environment in 1991. However, the policy was revised in 1999. The latest version of the national policy on environment is the one of 2016. The purpose of the policy is to “define a new holistic framework to guide the management of the environment and natural resources of the country⁶. Thus, the environmental policy has made explicit provision for the use and management of land.

The policy recognised land as the basic resource upon which most development efforts are based and stresses on the necessity to plan the utilization and management of land in an integrated manner. Moreover, the policy requires that impacts of the various social and economic activities on natural resources such as soil, water, air should routinely be assessed at every stage of the development process. This is necessary for appropriate allocation and utilization of land and its resources that will ensure transition to sustainability. The 2016 revised edition of the National Policy on Environment acknowledges that “Desertification, land degradation and drought remain major challenges for the country in the use of its land resources.”⁷ To achieve this, the policy recommended the following policy statements as strategies for appropriate land management and utilization:

⁴ Margaret Fubara, *Law of Environmental Protection* (Caltop Publication Nigeria Limited, 1998) 57

⁵ Ibid

⁶ National Policy on Environment (Revised 2016) available at <http://extwprlegs1.fao.org/docs/pdf/nig176320.pdf> accessed on 10th June 2021

⁷ Ibid.

- 1) Review and implement National Policy on Drought and Desertification and the translation of the National Drought Preparedness Strategy to vernacular.
- 2) Undertake a baseline study to quantify the extent and severity of land degradation and desertification in the frontline and buffer States and mitigate the effects of Drought in Nigeria.
- 3) Strengthen the capacity of the Department of Drought and Desertification Amelioration (DDDA) in the Federal Ministry of Environment to co-ordinate activities for combating desertification
- 4) Implement the national strategy for the Great Green Wall Sahara and Sahel Initiative for the establishment of 1500 km by 15km of green wall in the frontline states to halt the advance of the Sahara Desert, enhance environmental sustainability and control land degradation.
- 5) Strengthen the capacities of the Departments of Forestry and/or Drought Desertification in each of the affected States to manage the Green Wall for environmental sustainability.
- 6) Strengthen the capacity of the Arid Zone Research Centre to play an effective advocacy role on the socio-economic impact of desertification.
- 7) Review the National Land-use Decree to accommodate aspect of sustainability in land-use practices.
- 8) Establish desertification control offices in all the 11 frontline states and buffer states as well as their LGAs.
- 9) Promote sustainable land management best practices.
- 10) Establish drought and desertification monitoring and early warning systems.
- 11) Rehabilitate at least 50% by 2020 for poverty reduction and sustainable job creation.
- 12) Apply modern and indigenous soil defence and restoration techniques and sustainable land management practices, including dune fixation, windbreaks, dykes, biological and agroforestry.
- 13) Promote awareness and active participation of communities in land management, particularly rehabilitation of degraded lands, programmes.
- 14) Promote active involvement of communities in the practices of sustainable land management.
- 15) Achieve land degradation neutrality in the country by 2030.

It is our contention that the policy has made ample provisions for plan of action to manage and protect the quality of land in order to protect its output and productivity. Thus, land is fundamental for the realisation of basic human rights. Its adequate management and monitoring would help to build a sustainable land management system in the interest of the future generation and enhances the protection of guaranteed rights.

Legal Frameworks on Land Pollution

Governmental involvement is vital if measures to protect the environment are to be successful. This is the stage at which the law has an imperative role to play. No quantity of technological or scientific strategies or design can successfully protect the environment without the aid of legal

system to sustain them.⁸ The purpose of preserving and maintaining the purity of the environment can be attained only if the law can be mobilized to operate in companionship with science and technology.⁹ There are no specific legislations regulating land pollution in Nigeria. However, there are some laws whose objectives and purposes are geared toward prevention of land pollution. These shall be examined in order to evaluate the adequacy or otherwise and made the necessary suggestions to improve the system.

The Land Use Act¹⁰

The Land Use Act vested all land in a state in the hands of governor of that state who holds the land in trust for the benefit of its citizens. The freedom to use and enjoy land in particular and private property in general is guaranteed by our laws in Nigeria.¹¹ It is however settled law that rights are not absolute.¹² They have to be regulated in the interest of generality of the populace and in the protection of the rights of others in the society.¹³ The Act primarily deals with acquisition, use and enjoyment of land. Therefore, activities of individual, government or organizations are likely to create environmental problems. For example, where permission is given for land for mining, environmental problems are surely going to crop up in the use and enjoyment of the land for such purpose. It is therefore expected of a law of such nature and magnitude to incorporate environmental protection in its provisions. If the law is read without such incorporation, the result is bound to be environmentally unsound and human rights abuses.¹⁴

The Act confers absolute power on the state governor to take control of all lands within the state territory. Besides, the Act by its section 1 vests in the Governor of a state all land within its territorial jurisdiction and it is lawful for the Governor¹⁵ “to revoke a right of occupancy for overriding public interest” and this includes mining and other purposes connected to it.¹⁶ Once a company has been given a licence to operate, the state government has to provide access to land to the company whose activities might lead to land pollution. This has indeed created an atmosphere for the polluter to operate without due regards to the consequences of their activities on human rights.¹⁷ The activities of these polluters have resulted into environmental degradation

⁸ White, Paul and Anke Jentsch, "The Search for Generality in Studies of Disturbance and Ecosystem Dynamics," in *Progress in Botany*, Vol. 62. Berlin: Springer-Verlag, 2001, 399-450; Wilson Harlan, "Environmental Democracy and the Green State," (2006) Vol. 38, No. 2, April, *Polity*, 276-94.

⁹ Young and Oran "Regime Effectiveness: Taking Stock," in *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms*. Edited by Oran Young. Cambridge, Massachusetts: The MIT Press, 1999, 249-279.

¹⁰ Land Use Decree 1978 later became an Act contained in CAP 202 Laws of the Federation of Nigeria 1990

¹¹ *ibid*

¹² Mark Cooray, "Human Rights Are not Absolute" Retrieved from <http://www.ourcivilisation.com/cooray/btof/chap225.htm> [accessed on 11th June 2021]

¹³ *ibid*

¹⁴ Muhammed Tawfiq Ladan "Enhancing Access to Justice in Environmental Matters in Common Law Africa" Being a paper presented at the 4th City of Rio de Janeiro Attorney General's office International Congress on Environmental Law held between 22nd-24th May 2007

¹⁵ Land Use Decree 1978 later became an Act contained in CAP 202 Laws of the Federation of Nigeria 1990

¹⁶ *Id*, section 28

¹⁷ Onyebinama U.A.U. "Land Reform, Security of Tenure and Environmental Conservation in Nigeria" (2004) volume 15, *Int. J. Agric Rural Dev.*, 86-90

and human rights abuses because the law under which land is secured for their operation failed to incorporate environmental protection in its provision. The Act confers power on the governor of a state to allocate land to individual for residential purpose and to industries for commercial purpose without word of limitation.¹⁸

It is understandable that the Act came to being before the adoption of the national policy on environment for Nigeria. The policy however requires that existing legal frameworks be revised and amended to be in conformity with the aspiration and strategies of the policy.¹⁹ Environmental protection begins with the management and sustainable utilization of land. Where lands are allocated indiscriminately without regulation, the resultant effect will be environmental hazards and human rights abuses. This is because land is the resource base for all development. Thus, activities utilizing this fundamental resource must integrate environmental concern in its agenda. Commenting on this, the Institute for land, Human Rights and Business said²⁰:

Human rights law does not explicitly recognize the human right to land *per se*. In many parts of the world, land is “owned” by the state, which grants usage rights – in perpetuity or time-bound – to individuals or groups. In many parts some land is owned communally. But human rights are interdependent, universal, inalienable, and indivisible, and as such, the realization of many rights is closely associated with land ownership and usage, and access to land becomes a pre-requisite for certain rights to be realized.

An Act which provides for the confiscation of land for economic benefit ought to have incorporate provision for environmental concern in order to maintain a sustainable environment. It is therefore contending that the Act also laid an incurable foundation for indiscriminate use of land in Nigeria. This is because land planning and management goes hand in gloves with environmental protection. Commenting on the effect of the Land Use Act, Rhuks T Ako opined that²¹:

The Act is a legal tool that completed the plan to exclude the oil-bearing communities of the Delta region from active participation in the oil industry

Clearly, the Land use Act fall short of minimum standard requirement for the protection of the environment. It has given too much power to the governor to confiscate and allocate land to the oil industries without ensuring the right of the affected citizens to participate in environmental decision-making process. This has given far-reaching power to the polluter to operate without taken account of the effects of their activities on the environment and the right of the people. It is therefore necessary to revise and amend the provisions of the Act to include the protection and management of land. This is fundamental because however, strong a policy is, it requires the support of legal aid to materialized.

¹⁸ See the preamble to the Land Use Act CAP 202 Laws of the Federation of Nigeria 1990

¹⁹ See paragraph 8 of the National Policy on Environment 1989 revised in 1998

²⁰ Institute for Land, Human Rights and Business “Land, Business and Human Rights” Retrieved from http://www.ihrb.org/pdf/Land_Business_and_Human_Rights.pdf [accessed on 10th March 2021]

²¹ Rhuks T Ako “Nigeria’s Land Use Act: An Anti-Thesis to Environmental Justice” (2009), 53(2) *Journal of African Law*, 289–304

Harmful Waste (Special Criminal Provisions) Decree²²

Poverty has always been reason adduced by the people for tolerating substances that they would ordinarily not have. This poverty is responsible for permitting the exportation of wastes into Africa in general and Nigeria in particular. A good example of this case was the Koko dumping incidence of 1987.²³ In September 1987, an Italian man named Gian Franco Raffaelli who had resided in Nigeria for almost 20 years approached one Sunday Oyemirs Nana, a farmer at Koko, a small village in old Bendel State (now in Delta State) to dump about 3,880 tonnes of toxic and hazardous waste on behalf of his company at agreed sum.²⁴

Months later, a scandal regarding the toxic wastes was publicized when the effects started leaking into the environment. It was later discovered that the wastes were stored at the port of Koko and the Nigerian government issued an ultimatum for the company to return the wastes to its original place. At last, the Italian government accepted to bear the cost of importing the wastes back to Italy. In July 1988, two ships were sent down by the Italian government for the carriage of the wastes back to Italy.²⁵ The incidence acted as a vehicle that drove the attention of the government on the implication of the negligence of her environment. This episode prompted the Nigerian government to promulgate the Harmful Waste (Special Criminal Provisions) Decree which later becomes an Act.²⁶

The Act was enacted for the purpose of prohibiting the carrying, deposit and dumping of harmful waste on any territorial water of Nigeria.²⁷ The Act authorizes the minister saddled with the responsibility for works and housing to seal up any or site used or being used for the purpose of depositing or dumping harmful waste.²⁸ The Act imposes civil liability (apart from criminal liability) on anyone dealing with harmful waste²⁹. The immunity from prosecution conferred on certain persons by the Diplomatic and Privileges Act does not extend to crime committed under the Act.³⁰

The Act defines Harmful waste to mean:

.....any injurious, poisonous, toxic or noxious substance and in particular, includes waste emitting any radioactive substance if the waste is in such quality, whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, fatal injury, or incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a

²² Harmful Waste (Special Criminal Provisions) Act Cap. H 1 Laws of Federation of Nigeria 2004 formally Harmful Waste (Special Criminal Provisions) Decree No. 2 of 1988.

²³ Adewale O. "Africa: The Waste Basket of The West" (1988) 67 *Business and Society Review*, 48-50

²⁴ "Nigeria waste Imports from Italy" Retrieved from <http://www1.american.edu/tes/nigeria.htm> [accessed on 17th October 2020]

²⁵ *ibid*

²⁶ Harmful Waste (Special Criminal Provisions) Act Cap. H 1 Laws of Federation of Nigeria 2004 formally Harmful Waste (Special Criminal Provisions) Decree No. 2 of 1988.

²⁷ *Id*, see the preamble to the Act and in particular the provision of section 1

²⁸ *Id*, section 11

²⁹ *Id*, section 13

³⁰ *Id*, section 9

container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste.³¹

A contravention of any provision of the Act amounts to a crime in respect of which the Federal High Court has the exclusive jurisdiction to try.³² Any person that violates the provisions of the Act will be liable to prosecution and upon conviction be sentenced to life imprisonment.³³ There is also a provision for civil liability under the Act. By section 12 of the Act, where any damage occurred by any harmful waste which has been deposited or dumped on any land, the person who deposits, dump or imported the harmful waste or who caused the harmful waste to be deposited, dumped, or imported is liable for damages.³⁴

It needs to be pointed out that by section 12 of the Act,³⁵ a person is deemed to deposit or dump harmful waste under the Act if he deposits or dumps harmful waste, whether solid, semi-solid or liquid, in such circumstances or for such period that he may be deemed either (a) to have abandoned it where it is deposited or dumped or (b) to have brought it to the place where it is so deposited or dumped for the purpose of its being disposed of or abandoned whether by him or any other person.³⁶

The Act no doubt makes provisions for land pollution control measures with regard to waste disposal as envisaged in the national policy on environment and incorporates the need for the protection of human rights. Section 15 of the Act defines harmful waste as any substance likely to subject any person to the risk of death, fatal injury, or incurable impairment of physical and mental health. Thus, subjecting any person to risk of death or fatal injury constitutes an act which may directly affect the right to life and health of the people. Though these are measures designed to protect the land from degradation which if implemented would protect human right as well since the enjoyment of basic rights depends on the healthy state of the environment.³⁷

The Act is a landmark in the history of environmental law in Nigeria because it prohibits indiscriminate disposal of waste on land knowingly well the impact on the immediate environment. This is because indiscriminate disposal of waste on land will adversely affects the quality of the land and lower its nutrients content. It can even affect the health of the populace within the vicinity of disposed area. This is a culpable act capable of infringing on quality of life. Commenting on the effect of waste dumping on land, Cyril Uchenna Gwam said³⁸:

³¹ Id, section 15

³² Id, section 13

³³ Id, section 6

³⁴ Id, section 12(1)(b)

³⁵ Id, section 1(3)

³⁶ Ibid; for more detail view see Aina E. O. and Adedeipe N. O, "The Making of the Nigerian Environmental Policy" University Press, Ibadan, 1991, 311.

³⁷ Peter Gleick, *The Right to Water*, Pacific Institute for Studies in Development, Environment and Security, 1999, 1-12. Also available at http://www.pacinst.org/reports/basic_water_needs/human_right_to_water.pdf [accessed on 10th June 2021]

³⁸ Cyril Uchenna Gwam "Toxic Wastes and Human Rights" (Summer/Fall 2000) Volume VII, Issue 2, *The Brown Journal of World Affairs*, 185-196

Toxic waste dumping and its adverse effect on the right to health will have implications on the right to life, liberty and security of persons, privacy, health, adequate standard of living, food, housing, education and development. This issue cuts across civil, political, economic, social and cultural rights. The human rights dimension is expansive because virtually every measure of disease control has a human rights dimension

It needs be mentioned that there is no place in the Act where reference is made to land. However, it is a common phenomenon that lands is the major environmental medium for dumping of harmful or industrial waste. On this note, it is argued that the Act at least made minimal provisions to prevent degradation of land. This is so because such wastes contain dangerous substance that deplete the quality and nutrients content of the soil; thereby affecting its productivity and output.

However, the Act is fraught with some problems which render it ineffective for those seeking redress in Nigeria. The Act does not create any legal right capable of being enforced against the polluter or the government. Thus, it has not conferred legal right on a person to seek compliance with the provisions of the Act.³⁹ This omission has a negative effect because it fails to provide avenue to stop or seek injunction against indiscriminate disposal of waste on land or any other environmental medium.

Also, by section 1(2), the Act only applies where the corporation or individual disposes harmful waste without lawful authority. Thus, where there is lawful authority to dispose harmful waste, the disposer will not be liable under the Act.⁴⁰ This suggests that the government may give permission or authority to dispose waste notwithstanding the long- and short-term effects on the land or other environmental medium.

Besides, knowingly well that the major polluters are the corporate body, the Act fails to prescribe penalty against corporate offenders. It only states that the offender “shall be liable to be proceeded against and punished accordingly.” It suffices to say that corporate bodies are excluded from liability within the purview of the Act. The reason being that, by the provision of section 36(12) of the Constitution of Federal Republic of Nigeria, a person can only be tried, convicted, and sentenced for an offence defined by law and punishment prescribed thereto.⁴¹ In the light of this, the Act failed to provide for corporate liability.

In addition, it should be noted that the meaning assigned to harmful waste in section 15 of the Act is restrictive in content and scope because it excludes other cases of environmental consequences in Nigeria. For instance, environmental issues in the Niger Delta covers a wide range of matters ranging from damage to property, destruction of farmland, pollution of water to destruction of fishponds and human rights abuses. An action for damages under the Act only

³⁹ See also Adejoke Babington-Ashaye “Evaluating the Protection of Socio-Economic Rights in the Niger Delta” http://www.google.com.my/url?sa=t&rct=j&q=Adejoke+BabingtonAshaye+%E2%80%9CEvaluating+the+Protection+of+SocioEconomic+Rights+in+the+Niger+Delta%E2%80%9D&source=web&cd=1&ved=0CCwQFjAA&url=http%3A%2F%2Fwww.serac.org%2Fpublications%2FBabington-Ashaye%2520paper.doc&ei=3_1ST-PdBsemrAeGiNzBAQ&usg=AFQjCNHK0XwlST0GTO4k3qrPT2VZ5ZPiyw&cad=rja [accessed on 3rd March 2020]

⁴⁰ *ibid*

⁴¹ See the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011)

covers situations where such poisonous, toxic, or noxious substance has subjected a person to risk of death, fatal injury or incurable physical and mental health. Thus, the Act fails to recognise land rights. Therefore, this paper argues that the Act is more concerned about physical and personal injury of persons than the protection of the environment.

Other Pieces of Legislation

There are other pieces of legislation that contain significant provisions on land pollution. For instance, The Oil Pipelines Act makes provisions for licenses to be granted for the establishment and maintenance of pipelines incidental and supplementary to oil fields and oil mining.⁴² The Act applies to pollution arising from corrosive pipelines or leakages from pipelines laid in the distribution, marketing and transportation of crude oil.⁴³ Oil pipeline is defined as a pipeline for the conveyance of mineral oils, natural gas and any of their derivatives or components and also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas, and any of their derivatives and components.⁴⁴ This Act is significant bearing in mind that oil activities is the backbone of Nigeria economy. Incidence of oil pollution is rampant in the Niger Delta where oil activities take place. More than 80% of land has been rendered unfit for agricultural purposes due to oil spillage which has lowered the quality and productive capacity of the land in the region. This Act would have been of momentous impact to remedy land situation in Niger Delta, instead it is an inconsistency of its own.

The Act forbids the holder of the license to construct any works upon land which is the site of or is within fifty yards of any public roads, dam reservoir or building belonging to or occupied by the Federal or State Government or Local Government, or upon any land appropriated for any railway or situate within one hundred of any railway.⁴⁵ Ironically, it has also give the holder of a license or its agents the right to enter upon and take possession of any land for the purpose of constructing, maintaining and operate an oil pipeline and ancillary installation.⁴⁶ Thus, the Act appears to protect the economic interest of the government and less protective of the environment and the right of the people. This has given the oil companies the latitude to destroy useful ecosystem, deplete soil quality and nutrients with ease and impunity. The Act requires the holder of licence should pay compensation to the owner of a land in respect of any damages dome to the land. However, it has not specified the amount payable as compensation. This has given the polluter a more bargaining power over the victims when considering the hurdles and cost of litigation.

Another significant legislation is the Constitution of Federal Republic of Nigeria, which came into force on May 29, 1999. It specifically makes environmental protection a state objective and indeed provides for it in the chapter two on Fundamental Objectives and Directive Principle of

⁴² See the preamble to the Act. For more detailed view see Amokaya G. Oludayo, *Environmental Law and Practice in Nigeria*, University of Lagos Press, Nigeria, 2004, 670

⁴³ Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria 2004, section 11 (5)

⁴⁴ Id, section 11(2)

⁴⁵ Id, section 14 (a)

⁴⁶ Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria 2004, section 11 (2)

State Policy.⁴⁷ Section 20 expressly contains provision on environmental protection and states as follows:⁴⁸

The state shall protect and improve the environment and safeguard the water, air, land, forest and wildlife in Nigeria.

It is sufficient to say here that this provision is not justiciable when considering the provision of section 6(6)(c) which provides that:

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 judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution

This provision has been interpreted to deny the court the power to adjudicate on any issue bothering on section 20 of the Constitution.⁴⁹ Thus by analogy, no action can be brought to prevent land pollution because section 20 also falls under the provisions of fundamental objectives and directive principles of state policy set out in chapter two of the Constitution which by section 6(6)(c) are generally not enforceable.

Comment and Suggestions

A critical evaluation of the legal frameworks on land pollution in Nigeria revealed that land management and protection has not been given adequate attention. For decades, the oil industry in the Niger Delta and other enterprises have operated with little or no effective regulation or monitoring due to inadequate and sometimes laughable provisions of existing laws. Of all laws examined in this paper, it is clear that only the Harmful Waste (Special Provisions) Criminal Act contains minimal provisions for land pollution control. The environmental policy for Nigeria has made ample strategies to curb unsustainable utilization of lands. It is therefore highly desirable that the existing laws be revised and reviews upward to materialize the aspirations and goals of the policy. Policy is a mere aspiration and without the support of legal aid, it may be reduced to worthless paper. It is on this premise that the following recommendations would be made: a specific legislation which deals with land pollution in detail should be enacted or in the alternative, the existing ones should be reviewed and amended to cover land pollution; corporate bodies in the business of oil exploration should be made to account for the environmental abuse resulting from their activities; the government should expand its environmental awareness programs to the urban area on the devastating effects of polluting soil nutrients; and finally, the government should mandate industries emitting harmful substance into the land to adopt a recycling program in order to mitigate the adverse effects of land pollution.

⁴⁷ See the provisions of the chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

⁴⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011)

⁴⁹ Mathew Adefi Olong, "Human Rights, the Environment and Sustainable Development: Nigerian Women's Experiences" (2012) Volume 5, No. 1 *Journal of Politics and Law*, 100-108

Conclusion

Globally, behaviours towards sustainable land resource management for the future are being re-evaluated. Preservation of land resources pertaining to quantity and quality is more and more being accentuated as the process to deal with the predictable and mounting shortages of land benefits in several parts of the world. This land is required to meet ever growing domestic, industrial, and agricultural demands. Virtually, every new development creates pressure on the carrying capacity of the land to bear the degree of pollution. Industrial pollution, unrestrained domestic emissions from urban areas, diffuse pollution from agriculture and livestock rearing, and diverse alterations in land use may all contribute to non-sustainable use of land resources, ultimately resulting into negative impacts on the economic development of many countries or even continents. Numerous chemical substances discharged and released into the land from anthropogenic sources pose a threat to the functioning of useful bacteria that help in soil reaction. The need for strengthened measures to prevent and to control the release of these substances into the land environment has led many countries to develop and to implement land management policies and strategies based on, amongst others, land quality criteria and objectives. The Nigerian environmental policy has made adequate provisions on actions to ensure proper management of land and prevent its pollution. However, since policy is a mere expression of intentions or wishes, it require a formidable and effective legal frameworks to properly supervise and monitor the management of land and guide against activities likely to diminish its quality and quantity. While the existing legal frameworks on land pollution in Nigeria are characterized with shortcomings; they can still with necessary amendments go a long way to redefine and restructure land use pattern if given the necessary fillip and support. It is therefore suggested that the legal framework for the control of land pollution be put in place in view of the present economic realities and with a view to practically control land pollution in Nigeria.