MODULE 1

UNIT 1 ENVIRONMENTAL LAW

CONTENTS

1.0 INTRODUCTION

Environmental Law was developed in response to the public perception that human health and the environment were inadequately protected. It is at this point that the Environment needs protection, and whether law is successful in the protection of the environment will depend significantly upon the range of entities that it is able to protect.

It is imperative that Environmental Law is a concept that will be discussed in this unit using various scholarly ideas in that direction to enable you the learner to be abreast with the facts dealing with the topic. Government participation by all tiers is inevitable if measures designed to protect the environment are to be effective. It is at this point that, law has a key role to play regardless of technological or scientific design or devices. The core objective of preservation, conservation and maintenance of the environment can only be achieved if the law can be mobilised to operate in partnership with science and technology.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define the concept of environmental law applicable in Nigeria and other jurisdictions; and
- explain the different concepts of the environment.

2.1 HOW TO STUDY THIS UNIT

1. You are expected to read carefully through this unit twice before attempting to answer the activity questions. Do not look at the solution or guides provided at the end of the unit until you are satisfied that you have done your best to get all the answers.
2. Share your difficulties in understanding the unit with your mates, facilitators and by consulting other relevant materials or internet.
3. Ensure that you only check correct answers to the activities as a way of confirming what you have done.
4. Note that if you follow these instructions strictly, you will feel fulfilled at the end that you have achieved your aim and could stimulate you to do more.

3.0 MAIN CONTENT

3.1 Definition of Environmental Law

Environmental law in Nigeria is that branch of public law which contains rules and regulations which have as their object or effect the protection of the environment.

It is one of the newest courses of study in most Nigerian institutions of higher learning where law is being offered as a course of study. Environmental law cannot be discussed globally without the concept of the environment. The definition and concept of the environment is the focus of this study and law comes in as a predictable attendant to protect the environment by way of regulating and regularising it against abuse and ill-treatment by the human elements (who are the presenters and beneficiaries of the environment).

Generally, the modus operandi for defining environmental law depends largely on the individual who is saddled with the responsibility of defining the subject matter. “At one extreme, it can mean pollution control law, at the other; Einstein would say that it is the law which belongs to everything that is not one. For most people an acceptable compromise has to be found between these positions” (Andrew Waite *et al*., 2001). Another attempt may mean ‘the law relating to the protection of public health and our natural and manmade surroundings. The

environment is where we all live in and the law is what we live in and by."

Environmental law is a complex and interlocking body of treaties, conventions, statutes, regulations, and common law that, very broadly, operate to regulate the interaction of humanity and the rest of the biophysical or natural environment, toward the purpose of reducing the impacts of human activity, both on the natural environment and on humanity itself.

Rodgers stated that environmental law cannot repeal the rain and the wind nor can it repeal the law of ecology. What it can do is to attempt to create order out of chaos as law cannot alter the environment.

In the views of Thoron and Beckwith (1997, p.2), it is the body of the laws to which the label environmental has been attached and is concerned with protecting the natural resources of land, air and water, the three environmental media and the flora and fauna which inhabit them.

Environmental law draws from and is influenced by principles of environmentalism, including ecology, conservation, stewardship, responsibility and sustainability.

Environmental law is seen as the body of laws concerned with the protection of living things (human beings inclusive) from the harm that human activity may immediately or eventually cause to them or their species, either directly or to the media and the habits on which they depend. Environmental law covers the whole universe including not only human beings, but also plants, animals, forests shrubs, refuse, bacteria/diseases and insects (Ola, 1984:150-154).

3.2 The Concept of Environmental Law

The word 'concept' means an abstract notion, a mental impression of an object; it could also be referred to the idea underlying a class of things or the general notion of that thing.

Generally in discussing the concept of environmental law, then an expository look at the word environment cannot be overemphasised. Literally, environment means that which surrounds, in a sense, the environment is the whole physical universe. However, the Cambridge Encyclopedia defined the environment as the conditions and influences of the place in which an organism lives. The concept of environmental law refers to the integrated rules and principles, i.e., legal norms, the purpose of which is to achieve environmental conservation

Naturally, in discussing the concept of environmental law our minds will be directed at what constitute the ideas, the policies and the juridical basis that gave prominence to the need to have and develop environmental law.

In the words of a former member of the International Court of Justice (I.C.J), Honourable Prince Bola Ajibola:

> "It is the policy of the administration to vigorously pursue the protection of the Nigerian environment in order to preserve the quality of life of all citizens and conserve the resources for the benefit of future generations of Nigerians."

The concept of environmental law has taken a serious dimension worldwide and Nigeria is not an exception as the focus is not only on mere control, protection and management of environmental health problems but also on legal policing. "The reason for this rapid paradigm shift in Nigeria in recent years may not be divorced from the dumping of harmful toxic waste materials in Koko in the Delta State (part of the defunct Bendel State) in June, 1988 and the need to redefine our hitherto concept of the environment".

In the 1970s, the environment was described as 'an international issue and these have not spurred the Nigerian national government into action until the event of the widely published Koko saga in June 1988, "The Koko Toxic Waste Dump". This actually stands as a stimulant to the Nigerian government as the event galvanised it into action. Since 1988, national focus on the Nigerian environment and environmental programmes and policies cannot be over-emphasised.

This was supported by the late Chief F.R.A. Williams (SAN) when he stated that "prior to 1988, legal and administrative measures covered mainly protective and preventive measures relating to environmental sanitation and issues on public health; warning and emergency measures to reduce potential harm in case of natural disasters and context of Nigeria Law which whilst paying due regard to global movements and ideas as well as the increasing interest of the international community on the problems pertaining to the environment".

It was also categorically stated by Okorodudu–Fubara that "until the adoption of the National Environmental Policy on the Environment in 1989, Nigeria has no distinct and clearly articulated national policy goals for the Nation's environment" The Koko toxic waste dumping experience, led the Nigerian Military Government to promulgating the Federal Environmental Protection Agency Decree 1988 No 58. It was the first of its kind since Nigeria's Independence in 1960 and in line

with the 1972 Stockholm Conference on Environment which Nigeria was a signatory.

The "Koko Toxic Waste Dump" gave credence to a nationally unified law/national policies and programme on the Environment which eventually led to the promulgation of the two basic Decrees; Federal Environmental Protection Agency Decree 1988 No. 58, and The Harmful Waste Special Criminal Provision Decree 1988, No. 42.

To this extent Nigeria as a nation moved away from mere control and compensation of hazards, and included laws meant for monitoring, reduction and possible prevention of environmental pollution.

Furthermore, the environmental problems on the other hand have no exclusive terrain, but rather a universal global problem. After all, there is only one world environment and no nation can exist in isolation, hence, the environmental problems cut across socio-political, geographical and international boundaries.

4.0 CONCLUSION

It is pertinent to note that at the end of this unit, you should be able to know and briefly explain the term concept of the environment. You should also be able to codify statutes into a sustainable law for further protection, development and sustainability of our environment.

5.0 SUMMARY

In summary, you have learnt the concept of environmental law and the views of some legal luminaries. You have also learnt about the advent of the Koko toxic waste crisis which served as momentum and catalyst to the Federal Government of Nigeria to make a comprehensive national policy and statutes to stem environmental abuse and led to the promulgation of some major decrees in that regard to fight the menace.

6.0 TUTOR-MARKED ASSIGNMENT

i. Define the term environmental law and state the views of different scholars.
ii. State the statutes enacted to promote or sustain our environment after the Koko Toxic waste saga.

7.0 REFERENCES/FURTHER READING

David, W. (2002). *Environment and Law*. London and New York: Routledge.

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UNIT 2 HISTORICAL BACKGROUND TO ENVIRONMENTAL LAW IN NIGERIA

CONTENTS

1.0 INTRODUCTION

The historical background of every subject, especially topic relating to the environment cannot be ignored, as the law relating to the evolution of the subject matter will be the centre of the discussion in this unit. Generally this will relate to the development of Environmental Law in Nigeria and other jurisdictions in the world. It is however, pertinent to know how the law for supporting our environment emerged internationally.

The role of the United Nation Organisation through its United Nations Environment Programme (UNEP), the impact of regional organisations and the resolutions of international conferences on environmental protection and sustenance of our natural environment through the effectiveness of the law.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- discuss the evolution of environmental law;
- trace its evolution from the colonial era to the Koko saga in Nigeria; and
- explain the role of the United Nations in fighting the menace of environmental degradation the world over.

2.1 HOW TO STUDY THIS UNIT

1. You are expected to read carefully through this unit twice before attempting to answer the activity questions. Do not look at the solution or guides provided at the end of the unit until you are satisfied that you have done your best to get all the answers.
2. Share your difficulties in understanding the unit with your mates, facilitators and by consulting other relevant materials or internet.
3. Ensure that you only check correct answers to the activities as a way of confirming what you have done.
4. Note that if you follow these instructions strictly, you will feel fulfilled at the end that you have achieved your aim and could stimulate you to do more.

3.0 MAIN CONTENT

3.1.1 Historical Background of Environmental Law

The environment is a beautiful place to live in once treated in that regard, it is to this extent that the environment cannot be discussed without its evolution the world over. The environment as beautiful as we have described it is faced with the twin pressure of population and development, and these environmental menaces however, results in its deterioration and diminution of the natural resources at a frightening rate.

Day in, day out, our environments are being polluted with various unlawful disposals of waste, like the traditional pollutants, despite this the sprain of unimpeded effluents and secretion from hazardous industries has caused pollution of the environment and consequent human health hazards.

The world becoming a global village has greatly affected the environment and generally the populace are not ready to take care of the environment in proportion to the pace of development, especially in the light of reckless industrial growth and this may lead to an over exploitation and destruction of natural resources. This is necessary to avoid disaster as the environmental support system has been damaged beyond repair.

In the words of Dharmendra (2007) he stated that there is a need to strike a balance between the environment and technological development so that we may have sustainable development. He added further that "Environmental pollution has become a worldwide problem, with many nations giving it the required attention". The United Nations Conference on Human Environment in 1972 was an initial major effort to diagnose the unsatisfactory state of the global environment.

The efforts of the United Nations cannot be overemphasised, and despite these efforts most of the nations of the world have no national policy or laws to protect their environment inspite of the various threat posed by environmental hazards.

The advent of the United Nations Conference tagged the Stockholm Declaration on the Human Environment 1972 for the first time in the history of the world ended with a communiqué on a legal regime for environmental protection. This highlighted the problems and recommended measures to make the system of regulatory environmental management more effective and proactive.

Nigeria as a nation was not exempted from the slow pace of the development of environmental law as the nation at a time had no single policy or law relating to the protection of the environment and this caused hazards to the environment and humans.

This lacuna led to the incident of the Koko toxic waste dumping Koko in Delta State (defunct Bendel State) in 1988. This singular act that was detrimental to the nation galvanised the Federal Government of Nigeria into action towards promulgating environmental law and enforcement of international declaration on environmental laws.

Africa is not the only continent in the world that is affected by these multifarious environmental problems; it is a global problem which the Stockholm Declaration on the Human Environment held by the United Nations Organisation on the Human Environment addressed.

In response to this declaration, African nations adopted this report by organising a Seminar on the development of environmental protection legislation in conjunction with the Economic Commission for Africa (ECA) which discussed these issues at the second meeting of the Technical Preparatory Committee of the WHOLE in Freetown, Sierra Leone in March 1981. This conference report was adopted by the 16th session of the Commission and 7th meeting of the conference of the Ministers which took place in Freetown in April 1981 by its Resolution 412 (xvi).

3.2 Pre - Koko Toxic Waste Dumping Saga

It is imperative to reiterate that before the advent of the colonial era in Africa, in Nigeria the people had a method of disposal of refuse and cleaning their environment which is through community efforts in cleaning and beautifying the environment, and refuse is usually dumped in the appropriate place created by the community.

In doing this, the communities were very conscious of their environment, to the extent that mutual rules, regulations, customs, norms, ethics and cultural aestheticism to manage their immediate environment were formulated. These ways and means of tidying and controlling pollution in their surroundings cuts across hamlets, villages, towns and cities in the communities. The days for environmental sanitation were fixed and are still in place in most communities, especially in the south west of the country.

However, most of the environmental pollutants now were not available in those days, no industrialisation as it is now, and the population and vehicles have now increased tremendously increasing pressure on the land, water and air space. Before now, the ozone layers depletion, scourge of erosion, deforestation, toxic waste disposal/hazardous waste or/effusion were not known or at very insignificant stage unlike the current situation where the environmental problems are posing serious threat to the sustainability of the world (Dharmedra, 2007: 1-4).

In the colonial era there was no policy or law on environmental issues and programme. Most of the efforts of the colonial authorities were geared towards economic and political objectives. Attention was not paid to the maintenance of personal and public health.

It also marked the beginning of formal policy making, programmes and conceptual formulation by the colonial government to address environmental issues.

However, it may be observed that during the colonial period and the immediate post independence era in Nigeria, the perceived environmental problems in the form of control and management were principally in the area of domestic management. There was no regulated policy on forest conservation at the time which was capable of achieving suitable development, neither was there any legal mechanism in place to check the emerging environmental problems due largely to the economic activities of the colonial powers (Atsegbua *et al*, 2004: 1 – 6).

In that era, there was no national environmental regulation aside the sanitary officers who were available only in the urban and sub-urban areas. They did not operate in the rural areas.

Even though the Nigerian government did not pay serious attention to the environmental problems, there were certain laws that were in place and used for the general protection of the environment, especially legal provisions to check environmental pollution, in the criminal code Cap 77 LFN 1990. This had provisions which sanctioned malodorous of water in spring, stream well, tank reservoir, and the burial of corpses within a hundred yard of a dwelling place, and the vitiation of the atmosphere so as to make it noxious to the health of persons.

The period between 1960 and 1988 saw the emergence of some political-socio-economic factors which began to enhance the development of the concept of environmental law in this part of Africa. This period witnessed the development of cocoa industries and many other cash crops that generated pollution and industrial waste management which infected the environment with various kinds of pollutants.

However, the discovery of oil and the subsequent oil boom in the early seventies exposed the unpreparedness of the government for the environmental quandary usually associated with industrial development (Ola, 1984: 152 -4).

In response to the impact of industrialisation on the environment, a new course of environmental law had to be charted. This brought about the enactment of some laws such as the Factories Act, the Oil Pipeline Act, 1956, the Oil in Navigable Waters Regulations 1968, Petroleum Act 1969, Petroleum (Drilling and Production), Regulations 1969, Petroleum Drilling and Production (Amendment) Regulations 1973, Petroleum refining Regulations 1974. (Okoye, 1990: 64-65) said these laws and regulations marked a departure from the concept of environmental law from what it was in the colonial era.

Ogbuigwe (1985: 20-2) posited that the protection of the citizens health, the balancing of the ecosystem, adequate management of natural resources, compensation of pollution victims, and socio-economic and political consideration actually accounted for this movement in the concept of environmental law.

The dumping of the toxic waste in June 1988 actually changed the perspective the government of the nation to the issue of the environment and brought about more laws in line with the need to protect the environment, culminating in the promulgation of the Federal Environmental Act of 1988.

3.3 The Post- Koko Toxic Waste Dumping Saga

In Nigeria, the “Koko incident” of 1988 rudely jolted the government to the reality of toxic wastes when same were dumped at Koko port in the then Bendel State by some fraudulent Italian businessmen with the active connivance of a poverty stricken, ignorant and hungry villager Sunday Nana for a miserable sum of N500.00 monthly. Prior to 1988, the government of Nigeria had no meaningful environmental policy. Thanks to the resourcefulness of the Italian businessmen and Sunday Nana, the Nigerian government in its usual fire-brigade approach to problems came out with the Harmful Waste Decree 42 of 1988.

The incident also facilitated the establishment of the Federal Environmental Protection Agency (FEPA) through Decrees 58 of 1988 and 59 as amended) of 1992. FEPA was charged with the overall responsibility for environmental management and protection across the country. This was until 1999, when FEPA and other relevant Departments in other Ministries were merged to form the Federal Ministry of Environment.

It became a prominent issue at the public and government levels in Nigeria. Worldwide, environmental threats are noticeable in various forms such as acid rain, ozone layer depletion; global warming and other climatic modification, release of carbon dioxide in several tones, methane and chlorofluorocarbons into the air may lead to imbalances of natural cycles result into warming of the earth, melted ice-caps, deserts and flooded cities. There are also tendencies for the atmosphere to run short of oxygen – the phytoplankton; a primary source of oxygen from the sea/ocean may be affected. The nitric oxide emissions may adversely deplete the protective ozone layer therefore exposing man to the deadly ultraviolet rays as a result of the fact that the shield that covers the ozone layer is depleted.

It is not a mere saying that the adverse health hazards associated with exposure of humans to the unprotected work environment and other residential areas is highly noticeable in Africa and other parts of the globe. In Nigeria, there are several examples, toxic waste dumped at Koko Village in Delta State in 1988, and the battery waste dumped at Lalupon – Ilegbon Area in Lagelu Local Government Area of Oyo State by Exide Battery Company reportedly killing villagers and their animals in February 2010.

However, the changes which emerged from the 1972 United Nations Conference on the Human Environment held at the Royal Opera House in Stockholm on June 5, 1972 served as stimulus to a lot of nations including the third world countries. However, most third world countries did not make any meaningful effort in this regard until towards the end of the 1980s (Imevbore *et al.,* 1991: 35).

Nigeria is a prominent signatory to a number of these multilateral treaties on environmental protection. Nigeria was among the 114 heads of governments represented at the historic conference held in the United Nations 1972 in Stockholm on the "Problems of the Human Environment" which focused on the general need for greater environmental awareness and concern.

Subsequently, in Nairobi Kenya at a conference preceding the Stockholm Conference, Nigeria as a nation was very prominent in making its voice heard. This was re-echoed at the 10th anniversary of the Stockholm Conference which reiterated the participating nation's

commitment to the protection and enhancement of the quality of human environment.

Nigeria attended the 1979 Rabat Conference of Ministers and Assembly of Heads of State of the O.A.U which corroborated the International Strategy for the Third Development Decade – the African Region. All these efforts were directed at creating national awareness on the need to protect the Nigeria environment against environmental hazards.

Though Nigeria no doubt is signatory to a large number of international and sub regional treaties, she has not promulgated the constitutionally mandated laws at the national level to give legal effect to most of these international treaties in the country. (Okorodudu – Fubara, 1998: 6-8).

It is pertinent to reemphasise that the goal of generating and regeneration of our environment is still very fundamental even in the current democratic dispensation and it has made several moves towards formulating new mechanisms for environmental protection and sustainable development in Nigeria with a view to creating a new approach to environmental regulations and enforcement. "All Nigerians and friends of our country are enjoined to join us in this quest to keep our environment wholesome, safe and healthy" Arch. (Mrs.) Halima Tayo Alao, Hon Minister of Environment, Housing and Urban Development was quoted as saying at a function in October 2007 .

Some key issues were raised in a forum organised by the National Environmental Standards and Regulations Enforcement Agency (NESREA) between 22–23 October, 2007 in Abuja after its establishment on July 30, 2007 as a body corporate with perpetual succession and a common seal. (It may sue and be sued in its corporate name. It is responsible for the enforcement of environmental standards, regulations, rules, laws, policies, guidelines and policies, such as the National Policy on the Environment), in 1999 the then Vice President Dr. Goodluck Ebele Jonathan who represented the President Alhaji Umar Musa Yar'Adua GCFR (now late) stated that: the forum is very timely "at a time when world attention is focused on the challenges of environmental protection, climate change and sustainable development". He also reiterated that at the global level, the United Nations and other multilateral organisations have, through notable global forums, provided the milestones and bench marks for new directions in formulating policies on the preservation of the integrity of the ecosystem and human well being. They have also encouraged national governments to create institutions for the protection of the environment and human health.

It is important to further reiterate that the merging of FEPA and other agencies to the Ministry of Environment has however created a vacuum in the effective enforcement of environmental laws, standards and

regulations in the country. In addressing this, the Federal Government created by law a new institutional mechanism, the National Environmental Standard and Regulations Enforcement Agency (NESREA) to fill that vacuum.

NESREA is charged with the responsibility of enforcing all the environmental laws, guidelines, policies, standards, and regulations in Nigeria. It also has responsibilities for enforcing compliance with the provisions of international agreements, protocols, conventions and treaties on the environments to which Nigeria is a signatory.

The government on its part further reiterated it support to provide all the requisite institutional and structural support for NESREA to effectively and efficiently meet her mandate. It is our hope that the management and staff of NESREA will be single-minded about their obligation to ensure that our society becomes innately environmentally conscious. Our desire is for an environment where all the necessary sustainable development principles are applied and enforced.

Therefore, it is the responsibility of all and sundry to ensure a healthier, cleaner and safer environment for all guided by an abiding dedication to working with commitment to secure our environment. (President Umar Musa Yar' Adua: 2007, NESREA).

In this wise, African people and their governments are very much conscious of the implications of the abuse of their environment either by multinational corporations or themselves and have taken serious measures to combat environmental menace ravaging the continent. Third world nations are aware of the hazards to their environment, no wonder most of them are now adopting deliberate steps in formulating policies" which will lead to procedures and other concrete actions required for launching the third world into an era of social justice, self–reliance and sustainable development in the 21st Century (Aina, EOA and Adedipe, N. O., 1991: 311).

4.0 CONCLUSION

In conclusion, Nigeria as a nation despite its slow start on domestication of international conventions, which she is a signatory to, has done a lot after the Koko Toxic Saga to protect its environment, however, a lot still needs be done in area of oil pollution and environmental degradation and deforestation of our forests.

It is also important to note here that we need to re-orientate the populace on our attitude towards our environment.

5.0 SUMMARY

In this unit we have discussed the historical development of environmental law in Nigeria, the laws governing the environment of the country before the Koko toxic waste incident, the laws thereafter. You should be able to critically analyse the eras.

4 TUTOR-MARKED ASSIGNMENT

i. Briefly explain the historical background to the emergence of environmental law in Nigeria.
ii. Identify laws governing environmental law in Nigeria after the Koko Toxic Waste incident of 1988.

5 REFERENCES/FURTHER READING

Aina, E. O. A & Adedipe, N. O. (Eds.) (1991).*The Making of the Nigeria Environmental Policy*. Ibadan: University Press. p. 311

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UNIT 3 SOURCES OF ENVIRONMENTAL LAW IN NIGERIA

CONTENTS

1.0 INTRODUCTION

Generally, the coming into effect of laws is as important as the sources of such laws. It is at this point that this unit is set to discuss the sources and scope of environmental law to Nigeria.

The nuptials of the two concepts that is, law and the environment cannot be overemphasised in the socio-economic development of any nation. It is in this context that the sources of this law will be discussed.

The scope of the law varies from one jurisdiction to another, and some other jurisdictions will also be looked at critically. The main sources of environmental law like the international treaties and convention cannot be ignored; it is also of major concern to discuss the role of the constitution of the FRN, the common law approach through the doctrine of negligence and nuisance.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- identify and discuss all the sources of environmental law in Nigeria ranging from international treaties, the Constitution of the Federal Republic of Nigeria to case laws and statute laws among others; and
- discuss the scope of environmental law.

2.1 HOW TO STUDY THIS UNIT

In this unit you are expected to:

1. Read through the course contents on your own
2. First attempt the activities, then the TMA without looking at the hints provided by the author
3. Make observations on all your difficulties to your facilitator
4. Confirm your work on the activities after you have done your best to get all correct

3.0 MAIN CONTENT

3.1 Sources of Environmental Law

It is pertinent to reiterate that before the advent of the 1988 Federal Environmental Protection Agency Act No. 58 of 1988, there was no concise law to protect the environment or referred to as the National Environmental Law.

More than most areas of the law, environmental laws are greatly influenced by policy choices and ideas drawn from other disciplines such as biology, chemistry, economics and engineering.

It is however important to reiterate that the content of environmental law for Nigeria is broad and extensive. It encompasses the problem of Land Use and soil conservation; Forestry – wildlife and protected natural area; water management, marine resources and coastal areas, sanitation and waste management, air quality, hazardous substances, working environment – occupational health and safety, major sources of pollution/pollutants includes water pollution, air pollution, auto mobile emission and noise pollution, land degradation and planning, aforestation, deforestation and desertification among others. All these areas mentioned in a Federation like Nigeria, both the Federal and State governments have the right to enacts laws which seek to regulate and protect the environment either directly or indirectly. (Akintayo, 2006 p.394).

The sources of Nigerian Environmental law include: the Constitution, Legislation, judicial precedents or Nigerian case law, the received English Law, Customary Law, and Islamic Law. These are the general sources of the Nigerian Law and the ingredients of Nigeria's legal system at a glance but in the present dispensation not all these sources are relevant to the concept of Environmental Law.

3.2 International Law

International law is one of the major sources of environmental Law which seeks to protect the environment. The United Nation Organisation as an International Organisation meant to maintain the efficacy and efficiency of International law recognises the sovereignty and individuality of each state among the committee of nations.

It is imperative to note that each state has rights in the international arena as its citizens claim rights within the nooks and crannies of its territory. The states have exclusive jurisdictional control over their territory which includes territorial water, air and land territory, population and natural resources. The rights over her territory cannot be tempered with by any state regardless of its acclaimed power in the committee of nations.

It is to this extent that many conferences, conventions, treaties and protocols were initiated to protect the world environment. Initially, from the emergence of UN, the environment was not a major concern, except for world peace but some of its agencies are saddled with such responsibilities relating to the environment, and these are the Food and Agricultural Organisation (FAO) and the World Health Organisation (WHO) (Malcolm, 1994).

However, in 1962 the first book relating to the environment is a book that gave graphic perspective views of the indiscriminate use of pesticides "Silent Spring" written by Rachael Carson. The book dealt into the area known as 'Environmental Revolution' and laid the foundation for the emergence of law otherwise known as "Environmental Law" (Atsegbua, 2003 p.11).

There have been a lot of global issues that have gingered the UN as a world organisation to embark on various conferences, the ever increasing marine pollution, ground water contamination, and europhication of lakes, dying forest and solid acidification and finally the global climate change, the greenhouse effect. These are some of the major incidents that led to the UN Conference on the Human Environment, in Stockholm, in June 1972.

Significantly, the impact of the Stockholm Conference on the Human Environment was particularly, Principle 21, which stated that: "States have a responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction".

The principle equally admonished States to develop their environment and their own jurisdiction in accordance with the tenets of International law that will provide a platform to compensate the victims of pollution

and other environmental hazards caused by activities within their own jurisdiction or the control of such states outside their own jurisdiction.

There are other international treaties, protocols and convention that are of paramount importance to the environment aside the Stockholm Conference; these are the international and regional efforts in combating the environmental menace.

1. The Universal Declaration of Human Rights 1948. Article 25 (i) stipulated that everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care.
2. Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matters 1972. This treaty was not ratified by Nigeria until 18 April 1973. The treaty provides measures to prevent dumping of waste and other pollutants into the marine environment.
3. International Convention for the Prevention of Pollution of the Sea by Oil 1954 (as amended in 1962 and 1969). It was in 22 April, 1968 that Nigeria assented to this treaty. The convention was aimed at preventing and curtailing the pollution of the sea. It prohibits the discharge of oil or oily mixture in the stated zones.
4. Convention on the Continental Shelf 1958. Nigeria acceded to this treaty on 28 May, 1971. The treaty recognises and delimits the rights of states to explore and exploit the natural resources of the continental shelf.
5. The Convention on the High Sea 1958: Nigeria acceded to the treaty on 30 September 1962. It is aimed at codifying rules of International Law relating to the high sea. "High Seas" according to Article 1, means "all parts of the sea that are not included in the territorial sea or in the internal water of a state".
6. United Nations Conference on Desertification (UNCOD) held in Nairobi, Kenya in August/September 1977 -- Desertification addressed as a worldwide problem for the first time and a Plan of Action to Combat Desertification (PACD) adopted. Nigeria is a signatory to this treaty.
7. United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil in June 1992 – The Earth Summit and Agenda 21 call on the UN General Assembly to set up an inter-governmental committee to prepare for a legally binding instruction that addresses the problem of desertification.
8. United Nations Convention to Combat Desertification UNCED adopted in Paris, France in June 17, 1994 which has been earmarked as the World Day to Combat Desertification. This UNCED enters into force, 90 days after the 50^{th} ratification is recovered.

9. "Dumping of Nuclear and Industrial Wastes in Africa" organized by the council of ministers of the defunct Organisation of African Unity, 48th Ordinary session, meeting in Addis Ababa Ethiopia, May 19 – 23, 1988, declares that the dumping of nuclear and industrial wastes in Africa is a crime against Africa and the African people.
10. OAU Convention Banning Outright Import of All Forms of Toxic Wastes into Africa and controlling Trans –boundary Movement of such waste generated in Africa –signed in Bamako, Mali on 30th January 1991. The main objective was to prevent the importation of all forms of toxic waste within Africa and the movement of toxic waste within Africa (Mokon).
11. Convention for Cooperation in the Petroleum and Development of the Marine and Coast Environments of West and Central Africa – which came to force on 5 August 1984 with the objective of protecting the marine environment of coastal zones and related internal waters falling within the jurisdiction of the states of the West and Central African Region. This was ratified by Nigeria on the 5 August 1984.
12. Treaty Banning Nuclear Weapons Tests in the Atmosphere in Outer Space and Disarmament under strict international control, in accordance with U.N. objectives. This was ratified in December 1967.
13. African Charter on Human and People's Rights. This charter was signed and ratified by Nigeria on 31st August 1982 and 22 June 1983. However, it came into force in Africa on 21 August 1986.
14. Vienna Convention for the Protection of the Ozone Layer 1985 which came into force on 10 August 1992. The main objective is to protect the ozone layer by taking precautionary measures to control global emissions of substances that deplete it. This was ratified by Nigeria on 1 January 1989.
15. International Conference on the Establishment of an International Fund for compensation for Oil Pollution Damages which came into force on 16 October 1978.
16. Rio Declaration on Environment and Development

All these treaties and conventions are parts of the sources of Environmental Law. In addition, out of about eighty five international environmental conventions that are applicable to the country, she has signed and ratified less than half of the number just about thirty six and may be the Federal government is yet to make up its mind to sign and ratify the rest. But the position of the constitution of the Federal Republic of Nigeria 1999 is very clear on most of these treaties.

3.3 Constitution of the Federal Republic of Nigeria

This is the grand norm of any nation and it plays a significant role as one of the sources of any law relating to people. The constitution is the supreme law of a state. It directs the process of governance, specifies duties and functions of different arms of government and the fundamental rights and obligations of citizens.

All other laws derive their relevance from it; any law inconsistent with provision of the constitution is void to the extent of its inconsistency (Yalaju, 2007 p.35). A constitution is nothing but an institution of government made by the people, establishing the structure of a country, regulating the powers and functions of government, rights and duties of the individual and providing remedies for unconstitutional acts.

Naturally, there have been a lot of environmental menace that most environmentally conscious countries, have handled through legislative action; some countries have given these problems constitutional status for the state to deal with, most of the third world countries have enacted laws to minimise the menace. Nigeria, South Africa, Mali, India, Chile just to mention a few.

As we have seen the Nigerian as a nation has only paid lip service to the environment through the sustainable development programme, even in the 1979 Constitution which came after the Stockholm Conference of 1972, not until the events of the 1980s that paved way for the inclusion of the environmental objectives in the constitution. This clause is to be seen in section 20 of the 1999 Nigerian Constitution in consideration of the importance of the environment to human beings. And it states that:

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

This is however the first time that the need to protect the environment would be specifically mentioned in the constitution (Akande, 2000 p.61).

Other nations also deal with the issue of the environment in their constitution like Nigeria, in Ghana the 1992 constitution of the Republic of Ghana particularly chapter 6 deals with the Directive Principles of State Policy, as part of the social objectives of Ghana in its Article 36(7). It is important to note that the provision of Ghana's constitution is more broad and exhaustive than the 1999 Constitution of Nigeria.

Similarly, S15 of the 1992 Mali Constitution provided that: a person has a right to a healthy environment. The protection and defence of the environment and the promotion of the quality of life are a duty for all and the state. Also, S 46 of the 1992 constitution of the Democratic Republic of Congo (DRC) provides: Every citizen shall have the right to a satisfactory and sustainable healthy environment and shall have the duty to defend it.

In addition, Section 24 of the Constitution of the Republic of South Africa 1996 is more elaborate than the Malian and DRC clause.

It is important to note that the significance of ensuring environmental rights in national constitutions has been highlighted by Ogola (1995, Pp. 412 – 4) who stated that: The Constitution of a country constitutes the first and primary level in its hierarchy of norms. Constitutional provisions inter-alia, underline national priorities and hence determine the decision and nature of future legislative policies and executive actions. The elevation of environmental concerns to constitutional status in these countries has no doubt enhanced the priority to be accorded by Government on sound environmental management and sustainable development.

However, the inclusion of environmental clause into the CFRN 1999 can be said to be a milestone in the quest for the protection and sustainability of the Nigeria environment. Though, the clause in S20 of the constitution is far from meeting the yearning and expectations of environmentalists. This is because the constitution has not given adequate recognition to the environmental rights and healthy environment as a fundamental right.

There have been a lot of judicial interpretations of section 20 of the Constitution. This was first made in the decided case ***Attorney General Lagos State vs. Attorney General of the Federation & Ors (2003). Kalgo JSC*** in his concurring judgment on pages 177 to 179 noted inter alia that the main object of Section 20 is to protect the external surroundings of the people and ensure that they live in a safe and secure atmosphere free from any danger to their health or other conveniences. He opined further that the provisions of the section do not give the National Assembly the power to legislate on planning and development control over land in the states or local governments.

A new dimension to the responsibility of states is by obliging the state to protect, improve and sustain the environment for the good of the society as a whole. The state is also obliged to direct its policy towards the control of maritime resources of the community to observe the common good, the need to improve human life by controlling the exploitation of

natural resources and protection of environment. This led to the inclusion of environmental matters in various constitutions of most countries of the world and in turn made the constitution one of the vital sources of environmental law.

3.4 State Laws

Statutes or state laws mean the law made by the organ of government whose primary duty is to make law for the state. Laws made by this body (legislative arm) are known as statutes or legislation. Nigerian legislation consists of statutes and subsidiary legislations. However, it is imperative to note that subsidiary legislation is the statutes made in the exercise of powers given by a statute. It could also be referred to as delegated legislations.

Moreover Nigeria's statutes consist of Ordinance, Acts, Laws, Decrees and Edicts. Ordinances are laws passed by the Nigerian Central Legislature before October 1, 1954 which ushered in a Federal Constitution into Nigeria (Obilade, 1998 p.64). A statute enacted by the Federal Legislature (the National Assembly comprising of the Senate and the House of Representatives) is an "Act".

The statute made by the House of Assembly of a state is called "Law". However, in a military administration, an enactment or promulgation made by the Federal Military Government is known as a "Decree" and the one made by the Government or Military Administrator of a state is known as "Edict".

Note that all existing Federal Statutes in Nigeria up till 1990 have been consolidated in Laws of Federation of Nigeria (LFN) 1990. The collection of these Decrees and Edicts are invaluable source of Nigerian Law (Sanni, 1999 p.126).

There were statutes that were enacted before the 1988 Koko incident which are environmentally related, under the military and the civilian regimes and they include the Petroleum Act, the Oil Mineral Act, the Factories Act and the Criminal Code. Then following the Koko incident, more cognisant efforts have been made to tackle environmental problems through specific legislations and they include: Harmful Waste (Special Criminal Provisions) Act 1988 and the Federal Environmental Protection Agency Act Cap 131 LFN 1990.

It is important to reiterate further other state laws used in combating the menace of environmental degradation and pollution:

1. The Oil in Navigable Waters Act 1968 – enacted as a result of the International Convention for Prevention of Pollution of the Sea in 1954, it is the most comprehensive legislation on oil pollution.
2. Oil Terminal Dues Act Cap 339 LFN 1990 – it provides for the discharge of oil at an oil terminal.
3. The River Basin Development Act – it is provided for the supply of water.
4. Environmental Impact Assessment Act No 68 1992 – it is provided for projects that are likely to have an adverse impact on the environment to be subjected to environmental impact assessment.
5. Management of Solid and Harmful Waste Regulation – it regulates the collection, treatment and disposal of solid and hazardous waste from municipal and industrial sources.
6. Associated Gas Re-Injection Act Cap 26 LFN 1990.
7. The Environmental Sanitation Edict No 4 of 1987 (Lagos State) No 4 of 1986 (Oyo State).
8. The Pollution, Prevention and Control (Miscellaneous Provision) Edict of Imo State, 1985.

3.5 Case Laws

Naturally, the courts are saddled with the responsibilities of interpreting the state laws and international conventions once an issue to that extent has arisen. However, the role of case law in this respect is best appreciated where there is judicial activism and judicial precedent. It is also important to say that the law is what the court says it is.

The case law is a source of Environmental law in Nigeria and at the international level. In Adediran vs. Interland Transport Ltd (1986) 2 NWLR Pt 20 Pg 78, where the court held that the consent of an Attorney General is no longer necessary for the competence of action in public nuisance.

Note that the riparian doctrine was also applied in Nigeria as it is a common law doctrine, a landowner has a right to the water which flows, across his land and his right to use the water should be reasonable. In Braide vs. Adoki (1931) 10 NLR 15

In ***Isaiah v Shell Petroleum Company of Nigeria Limited (2001),*** a case decided on the basis of S239(1)(a) of the Constitution (Suspension and Modification Decree No 107 of 1993, the Supreme Court decision in this case laid to rest finally what position of the law is with respect to jurisdiction in oil pollution by deciding that, the subject matter of the claim, which is oil spillage falls under the exclusive jurisdiction of the Federal High Court as provided for under the earlier mentioned section. The nature of proof of environmental claims is favourable obstacle which the claimant(s) must summon before he can succeed. This nature

of proof principle was well elucidated in the case of ***Ogiale & 2 Ors vs. S.P.D.C. (1997).***

It is important to note that the role of courts to interpret the law and the outcome of it – case law is best appreciated where there is judicial activism.

3.6 Common Law

Common law is the principle of law common to the whole of England while the doctrine of equity was evolved to mitigate the harshness of common law in order to do justice. However, all this laws were received into Nigeria in 1900.

The Law of Torts is the area of law under the common Law that mainly prescribes the control of environmental pollution. A tort is a civil wrong, which entitles the injured party to claims and damages for his or her loss or seek an injunction for the discontinuance or prevention of the wrong. There are four torts specifically relevant to the control of environmental pollution, they are: Negligence, Nuisance, Trespass and Strict Liability.

Negligence

The tort of negligence can be defined broadly as the breach of a legal duty to take care, resulting in damage undesirable by the defendant, to the plaintiff (Winfield and Jolowicz, 1998 p.66).

There are three main elements to the tort that the plaintiff must prove:

a. A duty of care owed by the polluter to the plaintiff.
b. The polluter is in breach of that duty of care.
c. The breach has caused foreseeable damages to the Plaintiff.

It is important that where the Plaintiff is able to prove his case successfully, the following remedies are available to him, damages and injunctions which may be mandatory or prohibitive.

Nuisance

A Nuisance is an inconvenience materially interfering with the ordinary comfort physically of human existence.

However, under environmental law, Nuisance occurs when the emission of noxious or offensive materials from the defendant's premises significantly impairs the use and enjoyment by another of his property or prejudicially affects his health, comfort or convenience. Nuisance may be public or private. The same conduct leads to committal of both.

The remedies available to the plaintiff in this regard are damages, an injunction to restrain further nuisance and abatement. Nuisance may be public or private. The same conduct leads to committal of both.

a. Public Nuisance

A public or common nuisance can be described as an act which interferes with the enjoyment of a right which all members of the general public or a section of the public are entitled to, such as the right to fresh air, or travel on the highways. Public nuisance is basically a crime.

It is pertinent to note that before 1979 and under Common Law, however, actions based on the public nuisance can only be instituted with the consent of the Attorney General of the Federation or that of the State as the case may be. Any action filed contrary to this principle/rule will be struck out as incompetent. This was the decision in ***Amos and Ors vs. Shell BP Petroleum Development Company of Nigeria Ltd. (1977) 6 Sc p9***.

Moreover, after the 1979 Constitution of Federal Republic of Nigeria particularly, the decision in ***Adediran v Interland Transport Limited (1986) 2 NWLR pt 20, 78***. It is interesting to note that, the consent of the Attorney General is no longer required for the competence of action in Public nuisance.

b. Private Nuisance

This type of nuisance is important but private nuisance are not crimes, but give rise to an action for damages which may be brought by the person who has suffered loss. It is described as "unlawful interference with a person's use or enjoyment of land and some right over or in connection with it ***(Abiola vs. Ijeoma 1970) 2 ANLR 768)***. The act of private nuisance include interference with an easement such as blocking up of a right to light enjoyed by the window of a house, acts of wrongfully allowing the escape of harmful things on to another person's land. See also ***(Tebite vs. Nigeria Marine & Trading Co. Ltd (1971) 1 U.L.R 432)***.

Strict Liability

Liability is strict in instances, where the defendant is liable for damage caused by his act, irrespective of any fault on his part. The rule in ***Rylands vs. Fletcher (1986) LR Ex 265.*** The decision in this case established strict liability tort. The principle states that the polluter is liable, irrespective of wrongful intent of negligence and in the words of House of Lords states:

> "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 is 'prima facie' answerable for all the damage, which is the natural consequences of the escape".

It is important that for a Plaintiff to be successful or to rely on the principle as decided in the above cases he must prove that there was a non-natural use of land by the defendant; he must show that there was an escape of materials or objects from the defendant's adjourning land to his property. Irrespective of the problems, the rule has no doubt been successfully applied in environmental law cases/litigations. Most particularly, those involving the oil sector, that is, oil spillages. (***Umudje vs. Shell-B.P Petroleum Development Co. of Nigeria Ltd (1975) 11 S.C 155)***

4.0 CONCLUSION

It is imperative to reiterate that the under listed sources of environmental law cannot be ignored in any discussion that is related to it. Legislation, International Law and Case Law are very important sources of Environmental law.

5.0 SUMMARY

In summary this unit has discussed all the sources of environmental law in Nigeria ranging from international conventions and treaties to the constitution of states, statutes, case laws and lastly the common law approach to the sources of law of environment. At this point you should be able to discuss the sources of environmental law in Nigeria.

6.0 TUTOR-MARKED ASSIGNMENT

i. Explain with decided authorities the Nigerian approach to the rule of strict liability under common law as it relates to the environment in Nigeria.
ii. Write on any two of the sources of environmental legislation discussed in this unit.
iii. Discuss the scope of environmental law in Nigeria.

7.0 REFERENCES/FURTHER READING

Obilade, J. O. (2000). *The Nigerian Legal System*. Ibadan: Spectrum Books.

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UNIT 4 LEGAL ANALYSIS OF ENVIRONMENTAL PROBLEMS

CONTENTS

1.0 INTRODUCTION

Industrial development all over the world has progressively damaged the environment. The natural environmental comprises of the sum total of all conditions and influences which affects the life and development of an organism, such as water, air, and land and inter – relationships which exist among the elements of water, air and land and the human beings, creatures, plants, micro –organisms and property.

However, mankind is faced with the fact that the current rate of destruction might lead to a very bleak or even non-existent future for the earth and its inhabitants. The whole environment is being polluted because of human carelessness and the lack of a good attitude to maintain and sustain the environment.

It is important to continually reiterate the need to protect and improve the quality of the environment because an increase in industry and energy consumption is unavoidable in the course of development.

However, preventing and abating environmental pollution, the standards for emission and discharge of environmental pollutants from the industries and operations processes should be through legal framework. The hazardous substance and its related polluting elements will be taken care of by relevant Environmental law.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- explain the legal analysis of environmental problems;
- discuss development and the environment ; and
- analyse the effect of population growth on development of the nation.

2.1 HOW TO STUDY THIS UNIT

1. You are expected to read carefully through this unit twice before attempting to answer the activity questions. Do not look at the solution or guides provided at the end of the unit until you are satisfied that you have done your best to get all the answers.
2. Share your difficulties in understanding the unit with your mates, facilitators and by consulting other relevant materials or internet.
3. Ensure that you only check correct answers to the activities as a way of confirming what you have done.
4. Note that if you follow these instructions strictly, you will feel fulfilled at the end that you have achieved your aim and could stimulate you to do more.

3.0 MAIN CONTENT

3.1 Legal Analysis of Environmental Problems

It has been stated that every human being has equal rights as it concerns the environment, however, world over the growing concerns are about environmental problems in the upper atmosphere such as global warming and ozone depletion. Here in Nigeria, we are threatened by fundamental environmental challenges which include draught and desertification, coastal and land erosion, hazardous domestic garbage and industrial toxic waste, industrial and air pollution which has generated unpleasant social conditions, huge loss of life and means of livelihood" (Bent, 2007 p.18 representing Adamawa State)".

It is also important to further reiterate that the hazardous bilge waters and emissions from industries includes heavy metals, carbonic compounds, radioactive substances and such other dangerous chemicals which cause harm to the health and environment of man, animals, trees and plants. Mortality and serious irreversible or incapacitating illness are the results of hazardous wastes (Dhamendra, 2007 p.9)

Furthermore, attempts are being made to proffer solutions to the various problems affecting the world in the area of development and environmental pollution. The control and regulation of this range of problems is very essential. The basis and easiest way of achieving this

goal is through efficacy of laws which provide the framework for such control and regulation.

The exertion by all countries all over the world have brought various conferences, treaties and agreement organised by the United Nations to come up with different environmental laws to address environmental pollutions. However, the nature of environmental problems in each country will definitely determine what nature of law to be enacted.

In the words of Yinka Omorogbe, the environment is the entirety of our society and life; as a result both poor and rich states make provisions for the control and regulations of their environment based on peculiarities of individual country's environmental problems.

In this regard, the problems facing the enforcement are laws for controlling, protecting and sustaining the environment and they need to be critically considered with the aim of proffering solutions to the indentified problems.

3.2 Development and Environment

The word 'development' is reflected in everyday life and largely related to the environment. However, the word development means "the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of buildings or other land" which must be in line with Town and Country Planning Act 1990 Section 55.

The industrialised nations were ahead in development ever before the emergence of the third world nations. The main issue is that development cannot take effect outside environment.

Environment to this extent is tantamount with development and pollution. Consequently, the problems created by the advanced countries that are highly industrialised ahead of the developing nations are often at the detriment of the latter. To address this issue, of disparity and conflict of interests, the United Nations Organisation came up with the "Action Plan and the Declaration on the Human Environment"

The UN Brindland Report advanced a common solution to the problem of how to develop and sustain without necessarily injuring the surroundings/environment.

This is seen as constituting development that meets the need of the present without compromising the ability of future generations. It is also defined as a requirement that the use of resources today neither should nor reduce real income in the future.

Hitherto, the energy use of the developing world is a fraction of that of the industrialised nations, sustainable development in the area of energy use therefore appears also to require either total stagnation in the developing countries or an altruistic reduction of energy use by the industrialised world so that increases by developing world can be absorbed.

To substantiate this fact, Hunt, Bobeff and Palmer posited that:

> "No growth policies fashionable in some quarters and often in ones that enjoy comfortable living standards are not favoured by those who find it difficult to meet their basic needs. These countries will want to develop and will not be easily persuaded to abandon their traditional means of achieving that goal. The rest of the world will have to help these countries to achieve their goals in a way that is consistent with the policy of sustainable development while this may prove to be a costly exercise for the richer countries, they may be prepared to bear that cost in order to protect their environmental standards."

Particularly in the past the inclinations and the realities of the international economy a major and clearly devastating environmental disaster would have to be glaringly imminent before such sacrifices could be made.

3.3 Effects of Population on Development

These are:

- it could lead to environmental chasm
- it leads to very low life expectancy and increase in birth especially in the third world with almost 75% of the global population
- the thrust for the development on the part of poor nations will mean more pressure on environmental resources which are almost at the verge of exhaustion
- this may hasten the prediction of the United Nation's that "The global population in the 2050 will be somewhere between 7.3 billion and 10.7 billion" The difference between the high scenario and the low scenario is just one child per couple with the specie on that kind of demographic knife-edge; it pays for these couples to make their choice carefully
- it will put more stress on infrastructures that are meant to add value to the populace.

4.0 CONCLUSION

In conclusion the legal analysis of the environment problem cannot be ignored in that regard. However, the conflict between development and environment are equally discussed with the impact of population growth on the environment. It is also imperative to note the development of the environment is important for sustainable development of any nation.

5.0 SUMMARY

In summary, it is important to note that this unit has discussed the legal analysis of environmental problems, and also the development of the environment and the impact of the population on the environment. You should be able to explain these points to a large extent.

6.0 TUTOR-MARKED ASSIGNMENT

i. Explain the legal analysis of environmental problem.
ii. Explain the role of development and the environment.
iii. Briefly highlight the effect of population on environmental development.

7.0 REFRENCES/FURTHER READING

Dharmedra, S. S. (2007). *Environmental Law Practices*. New Delhi, India: Hall.

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UNIT 5 SOCIAL AND CULTURAL VIEWS ON THE ENVIRONMENT

CONTENTS

1.0 INTRODUCTION

It is important to reiterate that the impact of political and social views on the environment cannot be overemphasised. We shall also discuss the impact of Town and Country Planning on Environmental law, the Socio-cultural effects, and non-compliance and enforcement constraints of environmental law in Nigeria.

The attitude of the populace to the environment cannot be ignored. To this extent this unit will focus on the political and social views of the people on the environment and their effects on Town and Country planning. In Lagos, for example the role of the people and the government shaped the Lagos Megacity project.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- mention the political and social views of the populace on the environment
- highlight the social cultural impact on Town and Country planning
- discuss non-compliance and enforcement of the environmental laws and enforcement constraints.

2.0 HOW TO STUDY THIS UNIT

In this unit you are expected to:

1. Read through the course contents on your own
2. First attempt the activities, then the TMA without looking at the hints provided by the author
3. Make observations on all your difficulties to your facilitator
4. Confirm your work on the activities after you have done your best to get all correct

3.0 MAIN CONTENT

3.1 Socio-Cultural Effects on Environmental Law

Environmental issues are perceived diversely by the ordinary man on the street both in developed and developing nations.

In developed nations every resident is concerned and sees all environmental issues as personal. The awareness in that regard is very high and people are ready without been coerced to the care of the environment.

Most people in the advanced nations need not be told about the negative impact of plastic bags and aerosol sprays on the ozone layer. Writing paper is labeled a recycling process and cosmetics may be advertised as being free of chemical pollutants. All these are regarded as biodegradable and the majority are conscious of endangered species and the 'green – house effect'

Nevertheless, in most developing countries especially in Africa, these are issues that are strange to us, not just as a result of the fact that most governments are indifferent or because of the lack of the basic education required to understand such principles, but because most people are not too concerned with what happens to the environment even though they will be directly affected. Another main fact is that the average person is hard pressed and cannot afford the time, effort and expertise that environmental concerns entail.

The rich have the same attitude and are often engaged in degrading the environment by building on the main canals or drainages that serves the community which could block the main source of water to the community.

The tepid attitude of an average man to his environment in the developing country is what is translated into efficacious laws at the intergovernmental level. This concern about immediate well being is

particularly given expression to in a strategic plan such as the Lagos Plan of Action.

Although, the average man will fight tooth and neck to ensure the citing of industries in their areas because of the advantages that such industries will bring in addition to the development that will accrue to the area. The 'I do not care' attitude is not good with environmental protection and sustainability.

Therefore, governments at all levels, non-governmental organisations and human right groups need to sensitise the people about the degradation of our environment, change our attitude and plant a tree regularly, in order to reduce the risk in a polluted environment which tend to influence government policies, decision – making in environmental awareness matters and the resultant growth in the law.

The Lagos State government has been in the forefront of protecting the environment even more that the Federal Government, it holds regular seminars and awareness programmes on the impact of the environment on the populace, it keeps sensitising the people. It is the only government that has a recycling centre and waste to wealth centre in the whole country. It also has a structured refuse disposal system and regularly sensitises the people on the issue of cleanliness.

It is not easy to spread awareness on environmental law among the less privileged due to the absence of the physical and psychological factors required for effective environmental knowledge. The awareness campaign is less difficult among the more comfortable segments of the society which constitutes a small percentage of the population. With the present situation in Nigeria, communities are more aware through various campaigns on the need to protect and cherish our resources. It is now pertinent that survival of humans is dependent on preserving nature. As a result, we are in a good position to contribute to the health and sustainability of the earth. We can impact on the environment positively at every event as this will go a great length in helping our planet. Therefore, people must as a matter of fact act in a responsive and responsible manner in everything they do and as much as possible include energy conservation, minimise the consumption of natural resources, reduce waste and generally using earth –friendly products. Henceforth, the more we act responsibly, the greater the positive impact our efforts will have on our environment (The Nation Daily Newspaper 2010: 5th February Vol. 2:29).

3.2 The Impact of Town and Country Planning

Environmental development controls and regulates the orderly planning and growth of any given country, city and town by emphasising standards for all areas of planning.

The rule regulating town and country planning stipulates that there must be adequate light, well spacious environment, ventilation, recreation space for children and elders, open space for social festivities, Community Health Centre, Estate or Community Market. All these are important to any given city or town planning and also including residential, educational, industrial, commercial and agricultural areas are well and carefully zoned. This is to avoid conflict, breach of peace and promote harmonious relationship.

Naturally, in improving urban design in Africa, it is essential that adequate standards of density, land use and utility services be established.

City or Town Planning control is solely aimed at checking nefarious activities of developers, landowners, land speculators and estate quacks from property development at the detriment of the public interest. The main fact is that a development plan cannot work in the absence of planning regulations.

Atsegbua *et al* states that in improving urban design in Africa, it is essential that adequate standard of density, land use and utility services be established, that sand planning principles and techniques and a mature philosophy of contemporary aesthetic considerations be developed and that those and other urban factors should be related to the over-all development plan by preparing three-dimensional plans and models of the neighbourhood. Urban design is a social art that has as its purpose the proper arrangement of the physical facilities that form our urban environment.

It is an art and technique, which requires the freedom and enthusiasm of creative designers.

However, Ola (1984) posited that "Town planning is perhaps the oldest of the arts and the newest of the sciences. In modern practices before making plans, pictures and fine-looking models of how the future city will look – these have to be a careful diagnosis of everything that makes the term 'tick', that is, good road network, railways, industries, shops, houses, schools, health services and most important, its local administration. Once this diagnosis is done, a cure for the various ailments and maladjustments of the city can be prescribed in terms of

the ascertained needs of the people and place itself. The plan ought to grow out of the city naturally".

In addition, a city is not an non-living object upon which any plan can be imposed – nor can it with impunity be hacked about or messed up by any kind of chaotic development as is the case in most African countries especially Nigeria particularly cities or towns like Ibadan, Aba, Kaduna, Kano, Enugu etc.

It is important that before and after development approvals, architects, builders and contractors as well as developers must pay special attention to issues in this regard.

1. Building Line – nearness to roads or footpaths.
2. Density Control – number of rooms to be built on a given land.
3. Zoning - The type of buildings that could be created in a given area from a functional point of view, such as commercial, industrial, residential and recreational areas.
4. Orientation – sides to axis of the sun to catch prevailing wind flow and cut off direct sunlight as much as possible.
5. Lighting – openings given, including the necessary air space to be observed.
6. Availability of amenities – kitchen, store, bathroom, toilets and drainage.
7. Facades – appearance from elevation and how harmonious the facades are in relation to other existing buildings.
8. Plot ratio – percentage of the land to be built on and percentage to be left undeveloped to provide open spaces and necessary greens.

The quantity and quality of materials used should be as such that will match with modern architectural designs.
Lagos as a megacity has been in the news in recent times over collapsed building which has been embarrassing to the government from the hands of unethical developers, who are out to make money by all means and do not care of its impact on the environment.

Conservation experts of the United Nations Food and Agriculture Organisation (FAO) tend to discount recent theories of global changes as the main reason for land loss. Despite such natural disasters as the Sahel drought they maintain that most damage is either man – made or due to human negligence

However, total rural population of the developing world, despite massive irrigation to cities is expected to grow by 900 million by the turn of the century. At the World Desertification Conference in Nairobi, Kenya, global land loss from manmade causes was already estimated to cover an area bigger than the entire Saharan Desert. More than 680 million people were said to be living on land which could no longer support permanent cultivation or was in danger

In Nigeria, where about 90% of the population is made up of farmers or nomadic herdsman, more than 20.6 million people live in the 15 percent of the country which is semi –arid. At least two – third of Kenya is classified as arid or semi –arid, yet land loss is continuing through new land clearing on fragile soils, bush fires and indiscriminate burning of trees and shrubs for charcoal.

3.3 Non-Compliance and Enforcement of Environmental Law

Generally, Nigerians like to abuse the law, by not respecting the rights of others when it come to issues in general and respect for the environment is not an exception as it is equally affected by the attitude of the populace on non compliance and enforcement of the law. It is important to note that ignorance of the law is not an excuse for flouting or non-compliance to Environmental law.

The general cliché that ignorance of the law is not an excuse for non-compliance with environmental regulations the world over and the blatant contravention of environmental laws in Nigeria and other third world countries cannot be over emphasised. The problems associated with non-compliance and enforcement of environmental laws are as follows:

a. Lack of environmental consciousness
b. Lack of qualified workforce
c. Corruption among the top hierarchy
d. Misappropriation of Ecological fund
e. Lack of Government interest /inadequacy
f. Lack of database
g. Poor funding of activities and operations
h. Economic considerations
i. Lack of maintenance culture and facilities
j. Use of internal environmental audits
k. Dearth of environmental pressure groups
l. Weak enforcement of existing laws and regulations
m. Lack of environmental know how and technology
o. Lack of or inadequate state of the art in-situ instruments for rapid detection of banned goods and products.

It is pertinent to note that all these in no small measure affects implementation of environmental policies, programmes and regulations especially in African countries which tend to slow the pace of awareness campaigns to protect and sustain our environment.

3.4 Enforcement Constraints of Environmental Laws

It is generally the role of the government to make laws and set achievable standards in this regard to avoid unwholesome destruction of the earth and its resources, a bench mark which must be set and which will not exceeded by any enterprise or human activities likely to impact the environment negatively. These must however comply with Standards and this can either target specific environmental medium such as water, air, land, or have the objective of protecting the human environment. As a result, environmental standards and regulations became important and integrated to avoid loopholes that can result in disastrous human consequences.

Nigeria has more than one hundred and twenty two Acts and additional subsidiary legislations dealing with environmental issues, for example, legislations on natural resources, petroleum, resources, mining/quarrying, maritime activities and industries (LEEP, 2002). Many of these legislations which were made in the 1940s, 1950s, and 1960s were not properly enforced in their early days. This in addition to their inadequacy and now are outdated and obsolete. The penalties for non-compliance are minute and a slap on the wrist for violators.

Environmental management in Nigeria is pivoted on the 1989 National Policy on the Environment as revised in 1999, 2007 and 2009 as well as a set of laws, regulations, guidelines and standards to ensure the conservation of natural resources and the protection of the environment and human health.

Importantly, there is no requirement or fixed basis for the size of the fine which could be based on the volume, toxicity, and damage or polluting history of the corporation.

However, it is pertinent to note that with the exception of the Lagos State pollution charge fund, all revenues from fines go to the Federal government and not FEPA or a State Environmental Protection Agency (SEPA). The FEPA in 2007 metamorphosed into National Environmental Standards and Regulations Enforcement Agencies (NESREA), which however, has taken over the role of FEPA in its entirety.

4.0 CONCLUSION

In conclusion, it is important to reiterate that social and cultural views on the environment are important and the role of the urban planning on the environment cannot be overemphasised in that regard.

However, the enforcement procedure of laws relating to the environment cannot be ignored with impunity. Equally important are the constraints of the enforcement procedures of the said laws.

5.0 SUMMARY

In summary, this unit has extensively discussed the social and cultural views on the environment, and you are expected to critically discuss these issues, the enforcement procedures and constraints as well as the role of urban planning on the environment.

6.0 TUTOR-MARKED ASSIGNMENT

i. show the socio-cultural impact of environment
ii. Identify constraints hindering the enforcement of environmental laws and address the issues identified.
iii. Explain the impact of urban planning on the environment and the way forward.

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UNIT 6 HAZARDOUS AND TOXIC WASTES IN AFRICA

CONTENTS

1.0 INTRODUCTION

Hazardous wastes as the name connotes are dangerous wastes that cause damage to human and aquatic life and generally the environmental world. The dilemma of hazardous wastes, dumping of toxic wastes in Africa became an issue in 1988 as a result of the Koko Toxic Waste Dumping saga which served as a catalyst for conservation legislation in Nigeria, now there are lots of hindrances affecting this legislation, its inadequacies and constraints in enforcement and the proposed reforms subsequently generated.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- explain the concept of toxic and hazardous wastes in Africa and the danger associated with it
- mention the sources of such wastes
- trace the importation of the wastes to Africa by most foreign countries particularly its importation to Nigeria
- discuss the legislations that regulates this area of law and how effective they have been, if at all.

2.1 HOW TO STUDY THIS UNIT

In this unit you are expected to:

1. Read through the course contents on your own
2. First attempt the activities, then the TMA without looking at the hints provided by the author
3. Make observations on all your difficulties to your facilitator

4. Confirm your work on the activities after you have done your best to get all correct

3.0 MAIN CONTENT

3.1 Hazardous Wastes

The business of toxic waste is gigantic, satanic and dangerous and it belongs to the domain of what observers called the Devil's Trinity, which includes hard drugs (cocaine for example) and arms. It is important to reiterate that the use of toxic and hazardous wastes are used interchangeably but they mean the same thing and stand for the same concept. When it comes to matters of environmental pollution they are an extension of each other.

The word "toxic" simply means "poisonous" just as a toxin is a poison. By extension, a poison is an agent that chemically destroys life or health upon contact with or absorption by an organism. By implication, poisons are harmful to life and health and anything that is harmful is said to be hazardous.

Toxic is defined in the Basel Convention as having poisonous effects if breathed in, eaten or absorbed by the skin, including carcinogenicity i.e. cancer – producing.

In Nigeria under section 15 of the Harmful Wastes (Special Criminal Provisions etc.) Act, Cap. H1, Laws of the Federation of Nigeria (LFN) 2004, harmful wastes mean: Any injurious poisonous, toxic or noxious substance and, in particular, nuclear wastes emitting any radioactive substance … as to subject a person to the risk of death, fatal injury or incurable impairment of physical or mental health.

"Waste" on the other hand means something which originally served a purpose, but is no longer useful, as for example, refuse. They are things left over or are superfluous as excess materials or by-products not required for use in the work at hand. In the context of the topic under discussion, wastes are derived from mechanical and chemical disintegration. In the industrial context, when chemicals are produced, the residue forms wastes and these are more often than not toxic.

In the view of an environmentalist, Dharmendra "industrial civilisation has led to an explosive growth of industries including the hazardous ones. These companies and industries have not only exploited the natural resources to their maximum but the discharge of toxic effluents and emissions from hazardous industries have also polluted the surrounding environment. Thus, industrialisation has resulted in a high

degradation of the environment and caused enormous human health hazards".

Naturally it is important to note that toxic wastes are hazardous because of their physical or chemical quality; it is even more so when they are in large quantities. Such wastes cause grave illnesses and contribute significantly to the destruction of life forms of all kinds.

3.2 Sources of Toxic Wastes

The sources of toxic waste can be categorically found in two ways and they are human and natural sources, and the damage caused by each cannot be quantified.

(a) Human Sources

Naturally toxic wastes arise from businesses, refineries and industries. The volume of waste generated by industries is frightening because of its overall effect on the environment, and considering the fact that most of these toxic wastes are in their crude form before disposal especially in a developing country like Nigeria where there is virtually little or no treatment and disposal regulations. The toxic waste generated by industries may be liquid, solid or gaseous depending on the products of such industries and the raw materials used in their manufacture. Some of the industries, which generate toxic wastes, include the following:

- Chemical manufacturing plants that produce wastes types such as strong acids and bases, spent solvents and reactive wastes;
- Cleaning agents/cosmetic-manufacturing industry, which generates heavy metal dust, ignitable waste, flammable solvents, strong acids and bases.
- Printing industry which generates heavy metal solutions, wastes ink, solvents, spent electroplating wastes, ink sludge containing heavy metals;
- Furniture and wood manufacturing and refinishing plants produce ignitable wastes and spent solvents;
- Metal manufacturing industries produce place wastes containing heavy metals, strong acids and bases, cyanide wastes and sludge containing heavy metals;
- Leather products manufacturing plants produce benzene (a clear colourless, aromatic liquid extracted from coal tar and used as a solvent and intermediate in manufacturing organic chemicals) and wastes toluene (a colourless, flammable, mobile liquid hydrocarbon obtained from coal tar and petroleum, used in making explosives, dyes and as a solvent);
- Paper industry which produces print wastes containing heavy metals, ignitable solvents, strong acid and bases; and

- Vehicle manufacturing and maintenance shops which produce heavy metal wastes, ignitable wastes, used lead acid batteries and spent solvents.

It is important to note that the greatest culprit of toxic waste generation is the nuclear industry where the wastes generated are just as dangerous to handle as the nuclear products themselves. There are also some organic substances such as solvents and vapours, which are made up of such things as kerosene, petrol, tetracloromethane etc. Pesticides, such as DDT are also toxic in nature and extremely dangerous when used improperly.

Nigeria is vulnerable as it is has no nuclear industry for now but her oil and gas industry is responsible for the generation of a very large volume of toxic wastes.

b. Natural Resources

The main apparent natural sources of toxic wastes include volcanoes which upon eruption, produce a lot of toxic gases and undesirable and damaging larvae, and which sometimes affects food containing phytoxins which are highly poisonous when improperly processed or eaten raw.

3.3 Export of Toxic Wastes to Africa

The harmful effect of toxic wastes cannot be overemphasised. Toxic wastes are hazardous because when the chemical contents of the wastes react with the atmosphere, the wastes endanger health and impair the ecological system. Thus, for example, an industrial waste that is toxic could escape from its captivity and seep into the ground and from there to the streams and rivers causing death to marine life and persons.

Across the globe, the nuclear industry today has done more than its fair share of damage to life forms and the environment.

Export of toxic waste to Africa in particular became known in 1988. At Koko, a town in the old Bendel State (now Delta State) a devil-incarnate businessman called Gianfranco Rafaelli, dumped the toxic waste after approaching a 67-year-old Sunday Nana to acquire a "piece of land to dump what he claimed was raw materials for his industry". It was later discovered that Rafaelli had dumped at Koko, 8,000 drums of polychlorinated biphenyl sulphate (PCBS), methyl melamine, dimethyl ethyl-acetate formaldehyde etc., which were the world's most hazardous waste.

It dawned on us that Africa has been turned into the World's dumping ground for deadly hazardous wastes. This attracted a lot criticism and condemnation from all nooks and crannies.

We cannot forget in a hurry that a ship called *Kian Sea* carried 2,000,000 tonnes of Philadelphia Ash from Panama to Guinea-Bissau in West Africa. Benin Republic was reported to "have a contract on January 12, 1988, with a British company affiliated to South Africa to dump about five million tonnes of waste yearly. Benin Republic was expected to receive a ridiculous fee of $2.50 per ton from Sesio Gibraltar, the company behind the deal, despite the fact that in the developed world, more than $5,000 would have been charged per ton of waste". This writer is not in any way subscribing to such negotiation, of any amount

In the words of Dr. Layeni Adeyemo an expert on occupational and environmental health and a Director at the Lagos State Ministry of Health, "Nigeria is now among the leading dumping grounds in the world for high-tech waste from developed countries".

In a paper she delivered at the Post e-Waste Stakeholders' Summit, organised by the Lagos State Environmental Protection Agency (LASEPA) in July 2011 in Alausa Ikeja, Lagos State, Adeyemo said an estimated 50 million tonnes of e-waste were produced globally every yearly.

She categorised e-waste into three, namely: house appliance such as refrigerators and washing machines; telecoms appliances such as computer and mobile phones and consumer equipment like disused television sets.

She stated that over 80 per cent of the world's high-tech waste ends up in landfills in Asia and Africa, Nigeria is emerging as one of the top dumping grounds for toxic, chemical and electronic waste from the developed world.

After toxic waste was dumped in Koko, the United Nations Environment Programme, UNEP, set up a centre to be handling waste, especially hazardous waste, at the University of Ibadan, Nigeria, which is headed by Professor Oladele Osibanjo and Dr. Evans Aina's Federal Environmental Protection Agency, FEPA. The former "was part of the team involved in the decontamination process of Koko town.

However, it is remarkable to note that this incident provided the momentum needed to promulgate the Federal Environmental Protection Agency Decree in the same year (1988). The first legislative reaction to the Koko Toxic waste incident was the Harmful Wastes (Special Criminal Provisions) Act 1988 now Cap 165 Law of the Federation of

Nigeria 1990 as revised in 2004. This is majorly to prohibit the dumping of harmful waste in any form into any territorial waters or Exclusive Economic Zone of Nigeria or its inland waterways. The first State in Nigeria to follow suit with similar provisions appeared in the Lagos State Environmental Pollution Control Edict, 1989.
The FEPA Act, since its enactment has been amended twice in 1999 and 2007 when the nomenclature was entirely changed and the scope of its function widened. It is known as the National Environmental Standards and Regulations Enforcement Agency (NESREA) and was established in November 2006. The NESREA Act was signed into Law by President Umar Musa Yar'Adua GCFR and this has been published in the Federal Republic of Nigeria Official Gazette No 92 Vol. 94 of 31st July, 2007 by the NESREA Act which replaced the FEPA Act Cap F No10 LFN 2004.

4.0 CONCLUSION

In conclusion it is important to note that the dumping of toxic wastes in Africa has been devastating to the populace, and this is been done through the efforts of some impoverished fellows, the likes of Nana in Koko town of Delta State. It is amazing how Africa sustained herself the last several decades in the light of multifarious environmental hazards which she faced.

5.0 SUMMARY

In summary, in this unit we have been able to discuss, the concept of toxic wastes and we emphasised how dangerous they are to human health in particular and the environment in general.

After going through this unit you should be able to give a critical insight into the concept, talk about its sources and also the effect of the export of the substances into Africa and Nigeria in particular.

6.0 TUTOR-MARKED ASSIGNMENT

i. Define the concept of toxic and hazardous wastes and give the sources of the concept.
ii. Explain the concept of exportation of toxic wastes to Africa and Nigeria as a signatory to the Brussels Convention.
iii. discuss the legislation that regulate the importation of toxic wastes especially in Nigeria

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