

Solid Waste Management Laws and Methods of Disposal in Nigeria: A Case Study of Lagos, Akwa Ibom and Cross River States

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Abstract

This paper critically examined solid waste collection and disposal challenges against the plethora of policies, laws and regulations in Nigeria based on inductive analysis of Lagos, Akwa Ibom and Cross River States' laws. The paper adopts doctrinal research method. This work finds that there exists a clear and obvious issue of role conflict and usurpation between the national and sub national governments vis-à-vis the constitutional functions of solid waste collection and disposal assigned to the third tier of government. Also, the research reveals an overt case of revolution by the federal and state governments against constitutional provision through the enactment of national environmental regulations on solid wastes control and the establishment of states' legal and regulatory frameworks. The Author believes that adoption by Nigeria of the Malaysia's three tier levels of solid wastes management system, which statutorily assigns solid wastes management functions to the three tiers of government based on a national solid wastes management policy will contribute to the legislation, plans, actions and regulations toward solid wastes management in the cities across Nigeria.

Keywords: Solid Wastes, Disposal, Doctrinal, Constitution, Management transformation

INTRODUCTION

Environment is home to man, forest, animals, water, air and land. The environment can be human and natural environments. The management of environment generally was given to man by the Creator of the universe for his own good and preservation. At creation, the environment or land, in particular, seemed unoccupied and in-extensive not until human population increased astronomically. Also, food requirement to feed the increased population exploded, housing need increased as well as increasing production. This scenario has given birth to excessive consumption with attendant solid wastes generation. In order to curb this unintended outcome, national and international governments decided to make legislations, policies and regulations to tackle and/or reduce abuse towards the environment. However, because solid waste is a necessary part of human existence, national policies cum international measures on solid wastes management have failed to reduce the indiscriminate solid wastes disposal due to dearth of finance, technology, personnel and cultural influence. Arising from this seemingly helpless situation, various initiatives, policies and laws have been made by different arms of government in the world and Nigeria in particular to confront and bring to the barest minimum indiscriminate solid wastes disposal.

indiscriminate solid wastes disposal by chunking out research works on solid wastes collection and disposal but there still exists noticeable gaps and/or missing links around such works. Therefore, this research is aimed at inductively examining solid wastes management laws in Nigeria, utilizing three states of Lagos, Akwa Ibom and Cross River States as case study with a view to unearthing possible panacea towards eradicating or minimizing the spate of indiscriminate solid wastes disposal in states or cities across Nigeria.

Lagos State

Greater percentage of solid waste in Lagos, which as at 2nd quarter of 2020 stands at 12,000 metric tons per day¹, is generated from households, slums, commercial and industrial activities in the densely populated cities of the 20(twenty) Local Government Councils and 56 (fifty six) Local Council Development Areas.² For decades, Lagos State has been experiencing huge solid waste and incident of indiscriminate disposal of such solid waste in all parts of the State with attendant public health challenges.³ Successive governments in Lagos State, have tried to address issues of indiscriminate solid waste disposal in the State with

In Nigeria, the academics also have made their contributions towards the efforts at reducing

¹TVC News at 10pm, 9th August, 2020.

²Nwagwuop *cit.*, 3.

³*Ibid.*

minimal success rate. The rate of success achieved has been made possible due to good governance, programmes and measures such as the “Cleaner Lagos Initiative”,⁴ enactment of separate law and regulatory body to enforce solid waste management law in the state. To this end, Lagos State Government has created the Lagos Waste Management Agency (LAWMA),⁵ the Lagos State Environmental Protection Agency (LASEPA)⁶ and equally engaged many Private Sector Participants (PSPs)⁷ to handle solid waste and other wastes stream in the state. So far, reasonable level of healthy environmental behaviour and attitude has been noticed among the residents.⁸ Some of the PSPs have established solid waste recycling plants for solid waste recycling in the state. This effort has contributed to the reduction of growing solid waste heaps in Lagos State. However, a legal action has recently been instituted by the PSPs⁹ and also by one Ebu-Olu Adegboruwa¹⁰ against the Lagos State Government. The plaintiffs are asking the court to determine the right of Lagos State government to terminate a solid waste contracts validly entered into between the PSPs and Lagos state government. Also, the court is to determine the constitutionality of banning movement of people and vehicles during sanitation period and the constitutionality of Lagos State government to enact the new Environmental Management and Protection Consolidated Law (EMPL) 2017.

Indeed, the EMPL 2017 confers powers on Lagos State government to collect and dispose solid waste through the Lagos State Waste Management Authority (LAWMA) or out-sourcing such function to any licensed private solid waste management firm. Indeed, the courts have already made pronouncement which curtailed the right of Lagos state government to stop movement of persons and vehicles during environmental sanitation periods in Lagos State.¹¹

Akwa Ibom State

Uyo is the state capital of Akwa Ibom State. It has a rising solid waste profile due to urbanization which is encouraged by renewed effort of government at industrializing the state. Solid waste generation in Uyo City as at 2020 stands at 1,888 metric tons per day, compared to 2016 figure, which stood at 125.25 metric tons per day and 1,065.75 metric tons per week, 4,560 metric ton per month and 54,720 metric tons per year.¹² Solid waste collection in Akwa Ibom State capital is divided into 6 (six) zones.¹³ Door to door solid waste collection services are seldomly carried out by private solid waste collectors at a fee as agreed by the parties concerned.¹⁴ However, the state encourages collection and disposal of such communal wastes and dumping of such wastes in public receptacles. The wastes are collected by the Akwa Ibom State Environmental Protection and Waste Management Agency in conjunction with the Akwa Ibom State Ministry of Environment and Mineral Resources or its approved licenced private waste contractors.

The state solid waste management agency provides public solid waste receptacles at strategic public places like road paths, markets, motor parks, eateries, supermarkets, banks, schools, hospitals among others, for people to drop off their wastes. However, wastes in these receptacles are not often evacuated as such solid wastes usually overwhelm the receptacles and litter the surrounding and immediate environment¹⁵ with foul odour or stench. The residents in the immediate surrounding environment and passer-by inhale polluted air with attendant health and legal implications against the security, welfare and right to life constitutionally guaranteed the citizenry.¹⁶ Also, the local government councils in the state merely undertake solid waste management function as an ad hoc responsibility conferred on them under the AKS Environmental Protection and Waste Management Agency Law.¹⁷

⁴*Ibid.*

⁵Edict No. 55 of 1991.

⁶Edict No. 9 Cap 123 of 1997.

⁷Client Services – Lagos Waste Management Authority (LAWMA). www.lawma.gov.ng/inside.../client-service... Accessed on 26th August, 2017.

⁸Nwagwuop *cit.*; 3.

⁹Court rules in PSP Operators’ Suit Against Lagos. Punch, June 22. Punching.com/courtules-in-psp-operators. Accessed on 4th September, 2017.

¹⁰Ejikeme, Lawyer drags Lagos State Government to Court Over New Environmental Law. <https://www.premiumtimes.com/.../230384...> Accessed on 26th August 2017.

¹¹Faith Okafor v. A. G. Lagos State. See Restriction of Movement on Environmental Sanitation Days Declared illegal. www.nijalegalbnkng.com/.../240... Accessed on 26th August, 2017.

¹²I.B. Udoh & S. A. Inyang, review of Public Solid Waste Collection, Disposal and Management Practices in Akwa Ibom, Nigeria. (2016) Vol. 5 (7) International Research Journal of Environment Sciences. 55 – 59. See also Ayuba, K A. et al. “Current Status of Municipal Solid Waste Management Practice in FCT Abuja (2013) Vol. 5(6) Research Journal of Environmental and Earth Science, 295 – 3014 and Babayemi, J. O. and Dauda, K. T. “Evaluation of Solid Waste Generation, Categories and Disposal Options in Developing Countries: A case study of Nigeria (2009). Vol. 13(3) *J. Appl. Sci. Environ. Manage.*, 83 – 88.

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵*Ibid.*

¹⁶1999. Cap C. 23 LFN 2004. ss 14(2) (6) and 33(1).

¹⁷Cap 47 Laws of Aks of 31 December, 2000. SS. 2.(1) (vi) and 6(e).

The State Ministry of Environment and Mineral Resources rather than the State Environmental Protection and Waste Management Agency recruits women who go by the name and style “Green Brigade”, to sweep streets in Uyo – which has a population of 847,000 people as at 2015.¹⁸ The Ministry of Environment and Mineral Resources also handles and enforces monthly sanitation exercise instead of the officials of the State Environmental Protection and Waste Management Agency.¹⁹ The Ministry of Environment has partnership with banks in the state to provide funding for the acquisition of facilities and trucks to aid solid waste evacuation and recycling.²⁰ The state is presently encouraging private firms to go into waste recycling activity in order to convert the enormous wastes in the state into wealth. Currently, solid waste collected by private waste contractors in the state are dumped in approved dumpsites. Other waste streams such as plastic, bottles, scraps of old vehicles and aluminums are usually bought from their generators and transported to other states for recycling. This development creates in Akwa Ibom State a veritable opportunity for investors in solid waste management subsector to go into. It is also an opportunity to create employment for the youth and to generate IGR for the State.²¹

Cross River State (CRS)

Increasing solid waste management challenge in Calabar, CRS is due to urbanization, and high purchasing power of the residents.²² The management of solid waste function in Calabar South and Calabar municipality previously had been under the Local Government Councils in the state until 2003 when the solid waste management function was taken over by CRS Government.²³ The Councils were accused by state government of being incapable of handling the overwhelming solid waste generation, collection and disposal.²⁴ As a result, the CRS government in 2003, appointed private solid waste firms to handle

solid waste collection and disposal in the state which model also failed.²⁵

In 2004, the state government enacted the Calabar Urban Development Agency (CUDA) Law. The law establishes CUDA with mandate to take over solid waste function in Calabar and other major cities in Cross River State.²⁶ With CUDA law, local government councils in the state were denied their constitutional function of solid waste collection and disposal. The local government councils were meant to carry out only supportive role in the solid waste management. This marked the first effort at statutorily taking away the constitutional function of solid waste management from local government councils in CRS. CUDA or Agency is empowered to engage private refuse collectors to discharge its functions when and where necessary. However, the use of private solid waste collectors in the state has produced little success rate.

Hitherto, Calabar was known for its cleanliness but recently, the environment in Calabar has been overwhelmed by indiscriminate solid wastes disposal due to poor environmental behaviour of the citizens, low collection rate and poor supervisory role by CUDA²⁷ and CRS Ministry of Environment. These agencies have been created to ensure that such communal solid wastes are regularly collected from public receptacles and households bins in designated zones and facilities in Calabar and other cities across the state.²⁸

LITERATURE REVIEW

A Comparison of Solid Waste Management Laws of Lagos, Akwa Ibom and Cross River State and Role of Local Government Councils

The new environmental (consolidated) law²⁹ of Lagos State creates the Lagos Waste Management Authority (hereinafter called “the Authority”). The new Environmental Management and Protection Law (EMPL) consolidates 12 (Twelve) legal and institutional frameworks on environmental management, protection and conservation in the state. The EMPL 2017 puts all different environmental related bodies and units under the supervision of Ministry of Environment in Lagos State.³⁰ Specifically, LAWMA is saddled with the responsibility of handling controlled wastes in the state. LAWMA which is the governance structure on solid waste in Lagos State is headed by a General Manager, appointed by the State

¹⁸Uyo-Population, Population >city?nigeria>Uyo. Accessed on 24th August, 2018.

¹⁹Environment Commissioner Vows to Sustain Monthly Sanitation. theinknewpaper.blogspot.com/2016/06/01. Accessed on 30th August, 2017.

²⁰U. Eshiet. Banks to partner AkwaIbom on Sanitation. The Nation, 29th November 2015.

²¹N. M. Abdallah. Oil Price Fall, States Struggling. To Pay Salaries.Daily Trust, 2014. <https://www.dailytrust.com.ng/topstories>. Accessed on 3rd September, 2017.

²²M. Sanusi, Lagos Waste Management and the Government. <https://lagosstate.gov.ng/2018/02/03/1>. Accessed on 24th July 2018.

²³Sampson-Akpanop. cit, 48.

²⁴Ibid.

²⁵Ibid.

²⁶Ibid.

²⁷Ibid.

²⁸Ibid.

²⁹Environmental Management and Protection Law (consolidated) of 2017.

³⁰Ibid. S. 4(1).

Governor after due consultation with Commissioner for Environment. The GM serves as the Chief Executive Officer of LAWMA.³¹

LAWMA (hereinafter called “the Authority”) has numerous functions³² and powers³³ which are carried out in consultation with Lagos Ministry of Environment, Local Government Councils and other relevant authorities pursuant to the new EMPL 2017 in the State.³⁴ The main functions of the Authority are to promote and sustain a clean, safe and healthy environment conducive for citizens and residents in Lagos State.³⁵ The Authority also is to ensure that controlled solid wastes³⁶ generated by commercial, domestic, industrial, medical, agricultural, institutional activities and operations,³⁷ are regularly collected and disposed either by the agency or through Public Private Partnership (PPP). The PPP model involves the Authority and licensed private operators for collection and transportation of solid waste to designated dumpsites.³⁸ However, in the discharge of the functions and powers of the Authority, the EMPL 2017 stipulates that such functions and powers should not supersede the functions and powers of the Governing Board (GB) established for the Authority.³⁹

The GB is to be headed by a person appointed by the State Governor subject however, to confirmation of the State House of Assembly. The Chairman of the GB must have a science or public health discipline background.⁴⁰ Other members of the GB include 3(three) Local Government Council Chairmen each drawn from the existing 3(three) senatorial districts in the state; Commissioner for Local Government Councils and Community Affairs; Commissioner for Environment or their representatives, as well as a representative of the Lagos State University which must belong to Civil Engineering Department.⁴¹ Such a representative must not be less than an officer on a Grade level 15(fifteen). The membership of the GB also includes the General Manager of the Authority.⁴²

Unlike the Lagos State solid waste governance structure, the Akwa Ibom State solid waste governance structure is established under the Environmental Protection and Waste Management Agency

Law.⁴³ Under the Akwa Ibom State Environmental Protection and Waste Management Agency Law, solid waste governance structure (hereinafter referred to as “the Agency”)⁴⁴ is supervised in the Governor’s Office.⁴⁵ The functions and powers of the Agency touch on and extend beyond management of solid waste. Such functions and powers include the regulation of toxic or harmful waste, oil spills and gas flaring.⁴⁶ The Chief Executive Officer of the Agency is called Managing Director. The appointment of the Managing Director is to be nominated by the State Governor.⁴⁷ There is also a Board to be established for the Agency. The Board is to have a Chairman, who is to be appointed by the State Governor, subject however, to confirmation of the Akwa Ibom State House of Assembly.⁴⁸ Other members of the Board include 3 (three) full time and 3(three) part time members. These members are to be appointed from among professionals in the fields of Medicine, Environment or Sociology.⁴⁹ In addition, other relevant and key Ministries in the State are to be represented on the Board.⁵⁰ Indeed, like Lagos State counterpart, 3(three) Chairmen of Local Government Councils, each selected from the 3 (three) senatorial districts are made members of the Board.⁵¹

In Cross River State, solid waste management is regulated under 2 (two) general laws on environment. These laws are the Environmental Protection Agency Law (EPAL)⁵² and Urban Development Authority Law (UDAL).⁵³ The EPAL creates the Environmental Protection Agency (hereinafter called “the Agency”), and saddles it with functions⁵⁴ and powers⁵⁵ relating to environmental protection, solid waste control and public health management. Such functions also extend to the regulation of industrial, harmful wastes, oil spills and gas flaring to mention a few.⁵⁶ Unlike Lagos and Akwa Ibom States laws, the head or chief executive officer of the CRS Agency is known as a Director, who is to be appointed by the State Governor.⁵⁷

⁴³Cap. 47 Laws of Akwa Ibom State of 31st December, 2000.

⁴⁴*Ibid* S.1(1).

⁴⁵*Ibid* (3).

⁴⁶*Ibid*. See ss. 6 and 7 generally.

⁴⁷*Ibid* S. 20(1).

⁴⁸*Ibid* S. 2(1)(a).

⁴⁹*Ibid*.

⁵⁰*Ibid*. 1(b)(i-v).

⁵¹*Ibid* (vi).

⁵² Cap E.5 Laws of Cross River State of 25th April 1996.

⁵³ Cap. U. 12 Laws of Cross River State of 23rd January 2001.

⁵⁴*Op. cit*, 19. s. 2.

⁵⁵*Ibid*. S.3.

⁵⁶*Ibid* and See *op. cit*, 81.

⁵⁷*Ibid*. S.4(2)(c).

³¹*Ibid* S. 58(1) & (2).

³²*Ibid* S. 56(1) (a-y), (2) (a-b), (3) (a-h) & (4) (a-b).

³³*Ibid* S. 57(1) & (2) (a-g).

³⁴*Ibid* SS. 56(1) (a) & 57(3).

³⁵*Ibid*. S. 3(1).

³⁶*Ibid* S. 41.

³⁷*Ibid*.

³⁸*Ibid*. ss. 77(1), 79(2), (6) & (7) and 80(5).

³⁹*Ibid*. ss. 43 & 48 (1) & (2).

⁴⁰*Ibid* s. 44(1) & (2)(a).

⁴¹*Ibid* (1)(d), (f), (g) & (h).

⁴²*Ibid* (j).

There is also a Board created for the Agency.⁵⁸ This Board is headed by the Secretary to the State Government in Cross River State.⁵⁹ Other members of the Board are to be drawn from related Ministries. The Director of the Agency is also a member of the Board. In addition, 4 (four) part time members are to be appointed by the State Governor for the Board. One of the part time members is expected to be a scientist.⁶⁰

It is the functions of the Board to determine and regulate the role of Local Government Councils and the State towards the management of waste, pollution and environmental degradation in the State.⁶¹ The Agency in turn is required to collaborate with the Cross River State Environmental Sanitation Department and also liaise with Local Government Councils, in order to control the process of sitting up and management of landfills and waste dumpsites within Cross River State.⁶²

Similarly, the Urban Development Authority Law in Cross River State, establishes 3 (three) Urban Development Authorities.⁶³ Each Authority has a Board created to manage the operational activities of the Authority.⁶⁴ The Board for each Authority is headed by a Chairman, including 4 (four) other members to be appointed by the State Governor.⁶⁵ The major function of the Board is to coordinate development programmes within each urban Development Authority. Other functions of each Board extend and touch on the conduct of joint sanitation exercise with Cross River State Environmental Sanitation and Protection Agency. The objective of this exercise is to maintain cleanliness of each Planning Area within the State.⁶⁶ The activities of the Urban Development Authorities cut across the 50 (fifty) towns and villages in Cross Rivers State. Each Development Authority is expected to re-enact and re-invigorate the hitherto culture of cleanliness associated with the environment in Calabar and other towns and villages in Cross River State.

From the examination and comparison in the aforementioned solid waste governance structures and laws in the 3(three) states of Lagos, Akwa Ibom and Cross River, some key similarities and dissimilarities which have the potentials to make or mar effective and efficient enforcement and compliance with solid waste management laws have been revealed.

For example, EMPL 2017 which creates LAWMA is a consolidation of 12(twelve) different environmental related bodies in the State. These different agencies, authorities, boards, departments, offices and units are to be supervised by Lagos State Ministry of Environment as well as their different boards where applicable. The merits of consolidating these bodies into a single law with different focal mandates relating to environmental protection and conservation cannot be overstressed. The EMPL 2017 creates LAWMA as solid waste governance structure while other bodies under this law handle other aspects of environmental preservation and sustainability. LAWMA therefore, becomes the focal point for solid waste management in Lagos state. This model therefore could promote a measure of productivity and good governance in integrated solid waste management.

Unlike Lagos EMPL 2017, the Akwa Ibom and Cross River States Laws on environment cover and regulate wide areas of environmental objectives like oil and gas, pollution control and harmful waste among others. Such wide areas of coverage conferred on the agency are beyond or outside solid waste management within the scope of this work. This model or law confers on the governance structures in these states more focal point of environmental media with attendant management challenges. Besides, such governance structure, admittedly, requires a lot of funding mechanism for training and re-training of its workforce. Also, unlike the EMPL 2017, the Akwa Ibom and Cross River States laws on environment are contained in different laws.⁶⁷ Nevertheless, the two legal regimes or models on environment are relatively effective and implementable to the extent that the laws are imbued with adequate mechanism to check anti-good governance like corruption, poor funding, dearth of equipment and undue political interference.

Also, the Lagos, Akwa Ibom and Cross River States Laws on environment establish governance structure with similar organ grams. Each of these States' Laws creates a Board for the governance structure⁶⁸ with nomenclatures like "General Manager",⁶⁹ "Managing Director"⁷⁰ and "Director"⁷¹ assigned to heads the Authorities or Agencies appointed by the Governor of these states⁷² so as to handle solid waste management.

Solid waste governance structure is supervised by Lagos State Ministry of Environment,⁷³ while the Akwa

⁵⁸*Ibid.* S. 8.

⁵⁹*Ibid.* S.4(1)(a).

⁶⁰*Ibid.* (2).

⁶¹*Ibid.* S.8.

⁶²*Ibid.* S. 3(n).

⁶³*Op cit*; 80 S.1.

⁶⁴*Ibid.* S.3.

⁶⁵*Ibid.*

⁶⁶*Ibid.* S.8(a) & (f).

⁶⁷*Op. cit.* 56, s.4(1)(a-l).

⁶⁸*See Op. cit*; 56 S. 43, *Op. cit*; 70 S.2(1), *op cit*, 79 S.4 and *Op. cit*; 80 S.3.

⁶⁹*Op. cit*; 56 S. 58(1).

⁷⁰*Op. cit*; 70 S. 20(1).

⁷¹*Op. cit*; 79 S.4(2)(c).

⁷²*See Op. cit*; 56 S.58(1) and *Op. cit*; 79 S.4(2)(c).

⁷³*Ibid.* S.4(1).

Ibom and Cross River States counterparts are attached to office of the Governor.⁷⁴ Again, the Boards Chairmen in Lagos and Akwa Ibom States are appointed by the State Governor from outside the public service while the Board Chairman in Cross River State is the Secretary to the State government.⁷⁵

Unarguably, Ministry of Environment has an array of professionals in environmental related fields, and could read and interpret environmental policies and laws. These professionals could seamlessly implement such environmental policies and laws more than non-professionals or other public or civil servants attached to the Governor's Office. It is trite and ethical that environmental professionals belong to professional bodies which pre-suppose them to uphold good ethical conduct in the discharge or performance of their duties. Also, the Commissioner for Environment usually attends the State Executive meetings and at such meetings he is expected to present and defend environmental matters touching on his or her Ministry. The Commissioner for Environment has inputs or briefs routinely supplied to him by environmental expert in and outside of the Ministry of Environment. Under normal circumstance, there could be a seamless working relationship between the waste governance structure and officials of the Ministry of Environment which could promote effective policy implementation on environment. Conversely, where the waste governance structure is supervised through the State Governor's Office, environmental matters may not receive expert and or deserving or rapid attention. However, having the solid waste governance structure to be supervised by Governor's Office can demonstrate government's commitment towards issues of the environment.

Again, membership of the Board established for the Authority in Lagos State is made of a Chairman who should be an expert in any science or public health associated discipline.⁷⁶ The Lagos EMPL 2017 also provides that a Civil Engineer in the Department of Civil Engineering of the Lagos State University, not below Grade Level 15(fifteen) should be a member of the Board created for the Authority in Lagos State.⁷⁷ This particular requirement is outdated because the current salary structure in the Universities in Nigeria is the Consolidated Universities Academic Salary Structure (CONUASS) and not Grade Level. This anomaly should be corrected to reflect the current salary structure in the Universities in Nigeria.

It is also noteworthy that only Lagos⁷⁸ and Akwa Ibom⁷⁹ States Laws provide for 3 (three) Chairmen of Local Government Council to be drawn from the existing 3(three) senatorial districts to become members of the Boards created for their Authority and Agency. For example, the Akwa Ibom State Environmental Protection and Waste Management Agency Law provides for a part time Chairman of the Board, 3(three) full time and 3 (three) part time members to be appointed by the State Governor. Such persons are to be appointed from among Medical Practitioners, Environmentalists and Sociologists.⁸⁰ Additionally, other members are to come from related Ministries as representatives on the Board of the Agency.⁸¹ In Cross River State, the Board is chaired by the Secretary to the State Government.⁸² The Board is to be constituted by 4 (four) other part time members, one of whom is to be a Scientist.⁸³

Indeed, Lagos, Akwa Ibom and Cross River States laws clearly recognize the correlation between ability of a public officer to carry out the functions and powers of a Board and the possession of requisite qualifications like in sciences or public health related field. This could justify why the solid waste management laws of these states make the possession of relevant qualifications a requirement for appointment into solid waste management Boards in their States. This is very commendable because environmentalists and other professionals in sciences have what it takes as critical stakeholders in environmental protection owe themselves and the public a responsibility to safeguard and protect the environment in and out of public offices. Beyond making academic qualification a yardstick for appointment into the Boards of any solid waste governance structure, States should review the existing solid waste management models like the integrated solid waste management, extended Producers Responsibility and polluter pays principle. This review will create the needed opportunity for the people, the communal wastes generators and both the waste collectors and recyclers to be mainstreamed into a modified integrated solid waste management and modified extended producer responsibility proposed in this work. The modified integrated solid waste management and modified extended producer responsibility is to incorporate social benefit scheme for communal solid waste generators and to provide sources for financial aid to waste collectors and recyclers. Also, the proposal is to make ultimately

⁷⁸*Ibid.* (d).

⁷⁹*Op. cit*; 70 s.2(i)(b), (vi).

⁸⁰*Ibid.* (1)(a).

⁸¹*Ibid.* (b)(i-v).

⁸²*Op Cit*; 80. S.4.

⁸³*Ibid.*

⁷⁴ *Op. cit*; 70 S.1(3), Cit, 79 ss.4 & 34.

⁷⁵*Op. cit*; 79 S.4.

⁷⁶*Op. cit*; 56. S.44(2)(b).

⁷⁷*Ibid.* (i).

wastes to become wealth to all the stakeholders in the solid wastes value chain.

Offences and Penalties Provisions in Solid Waste Management Laws of Lagos, Akwa Ibom and Cross River States

The EMPL 2017⁸⁴ establishes LAWMA or “the Authority”⁸⁵ and provides that any unauthorized or harmful disposal or treatment of waste is an offence and is prohibited. The law also adds that any person who contravenes the provision of this section of this law upon conviction is liable to N50,000 (Fifty Thousand Naira) only fine for an individual first offender. If the offender is an artificial person, such an offender will be liable to N500,000 (Five Hundred Thousand Naira) only fine as first offender.⁸⁶ Any subsequent commission of a similar offence, renders an individual liable to a criminal imprisonment for a term not exceeding 2 (two) years and with no option of fine. In the case of a corporate body a subsequent commission of a similar offence, such a corporate body and each of the Directors and Management Staff saddled with daily running of such a company will be liable to 2(two) years imprisonment while the entity will be liable to a fine of N1,000,000 (One Million Naira) only.⁸⁷

Also, this law prohibits disposal of healthcare, individual and biomedical wastes in a manner such that it litters or is likely to litter the environment. Therefore, anyone who violates the provision of this section of this law commits an offence. A breach of this law will render an individual liable on conviction to a financial fine of not less than N25,000 (Twenty Five Thousand Naira) only.⁸⁸ Under this law, it is an offence to obstruct the Ministry of Environment or Local Government Councils and or their officials or agencies or authorities in the discharge of their statutory functions.⁸⁹ The contravention of the provision of this section of this law makes the culprits liable to a fixed financial fine of N250,000 (Two Hundred and Fifty Thousand Naira) only or to a jail term of 3 (three) months or both.⁹⁰ Indeed, other offences and penalties provided under this law reveal that more premium is placed on financial penalty rather than criminal penalty.⁹¹

In the Akwa Ibom environmental Protection and Waste Management Agency Law,⁹² offences and penalties provisions also prohibit indiscriminate disposal and

handling of solid waste. This law imposes financial penalty of not less than N100,000 (One Hundred Thousand Naira) only against any person who violates the section of this law.⁹³ This law clearly shows a preference for financial penalty other than criminal imprisonment.

The Environmental Protection Agency Law⁹⁴ of Cross River State provides for offences and penalties relating to solid waste and the obstruction of an Authorized Officer of “the Agency” from carrying out his or her lawful functions. The law provides that an individual who commits offence against this provision of this law on conviction is liable to pay a fine not exceeding N10,000 (Ten Thousand Naira) only or to a term of imprisonment not more than 2 (two) years or both fine and imprisonment. However, the law says if the person is a corporate body it shall be liable to a fine not exceeding N100,000 (One Hundred Thousand Naira) only.⁹⁵ Other offences and penalties under this law do not directly relate to infractions against solid waste management.⁹⁶

A cursory look at the offences and penalties provisions of the solid waste management laws of Lagos, Akwa Ibom State and Cross River States shows that each of these State Governments is apparently serious about waging war against irresponsible environmental behaviours within its State. For instance, the financial penalty provisions in all the offences and penalties sections under these laws examined are high while criminal penalties are relatively low. For example, the Lagos EMPL 2017 provides increased financial fines against persons who engage in indiscriminate solid waste disposal, those who handle solid waste collection, transportation and or treatment contrary to approved standards and regulations.

Increased financial fine for violation against environmental law is generally meant to serve as deterrent and thereby promotes public health. Indeed, there may be many factors responsible for increased financial fines such as economic reason and international best practice. Economic consideration may drive states to raise their internally generated revenue (IGR) in order to grow their economies. For example, the IGRs in Lagos State, for 2015, 2016, 2017 and 2018 stand at N22,000,000,000 (Twenty Two Billion Naira) only, N24,000,000,000 (Twenty Four Billion Naira) only, N30,000,000,000 (Thirty Billion Naira) only and N34,000,000,000 (Thirty Four Billion

⁸⁴*Op. cit*; 56.

⁸⁵*Ibid.* & 42(i).

⁸⁶*Ibid.* S.s1 (1) & (2).

⁸⁷*Ibid.* (2).

⁸⁸*Ibid.* S.81(1) & (2).

⁸⁹*Ibid.* S.97.

⁹⁰*Ibid.*

⁹¹*Ibid.* See ss. 98 (9) & 109 (1) & (2).

⁹²*Op. cit*; 70.

⁹³*Ibid.* S.37. See also *Op. cit*; 70. ss. 25, 26, 27, 28, 29(2) & 31.

⁹⁴*Op. cit*; 79.

⁹⁵*Ibid.* S. 2.

⁹⁶*Ibid.* ss. 25, 26, 27 & 28.

Naira) only respectively.⁹⁷ These figures which cover 4(four) years since the inauguration of Governor Akinwunmi Ambode administration show steady and astronomical increase in the Lagos IGRs.

Undoubtedly, the sources of Lagos State's IGRs may include fines payable by violators against solid waste management law. It is observed that Lagos State Government requires money to actualize its "Clean Lagos Initiative" policy among others. This clean Lagos initiative policy requires the state government to expand not only its tax net as a source of IGR but also to raise revenue from other sources such as financial fines payable by the citizens and residents who violate environmental protection laws in the State. For example, solid waste law offenders in Akwa Ibom State are arrested and prosecuted before Akwa Ibom State Environmental and Sanitation Court.⁹⁸ The court has over the years handled numerous sanitation and solid waste violations and has determined and imposed both financial fines and criminal penalty on those convicted.⁹⁹ In Lagos State also, over 136 (One Hundred and Thirty Six) offenders or violators of sanitation and solid waste management laws were recently arrested. Many of the violators were made to undergo communal services across Lagos State metropolis, while 4 (four) others were prosecuted before different sanitation courts and Special Offences Mobile Court at Oshodi.¹⁰⁰ The sentences are low and or for community services. This underscores the importance of Lagos State's quest for prison reform which is in collaboration with Federal Government of Nigeria.¹⁰¹

Role of Local Government Councils in Solid Waste Governance Structure

Three Local Government Councils Chairmen drawn from the 3(three) existing senatorial districts recognized under the Lagos EMPL¹⁰² and Akwa Ibom Environmental Protection and Waste Management

Agency Law¹⁰³ make up members of the Boards which create the solid waste governance structures in these states. In Lagos State, the EMPL 2017 makes the Commissioner for Local Government Council and Community Affairs or his representative a member of the Board in the State.¹⁰⁴ A glean from the solid waste management laws of Lagos and Akwa Ibom States shows that the inclusion of 3(three) randomly selected local councils chairmen from the 3(three) senatorial districts in each of these states may be to ensure a collaboration in policy formulation and implementation relating to solid waste management.¹⁰⁵ The same collaboration is evident between solid waste governance structure and Local Government Councils in landfill and dumpsites planning and implementation in Cross River State.¹⁰⁶

Be that as it may, the question to be asked, is whether the inclusion of these 3(three) Local Government Councils Chairmen as members of Boards for the solid waste governance structures of Lagos and Akwa Ibom States has fulfilled or negative the constitutional provision that confers Local Councils with the function of solid waste management? Or would it not make much socio-economic difference if Local Government Councils were allowed by the States to carry out solid waste collection and disposal as envisaged under the constitution?

The Constitution of the Federal Republic of Nigeria¹⁰⁷ provides that it is one of the functions of Local Government Councils to collect and dispose solid waste (refuse) within their Council areas in Nigeria.¹⁰⁸ Notably, Local Government is the third tier of government in Nigeria. This presupposes that it is separate and independence from other tiers of government. This status empowers the Local councils to make bye-laws, formulate and enforce their policies in their areas of jurisdiction. Therefore, it becomes unconstitutional for any state government to make a law which purports to regulate solid waste and to include representatives of the local government councils on the Board of state solid waste governance structure. By all intents and purposes, this act tantamount to circumvention of the extant provision of the constitution which confers solid waste collection and disposal on local government council.

Notwithstanding the foregoing, Local Government Councils in Nigeria have been bedeviled with a number

⁹⁷Lagos Monthly Internally Revenue – Now N34 billion – Government. <https://www.lagos.gov.ng> Accessed on 11th August, 2018.

⁹⁸*Op. cit*; 70, S.42.

⁹⁹The State v Kingdom Christian 13 ESCU/802C/17 (Akwa Ibom State) for non-participation in environmental Sanitation, The State v Promised Clement – 16ESCU/831C/17 for non-participation in Sanitation exercise and the State v Godslove Jimmy Edet 23ESCU/374C/17 for obstructing of Health Officers.

¹⁰⁰K. Adegboye, Lagos Laws warns Against Indiscriminate Dumping of Refuse – Vanguard News. <https://www.vanguardngr.com>. 2018/05. Accessed on 11th August, 2018.

¹⁰¹T. Ogunbiyi, Lagos and the Quest for Prison Reform – Opinion-The... <https://m.guardianng.com/opinion/lagos-9>. Accessed on 11th August, 2018.

¹⁰²*Op. cit*; 56S. 44(1) (d).

¹⁰³*Op. cit*; 70 S.2(1) (b)(vi).

¹⁰⁴*Op. cit*; 56 S. 44(1)(g).

¹⁰⁵*Ibid*. See ss. 48(1)(a) & (e) & 56(1). See also *op cit*., 70. S. 6(e).

¹⁰⁶*Op. cit*; 79 S. 3(n).

¹⁰⁷ 1999 – now Cap C.23 LFN 2004.

¹⁰⁸*Ibid*. See 4th Schedule to the Constitution item 1, paragraph (h).

of statutory and constitutional factors like poor and irregular disbursement of federal allocations meant for Local Government Councils within each State from the “State Joint Local Government Account”¹⁰⁹ and irregular conduct of elections into local government councils.¹¹⁰ Nevertheless, of these factors, revenue allocation and elections into local councils have undeniably and evidently hampered independence and financial autonomy of the local authorities. For example, the legislative arm of the local councils which is made up of elected Councilors is expected to make bye-law though not outside the functions conferred on the local government councils.¹¹¹ Such functions include establishment and maintenance of slaughter houses, markets, motor parks public conveniences and collection and disposal of refuse.¹¹² Irregular disbursement of revenue meant for the local government councils from the state joint local government account affects negatively the executive and legislative arms in the local governments. As a result, the local authorities regrettably, do not have the financial muscles to execute their developmental projects.

Indeed, where any State Government makes a law to regulate solid waste collection and disposal and also purports to make such law binding on the Local Councils within its state, such act *ultra vires* the constitutional powers conferred on Local Government Councils.¹¹³ In *AG of Abia State and 2 Ors v. AG of Fed & 33 Ors*¹¹⁴, the Supreme Court of Nigeria held that the National Assembly (NASS) lacks the constitutional competence to enact any Act which purports to confer power on it relating to “disbursement” of funds standing to the credit of Local Government Councils in the “State Joint Local Government Account”. The court, however, ruled that NASS could lawfully and validly enact an Act on the “division” of public revenues between States and Local Government Councils and among Local Government Councils in the States.¹¹⁵ To this end, States solid waste management law to the extent of their inconsistency with the extant provision of the Constitution is null and void.¹¹⁶

The answer to the second question as to whether local councils would fare better if they were allowed by their

State governments to carry out their constitution functions of solid waste management would make socio-economic difference is to be found in the constitution and constitutionalism. The Constitution of Nigeria in Section 1(1) & (3) declares itself supreme over and above all persons, authorities and any other law or Act which is inconsistent with any of its provisions to the extent of such inconsistency. Therefore, the state governments ‘Lawson solid waste management are inconsistent to the Constitution. Also, such action of the States in making laws to regulate solid waste collection and disposal is jurisprudentially a revolution against the Constitution. Assuming without conceding the perception that Local Government Councils are incapable to discharge such constitutional functions conferred on them manage solid waste as adduced by the States. Such proposition or reason cannot lawfully warrant the state governments to usurp such function. It is pertinent to reiterate that since federal and state governments cogitate that local councils are incapable of discharging solid waste function conferred on them under the constitution, there is therefore a need for the Nigerian state to adopt a tripartite solid waste management like in Malaysia.¹¹⁷ In the Malaysia arrangement the three tiers of government handle controlled solid wastes based on Malaysian national solid waste policy.

Flowing from the aforementioned, state governments’ laws to regulate controlled solid waste and also set up courts to try offenders against sanitation and solid waste laws are anti-thesis. No doubt, the Constitution of the Federal Republic of Nigeria, 1999 does not have sanitation” as an item in the Exclusive and Concurrent Legislative List. It is trite, therefore, that the competence to legislate on “sanitation” is generally vested in the Houses of Assembly of each state.

In *AG of Lagos State v The AG of Fed & Ors*¹¹⁸ and *AG of Fed v AG of Lagos State*¹¹⁹ the Supreme Court of Nigeria held that Federal Government of Nigeria and indeed NASS lack legislative powers to enact any law that confers on them power to legislate on matters which are deemed to be on the residual list– which the legislature of the State Houses of Assembly is the only competent authority so to do.

Curiously, the 1979 and 1999 Constitutions vest controlled solid waste function in the local government councils. The drafters of these constitutions intended that solid waste control should be within the purview of the local councils because they are grassroots

¹⁰⁹*Ibid.* S. 162 (6) – The Account holds federal allocation meant for Local councils in each State.

¹¹⁰*Ibid.* S.7(1).

¹¹¹*Ibid.* See 4th Schedule item 2, paragraph (d).

¹¹²*Ibid.* See 4th schedule item 1, paragraph (e).

¹¹³*Ibid.* 4th schedule item 1, paragraph (h).

¹¹⁴(2005) Suits Nos. SC. 99/2005, 121/2005 and 216/2005 (Consolidated).

¹¹⁵*Ibid.* See also *Op. cit*; 134 2nd Schedule, part II, item 1, paragraph (a) (iii) & (iv).

¹¹⁶*Ibid.* See also *Op. cit*; 134 s. 1(3).

¹¹⁷See Solid Waste Management and Public Cleaning Act of 29 August 2007 (Act 672) of Malaysia. See Preamble and ss. 3 & 4.

¹¹⁸*Op. cit*; 70. s.42.

¹¹⁹(2003) LPELR – SC. 353/2001.

government where solid waste control culture emanates. Again, a cursory look at the word “sanitation”¹²⁰ shows that sanitation is a system to keep places clean. Also, the term “waste” hinges on anything which is discarded or unwanted substances or materials which require to be disposed of.¹²¹ Indeed, the 2 (two) words unarguably, belong to the same class and root. These words, in the circumstance could be read or interpreted conjunctively. This is against the backdrop of the rule of *ejusdem generis*, which requires that all like items should go together for purposes of justice dispensation to the parties confirmed. To this end, sanitation, solid waste collection and disposal, establishment and maintenance of markets, motor parks, sewage and conveniences among others, fall within the functions of local councils.¹²² Furthermore, facilities like markets and motor parks are major sources of communal solid waste generation and where these facilities are not well managed and maintained under coordinated governance structure based on of rule of law regular sanitation exercises and public health regulation could be endangered.

Indeed, the special courts established by State Governments by extension lack jurisdiction to try offenders of sanitation and controlled solid waste laws flowing from the aforementioned propositions. In *Elliott et al. v. The Lessee of Peirsolet et al.*,¹²³ *Orhena Adugu Gbilere & Anor. v. Mrs. Ngunan Addingi & Anor*¹²⁴ and *Benjamin Leonard Mac-foy v. United Africa Company Ltd.*¹²⁵ the courts in these cases made it clear that one cannot put something on nothing and expect it to stand, it will fall. These courts also held that lack of jurisdiction is fatal to any decision reached by or to be taken by any court. Again, in a related and reported case of *Faith-Okafor v. AG Lagos State*, the Court of Appeal held that Lagos State Government lacks jurisdiction to restrict movement of citizens during sanitation exercise.

In most other climes, solid waste governance is shared between 3 (three) tiers of government.¹²⁶ However, a different solid waste management model is practiced in Kenya where local government council is statutory

empowered to handle controlled solid waste.¹²⁷ In Malaysia, the National Government makes a national solid waste policy applicable to all the three tiers of government in Malaysia.¹²⁸ Therefore, the Nigerian government should borrow a lift from Malaysia in terms of making a National solid waste policy and review the solid waste governance provision currently in the Constitution. Ostensibly, this will check the current abuse of such function by the states and thereby vests the function in the three tiers of government in Nigeria.

Solid Waste Management and Methods of Disposal in Lagos, Akwa Ibom and Cross River States

Solid waste in Lagos, Akwa Ibom and Rivers States is handled through public private partnership (PPP). Paradoxically, the rate of collection and disposal of solid wastes in these states is low as opposed to the level of solid waste generation. The solid waste collected is disposed through various methods such as landfill, open dumping in authorized and unauthorized dumpsites, burning, incineration, conversion of waste to energy and recycling.¹²⁹

In Lagos State both landfill and recycling methods of solid waste disposal are adopted under PPP arrangement. Of note, recyclers are assisted by the Lagos state government to secure local and foreign funding to enable the recyclers to turn wastes to raw materials and or finished products and thereby create jobs in the process for the teeming youths of Lagos State in particular. This underscores the importance of the introduction of the Clean Lagos Initiative.¹³⁰

In Akwa Ibom and Cross River States, PPP model is equally adopted in solid waste collection and disposal. The methods of disposal of solid waste in these states are majorly landfill, open dumping in authorized and unauthorized places and burning. Recycling is still

¹²⁰A. S. Hornby, Oxford Advanced Learner's Dictionary of Current English 6th ed. (Oxford University Press, 2001) 1042.

¹²¹*Op. Cit*; 56. s. 41.

¹²²*Op. Cit*; 134.4th Schedule. See item 1 (a-g). See also *Da Kabirikim (District Head) & Anor v. Hon Justice Luke Emefor & Ors* (2009) LPELR – SC.242/2002.

¹²³ 7 ED 164 (1828) 1Pet. 328, 7L Ed. 164.

¹²⁴ (2014) – LER – Sc. 193/2012.

¹²⁵ (1961).

¹²⁶See Restriction of Movement on Environmental Sanitation Days Declared illegal. www.naijalegalbnkng.com/.../240. Accessed on 26th August, 2018. See also *op. cit*; 144.

¹²⁷Environmental management and Coordination Act (EMCA) No. 8 of 1999. See also Constitution of Kenya 2010.

¹²⁸*Op. cit*; 144.

¹²⁹Agboje, I. A.; Adeoti, A. and Irhivben, B. O. Performance Assessment of solid waste management following Private Partnership Cooperations in Lagos State, Nigeria *Journal of Waste Management*, Vol. 2014. <https://www.hindawi.com/jwm>. See also Ibiyemi, A. O. Economics of Solid Waste Management in Lagos State, Nigeria. Vol. 1 Yaba. *Journal of Env. Research*, 2008, AkwaIbom State Community Based Urban Development Project (World Bank Assisted) E522 Vol. 1. NG 2015 2001. Documents.worldbank.org>text and Agbaji, D. D. and Ejemot-Nwadiolo, R. I. Solid Waste Management in Calabar Metropolis: Case study of Calabar Urban Development Authority (2008-2017). *Greener Journal of Medical Sciences*, 2019, Vol. 9(1).

¹³⁰*Ibid*.

alien or at low ebb, which is mainly undertaken by few private persons.

In the three states under consideration, the authorized methods of solid waste disposal are tied to funding from budgetary provisions. In this case, where the expected budgetary income is low, then the available fund with which to undertake solid waste collection and disposal is normally scaled down with attendant impairment of the capacity of the solid waste governance structures to discharge their functions. The end result is usually humongous uncollected solid waste littered around public solid waste receptacles in the cities and towns. Equally, there is a result that where the state solid waste governance authorities fail to pay the private solid waste collectors as and when due, the private sector participants (PSP) usually act reactionary and ultimately abandon and or abdicate their obligations of regular solid waste collection and disposal.

There is a deep seated negative attitude to dump solid waste in gutters, drains and road sides by the residents in the states in question due to the fact that solid waste is generally viewed as a public good and hence it is the duty of local and state governments to evacuate solid waste, wherever such is dumped.¹³¹ However, the paradox around uncollected solid waste generally is that everyone understands its public health impact but no one sees or cares about its legal implications on the residents.

CONCLUSION

Indiscriminate solid wastes disposal has become an intractable sub national, national, regional and global challenge. Indeed, indiscriminate solid wastes disposal and its challenges have overwhelmed sub national, national, regional and global community. This has given credence to the conclusion that indiscriminate solid wastes disposal and its attendant environmental pollution supersede climate change and its attendant damage and/or harm to human and natural environments. Therefore, national and global community should come together with a view to tackling solid waste challenges through improved policies and laws based on effective and efficient enforcement mechanism of such laws and policies for the betterment of citizenry. Also, this paradigm shift should be weighed in alongside the efforts towards curbing causes of climate change in the world. However, this work has been limited by funding and limited literature in the area of research. It is, therefore, hoped that this work is bound to provoke more and expansive research in future.

4. RECOMMENDATIONS

- ❖ The 1999 Constitution (as amended) should be reviewed to provide for a tripartite solid wastes management system in Nigeria.
- ❖ Market for recycled solid wastes should be formally established.
- ❖ Funding windows within and outside Nigeria should be promoted and made accessible to solid wastes recyclers.
- ❖ Solid wastes governance structure and the local governance structure made up of family heads, village heads, clan heads and paramount rulers be established.
- ❖ Solid wastes should be partially commercialized with inbuilt economic benefit to solid wastes' generators.
- ❖ Solid wastes levy should be imposed on distributors of organic and inorganic foodstuffs in the states across Nigeria

CONFLICT OF INTEREST

I declare that there is no conflict of interest with this manuscript either financial or non-financial

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