

CHAPTER 165

HARMFUL WASTE (SPECIAL CRIMINAL PROVISIONS, ETC.) ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 165 HARMFUL WASTE (SPECIAL CRIMINAL PROVISIONS, ETC.) ACT

1988 No. 42.

An Act to prohibit the carrying, depositing and dumping of harmful waste on any land, territorial waters and matters relating thereto.

Commencement.
[25th November, 1988]

Crimes in respect of Harmful Wastes

Prohibition of activities relating to harmful waste. etc.

Cap. 88

1. (1) Notwithstanding the provisions of the Customs, Excise Tariff, Etc. (Consolidation) Act, or any other enactment or law all activities relating to the purchase, sale, importation, transit, transportation, deposit, storage of harmful wastes are hereby prohibited and declared unlawful.

(2) As from the commencement of this Act, any person who, without lawful authority—

- (a) carries, deposits, dumps or causes to be carried, deposited or dumped, or is in possession for the purpose of carrying, depositing or dumping, any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways; or
- (b) transports or causes to be transported or is in possession for the purpose of transporting any harmful waste; or
- (c) imports or causes to be imported or negotiates for the purpose of importing any harmful waste; or
- (d) sells, offers for sale, buys or otherwise deals in any harmful waste,

shall be guilty of a crime under this Act.

(3) A person shall be deemed to deposit or dump harmful waste under this Act if he deposits or dumps the harmful waste, whether solid, semi-solid or liquid, in such circumstances, or for such period that he may be deemed—

- (a) to have abandoned it where it is deposited or dumped; or
- (b) to have brought it to the place where it is so deposited or dumped for the purpose of its being disposed of or abandoned whether by him or any other person.

Parties to the Crime.

2. (1) A person shall be deemed to commit a crime under this Act if—

- (a) he actually does the act or makes the omission which constitutes the crime; or -
- (b) he does or omits to do any act for the purpose of enabling or aiding another person to commit the crime; or
- (c) he aids another person in committing the crime; or
- (d) he counsels or procures any other person to commit the crime, in which case he may himself be charged with committing the crime or with counselling or procuring the commission of the crime.

(2) Any person convicted of counselling or procuring the commission of a crime under this Act shall be liable to the same punishment as is prescribed under this Act for the commission of the crime.

(3) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted a crime on his part under this Act, shall be guilty of a crime of the same kind and liable to the same punishment as if he had himself done the act or made the omission, and he may be charged with committing the act or making the omission

Crimes committed in prosecution of common purpose

3. When two or more persons form a common intention Crimes to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose a crime under this Act is committed, each of those persons shall be deemed to have committed the crime

Mode of execution of crime

4. (1) When a person counsels another to commit a crime under this Act, and a crime is actually committed after such counsel by the person to whom the counsel was given, it is immaterial that the crime—

- (a) actually committed is the same as the one counselled or a different one; or
- (b) is committed in the way counselled or in a different way:

Provided that, in either case, the facts constituting the crime actually committed are a probable consequence of carrying out the counsel.

(2) A person who gives any counsel as specified in subsection (1) of this section shall be deemed to have counselled the other person to commit the crime actually committed by him.

Accessories after the fact.

5. Any person who assists another who has, to his knowledge, committed a crime under this Act, in order to enable him to escape punishment shall be deemed to be an accessory after the fact to the crime.

Penalties etc.

6. Any person found guilty of a crime under sections 1 to 5 of this Act shall on conviction be sentenced to imprisonment for life, and in addition—

- (a) any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste; and
- (b) any land on which the harmful waste was deposited or dumped,

shall be forfeited to and vest in the Federal Military Government without any further assurance other than this Act.

Crimes by bodies corporate.

7. Where a crime under this Act has been committed by a body corporate and it is proved that it was committed with the consent or connivance of or is attributable to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) any other person purporting to act in the capacity of a director, manager, secretary or other similar officer,

he, as well as the body corporate, shall be guilty of the crime and shall be liable to be proceeded against and punished accordingly.

Attempt.

8. (1) Any person who attempts to commit any of the crimes under this Act shall be guilty of a crime and shall on conviction be sentenced to imprisonment for life.

(2) Where a person is charged with a crime under this Act and the evidence establishes an attempt to commit the crime he may be convicted of having attempted to commit that crime, although the attempt is not separately charged and such person shall be punished as provided under subsection (1) of this section.

(3) When a person is charged with an attempt to commit a crime under this Act but the evidence establishes the commission of the full crime, the offender shall not be entitled

Miscellaneous

Exclusion of immunity
Cap. 99

9. The immunity from prosecution conferred on certain persons by or under the Diplomatic Immunities and Privileges Act shall not extend to any crime committed under this Act by any of those persons.

Power to search, seize and arrest.

10. 1. For the purposes of this Act, any police officer may, without warrant-

- (a) enter and search any land, building or carrier, including aircraft, vehicle, container or any other thing whatsoever which he has reason to believe is related to the commission of a crime under this Act;
- (b) perform tests and take samples of any substances relating to the commission of the crime which are found on the land, building or carrier, including aircraft, vehicle, container or any other thing whatsoever searched pursuant to paragraph (a) of this subsection;
- (c) arrest any person who he has reason to believe has committed a crime under this Act;
- (d) seize any item or substance which he has reason to believe has been used in the commission of a crime under this Act.

(2) A written receipt shall be given for any item, substance or thing seized under subsection (1) of this section.

Sealing of dumping site, etc.

11 (1) Where the Minister charged with responsibility for works and housing has reasonable ground to believe that any area or site has been, is being or will or might be used directly or indirectly for the purpose of depositing or dumping any harmful waste, he may seal up the area or site in question.

(2) Where the Minister acts under subsection (1) of this section, any person aggrieved may appeal to the Minister within ten days and the Minister after considering the appeal may confirm or cancel any action taken pursuant to subsection (1) of this section.

(3) The sealing up of any- area or site shall last for three months in the first instance and may be extended by the Minister for another period of three months at a time, so however that the total period of the sealing shall not exceed twelve months.

(4) Notwithstanding subsection (2) of this section, upon the receipt of any report in respect of any area or site sealed up, the Minister may direct that any substance found therein which in his opinion is of a harmful nature shall be destroyed or disposed of at such time and in such manner as the Minister thinks fit in the circumstances.

(5) The Minister may take other necessary measures to safeguard lives or property found or within the area or site sealed up pursuant to subsection (1) of this section.

(6) Any person who knowingly and without reasonable excuse breaks a seal affixed under subsection (1) of this section or obstructs or hinders any operation or measure being taken under subsection (5) of this section shall be guilty of a crime and on conviction shall be liable to a fine of not less than N50,000 or to imprisonment for not less than five years.

Civil liability

12 (1) Where any damage has been caused by any harmful waste which has been deposited or dumped on any land or territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways, any person who deposited, dumped or imported the harmful waste or caused the harmful waste to be so deposited, dumped or imported shall be liable for the damage except where the damage—

- (a) was due wholly to the-fault of the person who suffered it; or
- (b) was suffered by a person who voluntarily accepted the risk thereof.

(2) In this section, "damage" includes the death of, or injury to any person (including any diseases and any impairment of physical or mental condition).

Jurisdiction.

13 The Federal High Court shall have exclusive Jurisdiction to try the crimes specified in this Act.

Offences under more than one law.

Cap.192

14. It is hereby declared for the avoidance of doubt that section 25 of the Interpretation Act shall not apply in respect of the crimes specified in this Act.

Interpretation

Cap. 116

15. In this Act, except the context otherwise requires—

"Exclusive Economic Zone" has the meaning assigned thereto in the Exclusive Economic Zone Act;

"harmful waste" means any injurious, poisonous, toxic or noxious substance and, in particular, includes nuclear waste emitting any radioactive substance if the waste is in such quantity, whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, fatal injury or incurable Impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste;

"Minister" means the Minister charged with responsibility for works and housing;

Cap. 428

"territorial waters" has the meaning assigned thereto by the Territorial Waters Act.

Short title.

16. This Act may be cited as the Harmful Waste (Special Criminal Provisions, etc.) Act.