

Damyoose U:H  
1996  
9-4-96

ISSN 0189 0085

# RESEARCH for DEVELOPMENT



*(The Journal of the Nigerian Institute of Social and Economic Research)*

Vol. 11 Nos. 1 & 2, Vol. 12 Nos. 1 & 2, January 1996.

Page

## Editorial Comments

### Research for Development Volume 11 Nos. 1 & 2 1996

- |   |  |    |
|---|--|----|
| A.A. Adejunmobi                         | Professionalism in the Health Sector: The Case of Nurses and Physicians  | 01 |
| D. O. Ajakaiye                          | Public Enterprise Reforms in West Africa: Issues and Research Agenda   | 13 |
| Olusegun Areola and Festus O. Akintola  | A Review of Resettlement and Compensation Issues Associated with Large Scale Water Development Schemes, with Particular Reference to the Dandin Kowa Community Dam/Irrigation Project, Nigeria | 25 |
| Louis N. Chete and Adeola F. Adenikinju | Productivity Growth in Nigerian Manufacturing and its Correlation with Trade Policy Regimes/Indices  | 43 |

### Research for Development Volume 12 Nos. 1 & 2 1996

- |               |  |    |
|---------------|--|----|
| S. S. Tombofa | Transcendental Logarithmic Production Function Applied to Nigeria's Electricity Industry | 60 |
|---------------|--|----|

Oluyemisi Bamgbose (Mrs)	-	The Legal Consequences of Bush Burning and Forest Fires in Oyo, Osun, Ogun and Ondo states: The Criminal and Civil Perspectives	79
M. O. Raimi	-	Basic Mortality Patterns in Nigeria: A Case Study of Iwo Local Government Area of Oyo State of Nigeria	97
O. O. Oyesiku	-	Regional Analysis of Transport Infrastructure and Socio-Economic Factors of Nigerian Development	112
Notes to Contributors	-		131
Subscription Form	-		132

UNIVERSITY OF IBADAN LIBRARY

## EDITORIAL BOARD

'Kunle Adeniji	-	Editor-in-Chief
Oyebanji Oyeyinka	-	Business Manager
'Kole Oni	-	Review Editor
Ade Olomola	-	Review Editor
Festus Egwaikhide	-	Review Editor
Taiye Okoosi	-	Review Editor

UNIVERSITY OF IBADAN LIBRARY

By

Oluyemisi Bamgbose( MRS)

Mrs oluyemisi A. Bamgbose is a Lecturer in Criminal Law and Criminology,  
Department of Private and Business Law, Faculty of Law, University of Ibadan.

### ***A bstract***

*This paper examines existing Laws, By-Laws and Regulations guiding bush burning and forest fires in Oyo, Osun, Ogun and Ondo States of Nigeria and highlights the legal consequences from the criminal and civil perspectives of breaching the law. Every year, properties worth millions of Naira are destroyed in these States as a result of fire incident caused by farmers, hunters and nomads who use fire for land clearing, killing of animals or growth of foliage for animals respectively. Bush burning has been particularly recognised as a precarious agent of accidental fire outbreaks. Though bush burning is an acceptable customary practice, effort should be made to introduce new improved and more productive methods of farm clearing and hunting methods to people in these States.*

### **Introduction**

Bush Burning and setting forests on fire for the purpose of farm clearing and hunting is a way of life for some Nigerians, as such it is one of the tools within the traditional food production system. Though it yields benefits for arable crop and livestock farmers on one hand, on the other hand it inflicts damages on communities and land, that is, in the absence of adequate care. In Oyo, Osun, Ondo and Ogun states, there are laws enacted to regulate bush burning and forest fires but the effectiveness of these laws is another matter to be considered. With the rampant of cases of damages caused by bush burning and forest fires, it is evident that these laws are either ineffective or the citizens of these states are ignorant of the laws. It is a trite law that ignorance of the law is no excuse and notwithstanding the ineffectiveness of a law, it remains binding and effective until it is repealed and anyone caught contravening any of the provisions is liable to the penalty prescribed under the law. In this paper, the

laws relating to bush burning and forest fires are outlined. The dangers of this form of practices are highlighted. The paper suggests ways of minimising the ugly consequences of bush burning and forest fires. In conclusion, the paper provides some policy recommendations.

### **The Legal Framework**

Various laws form the legal framework for controlling bush burning and forest fires in Oyo, Osun, Ondo and Ogun States. However, the content of the provisions of the laws in the three states are similar. The differences are in the chapters wherein the laws are contained in the different states. For clarity, the laws of Oyo State would be referred to, and the corresponding provisions in the laws of Ogun and Ondo states hereinafter called Ogun 1978, and Ondo 1978 respectively would be stated. The various laws forming the legal framework include the following:

#### **(i) The Burning of Bush Adoptive By-Law 1978:-**

This By-Law is under the local government Law, Cap 66, laws of Oyo State 1978, Volume iv (Ogun 1978 Cap 63 Vol iv; Ondo 1978 Cap 63 Vol iv); it is the most sketchy of all the laws that relate to this practice. It was designed to tackle and control bush burning in these states and to serve as a guideline for the different local government councils that may wish to adopt it, hence it is only applicable to those council that adopt it. The word 'Bush' is defined in the By-Law as including grass or any collection of weeds or dead leaves, and "Fire" is said to include light or any ignition of bush by any object howsoever caused. It is against Section 3 of the By-Laws in all the three States, for any person to set fire to or burn any bush or authorize or permit the setting to, or the burning of any bush or any land within the area of jurisdiction of the council between a prescribed period. The prescribed period is that commencing from the 30th day of October in any year and ending on the first of May of the following year, both days inclusive. However, by virtue of Section 5 of the By-Law (Oyo, Ogun, Ondo states) such a period stated above can be varied by the authorities concerned. Though it may appear from the provisions of Section 3 above, that bush burning is totally prohibited in these states, this is not the case. A provision to this Section 3, states that bush burning can be carried out legally if certain guidelines are followed. The guideline is that, a person may at any time clear any piece of land for farming by burning the bush, after cutting a sufficiently wide area around such piece of land to prevent fire from spreading beyond the area required for farming. This provides a cheap way of bush clearing and farmers can derive a lot of benefit from it, if it is strictly adhered to.

#### **(ii) The Forestry Law 1978 - and Forestry Regulation 1978**

The Forestry Law Cap 40, Vol iii, Laws of Oyo State 1976 (Ogun 1978 Cap 39 Vol

iii; Ondo 1978 Cap 39 Vol iii) hereinafter referred to as "The Laws" has been heavily criticised and steps are being taken to review its provisions. There is no doubt that forest fires if not controlled can have devastating effects. It is against the provision of section 42 (C) of the law in all the states, for anybody in a forest reserve except with the authority of the prescribed officer to set fire to any grass or herbage or kindle a fire without taking due precaution to prevent its spreading. A forest reserve is however defined in section 2 of the laws, which also states such things that may be destroyed by fire in a forest. These include *forest growth*, which are things growing on the land other than agricultural crops; *forest property* which include machineries and cattle and *forest produce* which include trees, surface soil and minerals. The three laws in section 40 (24) makes provision for the Forestry Regulations Section 1 (2) of the regulations in these states, exempts some lands and classes of persons from its operation. It prohibits the destruction of any protected tree or protected minor forest produce or tree or plant from which any protected minor produce is obtainable. The terms "protected tree" and "protected minor forest" are defined in section 4 of these regulations. Furthermore, section 6 of the regulations prohibits the burning or destruction of any tree which has been planted on the side of any road or path except the consent of the forest officer or anyone acting on his behalf is obtained. The importance and uses of trees especially for beautification and as shades cannot be over-emphasised.

Hunting practice is also controlled by the forestry regulation under discussion. The method of bush burning and forest fire for hunting purposes is an old and traditional way. Hunting is prohibited in any forest reserve except with the authority of the prescribed officer. Moreover, damage or destruction of any kind in a forest, which may be caused by setting of fire during hunting is prohibited by the Forestry Laws in section 42 (j) and (k).

### **(iii) Wild Animal Preservation Law 1979**

The Wild Animal Preservation Law (Cap 132) Laws of Oyo State 1978 (Ogun, 1978, Cap 133; Ondo 1978, Cap 129) makes provisions for the preservation of animals and birds in designated areas. Hunting, by virtue of section 3 of these Laws includes attempt to kill or to capture or cause intentional injury or attempt to cause injury to an animal or bird. By sections 36 and 37 (Oyo, Ogun, Ondo states) hunting is not totally prohibited if carried out in accordance with the provision of this law. By virtue of sections 4, 5 and 6 of these laws, certain categories of animals can be hunted by a person provided such a person has a license to hunt such an animal or bird. Though the laws in section 42 provides that regulations may be made prohibiting the use of fire for the purpose of hunting, killing or capturing animals or birds, unfortunately no such provision was expressly made under one of the regulations made in furtherance of that law.

**The Dangers:-** Often times, it is discovered that economic and cash crops, or even buildings have been gutted down by fire. Investigation at times shows that an unknown or faceless person has intentionally set fire to a bush of forest while hunting for animals or clearing land for farming. Every year, properties worth millions of naira are destroyed as a result of fire incident in various parts of Oyo, Ogun, Osun and Ondo states. Bush burning has been particularly recognised as a precarious agent of deforestation and accidental fire outbreaks.

The burning often results from farmers who use it for land clearing, herdsmen who use it to regenerate grass, hunters to kill wildlife and some villagers to clear their surroundings. In the above mentioned states, bush burning has claimed Cocoa and other plantations. For example between 1980 and 1981, over nine hundred hectares (900 hectares) of Gmelina pulpwood plantation in Oluwa Forest Reserve, Ondo State established from loans from the World Bank was destroyed by fire caused by bush burning. On a national scale, it is recorded that well over three hundred and fifty thousand hectares (350,000 Hectares) forest and savanna woodland are destroyed each year through many factors including bush burning (NEST 1991 p.p 164).

In addition, natural habitations of animals and properties are destroyed as a result of unscrupulous and careless handling of fire by farmers and hunters. It should also be mentioned that in many parts of these states especially Oyo State, nomads have the habit of burning bush intentionally and this has led to the destruction of many properties. The purpose of this act by the nomads, usually carried out following the onset of the dry season, is to enable early flush of grass for their animals.

Both adults and children are guilty of this act and the incident occurs mostly during the dry season that is December to May every year. Apart from the legal consequences that will be discussed in this paper, the other implications of bush burning and forest fires include: (i) environmental implications, since air pollution by smoke pose hazards to the people and lands are degraded: (ii) economical implication, for example where telephone and electrical lines are destroyed. The destruction of these lines causes disruption in communication systems and power supply. Moreover, the replanting of destroyed pulpwood plantation brings about an increase in the overall cost of pulp productions reflected in the prices of the final product.

It is not too much to state that bush burning and forest fires if not controlled in these states may cause large scale destruction to wild life, forest and agricultural products and may have disastrous effects on soil texture and fertility (Tsiche, 1980).

### **Legal Consequences**

There are legal consequences arising from breaching the provisions of the various laws analysed above. These consequences can be discussed from two perspectives. These are from the Criminal and Civil perspectives. The basic differences between Criminal and Civil cases are that, generally in Criminal cases, most of the proceedings are instituted by the State (although an individual in certain cases may institute proceedings) against an offender called the accused. The proceedings may result in punishment if the accused is found guilty. On the other hand, in Civil cases, proceedings are brought by persons known as plaintiffs against the defendant and the result is compensatory in nature where the Civil case is proved.

### **Criminal Perspective**

There are penalties stipulated in the various laws analysed above, for any infringement of the provisions of the laws. The penalties include payment of fines, sentence to a term of imprisonment, or forfeiture of items. Under the bush burning By-Laws, it is provided in Section 4 (i) that the penalty for setting fire to a bush during the prohibited period if a person is found guilty is a payment of a fine, which must not exceed ten naira for the first offence and a payment of a fine which must not exceed fifty naira or a sentence to a term of imprisonment which must not exceed two months for a subsequent offence. These penalties both for a first offender and a second offence are ridiculously lenient considering the loss that might have been suffered. Furthermore, Section 4 (2) of the By-Laws states that an occupier of land in the absence of proof to the contrary, the onus which lies on him, is deemed to have authorized such contravention. This provision may appear unfair to an occupier of land, but it ensures that people keep watch over their land.

It should be noted that any Local Government Council that adopts the provisions of the By-Laws as discussed above, is not restricted to the penalties stated above. By Section 168 (2) of the Local Government Law Cap 66 of Oyo State, (Section 170 (2), Cap 63 Ogun State; Section 170 (2) Cap 63 Ondo State) a Local Government that adopts the By-Law, is empowered to impose a penalty not exceeding N100.00 or imprisonment to a term not exceeding six months or both as the Local Government may deem fit. It is submitted that though the fine is increased and also the term of imprisonment, both are still absurd to effectively curb and prevent cases of bush burning and forest fires (Agunbiade, 1988). Furthermore, another penalty not



exceeding 5.00 for each day on which a breach of By-Laws is committed after written notice has been served on the offender may be imposed. This provision, it must be stated has long outlived the purpose it was meant to achieve and should be urgently reviewed in line with the current economic position of the country. In the interpretation of the provisions of the By-Laws, reference must be made to the Interpretation Laws of the four States. (Cap 52 Oyo State 1978; Cap 50 Ogun 1978; Cap 50 Ondo 1978).

With respect to the forestry laws, any person who contravenes the provisions of section 42 (C), that is setting fire to any grass of herbage or kindles a fire without taking due precaution to prevent its spreading is liable on summary conviction to a fine of two hundred Naira or to a term of imprisonment for twelve months or to both. Considering the dangers of bush burning and forest fires discussed above, and the millions of Naira that is lost in such incidents, the above penalty makes a mockery of the efforts of the different governments and various agencies to curb this human habit. However, any person or community that has a recognised right in the forest by Section 42 of the laws, is not prohibited from exercising that right and the penalty in Section 42 (C) will not prohibit such a recognised right. Moreover, any person who destroys or injures any protected tree or protected minor forest produce or any tree from which any protected minor forest produce as defined in Section 4 of the *Forest Regulations* is obtainable, or burn any tree planted on the side of any road or path without approval from the appropriate authority is liable to a fine of N100.00 or to a term of imprisonment for six months or both by virtue of sections 4 and 6 of the *Forestry Regulations*. In addition, any person who without authority in writing from the appropriate officer sets fire or allows fire to spread to any forest growth unless such forest growth is being or has been felled for farm purposes and otherwise than during the period of year allowed for this, is liable on summary conviction to a fine of One hundred naira or imprisonment for six months. It must be pointed out that so much effort is being put in by the governments of Oyo, Ogun and Ondo states to beautify different areas of the states with trees. It is known that trees take years to grow and mature. Therefore, the different penalties imposed for the destruction of these trees by fire as seen in the provisions above are ludicrous.

Section 45 of the *Forestry Laws* provides that persons who contravene the laws or regulations may be required by the court to pay sums equivalent to the fee and royalties payable on any forest produce damaged and also such amount if any as the court may consider as compensation for damages done. This provision is commendable most especially where an expert is called to assess the damage caused to the owner and such an amount is paid accordingly.

It is important to note that by virtue of Section 35 of the *Forestry Laws*, it is lawful for any forestry officer, administrative officer or police officer to prevent the contravention of any of the provisions of this Law. Furthermore, persons suspected

of having committed the offence of setting fire to the forest without authority can be lawfully arrested by any forestry officer without a warrant by virtue of Section 48 of that law. This happens especially in cases where such a person refuses to give his name and address or gives a name or address which is believed to be false or there is reason to believe that he will abscond. In addition, section 48 provides that a person arrested must be taken before a Magistrate or a Customary Court or to the nearest Police Station without delay. It must be stated that these provisions are laudable. However, how they can be implemented is another matter. This is because most of the offenses as a result of forest fires or bush burning are committed by faceless offenders.

Another laudable provision under the Forestry Laws is that offenses under the laws in the four states under consideration can be compound. This removes any delay in prosecution of the offenses under the Forestry Laws. By this, it means that where a person is reasonably suspected to have set fire to a forest in contravention of the law, a forest officer not below the rank of an Assistant Conservator of Forest, may instead of taking proceeding against such a person in court receive from such a person a sum of money by way of compensation for the offence that he is suspected of having committed together with the value of forest product or property destroyed. It should however be noted that such compensation received should not be more than twice the fee and royalties if any estimated to have been lost on the forest produce in question or twice the value of the forestry property in question.

Furthermore, after the payments, such offender must be released and no proceeding should be taken against such a person in respect of that offence as a person must not be punished twice for the same offence. However, if the compensation is collected in a local government area, such money is revenue for that local government if it is not diverted to private pockets. In other cases, the amount is paid into the treasury of the state government.

With respect to the Wild Animal Preservation Law (Cap 132 Oyo; Cap 133 Ogun; Cap 129 Ondo) there are different classes of animals and birds and the severity of the penalties depend on the class of animal or bird involved. Furthermore, different classes of licenses are issued to hunt different classes of animals or birds.

It is provided in Section 4 (2) of the laws that any person unless he is authorized, who contravenes Section 4 which prohibits the hunting or killing of birds or animals in schedule 1 is liable to a fine of 200.00 Naira or if the offence relates to more animals than two, to a fine of 100.00 in respect of each animal or in default in either case, imprisonment for six months.

However by section 26 of the laws, person may be authorized in certain cases to kill an animal or bird even though this is prohibited by the law. This is where such a person can satisfy the officers in charge that such an act is necessary to protect the

lives of persons or to prevent the destruction of a crop or of domestic stock. In addition, this provision is applicable in the time of famine or to any situation relating to public health and public order. This provision does not apply to animals or birds in a game reserve.

The laws further provide in sections 5 (2) and 62, that the hunting or killing of animals and birds in schedules 2 and 3 attracts a punishment of a fine of N100.00 or if the offence relates to more animals than two, a fine of N50.00 in respect of each animal or in default in each case, a term of imprisonment for three months or a fine of N10.00 respectively. In these days when it is being emphasised that some animals are going into extinction, the above penalties are absurd and would not help to conserve our wild life. However, no matter the type of license issued to a person, such license does not authorize the holder to hunt on a private land without the consent of the owner or occupier (Section 33).

Forfeiture is a punitive measure adopted under the Wild Animal Preservation Laws. A person who has been convicted under the law forfeits such items like the head, horn, tusk, skin or remains of bird of animals found in his possession to the government of the state where the offence was committed by virtue of Section 39 (2). In addition, this provision implies that a person may have his license revoked for contravening the law.

To ensure the enforcement of this law, there is an incentive to informers who apprehend or report persons hunting animals or birds by setting fire to forest or bushes. Section 40 of this law provides that the court may award to such informers any sum not exceeding half the total fine recovered.

In the final analysis, Section 41 of the law states that all the offenses can be tried summarily. This provision is a commendable one because it ensures speedy trial of the offence under this law.

Under the criminal law, the burden of proof is on the prosecution and it never shifts. It is a fundamental right of the accused under the Nigerian constitution that any doubt in a criminal case must be resolved in his favour. This is an additional burden on the prosecution because in a criminal case, the prosecution must prove the case beyond reasonable doubt. See Section 33 (5) Nigerian Constitution; Section 140 Evidence Act : *R V Basil Lawrence*, 1932.

### Civil Perspective

Consequences of bush burning and forest fires are not limited to the ambit of criminal law where punitive measures are prescribed by law on the offender. The consequences extend to the realms of civil law. Persons who have suffered losses as a result of bush burning and forest fires may, subject to certain conditions, institute

civil action against the perpetrators of such acts. Such actions include;

**(i) Action in Negligence:-** Winfield and Jolowicz (1979) define negligence as the breach of a legal duty to take care which results in damage undesired by the defendant to the plaintiff (1979, p. 66). Where negligence is successfully proved, a plaintiff can claim for damages suffered from a defendant. The court after considering this claim by the plaintiff, will give an order on the amount the defendant will pay based on all the facts of the case. Under the law of negligence, the position of the law is that a person must not injure his neighbour and that such a person must take reasonable care to avoid acts or omissions which can reasonably be foreseen and would likely injure a neighbour.

Lord Macmillan in the case of *Donoghue Vs Stephenson* (1932) defines a neighbour as a person who is closely and directly affected by the defendant's act to whom the defendant ought reasonably to have in contemplation as being so affected when the mind is being directed to some acts or omission.

However, in an action in negligence, a person can successfully sue another and claim damages only if the following conditions required by law are satisfied:

- (a) The defendant must owe a legal duty of care to the plaintiff and as stated in the case of *Haley Vs London Electricity Board* (1965), this duty of care, must be one of those within the area of foreseeable injury.
- (b) The defendant must have breached the duty of care.
- (c) The breach of duty must have resulted into consequential damage (*Onajoke Vs Seismograph Services Ltd*, 1967; *Seismograph Service Ltd Vs Akpruovo*, 1974).

It is noteworthy that an award of damages is made in order to compensate the plaintiff for his loss as a result of the defendant and this may be in form of general or special damages. The distinction between the two classes of damages is made by Winfield and Jolowicz (1979 p. 589).

In cases of bush burning or forest fires, where the negligent act of the defendant results in a loss or damage to the plaintiff, the basic principle for the measure of damage in tort is that there should be *Restitution In Integrum* that is, the plaintiff should be restored to his original position. Furthermore, where a loss is suffered, and property is totally destroyed as a result of the defendant's tort, the normal measure of damage is the value of the thing destroyed at the time and place of destruction. On the other hand, where the property of the plaintiff such as crops are damaged, the measure of damage that can be claimed by such a person is the amount by which its value has been diminished. However, in the case of land where the cost of reinstatement greatly exceeds the diminution in value and would be unreasonable for the plaintiff to insist on reinstatement, the diminution in value will be the measure

used in awarding damages. Consequential losses such as profit that could have accrued from the property may also be recovered.

(ii) *Action under the rule in Ryland Vs Fletcher*.- Legal action could be brought under the rule in the case of *Ryland Vs Fletcher* (1868) by a person who has suffered losses or damages as a result of bush burning or forest fires. The decision of Blackburn J in this case is instructive (p.279).

The *Ryland Vs Fletcher* liability is a strict liability tort. The rule is that a person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes must keep it in, and if he does not do so, he is *prima facie* answerable for all the damage which is the natural consequences of the escape of the thing. The principle in this case has been applied to cases of fire which is categorized as a dangerous thing (Ogus 1969).

However for a successful application of the rule, the following requirements are necessary:

- (a) The defendant must be an occupier of land or an owner who controls things on land.
- (b) Such an occupier must have brought on his land and collected and kept there something which is dangerous in the special sense of being likely to do mischief if it escapes. Fire is a good example.
- (c) The "thing" brought on the land by the occupier must be such that was not naturally on the land. This is referred to as "Non - Natural Use of Land". This means that the land is put to a special use bringing with it increased danger to others and must not merely be the ordinary use of land *Read vs Lyon* (1947), and Newark (1961 p. 577). It must be noted that in earlier decisions of the courts, the form in which the above term was used was flexible *Richards vs Lothian*, (1913). However, the current tendency is to interpret the term narrowly *Read vs Lyon* (1947). Unfortunately, the effect of this is that it will restrict the scope of the rule in *Ryland Vs Fletcher* (1868).

The rule in this case has a restriction already. The restriction is only applicable where an occupier brings a non -natural user on his land and such escapes to damage the property of another. Therefore, there must be an escape from a place where the defendant has occupation or control over land to a place which is outside his occupation or control. Therefore this is a limitation in the action because a fire which destroys property or injures a person within the land where the fire occurred is outside the rule. In such a case, the owner of property destroyed has no claim under *Ryland Vs Fletcher* (1868), though he may bring an action in other ways. The restriction discussed above brings us to the next requirement which is that:

- (d) there must be an actual escape from the defendant's land into the plaintiff's land which resulted in damages.

It should however be stressed that an occupier of land who starts a fire intentionally or by negligence is bound at his peril to keep it from doing damage to others. This rule is however subject to an exception. This exception is where the damage is caused by an act of God. In *Filliter Vs Phippard* (1847) a fire was intentionally lit on the defendants property for the purpose of burning weeds and the negligence consisted in lighting the fire in the existing state of the wind and omitting to prevent it from spreading to the plaintiff's edge. The defendant was held liable.

It is also the principle of law, that a person who carries on operation which involves the creation of fire like burning of grass for farm clearing is under a duty to see that the fire is harmless to the third party. In *Mulholland Tedd Ltd Vs Baker* (1939) the defendants made a fire to smoke out a rat in a barn. The fire spread to a parking lot and exploded a drum of paraffin. The defendant was held liable. In the Nigerian case of *Busari Adedigba Vs Abati* (1934), the plaintiff wrote to the defendant asking that he be informed when the defendant would set fire to his farm to enable the plaintiff protect his property. The defendant claimed that he informed the plaintiff, although the plaintiff denied receiving this information. The defendant set fire to his farm and went fishing while the farm was burning. The fire went out of control and destroyed the plaintiff's Cocoa farm. The customary court held that although burning is an acceptable customary practice, the defendant was liable for the damage to the plaintiff's property.

Under the law, a fire may be accidental in origin on the land occupied by the defendant but the negligence of the defendant may be in its continuance and later destruction of the plaintiff's property. Such a defendant is bound to take reasonable care to prevent the fire from spreading. A good example happened in the case of *Goldman Vs Hargrave* (1967) where a tree on the defendant's land was set on fire by lightning. After felling it, the defendant decided not to extinguish it but to let it burn out. A wind revived the fire which spread to the plaintiff's property. The defendant was held liable.

Furthermore, it is known that burning of bush and forest fires have often resulted from sparks from railways. It should however be stressed that as a general rule, in the absence of negligence, no liability is imposed on the railway authority for the fire caused by sparks emitted from the engine. However, the railway authority may be liable if such fires were as a result of negligence on the part of the authority such as leaving heaps of dry grass and cuttings on land adjoining the railway line *Smith Vs Land S.W. Railway*, (1870).

It is important to note that the person liable for damage caused by fire is the person who starts it or his agent and action can be brought against such a person by

any person who suffers damage as a result of the fire. Under the law, any one who authorises another to commit a tort is himself liable for that tort. Owners of land will by this law ensure that those they let their properties or land to, use them well.

The burden of proving negligence is on the plaintiff and it is not for the defendant to prove that the fire was accidental. This may appear unfair to a plaintiff who has lost his property. It would have been better if there was enough proof that the accused did that which was prohibited in law and he is left to prove that he was not negligent.

**(iii) Remedy of injunction:** This is a remedy that can be obtained by a person whose property is affected or in the danger of being affected by any act caused by bush burning or forest fires. An injunction is an order of the court restraining the commission or continuance of some wrongful acts or some wrongful omission.

Civil action can be taken against the defendant by the plaintiff, notwithstanding the fact that criminal action has been instituted against the offender by the appropriate authorities.

### Legal Impediments

There are some legal impediments to the effective curbing of bush burning and forest fires in Oyo, Ogun, Osun and Ondo states. These include the following:

- (i) **The cost of prosecution :** In present day Nigeria, the cost prosecution of cases are high. This has discouraged a lot of people from pursuing their cases in court. The prosecution of a case of bush burning which has resulted in damages of property, enables other people to be aware of the legal consequences of such acts by future offenders.

Some farmers and hunters in some local government particularly in Oyo and Ondo states have expressed their preference in settling out of court, that is personal settlement, where properties have been destroyed by bush burning than going to court. Their preference was based on the fact that after such a loss, they have to pay high fees to prosecute and eventually they may not win after series of adjournment (Food Basket International 1993).

- (ii) Generally, series of adjournments has characterized most of the Nigerian courts. This is attributed to factors such as lack of adequate personnel (judges and magistrates). In the case where damages is caused as a result of forest fires or bush burning, the issue of adjournments has a lot of implications. It is known that such cases may take months or years to be completed, and the value of the damages that may be awarded if the plaintiff wins, would have depreciated so much that the whole exercise of going to court to prosecute the

case may not eventually worth it.

- (iii) As in criminal cases, there are also defenses available to a defendant in civil cases. This means that there may be situations where a plaintiff has in fact suffered losses as a result of bush burning and forest fires and such a plaintiff cannot succeed in an action because of a defence in law available to the defendant *Filmer Vs Phippard*, 1847; *Collingwood Vs Home and Colonial Stores Ltd*, 1936; and the statutory protection for the Railway *Supra*.

It is observed that there is a dearth of Nigerian Court decisions on the issue of bush burning and forest fires. This is not because such incidents do not occur in these states. On the contrary as seen above, several millions of naira have been lost through bush burning in these states. The reasons are not farfetched. A large percentage of cases caused by this act, are by faceless offenders who are never caught and prosecuted. In addition as it has been discovered in the discussions with some farmers and hunters in Oyo and Ogun states (Food Basket International 1993), many of the cases are settled privately out of court due to many reasons. It is noteworthy that another reason is that of all aspects of environmental damages, those related to oil pollution have commanded the greatest attention.

### **Suggestions and Conclusion**

Sustainable development is today an increasing concern of the Nigeria government at the different levels, the non governmental agencies and the peoples of the world over. No doubt, bush burning and forest fires work against this development.

A review of the legal framework on the issue of bush burning and forest fires in Oyo, Osun, Ogun and Ondo states, shows that there is need for a re-examination of some of the provisions of these various laws, more comprehensive and direct legislation, implementation of such laws and effective monitoring system of areas concerned. It is in this light that the following suggestions are made.

It is noted that bush burning is an acceptable customary practice in these states for hunting and farm clearing, however it must be pointed out that it has its negative effects. Recent studies indicate that each vegetation type has to be considered separately in taking a decision about seasonality, periodicity and intensity of burning. Early burning, repeated burning and late burning has its advantages and disadvantages depending on the land (Ayeni 1985). It is therefore suggested that enlightenment programmes should be organised at the different local government levels in these states for the people, educating them that after all it is not all cases of bush burning that is beneficial to them, and introducing new and more productive farm cultivation and hunting methods. In addition, it is suggested that the government should subsidize the cost of such methods until they are well rooted and



acceptable to the communities. This enlightenment programmes should not be left alone for the government to do, but the different non governmental agencies in these states should organise seminars, village meetings in the language of the people and this should be done at both the grassroots level and in the towns. Such steps taken by non governmental organisations in some local government areas in Oyo and Ondo states are commendable and should continue (Food Basket International 1993).

Furthermore, as most incidents of bush burning and forest fires occur during the dry season that is December to May every year, it is suggested that the patrol of forest officers be intensified at major forest reserves during this period. Interviews conducted with some senior forestry officers in Oyo, Osun, Ondo and Ogun states show that the problems facing the forestry departments presently are the lack of adequate monitoring staff, equipment for detecting and fighting fires and funding (Agunbiade, 1992). In some sections, there is also the deficiency of training programmes. It is suggested that to save millions of Naria being wasted through bush burning and forest fires, the above issues of adequate number of personnel, availability of modern equipment such as watch towers and fire fighting gadgets, manpower training and funding would have to be addressed by the governments of these states (Adewale 1991). It is also suggested that as much as possible fire stations with adequate water supplies should be located in areas easily accessible to the people in the different local governments of these states.

At the village levels, it is suggested that vigilante groups should be organised during the dry seasons amongst different villages in these states, to monitor and prevent the incidents caused by bush burning and forest fires. A commendable practice is found amongst the Iroko community in Akinyele local government of Oyo State. The chiefs of the community emphasised that during the hunting season, bush burning is prohibited under customary law. A violation of this law will lead to the arrest of the offender who is taken to the village head who imposes a fine on the offender. This is commendable, because in other areas bush burning is an acceptable customary practice (Adewale 1994 : 161).

It is further suggested that the nomads who set fire to bush intentionally to allow fresh grass to grow for their cattle should be sedentarized to restrict their movement from place to place in search of food. This programme is envisaged whereby food is made available for the animals in one location and irrigation facilities and boreholes are applied in growing improved pasture for year round feed supply (Nest 1991 :32).

It is suggested that the laws on bush burning and forest fires should contain provisions empowering private individuals present at the scene, where the laws are being contravened, to arrest the offender. This may appear unrealistic in the present day Nigeria, whereas if this provision is contained in the law, there will be a firm basis for those people who have suffered a loss once, or who appreciate the issue to arrest any offender.

With the repeated occurrence of incidents of bush burning every year, it is suggested that strict liability should apply to this environmental hazardous activity. This is the trend in Norway and Germany (Adewale 1994).

It is suggested that the law enforcement agencies like the police should ensure that the efforts of the informers to a case of bush burning or forest fires in contravention of the laws are not frustrated by demanding repeated calls to the police stations. As some farmers claimed such repeated cases waste precious time, which they prefer to avoid. (Food Basket International 1993).

There is no doubt that the penalties for contravening the laws on bush burning and forest fires presently are ridiculous, too lenient, and insufficient to deter a person from committing the offence. This is more so, when a person weighs the penalty and the private cost and benefit of using this customarily accepted method. It is suggested that more stricter penalties should be imposed and sufficient to deter any person from contravening the law.

Finally, it is suggested that the governments of these states at all levels, must integrate environmental concern into all economic and sectional policies to ensure protection and improvement of the environment, natural resources, forest reserves, and wild life on which the welfare of the people of Oyo, Osun, Ogun and Ondo states depend. The implementation of farm mechanization policies (though it is appreciated that it has its own environmental costs) in these states and the effective implementation of the revised laws will curb the incidence of bush burning and forest fires.

To avoid economic disaster in Oyo, Osun, Ogun and Ondo states, the issue of bush burning and forest fires, which are notorious agents of deforestation and extinction of wild animals, must be urgently addressed.

## References

- Adewale O. (1991) "The Right of the Individual to Environmental Protection: A Case Study of Nigeria". *Rivista Giuridica Dell' Ambiente*. No 4 December p. 650.
- Adewale O. (1994) "Judicial Attitude to Environmental Hazard in Nigerian Petroleum industry". In Ajomo M.A and Adewale O (ED) *Environmental Law and Sustainable Development in Nigeria*. Published in Lagos by the Nigerian Institute of Advanced Legal studies and British Council p.62.

- Adele O. (1994) "Customary Environment Law" In Ajomo M.A and Adele O. (ed) *Environmental Law and Sustainable Development in Nigeria* p. 161
- Agunbiade A.O. (1988) "Poverty and Natural Resources Degradation in Nigeria" Resource Paper. World Bank Environment Department, Policy and Research Division.
- Agunbiade B. (1992) "Dynamics of Critical Success Factors in Regional Sustainable Development Planning: A Nigerian case Study". Paper presented at the 47th congress of the International Geographical Union. Washington D.C., U.S.A August 9-15 1992.p13
- Ayeni J.S (1985) "Strategies for Quick and Effective Conservation and Recovery of the Wild Life Resources of Nigeria" *The Nigeria Field* p.50.
- Burning of Bush Adoptive By-Law - In Local Government Laws Cap Law 66 Laws of Oyo State 1978.
- Burning of Bush Adoptive By - In Local government Laws Cap 63 Laws of Ogun State 1978.
- Burning of Bush Adoptive By-Law - In Local Government Laws Cap 63 Laws of Ondo State 1978.
- Busari Adedigba Vs Abati 1934 Ake "A" Native Court 50/1934 (Unreported).
- Collingwood Vs Home and Colonial Store 1936 15 *Law Times* p.550.
- Constitution of the Federal Republic of Nigeria Cap 62. 1990 Laws of Federation of Nigeria.
- Donoghue Vs Stephenson 193 Appeal Cases p. 580.
- Evidence Act Cap 117 1990 Laws of the Federation of Nigeria.
- Filliter Vs phippard 1847 11 Queens Bench Division p. 347.
- Food Basket International 1993 - one day seminar on Bush Burning and its control organised by Food Basket International Ibadan and Development agency Idanre in July 1983 at the Headquarters of Lagelu Local Government, Iyana - Ofa, Oyo State.
- Food Basket International (1993) - One day seminar on Bush Burning and its control organised by Food Basket International Ibadan and Development Agency Idanre in September 1993 at the Headquarters Akinyele Local Government, Moniya Oyo State.
- Food Basket International 1993 - One day seminar on Bush burning and its control organised by Food Basket International Ibadan and Development Agency

Idanre in April 1993 at the Headquarters of Idanre Local Government, Idanre Ondo State.

Forestry Law Cap 40 Laws of Oyo State 1978.

Forestry Law Cap 39 Laws of Ogun State 1978.

Forestry Law Cap 39 Laws of Ondo State 1978.

Goldman Vs Hargrove 1967 1 Appeal Cases p. 645.

Haley Vs London Electricity Board 1965 Appeal Cases 778.

Interpretation Law Cap 52 Laws of Oyo State 1978.

Interpretation Law Cap 50 Laws of Ogun State 1978.

Interpretation Law Cap 50 Laws of Ondo State 1978.

Isiche A.O. and Sanford W.W (1980) "Nitrogen Loss by Burning from Nigerian Grassland Ecosystems". In Rosswal T (Ed) *Nitrogen Cycling in West Africa Ecosystem*. Proceedings of Scopelunep Workshop I.I.T.A Ibadan p.11 - 15.

Mason Vs Levy Auto Parts of England Ltd 1967 2 Queens Bench p. 538 - 539.

Mulholland Tedd Limited Vs Baker 1993 All England Report 253.

NEST (1991) - Nigerians Threatened Environment - A National profile Nest publications, Ibadan.

Newark (1961) "Non - Natural User and Ryland Vs Fletcher" 24 Modern Law Reviews p. 577.

Ogus A. I. (1969) "Vagaries in Liability for Escape of Fire" Common Law Journal p. 104.

Onajoke Vs Seismograph Services Ltd. Suit N. Sapele High Court 28/67 delivered on January 29 1967.

R V Basil Lawrence 1932 11 *Nigerian Laws Report* p. 6.

Read Vs Lyon (J) Co. Ltd 1947 Appeal Cases p. 166.

Richards Vs lothian 1913 Appeal Cases p. 280.

Ryland Vs Fletcher 1868 Law Report 1 Exchequer p. 279.

Seismograph Services Ltd Vs Akprovo 1974 6 Supreme Court p. 119.

Smith Vs L and S.W Railway 1870 Law Report 6 Carrington and Payne Report P. 14.

Wild Life Preservation Law Cap 132 Laws of Oyo State.

Wild Animal Preservation Law Cap 133 Laws of Ogun State.

Wild Life Preservation Law Cap 129 Laws of Ondo State.

Winfield and Jolowicz (1979) Tort London: Sweet and Maxwell p. 66:589

UNIVERSITY OF IBADAN LIBRARY