Environmental Nuisance Laws in Nigeria: Making them Effective for Sustainable Development

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Abstract

In the history of human social institutions there often arises need to reappraise the basic principles upon which such institutions rest. This probative inquiry into the laws will determine whether its growth is progressive, retrogressive or static especially in the face of obvious dissatisfaction with its present state and apparent potentials which can be used in the sustenance of the environment in Nigeria. It reviewed environmental nuisance critically in the light of the populace level of awareness, the practice and enforcement of these laws with the view to show that the cause of a healthy and wholesome environment would be greatly furthered by the enlisting of ordinary individuals and groups for proper mobilization and awareness regarding environmental nuisance laws. Case laws, statutes and literature review were done while interviews with employees of the Environmental Protection Agencies and members of the Nigerian public were conducted. The review indicates a general low level environmental education on the part of the populace, among other problems besetting the effectiveness of the environmental nuisance law in Nigeria. Implications of these findings were discussed in order to make the nuisance law a tool for sustainable environment. The paper recommends among other things a strict enforcement of the existing laws which must be reviewed to make them abreast with the exigencies of the 21st century economic and other realities in Nigeria. Furthermore, the establishment by law of a Stock breeding and marketing outfits in every State and ward is proposed, aimed at curtailing the practice of roaming of animals and resultant littering of fecal waste.

Introduction

In ordinary parlance, nuisance means a source of inconvenience or annoyance. However, in the legal parlance the definition is more restrictive in nature encompassing the protection and prevention of interference with another's use and enjoyment of land and those affecting the reasonable comfort of the public or class of it. Historically, the tort of nuisance is a recent phenomenon in Nigeria and the law relating to it clearly follows that of the English legal system including largely judicial precedents and some local enactments.

A lot of juristic ink had already flowed in an attempt to define nuisance, however, it is worthy to state that there has been no one universally accepted definition of the term. According to the Black's Law Dictionary (1979) Nuisance is that activity which arises from unreasonable, unwarranted or unlawful use by a person of his own property working obstruction or injury to the right of another, or to the public and producing such material annoyance, inconvenience and discomfort that the law will presume resulting damage. Nuisance therefore belongs to the class of wrongs that arise from improper, unlawful conduct producing material annoyance to a person, general public or class of it.

Winfield (1979) opined that Nuisance is the unlawful interference with a person's use and enjoyment of land or rights connected therewith. This definition corresponds with many cases including that of Reed V Lloyds & Co Ltd (1945) and Howard V Walker (1947). For Kodilinye (1982), nuisance is used in popular speech to mean any source of inconvenience or annoyance which is actionable including emission of noxious fumes from factories, excessive smell and noise and interference with the easement of the way. It is imperative to note that many of the writers whose works are referred to in this article share a lot in common especially in the area of definitions and description. Nuisance therefore, comprehends interference with the comfort or that which endangers the health or safety of a neighbour, the public or class of it.

Most times, environmental nuisances are consequential outputs of industrialization and other forms of development that attend city environment in a Nation like Nigeria. Improper land use by individuals and government have always culminated to an unhealthy environment like slum settlement, littering with human and other wastes, marine and oil spillages, depletion of the atmospheric equilibrium, etcetera.

Nnamani (2000) noted that the emergence of Shanty Towns with all the characteristic environmental and health hazards causes, among other things, overcrowding situation. He further stated that large quantities of waste water and household rubbish are generated in most neighbourhoods with inadequate drainage and refuse disposal. Similarly, Udo (1999) concluded that in these areas especially the hinterlands where pit-latrines are in use, they fill up and overflow freely into the streets most of which have no drainage often making them impassable and generating unpleasant and repugnant smell. This forewarns the fact that problems in the environment may present in various forms ranging from man made to natural factors culminating in the absence of a healthy, peaceful and desirable environment. In spite of the various environmental nuisance laws supposedly in operation in Nigeria, including the Federal Environmental Protection Agency FEPA Decree No 58 of 1988 (Now Cap F10 Law of the Federation of Nigeria, 2004) created with a mandate to supervise and ensure a healthy environment throughout the states of Nigeria, a wholesome environment is still very elusive. This is sadly the case both in the State capitals and in the hinterlands.

Judicial Regulation of Nuisance

Judicial precedent forms a great part of the body of rules regulating nuisance generally and especially as it relates to the environment. The case law is sought to be discussed to buttress the foregoing, under the two main classifications of nuisance, namely; public nuisance and private nuisance.

Public Nuisance

Public nuisance is an unlawful act or the omission to discharge a legal duty which consequently endangers the lives, safety, health, property or comfort of the public. It also amounts to a crime. In other words whenever a person carries on some harmful activities which affects the general public or a section of it, he is said to have committed public nuisance. As a crime, public nuisance is provided for in sections 192 and 194 of the Penal Code operating in Northern Nigeria; and Section 234 of the Criminal Code which operates in Southern and Eastern parts of the country. As a general rule under both the Penal and Criminal Procedure Codes, public nuisance is actionable only at the instance of the Attorney-General of the Federation or the State. A private individual therefore cannot bring an action successfully for public nuisance unless he can show that he has suffered damage substantially above that which is sustained by the other members of

the public. Street (1983) made assertions in line with the above and stated that to hold otherwise would mean that the wrongdoer would run the risk of being punished "a hundred times for the same cause".

Public nuisance may result in situations where the owner of a factory causes or permit fumes and smoke to pollute the atmosphere in the locality. Also, where waste materials are not disposed properly thereby endangering the lives of the public by the consequent pollution, environmental nuisance is said to have occurred. In the landmark case of Rose V Miles (1915) the defendant wrongfully obstructed a public navigable creek by mooring his barge there, thus compelling the plaintiff to unload his boats and transport his cargo by land, at a greater expense. The loss incurred by the plaintiff was said to have been substantial enough and damages were rightfully awarded.

In the case of Hasley V Esso Petroleum Co. Ltd (1961) the court held that it is an actionable nuisance where the defendant's factory emitted acid snots and excessive noise thereby disturbing the peace of his neighbours. The case law is indeed rich with examples of environmental nuisance. In Savage V Akinrinmade (1964) it was held to be public nuisance of which a private individual could maintain where the defendant blocked a street thereby interfering with the access of staff, parents and pupils to the plaintiff's school. Since an individual plaintiff is precluded from suing under public nuisance except he could prove material damage, the question that arises is whether an action brought by a whole community can succeed without proof of loss by each person. The landmark case of Amos V Shell B. P (1974) proffered answers when the defendant in the course of their work in the oil industry constructed a temporary dam across a public navigable creek in a town in Rivers State, Nigeria. The plaintiffs being representatives of the entire 'Ogbia Community' brought an action for damages, alleging that the erection of the dam had caused severe flooding on their land. Dismissing their claim the learned trial Judge stated thus;

> *"Kolo creek is agreed by both parties to be a public waterway. Blocking it up is a public nuisance. No individual can normally recover damages for a public nuisance, except there is a proof of a 'special damage' peculiar to himself. These losses if in fact they were suffered were suffered individually and therefore must come under the heading of special damages, where each individual must plead and prove his or her special individual loss. There has been no attempt to do this, so the whole claim in my view fails".*

Similarly in Interland Transport Ltd V Adediran & Akintuoye (1986) where a representative action was taken against the appellant who was accused of violent and disturbing noise, unbearable volume of dust, damage to roads, water-pipes, depositing refuse around the Estate while pouring engine oil in gutters. The trial judge found the appellant liable for environmental nuisance but on appeal the appellant court overturned the decision of the trial court and held that since it all mounted to public nuisance that it is only the Attorney-General that can bring such an action. The position of the law courts seems to have remained unchanged over the years. For an instance in 1989 the holden of the court followed the above cases in Abdullahi V Governor of Lagos State and Ors (1989).

The limitation placed on the path of the ordinary individuals in the area of their capacity to sue or 'locus standi' leaves much to be desired. This therefore hampers the ability to sue or seek redress and often times the wrongdoer hides under this limitation to avoid being punished. Indeed, this is very discouraging especially in the face of a hope to bring about a healthy and sustainable environment. The law must be channeled in such a way as to empower the individual member of the public to contribute and insist on an environment free from all manner of environmental nuisance.

Another area of public nuisance that is worthy of mention is that which is a familiar sight in most hinterlands and cities in Nigeria where livestock and human waste litter the environment as a result of stock roaming. This becomes a source of contamination to sources of clean water, clean air and inconveniences to motorists, residents, and the general public. Although there are stock routes across the country, most are shrouded in controversy, while some have been encroached upon by modernization in form of road networks and other facilities. Alternative arrangement must therefore be put in place if a sustainable and healthy environment is to be achieved.

A worrisome aspect of environmental nuisance is the emergence of slums both in the cities and the various hinterlands; this manifests in an increased deterioration of the physical or environmental conditions. The said slum situation often exerts pressure on the existing social amenities and other infrastructure resulting in an environmental nuisance. In other words, a high congestion in most residential and other areas which is a common and rising phenomenon and an awakened reality faced by most urban and sub-urban dwellers, causes unsanitary conditions resulting in environmental nuisance. A culmination of various factors including high cost of housing, poor

quality housing delivery, poor maintenance culture and violation of existing land use plan has gradually made the dream of a healthy and clean environment a mirage.

Private Nuisance

Generally, private nuisance is aimed at the protection of the individual occupier of land from any substantial interference therewith. According to Kodilinye (1980) private nuisance is of three (3) categories;

(1) "Physical injury to the plaintiff's property; e.g. where the plaintiff's crops are destroyed by fumes from the defendant's factory or where vibrations from the defendant's building operations cause structural damage to the plaintiff's house.
(2) Substantial interference with the plaintiff's use and enjoyment of his land; e.g. where the plaintiff is subjected to unreasonable noise or smells emanating from the defendant's neighbouring land.
(3) Interference with easements and profits; e.g. where the defendant wrongfully obstructs the plaintiff's right of way or right to light."

To succeed in private nuisance, the injury or interference complained of must be substantial and the defendant's conduct unreasonable in the circumstance. In the case of Abiola V Ijeoma (1970) the plaintiff and defendant occupied adjoining premises in the residential area in Lagos. It was alleged that excessive noise made by the chickens kept by the defendant in his poultry at early hours disturbed the plaintiff's sleep and that the nauseating smells from the pens disturbed his comfort. The court therefore held in favour of the plaintiff that a case of nuisance had been established. In Tishbite V Nigeria Marine Trading Co Ltd, the plaintiff claimed and received damages for nuisance from the defendant's company for installing a machine which produced a lot of noise and for disturbing the plaintiff's peace by shouts of "Osebe... he, Osebe... he" by her employees. The area where this took place was exclusively residential.

The above notwithstanding, it appears that majority of Nigerians do not care about environmental nuisance whether of public or private nature. The norm is that most people expect the government to provide all the answers including those of maintaining a healthy environment. Furthermore, people are very reluctant to take out suits against their neighbours or other persons with regard to environmental nuisance. The actual realization of a sustainable environment in Nigeria will remain in the realm of a mirage or myth if

the individual is not effectively mobilized and involved. Most are still ignorant of their rights to action and complain. Habits that will stop depletion of the ordinary standard of living must be maintained both by the Government and the ordinary individual. Some household and industrial wastes are improperly disposed while there is no strict adherence to sanitary and other related legislations. Nnamani (2000) cited the provisions of the Nigeria National Policy on Environment whose section 1 (1) states thus;

> *"Nigeria is committed to a national policy that ensures sustainable development based on proper management of the environment in order to meet the needs of the present and future generations. This demands positive and realistic planning that balances human needs against the potential that the environment has for meeting them".*

It is worthy of note that the various provisions in the Nigerian National Policy on the Environment are indeed laudable. however there seem to be a lack of commitment on the part of government, their agencies and even the individuals to the actualization of these goals embedded in the various legislations. Aside from the case law, there have been various attempts by the government at various levels to promulgate Byelaws, Decrees, and to establish Agencies geared toward the protection of the environment. These include the aforementioned provisions of both the Penal and the Criminal codes. Similarly, there are the Noxious Act of 1958; Forestry Act Cap 42 of 1958; Explosive and Noxious Act of 1964; Harmful Waste (Special Criminal Provision) Decree No 42, 1988; the various State Environmental Protection Agencies and the Federal Environmental Protection Agency Decree No 58, 1988. Now Cap F10, Vol. 6 Laws of the Federation of Nigeria, 2004.

The functions of the Federal Environmental Protection Agency (FEPA) is provided for in the fifth section the Act as a body having responsibility for the protection and development of the environment and biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology. Other functions include;

a) "to advise the Federal Government on natural environment policies and priorities, the conservation of natural resources and sustainable development, and scientific and technological activities affecting the environment and natural resources;
b) To promote co-operation in environmental science and

conservation technology with similar bodies in other countries and with international bodies connected with the protection of the environment and the conservation of natural resources;

c) To co-operate with Federal and State ministries, local governments, statutory bodies and research agencies on matters and facilities relating to the protection of the environment and the conservation of natural resources; and . . . "

In spite of the various provisions by the Act regarding the functions of the Agency very little co-operation exist in practice between Nigeria and other international bodies connected with the protection of the environment and the conservation of natural resources. An example of such collaboration is given by Audu (2002), in his work as the UNESCO-UNEP (1989) recommendation that environmental literacy, attitudes and skill are critical to the empowerment of the whole populations in the tackling of environmental issues. Okpara (1996) stressed the importance of the integrated approach advocated by Agenda 21 of the 1992 UN Conference on Environmental Development. Similarly, the Agency is supposed to be collaborating and co-operating with the Federal, State and Local governments as well as statutory bodies and research agencies on issues of environmental protection. The survey revealed that very little is seen of this expected collaboration, most people are unaware of such, especially among the academia and city dwellers. These collaborations ought to be further strengthened so that there would be an effective linkage between the different tiers of government to ensure cooperation in achieving sustainable environment.

It is intended to examine closely some of the provisions of these regulations to show the need for a review in some cases, and a need for an effective enforcement regime. Laws can only be good when they are effectively enforced and adhered to. Section 18 (2) of the Act provides that the Agency may establish monitoring stations or network to locate sources of atmospheric pollution and determine their actual or potential danger. The pertinent question is whether they have actually established such monitoring units in practice and in such numbers as would effectively prevent atmospheric pollution? Are these stations equipped to meet this challenge? Section 21 (1) prohibits the discharge in such harmful quantities of any hazardous substance into the air or upon the land and the waters of Nigeria or at the adjoining shorelines. Furthermore, Section 22 provides;

> "except where an owner or operator can prove that a discharge was caused solely by a natural disaster or an act of war or sabotage, such owner or operator of any vessel, etc, from which hazardous substance is discharged in violation of Section 21 shall in addition to the penalty be liable for cost of removal. . . "

It is evident that the discharge without permission of hazardous substance is highly prohibited. However it is common place that such substances are being unlawfully disposed without consequential punishments to most of the offenders. Section 22 makes room for the escape from liability of a spiller where it can be shown that an unlawful discharge was by an intervening factor. It is however observed that in most cases that were attributed to sabotage, the persons involved were actually negligent. The cases of Urumoke and Rumola villages in Rivers State in February and March of year 2001 are good examples. It is worrisome that offenders may utilize such loopholes to avoid liability.

Section 27 (1) provides inter alia that;

> "Any authorized officer, where he has reasonable grounds of believing that an offence has been committed against the Act may without a warrant;
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> a. enter and search any land, building, vehicle, tent, vessel, floating craft or any inland water, or whatsoever, in which he has reason to believe that an offence has been committed;
> b. perform tests and take samples of any substances relating to the offence;
> c. arrested any such person; and
> d. seize any item or substance which he has reason to be believe has been used in the commission of such offence"

From the survey and interviews conducted, it is generally acknowledged that the Act empowered the officers of the Agency for the maintenance of a nuisance free environment. Nevertheless, in practice their functions are hampered by lack of adequate manpower, poor funding, lack of motivation, etcetera. Most offenders are usually violent with arms and unless there are commensurate provisions to meet the challenge, including insurance policies and favourable condition of service, optimal performance by the officers of the Agency would be an illusion. There must also be a collaboration of the law enforcement agents in all levels of government with the Agency to ensure effectiveness.

The National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations of 1991 also made laudable and express provisions relating to the reduction to barest minimum of nuisance and pollution emanating from industries. For an instance, Section 1 restricted the release of hazardous toxic substances while Section 2 provided for a pollution monitoring unit. Furthermore, Section 12 of the Regulation provided for a buffer zone in each State of the Federation. In spite of the above provisions, there are heavy and continuing pollution emanating from these giants of production. The problem is that of implementation and execution of the Law; most members of the public are ignorant of what a buffer zone signifies.

The Bauchi State Environmental Sanitation Task Force and Committee Law made important contributions. Section 7 thereof provided that, the Task Force shall take all lawful measures to ensure an effective and continuous refuse service as well as the general cleanliness of Bauchi metropolis. Its Section 22 listed offences that includes the throwing or depositing in an open drain anything that is capable of obstructing drainage, or any refuse or household wastes in places not designated for throwing or dumping such refuse. There is an obvious need for improvement especially in the area of enforcement of these Laws. For an instance, Regulation 7 (F) provided against hawking by children while Regulation 7 (E) provided for a regular and surprise inspections of buildings. In view of the low level environmental education demonstrated by most people, an aggressive enlightenment programme must be put in place. In other words, the various traditional rulers including ward heads and Local Government chairmen have roles to play in the achievement of the collective goal of a sustainable environment. It is obvious that the legal regime is of utmost importance not only in its legislative mode but in its adherence, commitment and enforcement.

Conclusion

The environment must be protected from further dilapidation resulting from nuisance using the law as a panacea. Despite the present ineffective state of the legal regime relating to environmental nuisance in Nigeria, the law still holds the potential of being properly positioned to achieve an environment that is free of contamination and is healthy. Some of the laws need to be reviewed in order to bring about a legislative rebirth that will usher in the desired sustainable environment.

The present problems that had bedeviled the Laws and Agencies rendering them ineffective including

lack of enforcement machinery, poor staffing, poor funding, etcetera must be re-addressed to ensure a new lease of life. The menace of environmental nuisance is one that must be properly addressed by all concerned to avoid further degradation of the environment. The various Legislative Houses, both at the Federal and State levels must unite in the fight against this nuisance by bringing into existence well reasoned legislative bodies at the various levels, taking into consideration the existing legal framework.

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