

REPOSITIONING PUBLIC HEALTH AND SANITATION LAWS FOR CHALLENGES OF MODERN NIGERIA

J. P. Esavwede*

Abstract

Public health and environmental sanitation are crucial to the well being of every nation and her people. They are the determinant factors of a healthy nation. In order to achieve public health, there have to be good and enforceable public health laws in place ably supported by environmental sanitation laws. These public health laws in Nigeria are colonial legacy and these laws which predate Nigeria independence still remain the way they had been since inception on the face of a rapidly growing and modernizing nation. The paper observes that Nigeria has outgrown its public health laws and left them behind. This has resulted in exposure of the nation to health hazards and filthy and dirty environment. The paper identifies various sections of the Public Health Laws and the environmental sanitation laws that are obsolete and need to be brought in line with the reality of contemporary Nigeria society. The paper then calls for amendment of identified provisions of the laws with a view to properly positioning them to address the challenges of modern Nigeria environment.

1.0 Introduction

Public health laws in Nigeria date back to the colonial era. They were not enacted for the purpose of environmental protection, rather as the name implies, they were enacted to safeguard public health. At that time, environmental protection was not the business of the Colonial government which was preoccupied with the pursuance of its own economic interest.¹

* Lecturer, Faculty of Law, Delta State University.

¹ The view has been expressed that the Colonial government deliberately avoided laws which would adversely affect their political interest. According to Nnadozie, K.C. "Pollution Control in Nigeria; The Legal Framework" being a paper presented at a workshop held at the Sheraton Hotels and Towers, Ikeja Lagos on the 5th – 7th April 1994 P.2, cited by Atsegbua, L. et al Environmental Law in Nigeria, 2nd ed. (Benin City: Ambik Press, 2010) P.4) "Laws which would have in any way restricted economic activities or imposed additional responsibilities on them (Colonial Government) by way of environmental; requirements would probably have been considered counterproductive, it not repugnant, thus resulting in a situation where there was hardly any laws

Moreover the health condition of Nigeria and Nigerians at that time is certainly not the same as it is today after a period of over fifty years. The public health laws of over fifty years ago cannot therefore adequately address the current situation in Nigeria which has had astronomical growth in population and urbanization over this long period of time.

On their own part, environmental sanitation laws were enacted as separate and distinct laws for the first time in Nigeria in the 1980s under the Buhari/Idiagbon led military administration. Prior to that time environmental sanitation laws were embedded in other laws such as the Public Health Laws, the Factories Act and the Criminal Code. A perusal of these laws shows that their provisions have remained the same after many decades even in a constantly changing world. The result of this is that Nigeria cities are replete with filths as if there are no regulatory laws on sanitation. A review of these laws will reveal their inadequacies.

2.0 What is Public Health?

Public health is defined as:

*the health of the community at large; the healthful or sanitary condition of the general body of people or of the community en masse, especially the methods of maintaining the health of the community, as by preventive medicine and organized care for the sick.*²

The World Health Organization has defined Public Health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.³ Public health could be said to be the health condition of the totality of people in a given area. It follows from this definition that if there is outbreak of an epidemic the public health of the place is affected. ‘The primary

deliberately directed at protecting the environment or the natures from the polluting effects of their activities.”

² *Black’s Law Dictionary*, 9th Edition p.787.

³ Quoted in [Wikipedia, en.wikipedia.org](http://Wikipedia.en.wikipedia.org) .

focus of environmental law in colonial Nigeria was restricted to the more basic hygiene and sanitation, adulteration of food or drink, dealing in diseased meal, fouling of water bodies, burials in houses and the use of white phosphorus.⁴

2.1 Public Health Laws

Simply put, Public Health Laws are those laws that deal with the health of a community at large. This includes the health of individuals in the community and the totality of the health of the people making up the community.

As important as the issue of public health it is not given a pride of place in the works of different Nigeria authors on Environmental Law. For instance the lead authorities on Environmental Law in Nigeria include *Law of Environmental Protection, Materials and Text*.⁵ In this book, the author identified and discussed environmental problems in Nigeria. This appears to be the foremost author to examine environmental law and policy in Nigeria in the 938-page book. The author did not however expressly discuss the provisions of Public Health Law and Environmental Sanitation Law probably because those were not the primary focus of the Book.

Another lead authority on Nigeria Environmental Law is the book titled *The Law of Oil Pollution and Environmental Restoration: A Comparative Review*⁶. The author discussed the issues of restoration of victims of environmental pollution and international Environmental Law. The author did not however discuss the provisions of Public Health and Environmental Protection Laws as they did not form the focus of the work.

Finally, the book, *Environmental Law in Nigeria: Theory and Practice*⁷ is a lead authority on Nigeria Environmental Law. It deals with contemporary issues in Nigeria Environmental Law. Chapter seven of the Book is titled, and devoted to, 'Public Health

⁴ Atsegbua L., et al, *Environmental Law in Nigeria: theory and practice* (Benin City: Ambik Press, 2009) p.149.

⁵ Okorodudu-Fubara, M.T. (Ibadan: Caltop Publishers Limited, 1998).

⁶ Fagbohun O. (Lagos: Odade Publishers, 2010).

⁷ Atsegbua, L., et al, (Benin City: Ambik Press, 2010).

and Environmental Law in Nigeria. Under the discussion of Public Health⁸ the provisions of the Criminal Code which affect public health were discussed. No discussion was made of the Public Health and Environmental sanitation Laws.

Nigeria was made up of three Regions: Northern, Western, and Eastern Regions. Each of the regions had its own Public Health Law. The provisions of the Public Health Laws were virtually the same. With the creation of states, the various states of the federation retained the Public Health Law of the Region from which they were created. Delta State is one of the offspring of the former Western Region.⁹ The Western Region of Nigeria had its Public Health Law.¹⁰ The Public Health Law of Delta State is the same as the Public Health Law of the former Western Region of Nigeria as it was adopted without alteration. Consequently, the Public Health Law of Delta State will be used as a reference point in this paper as the various states Public Health Laws remain substantially the same.

It is however pertinent to state that apart from the Public Health Laws there are other legislation which contain provisions on Public Health but which were not however primarily designed for Public Health and Environmental Sanitation they include the following:

2.1.1 The Factories Act¹¹

The purpose of the Act is explicit in its full title. It is not for Public Health *per se*. Rather it is “An Act to provide for ... factory workers... exposed to occupational hazards; to make

⁸ At p. 151 – 157.

⁹ First Midwest Region was created out of Western Region 1963 and subsequently Midwest Region was renamed Bendel State which was later split into two States: Delta State and Edo State.

¹⁰ First Cap 103 Laws of Western Region of Nigeria 1957 and subsequently Cap 25 Laws of Western Region of Nigeria 1959.

¹¹ The Factories Act was enacted by the Colonial Government and remained in force, even after independence until 1987 when it was repealed and replaced by the Factories Act of 1987 Cap F1, volume 6, laws of the Federation of Nigeria, 2010.

adequate provisions regarding the safety of workers to which the Act applies and to impose penalties for any breach of its provisions". The relevant part of the Act is part 11, sections 7-13 which deal with health provisions generally.

Section 7(1) provides that every factory shall be kept in a clean state, and free from effluvia arising from any drain, sanitary convenience or nuisance, and accumulations of dirt and refuse shall be removed daily by a suitable method from the floors and benches of workrooms, and from the staircases and passages. It provides further that the floor of every workroom shall be cleaned at least once in every week by washing or by sweeping or other method.

The section also requires that all inside walls and partitions and all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall be washed with hot water and soap or cleaned by suitable method at least once in every period of twelve months. Furthermore, where such walls are painted, the section requires that they be repainted at least once in every period of five years.

Section 8 of the Act prohibits overcrowding in any factory that can cause risk or injury to health of workers while work is carried out and the section went ahead to define overcrowding to be: if the number of persons employed at a time in any workroom is such that the amount of cubic space allowed for every person employed is less than 400 cubic feet.

Section 9 requires that effective and suitable provision shall be made for securing and maintaining the circulation of fresh air in each workroom to ensure adequate ventilation of the room.

Section 11 requires that suitable and effective drainage be provided in factories in cases where the floor is liable to be wet to a level that require drainage.

Section 12 requires sufficient and suitable sanitary conveniences to be provided for persons employed in the factory. It further requires the conveniences so provided to be maintained and kept clean and properly lighted.

It could be seen that all these provisions concern the comfort, health and convenience of factory workers and not necessarily for the benefit of the general public.

2.1.2 The Criminal Code Act¹²

The Criminal Code was first enacted on the 1st day of June 1916 shortly after Nigeria became a nation, although under the British Government. It apparently predates Nigeria independence even though it is normally referred to as Criminal Code Cap C 38 in the Laws of the Federation of Nigeria, 2004. It was, and is still, a Federal Law although many states in the Federation enacted their own Criminal Law. The Criminal Code was not, strictly speaking, a statute for protection of Public Health. However, it contains some salient provisions on Public Health.

The first provision relating to Public Health in the Criminal Code is S.234 which codifies the common law offence of public nuisance.¹³ The section makes culpable the following acts or omissions:

- (a) obstructing any highway by any permanent work or erection thereon or injury thereto which renders the highway less commodious to the public than it would otherwise be.

This provision would catch up with persons who after erecting a Town Planner's approved structure would proceed to extend the structure to the highway without approval of the Town Planning office. This is a common phenomenon in Nigeria. Indeed, cases of illegal structures abound in the entire Country. Many of these illegal structures encroach on public roads. The demolition exercise by government across many cities in Nigeria is a matter of common knowledge and this attest to the flagrant violation of Section 234(a) of the Criminal Code.

This section also makes it an offence for any person to cause injury to any highway. Such injury will include digging across any highway for the purpose of laying water pipes or cables

¹² Cap C38, Laws of the Federation of Nigeria 2010.

¹³ *Esso Petroleum v. South Port Corporation* (1954)2 QB 182.

across highways by individuals. Such persons are expected to repair the damage done to the highway to avoid sanction. Unfortunately, this provision is observed more in the breach than in compliance.

Under Section 234(b) it is an offence to prevent the public from having access to any part of a highway by an excessive and unreasonable temporary use thereof or even dealing with the land in the immediate neighbourhood of the highway as to prevent the public from using and enjoying it securely. This provision makes it unlawful to dump and leave on the highway or even on the adjoining land things like building materials such as sand and gravels. It also outlaws abandonment of vehicles on highways in such a manner as to affect or inconvenience road users.

Under Section 234(f) any act or omission by a person which obstructs or causes inconvenience or damage to the public in the exercise of rights common to the public is an offence. The view has therefore been expressed that the section may be invoked to punish unlawful discharge of oil pollutants on public land and water, because of the “inconvenience and damage to the public in the enjoyment of these rights.”¹⁴

For all these offences enumerated above, the punishment is imprisonment for two years. But there are many cases where individuals in preparation for building, keep and retain building materials such as sand, gravels, wood and roofing materials on highways for quite some time. Many such acts of obstruction are known to have caused road accidents in Nigeria. The question is why should people continue to do that which the law prohibits? Three possible reasons are responsible for this: the first is the absence of knowledge of rights on the part of the citizenry. Although the maxim *ignorantia juris non excusat*, (ignorance of the law is no excuse) is codified in Section 22 of the Criminal Code, majority of citizens do not know that they have right to public highways which no individual should impair. Secondly, the

¹⁴ Ibidapo – Obe, J. “Criminal Liability for Damage Caused by Oil Pollution” in Omotola J.A. (ed) *Environmental Laws*, op. cit, P. 251; see also Jaffe, “Standing to sue in conservation Suits” in Bahim and Page, (eds), *Law and Environment*, (1970) P. 123 cited by Ibidapo – Obe, Ibid, footnote 72.

type of nuisance provided for under this section is public nuisance and as characteristic of public nuisance the issue of whether or not a private person can prosecute (or has locus standi) may pose a problem. Thirdly, the police which is saddled with the responsibility of preventing, investigating and combating crime has failed in its duty. This assertion becomes inescapable in view of the fact that acts of public nuisance and obstruction on the roads are not done in secret but to the glaring of all. Yet cases of prosecution under this section of the Code are rare.

Chapter XXIII of the Criminal Code deals with offences against Public Health. Section 243(2) prohibits adulteration of food or drink intended to be sold as food or drink. These two provisions are aimed as safeguarding the health of members of the public.

Section 245 deals specifically with pollution of water. The section provides as follows:

Any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir, or place, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanor, and is liable to imprisonment for six months.

The above is clear provision for protection of water from pollution. Although the provision would appear to be aimed at the effects corruption of water would have on public health the provision nonetheless thereby protects water from pollution. For, to corrupt water so as to render it less fit for the purpose for which it is ordinarily used is to pollute the water.

Section 247(a) expressly prohibits air pollution and makes air pollution an offence punishable with six months imprisonment. The section provides as follows:

Any person who vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty, of a

misdemeanor, and is liable to imprisonment for six months.

Even though the provision appears to be primarily concerned with the protection of public health, it nonetheless prohibits air pollution of the environment bearing in mind the definition of pollution.

2.1.3 The Federal Environmental Protection Agency Act, 1988¹⁵

This Act came into force on 30th December 1988. The Act deals with environmental protection generally and does not contain specific provisions on Public Health. It has been described as ‘the statutory threshold of a national policy on environmental protection in Nigeria’.¹⁶ It presents the legal signposts for essential considerations of national policy on the environment and encapsulates a broad spectrum policy on the environment.¹⁷

2.1.4 The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007¹⁸

This Act repealed the Federal Environmental Protection Agency Act, 1988.¹⁹ Like the repealed FEPA Act, this Act certainly occupies a key position in the legal framework for environmental protection in Nigeria. The Act also established an Agency known as the National Environmental Standards and Regulations Enforcement Agency²⁰ which replaced the Federal Environmental Protection Agency. The Act provides that the Agency shall be the enforcement Agency for environmental standards, regulations, rules, laws policies and guidelines.²¹ The

¹⁵ The Act was originally enacted as the Federal Environmental Protection Agency decree No. 58 of 1988 and was later amended in 1992 and 1999.

¹⁶ Okorodudu Fubara, op. cit. p

¹⁷ Ibid.

¹⁸ Act No. 25 of 2007.

¹⁹ S. 36.

²⁰ S. 1 (1).

²¹ S 2 (a).

Act did not the specifically with the issues of Public Health and Environmental Sanitation. Rather the Act established the regulatory body and deals with regulation and enforcement of environmental laws.

2.2 The Public Health Law of Delta State

The Public Health Law of Delta State,²² dates back to 1957. It was the Public Health Law enacted by the then Western Region of Nigeria on 1st August 1957 with the creation of Midwest Region it became Public Health. Again it was one of the laws enacted before Nigeria became independent. As the name implies, it deals with matters of public health.

2.2.1 Appointment of Medical Health Officers

The law empowers the Governor of a State to appoint a qualified medical practitioner to be government medical officer of health in any specified area or generally for the State. However in the absence of such appointment for any area the medical officer in charge of the area shall be the medical officer of health for the area²³. On their part each Local Government Council is empowered to appoint a qualified medical practitioner to be the medical officer of health of the Local Government Council for the area of authority of the Local Government Council²⁴.

A close look at the provision of S. 3(1) & (2) show that there is no clear delineation of the area of operation of the medical officer of health of the state and that of the Local Government Council. Every part of the state is under a Local Government Area. It is therefore difficult to isolate areas in which the medical health officer of the state can operate to the exclusion of the medical health officer of the Local Government and vice versa. There should therefore be clear separation of the area to be covered by each medical officer of health.

This becomes necessary because of the general power given to every senior health officer under S.4 of the law. The

²² Cap 170.

²³ S. 3(1).

²⁴ S. 3(2).

section provides that every senior health officer in the service of the Government of the State shall be a medical officer of health and while on duty in any place shall have power to direct the exercise of the powers and duties conferred by this Law on any health officer and for that purpose to give instructions to such officer whether in the employment of the Government of a State or of a competent Local Government Council. It is a matter of common knowledge that there are very many senior health officers in Nigeria today. Everybody's job is nobody's job.

It is therefore submitted that the Medical Director of each hospital should now be given supervisory powers over all the senior health officers in the area covered by the hospital. In this way he can be held responsible for public health matters.

2.2.2 Acts of Public Nuisance

Part 2 of the law deals with Nuisance and which shall be deemed to be public nuisance in S.6 as follows:

- (a) any premises in such a condition as to be injurious to health;
- (b) any premises which are so dark or so ill-ventilated or so damp or in such a condition of dilapidation, as to be dangerous or prejudicial to the health of the persons living or employed therein;
- (c) any premises which contain rat holes or rat runs or other similar holes or which are infested with rats or in which the ventilating openings are not protected by gratings in such manner as to exclude rats there from;
- (d) any pool, ditch, gutter, watercourse, cesspool, drain, ashpit, refuse pit, latrine, dustbin, washing place, well, water tank, barrel, sink, collection of sullage water, receptacle containing stagnant water, or other thing in such a state or condition as to be injurious to health;
- (e) any animal or bird so kept as to be injurious to the health of man or molesting to neighbours and any animal or bird suffering from a noxious or contagious disease;

- (f) any hole or excavation, well, pond or quarry in or near any street which is or is likely to become dangerous to the public;
- (g) any stable, cow house, pigsty, or other premises for the use of animals or birds which are in such a condition as to be injurious to the health of man or of such animals or birds;
- (h) any noxious matter or water flowing or discharged from any premises into any public street or into any gutter or side channel of any street;
- (i) any accumulation or deposit of rubbish of any kind whatever, or any decaying animal or vegetable matter, whether in the form of refuse, manure, decayed or tainted food or in any form whatsoever;
- (j) any growth of weeds, cactus, long grass, reeds or wild bush of any kind which may be injurious to health, and any vegetable that of itself is dangerous to children or others either by its effluvia or through eating its leaves, seeds, fruits or flowers;
- (k) any premises certified by the health officer to be so overcrowded as to be injurious or dangerous to the health of the inmates;
- (l) any premises on which servants or workmen are employed and suitable and adequate sanitary conveniences are not provided;
- (m) any act, omission, place or thing which is or may be dangerous to life, or injurious to health or property;
- (n) any plant or tree which may be specified by the appropriate authority by a notice published in the State Gazette as being favourable to the breeding of mosquitoes, found in any area which may be specified in the said notice.

The Law requires that a health officer who is satisfied of the existence of a nuisance shall serve a notice, regarding

abatement of the nuisance, on the person by whose act or default the nuisance was caused but if the person cannot be found the notice shall be served on the occupier or owner of the premises on which the nuisance arises, requiring him to abate the nuisance within the time specified in the notice²⁵. The health officer may also notify such person, occupier or owner to do what is necessary to prevent recurrence of the nuisance.²⁶ The consequences of failure are provided for in ss.8 and 9 of the Law. In the first place the health officer makes a complaint to the Court which upon hearing the matter may make a nuisance order, which may be an abatement order, a prohibition order, a closing order.

As provided in Sections 8(3), (4) & (5) of the Law, an abatement order may require a person to comply with any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in such order, any prohibition order may prohibit the recurrence of a nuisance, an abatement order or prohibition order shall, if the person on whom the order is made so requires, or the court considers it desirable, specify the work to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance, a closing order may prohibit any premises from being used for human habitation.

A closing order as provided in Sections 8(6) and (7) of the Law shall only be made where it is proved to the satisfaction of the court that by reason of a nuisance, premises are unfit for human habitation, and, if such proof is given, the court shall make a closing order, and may impose a fine of one thousand naira or a term of imprisonment not exceeding six months. The court, when satisfied that the premises have been rendered fit for human habitation, may declare it is so satisfied and cancel the closing order. If a person fails to comply with the provisions of a nuisance order with respect to the abatement of a nuisance he shall, unless he satisfies the court that he has used all due diligence to carry out such order, be liable to a fine of fifty naira a day during his default; and if a person knowingly and willfully acts contrary to a prohibition or closing order he shall be liable to a fine of one

²⁵ S. 7(1).

²⁶ S. 7(2).

hundred naira a day during such contrary action; moreover the health officer may enter the premises to which a nuisance order relates, and abate or remove the nuisance, and do whatever may be necessary in execution of such order. When there is still failure to comply with such order the health officer may with an order of Court abate the nuisance and the premises may be sold to pay for the expenses incurred in connection with the abatement after following the processes prescribed under the law²⁷.

The search for case law on this issue has not revealed any case where a defaulter's premises has been sold. This shows the unrealistic provision of this section in the first place. Cases under this law are taken to Magistrates Courts which are Courts of summary jurisdiction and their decisions are not normally reported. Moreover, Magistrate Courts are not vested with jurisdiction over land matters. The premises in question may be located either in an urban area or in a nonurban area. If it is in a nonurban area it comes within the jurisdiction of the customary Courts in the area while it properly falls within the jurisdiction of the High Court where the property is in an urban area.²⁸ It will therefore be difficult for the Magistrate to make an order of sale of such premises.

Another issue that arises from this provision is that of competence of the Health Officers to prosecute offenders under this law. Health Officer is defined to include a medical officer of health, a health superintendent or inspector.²⁹ Apparently, Health officers are medical personal who are not trained in the law and acts of prosecution. The problem of competence to prosecute offenders by Public Health Officers is discussed in later part of this paper³⁰.

The Law has prescribed imposition of fines on defaulters. The fine of fifty naira a day prescribed in Section 8(9) for failure to comply with the provisions of a nuisance order is grossly inadequate and cannot act as a deterrent to others. It also shows how stale the Law is.

²⁷ S. 9.

²⁸ S. 272 of the Constitution of the Federal Republic of Nigeria.

²⁹ S. 2 of the Public Health Law, Cap 170 Laws of Delta State, 2005.

³⁰ *Infra*.

2.2.3 Notifiable Infectious Diseases

Section 12 deals with Notifiable Infectious Diseases and makes it mandatory for such diseases to be reported to an Appropriate Medical Officer of Health. The Appropriate Medical Officer of Health is defined in Section 12 of the Law to mean “the government medical officer of health or the medical officer of health of the competent Local Government Council for the area within which the power is to be exercised or the duty to be discharged.

Furthermore, Section 13(1) places an obligation on the head of the family to which a person suffering from an infectious disease belongs to notify the appropriate medical officer of health. Section 13 (1) provides that when an inmate of any building used for human habitation is suffering from a notifiable infectious disease the head of the family to which that inmate belongs, and in his default, the nearest relatives of the patient present in the building or in attendance on the patient, and in default of such relatives, every person in charge of or in attendance on the patient, and in default of any such person, the occupier of the building, shall as soon as he becomes aware that the patient is suffering from a notifiable infectious disease, send notice thereof to the appropriate medical officer of health.

Failure to give required notice is punishable with a fine of one thousand naira or a term of imprisonment not exceeding six months.

This section appears to implicate every person who became aware of the notifiable infectious disease when notice was not given. Even though such persons other than the head of the family can raise a defence that they had reasonable cause to suppose that the notice had been duly given, that defence is only available when they have been arraigned in court and subjected to the ordeals of criminal prosecution. Probably the essence of this provision is to place the duty to give notice on the generality of the inmates of every building to prevent the spread of such disease.

Moreover, if such notice is given, the appropriate medical officer of health is empowered under Section 19 of the law to

remove to, and detain, infected persons, and even suspects, in a government hospital until he can be discharged with safety to the public. Moreover, Section 26 empowers every health officer or Police Officer apprehend and the health officer is also empowered under Section 15 of the law to cause to be marked any premises in which any case of a notifiable infectious disease has occurred for the purpose of denoting the occurrence of such disease. Beyond this, the health officer or the competent Local Government Council may pursuant the Section 17(1) order the destruction of any building in which a case of a notifiable infectious disease has occurred in the interest of public health. In addition to this the Health Officer may, pursuant to S.18 order the destruction of any animals which he has reason to believe are likely to be agents in the transmission of a notifiable infectious disease.

The Law also makes it an offence under Section 22 for any person to knowingly let for hire any house in which any person has been suffering from any notifiable infectious disease without having had such house and the articles therein properly disinfected to the satisfaction of the appropriate medical officer of health. In order to further curtail the spread of notifiable infectious diseases the law makes it an offence under Section 23 for any person suffering from it or any person who is in charge of a person suffering from it to do any act or thing which tends to spread the disease. In particular, Section 24 makes it an offence for any person suffering from any of such disease to enter any public conveyance without notice to the person in charge of the public conveyance.

All the above provisions of the Public Health Law are geared towards securing a healthy environment for human habitation. Unfortunately, these provisions are observed more in breach than in obedience. “Notifiable infectious disease” is defined in Section 2 to mean plague, cholera, yellow fever, small pox, typhus, relapsing fever, cerebro-spinal meningitis, chicken pox, diphtheria, scarlet fever, puerperal fever, whooping cough, measles, tetanus, rabies, typhoid, dysentery, poliomyelitis, tuberculosis, leprosy, yaws and trypanosomiasis, and includes any disease of an infectious or contagious nature which the appropriate

authority may by public notice declare to be a notifiable infectious disease. These diseases if left unchecked will certainly affect the quality of the human environment. In fact, it will lead to a high degree of pollution which will make the human environment uninhabitable.

Unfortunately, what obtains in practice is that people who are infested by many of these diseases are left to roam the streets without check. It is a common sight to see persons infested with chicken pox, tuberculosis and other infectious diseases in public places such as markets, public vehicles, worship places and even on streets. This is in spite of the powers conferred on the medical officers and Health officers as well as Police Officers to apprehend and take, or cause to be apprehended or taken, to a hospital any person whom they find in any public street, public place, shop or public conveyance suffering from any notifiable infectious disease. A cursory look at the Law shows that its provisions are clear and unambiguous. Such clear and unambiguous provisions must therefore be given its literary interpretation. The Supreme Court has held in the case of *Adisa v. Oyinwola*³¹ that where the words used in a statute are clear and unambiguous they must be given their natural and grammatical construction.

Again a maxim of literary interpretation is “*lex non cogit ad impossibilia*” (a law should not be constructed to do what is impossible).

The Public Health Law cannot also be said to have provided for the doing of anything which is impossible. The requirements provided in the law to ensure public health are clear, simple, preventive, elementary, practicable and obviously obtainable.

There however appears to be a conflict between Customary or traditional medical practices and the practices of orthodox medicine. While the state of the law aligns with the practice of orthodox medicine, traditional medical practices have no place in

³¹ (2000) 79 LRCN 180. In fact, there are plethora of cases to that effect; see *Olatunde v. Obafemi Awolowo University* (1998) 58 LRCN 3363; *City Engineers v. NAA* (1999) 70 LRCN 2121; *Mobil Oil (Nig.) PLC v. IAL Inc.* (2000) 77 LRCN 918.

the Public Health Law. This can result in apathy in compliance with, and non-enforcement of the Law.

In other for the provisions of the law to be effective it is necessary to educate the masses who often resort to traditional medical practices when they are sick. There is need to create awareness in their minds that such diseases are infectious irrespective of their belief.

3.0 Environmental Sanitation Laws

Environmental Sanitation Laws were introduced to keep the human environment in good sanitary condition, aesthetics and beatification of the human environment. They were enacted as Environmental Sanitation Edicts across all the states of Nigeria pursuant to the directive of the then Federal Military Government of Nigeria. Consequently, their provisions are also basically the same across the country. The Environmental Sanitation Law of Delta State will be used as a reference point in this paper.

3.1 What Is Sanitation?

Sanitation is defined as the hygienic means of promoting health through prevention of human contact with the hazards of wastes as well as the treatment and proper disposal of sewage or wastewater.³² On the other hand Public Health has been defined as the health of the community at large.³³

The implication of these two definitions is that the health status of a person is a direct function of the status of his environment. Consequently, every effort at improving healthful condition of the citizens must directly impact on efforts at maintaining a clean environment.

Environmental Sanitation Laws are therefore the Laws put in place to regulate the conduct of man to secure compliance with guidelines, standards and directives for ensuring sanitary environmental condition. Delta State has its own Environmental Sanitation Law and its provisions will now be discussed.

³² Wikipedia, en.m.wikipedia.org .

³³ Blacks Law Dictionary, Supra.

3.2 The Delta State Environmental Sanitation Law

The Delta State Environmental Sanitation Law was enacted on the 15th day of April 1986. As the name implies and as clearly stated in the preamble it is “A law to provide for environmental sanitation in Delta State and for the purposes connected therewith” The law deals with general sanitation of the state. Section 3 of the Law provides that the landlords or occupier of tenement shall at all times keep the tenement and its surroundings together with the adjoining and connecting drains, gutters or channels free from weeds, grasses, filth, rubbish, refuse or any other waste matter.

The word “occupier” in this Law is defined in Section 2 to mean a person who has actual use, possession or control of a premises or what goes on in the premises. By this definition, landlord, tenants and even sub-tenants are involved in keeping the tenement in good sanitary condition. Tenement here is defined to include houses, shops, market stalls, factories, industrial and commercial building, clubs and hotels. In fact, this definition is wide enough to include the totality of human habitats in the whole states. This is obvious from the use of the word “include” in defining “tenement” in Section 2 of the Law. It is now trite law that the word “include” used in statutes means that the list is not exhaustive. It is also to be noted that the occupier is to keep the adjoining and connecting drains and gutters free from weeds, grasses, filth and rubbish. This provision if actually enforced will earn for the state a healthy environment. Unfortunately, what is seen in the various towns and streets in the Niger Delta suggest that these laws are not effectively applied.

Again Section 4(1) provides that the landlords or occupier of a tenement shall provide a standard refuse bin having two handles on either side a cover for the purpose of gathering and storing refuse or other waste matters. The Local Government Council in every area is expected under Section 4 (2) to have a refuse disposal service for which every landlord or occupier would pay a prescribed fee in order for the Local Government Council to dispose of the refuse at regular intervals. Moreover, where the Local Government Council does not provide refuse collection services the landlords or occupier of the tenement shall engage the

services of an approved agent of the local government council to dispose of the refuse regularly. The approved agent is any person or company registered by a local government council as a refuse disposal agent. Three situations arise here: in the first place the local government council may not provide a refuse bin for an area in which case occupiers of the area have to engage the services of agents approved by the Council.

A second situation is where there are no agents approved by the Council in the area and the third situation is where the agents approved by the Council are not rendering the services of disposing the refuse regularly. All these situations result in neglect of environmental sanitation. This calls for a more drastic measure. In the first place the law should be amended to make it mandatory for the local government council to always provide refuse bin in designated areas. A penal legislation should also be included in the legislation to make it an offence for Council workers who are saddled with the responsibility and duty of making the refuse bins available for use and supervising their evacuation if they fail to do so.

Secondly, it is not enough for persons or companies to be registered by the Local Government Council as approved agents. The law should be amended to make it an offence for any registered agent to fail to discharge the duty of the refuse disposal.

Section 5 makes it mandatory for the landlord or occupier of every tenement situate in an area designated to be an urban area in the state to erect a water system toilet with soak away pits and septic tanks into which he shall direct all obnoxious water and effluents.

Again the landlord or occupier of a tenement whose tenement is in an area designated to be an urban area is required to provide and maintain security lights in and around the tenement at all times. An observation of the tenements in the state clearly shows that landlords or occupiers merely observe this provision at their discretion. This is evident from the way many tenements in urban areas are left without security light over a long period of time; the landlord or occupier maintains the security light at his own pleasure.

3.2.1 Offences under the Law

Offences are created in S.11 of the law to sanction offenders. The following are offences:

- a. To sweep or throw or deposit refuse or other waste matter into the highway or public space of an unauthorized place.
- b. To display by the highway any article for sale or to store firewood, motor tyres, sand, gravel, blocks, empty crates, cartons, motor junks or anything whatsoever that constitutes an obstruction to the public or is prejudicial to health;
- c. To store in an empty receptacle or make excavation or construct anything whatsoever that is likely to encourage the breeding of mosquitoes or other harmful insects;
- d. To discharge or allow to be discharged obnoxious water or other toxic water from his tenement to a highway or adjoining gutters or drains;
- e. To throw or lay a tenement, on high way or gutter (except place which may be set apart and certified for such purpose by a local government council) any rubbish, refuse or any other waste matter or any structure or object which is capable of causing any obstruction or constituting a nuisance to the user of the high way or an occupier of the tenement;
- f. To make noise or nuisance through the regular use of sound equipment of any description in a manner as to cause hearing discomfort to neighbours or the immediate public, however, the noise from religious, traditional and social ceremonies is excluded. It is respectfully submitted that noise from religious, traditional and social ceremonies should be caught up by the law if it is excessive.

- g. Not to provide and maintain adequate security lights in his tenement;
- h. To obstruct, damage, remove or interfere with any street light;
- i. Being a tradesman to operate his business or trade within a designated urban area except he has the written approval of the local government council;
- j. Not to report to the local government council any obstruction, or removal or interference with any street light, and
- k. Not to provide and maintain water system toilet.

It is common knowledge that these offences are committed daily yet there is hardly prosecution of offenders. The person who can prosecute for any of the offences above listed is a member of the Task Force which includes a medical officer, a health superintendent, other person acting in that behalf under the authority whether general or special of a local government council or the Task Force.³⁴ Indeed the category of people who should enforce this law is wide.

4.0 Conclusion and Recommendations

Attempt has been made in this paper to analyze the provisions of the public health laws and those of the environmental sanitation laws with a view to ascertaining their adequacy and effectiveness. It has been shown in this paper that some of the provisions of the laws need to be updated as follows:

4.1 Public Health Laws

Public Health Law of Delta has been discussed. The emphasis of Public Health Laws is on various acts of nuisance which would be injurious to human health. Accordingly, acts

³⁴ S. 11 and S. 2.

which constitute public nuisance are enumerated in the law. If the acts listed as public nuisance are effectively curtailed the result will be a much healthier environment. Any person involved in this act of public nuisance commits an offence. However, the law only authorized Public Health Officers to prosecute offenders under this law. Unfortunately, since they are not trained lawyers it becomes difficult for them to effectively prosecute offenders. For this reason, it is submitted that legal department be created in each local government council where competent lawyers are employed to prosecute offenders. In addition to this the law should make provision for private prosecution where the government fails to prosecute.

Notifiable infectious disease has also been discussed and it is observed that in spite of the serious health hazard posed by people infested with such diseases many of them are still found in public places. There is need for aggressive awareness campaign for the masses to appreciate the danger involved in infested people mixing up with the general public. Moreover, it should be made mandatory for Health Officers and Police Officers to apprehend and take such persons to hospital in line with the duty conferred on them by law.

4.2 Environmental Sanitation Laws

On environmental sanitation laws even though every Local Government Council is required to provide refuse disposal service for which every landlord or occupier would pay a prescribed fee in order for the Local Government Council to dispose of the refuse, the Law did not provide for any sanction against any Local Government and its staff in the event of failure to provide such service. This section of the law needs to be amended. The amended law should make it an offence for Local Government Council workers, who are saddled with the responsibility of providing such service, to fail to do so.

The law also needs to be amended to make it mandatory for every Local Government Council to always provide refuse bins in designated areas. If there is such mandatory provision, an order of

mandamus can then be used to compel defaulting Local Government Officials to do their work.

Furthermore, Section 4(2) also empowers the Local Government Council to give approval to any person or company registered by the local government council as a refuse disposal agent where the local government council could not provide refuse collection services. In order to ensure that such agents do their work there is need to amend the law to make it an offence for any registered agent to fail to discharge the duty of refuse disposal.

It is the position of this paper that if the above amendments are made the laws would be in a better position to address the challenges of public health and sanitation in the fast growing Nigerian society.