NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF SCIENCES AND TECHNOLOGY

COURSE CODE: EHS 506

COURSE TITLE: ENVIRONMENTAL HEALTH LAWS, REGULATIONS AND POLITICS

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COURSE GUIDE

EHS 506
ENVIRONMENTAL HEALTH LAWS, REGULATIONS, AND POLICIES

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Published by
National Open University of Nigeria

Printed 2014

ISBN: 978-058-072-X

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INTRODUCTION

Environmental Health Law, Regulations and Policies is a semester course. It is a two-credit unit course available to all students of Bachelor of Science (B.Sc.) Environmental Health and other related sciences. The field of environmental health is evolving, hence environmental health officers need to keep with the pace of development and be sensitive as well as get updated on the evolving developments in the field. It will also spur consciousness and equip you with adequate information to safeguard the environment from the dangers of misuse as a result of lack of awareness of the environmental health laws, regulations and policies and the consequences of non-compliance with these laws.

Economic instruments, information devices, voluntary agreements, laws, regulations and policies are just some of the instrument of administration and techniques modern States use to protect their environment. It is often alleged that environmental offences are not ‘real’ crime rather they are merely ‘quasi-criminal’ regulatory offences. This course rejects this view. It argues that environmental crime is a serious and growing problem; it examines some of the constituents of environmental offences and claims that environmental offenders often have very strong financial incentives to break the law. It claims that environmental laws, regulations and policies are though in place and potent, the rate of compliance are currently too low and that serious consideration should be given to the increased use of civil and administrative penalties as a very important means of ensuring compliance to the provisions of environmental laws, regulations and policies.

It should be noted that the best of environmental standards in the world will be innocuous if they are not complied with or effectively enforced. Compliance and enforcement therefore ensures good environmental compliance and respect for the rule of law. They equally determine the enforcement of environmental standards based on practical realities and to a greater extent provide a yardstick for assessing whether the standards should be maintained, amended or repealed.

Like many other developing countries, Nigeria faces the challenge of environmental health problems. These problems are basically a gap between what it is and what ought to be, what we have and what we want or can reasonably hope to achieve. Environmental health laws, regulations and policies are therefore the required instruments of administration that will guarantee a hygienic and clean environment that will support and promote good and healthy living without endangering the flora and fauna.

WHAT YOU WILL LEARN IN THIS COURSE

The course content consist of a unit of Course Guide, which informs you briefly what the course is about, what course materials you need and how to work with such materials. It also gives you some guideline for the time you are expected to spend on each unit, in order to complete it successfully.

It guides you concerning your tutor-marked assignment, which will be placed in the assignment file. Regular tutorial classes related to the course will be conducted and it is advisable for you to attend these sessions. It is expected that the course will prepare you for challenges you are likely to meet in the field of Environmental Health Laws, Regulations and Policies.

COURSE AIMS

The aim of this course is to provide you with a sound knowledge and understanding of the evolution and history of environmental health laws, regulations and policies; nature and sources of laws; morality, judicial institution.and functions of laws, regulations and policies in our society. The national legal system, characteristics and sources of a national legal system will discuss be examined, so also the process of making laws; court processes and procedures; process of compelling attendance of accused person in court; constitutional rights and safeguards of the accused person and public health laws.

In view of the growth international and national environmental health concerns, attention will be given to environmental/public health offences; enforcement roles of environmental health officers; Environmental Health Officers Registration Council of Nigeria and National Environmental Standard Regulations Enforcement Agency.

COURSE OBJECTIVES

To achieve the aims of the course as set out, there are set of objectives for each of the course units. Each unit has specific objectives which are stated at the beginning of the unit. You are advised to read the objectives before you study to be able to track your understanding of the course and your progress. It is also good that you endeavour to check the unit objectives after the completion of each unit, to work out your level of accomplishment.

After going through the course, you should be able to:

- explain the evolution of environmental health laws, regulations and policies
- define environmental health laws, regulations and policies
- summarise the nature of laws
- identify the national legal system
- list characteristics and sources of national legal system
- plan and implement process of making laws, regulations and policies
- write the court processes and procedure
- recall the environmental/public health laws and it's sections
- list the code of ethics for environmental health officers
- translate the enforcement role of environmental health officers in relation to environmental health laws, regulations and policies
- recognise, Environmental Health Officers Registration Council of Nigeria
- list the duties of National Environmental Standard Regulations Enforcement Agency.

WORKING THROUGH THIS COURSE

To complete this course, you are expected to read each study unit, read the textbooks and other materials, which may be provided by the National Open University of Nigeria. Each unit contains self-assessment exercises. In the course, you would be required to submit assignment for assessment. At the end of the course, there is final examination. The course should take about fifteen weeks to complete.

Listed below are the components of the course, what you have to do and how to allocate your time to each unit, in order to complete the course successfully and timely.

ACTIVITY SCHEDULE

Module 1		
Wk. 1	Unit 1	Submit TMA
Wk. 2	Unit 2	Submit TMA
Wk. 3	Unit 3	Submit TMA
Wk. 4	Unit 4	Submit TMA
Module 2		
Wk. 1	Unit 5	Submit TMA
Wk. 2	Unit 6	Submit TMA
Wk. 3	Unit 7	Submit TMA
Wk. 4	Unit 8	Submit TMA
Wk. 5	Unit 9	Submit TMA
Module 3		
Wk. 10	Unit 10	Submit TMA
Wk. 11	Unit 11	Submit TMA
Wk. 12	Unit 12	Submit TMA
Wk. 13	Unit 13	Submit TMA
Wk. 14	End of Circle General Revision	
Wk. 15	End- of -Course Examination	

The course demands that you should spend good time to read. My advice for you is that you should endeavour to attend tutorial session where you will have the opportunity to compare notes and knowledge gained during your studies with colleagues.

COURSE MATERIALS

The main components of the course materials are:

1. The Course Guide
2. Study Units
3. References/Further Reading
4. Assignments
5. Presentation Schedule

COURSE UNITS

There are 13 study units in this course. The units are as follows:

Module 1

Unit 1	History of Environmental Health Laws, Regulations and Policies
Unit 2	Nature and Sources of Laws
Unit 3	Morality
Unit 4	Judicial Institution in Nigeria

Module 2

Unit 1	Process of Making Laws
Unit 2	Court Processes and Procedures
Unit 3	Process of Compelling Attendance of Accused Person in Court
Unit 4	Constitutional Rights and Safeguards of the Accused Person
Unit 5	Public Health Laws

Module 3

Unit 1	Environmental/Public Health Offences
Unit 2	Enforcement Roles of Environmental Health Officers
Unit 3	Environmental Health Officers Registration Council of Nigeria
Unit 4	National Environmental Standard Regulations Enforcement Agency.

Module1 explains the evolution of health laws, regulations and policies. There are four units in the module. The first unit focuses on the history of environmental health laws, regulations and policies, while the second unit deals with the nature and sources of laws. The third unit dwells on morality and the last unit, which is unit four of the module one, is on judicial institution in Nigeria.

The second module is on environmental health legislation. It has five units. The unit starts from1-5. The first unit deals with process of making laws, the second unit discussed court processes and procedures while the third unit deals with process of compelling attendance of accused person in court. Finally, unit four is on constitutional rights and safeguards of the accused person and unit five dwells on public health laws.

The third and last module is on enforcement of environmental health laws, regulations and policies. It has four units. Unit one deals with environmental/public health offences. Unit two focuses on the enforcement roles of environmental health officers; while unit three deals with the Environmental Health Officers Registration Council of Nigeria and the last unit which is unit four discusses National Environmental Standard Regulations Enforcement Agency.

Each will take you 1 or 2 weeks, including introduction, objective/s, main content, reading materials, exercises, conclusion, summary, tutor-marked assignments (TMAs), references/further reading and other resources. The various units direct you to work on the exercises related to the required reading.

In general, the exercises test you on the materials you have just covered or require you to apply it in a way that it will assist you evaluate your own progress and to reinforce your understanding of the materials. Alongside the TMAs are some exercises. They will help you achieve the stated learning objectives of the individual units and course as a whole.

PRESENTATION SCHEDULE

Your course materials have important dates for the early and timely completion and submission of your TMAs and attending tutorials. You are expected to submit all your assignments by the stipulated time and date and guard against falling behind in your work.

ASSESSMENT

There are three parts to the course assessment and these include self-assessment exercises, tutor- marked assessments and the written examination or end-of-course examination. It is advisable that you do all the exercises. In tackling the assignments, you are expected to use the information, knowledge and techniques gathered during the course. The assignments must be submitted to your facilitator for formal assessment in line with the deadlines stated in the presentation schedule and assignment file. The work you submit to your tutor for assessment will count for 30% of your total course work.

At the end of the course you will need to sit for a final end-of-course examination of about three hours duration. This examination will count for 70% of your total course mark.

TUTOR- MARKED ASSIGNMENT

The TMAs is a continuous component of your course. It account for 30% of the total score. You will be given four (4) TMAs to answer. Three of this must be answered before you are allowed to sit for the end-of-course examination. The TMAs would be given to you by your facilitator and returned after you have done the assignment. Assignment questions for the units in this course are contained in the assignment file. You will be able to complete your assignment from the information and material contained in your reading, references and study units.

However, it is desirable in all degree level of education to demonstrate that you have read and researched more into your references, which will give you a wider view point of the subject. Make sure that each assignment reaches your facilitator on or before the deadline given in the presentation schedule and assignment file. If for any reason you cannot complete your work on time, contact your facilitator before the assignment is due to discuss the possibility of an extension. Extension will not be granted after the due date unless there are exceptional circumstances.

FINAL EXAMINATION AND GRADING

The end-of-course examination for non-communicable and chronic diseases will be for about 3 hours and it has a value of 70% of the total course work. The examination will consist of questions, which will reflect the type of self-testing, practice exercise and tutor-marked assignment problems you have previously encountered. All area of the course will be assessed.
You are to use the time between finishing the last unit and sitting for the examination to revise the whole course. You might find it useful to review your self-test, and TMAs and the comments on them before the examination. The end-of-course examination covers information from all parts of the course.

COURSE MARKING SCHEME

Assignment	Marks
Assignments 1-4	Four assignments, best three marks of the four counts 10% each for the 3course marks amounting to 30%.
End-of-course examination	70% of overall course marks
Total	100% of course materials

FACILITATORS/TUTORS AND TUTORIALS

There are 15 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of the tutorials as well as the name and the phone number of your facilitator, as soon as you are allocated a tutorial group.

Your facilitator will mark and comment on your assignments, keep a close watch on your progress and any difficulties you might face and provide assistance to you during the course. You are expected to mail your tutor-marked assignment to your facilitator before the schedule date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible.

Do not delay to contact your facilitator by telephone or e-mail if you need assistance. The following might be circumstances in which you would find assistance necessary, hence you would have to contact your facilitator if:

- You do not understand any part of the study or the assigned readings
- You have difficulty with self-tests
- You have a question or problem with an assignment or with the grading of an assignment.

You should endeavour to attend the tutorials. This is the only chance to have face-to-face contact with your course facilitator and to ask question which are answered instantly. You can raise any problem encountered in the course of your study. To gain more benefit from course tutorials prepare a question list before attending them. You will learn a lot from participating actively in discussions.

SUMMARY

The very existence of the course **Environmental Health Laws, Regulations and Policies** is not in question because this course x-rays the very interventions and contributions of regulations, policies and laws that are relevant to and are of environmental health importance and their impact on environmental health.

Nigeria is committed to a national environmental health laws, regulations and policies that will ensure sustainable development based on proper management of the environment. This has necessitated the federal government of Nigeria passing various laws, policies and regulations to safeguard the Nigerian environment thus promoting positive demands and realistic planning that balances human needs

against the carrying capacity of the environment. This requires that a number of complementary policies, strategies, management and approaches are put in place which should ensure, among others, that:

a) environmental health concerns are integrated into major economic decision- making process
b) environmental health remediation costs are built into major development projects
c) economic instruments are employed in the management of natural resources
d) environmental health -friendly technologies are applied.

Upon completing this course, you will be equipped with sound knowledge, understanding and professional demanded of you in relation to environmental health laws, regulations and policies as you will be grounded in the knowledge and understanding of the evolution and history of environmental health laws, regulations and policies; nature and sources of laws; morality, judicial institution.and functions of laws, regulations and policies in our society.

You will be able to discuss the national legal system, characteristics and sources of a national legal system and also the process of making laws; court processes and procedures; process of compelling attendance of accused person in court; constitutional rights and safeguards of the accused person and public health laws.

You will also know the growth of international and national environmental health concerns, with particular attention to environmental/public health offences; enforcement roles of environmental health officers; Environmental Health Officers Registration Council of Nigeria and the National Environmental Standard Regulations Enforcement Agency.
In addition, you should be able to answer questions on the subject such as:

- The evolution of environmental health laws, regulations and policies
- Environmental health laws, regulations and policies
- Nature of laws
- National legal system
- Characteristics and sources of national legal system
- Plan and implement process of making laws, regulations and policies
- Understand court processes and procedure
- Understand environmental/public health laws and its sections
- Code of ethics for environmental health officers

- Understand the enforcement role of environmental health officers in relation to laws, regulations and policies
- Understand what is Environmental Health Officers Registration Council of Nigeria
- National Environmental Standard Regulations Enforcement Agency.

The above list is just a few of the questions expected and is by no means exhaustive. To gain most insight into this course you are advised to consult relevant books to widen your knowledge on the topic.
I wish you success in the course and your future endeavours. It is my hope you will find it both illuminating and useful.

MODULE 1

Unit 1 History of Environmental Health Law, Regulations and Policies
Unit 2 Nature and Sources of Laws
Unit 3 Morality
Unit 4 Judicial Institution in Nigeria

UNIT 1 HISTORY OF ENVIRONMENTAL LAWS, REGULATIONS AND POLICIES

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
    3.1 Evolution of Environmental Health Laws, Regulations and Policies in Nigeria
    3.2 Define
        3.2.1 Law
        3.2.2 Regulations
        3.2.3 Policies
    3.3 Environmental Law Movement
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Reading

1.0 INTRODUCTION

The socio-economic activities of man are daily endangering the environment. There is not gain saying the fact that this act of man has being of a great concern to all and hence the concept of sustainable development as a panacea to redressing the alarming situation. Before 1972, there were no clear laws, regulations and policies on environmental issues in Nigeria. Most laws in practise were contained in the various public health laws of various states of the federation.

The 1987 dumping of toxic waste at Koko village in the then Bendel State now Delta State, marked an important paradigm in the nation’s understanding and putting in place a virile environmental laws, regulations and policies.

In 1987, Italian businessmen, Gianfranco Raffaeli and Renato Pent, of the Waste Broker firms Ecomar and Jelly Wax respectively, signed an illegal agreement with Nigerian businessman, Sunday Nana, to use his

property for storage of 18,000 drums of hazardous waste for approximately $100 a month. The wastes were exported from the port of Pisa, and elsewhere in Italy, to the receiving firm in Nigeria, the Iruekpen construction company, owned by Sunday Nana. The wastes were imported as substances "relating to the building trade, and as residual and allied chemicals.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- discuss the evolution of environmental laws, regulations and policies
- define law
- state the regulations
- state the policies
- list the important personalities in environmental health law vanguard in Nigeria.

3.0 MAIN CONTENT

3.1 Evolution of Environmental Laws, Regulations and Policies

Environmental law in Nigeria is that branch of public law which contains rules and regulations which have as their object or effect the protection of the environment. During the colonial era, protection of the environment was not a priority in Nigeria and there was accordingly no policy aimed at preserving and protecting it. Matters relating to the environment were dealt with as a tort of nuisance because disputes in environmental law were not viewed as public matters warranting state intervention. The few environmentally related laws that were applicable criminalised activities that could degrade the environment. These laws include the Criminal Code Act of 1916, which prohibited water pollution and air pollution; and created the offence of nuisance. In 1917, the Public Health Act was enacted. Although somewhat broad in scope, this Act did contain provisions of relevance to the regulation of land, air and water pollution. Thus it is evident that at this time, matters relating to the environment were dealt with in a rudimentary manner, from the view point of environmental sanitation.

Following Nigeria's independence in 1960 and the discovery of oil in commercial quantities, it became apparent that existing laws dealing with the environment were grossly inadequate. This was owing to the fact that most of the provision on environmental protection were scattered throughout different laws, resulting in an ad hoc response to different needs in different situations. During the decade following

independence, the government criminalised polluting activities, particularly those relating to the discharge of oil in navigable waters and environmental degradation as a result of petroleum activities. The 1970s saw the further development of the Nigeria's environmental regime in response to the industrial growth associated with the oil boom. River Basin Authorities were created and environmental units were established in some government ministries. The laws were, however, typically 'knee-jerk' responses to emergency situations.

The 1980 and 1990s witnessed the most drastic and systematic development of environmental laws in Nigeria, partly owing to Nigeria's subscription to a number of international instruments during this period. The main National Laws and Decrees developed during this period, and which are still in operation today, are listed below:

- Animal Disease (control) Act
- Bee (import control and Management) Act
- The Endangered Species Act
- Hides and Skins Act
- Live Fish (control of importation) Act
- National Crop Varieties and Livestock Breeds Act
- Agricultural (control of implementation) Act
- Agricultural and Rural Management Training Institute Act
- Pest (control of produce) Act
- Quarantine Act
- Associated Gas Re-Injection Act
- Civil Aviation Act
- Oil and Navigable Waters Act
- River Basin Development Authority Act
- Sea Fisheries Act
- Territorial Waters Act
- Exclusive Economic Zone Act
- National Water Resources Institute Act
- Kainji Lake National Park Act
- Harmful Waste Act
- Land Use Act
- Minerals Act
- Petroleum Act
- Criminal Code Act
- Energy Commission of Nigeria Act
- Federal Environmental Protection Agency Act
- Natural Resources Conservation Council Act
- Environmental Impact Assessment Decree
- National Environmental Standards Regulation, Enforcement Agency; and
- The Nuclear Safety and Radiation Protection Act.

These Laws and Decrees are supported by an array of additional regulations and policies of environmental significance. The most recent and important addition to Nigeria's environmental regime is the National Environmental Standards and Regulations Enforcement Agency (establishment) Act, which came into force in 2007. The Act establishes the National Environmental Standards and Regulations Enforcement Agency, Nigeria's leading Environmental Protection Agency.

As should be evident from above, Nigeria's formal environmental regime has developed significantly from humble beginnings. Having been initiated in the colonial period, during which environmental issues were generally couched within public health regulation; and having developed in a rather ad hoc manner in the early days of independence, during which heavy reliance was placed on the law of nuisance; Nigeria now has a relatively comprehensive environmental regime. This regime is administered by an array of institutions. The Federal Ministry Environment, Housing and Urban Development and the National Environmental Standards and Regulations Enforcement Agency are the main institutions responsible for the formulation of environmental policy and enforcement respectively. Their functions are supported by the following additional government institutions; the Federal Ministry of Solid Minerals Development; Federal Ministry of Agriculture and Natural Resources; Federal Ministry of Water Resources; Federal Ministry of Science and Technology; and Ministry Of Energy, Oil and Gas Resources.

The National Environmental Standards and Regulations Enforcement Agency (NESREA), Act came into force in 2007. The Act establishes the National Environmental Standards and Regulations Enforcement Agency, Nigeria's lead environmental protection agency. NESREA was created to replace the defunct Federal Environmental Protection Agency (FEPA).

Nigeria spans about 924,000 square kilometres of land area with ecological zones ranging from the dry savannahs in the north, to the water abundant Niger Delta which is rich in energy and mineral deposits. Nigeria possesses a well-endowed environment and natural resources base both renewable and non-renewable, and has remained a key player in all global environmental initiatives since the 1970's.

The 1987 of experience dumping of toxic waste in Koko village, in Delta State, propelled Nigeria into taking a giant leap by becoming an environmentally conscious nation. The country was before this incident, ill-equipped to manage such environmental crisis, as there were no institutional capacity and legislations to address such matters.

The birth of Federal Environmental Protection Agency by Decree 58 of 1988 was a fallout of Koko toxic dump. It was indeed the beginning of special attention being paid to matter relating to the environment. It is worthy of mention that environmental health concern has being enjoying attention under the public health laws, but the coming of Federal Environmental Protection Agency further widened the scope

3.2 Laws

Law is a body of directions or commands requiring or prohibiting certain conduct, enforceable by legal sanctions. It is also a body of directions or commands that grant authority to a public body or agency or requires such a body or agency to carry out designated powers. Thus, environmental/public health law forbids persons to engage in activities that endanger the health of others, and it specifies government agencies to carry out certain programs to advance environmental/public health and to prevent activities that are harmful to the health of individuals or of the public. In its generic sense, law is defined as – a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. (See *Black's Law Dictionary*, 6th ed.). Obilade opines that in the Nigerian legal system 'although there is no universally accepted definition of 'Law', it is clear that law consists of a body of rules of human conduct'. As stated by Obilade, there is not one satisfactory definition of 'law'. Law can be defined severally as:

a. "a set of rules enforced by the state"
b. "a system of rules that enables society to function efficiently and harmoniously."

3.3 Regulations

Regulations are example of secondary or subsidiary legislation. It is an official rule, law or order stating what may or may not be done or how something must be done. It is a government order with force of law. It is an order issued by a government department or agency that has the force of law.

It is also important to state that most laws on environmental health in recent times made provision for the making of regulations for the purpose of achieving a sound and healthy environment, thus reducing and where possible eliminate the disease caring capacity of the environment.

3.4 Policy

Policies are a course of action; a programme of actions adopted by a person, group, or government, or the set of principles on which they are

based. It is a plan or course of action in directing affairs, as chosen by a political party, government, business or company. A policy may also be said to be a definite course or method of action selected by a government, institution, or individual from among alternatives and in the light of given conditions to guide and usually determine present and future decisions.

Conclusively, policy may be an aggregation of people's hopes, aspirations and values which may be contained in official documents or merely taken as being the current stand on given problems.

In practical terms, it consists of a course of actions and measures deliberately taken to direct the affairs of society towards the realisation of predetermined goals or objectives.

Stated most simply, policy is the sum of government activities, whether acting directly or through agents, as it has an influence on the life of citizens Stated simply, policy is the sum of government activities, whether acting directly or through agents, as it has an influence on the life of citizens.

The term public policy always refers to the actions of government and the intentions that determine those actions. Public policy is "Whatever governments choose to do or not to do". Public policy consists of political decisions for implementing programmes to achieve societal goals.

It is important to mention that the content of policy includes:

a. Introduction
b. Goals of policy
c. Types of policy
d. Policy cycle management
e. Policy formulation
f. Policy implementation
g. Strengths and weaknesses of policy design; and
h. Reasons for failures.

4.0 CONCLUSION

In this unit, we have discussed the evolution of environmental laws, regulations and policies. We also defined the following terms:

1. Law
2. Regulations and
3. Policies

5.0 SUMMARY

In concluding this unit, it is important we note that environmental health laws had existed for long as public health laws in Nigeria. Environmental health concerns really came to the fore-front and became more prominent in Nigeria in 1987, following the Koko toxic dump by an Italian company. And this indeed prompted the then Federal Military Government to promulgate Decree 58 of 1988 that made provision for the creation of Federal Environmental Protection Agency that later transmuted to a full- fledged Ministry of environment during the regime of Chief Olusegun Obasanjo from 1999 to 2007.

Also worthy of note is the concern of world leaders on human environment that led to the first earth summit held in Stockholm in 1972. It was an international agenda by UN to save the human environment continued environmental degradation.

Regulations are secondary or subsidiary legislation that usually derives its existence from the principal law whereas policy simply put, is the sum of government activities, whether acting directly or through agents, that are reduced into writing providing direction for government frame work and it has an influence on the life of citizens.

6.0 TUTOR-MARKED ASSIGNMENT

Define the following:

a. Law
b. Regulations
c. Policy.

7.0 REFERENCES/FURTHER READING

http://www.westerncape.gov.za/eng/directories/services/11515/6455.

https://ehealth.gov.mt/HealthPortal/public_health/environmental.health/health_inspectorate/port_health_services/port_health_services_objective.aspx.

http://tsaftarmuhalli.blogspot.com/2011/04/environmental-health-in-nigeria.html.

http://www.euro.who.int/__data/assets/pdf_file/0004/151375/e95783.pdf.

UNIT 2 NATURE OF LAW

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 State the Nature
 3.2 Sources of Law
 3.3 List the Characteristics of Law
 3.4 State the Classes of Law
 3.5 Enumerate the Types of Law
 3.6 State the Functions of Laws, Regulations and Policies in the Society
4.0 Conclusion
5.0 Summary
6.0 Tutor- Marked Assignment
7.0 References/Further Reading

1.0 INTRODUCTION

In the last unit, we discussed the evolution of environmental health laws, regulations and policies. The terms law, regulation and policies were also defined. In this unit, we shall be discussing the nature, sources of law, the characteristics of law, classes, the types and the functions of laws, regulations and policies in the society.

One of the principal objects of the laws, regulations and policies is to safeguard the rights of citizens. Our basic rights are what give us our freedom in daily life. The freedom of speech, the right to a fair trial, personal freedom etc, are all functions of law.

What is the importance of law today? In order to establish this we must first establish what the point of law is. Law and order are essential in all communities. In an orderly law-abiding community people can plan ahead, work in safety and do business in trust. In most modern societies order means stability. The guarantees of this order take place in the form of laws. Laws are rules and customs that the citizens of a community regard as binding upon them and can be enforced by the courts. Laws provide boundaries so that people realise where and when they are committing an offence.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state the nature of law
- list the sources of law
- list the characteristics of law
- state the classes of law
- enumerate types of law
- state the functions of laws, regulations and policies in the society.

3.0 MAIN CONTENT

3.1 State the Nature of Law

There are two kinds of law. One based on Justice. The other based on control. The predominant form in use today, and which has the greater ancient heritage, is the latter. Basically, what the vast majority of individuals view as law today is a bastardisation of the golden rule: "Dem wid de gold makes de rules." It is the law of control, of raw power, of "might making right".

Law at its most fundamental level is a means by which individuals and groups with wildly different agendas, goals, and aspirations can function in a tolerant, cooperative, and/or competitive environment. Just as there is no reason to dismiss law (and order?) merely because of its grotesque misuse by those with the power to use it as a manipulative and enslaving tool -- there is also no reason to assume that the latter is the only viable form of law.

It assumes that law possesses certain features, and it possesses them by its very nature, or essence, as law, whenever and wherever it happens to exist. However, even if there are such universal characteristics of law, the reasons for a philosophical interest in elucidating them remain to be explained. First, there is the sheer intellectual interest in understanding such a complex social phenomenon which is, after all, one of the most intricate aspects of human culture. Law, however, is also a normative social practice: it purports to guide human behaviour, giving rise to reasons for action. An attempt to explain this normative, reason-giving aspect of law is one of the main challenges of general jurisprudence. These two sources of interest in the nature of law are closely linked. Law is not the only normative domain in our culture, morality, religion, social conventions, etiquette, and so on. It also guides human conduct in many ways which are similar to law. Therefore, part of what is involved in the understanding of the nature of law consists in an explanation of how law differs from these similar normative domains,

how it interacts with them, and whether its intelligibility depends on such other normative orders, like morality or social conventions.

3.2 Sources of Law

Sources of law means the origin from which rules of human conduct come into existence and derive legal force or binding characters. It also refers to the sovereign or the state from which the law derives its force or validity. Generally, sources of law from most nations are:

i. Precedents
ii. Customs
iii. Legislation

3.2.1 Precedents

Precedent is one of the sources of law. The judgments passed by some of the learned jurists have become a significant source of law. When there is no legislation on a particular point which arises in changing conditions, the judges depend on their own sense of right and wrong and decide the disputes. Such decisions become authority or guide for subsequent cases of a similar nature and they are called precedents. The Gilbert pocket sized *Law Dictionary* defines a judicial precedent as a previously decided case which is used as an example or authority for similar cases which subsequently arise. Precedent therefore is a judgment or decision of a court of law cited as an authority for deciding a similar state of fact in the same manner or on the same principle or by analogy. Precedent is more flexible than legislation and custom. Precedents are not binding on courts in narrow senses, but usually the decision of a higher or Supreme Court is binding on all of its subordinate courts. However, the higher courts can overrule their own judgments.

3.2.2 Customs

A custom is a rule which in a particular family or in a particular district or in a particular section, class or tribe, has from long usage obtained the force of law. The law dictionary defines custom as a practice which, through long, repetitious use and common acceptance, has gained the status of unwritten law in a particular area. Custom as a source of law got recognition since the emergence of Savigny on the horizon of jurisprudence. It is an exemption to the ordinary law of the land, and every custom is limited in its application.

3.2.3 Legislation

Legislation is a set of laws made by a legislative body; regulations adopted by a lawmaking body. Legislation is a direct source of law. The legislative body has power to make laws and amend the old laws and cancels the existing ones. In modern times this is the most important source of law making. The legislative body not only creates new rules it also sweeps away existing inconvenient rules. It has to be passed by both the House of Representatives and the Senate that make up the legislative body for the federation. The making of a new law starts as a bill. Here the bill is discussed and debated by the members of the legislature and is often amended before it is passed.

However, the major sources of Nigerian Law in addition to precedents, legislation and customs include the following:

a. The Constitution
b. Nigerian Legislation
c. English Law
d. Customary Law

3.2.3 (a) The Constitution

In Nigeria, the constitution refers to the document containing the substance of the law of the country. In its loose and abstract sense, it may mean, "the system of laws, custom and conventions which define the composition and powers of organs of the state, and regulate the relations of the various state organs to one another and to the private citizen. The constitution of the Federal Republic of Nigeria is superior to all other laws of the land and it regulates the judicial, executive, and legislative organs of government. The current constitution is the 1999 constitution. And it came into operation on May 29, 1999.

3.2.3 (b) Nigerian Legislation (Acts, Decrees, Edicts)

The constitution of the Federal Republic of Nigeria 1999 regulates the distribution of legislative business between the national assembly which has power to make laws for the federation and the house of assembly which has power to make laws for the state. The current legislation in force at the federal level is largely contained in the laws of the Federation of Nigeria 2004 (LFN). Laws made after the 2004 revision exercise of the Federal Laws are to be found in the annual volumes of the Laws of the Federal Republic of Nigeria. Federal Laws under the military, known as Decrees, and State laws, known as Edicts, form the bulk of the primary legislation.

Each of the 36 states and the Federal Capital Territory (FCT) Abuja has its own laws. Some States have in recent times undertaken law revision exercises to present their laws in a compact and comprehensive form to update the laws and guarantee easy access. Most of the pre-1990 Decrees were incorporated into the LFN and those patently incompatible with the new constitutional order were repealed on the eve of the inauguration of a new democratic government in May 1999. Primary and subordinate legislation in force on the coming into operation of the constitution are treated by the constitution as existing laws and deemed to have been made by the appropriate legislative body with competence to do so under the 1999 Nigerian Constitution. Legislation has been described as the most important source of Nigerian law. This is partly because all other sources of Nigerian Law are considered as such by virtue of a piece of legislation or the other.

3.2.3(c) English Law

This consists of the received English Law comprising: the Common Law, the Doctrines of Equity, Statutes of general application in force in England on January 1, 1900 and statutes and subsidiary legislation on specified matters and English Law (Statutes) made before October 1, 1960 and extending to Nigeria which are not yet repealed. Laws made by the local colonial legislature are treated as part of Nigerian legislation. The failure to review most of these laws especially in the field of criminal law has occasioned the existence of what may be described as impracticable laws or legal provisions which are honoured more in breach than in observance. Despite the influence of English Law, the Nigerian legal system is very complex because of legal pluralism.

3.2.3(d) Customary Law

The traditional classification of Customary Law is into the following categories:

a. Ethnic/Non-Moslem; and
b. Moslem Law/ Sharia

In the States of the southern part of the country, Moslem/Islamic Law, where it exists, is integrated into and has always been treated as an aspect of the customary law. Since 1956, however, Islamic Law has been administered in the northern states as a separate and distinct system. Even then it has only been in relation to Muslim Personal Law. However, it is better to accord Islamic law its distinct status as a separate source of law because of its peculiarities in terms of origin, nature, territorial and personal scope of application.

3.3 List the Characteristics of Law

A law is a body of rules recognised and maintained by the state to regulate the human behaviour and conduct in a society. A law will present the following characteristics:

a. It is a set of rules
b. It regulates the human conduct
c. It is created and maintained by the state
d. It has certain amount of stability, fixity and uniformity
e. It is backed by coercive authority
f. Its violation leads to punishment
g. It is the expression of the will of the people and is generally written down to give it definiteness
h. It is related to the concept of 'sovereignty' which is the most important element of state.

3.4 State the Classes of Law

There are principally two classes of law: Public or Private.

3.4.1 Public Law

Public Law is the part of the law that deals mainly with the state. It controls the relationship between different parts of the government, as well as the relationship between individuals and the state. It is criminal in nature. The main parts of public law are:

- **Criminal Law**: the part of the law that deals with crimes being committed and punishment of those crimes. Criminal Law is that part of the law dealing with crimes being committed. A crime or an offense is an act or omission punishable by the state, which is already contained as an 'offense' in the written law. Criminal proceedings are carried out mainly to punish the 'wrongdoer'. Criminal proceedings are controlled by the state although private persons may sometimes institute such proceedings.

In the southern states, crimes are classified by the seriousness of the crime, which can be:

- felony
- misdemeanour
- simple offense

The seriousness of the crime is supposed to determine the length of jail time and/or the bail amount. (The northern states also have similar classification).

Southern States also classify crimes by whether they are indictable or non-indictable offence is any offence which on conviction may be punished by a term of imprisonment exceeding two years or by imposition of a fine exceeding N500.00 (Section 2 of the Magistrate Court's Law Lagos, 2004.). Indictable offenses are based on being previously written in the law, or have a certain bail amount, or have a certain jail term to be served, while non-indictable offence is any offence other than indictable offence.

- **Constitutional Law**: the part of the law that deals with
  - the structure of different parts of the government
  - the relationship between them
  - their principal functions
- **Administrative Law:** the part of the law that deals with the functions of the different government agencies.
- **Revenue Law:** the part of the law that controls taxation and other sources of government revenue.

3.4.2 Private Law

Private law is the part of the law that deals mainly with the relationship between individuals. It is civil in nature. Civil Law is the law governing conduct which is generally not punishable by state. Civil proceedings are carried out mainly to enable people to enforce their rights and receive compensation for injuries that other people have caused to them. Civil proceedings are usually taken by individuals, but the state may be a party to the civil proceeding. Private law includes, but not limited to:

- **Law of Contract**: when a written agreement is violated.
- **Law of Tort**: when a non-written agreement is violated.
- **Law of Trust:** when someone is supposed to deal with property for the interest of someone else.
- **Law of Property:** this controls title or interest in property. This can be further divided into:
  - Real property (like real estate)
  - Personal property, which can be further divided into:
- Tangible property (property that can be touched, like stocks, etc.)
- Intangible property (property that cannot be touched, like copyrights, etc.)
- **Company Law:** the part of the law that governs the association of different people having a common object like a business undertaking.
- **Partnership Law:** governs the agreements between two or more people who have agreed to carry on a business and share the profits and losses in predetermined proportions.
- **Commercial Law:** controls trade and commerce.

- **Family Law:** deals with family issues such as marriage, parent-and-child relationships, custody, adoption, etc.
- **Law of Succession:** governs how property is passed on after someone dies.
- Private International Law: deals with cases that involve more than one legal system.
- **Law of Evidence:** relates to proof that is provided in a court room.
- **Law of Remedies:** governs the remedies given by the court for an offense.
    - Damages: when money is offered as compensation for the offense.
    - Mandatory Injunction: when the court orders an individual to perform a certain act.
    - Prohibitive Injunction: when the court orders an individual NOT to perform a certain act, or to STOP performing a certain act.
    - Specific Performance: when the court orders someone to fulfil an obligation.

3.5 Types of Law

There are two types of law. The first is Criminal Law, while the latter is Civil Law. Criminal Law is the body of law that relates to crime. It regulates social conduct and proscribes threatening, harming, or otherwise endangering the health, safety, and moral welfare of people. It includes the punishment of people who violate these laws. Usually, it is a crime against the state and the state is the complainant, whereas, in civil law, it is redressing of wrong done by one party to another. The aggrieved party sues for damages to help to solve problems which occur between individuals or groups (trained legal personnel and courts help solve)

3.6 State the Functions of Laws, Regulations and Policies in the Society

The society would have been ruled by anarchy, a form without control and a complex intriguing interaction with no mutual respect for feeling, context or content. Here stands the position of laws and order in the society. We all know that law is very important in the society. It is a must in order for a society to be peaceful and problem-free. Law is a man-made, therefore it is in you, if you will follow it or not. If you do not follow the law, it doesn't mean you will die, so nature has nothing to do on the laws of man.

The law is something that the human has created to modulate the society by introducing justice, fairness and equality that is set by courts and governments and is applied to everyone within their jurisdiction. The law can give protection to the victims and will punish those who have done unlawful actions. You don't have any option where you can choose from, if you disobey, then, you have to face the consequences. If a society won't have a system of law on it that will control how the people operates their lives, then there would not be a society to live in. people will be able to make decisions that will solely be based on their principles, then they would be able to do crimes if they want to, steal, murder, damage, bully, rape, trespass, and even terrorise what and whom when they wanted want to, and nothing would be done about it at all.

Therefore, it will be a disaster if people in a society will do actions that are solely base on their principles. If there won't be law, nothing will stop the people from doing things that they want, with that, they will be free to revenge and it will be vice-versa for they know that they could totally get away unto anything they do, even if it is bad and unlawful. Eventually, the society will be full of crimes, murders and illegal actions. If there were no rules in a society, then even a simple waste disposal will be a big problem that could affect the whole world. If not done properly, it may lead to diseases that can kill the human race. The supply of water could also be affected if there were no rules. No one will work to maintain the cleanliness of it for they may turn unto doing things that may give money more easily even though it is not right at all. No one will cure us when we were ill and help us in times of trouble. In the end, each of the people will find their own ways to live and survive; it will be like a war zone.

These merely show how important it is to have a system of law in a society to regulate a good relationship with each other, even for those with conflicting interest. This is the only procedure that could ensure that the human rights are respected. If we won't have laws, our society would not be able to function effectively. Crimes will become everyday occurrences that children will grow up and will then find it normal, which is not desirable to happen in our future generation that is why law is very important, it ensures the safety of our future generations.

4.0 CONCLUSION

In concluding this unit, it is important to state that we, as environmental health officers, should be abreast of the nature of law, the types, the class and the benefit to the society, as they constantly interact with the society as law serves as a guide to the protection of the officer at work and the relationship with the society.

5.0 SUMMARY

In this unit, we have stated the nature of law to include that of justice and control, the sources of law that starts from our customary laws, English received law, legislation and court precedents among others, the characteristics of law also to include uniformity, force of cohesion, codification and finally the function of laws, regulations and policies in the society. In the next unit, we shall look into Nigerian legal system. You must however note that there are several others not captured in this unit, you are therefore advised to read wider to enable you captured the ones not contained in this topic.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the sources of law?
2. List the characteristics of law.
3. State the classes of law.
4. Enumerate the types of law.
5. State the functions of laws, regulations and policies in the society.

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UNIT 3 MORALITY

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    3.2 Socially Accepted Moral Standard
    3.3 Difference between Morality and Law
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1.0 INTRODUCTION

In this unit, we shall be considering the concept of morality, socially accepted moral standards, the difference between law and morality and finally the similarities between law and morality.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define morality
- state what is socially accepted moral standard
- enumerate the differences between law and morality
- enumerate the similarities between law and morality.

3.0 MAIN CONTENT

3.1 Definition of Morality

Just like law, defining morality is not an easy task, considering the rate of modernity and the pressure on the need for the respect of fundamental or basic human rights. As Mandal (2004) rightly states "law and morality are too vague to understand. It must be added here that the notion of law and justice cannot be captured and presented before us within a few sentence". Kawashima (1971) on his part points out that the word morality or moral is ambiguous therefore cannot be given a precise definition.

However, this does not mean that there are no accepted definitions of morality. We shall now attempt to consider some definitions of morality.

According to *Oxford Advanced Learner's English Dictionary,* "morality is principle concerning right and wrong or good and bad behaviour". The *Online Dictionary* defined morality as code of conduct in matter of right and wrong. Morals may be created by and defined by one society, philosophy, religion or individual conscience". While Mandal (2004) states that "morals are actually certain yardsticks in our which work as prescription to human behaviour". William (1906) argues that "morality refers to norms of conduct whose legitimacy is justified on the ground that they are good or right or necessary for social welfare or social life".

From the definitions we have considered so far have you been able to notice some key issue about morality? Can you see that when discussing morality we are actually referring to the following?

- What is good and bad?
- What is right and wrong?
- What is not prescribed by the sovereignty that is the government?
- It is based on what the society considers or what their religion or they as individuals consider reasonable.

Therefore, we can say that morality deals with what one consider as standard behaviour which makes it vary from one person to another and from one society to another society. For example, as a community health practitioner you are expected to use your stethoscope in the examination of patients in the clinic and probably in the consulting room. But some community health practitioners have been seen wearing the stethoscope outside the clinic over their necks.

Although, this might be an unacceptable behaviour to you but to them there is nothing wrong. Also the issue of same sex marriage. The western democracies, for example, Britain, Canada, Germany and other countries sees nothing wrong in the same sex marrying each other but here in Africa especially, Nigeria we say it is wrong and have made a law to ban it. These western countries are asking us to repeal the law because to them there is nothing wrong in fact they are rather saying that our law is violation of the fundamental right of these gay people to marry and privacy. This is shows that morality is what a person or a group consider as the standard behaviour.

3.2 Socially Accepted Moral Standard

Like morality it is difficult for one to say exactly what is the socially morally accepted standard because it is a matter of individuality as well. It appears it is more of a matter of individual conscience than what the society at large holds.

According to Elegido (2006), "many writers draw attention to the fact that in modern societies there is much difference of ideas in respect of morality and stress that it would be unfair for a group even if it constitute a majority to impose its moral ideas on the rest of the population. The ideal they advocate is that everybody should be left free as much as possible, to live according to his or her moral ideas". While Elegido and his co-travellers who hold the idea of free thought and society might be right, it seems they are missing some very important puts, because there is no way society would not have what the majority considers as the ideal and ensure everybody tries to conform to it. To say everybody should do what he thinks is right is to invite anarchy because I could think raping women on the street is right but is that morally acceptable to the society.

Therefore, while there might not be any hard and fast rule about what is socially morally accepted standard. There are, however, general behavioural expectation of persons living within a given society which if one does not live up to he or she would be said to be immoral and may be subjected to scorn or disparagement. For instance, in some cultures in Nigeria the younger person must genuflect while greeting the elder. While in some other culture this is not done. But then it is generally accepted in the Nigerian society that the younger person must greet the elder with respect and decorum. Even within the medical profession seniority is recognised and junior practitioners are expected to behave in a particular way towards their seniors and failure to do so could be viewed as unethical conduct or insubordination which could attract professional discipline.

As Mandal (2004) rightly states, the starting of preaching of morals start from the very basic unit of our society which the family. As in a Hindu family, young people touch the feet of the elder to wish them. There is no logic behind these moral but still these moral do prevail in our society. Again let us consider the issue of same sex marriage which has been liberalised in most western societies that religious leaders themselves are now openly practising it. To most African societies, except to some extent South Africa, this is an unacceptable moral standard behaviour in terms of sexual relationship and definition of marriage and what constitute a family unit. Thus, even in the face of a free society where people should have their own moral ideals there are still standards of behaviour nobody should live below. If one does live below such standards that are generally accepted by the majority no matter what level of individual freedom and moral one may claim to possess he would be said to be immoral.

Based on the above we can say that a socially and morally accepted standard is that level of behaviour members of a given society expects

its member not to live below and which is accepted by the majority as the ideal. Like the same sex marriage is accepted as not ideal in Nigeria by the majority hence the national assembly has passed a legislation making it a criminal offence. But in the western the majority think it is acceptable hence their laws permit same sex marriage.

3.3 Differences between Morality and Law

The next issue we shall be considering in this unit is the difference between law and morality; and it is more challenging to make watertight compartmentalisation between law and moral because they are very coextensive.

As Mandal (2004) notes, "law and morality have always been at loggerhead with each other". Here, you can see that although the two concepts are co-extensive they are not co-terminus which means there is some difference between the two of them. There are quite a number of differences between law and moral, and we shall be discussing a few of them.

One of the differences between law and morality is that law does not punish every omission except where there is a legal duty imposed which was not or neglected to be undertaken. While morality punish every act of omission whether a legal duty exist or not. What the above means is that the law will not be activated except someone is under a legal duty to do something and has failed, omitted or refused or neglected to carry out that duty. For example, there is no legal duty on a community health practitioner to render health care services to any mental patient he sees on the road. And so, if he fails to render services to a person whose relation has mental illness on the street that other cannot complain of professional negligence and succeed in the law court because there is no law stating that and no duty is imposed. But in the court of morality he would be judge as guilty because morally it is proper for him to have render services to a fellow man having a health challenge.

Another difference between law and morality is that law is a continuously evolving norm, while morality is constant or fix. What this simply means is that law changes very often as the society change from time to time based on demand of modernity. However, morality does not change easily with time it tends to remain constant as it has been observed in that particular society in the past. For example, the Osu cast system in Iboland has not changed despite the several laws and court judgments that have declared it as discriminatory especially section 42 of the 1999 constitution.

One other difference between law and morality is that law can be legislated but it is impossible for morality to be legislated. What we are trying to say here is that you make a law and compel people to obey it through its enforcement.

Conversely, you cannot pass morality into law. As Elegido (2006) illustrates, "it is true that if a law clashes with many people behave that the law is impotent in influencing the moral ideas of people. This has been illustrated in Nigeria by the unsuccessful efforts to abolish the Osu cast system and to control the payment of bride price by means of law". Furthermore, law is coercive by nature while morality is persuasive as people are at liberty not to obey a particular moral injunction. According Mandal (2004), "the only difference between law and morality is that law is coercive and morality is not. Law is enforced by coercion and its constant application on a society leads to the internalisation of law in human soul. The point been made here is that one is under compulsion to obey the law and failure to do so could lead to some consequences. But there is no compulsion in morality.

Nevertheless, there are some unpublished consequences such as scorn, self belittling and public odium. A further difference between law and morality is that morality can easily be enforced, but law is more difficult to enforce. What this simply means is that members of a given society can easily see the accepted standard of behaviour held by the society and abide by it without any use of force. But in law it is always enforced for people to see it. For instance, in Nigeria as well as in most African societies, men are seen or perceived as superior to women and this is held by all as they grow up without any force applied. Yet the law says there is equality of all sex and there should be no discrimination on the basis of sex. But it has been difficult to erase the mentality of men superiority over the years despite the law.

From the above discussion you can see that there is difference between law and morality.

3.4 Similarities between Morality and Law

We shall now examine the similarities between law and morality. One of the similarities between law and morality is that they both prescribe and proscribe certain conducts in a given society. That is both law and morality stipulates certain conducts that are acceptable and allowed in a given society and those that are not allowed and acceptable. For example, it is legally and also morally wrong to kill another person or tell lies.

Another similarity between law and morality is that they supplement and reinforce each other. And what this means is that law helps morality to be sustained and maintained. While morality also helps to make people obey the law and maintain it. For instance, the principle of the duty of care for neighbour lay down in the case of *Stevenson v. Donoghue* is based both on law and morality because it is morally right to care for our neighbours and it also against the law to wilfully harm your neighbour.

Again law and morality operates within the same framework. As Elegido explains "law creates real obligation in the citizen only because it operates within the framework of morality. For example, morality exposes us to some basic norms which prescribes that we must do to foster the common good of the community and that in order to do that effectively we must obey certain rules established by custom or laid down by the authority.

Furthermore, both law and morality have some form of sanction. For instance, sanctions in law take the form of coercion while in morality the sanction takes the form of reprobation, repulsion and ostracism.

4.0 CONCLUSION

In this unit our focus was on the definition of morality and what is socially morally accepted standard. We equally discussed the differences and similarities between law and morality. It is hoped that you should be able to now define morality and enumerate some difference and similarities between law and morality.

5.0 SUMMARY

In this unit, our discussion was focused on the definition of morality which is referred to as a code of conduct in matter of right and wrong. We also enumerated the difference and similarities between law and morality.

6.0 TUTOR-MARKED ASSIGNMENT

1. Briefly define the term morality in your own words.
2. (a) Enumerate and explain three difference between law and morality in your own words
   (b) Enumerate and explain two similarities between law and morality in your own words.

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UNIT 4 JUDICIAL INSTITUTION

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1.0 INTRODUCTION

This is the last unit in this module. You will recall that in unit three, we discussed morality, defining morality, the link and similarity between morality and law. While also been introduced to the evolution and meaning of environmental health laws, regulations and policies, we have discussed the nature of law, the characteristics of law and types of law in a legal system and concluded by examining the functions of laws in a society.

In this unit, we shall be looking into judicial institution. We shall also examine the various courts, their hierarchy, and the judicial officers. It is an interesting topic; I will advise that you pay an interesting attention as you read along.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define superior and inferior courts
- state the courts in Nigeria and their hierarchy
- define judicial officers.

3.0 MAIN CONTENT

3.1 Superior and Inferior Courts

Superior Courts
These are courts of records; courts of unlimited jurisdiction. Generally, nothing shall be intended to be outside the jurisdiction of a superior court except that which specially appears to be so specified. They exercise supervisory jurisdiction over inferior courts and for that purpose, may make prerogative orders of certiorari, mandamus and prohibition; and injunction. The superior courts are creation of the constitution. They may punish contempt of court whether in facie curia or ex facie curia. Examples of Superior Courts are:

a. The Supreme Court of Nigeria
b. The Court of Appeal
c. The High Court's (Federal and States)
d. The Sharia Court of Appeal (Federal and States)
e. The Customary Court of Appeal (Federal and States); and
f. Other courts so designated by the national or state house of assembly.

Inferior Courts
Every court which is not a superior court is an inferior court. The inferior courts are not the creation of the constitution, but of the respective states in which they exist and operate. Examples are Magistrate Courts, Coroners' Courts, and Juvenile Welfare Courts etc.

3.2 The Supreme Court of Nigeria

Ordinance 3 of the 1863 established the first Supreme Court for the Colony of Lagos. It had both civil and criminal jurisdiction. It was replaced in 1866 by the court of civil and criminal justice. The Supreme Court ordinance, 1876 established the Supreme Courts of the Colony of Lagos which applied the Common Law of England, doctrines of equity and statutes of general application that were in force on 24 July, 1874 as well as local laws, and customs which were not repugnant to justice, equity and good conscience.

Following the proclamation of the protectorate of northern Nigeria (1900), a Supreme Court, like that in the colony, was established for the north. When the northern and the southern protectorates were amalgamated in 1914, a new Supreme Court emerged. The Protectorate Court Ordinance, 1933 set up the High Courts and the Magistrate Courts system. The jurisdiction of the Supreme Court and of the High Court was the same except that the Supreme Court had jurisdiction in matters of probate, divorce and matrimonial causes and admiralty. Appeals from the High Court and the Supreme Court lay to the West African Court of Appeal. The Supreme Court Ordinance, 1943 established one Supreme Court for the whole of Nigeria. It became the Federal Supreme Court under the Littleton constitution, 1954. Now, however, it is simply called the Supreme Court of Nigeria.

Read Chapter VII of the Constitution of the Federal Republic of Nigeria, 1999 in relation to the Supreme Court of Nigeria, especially:

Section 230: Establishment of the Supreme Court
Section 231: Appointment of the Chief Justice of Nigeria and Justices of the Supreme Court
Section 232: Original jurisdiction of the Supreme Court
Section 233: Its appellate jurisdiction
Section 234: How the Supreme Court may be constituted
Section 235: Finality of determination of the Supreme Court.

You should attempt to explain the aphorism that the Supreme Court is final not because it is infallible; it is infallible because it is final.

3.3 The Court of Appeal

The Court of Appeal was formally known as the Federal Court of Appeal. This court was established for the federation by the Federal Court of Appeal Act, 1976. Note the constitutional provisions relevant to the Court of Appeal, particularly the following:

Sections 237 and 238: Established of the Court of Appeal and appointment of its Justices

Sections 241 - 246: Exercise of right of appeal from High Courts (Federal or States), Sharia Court of Appeal, Customary Court of Appeal, and the Code of Conduct Tribunal and other courts and tribunals

Section 247: Constitution of the Court of Appeal
Section 248: Practice and Procedure at the Court of Appeal.

3.4 The High Courts (Federal and States)

Following the reform of the court systems in 1933, the protectorate court ordinance, 1933, was passed and it established the High Courts and the Magistrates Courts for Nigeria. The ordinance denied the High Court of original jurisdiction in cases raising any issue as to titles to land, or interest in land where any such case was subject to the jurisdiction of a native court unless the governor-in-council had directed otherwise. Appeals lay from the Magistrates Courts to the High Court's from where appeals lay to the West African Court of Appeal and then to the judicial committee of the privy council.

When Nigeria became a Federation in 1954 a High Court was set up for each region and the federal capital territory. The High Court law, Western Nigeria, 1955 provided for enforcement of existing native laws and customs when "not repugnant to natural justice, equity and good conscience" (section 17). By the Chief Judge of a State change of title Act, 1976, the most senior Judge of the state becomes designated "The Chief Judge" of the State.

The jurisdiction of the High Courts (Federal and States) is set out in the constitution. As well as hearing cases, Judges of the High Court serve on various tribunals such as the robbery and fire arms tribunals, election petition tribunals. The High Court sits at the highest level in the State Court hierarchy and has unlimited jurisdiction in both criminal and civil matters. It is presided over by one justice when exercising both original and appellate jurisdiction.

Note the constitutional provisions as regards the High Court's (Federal or States), particularly the following:

S. 249, 255 and 270; Establishment of the Federal High Court and the High Court of FCT and of each State of the federation
S. 250, 256, and 271: Appointment of Judges of the various High Court
S. 251, 257 and 272: The High Court's jurisdiction
S. 252, Powers of High Courts
S. 253, 258 and 273 how the High Courts may be constituted
S. 254, 259 and 274 Matters of practice and procedure.

It may widen the scope of your knowledge to distinguish the establishment, appointment, jurisdiction, practices and procedures and powers of the federal High Court, the High Court of the Federal Capital Territory and the High Court of a State from one another.

3.5 The Sharia Court of Appeal

In 1956, the northern region of Nigeria established a customary Court Of Appeal. It was called the Moslem Court of Appeal. It had original civil and criminal jurisdiction. It also had appellate jurisdiction. This court was replaced by the Sharia Court of Appeal at the eve of independence.

The Sharia Court of Appeal had only civil jurisdiction and on matters governed by personal Moslem law.

The CFRN, 1990 has provided for:

1. Sharia Court of Appeal of FCT
2. Sharia Court of Appeal of a State.

Read the 1999 constitution and the provisions as to the following:

- Establishment of the Sharia Court of Appeal of the federal capital territory and of a state: (Sections 260 and 275)
- Appointment of Grand Kadi and Kadis (Sections 261 and 276)
- The court's jurisdiction (Sections 262 and 277)
- The constitution of the Courts (Sections 263 and 279)
- Practices and procedure (Sections 264 and 279)

3.6 The Customary Court of Appeal

Like in the 19 northern states and the Federal Capital Territory, Abuja, the Constitution also provides for the establishment and administration of the customary court of appeal in the Federal Capital Territory, Abuja and in the 17 States southwards. In this connection, read the following 1999 Constitution provisions:

Sections 265 and 280: Establishment of the court
Sections 266 and 281: Appointment of the President and Judges
Sections 267 and 282: Jurisdiction of the court
Sections 268 and 283: Constitution of the court
Sections 269 and 284: Practice and procedure in the Customary Court of Appeal

3.7 Special Courts

Special courts include the judicial tribunal. The constitution provides for the setting up of tribunals which exercise limited powers of court on specialised matters for which purpose they are created. For example, the Constitution, 1999 provides for the establishment and jurisdiction of:

a. The National Assembly election tribunals for the federation.
b. Governorship and legislative houses election tribunals for each state.

Read section 285 of the constitution. Note the composition, and jurisdiction and quorum of each of the tribunals. There are other special courts of importance, such as the environmental sanitation special offences court, court martial, coroners. These are examples only.

3.8 Judicial Officers

A judicial officer is a person with the responsibilities and powers to facilitate, arbitrate, preside over, and make decisions and directions in regard to the application of the law. Judicial officers are typically categorised as Judges, Magistrates, Puisne and Judicial officers such as Justices of the Peace or officers of courts of limited jurisdiction; and notaries public and commissioners of oaths. The powers of judicial officers vary and are usually limited to a certain jurisdiction.

3.8.1 Attorney General (State or Federal)

This is the commissioner of Justice in the State or minister of Justice at the Federal level. She/he is the chief law enforcement officer of the federal or of a state government, typically serving in an executive branch position. The individual represents the government in litigation and serves as the principal advisor to government officials and agencies in legal matters.

The Attorney-General is head of the justice department and chief law officer of the federal/state government. He or she represents the government in legal matters generally and gives advice and opinions to the Governor/President and to other heads of executive departments as requested. In cases of exceptional gravity or special importance, the attorney general may appear in person before the Supreme Court to represent the interests of the government.

As head of the justice department, the attorney general is charged with enforcing state/federal laws, furnishing legal counsel in state/federal cases, construing the laws under which other executive departments act, supervising state/federal penal institutions, and investigating violations of state/federal laws.

3.8.2 Chief Judge (State or Federal)

Is a public officer chosen or elected to preside over and to administer the law in a court of justice; one who controls the proceedings in a courtroom and decides questions of law or discretion.

Judge refers to a person authorised to make decisions. A Judge is a court officer authorised to decide legal cases. A Judge presiding over a case may initiate investigations on related matters, but generally judges do not have the power to conduct investigations for other branches or agencies of government.

Judges must decide cases based on the applicable law. In some cases a judge may be asked to declare that a certain law is unconstitutional. Judges have the power to rule that a law is unconstitutional and therefore void, but they must give proper deference to the legislative body that enacted the law.

There are two types of Judges: Trial Court and Appellate. Trial court Judges preside over trials, usually from beginning to end. They decide pre-trial motions, define the scope of discovery, set the trial schedule, rule on oral motions during trial, control the behaviour of participants and the pace of the trial, advise the jury of the law in a jury trial, and sentence a guilty defendant in a criminal case.

Appellate Judges hear appeals from decisions of the trial courts. They review trial court records, read briefs submitted by the parties, and listen to oral arguments by attorneys, and then decide whether error or injustice occurred in the trial.

3.8.3 Solicitor General (State or Federal)

He is an officer of the justice department who represents the state or federal government in cases before the court. The solicitor general is charged with representing the executive branch of the government in cases before the court. This means that the solicitor and the solicitor's staff are the chief courtroom lawyers for the government, preparing legal briefs and making oral arguments in the court. The solicitor general also decides which cases the state or federal government should appeal from adverse lower-court decisions. The solicitor general occasionally files amicus curiae (friend of the court) briefs in cases where the government is not a party but important government interests are at stake. Sometimes the court itself will request that the solicitor file a brief where the government is not a party. The court also allows the solicitor general to participate in oral arguments as an amicus.

3.8.4 Court Registrar (State or Federal)

Is a public official charged with the duty of making and maintaining court records? A registrar is an official attached to the court carries out a number of quasi-judicial and administrative functions regarding the functioning of the court within the judicial division to which he or she is assigned.

3.8.5 Magistrate

He is an individual who has the power of a public civil officer or inferior judicial officer.

The various state judicial systems provide for judicial officers who are often called magistrates, justices of the peace, notary public. The authority of these officials is restricted by statute, and jurisdiction is commonly limited to the district in which the official presides. The position may be elected or appointed, depending on the governing state statute. The exact role of the official varies by state; it may include handling hearings regarding violations of motor vehicle codes or breaches of the peace, presiding over criminal preliminary hearings, officiating marriages, and dispensing civil actions involving small sums of money.

3.8.6 President/member (Customary/Alkali Courts)

The President is an individual who heads the Customary Court and has the power of adjudication at the courts in southern Nigeria. The Customary Court President who must be a lawyer if heading Grade A Court must have a vast knowledge of the customs and traditions of the area of jurisdiction. They are usually supported by other members that are most times two in number. The President of Court of Customary Court in the northern Nigeria is called Grand Kadi. The officers are usually very vast in knowledge of Islamic law and usually supported like their brothers in the southern Nigeria by such number of other members.

3.8.7 Court Bailiff (State or Federal)

Court Bailiffs are employees of the judicial service commission and are responsible for enforcing orders of courts by recovering money owed under court judgements. They can seize and sell goods to recover the amount of the debt. They can also serve court documents and effect and supervise the possession of property and the return of goods under hire purchase agreements.

A certified Bailiff is the last port of call if a court fine is ignored, an arrangement defaulted or contact cannot be made with the debtor. A bailiff has power of entry regarding a magistrate's warrant as the debtor has committed a criminal offence, bailiffs can climb over fences, walk in any unlocked door or enter through a window although most bailiff companies are against this - this is not against the law and it is up to the bailiffs discretion.

4.0 CONCLUSION

There are superior and inferior courts. In chapter seven of the constitution of the Federal Republic of Nigeria, 1999; you will find the list of the superior courts and the conditions for appointment and removal of Judges of the courts.

5.0 SUMMARY

In this unit, you have visited each of the most important courts in Nigeria. You must have noticed the names by which they are called, their jurisdictions, (original and appellate) and locations in the hierarchy. You also must have noted certain courts of coordinate jurisdictions.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the distinctive features of superior courts?
2. Define inferior courts.
3. State the courts in Nigeria and their hierarchy.
4. Define Judicial Officers.

7.0 REFERENCE/FURTHER READING

FRN. *The Constitution of the Federal Republic of Nigeria, 1999.*

MODULE 2 ENVIRONMENTAL HEALTH LEGISLATION, COURT PROCESSES AND ENFORCEMENT

Unit 1 Process of Making Laws
Unit 2 Court Processes and Procedures
Unit 3 Process of Compelling Attendance of Accused Person in Court
Unit 4 Constitutional Rights and Safeguards of the Accused Person
Unit 5 Public Health Laws

UNIT 1 PROCESS OF MAKING LAW

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 Law Making Process in Military Regime
 3.2 Types of Laws in Military Regimes
 3.3 Law Making Process in Democracy
 3.4 Types of Laws in a Democratic Government
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Reading

1.0 INTRODUCTION

In this unit, we shall be considering the law making process in Nigeria and the types of laws made during different administration. Nigeria, unlike most other countries, has witnessed two systems of government since Independence. These include democratic governance of parliamentary system following independence from Britain, the later adoption of presidential system and military government which unfortunately has lasted longer in Nigerian history as of date.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define what is meant by law making process
- describe the law making process in a military administration

- list some examples of military laws
- describe the law making process in a democracy
- list some examples of laws during a democratic government.

3.0 MAIN CONTENT

3.1 Process of Making Law

Law making or law making process is the process by which a law is made by a legislative body or a body empowered by law to make laws. What we are simply trying to say is that is law making is how law is processed for it to be regarded as a law which has a binding force.

The processes of making public health law are in two parts. The first is the legislative drafting, which is the business of the draftsman while the second part is the legislative process is the business of the lawmaker.

The first part which is the legislative drafting is the process of drafting or writing the instructions of the lawmaker or the executive into written bills, while the second part; legislative process is the process of making the laws in the hallow chambers of the national or state assemblies.

In legislative drafting, the role of the draftsman is simply to express the intention of the legislature or the executive into written bills and laws while legislative process is for the parliamentarians to argue, lobby and ensure the passage of the bill as law.

The stages of the legislative process are different from the stages of legislative drafting. Legislative process begins with the introduction of the bill to the floor of the house, the various readings of the bill, that is the first and the second readings, the committee sessions, the third reading, the passage and assent.

Legislative drafting begins with the receipt of instructions and ends with the scrutiny of the draft. Legislative drafting are done in stages. The draftsman needs to move in logical progression from the first stage to the last stage. The draftsman must not adhere strictly to these stages in the course of drafting but he should be free to overlap where it is necessary. These stages are:

3.1.1 Stages of Legislative Drafting

These stages are:

i. Receiving and Understanding Instructions
ii. Analysing Instructions

iii. Designing the Draft
iv. Composition
v. Scrutiny

i. Receiving and Understanding Instructions

A draftsman must receive and comprehend well the instructions of the sponsor of the law. To get this understanding, the draftsman must first request for drafting instructions that are most helpful and relevant to the legislation contemplated.

i Background Information

a) This may consist of any historical material on the subject, for example, reports of commissions of inquiry that may have dealt with the subject, judgments of courts and researches conducted, as the case may be;
b) The means or the machinery for realising the principal object of the legislation should be set out.

For example, whether it is a commission, a corporation or a board that is needed the structures and the powers of such machinery should also be spelt out;

c) The principal aims and objectives of the legislation should be clearly set out; and
d) The possible legal implications, difficulties and weaknesses of the legislation.

ii. Analysing Instructions

The draft instruction should be subjected to careful analysis in relation to the following factors:

a) Existing Law

This is necessary to avoid a situation where the proposed legislation would amend or by implication repeal an existing law. There must be consistency between the language of the proposed legislation and the existing law.

b) Potential Areas of Danger

The draftsman has a responsibility to ensure that areas of potential danger with the proposed legislation are pointed out in order to avoid any conflict. In pointing out these areas, the draftsman must be careful

not to highlight the disadvantages of the law or to subject it to some higher ethical, moral or religious considerations since his duty is simply to express the intention of the lawmaker. The areas of potential change include infringement of fundamental human rights, introduction of retrospective legislations and unnecessary bureaucracy.

c) Practicability

The draftsman must analyse if the proposed legislation is practicable, that is, what are the practical problems that are likely to confront the administration of the law? Another practicable thing is to check whether or not the law can be enforced to achieve the desired goal. For example, offences that are difficult to enforce should not be created. Such an offence is the public officers (protection against false accusation) decree No. 4 of 1984 which makes it an offence to ridicule a public officer regardless of the truth or otherwise of the facts constituting the ridicule. The decree was abolished in 1985.

iii. Designing the Draft

This is the preparation of the structure framework, skeleton or sketch of the draft. The importance is to show how the legislation would appear at the end of the work. In making the design, the draftsman should observe the following:

a) Make use of conventional practice of arranging legislation within the jurisdiction to ensure consistency with other legislation.

b) Avoid anything that may make the draft ambiguous or difficult to be passed as law. In making the design, the draftsman should prepare in a heading, form a statement of the basic aims, objectives and principles of the legislation and another statement of the principal means of attaining the objectives of the legislation. The draftsman should also decide at this stage whether or not the draft should be divided in parts. Finally, the draftsman should design the substantive and administrative provisions of the draft.

iv. Composition

This is the development or building up on the design that has been made. A lot of mental exercise, discipline and patience are required at this stage. The draftsman may need to draft and redraft his work. He would also have to make a lot of editions, corrections and cancellations. In the course of this, mistakes that are latent may become obvious and the draftsman need not be ashamed of this. The draftsman may also

need to go through the work again and again which is very tasking but there is no short cut to perfection.

v. Scrutiny

When the final draft is ready, it may be the third or the sixth or even the 9th version of the work. At this stage, the draftsman may be mentally and possibly physically exhausted. He should take a rest and look at the work again. He should also get a colleague who is coming into the exercise for the first time to look and scrutinise the work. The colleague may be able to detect errors that were not apparent to the draftsman.

For a law to be said to be binding it must be made by a body empowered to make law otherwise it will be declared null and void ab initio. For example, in the case of *A.G Lagos State v. A.G. Federation* where there was a dispute as to whether the Lagos state government acting through the Lagos State House of Assembly can create new local government without approval by the national assembly. The Supreme Court in that case stated that Lagos State cannot effectively create local governments without the approval of the National Assembly.

3.2 Law Making Process in Military Regime

Ordinarily, law making is the function of a legislative body duly elected for the purposes of law making, which is also referred to as parliament. For example, in Nigeria the legally recognised bodies to make laws are the **National Assembly** which consists of the Senate and the House of Representatives, the 36 States Houses of Assembly, and the legislative arms of the 774 local government and area councils. Thus in total, currently in Nigeria, there are 812 bodies that can make laws at different levels (Section 4 of the 1999 Constitution).

However, because Nigeria has been so unfortunate to have being forcefully ruled by military they too have arrogated to themselves the power to make laws during their tenure of office. And because the military has ruled Nigeria for 26 years out of the 51 years of her independence the military appears to have made more laws and it is on this note that it is important we examine the process of law making during military rule.

The military ordinarily do not have powers to make laws, but whenever there is a military takeover of government it always create a body that would make laws. for example, during the first military coup of 1966 decree no. 1 1966 was enacted and it suspended major provisions of the 1963 constitution which recognised the federal and regional parliament, dissolved the council of ministers and ousted the jurisdiction of the

courts to question the validity otherwise of decree or edict that would be made by the federal military government or the state military governor. It created the Supreme Military Council (often referred to as SMC) by virtue of section 8 of Decree 1 of 1966 and vested it with the legislative powers of the country to make laws for the federation, while the State military governors were to make laws which are referred to edicts for the state.

In 1967 Decrees numbers 16 and 20 were promulgated to include the state military governors in the Supreme Military Council and also empower the Head of State to include any person he might deem fit into the council from time to time (Oluyede, 2001). While we can assume to some extent that there was legislative body at the federal level in form of the supreme military council which is largely a rubber stamp of the head of state, because it has no powers to reject any law the head of state want to make. The same cannot be said of the state where only one man decide the law and promulgate it as an edict. This is why most scholars of law argue that military government are aberration because the rights of the citizens to participate in the debate that would lead to the passage of law is completely trampled upon and suffocated. Nobody can protest the illegality of their law and succeeded. although, in the case of *Adamolekum v Council of University of Ibadan* (1968) NMLR 253 the Supreme Court initially acknowledge the ouster powers of Decree No 1 1966 in the subsequent case of *Lakanmi v A.G. Western State* it reversed itself and ruled that its jurisdiction cannot be ousted, however, this led to the promulgation of Decree No. 28 of 1970 which appears to be the death kernel passed on the judiciary during the military.

From the above, you have seen that the process of law making during military administration is by fiat, the laws are not debated, the public is not involved in the process and nobody can question the validity of the laws made by them. In fact you can go to bed by 5.30am and by the time you wake up by 7.00am news, a new law has been made. Sometimes they also make their laws to take retrospective effect like Decree No 4 of 1984.

3.2 Types of Laws in Military Regimes

Basically, there are only two types of law during a military regime. This is because the third level or tier of government which is the local government is almost always non-existent during military rule and whoever that is appointed as the administrator has no powers to make laws. Although, during the kangaroo transition programmes of Generals Babangida and Abacha between 1989 and 1998 the local government legislative arms existed, it is doubtful if they were engaged in any real business of bye-law making. The major laws during military regimes are

decrees which is a federal government law which have binding force through the country and also superior to the constitution based on the way the decree bringing the military to power is couched. And the edict which is state government law which only have application within the state in which they were made. However, in order to check the powers of the state military governors with regards law making the federal military government under section 3(4) prohibited the States governors from making laws on any item that falls within the exclusive legislative list and obtain consent before making laws on matters within the concurrent legislative list of the suspended 1963 Constitution (Oluyede, 2001).

3.3 Law Making Process in Democracy

Unlike military administration, in democracy, the law making process and bodies responsible are always clearly mentioned and provided for in the constitution, in this case, it is the constitution of Nigeria1999 as amended. It is important to remind you that even in the previous constitutions during the colonial period and after independence especially the 1960, 1963, 1979 and 1989 constitution the law making bodies at the various level of government were well stated.

As earlier mentioned above under the 1999 constitution as amended, the law making powers of government is divided between the three tiers of government. That is the federal government, the state government and the local government councils. The **National Assembly** has exclusive powers to make laws on matters contained in the exclusive legislative list, while both the **National Assembly** and the state houses of assembly have powers to make laws on matters contained in the concurrent legislative list in the constitution. The state houses of assembly have exclusive responsibility to make laws on matters contained in the residual legislative list which are matters not included in either the exclusive or the concurrent legislative list; while the local government legislative arms have powers to make byelaws see second Schedule Part I & II, 1999 CFRN as amended. Nevertheless, where there is conflict between a law made by a state house of assembly and that made by the National Assembly, the law of the **National Assembly** prevails over that of the Sate see s.4 (5) 1999 CFRN.

In addition, the 1999 Constitution provides for a bi-camera legislature at the federal level, that is the Senate and the House of Representatives which constitutes the National Assembly. For any law made by the **National Assembly** to be valid, it must be passed by both chambers and the bill forwarded to the president for his assent see s. 47 and s.58. However, if for any reason the president withholds his assent to a bill,

after thirty days the **National Assembly** can override the president's assent by passing it into law by a two third majority see s.58 (3) – (5). Similar procedure obtains between a State House of Assembly and the governor; and between the local government legislative arm and the chairman. The only difference is that at the state and local government level there is a single legislative chamber see S.4 (6), S.90 & S.100 (1) – (5). However, the power of legislative veto appears to be seldom used in Nigeria. equally, the **National Assembly** also have power to domesticate treaties, that is, any international law signed by the federal government especially, the president for it to become a binding law in Nigeria by virtue of S.12(1) of the 1999 Constitution.

However, it appears the State Houses of Assembly also have powers to make treaties by virtue of S.12 (3) of the constitution. This provision is not only inconsistent but a precursor to legal conflict and succession. As Nwapi (2011) rightly notes, apart from being unclear, section 12(2) is contradictory, for example if the subject matter of the treaty falls within the residual legislative list. Is it been suggested that the legislative powers of the States will be interfered with because a treaty obligation of the federal government is to be implemented.

Furthermore, it will be important for you to know that before a law is passed by the either the **National Assembly** or a State House of Assembly or a local government legislative arm it has to pass through three readings on the floor of the particular legislative body. And subjected to the particular house committee in the area which the law is related, the committee will organise a public hearing where members of the public who have views either against or in support of the law would make presentation which are further debated at the committee level.

A report of the public hearing and the committee recommendations are presented on the floor of the house at plenary and debated by the committee of the whole before the law is finally passed and forwarded to either the president or governor or local government council chairman for assent. In the case of the **National Assembly** in case there is any difference between the version of the law passed by the Senate and the House of representatives, a conference committee has to be constituted comprising of members of both chambers to harmonise the difference before it forwarded to the President for assent.

From the above discussion, you can see that there is a great difference between the law making process during military administration and civilian administration. You can also observe that during a democracy the citizens participate very actively in the law making process and it goes through several stages. But during military administration the public is never involved and no procedure is followed all that is need is

for the Head of State or State Governor to call the Attorney General to draft a law even in his bedroom and it becomes a law. A good example would be the Decree annulling the June 12 election presumably won by Chief M. K. O. Abiola.

3.4 Types of Laws in a Democratic Government

We shall be concluding our discussion in this unit a brief examination of the various types of laws that are made during democracy. There are basically three types of laws that can be found during a democratic government in Nigeria.

These are acts of the national assembly, laws of the state house of assembly and the bye-laws of a local government council.

Acts of the National Assembly are the laws made by the National Assembly (the Senate and the House of Representatives) and they have national effect if they border on matters within the exclusive and concurrent legislative list. This is because matters on the exclusive are within the exclusive competence of the National Assembly to legislate on. While though both the National Assembly and the state houses of assembly can legislate on matters on the concurrent legislative list since in the case of any conflict between a law made by the two bodies that of the National Assembly prevails it then follows that the National Assembly has powers to legislate across the country on both the exclusive and concurrent legislative list.

Laws are legislative pronouncements of a state house of assembly and they have only binding force within the State in which they are made. They cannot be extended to even the closest state. For example, the Zamfara State Sharia Law of 2000 has no legal effect in Sokoto State because the Zamfara State House of Assembly cannot make a law that would be binding on Sokoto State.

The law must be within the remits of the residual list or concurrent legislative list if the National Assembly is yet to legislate on that item in the concurrent list. While bye-law are laws made by a local government legislative arm. They only have legally binding force within the local government area in which it was made and cannot be applied in another local government area.

4.0 CONCLUSION

In this unit, our focus was on the law making process in Nigeria, the various law making bodies and the types of law they make. It is believed you have learnt about the definition of law making process, the various

law making processes in Nigeria, the law making bodies and the types of laws made by the various law making bodies. It is hoped that you can now define law making process, describe the various law making processes in Nigeria, mention the law making bodies in Nigeria and list the various types of laws made in Nigeria.

5.0 SUMMARY

The focus of this unit was on the definition of the law making process, the various law making process and bodies, and the various types of laws made in Nigeria. We defined what we mean by law making process, describe the law making process during military and a democracy, and listed the types of law made in Nigeria.

6.0 TUTOR- MARKED ASSIGNMENT

1. Describe the law making process during military regime in your own words.
2. (a) Describe the law making process in a democracy.
   (b). List two law making bodies in a democracy and briefly explain the types of laws they make.

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UNIT 2 COURT PROCESSES AND PROCEDURE

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 3.11 Service out of Jurisdiction
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 3.13 Recording of Service
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7.0 References/Further Reading

1.0 INTRODUCTION

In unit one, the process of making laws was discussed under the military regime and democratic or civilian administration. In unit two, we shall be discussing court processes and mode of service of the process.

Before the commencement of any matter in the court, there must be active communication between the parties to the suit and the court. Such communication is referred to as the filing and service of court processes. Upon the filing and issuance of writ of summons or other originating processes, it becomes imperative on the plaintiff or claimant to cause the defendant to be served with the process. It is the only way the defendant may become aware of the suit against him in court and be able to put up a defense, if he intends to do so. If a party is not served with a process that requires service, the court cannot assume jurisdiction over him in that matter. Any order made against him in the absence of such service including all proceedings related thereto is void and of no effect and liable to be set aside.

The service of processes is an issue under the exclusive legislative list of the 1999 Constitution (Item 57, 2nd Schedule; Part 1) and under the sheriffs and civil process act (Cap S.6 LFN 2004, S. 96). The various states have adopted the sheriffs and civil process act and codified it in their laws. Accordingly, we have the sheriffs and civil process laws of the different states. Thus, the sheriffs and civil process act regulates the service of processes in Nigeria. However, the different rules of court may make specific provisions on service but not in any way inconsistent with the sheriffs and civil process act. It is noteworthy that a process issued in one state can be served in another state as if it were issued there.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain what is court processes
- state different methods of serving court processes.

3.0 MAIN CONTENT

3.1 Who Can Serve a Court Process?

Under the various rules of court, service of court process is done by the Sheriff, deputy Sheriff, Bailiff or other officers of the court. In practice, the Sheriff or his deputy hardly goes out to serve processes; rather the Bailiffs who are junior officers under them do the actual service of processes. However, under order 11 rules 1 of the high court of the FCT Abuja (civil procedure) rules 2004, the following category of persons may serve court processes in addition to the Sheriffs and Bailiffs;

a. A person appointed by a court or judge in chambers.
b. A solicitor who gives undertaking to the registrar that his chambers shall serve the process on the other party or his solicitor and would also file with the registrar a proof of the service effected, signed by the other party or his solicitor.
c. Service can also be made in accordance with an order of a judge in chambers as to who may effect service.

In respect of court processes of which personal service is not required, such may be served by or on the legal practitioner representing the party, or his clerk under his control. However, there has been an innovation in this regard under the 2006 Rivers State rules which provide that where the parties agree, service of court processes which does not require personal service may be made by electronic means. This innovation is in consonance with the advancement in information

technology and would enable processes to be served through e-mail or other electronic means of transmitting documents. But a problem may occur as to proof of service where a party denies service through such electronic means. However, it is our submission that this problem could be circumvented by copying the process to the court and the registrar and also printing a copy from the sent folder for purposes of proof of service.

3.2 Mode of Service

There are basically two mode of service:

a. Personal Service
b. Substituted Service

(a) Personal Service

All originating processes are required to be served personally by delivering to the person named in the process a copy of the process, dully certified by the registrar as being a true copy of the original process. However personal service may be dispensed with where the defendant by his solicitor undertakes in writing to accept service or he authorises his solicitor in writing to accept service.

Where a process is not required to be served personally, service of it on an adult resident or employed at the address for service is sufficient service. But service of process requiring personal service in the above manner must be done with the leave of court otherwise it will be a bad service.

Where a person to be served refuses service, threatens or actually uses violence on the process server so as to resist being served, it is proper service if the process server leaves it within the reach of the person to be served under the Lagos State rules. But under the Abuja and Kano State rules, it shall be sufficient for the bailiff or process server to inform the person resisting service of the nature of the process as near that person as practicable. Thus, there is no requirement of leaving the process or throwing it at such person as such conduct is likely to aggravate the aggression of the person resisting service.

(b) Substituted Service

Sometimes, it becomes difficult if not impossible to serve a process that requires personal service on the person named therein. The person may either be evading service or may have relocated from the address stated on the process. It may also be that he works late into the night and comes home very late. Whatever the circumstances of inability to make

personal service may be, the plaintiff may resort to substituted service by the leave of the court. Substituted service is therefore any mode of service other than personal service where personal service is required. All the rules of court provide for substituted service. An application for an order of substituted service is normally by way of motion ex parte supported by affidavit disclosing the facts making personal service impossible or difficult.

The common means of substituted service are:

a) Delivering the process to an adult member of the household of the person to be served or to an adult person at his place of business.

b) Delivery to an agent of the person to be served or to some other person whom it is believed with reasonable probability would ordinarily bring the process to the knowledge of the person to be served.

c) Advertisement in a gazette or in a newspaper circulating within the jurisdiction; and

d) Pasting of the process at the court house or to some other place of public resort or at the last known place of abode or of business of the person to be served.

Under the 2004 Abuja Rules, in consonance with modern day advancement in information technology, substituted service may also be made by way of e-mail or any scientific device and by a courier service or any other means convenient to the court. However, the means of proving service by e-mail or other such devices may be difficult if not impossible. It is however noteworthy that before the court makes an order for substituted service; it must be satisfied that the proposed mode of service will give the party to be served notice of service.

Though originating processes are generally required to be served personally, it is however not possible to effect personal service on some categories of persons in law. The process may therefore be served on such persons through a third party. Some of such situations are considered below:

3.3 Service on Government Employees

Where the person to be served is an employee of any tier of government, it shall be sufficient to deliver the process to a senior officer of the

department where the party to be served works and such officer shall then cause the process to be served on the proper person.

3.4 Service on Partners

Where a partnership is sued, the process shall be served on either one or more of such partners or to a person who is in control or management of the partnership at the principal place of business at the time of the service. However, where at the commencement of the action the partnership has been dissolved to the knowledge of the claimant, the process must be served on all persons who are members of the partnership within the jurisdiction sought to be made liable.

3.5 Service on a Corporation or Company

Where the person sought to be served is a corporation, service shall be in accordance with the law or statute establishing such corporation. In the case of a company, it shall be in accordance with the provisions of Companies and Allied Matters Act (CAMA), Cap C20, IFN 2004, which is to the effect that service of court processes shall be in accordance with the rules of court.

3.6 Service on Foreign Corporation or Company

Where a foreign corporation or company within the meaning of Section 54 of CAMA, having an office and carrying on business within the jurisdiction; and the suit is limited to a cause of action that arose within the jurisdiction, service of the process on the principal officer or representative of such foreign corporation or company within the jurisdiction shall be a good service. The Lagos and Rivers rules have a proviso that where the company or corporation has complied with Chapter 3 of CAMA, service may be affected on one of the persons authorised to accept service on behalf of the company. The said Chapter 3 deals with the incorporation of foreign companies as a separate entity in Nigeria.

3.7 Service on Board a Ship

If the defendant to be served lives or works on board a ship, the process shall be served on the captain or the person who at the time of service is in control of the ship to deliver it to the defendant.

3.8 Service on Prisoners and Lunatics

If the person to be served is a prisoner, detainee or a lunatic in asylum, service shall be affected on the superintendent or the head of the prison, place of detention or asylum as the case may be.

3.9 Service on Infants

Where an infant is to be served, service shall be on his father or guardian or on the person with whom he resides or under whose care he is, unless the court or judge in chambers orders otherwise. However, where a minor who is over 16 years is living independently or doing business, personal service on him is a good service. The judge may also order personal service on a person under legal disability.

3.10 Service on Local Agent of Principal who is out of Jurisdiction

If the person to be served resides outside jurisdiction of the court but carries on business within jurisdiction in his own name or under the name of a firm through an authorised agent and the proceedings is limited to a cause of action which arose within jurisdiction, the process shall be served on the agent. Under Lagos and Rivers State rules, the claimant is required to send a copy of the originating process by courier to the defendant at his address outside jurisdiction.

3.11 Service out of Jurisdiction

A writ of summons for service out of the jurisdiction of one state in another state of the federation cannot be issued unless with the leave of court under Abuja and Kano State rules. The leave is not for the service of the writ but for its issuance. The service of processes being a matter under the exclusive legislative list of the constitution and under the sheriffs and civil process act - a writ issued in one state can be served in another state as if it were issued there. In other words, no leave is required for service outside jurisdiction. No state law can provide otherwise but the court of issuance may grant leave to issue it before it can be served out of its jurisdiction if it is a requirement of the rules. This is because issuance of processes is within the legislative powers of the state. Accordingly, a State can legislate on how its process meant to be served out of jurisdiction shall be issued.

3.12 Proof of Service

When a process has been served by the bailiff or other process server, he is required to swear to an oath known as "affidavit of service" stating the fact, time, date, place and mode of service. The affidavit shall also contain a description of the process or processes served. Such affidavit of service shall be prima facie evidence of service. However, where there is no affidavit of service in the file but the defendant who has been

served appears in court, the court will no longer insist on proof of service. Ways of proving service of processes are:

1. By certificate of service
2. Affidavit of service
3. Appearance in court of the party served on the return date.

It is to be noted that the bailiff or process server is required to annex the acknowledgement of service (signed by the person served) as exhibit to the affidavit of service.

3.13 Recording of Service

Under the rules of court, a register is required to be kept at the registry for recording service of processes by the process server or the registrar. The register shall contain the names of the parties, the mode of service and the manner used to ascertain that the proper person was served. Where the process was not served, the reasons for the failure to serve shall also be entered in the register. Every entry in the register shall be prima facie evidence of the matters stated therein.

It must be noted that where a process that requires personal service is served by substituted means without the leave of court, an aggrieved party may apply to the court to set aside such an irregular service. Where there was no service at all, such party may apply to set aside any proceedings founded thereon. However, such objection as to the validity of service must be made at the trial and before further steps; otherwise it would be deemed to be a waiver. Note however that there cannot be a waiver in respect of non-service as it is not an irregularity but a fundamental defect that goes to the exercise of the jurisdiction of the court. Generally, only the party not served can object to the proceedings thereon. But a party who can prove that he suffered a detriment due to the non-service of the process may also validly object.

Without proper communication or effective service of process the whole proceedings in court falls flat and is a nullity. This is because the court cannot assume jurisdiction where the parties have not been properly notified. The underlying principle guiding the service of processes is closely linked to the rules of fair hearing (*audi alterem patem*) - which basically means that all parities must be heard. It is logical in this sense to argue that where a party is not properly notified of the proceedings, it then means that he cannot be heard and the matter should not go on. The principles surrounding the service of court processes are fundamental and cannot therefore be over emphasised.

4.0 CONCLUSION

In concluding this unit, you will agree with me that we have jointly done justice to the topic on court processes. This unit has succeeded in discussing effectively what court processes are and the various method of ensuring that the services of court process are made effective.

5.0 SUMMARY

The service of processes is an issue under the exclusive legislative list of the 1999 Constitution (Item 57, 2nd Schedule; Part 1) and under the Sheriffs and Civil Process Act (Cap S6 LFN 2004, S. 96). The various States have adopted the sheriffs and civil process act and codified it in their laws. Accordingly, we have the Sheriffs and Civil Process Laws of the different States. Thus, the Sheriffs and Civil Process Act regulates the service of processes in Nigeria. However, the different rules of court may make specific provisions on service but not in any way inconsistent with the Sheriffs and Civil Process Act.

6.0 TUTOR- MARKED ASSIGNMENT

1. What is a court process?
2. State four different methods of serving court processes.

7.0 REFERENCES/FURTHER READING

Enikuomehin, A. (2013). "Secretary, Ondo State Judicial Service Commission. Being a Paper Presented at the EHORECON MCEP Programme". Yenogoa, Bayelsa State 13th -16th May 2013.

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UNIT 3 PROCESS OF COMPELLING ATTENDANCE OF AN ACCUSED IN COURT

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
- 3.1 Summons
- 3.2 Contents of Summons
- 3.3 Execution of Summons
- 3.4 Substituted Service
- 3.5 Service outside Jurisdiction
- 3.6 Warrant of Arrest
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- 3.8 Effect of Defect in the Procedure in Bringing Accused to Court
- 3.9 Arrest without Warrant
- 3.10 Mode of Effecting Arrest
- 3.11 Contempt of Court
- 3.12 Types of Contempt
- 3.13 Failure of Prosecutor to be in Court

4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Reading

1.0 INTRODUCTION

In unit one, the process of making law was discussed while in unit two, court processes and its mode of service was also discussed. In unit three, we shall be discussing an interesting topic on the process of compelling attendance of an accused in court.

The presence of parties in court during litigation is intrinsic to justiciable adjudication. Indeed one ground of sustaining an appeal is that the appropriate parties did not appear in court. This is in line with one of the rules of natural justice of *audi auterim patem* i.e. giving the other party a hearing.

The concept of 'defence' or 'defendant' is answering to a claim in court or being named as accused person in a charge pending in court. In real terms therefore, the defendant is the one who answers to a pending claim against him in a court or tribunal whether for himself or in representative capacity. In civil cases, the person who responds to the claim is the defendant or respondent. The term 'respondent' is used

when the person who sues is described as the petitioner, applicant or appellant.

It is important to emphasise that the material difference between civil and criminal cases is that while the latter ends up in acquittal or conviction, the former ends either in fine, abatement, or some cost in favour of the winning party – no custodial order is made in respect of civil cases. In the criminal case, the defendant is described as the accused person. He is usually brought from police custody or reports in court if he was on administrative bail. The term accused person is only proper after arraignment, before then, he is described as the suspect. Please note the differences between suspects, accused and convict.

After the institution of a civil suit or filing of a charge the court has a duty to invite the defendant / accused person to court. This is done by issuing the appropriate court process. Court processes are documents issued by the court as a form of its order or command which gives specific instruction to the party against whom it is issued regarding a particular conduct. It is either mandatory (like search warrant). Examples of court processes are summons; arrest warrants; search warrant; reproduction warrant; removal order/warrant; hearing notice and witness summons. Court processes are signed by court officials to the person whom it is deserved.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain what is court summon
- state the process of substituted service
- define what is warrant of arrest
- explain the types of contempt of court.

3.0 MAIN CONTENT

3.1 Court Summon

A *Summon* is a document that invites a person to attend a court session at a particular time to answer to a specific charge brought by a named party. The summons must therefore contain the name of the plaintiff or prosecutor, the name of the defendant or accused person, the time and venue of proceedings and the details of the allegations against the person for which the summons becomes desirable. It also contains the signature of the magistrate or judge issuing it.

3.2 Contents of Summons

A Summon contains the following:

1. Parties to the suit
2. The name of the person summoned
3. Concise details of the offence/ claim
4. Signature of the issuing judge or magistrate
5. Positive order on him to appear in court within 48 hours.

3.3 Execution of Summons

Summons is largely used in civil cases as most accused persons are produced from police custody. A Summons is issued at the instance of the prosecution or the plaintiff. The lifetime of a summons is one year unless it is renewed.

The summons is usually served by the court bailiff (being an originating process) or policemen but where it is interlocutory, then the plaintiff may seek special permission to serve. Where it is part of the originating process, then the plaintiff can only act as a pointer. After the service of summons the Bailiff files the proof of service in court or where it is personally done. The plaintiff will serve the affidavit of service which states how and when service was affected. It is important that summons must be served during the day time i.e. 6.00a.m to 6.00 p.m. on any day including Sundays and public holidays. The person served with the summons has to endorse at the back of the summons and upon his refusal liable to detention for a period of not more than 14 days.

Furthermore, service of summons must be personal i.e. it must be handed over to the defendant or accused himself. If it is a company then it may be served on any of the partners or director or secretary or any chief agent therein. Where he refuses to collect it, must be thrown to him by the bailiff who will then tell him that he should realise that he has been served. The bailiff thereafter files the proof of service in the case file and a copy kept in the proof of service file

3.4 Substituted Service

Service of process is personal but oftentimes this has failed. Some of the reasons for the failure of personal service are improper description of the address of the recipient / defendant or acts of evasion by the defendant. To cure this, the rules of court permit service by other means i.e. non personal service. This is the concept of substituted service which is another way to bring the defendant or accused person to court.

This is done by way of motion ex-parte and supported by affidavit. The affidavit must show efforts made to effect personal service and how it has failed and that only another means of service can give notice of the pending case.

Some forms of substituted service are:

1. By publication in the newspaper;
2. By pasting on the wall of last known abode of the accused/ defendant;
3. By delivery to an adult or someone who the court whereas know the whereabouts of the defendant.
4. By post or express mail (DHL etc).

The consideration of court is that the defendant must be reached by the substituted means. For substituted service to issue, two basic conditions must be present:

1. There must have been a failed attempt to serve the defendant or accused personally.
2. The substituted meant must be ordered by the court. Parties cannot choose to serve by e.g. pasting without the consent of the court. Where a meant of service is suggested, service by order means is prohibited.
3. Under the CPC, leave of court is not required for substituted service but in practice, it is desirable.

3.5 Service outside Jurisdiction

When defendant resides outside the jurisdiction of the court, then at the point of issuing the writ or originating process, this must be disclosed i.e. the writ must bear the endorsement that the same is meant for service outside jurisdiction, court will then give its leave for the writ to issue. Please note that where the defendant or accused fails to respond to the substituted service, then the court will proceed to hear the case and give judgment behind him in civil cases while the court will proceed to issue a warrant of arrest in criminal cases.

3.6 Warrant of Arrest

A warrant of arrest is an order on all policemen, private persons and every Nigerian to hold the body, restrain and put in confinement, the person so named in the warrant for the purpose of bringing him to court. A warrant of arrest is issued in criminal cases, in the following circumstances:

i. Where accused has failed to honour a summons to appear in court
ii. Where accused person fails to appear in court in accordance with his condition of bail
iii. Where a witness refuses to appear in court where he is under obligation to do so
iv. Where a person is named on oath to have committed a criminal offence or about to commit an offence or about to flee the jurisdiction of the court.

3.7 Contents of the Warrant of Arrest

The arrest warrant contains the following:

a. Parties to the suit
b. The name of the person to be arrested
c. Concise details of the offence
d. Signature of the issuing judge or magistrate
e. Positive order on all policemen and other law enforcement agents to arrest and bring him to court.

Note the bench warrant is a variant of the warrant of arrest which deals most principally on arresting a person who is in contempt of court. It is called bench warrant because it is issued by court usually while in the course of a trial i.e. while sitting in court or because it arose out of the proceedings before the court.

3.8 Effect of Defect in the Procedure in Bringing Accused to Court

Where a summons is improperly served, yet defendant obeys and comes to court, the attitude of court is to see the process as a mere irregularity which cannot defeat the fact of his presence. However, if the irregularity goes to the root of the fact, then it can be struck out. This happens where for instance, the plaintiff fails to obtain leave to issue a summons which is meant for service outside the jurisdiction of the court. Failure to obtain leave here is germane to the suit itself and court could strike it out in that instance. Where however instead of serving it on the defendant, the process was dropped on his door, yet he appears in court, it is taken as a mere irregularity.

Regarding a warrant of arrest, the failure to execute it at a particular time of the day or as prescribed does not defeat the process in so far as the accused is eventually brought to court.

Note: Then arrestor orders must not only inform the accused person of the warrant issued against him, they must also treat the accused with

respect and honour. Except where restrain is absolutely necessary to prevent escape, an accused may not be handcuffed, paraded publicly or assaulted by the arresting officer.

Corporal punishment, usually administered to violations of curfew or environmental sanitation hours is wrong and unconstitutional. Arrestors must endeavour to be civil while effecting arrest. Civil liability lies against such officer or the agency he represents if the victim resorts to court.

Under the criminal procedure code, if the person to be arrested by warrant is outside the district of the court, the warrant is endorsed by the court before the same can be executed.

Public summons is where a person against whom summons or warrant of arrest is issued is evading service and the court had to order the summons to be published. Public summons must be in writing and must require the person so involved to appear within 30 days of publication. Public summons is thereafter pasted in conspicuous part of town, village or read out orally in public functions.

Note: a warrant of arrest may be endorsed with bail in which case the arrestor may admit the suspect to bail pending his production in court. The 'Sureteeship' must be very credible as he may abscond again if not properly secured.

3.9 Arrest without Warrant

Another way of compelling attendance in court is by direct arresting without warrant. this happen when a policeman is allowed by law to arrest without warrant anyone who he suspects reasonably to have committed an indictable offence, or who commits an offence in his presence of obstructs a police officer in performing his duties and other categories of offenders as contained in the police act but more particularly described in the penal code and the criminal code to include: those caught committing an offence or about to do it, those against whom a warrant has been issued, those reasonably suspected to be fleeing from crime and those whose arrest will ensure their security or the security of life and property of others.

3.10 Mode of Effecting Arrest

Arrest is done by touching the body of the suspect. in classis cases, the arrestor touches the shoulder of the suspect and says i arrest you by the order of the inspector general of police, or magistrate etc. words alone cannot effect an arrest, so where a person who believes he is being

trailed for the purpose of arrest abscond on citing the arrestor, then shouting to his hearing that he is under arrest alone cannot constitute effective arrest. He cannot be charged thereafter with resisting arrest though he has evaded arrest.

In practice those arrested for armed robbery or capital other crimes, the form of arrest may be violent and use of handcuffs is allowed. Policemen sometimes arrest a lot of people who they believe have committed an offence under the judge's rule, but as long as the respect the constitutional rights of he accused person the act is permitted.

3.11 Contempt of Court

Contempt of court is any act omission which tends to disparage or put the court to disrepute, ridicule or which constitutes disobedience to the order of court. Every act of disrespect to the court is contempt.

Contempt of court is both civil and criminal. It is civil where the consequences of the conduct do not lead to a crime but criminal when the disobedience is punishable under the penal statues.

3.12 Types of Contempt

There is basically two type's contempt of court. They are contempt in the face of court (in-facie currie and contempt ex facie currie). When contempt is committed in the face of the court, it means that the contemnor has disobeyed the court or mentioned some words contempt or does some act of disrespect to the court while the court is in session. In this case, the court has the power to punish the offender *brevi manu* (summarily) without preparing a charge. The punishment for contempt shall not exceed 3 months.

Where contempt is ex facie then upon arrest, a formal charge must be proffered against the accused person. It is important to note that a contempt proceeding is predominantly a criminal proceeding which is cognisable in the penal statutes.

3.13 Failure of Prosecutor to be in Court

The prosecutor or the plaintiff who has initiated the court process has a duty to be in court at all times during the course of the trial. His absence could move the court to strike out the case for want of diligent prosecution and the accused person will be discharged of the allegation. When an accused person is discharged then the prosecution has the power to institute the case afresh because the court has not decided the merits of the case. but when the court says it has discharged and

acquitted the accused person, then the prosecutor cannot bring up the charge again since the accused can now plead *autrevos acquit* i.e. that he has once been acquitted of the charges.

in a civil case the absence of the plaintiff evoke similar order of strike out by the court, the only difference is that the court can also award costs in against the plaintiff who is absent in court. Where the defendant has a counterclaim, he will be called upon to proceed and proof his case against the absent plaintiff.

4.0 CONCLUSION

In this unit, we have learnt what a court summons is, the contents of a valid court summons, the execution of a court summons, the term substituted service and what is service outside jurisdiction. We have also discussed warrant of arrest, the contents of the warrant of arrest and the effect of defect in the procedure bringing an accused before the court. We discussed arrests without warrant, the mode of affecting the arrest and the contempt of court; the types of contempt and failure of prosecutor to be in court either on day of mentioning, hearing or any other subsequent day without the leave of the court.

5.0 SUMMARY

The bringing of the actual and/or proper person before the court is fundamental and could also be fatal to the outcome of a court case. It then means that the presence of parties in court during litigation is intrinsic to justiciable adjudication. Indeed one ground of sustaining an appeal is that the appropriate parties did not appear in court. This is in line with one of the rules of natural justice of *audi auterim patem* i.e. giving the other party a hearing.

After the institution of a civil suit or filing of a charge the court has a duty to invite the defendant / accused person to court. This is done by issuing the appropriate court process.

Court processes are documents issued by court as a form of its order or command which gives specific instruction to the party against whom it is issued regarding a particular conduct. It is either mandatory (like search warrant). Examples of court processes are summons; arrest warrants; search warrant; reproduction warrant; removal order/warrant; hearing notice and witness summons. Court processes are signed by court officials to the person whom it is deserved.

6.0 TUTOR- MARKED ASSIGNMENT

1. What is court Summon?
2. State the process of substituted service.
3. What is warrant of arrest?
4. Define types of court contempt.

7.0 REFERENCES/FURTHER READING

Adeyemi, Rotimi (2013). "Director of Environmental Services: Local Government Service Commission, Akure." Being a Paper Presented at the EHORECON MCEP Programme in Yenogoa, Bayelsa State 13th -16th May 2013.

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UNIT 4 CONSTITUTIONAL SAFEGUARD OF AN ACCUSED PERSON

CONTENTS

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2.0 Objectives
3.0 Main Content
  3.1 Define Rights
  3.2 Enumerate Human Rights
  3.3 List Different Types of Human Rights
  3.4 List and Explain Types of Environmental Rights
  3.5 List and Explain Some Constitutional Rights of an Accused
4.0 Conclusion
5.0 Summary
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1.0 INTRODUCTION

In the last three units, we have discussed the process of making laws; court processes and procedures and process of compelling attendance of accused person in court.

In unit four, we shall be discussing the constitutional safeguard and the right of the accused person. In the face of the law, an accused person is presumed to be innocent until his guilt has been proved beyond reasonable doubt.

The constitution of the Federal Republic of Nigeria is a holistic one as it made provisions to safe guard the rights of all parties in a criminal trial; these provisions are to enhance fair trial of the accused person. In the face of law an accused is presumed to be innocent until a prima facie case has been proved beyond reasonable doubt against him. Hence, such an accused is expected to be accorded every right which a normal party should enjoy.

For the purpose of our discussion in this unit, emphasis will be made only on the first basic concept i.e. the rule of law, as this concept forms the source of many of the rights of accused persons. This concept of rule of law is not an alien concept. In the local context, it is embodied in the Constitution of the Federal Republic of Nigeria 1999 as amended, which sets out most of the fundamental liberties.

The provisions contained in this part are meant to protect individual rights by ensuring that the power of the state (including its enforcement machineries) is not exercised erratically or arbitrarily.

An aspect of fundamental importance to the notion of rule of law is the principle of natural justice, which embodies two essential rights, namely; the right to be heard and the rule against biasness. These rights are declared and entrenched in Chapter IV, Sections 33 – 42 of the Constitution, which states that 'no person shall be deprived of his life or personal liberty save in accordance with law', and 'all persons are equal before the law and entitled to the equal protection of the law' respectively. These two principles in reality form the very basis of our criminal justice system. Implicit in these principles, is the right to due process i.e. the right to a fair trial which is the paramount consideration in any criminal justice system.

In order for these rights of the accused person to be effective and operational in the context of our criminal justice system, certain basic and fundamental rights must be accorded to accused persons. What then are these fundamental rights? The Constitution, being the supreme law of the land, has expressly laid down several rights that must be made available to accused persons.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define rights
- enumerate human rights
- list different types of human rights
- list and explain types of environmental rights
- list and explain some constitutional rights of the accused person.

3.0 MAIN CONTENT

3.1 Rights

A right can be defined an entitlement which is endowed on someone and which is not subject to the discretion of any other person. Scott (2009) opined that “Rights are advantageous positions conferred on some possessor by law, morals, rules, or other norms”. What this simply means is that a right is what a person is entitled to because the law or morality has conferred it on him. It is not subject to the discretion of any person or group person and so they cannot decide on when to give to the possessor or the person who is entitle to it. It is different from privilege which is at the instance or discretion of another. A person’s privilege

can be withdrawn without reference to him and the law, but a person's right cannot be withdrawn except the law so provides.

Some rights are conferred based on the person's status as Scott (2009) rightly points out "one always possesses any specific right by virtue of possessing some status. Thus, rights are also classified by status. Civil rights are those one possesses as a citizen; human rights are possessed by virtue of being human.

Presumably women's rights, children's rights, patients' rights, and the rights of blacks as such are analogous". From the above you can see that certain people are entitle to certain rights while others are not, for example, women are entitled to maternity leave as of right but men are not. Also, children are entitled to parental care, but are adults are not, law makers are entitled to legislative privileges, but non-law makers are not, so your status sometimes determines the rights you are entitled to. Equally, adults are entitled to vote, drive cars and smoke, but children are not entitle to vote or drive cars or smoke until they are eighteen years old.

3.2 Human Rights

These are rights conferred on individual by the virtue of being a human being. According to Kaczorowska (2010), human rights are body of rules guaranteeing certain rights recognised internationally as inherent in all human beings by virtue of their humanity. They are universal, inalienable, indivisible, interdependent, and apply equally to all human beings irrespective of race, sex, religion, nationality and colour. In the case of *Odogu v, Attorney General of the Federation* (1999) 6 NWLR (pt.450) 508 the Supreme Court of Nigeria stated that a fundamental right (human rights) is a right guaranteed in the Constitution to every person by virtue of being a human being. While Akwara *et al* (2010) argue that "it is man's existence within society that accords him the status of human being, which ultimately entitles him to some rights as a consequence of his humanity.

The point you need to note is that human rights are right entitled to every human being because he or she is a human being and they are universal; meaning they are the same everywhere and every time, they inalienable meaning they cannot be taken away and they are independent meaning the rights are related and complementary to each other. It does not matter whether you are a Blackman or Whiteman, a woman or a man a child or an adult a Nigerian or a Non-Nigerian.

It is worthy of note that human rights are traceable to the American and French Revolutions of 1775 and 1789 respectively, later development of

the modern concept of human rights is post-world WAR II event. In fact, it was in a bid to find solutions to continued threat to human life, peace and international security and avoid the atrocities of the first and second world wars that led to the establishment of united nation which charter was adopted in 1945 to replace the League of Nations established in 1919. The United Nations (UN) subsequently established the international law commission in 1947 to codify international customary laws which are common practice among civilised nation into laws that would be adopted to guide the relationship between nations and regulate how some nations are treating its citizens.

The led to the codification of the first human rights document called the Universal Declaration of Human Rights (UDHR) which was adopted in December, 1948. The document was intended to take after the America Bill of Rights and was to be called International Bill of Rights but because of disagreement and dissenting views it was made a declaration which ordinarily has no legal binding force. However, State practices and the twin covenants adopted after it in 1966 that is the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) has conferred a binding force on it (Kaczorowska, 2010).

The UDHR which is the locus classic of human rights in Article 1 provides as follows: “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Article 2 “everyone is entitled to all rights and freedoms set forth in this declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self governing or under any other limitation of sovereignty”. The above has confirmed our earlier definition of human rights and what they stand for.

3.3 List Different Types of Human Rights

In discussing the various types of human rights, it is pertinent for you to note that just like the theories of law; there are several theories of human rights. According to Dembour (2010), there are four schools of thought about human rights. The first is the natural school of rights which argue that human rights are inherent in human being and given by God. The second is the deliberative school which argue that human rights are not given by god but are agreed upon by members of the society and whatever they agree as human rights are the rights people would be

entitled. The third is the protest school of rights whose scholars argue human rights are neither given nor agreed upon rather they are fought by the oppressed and to assuage the oppression from the rulers and that one victory does not mean the end of injustice. While the last is the discourse school which argue that rights are neither given, agreed nor fought for rather they exist because people talk about them.

Bentham on his part argues that human rights are complete ‘nonsense’, ‘mischievous nonsense’. ‘Nonsense on stilt's and there is nothing like human rights. For example, he argues that human rights talk about right to equality. To him there is nothing like right to equality because there is always a class, for example, the tenant cannot be equal to the landlord, the servant equal to the master, the child equal to father, the employee equal to employers. so why talk about right to equality when human beings are never equal and can never be treated equally, that is nonsense, tall nonsense on silt to talk about human rights, rather we should talk about how the law is made to ensure the utility of the majority. However, we shall stop the discussion of theories of rights here since that is not the aim focus of this unit and session.

Some scholars like Vasak (1979), argued that there are three broad types of human rights. These include: the right to liberty which are those rights contained in the ICCPR and often referred to as fundamental human rights in most national constitutions including the 1999 Constitution of the Federal Republic of Nigeria. And these rights seek to protect the individual against the arbitrariness and tyranny of the state. They are also called the first generation rights because they associated with the American and French Revolutions of the 18th century which was the first time the demand for these rights were made and granted.

Second types of rights according to Vasak are the equality rights which are found in the ICESCR which are aimed at ensuring the economic and social equality of all human beings. They are largely economic, social and cultural rights; associated with the communist movement of the 19th century which attempted to obliterate the exploitative capitalist system to enthrone Welfarism and linked with the Mexican and Russian revolution. They are listed as fundamental objectives and directive principles of state policy. They are asp rational rights and non-justifiable in most national constitution including Nigeria and are also referred to as the second generation rights.

The third type of human rights according to Vasak is the solidarity or group or collective rights which are aimed at protecting the group as a whole and not individual. They also seek to involve all stakeholders in the society to ensure their achievement. They were proposed by the third world countries to ensure even development, self-determination, reduce

the gross economic inequality between the developed and the less developed nation especially, freedom from colonial and oppressive western policies. They are contained in the Vienna Declaration and programme of action 1993. They are post World War I and II rights.

However, some scholars have argued that it is diversionary to divided human rights into generations because human rights are indivisible, inalienable, interrelated and interdependent, cumulative and overlapping as we need solidarity and economic rights to defend our civil and political rights. While others argue that human rights should be divided because some rights are most important and easily realisable compared to others, for example, the civil and political rights can be easily guaranteed by all countries no matter their economic status. But the economic, social and cultural rights cannot be guaranteed by all countries. For example, most countries cannot provide housing for all, education for all, health for all and food for all. Therefore, if the economic, social and cultural rights are made as fundamental like the civil and political rights countries would be brought to their knee because of litigations arising from failure to provide these rights. Based on this the economic, social and cultural rights should be made asp rational so that each country can fulfil them according to their economic status and pace of development.

3.4 Environmental Rights

It is imperative you know that as human right exist, so also do environmental rights of an individual which simply refers to some permanent entitlement of an individual normally protected by objective rules, by virtue of being one of the inhabitants of the environment (Bell and Mcgillivray, 2008). These rights could be divided into basic and general environmental rights.

The general rights include: right to pollute or trade in pollution credits which is right to generate an acceptable of amount of waste or refuse; right to be heard at an inquiry which entail the right to be given fair trial and to make complaint against polluters or violators of environmental health laws; right to bring judicial review action which means ability to ask for a reversal of a government environmental decision that is capable of causing environmental harm or threat; right of access to environmental information; right to healthy environment; right to clean air; right to clean water and right to participate in environmental decision-making.

While the basic rights include: private rights which are based on the principle of tort to action for breach of a person’s environmental right such as action against nuisances, prevention of trespass or unreasonable

interference with one's enjoyment of land. The second is public law right which is a procedural right that entails the right to participate in environmental decision-making, access to information, the right to be heard at an inquiry and the right to bring a judicial review action or undertake private prosecution at the instance of the state attorney general. The third is substantive legal right which are the general basic human rights which we have considered above which are found in extant human rights legislation like the right to life, property and privacy and right to respect for one's home.

3.5 List and Explain some Constitutional Rights and Safeguards of an Accused

The incorporation of fundamental human rights provisions in the Nigerian Constitution dates back to Sir Henry William's Minority Commission of 1957. It was to safeguard and alley the fears of minority elements. Fundamental human rights provisions were engraved into the Constitutions of 1958, 1960, 1963, 1979 and 1999. This of course is a very striking feature of pre and post independence in Nigeria. Nigerians, as it were, have joined the worldwide quest for the effective realisation of fundamental human right in all its manifestation.

In Nigeria the fundamental human rights of the individual have been incorporated into the constitution" and the courts have been assigned the gargantuan task of playing the role of sentinel for protecting and safeguarding these sacred and basic human rights, particularly rights guaranteed to an accused person. It can then be said that apart from criminal and penal code, criminal procedure act and code, the Nigerian 1999 constitution extends the right to a citizen implicated in a criminal case at various stages of the criminal justice process.

The fundamental human rights in the 1999 Constitution as amended are generally listed in chapter iv of the constitution, that is, Sections 33 – 46, which if breached can lead to a legal action for their enforcement that include:

Section 33 right to life which seeks to protect against unlawful taking of any citizens life except as prescribed by law and in fulfilment of a court order as a punishment for some specific offences like murder.

Section 34 rights speak on dignity of human person which seeks to prohibit torture or inhuman or degrading treatment or slavery or servitude or forced labour.

Section 35 right to personal liberty which seeks to prohibit unlawful detention of any person even if found to have committed an offence

without the lawful orders of court of competent jurisdiction. although, the police and other security agencies have powers to arrest and detain someone they are expected to take the person within 24 or 48 hours before a court otherwise would be breaching the fundamental rights of the person to liberty and a *habeas corpus* proceeding could be commenced to enforce the citizen's rights.

Section 36 is on right to fair hearing. It seeks to ensure that any person alleged to have committed any offence, should be given a fair hearing during the trial. Every person who is charged with criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence.

Section 5 CPA and section 38 CPC also provide for the duty of a police officer making an arrest to inform the accused the nature of the offences except he is in the actual course of committing a crime or escaping from lawful custody.

It will be of interest to discuss all the section 36 and its sub-sections. it contained most of the constitutional safeguards of an accused person.

Section 36 (1) in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -

(a) Provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and

(b) Contains no provision making the determination of the administering authority final and conclusive.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

The same is applicable to a criminal charge as provided for by section by 36(4) of the 1999 Constitution which provides that whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn be entitled to a fair hearing in public within a reasonable time by court or tribunal.

The concept of fair hearing is enshrined in the two Latin *Maxims Audi Alterem Partem* (which means hear both parties) and *Nemo Judex in Causa Sua* (which means a man cannot be a judge in his own cause). However, the Supreme Court in *Effiom v State* prescribed the essential elements of fair hearing to include the following:

- Easy access to the court
- The right to be heard
- The impartiality of the adjudicating process
- The principle of *nemo judex in causa sua*
- Whether there is inordinate delay in delivering judgment.

Presumption of innocence is another right is which an accused is expected to enjoy by the provision of Section 36(5) of the Constitution. The accused is always presumed to be innocent until his guilt is proved beyond reasonable doubt by the prosecution. However, there are exceptions to the above rule under Section 141(3) (c) Evidence act which is to the effect that nothing shall affect the burden placed on an accused person to prove a defence of intoxication or insanity.

One of the rights of an accused is to be informed of the crime alleged. Every person who is charged with criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence. This was provide for by Section 36(6)(a) of the 1999 Constitution. The only exception to this is provided for by both section 179(2) of the Criminal Procedure Act,(CPA) and Section 218(2) of Criminal Procedure Code (CPC), where an accused person is informed of the nature of a grave offence for which he was previously tried but was subsequently convicted for a lesser offence.

In addition, Section 36(6) (b) of the 1999 Constitution provides that every person who is charged with a criminal offence is entitled to be given adequate time and facilities to prepare for his defence. Flowing from this right, an accused is entitled to an adjournment in order to secure the services of a defence counsel or the attendance of witnesses in his defence. However, the grant of adjournment is discretionary and depends on the circumstances of the case but it is however expedient for the court to grant adjournment once the accused person's defence is absent from court.

By Section 36(6) (c) of the 1999 Constitution, every accused person charged with a criminal offence is entitled to defend himself in person or by legal practitioner of his own choice. This is referred as right to counsel. Section 211 of CPA states that both the complainant and the defendant shall be entitled to conduct their respective cases in person or by a legal practitioner and where the defendant is in custody or a remand, he shall be allowed the access of the legal practitioner at all reasonable time. It should be noted that any law that prohibits the appearance of a legal practitioner before any court or tribunal is unconstitutional and consequently null and void.

However, the right of a defence counsel is subject to other limitations and such limitation could prevent the counsel from defending him as held in the case of *Registered Trustee, ECWA Church v. Ijesha*. The combined effect of both Sections 352 CPA and Section 186 CPC provide that any person who is charged with a capital offence who is not represented by a counsel should have one provided for him by the court. This also provided for by Section 5 Robbery and Firearms Tribunal (procedure) Ruled, 1975.

It was held the case of *Josiah v. State* that where an accused is not represented in capital offence and he is convicted without an assignment of a counsel, the conviction shall be set aside as a contravention of his right to counsel. Furthermore, every accused person charged with a criminal offence is entitled to call a witness in his defence and cross examine the witnesses called by the prosecution either by himself or through his counsel. This is provided for by Section 36(6)(d) of the 1999 constitution. This was the decision in the case of *Tulu v. Bauchi Native Authority.*

In addition, every person charged with a criminal offence is entitled to have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial for the offence. The language in court in Nigeria is English language. The interpreter is to be competent enough to interpret the language used in court into the language understood by the accused person. It is however the duty of the accused to inform the court that he does not understand the language of the court through his counsel. Under Section 242(1) CPC, an interpreter must swear to an oath or solemn affirmation that he will state the true interpretation of the proceedings.

An accused person also has a right to be tried for an offence which is known to law. In other words, no persons shall be tried for any offence that is not defined in any written law and the punishment prescribed in the law. A written law has been defined to be act of the national

assembly, a law of State House of Assembly and any other subsidiary legislation or enactment under any provision of the law.

Section 36(7) of the 1999 Constitution, an accused has a right to obtain records of the proceedings. It provides that where any person is tried for any criminal offence the court or tribunal shall keep a record of the proceedings and the accused person or any person authorised by him in that behalf, shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case.

An accused also has a right against trial upon a retroactive legislation as provided for by Section 36(8) of the 1999 Constitution. The first aspect of this law states that an accused shall not be convicted of any crime for acts or omissions that did not constitute a crime at the time the accused person committed it. The second aspect of the law however, states that a convicted person should not be sentenced to a penalty which is higher than the penalty in force at the time when the offence was committed. Sections 175 and 212 of the 1999 constitution give an accused person the right against trial for an offence for which he has been pardoned. The underlining principle is that no person who shows that he had been pardoned for criminal offence can again be tried for that offence. The accused is expected here to prove this by producing the instrument of pardon by which he was pardoned by the appropriate authority.

Section 36(9) of the 1999 Constitution provides that an accused has a right to one trial for one offence as no person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either or acquitted shall again be tried for that offence for a criminal offence having the same ingredients as that offence save upon the order of a superior court. The limitation of the above right is that any accused person, who has been tried and convicted by a court martial for an offence, may be tried by the regular courts on the same offence but in passing sentence, the regular court must take into consideration any penalty already imposed on the accused by the court martial.

An accused person in addition to all the above rights also has a right to remain silent. Section 36(11) of the 1999 Constitution provides that no person who is tried for a criminal offence shall be compelled to give evidence at the trial. According to Section 236(I) (c) of CPC, the failure of the accused to give evidence shall not be made the subject of any comment by the prosecution, but the court may draw such inference as it thinks just.

Conclusively, by Section 36 (12) subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless

that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an act of the National Assembly or a law of a state, any subsidiary legislation or instrument under the provisions of a law.

Section 37- Right to private and family which seek to protect the privacy of the individual including his correspondence and home against unlawful interference and entry.

Section 38- Right to freedom thought, conscience and religion which seeks to allow people hold different opinion and belief as well as freedom of worship. Section 39 - Right to freedom of expression and the press which seeks to allow people publicly air their view and prohibit the proscription of the media.

However, the freedom of expression is qualified by libel and other defamatory statements.

Section 40-Right to freedom of peaceful assembly and association which seeks to allow people meet freely and discuss their common problems, form trade unions and political parties.

Section 41- Right to freedom of movement which seek to allow free movement of people within the country; and to also move out of the country within the remit's of the law.

Section 42 – The right to freedom from discrimination which seeks to prohibit all forms of discrimination against a person.

Section 43 - Right to acquire and own immoveable property anywhere in Nigeria.

Section 44 - Right to adequate compensation in case of compulsory acquisition of property which seeks to ensure that any person whose property has been taken by government or any other body is paid adequate compensation.

Section 45- Restrictions on and derogation from fundamental rights which is not a right per se but seeks to state circumstances under which some rights could be limited.

Section 46- Special jurisdiction of High Court and legal aid this also is not a right per se but state where a person who feel his right is been or about to be violated should go to seek redress and assistance.

The above are the fundamental rights of a Nigeria citizen which if breached can be enforced through the fundamental human rights enforcement procedure in any court of record in Nigeria.

4.0 CONCLUSION

From the above discussion, you can see that there are several types of rights. Also human rights are entitlements and not privileges. Again, there are some special environmental rights to which individuals are entitled and finally the constitutional rights and safeguards of an accused person, which must be guaranteed. It is believed you have learnt about the definition of rights, human rights and others which are constitutionally provided for.

5.0 SUMMARY

There is no doubting the fact that this is an interesting unit. It has not only enlightened on the right of an accused person standing trial in court on charges of environmental sanitation offences, it has also broaden our knowledge as environmental health officers on our own rights in the course of performing our professional duties. The unit focussed on the definition of rights and human rights, we also enumerated types of human rights, the environmental rights of the individual and the provisions of the constitution as to the safeguards that are available to an accused person in criminal and civil cases. These are right of individuals until otherwise determined by a court of competent jurisdiction.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define Rights.
2. Enumerate Human Rights.
3. List different types of Human Rights.
4. List and explain some constitutional rights and safeguards of an accused.

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UNIT 5 PUBLIC HEALTH LAWS

CONTENTS

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1.0 INTRODUCTION

This is unit 5, the last unit under module two. The title of the unit is 'Public Health Laws. We have earlier on discussed the process of making laws, court processes and procedures, process of compelling attendance of accused person in court and constitutional rights/safeguards of the accused.

Most of the environmental health related matters were covered inn most statute books as public health laws, not until recently in Nigeria, in which environmental health sanitation laws were now being promulgated. The words public health and environmental health will be used interchangeably in our discussion of this unit on environmental health laws.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- discuss the evolution of public health
- state the relationship between public health and public health laws
- enumerate the sources of public health law
- define public health laws
- list public health related laws
- state environmental/public health law principles.

3.0 MAIN CONTENT

3.1 Evolution of Public Health

The topic evolution of public health is quite interesting. It is pertinent to mention that concerns for public health issues gave rise to the early public health laws in place in the pre colonial era and up to pre and post independent Nigeria. It is also of good note to know that there is a difference between public health and public health laws because they could be easily confused. This difference you will come to appreciate as we consider the history of public health and public health laws. In our discussion of the history of public health in Nigeria, reference would be made to the United States of America in view of its similar nature. The two countries have public health history, system and laws that are structured in the same pattern and in addition it necessary to have an idea of how public health has developed in other countries.

The history of public health dates back several years. For example, as far back as 2500-1500 BC, the Mohenjo-Daro and Harrappa in Northern India had organised community health action (Egwu, 1996). Egypt had public toilet facilities between 2300-1800 BC; Cretan Knossos had central baths, running water and sewers; and ancient Rome had integrated public health system. Invariably, in ancient, medieval and early modern eras, public health practice was in place (Mcgrew, 1985).

However, some scholars like Aja (2001) have argued that public health history dates back to the very beginning of creation and thus it is a misrepresentation of fact when the history of public health is consider giving attention only to recent development. According to him the history of public health can be said to be as old as the bible. Yet, it is often taught at different tertiary levels, at different times, places and by different authorities without due reference to this significant historical source.

From my personal experience as a public health student in a secular higher institution, the teaching of this very important subject was based purely on "rational speculation, a scientific study of the (recent) past, or simply (an) experience of the passage of time…." historical perspectives focused mainly on classical, traditional conventions, modern or community health statutes/laws, and contemporary or primary health care declarations.

The promotion and protection of public health is one of the oldest functions of government-and certainly one of its earliest regulatory functions. Historically, even early governments, which existed primarily to promote the acquisition of wealth and territory by monarchs and their

families, recognised some obligation to protect the health and safety of their subjects.

Early public health regulation was rudimentary, as there was no clear understanding of the causes of disease or its modes of transmission. From the late middle ages, there was recognition of a relationship between filth and disease and some awareness of the vectors of many infectious diseases through observation. Thus, many jurisdictions had local ordinances targeted at "nuisances" and other sources of filth. Quarantine and isolation of the sick during epidemics -- the archetypal public health regulation-have been used since the dawn of history. However, a lack of understanding of the germ theory of disease obscured the connection between communal sanitation and the prevention of infectious disease.

The impetus for modern public health regulation was the sanitary revolution of the nineteenth century. During this period, scientific discoveries established the link between microorganisms and infectious disease, leading to a greater understanding of the vectors of infectious disease. Soon thereafter, societies concluded that they could prevent the spread of infectious disease through governmental action. Modern public health regulation was born.

The leaders of the nineteenth century sanitary revolution appreciated that governmental authority was necessary to implement the strong and often coercive strategies required to clean up living conditions and prevent the spread of disease. In Europe and the United States, the industrial revolution, with its rapid urbanisation and environmental degradation, wrought great hardship for many workers with increased poverty and disease. Also, technological developments of the industrial revolution permitted great movements of people across oceans and continents in search of treasure and freedom. These dislocations triggered greater public health regulation.

Specifically, in the United States, the large cities on the east coast, which were on the front lines in terms of sea trade and processing new immigrants, were the catalyst for governmental responses to public health concerns? Not surprisingly, in the United States, the early public health advocates focused on the local public agency as the model for executing public health responsibilities. The first local health board was organised in Baltimore, Maryland, in 1793, with other cities on the east coast following shortly thereafter. By the early nineteenth century, local boards were established throughout the nation. As infectious diseases and their vectors do not appreciate political boundaries, states soon established state-level public health agencies throughout the latter half

of the nineteenth century. To this day, states continue to exercise primary responsibility for the regulation of the health professions.

For the same reasons that the states established health departments, the federal government also engaged in public health regulation. The federal effort in public health like-wise was a response to the management of disease brought by seamen and immigrants to east coast cities. Public health was an important concern to the framers of the U.S. Constitution, who envisioned protection and promotion of public health among the federal government's responsibilities. In 1798, Congress established hospitals under the department of the treasury to care for sick and disabled seamen in American ports. This statute also established a national board of health appointed by the president. This national board of health was never strong and languished in future years due to a lack of appropriations to fund its operation.

The evolution of federal public health regulation proceeded in three stages. First, over the nineteenth century, there were responses to specific public health threats not adequately addressed at either the local or state level, such as the spread of infectious disease from seamen and immigrants. The most important development in this regard was the evolution of the marine hospital service into the public health service. This evolution began in 1870 when the marine hospital service was reorganised as a national hospital system with centralised administration under a medical officer, the supervising surgeon. The leadership of the service selected a military model, with a commissioned officer corps for its organisation, out of concern for the corruption and patronage that characterised the federal civil service generally. The marine hospital service became the public health service in 1912.

Another important mid-nineteenth century development in federal public health regulation was the establishment of rudimentary food and drug safety regulation within the federal department of agriculture. Following subsequent enactment of the food, drug and cosmetic act in 1906, this agency ultimately became the Food and Drug Administration (FDA).

The second stage in the evolution of federal public health regulation began with the establishment of the modern regulatory and welfare States as part of President Franklin Roosevelt's new deal. During the new deal, Congress established the FDA to execute the regulatory mandates of a new and improved federal food, drug and cosmetic act of 1938. Of note, this statute required demonstration of the safety of new drugs -- an essentially scientific determination.

The public health advances of the new deal years were chiefly the creation and expansion of the welfare state. In the social security act of 1935, Congress established social insurance programmes for the aged and cash assistance programmes for the aged, blind, and disabled as well as poor dependent children. These programmes helped improve the public's health by assuring income security for groups at greater risk for poverty and disease. In 1965, this expansion of the welfare state continued with enactment of the Medicare and Medicaid programmes for the aged as well as some disabled and some poor. By making health-care services available to vulnerable groups, these two programmes dramatically raised the health status of vulnerable groups in the United States. The Medicare and Medicaid programmes also greatly expanded the role of the federal government in addressing problems in the health-care sector.

This second stage of public health regulation also witnessed the consolidation of the modern federal public health establishment in the mid-twentieth century. In 1930, the Ransdell Act established the National Institutes of Health from the hygienic laboratory and authorised the establishment of fellowships for biological and biomedical research. After World War II, the National Institutes of Health evolved into the current well-funded engine for biomedical research and training throughout the United States. The Centres for Disease Control (CDC), which was formed out of the office of malaria control in war areas in Atlanta, Georgia, became part of the public health service with expanded public health responsibilities. In 1953, the federal public health and social welfare functions were consolidated into one cabinet-level department, the department of health, education and welfare. This department housed virtually all of the federal agencies with public health responsibilities (including the Medicare and Medicaid programmes) that had evolved since the civil war. In 1979, a new department of education was formed and the federal health and social services programmes were consolidated into the Department of Health and Human Services (DHHS).

The third stage of federal public health regulation in the 1960s and 1970s was the establishment of new regulatory programs to reduce risks to safety and health in the environment, workplace, and other settings. During this period, congress enacted extensive environmental legislation to clean up the environment and maintain environmental quality. Perhaps the most important federal environmental legislation was the 1969 national environmental policy act, which established a national policy for the environment that would guide federal environmental regulation. In 1970, the Nixon Administration consolidated existing and new federal environmental programmes into the new and independent Environmental Protection Agency.

Another major regulatory effort of this third stage of public health regulation was workplace health and safety. In the 1970s, Congress enacted the occupational safety and health act, which established a new regulatory program to promote health and safety in the workplace. The statute established the Occupational Safety and Health Administration (OSHA) within the labour department to set and enforce workplace safety and health standards; the National Institute for Occupational Safety and Health within DHHS to conduct research on occupational safety and health and the occupational safety and Health Review Commission as an independent agency to adjudicate enforcement actions challenged by employers.

Unlike earlier federal regulation that tended to be industry-specific and address market dislocations, this third stage of public health regulation reduced risks to health and safety across all industries. Consequently, this new generation of regulation generated great controversy and fuelled conservative criticism of government regulation as well as the movement for deregulation that exists to this day. Critique of this new regulatory movement was a major position of the conservative Reagan administration, which sought its reform. The political and economic ideology of the Reagan administration fundamentally questioned the appropriateness of government regulation to reduce risks to health and safety in the environment, the workplace, and other sectors.

One important development from this controversy was the demand for a better assessment of the costs of regulation and a balancing of these costs with the benefits to be derived. More specifically, in 1980, President Reagan issued an executive order mandating cost-benefit analysis in executive branch agencies along with presidential review of agency rules and regulatory planning. President George Bush continued this presidential oversight with the council on competitiveness. Liberals saw this cost-benefit analysis as a methodology to undermine laudable liberal regulatory goals and to advance a more conservative agenda. Cost-benefit analysis, however, has since become more institutionalised, as evidenced by President Bill Clinton's Executive Order mandating the use of cost-benefit analysis in the promulgation of rules. It appears that the executive oversight of rules went far smoother under the Clinton administration than the previous two Republican administrations, perhaps because of greater agreement between the agencies and the office of information and regulatory affairs with the Office of Management and Budget about regulatory goals.

Nevertheless, since the middle of the twentieth century, great strides have been made, particularly in the developed world, in reducing risks to health and safety resulting from economic activity. Life expectancy in

the more developed world is 75 years compared to 64 years in the less developed world- a difference partially due to reductions in environmental and occupational risks to health and safety. In sum, health and safety regulation has become an essential and permanent component of the modern public health mission.

In Nigeria, the history of public health is also traceable to the outbreak of diseases such as cholera, yellow fever, yaws, chicken pox and small-pox in the mid-20t^{h} century. Although medical service started in Nigeria with the establishment in 1860s when the Sacred Heart Hospital was established by Roman Catholic missionaries in Abeokuta, public health was not introduced until later. Throughout the ensuing colonial period, the religious missions played a major role in the supply of modern health care facilities in Nigeria (Ibet-Iragunima, 2006). This was followed by the colonial health system which was also largely hospital or curative it was not until the middle of the 19th century that Dr. Williams a Briton carried out the first series of vaccination in Nigeria (Kale, 2006). The increase in epidemic diseases like the once listed above led to establishment of the medical auxiliary schools in Zaria, Jos, Maiduguri and Ibadan to train rural health attendants, mosquito scouts, inspectors of nuisance, sanitary inspectors and health inspectors to undertake public health services just similar to those rendered in America during the period of their epidemic.

This also coincided with government enactment of relevant public health laws, then known first as Nuisance Ordinance and Public Health Ordinance of 1917 to ensure both environmental sanitation and disease control. This Public Health Ordinance was in place till 1958 when it was changed to Public Health Law.

Between 1958 and 1972, there were no major development in public health, until the coming of the earth summit on the environment, which was a major paradigm in the public health/environmental health laws development.

In 1978, global history of public health changed gear at Alma-Ata, Kazakh Republic, former USSR, when Primary Health Care (PHC) was universally adopted as the strategy for achieving health for all (defined as a level of health that guarantees socially and economically productive lives) (Aja, 2001). Primary Health Care was defined as:

> Essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally accessible to individuals and families in the community through their full participation and at a cost the community and country can afford to

maintain at every stage of their development, in the spirit of self-reliance and self-determination**.**

The eight key components of PHC when it was launched included: community mobilisation and involvement; health education and promotion; water and sanitation; control of communicable and non-communicable diseases; provision of essential drugs, treatment of minor health and injuries; provision of good food supply and nutrition; maternal and child health care including family planning and immunisation and child survival. Community mental health; care of the aged and the handicap; oral health care were later added.

PHC concept was a replacement for the earlier adopted basic health service scheme of 1972. PHC strategy was the training of a new care of health workers who will live and work in the rural areas and would be able to deliver health care services at the grassroots. This led to the training of middle level health practitioners and the establishment of schools of health technology.

Similarly, medical schools were restructured to train community physician as medical officers of health to render public health service in the rural areas with the local governments as the operational base (Abosede, 2003).

From the discussion so far, you can see that the history of public health and public health laws in Nigeria is similar to that of the United States and this seems to be situation in most countries of the world.

3.2 Inter-relationship between Public Health and Public Health Law

In our discussion of the inter-relationship between public health and public health law, there is the need to define the two terms. Just like most social and legal concept the definition of public health is very slippery and as Frenk (1992) states "the concept of public health is charged with ambiguous meanings". According to Frenk, public health has five different connotations. First, it equates with governmental action, that is, the public sector. Secondly, and more broadly it embraces the community as a whole-the public– and not the government (meaning the citizenry). Third, public health is directed towards non-personal health services, but services affecting the environment or the community. Fourth, it entails preventive services which are directed at a particular group of people such as children and women or disease control such as HIV/AIDS and malaria control or polio eradication. Finally, the term public health problem is sometimes used to refer to

illness that are particularly dangerous such as the epidemic associated with tuberculosis or HIV/AIDS.

Acheson (1988) defined public health as “the science and art of preventing disease, prolonging life and promoting health through the organised efforts of society”. From the above discussion public health can be defined as that branch of medicine which deals with the science and art of preventing and controlling diseases, prolonging live, promoting health and rehabilitating the sick through the combined effort of the government, community and individuals. The key point you need to know about the function of public health is that it is aimed at:

- Promotion of health, including tackling health inequalities
- Quality and clinical standards that is clinical governance
- Protection of public health and the management of risk (Holland and Stewart, 1998).

Public health also includes environmental health and laws because in the prevention of diseases a healthy environment that is pollutant free is essential. It also entails provision of adequate nutrition and housings. The remit of public health is quite broad because it cuts across several fields including health, education, agriculture, environment, land and housing, water, industry and works. however, quite often public health has been confused and mixed up with medical practice, especially clinical practice and this tend to affects its effectiveness in the disease control and prevention. The basic function of public is to determine disease pattern among the population, their causes and ways of preventing and recording deaths births, changes in population and other social behaviour patterns, assessing health needs and evaluating services to ensure better health of the society as a whole and not individual personal health care.

However, the profession of public health especially doctors started in England in 1948 (Hunter, 2003) which is similar to the time the training of rural health superintendents and sanitary inspectors started in Nigeria.

Public health laws on the other hand which include environmental health law is that branch of law which is concerned with the regulation of the conduct of public and private institutions and individuals to ensure the maintenance of a wholesome environment, prevention of disease and promotion of health to ensure a healthy individual, community and nation. It is aimed at ensuring the complete physical, mental, social and spiritual well-being of the individual and the community at large through the collective efforts of all by obeying relevant laws and standards prescribed by law.

3.3 Sources of Public Health Law

There are several sources of public health laws because public health cut across several fields of human endeavour. they include; the Constitution, Federal, States and Local Government environmental protection laws, law of torts dealing with nuisance, trespass and negligence, criminal law, town and country planning laws, labour laws, land law, consumer protection laws, drug laws, human rights laws and international laws (Bell and Mcgillivray, 2008). We shall examine each of these sources briefly to see how they are sources of public health laws.

The constitution is the grand-norm. The 1999 Constitution is a source of public health laws because in Section 20, it provides that "the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria. since water, air are essential to human existence and the land, because food is derived from land and the forest have direct bearing on the public health of the citizens, it then follows that the constitution is one of the major sources of public health law.

Human rights law is a source of public health laws because human rights guarantee the right to life, health and healthy environment. Therefore, if any action threatens the life of an individual or the society at large it is action. For example, the oil pollution in the Niger delta is both a breach of human rights and environmental laws.

Although, this provision is non-justifiable, however, by the Section 24 of the Act domesticating the African Charter on Human and Peoples' Rights in Nigeria, it is actionable if anybody pollutes the water, air or land or threatens the wild life.

Also Section 33of the Constitution of the Federal Republic of Nigeria, 1999 as amended, guarantees right to life which can be interpreted to include right to clean environment because unhealthy environment can lead to death.

Another source of environmental or public health laws is federal government, states and local government legislation dealing with the environment such environmental protection laws, sanitation laws and industrial waste laws. They are sources of public health laws because they prescribe threshold and pollution levels that are allowed, defines environmental offence, refuse collection and disposal procedures, processes of prosecution as well as punishment among other. And these no doubt have direct consequences on the health of the citizens.

The other source of public health laws is town and country planning laws. town planning and country planning laws stipulate how and where buildings should be erected to ensure they are suitable for human habitation, avoid overcrowding, adequate ventilation, proper drainages, preservation of green areas and general maintenance of clean towns and country. Since housing is a key determinant of health status and good drainages can reduce the incidence of mosquitoes breeding and by extension malaria, then it is a source of public health laws. This is because wrong erection of building, poor housing conditions and non-maintenance of drainages are regarded as public health offences.

Equally, the law of torts dealing with nuisance, trespass and negligence are sources of public health laws, because nuisance can cause public health problems. And nuisance is actionable both as a private and public wrong. While the attorney general is responsible of commencing action against public nuisance, private individuals can also commence action in case of nuisance, trespass and negligence which result in health hazards or threaten health.

One other major source of public health laws is drugs law, because drugs laws also regulate foods and other substances, especially narcotic drugs, which are of public health interest. Hence the National Agency for Food and Drugs Administration and Control (NAFDAC) was set up to ensure public health and has been prosecuting those who contravene the provision of its laws with regards food and drugs manufacture, distribution, sale and consumption.

The last source of public health laws we shall be discussing is international law. International law is a major source of public and environmental law because it provides a lot of laws and policies that are aimed at protecting the environment and by extension public health. For example, the S.24 of the Africa Charter, the 1972 Stockholm Declaration and the 1992 Rio Declaration which is also called Agenda 21. These declarations provide quite a number of principles and policies. Like the polluter pay principles, precautionary principle and the sustainable development principle among others which help to ensure public health.

3.4 Public Health Law

Public health law is the study of the legal powers and duties of the state, in collaboration with its partners (e.g., health care, business, the community, the media, and academe), to ensure the conditions for people to be healthy (to identify, prevent, and ameliorate risks to health in the population), and of the limitations on the power of the state to constrain for the common good the autonomy, privacy, liberty,

proprietary, and other legally protected interests of individuals. The prime objective of public health law is to pursue the highest possible level of physical and mental health in the population, consistent with the values of social justice (Gostin, 1999).

Public health law is that branch of jurisprudence which treats of the application of common and statutory law to the principles of hygiene and sanitary science. (Public health law) should not be confused with medical jurisprudence, which is concerned only in the legal aspects of the application of medical and surgical knowledge to individuals. Public health is not a branch of medicine, but a science in itself, to which, however, preventive medicine is an important contributor (Tobey, 1926)

The first major health law was the Public Health Ordinance Cap. 56 Vol. 1 of 1917. However, the Criminal Code Act, which was enacted in 1916, contained some provisions on public health offences and punishments. There was also public health law, Chapter 109 of 1963 which gave rise to the public health legislation of the FCT.

The various States of Nigeria have their own public health laws, which are not different from each other in context and content. For the purpose of our discussion, we shall be using Public Health Law of Ondo State of Nigeria Cap. 124 Vol. 3 of 2006 which is similar to the public health laws of other States in Nigeria.

The public health law is divided into eight (8) parts of seventy-five (75) sections. The titles of the eight parts are:

Part	**Sections**	**Title**
I	1-5	Interpretation, medical officers of health, their powers & duties
II	6-11	Nuisances
III	12-33	Notifiable infectious diseases
IV	34-36	Sale of food
V	37-52	Vaccination
VI	53-63	Yellow fever
VII	64-67	Sanitation and housing
VIII	68-75	General provisions (miscellaneous)

It is worthy of note that sections 243 – 248 of the Criminal Code Act (Cap. 77) Laws of the Federation of Nigeria (L.F.N.) 2004**,** have provisions for public health offenders.

243 (1) Any person who sells, as food or drink, or has in his possession with intent to sell it as food drink, any article which

has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, or is in a state unfit for food or drink is guilty of a misdemeanour, and is liable to imprisonment for one year.

(2) Any person who adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, is guilty of a misdemeanour, and is liable to imprisonment for one year.

244 Any person who:

(i) Knowingly takes into a slaughter –house used for the slaughter of any animals intended for the food of man the whole or any part of the carcass of any animal which has died of any disease; or

(ii) Knowingly sells the whole or part of the carcass of any animal which has died of any disease, or which was diseased when slaughtered; is guilty of a misdemeanour, and is liable to imprisonment for two years.

245 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 misdemeanour, and is liable to imprisonment for six months.

246 Any person who without the consent of the president or the governor buries or attempts to bury any corpse in any house, building, premises, yard, garden, compound, or within a hundred yards of any dwelling-house, or in any open space situated within a township, is guilty of a misdemeanour, and is liable to imprisonment for six months.

Any person who:

1) 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; or

2) does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, whether human or animal; is guilty of a misdemeanour, and is liable to imprisonment for six months.

248 Any person who:

1) Sells or has in his possession for the purposes of sale any matches made with white (yellow) phosphorus; or
2) Uses white (yellow) phosphorus in the manufacture of matches; is guilty of an offence and liable to a fine of twenty naira, and any matches in respect of which the offence shall have been committed shall be forfeited.

Section 265 (2) of the Criminal Procedure Law Provides:-

"The court may on a conviction for an offence under the criminal code order the food or drink in respect of which the conviction was had and also all other unfit or adulterated food or drink which remain in the possession or power of the person convicted to be destroyed".

Sections 243 -248 as stated above provided punishment for:

a. Any person who exposes things for sale which is unfit for food or drink.
b. Any person who deals in diseased meat.
c. Any person who corrupts or fouls the water of any spring, stream, well etc.
d. Any person who without the necessary government consent buries or attempt to bury any corpse in any house or premises.
e. Any person who (a) 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.
f. Does any act likely to spread the infection of any disease dangerous to life, whether human or animal.

3.4.2 Prosecution Procedure

a. General inspection
b. Detection of nuisances
c. Issuance of abatement notice
d. Verification for compliance or otherwise
e. Formal complaint made by the environmental health officer in the court on non compliance.
f. Formal charge on charge sheet by environmental health officer.
g. Preparation and service of summons on the accused.
h. Appearance of the accused in court and charges read.
i. Plea is taken (guilty or not guilty)
j. On pleading guilty, judgment is summarily entered against the accused whereby he is convicted and sentenced

k. On pleading of not guilty, bail is granted, and formal trial begins.
l. Trial begins with the prosecution counsel calling out his witness to establish his case
m. Note that the environmental health officer who inspected and served the notice is the prime prosecution witness
n. This is followed by the accused being called upon to enter his defence.
o. The accused present his witnesses to controvert the evidence of the prosecution.
p. At the end of the trial, where the accused is represented by a lawyer, the lawyer addresses the court, stating reasons and precedence to show that the accused is not guilty.
q. Thereafter the court adjourns the case for judgment.
r. If the prosecution evidence is convincing the court convicts the accused and either sentence him to a term of imprisonment or fine in-lieu of imprisonment or both.
s. Note that only lawyers are allowed to address the court both at the magistrate and the high court.
t. In view of the fact that *EHOS* are not lawyers, they are not allowed to prosecute cases at the high court.

3.4.3 Documents used in the Prosecution of Sanitary Offenders

a. Abatement Notice

- Features of Abatement Notice
  - The addresses/office issuing abatement notice
  - The date the abatement notice is issued.
  - The serial/reference number of the abatement notice.
  - The name of the person the abatement notice is addressed to and who is usually the person whose act or default the nuisance arises or continues, that is the name of the owner of the premises.
  - Address of the person to whom the abatement notice is addressed, usually the owner or the occupier of the premises where the nuisances have been detected.
  - The period of abatement-The time within which the owner or occupier of the premises must abate the nuisances found in the premises must be specified in the abatement notice e.g. forthwith or 24hrs, 7 days or 21 days. The length of notice depends on the type of nuisances and the health officer.
  - The place where the nuisances have been found, which may be different from the address of the owner.
  - What the nuisances consists of must be stated in the abatement notice

- Specification on what the owner or the occupier is to do with the nuisance e.g. provision of sanitary dust bin.
- Require the owner to prevent the recurrence of the nuisances.
- Must contain name and signature of the officer issuing the abatement notice and under it, is the title of the officer.
- Name and signature of the receiver of the abatement notice, if possible.

3.4.4 Environmental Sanitary Form 1-14

The designated forms for sanitary inspection of premises for both appraisal and routine inspection are as follows:-

Form E.S. 1 “sanitary inspection of premises (appraisal)”
Form E.S. 2 “sanitary inspection of premises (routine)”
Form E.S. 3 “the call back form” is filled out to indicate that the environmental health officer will come on a return visit.
Form E.S. 4 “abatement notice” is completed in triplicate to include the deadline at which an identified nuisance is to be abated.
Form E.S. 5 “complaint form” is completed when a complaint is received.
Form E.S. 6 “complaint acknowledgment form” is completed in triplicate. the complainant receives a copy while a copy is sent to the area office having jurisdiction and the third copy is retained for office use.
Form E.S.7 “closing order form” is issued to temporarily close down an inspected premise when its state is such as to constitute a threat to public health.
Form E.S.8 school sanitation inspection form.
Form E.S.9 – market inspection form.
Form E.S.10 - abattoir inspection form.
Form E.S.11 – inspection of private slaughterhouses.
Form E.S.12 - certificate of registration of food premises.
Form E.S.13 – inspection of pest and vector control outfit.
Form E.S.14 – serves a dual purpose for “quarterly and annual reports” of all activities.

3.4.5 Nuisance

Nuisances are the unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public. Nuisances can include noxious smells, noise, burning, and misdirection of water onto other property, illegal gambling, and unauthorised collections of rusting autos, indecent signs and pictures on businesses and a host of bothersome activities.

Where illegal they can be abated (changed, repaired or improved) by criminal or quasi-criminal charges. If a nuisance interferes with another person's quiet or peaceful or pleasant use of his/her property, it may be the basis for a lawsuit for damages and/or an injunction ordering the person or entity causing the nuisance to desist (stop) or limit the activity (such as closing down an activity in the evening).

3.4.6 Definition of some Terms used in Public Health Law

‘’Adult’’ means a person who is eighteen years of age or above.

‘’Appropriate authority” means the commissioner’’ for the time being charged with the responsibility for health matters.

‘'Child’’ means a child who is or appears to be under eighteen years of age;

‘’The commissioner’’ means the commissioner of the state for the time being charged with responsibility for health matters.

‘’Competent local government’’ means a local government upon which the functions of a local government under the law are conferred.

‘’The court” means a magistrate court, a mobile court or a customary court upon which jurisdiction to enforce the provisions of this law is conferred.

‘’Dairy’’ means and includes any farm house, cow shed, milk store, milk shop or other place from which milk, other than such imported milk, is kept for sale.

‘’Health Officer’’ includes a medical officer of health, a health superintendent or inspector or an environmental health officer or senior environmental health or other person acting under the authority, whether general or special, of the medical officer of health, and whether such superintendent, inspector or other person is serving in the medical or sanitary departments of the government of the state or in the service of a competent council.

‘’Health Superintendent’’ includes senior health superintendent and assistant health superintendent.

‘’Medical Officer’’ means a medical officer in the service of the government of the state or of a competent local government and includes a qualified medical practitioner employed by the government of the state or a competent local government.

‘’Medical Officer of Health’’ means a person appointed as such under Section 3.

‘’Notifiable Infectious Disease’’ in relation to human beings, means plague, cholera, yellow fever, smallpox, typhus, relapsing fever, cerebral 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 infections disease within the meaning of this law.

3. (1). The governor may appoint a qualified medical practitioner to be government medical officer of health for the purposes of this law in any specified area or generally for the state and in the absence of any such appointment for any area the medical officer in medical charge of the area shall be the medical officer of health for the area.

(2). A competent local government may appoint a qualified medical practitioner to be medical officer of health of the local government for the purposes of this law in the area of authority of the local government.

4. Every senior health officer in the service of the government of the state shall be a medical officer of health and whilst 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 or of a competent local government.

3.5 Public Health Related Laws

Public health or environmental health laws as we have discussed above are laws made to regulate public health services and ensure environmental protection, a breach of which attracts sanction or punishment. There are several types of public health and environmental laws and principle and they intend to regulate different aspects of public health and the environment in order to ensure a healthy society. They cover issues such as refuse collection and disposal, notification of epidemic and quarantine services, air pollution, water pollution, noise pollution, building erection, sales of food, disposal of corpse and other carcases, land pollution, industrial waste disposal, toxic waste disposal, drug testing and immunisation or vaccination, environmental impact assessment, petroleum exploration and exploitation, the polluter pay principle, the precautionary principle and the principle of sustainable

development. The list is endless but for the purpose of this course and unit we shall examine the laws covering these aspects of public health and environmental laws.

The first public health related law, we shall be discussing is the solid waste and refuse disposal law which regulates the collection, treatment and disposal of all solid and hazardous refuse and waste from households, industries and other sources. It also include maintenance of the aesthetic beauty of dwelling places, the environment through provision of green areas, pest and vector control, safe water supply, maintenance of drainage, good refuse bins and gutters. This is provided for, under Section 15 of the Federal of Environmental Protection Agency Decree No. 58 of 1988 and 59 of 1992 as amended. The Principal Decree is now known as Acts of the National Assembly.

The National Guidelines and Standards for Environmental Pollution Control in Nigeria, 1991 and the Pollution Abatement in Industries and Facilities Generating Waste of 1991. Also, the various State Environmental Protection Agency Laws, especially the State Environmental Sanitation Laws.

Another type of public health related law is disease notification and quarantine service law. This law provided that government at levels including the international community should notify the general public of the occurrence of certain diseases which is referred to as the international notifiable diseases. The world health organisation international health regulations 2005 require the reporting of some diseases to the organisation in order to help with its global surveillance and advisory role. The current (2005) regulations are rather limited with a focus on reporting of three main diseases: cholera, yellow fever and plague. The revised International Health Regulations 2005 (which entered into force in June 2007) has broaden the scope to include other emerging diseases such as Avian influenza, SARS, Ebola virus, mad cow disease among others and is no longer limited to the notification of specific diseases. Whilst it does identify a number of specific diseases, it also defines a limited set of criteria to assist in deciding whether an event is notifiable to whom.

Similarly, persons suffering from such disease are expected to be isolated, while those who are suspected to have been exposed to the disease and are likely to suffer it are quarantine to ensure they are not in position to spread the disease to other members of the public (Wings *et al,* 2007). Although, the two terms isolation and quarantine are sometimes used interchangeable, they mean different things and process. In the case of isolation it entails keeping a patient known to have a contagious disease separate from other people. While quarantine means

steps that restricts the movement of a well person who may have been exposed to a contagious disease and may present the risk of transmitting it to other people. It may involve sealing off a ship, house or an areas thought to harbour the disease (Wings *et al,* 2007).

It is one of the rare instances when a person's freedom of movement or liberty may be derogated. In fact in some countries like Kenya you must possess a valid yellow fever vaccination card in order to gain entry. However, the law also requires the various government to take immediate measures to combat the spread of such diseases and where unable should seek assistance.

The next type of public health and environmental related law we shall be examining is the air pollution law which prohibit the emission into the atmosphere chemical substances that are injurious to human health and limit the emission of carbon dioxide and green house gases. These substances do not only have harmful effect on human health but also deplete the ozone layer which has led to acid rains in the United Kingdom, global warming, rise in level of sea water, deforestation and desertification which is put at 100,000km2 and 48km each year (Bell and Mcgillivray, 2008). Air pollution is regulated by the factories act. Cap. 126 LFN, 1990, the Federal Environmental Protection Agency Act Cap 131 LFN 1990, 1987 Montreal Protocol on substances that deplete the ozone layer, the 1985 Vienna Convention for the protection of the ozone layer and the 1992 Framework Convention on climate change among others.

One other type of public health related law is water pollution law which prohibit the dumping into water any hazardous waste that is capable of causing harm to human and marine life. Water pollution is one of the most common sources of pollution because industries, especially petroleum exploring areas like the Nigerian Niger Delta area often discharge their waste into water or inadvertently cause pollution. Water pollutant, especially mercury can be very harmful to human when consumed at the secondary stage from sea foods. The first major incidence of water pollution resulting from mercury poison was the *Minimata* Bay pollution disaster in Japan in the year 1959. this resulted in death of domestic animals like cats, fishes and humans based on the level of pollution and the danger pose by the mercury, fishing and other marine life may not resume in this area until the next 1000 years, when the mercury is expected to reach its half-life. This show how dangerous mercury could be when discharged into water. water pollution is regulated by several laws including the Water Workers Act, 1915, the Mineral Act, 1917, Public Health Act, 1917, the Petroleum Act, 1969, Sea Fisheries Act, Cap 401 LFN 1990, the River Basin Development Authority Act, Cap 396 LFN 1990, Oil in Navigational Water Act, Cap

339 LFN, 1990, Exclusive Economic Zone Act, Cap 16 LFN 1990, the Law of the Sea Convention, 1982 and the Federal Environmental Protection Agency Act among others.

We shall now consider the law relating to drugs trial and vaccination. this is a public health related law, which requires that the consent of volunteer must be obtained and the implication of the drug and vaccine trial be made known to them before the drug or Vaccine trial is conducted. A breach of this law could lead to serious civil litigation that would result in payment of damages. An example, which is handy here, is the case of meningitis vaccine trial by Pfizer in Kano which resulted in some death and has become a subject of protracted litigation between the victims and Pfizer on the one hand and the Kano State Government and Pfizer on the other hand. Usually, drugs and vaccines though mostly tried on animals are also sometimes tried on humans provided proper procedure for the trial has been followed.

Noise pollution law is also another type of public health related law. Although, in its early stage it was targeted at factories to ensure that the noise they generate does not cause hearing problems to their staff. However, this has changed. Noise pollution law is now wider and covers generation of noise from industries, other commercial outfits, and households, sporting areas, recreational facilities, generating sets, vehicles and even construction sites. It is regulated by the Factory Decree of 1987, Federal Environmental Protection Agency Decree of 1992 and the National Environmental Protection (Pollution Abatement Industries and Facilities Generating Waste Regulation of 1991 especially Section 2 of the regulation is of particular relevance in this case). It empowers both government agency involved in environmental regulation, individual and communities to monitor and report any noise level that has exceed 30% decibel.

The law also require industries to have and install pollution control monitoring and control unit, and where possible out source these services to ensure compliance.

Another very important public health related law is the law that regulates the manufacture, production, distribution and sale of drugs, food and food products. It would be necessary to briefly differentiate between food and food product.

Foods are substances that are already in state of consumption, for example, yogurt, beans cake, bread and margarines. While food products are semi finished products which need to be further processed before they can be consumed, for instance, cow milk for the production of yogurt, flour for bread, beans for beans cake among others. The law

requires that these products must be wholesome and safe for human consumption from the point of production to the point of retail and consumption. thus, ordinarily it is an offence to expose food and food products meant for human consumption to dust and flies contamination, but unfortunately the law enforcement process is so weak that food are exposed dust, with flies perching on them.

Also, drugs must be manufactured to ensure compliance with set standards. The laws regulating food and drugs in Nigeria include the NAFDAC Decree no 15 of 1993 which expanded the 1974 Food and Drugs Decree No 35 and the Standard Organisation of Nigeria (SON) Act, 1971, which was amended in 1984. It is the duty of the agencies set up by these laws to monitor food, food product and drugs manufacturing, distribution and sale. Hence in recent past, NAFDAC has banned the use of potassium bromate in the production of bread and withdrawn from circulation several fake and counterfeit drugs.

However, because of space we shall not be discussing the other public health related laws such as:

a. The Animal Disease Control Act, No. 10 of 1990.
b. Harmful Wastes (special criminal provisions etc.) Act of 1988 (Harmful Wastes Act).
c. The Marketing of Breast Milk Substitute Act, No. 41 of 1990.
d. National environmental protection (effluent limitation) regulations.
e. Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002, published by the Department of Petroleum Resources (DPR).
f. National Environmental (pollution abatement in mining and processing of coal, ores and industrial minerals) Regulations, 2009.
g. National Environmental (sanitation and wastes control) Regulations, 2009.
h. National Environmental (pollution abatement in chemicals, pharmaceuticals, soaps and detergent manufacturing industries) Regulations, 2009.
i. National environmental (pollution abatement in food, beverages and tobacco sector) Regulations, 2009.
j. National Environmental (pollution abatement in textiles, wearing apparel, leather and footwear industry) Regulations, 2009.
k. The National Environmental (wetlands, river banks and lake shores protection) Regulations, 2009
l. The national environmental (watershed, hilly, mountainous and catchment areas) regulations, 2009.

m. National Environmental (access to genetic resources and benefit sharing) Regulations, 2009.
n. National Environmental (permitting and licensing systems) Regulations, 2009.
o. Abuja Environmental Protection Board (solid waste control/environmental monitoring) Regulations, 2005.
p. Lagos State Environmental Protection Agency Law.
q. Akwa Ibom State Environmental Protection and Waste Management Agency Law.
r. Ondo State Waste Management Law, 2002 among several others.

3.6 Environmental or Public Health Law Principles

The first principle we shall consider is the polluter pay principle which is says that "the polluter who is responsible for the pollution should meet the costs of its consequences or the remedying of the effect of the pollution" (Bell and Mcgillivray, 2008). What this principle simply means is that whoever that causes the pollution of either the air or water or land should pay for the cost of removing the pollutant from the environment. Unfortunately, everybody is a polluter and so we all pay for the cost of removing the pollutant indirect, this is charged by producers as part of the cost of goods and services they provide. However, the cost of major pollutions such as oil spill or discharge of hazardous waste into water or emission of harmful gas into the air which exceed permissible limit is always borne by the polluter the consumer is not involved.

The next principle we shall be discussing is the precautionary principle which states that "since science cannot predict precisely and absolutely how, when, or why adverse impacts will occur, or what their effect may be on human or the ecosystem. The absence of such proof should not prevent or lead to the postponement of any cost effective measure that will prevent environmental degradation" (Bell and Mcgillivray, 2008). This principle is based on the slogan 'prevention is better than cure' or what some scholars will refer to as is better being 'safe rather than sorry'. Basically, it encourages stakeholders not to postpone any measure that could save the environment even when there is no proof or evidence that this is the likely consequences of a particular environmental action or decision.

The other principle is the sustainable development principle which is based on the concept that "development should be carried in such a way that it meets the needs of the present generation without compromising the ability of the future generation to meet their own needs". This principle is the basis of most international, regional and national laws on environmental protection. The concept is predicated on the assumption

that there is an intergenerational relationship and each generation must behave in manner not to compromise the survival of the next the generation.

There are yet other principles, which include: the substitution principle. It stipulates that "dangerous or harmful procedure or substances including production, consumption and recreational system should be replaced with less dangerous processes". This principle is associated with the best available technologies not entailing excessive costs (Batneec) principle. Among others, is the public participation principle which seeks to encourage wide consultation and adequate involvement of the public and dissemination of information before environmental related decisions are taken and the likely effect of such actions would be is made known to the public. The next principle which you might want to know is the integration principle which seeks to encourage the integration of environmental friendly policy in areas of the society (Bell and Mcgillivray, 2008).

From the above discussion you can see that there are several types of public health related laws and environmental law principles which regulate peoples conduct regarding the environment and public health issues.

4.0 CONCLUSION

You will recall that at the beginning of this unit, you were informed that the unit is very interesting and that attention be paid to the discussion of the topic. Public health law is the pivot on which environmental health practice stands today. It is important you know that while public health is more to the wellbeing of man and the taming of all conditions, be it chemical, biological physical and mechanical capable of impairing human health, environmental health goes beyond this as it is concerned with all things animate or inanimate and to control the threshold at which the environment is being degraded by man. It is hoped that you can now give the history of public health and public health laws, define public health and public health laws and mention some sources of public health laws in Nigeria.

5.0 SUMMARY

This unit has discussed the evolution of public health in Nigeria in relation to the American and other European countries. It also discussed the inter-relationship between public health and public health laws, thus looking into the sources of public health law, the listing and discussion of some public health related laws and the public health/environmental health principles.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the evolution of public health.
2. State the relationship between public health and public health laws.
3. Enumerate the sources of public health law.
4. Define public health laws.
5. List public health related laws.
6. State the environmental/public health law principles.

7.0 REFERENCES/FURTHER READING

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MODULE 3

Unit 1 Environmental/Public Health Offences
Unit 2 Enforcement Roles of Environmental Health Officers
Unit 3 Environmental Health Officers Registration Council of Nigeria
Unit 4 National Environmental Standard Regulations Enforcement Agency

UNIT 1 ENVIRONMENTAL/PUBLIC HEALTH OFFENCES

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1.0 INTRODUCTION

In this unit, we shall be discussing public health offices and defences available to an offender or accused. However, before we examine the two main issues we shall define what we mean by the term offence.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define an offence
- list and describe some public health offence
- mention and explain some defences available to public health law offender.

3.0 MAIN CONTENT

3.1 Definition of Offence

The term offence and crime are often used interchangeably, especially in Nigeria where the criminal code did not clearly define offence. However, according to Okonkwo and Nash (2003), "an offence is an act or omission which is rendered punishable by some legislative enactment". Basically, what they are trying to say is that when a person or group of persons fail to undertake an act which is an omission or undertake an act which is wrong the omission or wrongful act attracts punishment based on the law the person or group of persons would be said to have committed an offence.

We can also define an offence as any attempt or act or omission which is wrong in the eyes of law for which there is a prescribed punishment or sanction. What we are trying to say here is that if one attempt to carry out a wrongful act or carry out wrongful or omit to carry out a rightful act that has a punishment or sanction attached to it, the person would be said to have committed an offence.

We added sanction because some offence may not require punishment. However, for a person to be said to be guilty of an offence there are two essential elements that must be established or proven by the prosecutor. first, the physical element of the offence must be established or proven which is often referred to as the *Actus Reus* (guilty or wrong act) and the mental element or intention which is referred to as the *Mense Rea* (guilty mind) these must be established and both must meet before a crime can be said to have been committed and for a conviction can be successful (Okonkwo and Nash, 2003).

What the above simply means is that one cannot be said to have committed an offence if his physical action and intention do not meet and cannot be proven.

For instance, let us take dumping of refuse on the street. For a person to be guilty of dumping refuse on the street, it has to be established that he intended to dump the refuse on the street and he actually did dump the refuse on the street. But if for example, he was just walking on the street and something fell of his bag unknown to him. He cannot be said to have committed an offence because his intention was not to dump the refuse on the street al, though the refuse has been dumped. This is necessary so that we know when to say somebody has breached public health laws or committed public health offence. Equally, it will be important for you to know that there are basically three types of offence: felony which is defined by the law creating it and punishable with death

or imprisonment of not less than three years; misdemeanours which are offences punishable with a prison term of not less than six months and not up to three years; while simple offences are those that are neither felony nor misdemeanour. Most public health offences are simple and misdemeanours.

3.2 Types of Public Health Offences

Just as there are several public health and environmental laws so there are public health offences but for the purpose of this unit and course we shall examine a few which we consider very important and then provide a list of some public health offences listed in the *Lagos State Environmental Sanitation Edict* now Law of 1998. Some common public health offence includes but not limited to: nuisance, trespass, negligence, poor housing, overcrowding, sale and distribution of unwholesome food among other which you will find in the list that would be provided later in this unit based on the Lagos state law.

3.2.1 Nuisances

One of the commonest and possible the oldest know public health offence is nuisance. Nuisance can be defined as the presence of any matter whether solid, liquid or gas that is capable of affecting the enjoyment of a healthy environment and can cause injury or threat to public health. Nuisance include; poor or lack of sanitary conveniences in a home or other public places, accumulation of rubbish and other decaying or decomposing materials (corpse and carcases or foodstuffs), improper disposal of industrial waste, presence of rodents and their holes, overcrowding, poor ventilation, structural defects to a building and noise.

Noise that amounts to a nuisance can either be continuous or intermittent, but in either case it must affect the comfort or quality of life of a reasonable person. It is the statutory duty of the local government authority using environmental health and other health officers to inspect and remove all nuisances (Ormandy and Burridge, 1988).

Furthermore, nuisance could be public or private nuisance. Public nuisance is that which affect or that is capable of affecting the general public which is actionable at the instance of the attorney general of the state. According to the *Free Dictionary* by Farlex (2011), private nuisance affects an individual more particularly and is actionable in tort by that individual. A private nuisance is a civil wrong; it is the unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individual's property, without an actual trespass or physical invasion to

the land. In the case of *Reads v. ltons & Co. Limited*, the English Court defined private nuisance as any unlawful interference with a person use or enjoyment of their land or some rights over, or in connection with it. A public nuisance is a criminal wrong; it is an act or omission that obstructs, damages, or inconveniences the rights of the community. conversely, public nuisance was defined in case of *Attorney General v, P.Y.A Quarris* as an act which materially affects the reasonable comfort and convenience of a life of a class of her majesty subjects (people) who come within the sphere or neighbourhood of its operation (or existence). We shall consider the remedies available to victim(s) of nuisances when considering the enforcement of public health laws. public nuisances appears wider in scope as it covers a wide variety of minor crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community. This makes nuisance both a civil and criminal wrong.

3.2.2 Trespass

Trespass like nuisance constitute a wrong both as civil and criminal wrong. Trespassing is the act of illegally intruding on another person's property that you do not have permission to be on. Initially trespass was any wrongful conduct directly causing injury or loss; in modern law trespass is an unauthorised entry upon land (the *Free Dictionary* by Farlex, 2011). It has also extended to non-personal entry on the land of another. For example, if a tree or a crop in ones compound extends to the air space or land or some liquid escape from one compound to that of other it is trespass. Trespass can also include mere resting on the fence or gate of another without his consent, even government agents could be liable for trespass if they gain entry into any compound without first obtaining consent to enter.

Furthermore, trespass could either be direct or indirect. it is direct where the trespasser is actually on the land and it is indirect when it he is not actually on the land but his act of negligence has caused an object to interfere with land of another just as in the example given above of the trees, crops and liquid escaping. However, to succeed in trespass it must be proven that there was direct entry or contact with the land, there was intention to enter or negligence and there is a link. in terms of public health somebody will be said to be guilty of trespass if trees in his compound protrude into the compound of another or liquid or other wastes escape from his compound into the compound of another thereby affect the enjoyment of their land.

3.2.3 Negligence

Negligence is another public health offence. It is very similar to the two earlier discussed concepts, especially nuisance because it is actionable

both in tort (civil) and in crime (criminal) law. However, there is not much distinction between negligence in civil and criminal proceeding, a distinction only arises when the negligence is gross as it relates to offences that may require the imposition of a sentence of life imprisonment (Okonkwo and Nash, 2003).

Negligence can be defined as any failure of the accused to exercise reasonable care that has resulted in the injury of another or has caused or capable of causing threat to the health and safety of another. Negligence can also be defined as any conduct that falls below the standards of behaviour established by law for the protection of others against unreasonable risk of harm. A person would be said to have acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances (the *Free Dictionary* by Farlex, 2011).

However, for proceeding in negligence to be successful, the plaintiff in the case of civil proceedings or the prosecution in the case of criminal proceedings must establish some essential elements which are sometimes referred to as the ingredients of the offence. They include: the fact that a duty of care was owed by the defendant to the victim; there was or has been a breached of this duty of care; that damage has resulted from the breach of the duty of care; and that the damage was foreseeable at the least by a reasonable man. See the case of Lochcelly Iron and Coal Co. V. Michelin.

It will be important for you to know that in some countries because of the close similarity and inseparable nature of negligence and nuisance as every act of negligence lead to nuisance and every nuisance is as a result of negligent act. The law of negligence and nuisance has been amalgamated, for example, in the United Kingdom they were amalgamated in 2005 (Buckely, 2011).

3.2.4 Poor Housing

The next public health offence we shall be considering is poor housing which includes poor erection of a house, defects on the building, poor ventilation and overcrowding. Although some are clearly different public health offence, we have decided to discuss them under this broad heading because of space and the requirement of the course.

A poor house is that which does not meet the basic physiological and psychological requirement for human life and comfort has no protection against infectious or contagious disease and accidents (Ormandy and Burridge, 1988). A good house must meet these requirements. According to Ormandy and Burridge, (1988) some of the physiological

requirements include: protection against excessive noise, adequate space for exercise and play for children, provision for heating and cooling, adequate daylight illumination and avoidance of undue daylight, provision for admission of direct sunlight. Some of the psychological requirements include: provision of privacy for individuals and normal family life, provision of opportunity for normal community life, good aesthetic beauty of the house and surrounding, easy to carry out cleaning without much physical and mental fatigue and conform to the prevailing social standard within the community. Protection requirements include: adequate supply of safe and wholesome water and sanitary facilities, toilets must be made to minimise the danger of transmitting diseases, protection against pollution, sufficient sleeping space to minimise risk of the disease spreading, proper preservation of food and foodstuffs to avoid contact with vectors and pest, fire escape routes, protection against road traffic and home accidents, electric shock, burns, and gas poisoning.

Ordinarily, a room of 10 x 12 feet which is a standard room is supposed to be occupied by four persons. That is man and the wife and two children. Therefore, any occupation beyond this is regarded as overcrowding. although defect is what is often used when describing house that is not suitable for human habitation, however, it advisable to use specific words to describe the nature of defect or inadequacy in the building, for instance, cracked walls, leaking roof, sagging ceilings, rotten woods, missing zinc or roofs, likely to be dangerous (Ormandy and Burridge, 1988). It is the duty of the local government authority to ensure that buildings are safe for human habitation through regular inspection. Although, in recent past there has been a running battle between environmental health officers and town planners as to who has the responsibility of inspecting houses.

3.2.5 Sale and Distribution of Unwholesome Food

The last public health offence we shall discus for the purpose of space as earlier mentioned is the distribution and sale of unwholesome. It is a public health offence to distribute and sell food that is not good for human consumption. For example, meat containing tapeworm, fish killed using chemicals or food containing other contaminants. this include sale of grains treated with chemical as this can result in public health diseases and fatality as was the case during the beans poison in 2002 where bean meant for planting treated with chemical were sold for consumption resulting in a lot of deaths, especially in the northern part.
Also, it includes proper display of foods, for example, meat, buns, meat-pie, fried beans cake, cooked beans pastry (moi-moi) and other already made foods (fast food) must be displayed in a showcase and not exposed to dust or flies which unfortunately is the case. Most food vendors do

not display their food complying with the law. It is the duty of health officers to ensure that food for public consumption is wholesome and properly displayed.

Some other very common public health offences include obstructing a health officer from performing their duties and assaulting them during the performance of their duties. it is an offence for any person(s) to prevent a public health officer or any person having relevant authority from either serving a notice or an order or enter a premises for the purposes of inspection after obtaining relevant consent or authority to do so.

Equally, it is a public health offence to disobey or ignore a valid notice to abate any nuisances. once a notice of abatement has been served on the appropriate person whether it is a prohibition or statutory abatement notice the occupiers of the premises or the person(s) responsible for causing the nuisance must abate the nuisance otherwise they would be guilty of a public health offence (Wolf, White and Stanley, 2002). You still need to know that both the prohibition and statutory abatement notices can be served together depending on the prevailing circumstances. For example, where there is evidence of the likelihood that the nuisance would reoccur or has been reoccurring. See the Case of *Peaty v. Feld* (1971) 1 WLR 387.

3.2.6 List of Offences under the Lagos State Environmental Sanitation Edict 1998

Below is a list of some public health offences and their penalty under the Lagos State Environmental Sanitation Edict, 1998.

S/No type of offence minimum fine and maximum fine:

1. Failure to clean sidewalk - ₦1, 000.00 - ₦3, 500.00
2. Failure to clean 18” from curb into street -N1, 000.00 - N3, 500.00
3. Littering/throwing out - ₦2, 000.00 - ₦5, 000.00
4. Sweep out - ₦1, 000.00 - ₦3, 500.00
5. Improper use of litter (dust) bin - ₦1, 000.00 - ₦2, 000.00
6. Failure to use dust bin - ₦1, 000.00 - ₦2, 000.00
7. Failure to cover dust bin - ₦1, 000.00 - ₦2, 000.00
8. Improper placement of dust bin - ₦1, 000.00 - ₦2, 000.00
9. Loose rubbish - ₦1, 000.00 - ₦2, 000.00
10. Exposure of materials - ₦2, 000.00 - ₦20, 000.00
11. Failure to separate waste - ₦2, 000.00 - ₦20, 000.00
12. Sidewalk obstruction - ₦10, 000.00- ₦20, 000.00
13. Street obstruction - ₦15, 000.00 - ₦30, 000.00
14. Commercial waste disposal - ₦1, 000.00 - ₦2, 000.00

15. Improper disposal of refuse - ₦1, 000.00 - ₦2, 000.00
16. Illegal dumping of refuse - ₦40, 000.00 - ₦75, 000.00
17. Posting of bills - ₦5, 000.00 - ₦10, 000.00
18. Removal of city advertisement - ₦7, 000.00 - ₦12, 000.00
19. Erection of structure on road set back - ₦30, 000.00 - ₦60, 000.00
20. Failure to clean drainages - ₦5, 000.00 - ₦10, 000.00
21. Sewage disposal - ₦5, 000.00 - ₦10, 000.00
22. Failure to cover waste trucks - ₦20, 000.00 - ₦30, 000.00
23. Waste burning - ₦5, 000.00 - ₦10, 000.00
24. Storage of trade waste - ₦50, 000.00 - ₦55, 000.00
25. Silt deposit along road side - ₦25, 000.00 - ₦30, 000.00
26. Direct dealing with unregistered private refuse contractors - ₦5, 000.00 - ₦10, 000.00
27. Unregistered private refuse contractor - ₦10, 000.00 - ₦50, 000.00
28. Cutting road by corporate bodies without approval - ₦10, 000.00, - ₦100, 000.00

3.3 Defences to Public Health Offences

The next issue we shall be discussing is defences available to an offender of public health laws or a person accused of breaching public health or environmental laws. A defence is a claim by an accused of the existence of certain facts that exonerate him from criminal liability (Okonkwo and Nash, 2003). What this means is that the person alleged to have committed an offence can point to the fact that based on certain prevailing circumstances he is not guilty of the offence. Some the defences available to a public offender include but limited to the following:

First, lack of notice or notices. For a public health offender to be successfully prosecuted he must have been given a notice to abate the nuisance or stop the breach of the offence. If the prosecuting authority fails to give notice to abate then the offender cannot be guilty of the alleged offence.

The second defence an offender may raise is inadequate or improper notice. The law requires that the relevant agency of government enforcing public health or environmental law make reasonable effort to serve an offender with a notice of finding or the existence of a nuisance or the likely breach or breaching of public health law (Wing *et al.,* 2007). Also the notice must be adequate and must be signed by the proper officer entitled by law to sign it or on his behalf by a proper person entitled to do that on his behalf. See the Case of Plymouth Corporation *v.* Hurrell (1968) 1 Q.B. 455. If the notice is not adequate

and not properly signed by the designated officer and in the prescribed mode the notice would be said to invalid and the offender cannot be guilty of failing to comply with a notice. See the Case of Graddage v. Harigey London Borough Council (1975) 1 W.L.R 241.

Equally, the notice must be authentic, if the notice served is not an authentic notice, for example, not being served in the proper format and on the proper person. Where the notice is not in the proper format and served on the proper person the notice would be invalid and the subsequent prosecution declared a nullity. See the Case of Harris v. Hickman (1904) 1 K.B. 563. Because often enforcement officials and agencies issue informal notices and sometimes serve notices on the wrong people. For example, you cannot serve notice on a tenant it ought to be served on the landlord or his attorney or proper representative if the nuisance relates to structural defects. Thus, if the notice is not in the prescribed form and served on a tenant it cannot pass for a valid.

Another defence an offender can raise is existence of a staying order. A person served with a notice is allowed by law to appeal for the stay of the notice while he takes step to abate the nuisance or preparing to be heard. While this situation is in existence no prosecution can take place. If prosecution commences while the order of stay has been made it would be a nullity and the offender cannot be convicted (Wing et al, 2007).

Also an offender can raise the defence of accident. That is the offence complained of is due to accident. Accident is a defence for most criminal offences under Section 24 of Criminal Code (Okonkwo and Nash, 2003). It simply means that the accused or any reasonable man could never have anticipated the consequence or that it happened not through the wilful act of the accused it is immaterial whether accidental event resulted from an unlawful Act. See the Case of R V. Barimah (1945) 11 W.A.C.A. 49. Another defence that an offender can raise is that the pollution or the discharge was made as an emergency in order to avoid danger or risk to life and health (Bell and Mcgillivray, 2008). See the Case of Express Ltd (Tan Express Dairies Distribution) v. Environmental Agency (2003) ENV. L.R 29 where the driver who had a tyre blowout and had an accident which led to spilling of milk was not held liable for breach of public health laws. However, the defendant or the person who did the emergence pollution or discharge must report immediately to environmental protection agency otherwise he would be avail of this defence.

Similar, the offender can raise the defence of contributory negligence in that the act of the plaintiff contributed to the factors that led to pollution. He could also raise the defence of statutory authority meaning that he

had authority to pollute, however, the pollution must not exceed the limit permitted for him otherwise this defence will fail where it is established the pollution been complained of has exceeded the limit permitted.

From the above discussion you can see that there are several public health offences and a person accused of committing a public health or environmental health offence has some defence he can raise in order not to be convicted.

4.0 CONCLUSION

In this unit, our focus was on the definition of offence and public health offence, the various types of public health offences and the defences available to a person accused of a public health offence. It is believed you have learnt about the definition of offence and public health offences, you have also learnt about the various types of public health offences and the possible defence an offender can raise in his defence.
It is hoped that you can now define offence and public health offences in your won word as well as list and describe some types of public health offence and defences available to public health offender.

5.0 SUMMARY

In this unit our focus was on the definition of offence and public health offences, the various types of public health offence and the defence an offender can avail himself. We have defined offence and public health offence, mentioned and described several public health offences and the defence to an offence of public health.

6.0 TUTOR- MARKED ASSIGNMENT

1. List four types of public health offences you have learnt.
2. Briefly describe three of the offences you have listed in your own words.
3. (a) What do you understand by the term defence?
   (b). List two defences available to public health law offender.

7.0 REFERENCES/FURTHER READING

Ewhrudjakpo, Lawrence (2012).*CHS 411: Introduction to Public Health Laws*. National Open University of Nigeria.

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UNIT 2 ENFORCEMENT ROLE OF ENVIRONMENTAL HEALTH OFFICERS IN RELATION TO ENVIRONMENTAL HEALTH LAWS, REGULATIONS AND POLICIES

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1.0 INTRODUCTION

In this unit, we shall be discussing the enforcement role of environmental health officers in relation to environmental health laws, regulations and policies. We shall consider the definition of enforcement, list and briefly discuss the various processes in involved or that could be followed to enforce the breach of environmental/public health laws.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define law enforcement
- list processes involved in public health laws enforcement
- mention the various public health laws enforcement agencies in the Nigeria
- list and discuss some of the remedies available to a victim of environmental harm.

3.0 MAIN CONTENT

3.1 Definition of Enforcement

Before going to define public health laws enforcement or law enforcement as they mean the same thing both in ordinary criminal procedure and environmental or public health law circle. It is important to say that the method of public health laws enforcement in Nigeria is one of the weakest. And it is more tailored towards domestic offenders instead of industrial and commercial offenders whose activities actually pose more threat to life and physical damage to the environment. Most companies in Nigeria do not have noise monitors or do not even provide respirators to workers working in very hazardous environment. It is also doubtful whether there is any pollution level set for the various types of industries and where certain industry should be sited. In fact the environmental sanitation authorities themselves do not often comply with these standards, for example, we see road sweepers sweeping road without respirators or face mask, refuse truck most times carry refuse across the city without covering them.

However, let us define enforcement since that is the focus of this session. Enforcement is the process of bringing any person who has committed an offence to attend or answer the charge against him/her before a competent authority or tribunal or court for the purpose of determining his/her innocence or guilt and to give appropriate sanction. According to Webster's online dictionary enforcement are federal or state or local legal actions to obtain compliance with environmental laws, rules, regulations, or agreements and/or obtain penalties or criminal sanctions for violations. Enforcement procedures may vary, depending on the requirements of different environmental laws and related implementing regulations. The point you need to note from the above definitions is that once we mention enforcement of public health laws we talking about the various ways public health rules or regulation are complied with and the sanctions that could be imposed on an offender if found to have breached a public health offence.

It would also necessary to point out that the process of enforcing public health laws is slight different from normal criminal enforcement procedure. While in normal criminal procedure it entails all those steps that may be required to compel the accused attendance at the police station or the court and which in most cases begin with either an arrest or a summons (Osamor, 2004). In public health law the procedure does not begin with arrest or summons, on the contrary it begins with an inspection, notice, then a summons and followed by arrest where necessary. We shall now consider some of these processes in the next session.

3.2 Public Health Laws Enforcement Process

3.2.1 Inspection

The first process in the enforcement of public health laws is inspection. It is the statutory duty of environmental health officers be it at the federal, state or the local government authority levels and other environmental protection agencies to carry out regular inspection of premises, streets and industries as well as measure the level of either air or water pollution from time to time so as to determine what action they should take in the performance of their functions under the relevant law establishing them.

Although, from time to time may appear imprecise and vague, however, it not an excuse not to carry out regular inspection which is to be determined by the nature or level of prevalence or likelihood of the presence of nuisances. It is would amount to an abandonment of duty if the local government council or the relevant environmental protection agency fails to carry out inspection of their local government area from time to time. See the Case of Mead V. Haringey London Borough Council (1979) 1 W.L.R. 637. The main purpose of inspection is to detect the presence of statutory nuisances and to take steps to remove them, ascertain repairs, areas of improvement, slum that require clearing, drainages and gutters that require cleaning, over grown weeds, refuse dump sites, and general housing conditions to ensure they are safe and fit for human habitation. However, before an inspection is undertaken in military, para-military and Government Reservation Areas (GRA) adequate notice has to be given to the occupiers of the resident or in cases of the industries in the locality within which the inspection is to be carried. This is to both serve the requirement of the law and courtesies and also to avoid action for trespass. It is important to note that this is not required in routine house to house and premises inspection. And at the end of the inspection there must be a report stating the major findings which must be available to chief environmental health officer of the local government who is acting on

behalf of the council to take appropriate action/s or decision as may be required.

An ideal inspection report must contain the following: the name of the owner or tenant(s) or occupant, the name of the landlord if different from the occupant of the premises inspected, the address of the premises and the area, the name(s) of the environmental health officer/inspector in case of more than one person but the head of the team must be the person writing and signing the inspection report, the date of inspection, number of persons staying in the household, the official number of persons permitted for this type of household, a general description of the premises or the area, detail report about the conditions of the house like bathroom, kitchen, toilet, living room, heating and cooling systems, bedroom, roof, the floor, ventilation, conditions of the wall, the paints. This is followed by comments noting the state of things, the environmental remedy to be effected and the time frame within which the environmental remedy must be affected and at the end the name and signature of the environmental health officer/inspector or head of inspection and a witness.

There could be a re-inspection report which is usually done if a notice of abatement has been issued and at the end of the period given the environmental health officer/inspector goes back to assess the conditions. In this case the report would not be as detail as the first. But it must still contain the address, name of environmental health officer/inspector, date of inspection, name of tenant and landlord. Then the body of the report is preferably divided in a tabular form with the left side headed details of inspection for example, (dated 4th November, 2011) and the right side headed details of re-inspection (dated 4th December, 2011). The entries on the left side would indicate the state of affairs as at the last inspection, while the right side is just to state whether still present or no longer present. It is the report of the inspection that set the stage for the next line of action which is almost always the issuance of an abatement notice.

3.2.2 Abatement Notice

The next step in the enforcement of public health laws is the service of an “abatement notice”. It is important to state that more often than not, the issuance of the abatement notice by an environmental health officer goes with the inspection. Once the environmental health officer has submitted his report and the local government are satisfied that there is existence of statutory nuisance then an abatement notice must be served on the persons occupying the premises or living within the vicinity asking them to remove the nuisance (Ormandy and Burridge, 1988).

An abatement notice can be defined as a notice issued under the government within jurisdiction by a person so authorised to do so informing an occupant of a inspected premises or area of the existence of some nuisance which needs to be removed, stating details of the nuisance and the steps required to remove them, and the time within which to remove the said nuisance. It is important that the abatement notice contain the necessary details otherwise it would be invalid. See the Case of *Whatling v. Rees* (1914) 48 L.J.K.B 1122.

Also the notice must be served on the appropriate person and depending on the nature of the nuisance to be abated, but it is usually on the person whose act, omission or default or sufferance has led to the existence of the nuisance. However, where such a person cannot be found then the notice is to be served on the occupier(s) or the owner. In case of nuisances arising from structural defects the notice is ordinarily to be served on the owner of the premises or his lawful attorney or agent. That is any person authorised to and/or you collects the rent of the premises. It is also important you know that an statutory abatement notice can only served while the nuisances is still in existence, however, where it has already occurred and it is likely to occur or has occurred repeatedly in the past then a prohibition notice would be the best notice to be served. Also there is no right of appeal against abatement or prohibition notice(s).

However, there are several forms an abatement notice may take depending on the type of nuisance detected. It may structural or statutory nuisance. Whatever may be the form of nuisance, an environmental health officer can exercise the right of entry at all reasonable time between the hours 6.00am and 6.00pm for the purpose of inspection and detecting nuisance or to see that a work order is complied with. The above is a statutory provision in the public health law. However, if an environmental health officer is prevented from entering the premises the occupants would not be guilty of obstruction.

3.2.3 Court Proceedings

The next process in the enforcement of public health laws is court proceeding which are always commenced at the magistrates court or a customary court. The court could be a permanent or mobile court. A mobile court is often used during special sanitation days or occasion that requires the immediate trial and conviction of several offenders. In mobile court, the court session is always not held in the regular court, but at places where the court so decided to sit at any given time. Conversely, the permanent court holds or sits at its regular place and time to hear the allegation of breach of public health laws brought against any person.

In most cases the actions in the magistrates courts is occasioned by the failure to obey an abatement notice or fully comply with the content of the abatement notice or where there is recurrence or the likelihood of recurrence of the nuisance after it has been abated or that the nuisance is not completely abated by the offender. However, while the proceedings for the enforcement of an abatement notice still subsist the local government council or the relevant enforcement agency could still take other measures to ensure the abatement and prevention of the recurrence of the conditions that have led to the existence of the nuisance (Ormandy and Burridge, 1988).

Also see the Case of Nottingham City D.C V. Newton (1974) 1 WLR 923. Similarly, the local government health authority or other enforcement agencies may commence proceedings at the magistrate court where a prohibition notice has been served or not complied following the recurrence of a statutory nuisance. Usually all public health offences proceedings at the magistrates court are criminal in nature whether for non-compliance with notice or obstruction of officers on duty or refusal or neglect to completely abate a nuisance or contravention of other environmental offence. They are commenced by way of laying and information before the magistrate who examine the facts so disclose in the information sheet and if satisfied that there is a prima facie case against the accused a summons would be issued against which will be served on him to appear to answer the charge on a particular day, place and time.

A summons is usually a written order by a magistrate or any judicial officer so authorised by law notifying an individual that he has been charged with an offence and requiring him to appear in court or a police station at a particular date and time (being not less than 48 hours after the service of such summons) to answer to the charge or allegation against him (Osamor, 2004). In the case of public health offences the summons is always requiring the person to appear before the court. Summons is usually issued for misdemeanours and breach of other local government bye-laws and it is equivalent of an arrest warrant. A breach of summons or disobedience of summons is a criminal offence as it is regarded as contempt of court and the trial is summary. However, you need to know that in the case of mobile court a summons is not need because it is summary trial because the offender was caught committing the offence and so the proceedings take place immediately.

Furthermore, in public health offence proceedings the prosecution is the local government authority for the state and represented in the court by the environmental health officer and not the police or a lawyer who has obtained a fiat of the state attorney general in other criminal offences or proceedings. The charge is read out to the accused and his plea taken

and then the environmental health officer would open the case against the accused by stating the facts of the offence and the particular section of the environmental health or public health law that the accused has breached (Ormandy and Burridge, 1988). The defendant would then have the right to cross examine witnesses if any was called by the prosecution and state his own case. The prosecution just like in regular criminal proceeding have no right of final address but may ask questions to clarify facts and argue on the point of law.

Although, there are order public health laws enforcement procedures such as injunction obtained from the high court to prevent a polluter from continuing the action of pollution or takeover a premises or prevent people from entry a particular building or premises or area because of the existence of nuisance which is of high public health threat. Or an order to allow the local government take over a property for the purpose of abating nuisance or action for the recovery of expenses incurred for abating a nuisance. These may not be discussed because of the nature of this course which is primarily introductory.

From the above discussion you can see that there is difference between the public health laws enforcement procedures and the ordinary criminal law enforcement process. Also, you can see that there are several processes involved in the enforcement of public health laws.

3.3 Environmental/Public Health Laws Enforcement Bodies

There are several government bodies which are involved either directly or indirectly in the enforcement of environmental laws. These bodies shall be examined next.

3.3.1 Federal Level

Federal Environmental Protection Agency

The Federal Environmental Protection Agency (FEPA) is set up initially by Decree 58 of 1988 and amended by the Decree No 59 of 1992. However, the creation of the Federal Ministry of Environment in 1999 by the President Olusegun Obasanjo administration brought the existence of FEPA to an end as FEPA was merged with the Federal Ministry of Environment. Its functions before it was merged with the ministry include the following:

a. Protect the biodiversity conservation and sustainable development of Nigeria natural resources;
b. Prepare a comprehensive national policy for the protection of the environment and conservation of natural resources, including

procedure for environmental impact assessment for all development projects;

c. Prepare, in accordance with the national policy on the environment, periodic master plans for the development of environmental sciences and technology and advice the federal military government on the financial requirements for the implementation of such plans;
d. The federal military government on the national environmental policies and priorities, the conservation of natural resources and sustainable development, and scientific and technological activities affecting the environment, and natural resources;
e. The President, Commander-in-Chief of the armed forces on the utilisation of the one per cent ecological fund for the protection of the environment;
f. 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;
g. 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
h. Carry out such other activities as are necessary or expedient for full discharge of the functions of the agency under this decree.

The functions of the then FEPA were now being performed by the federal ministry of environment with a wider scope.

National Environmental Standards and Regulations Enforcement Agency

The next body we shall be considering is the National Environmental Standards and Regulations Enforcement Agency (NESREA) was established because in the wisdom of government, FEPA and other relevant departments in other ministries were merged to form the federal ministry of environment in 1999, but without an appropriate enabling law on enforcement issues. This situation, however, created a vacuum in the effective enforcement of environmental laws, standards and regulations in the country. To address this situation, the National Environmental Standards and Regulations Enforcement Agency (NESREA) were established as a parastatals of the federal ministry of environment, housing and urban development. The NESREA Act was accented to by President Obasanjo on 30th July, 2007. By the NESREA Act, the FEPA Act Cap 10 LFN 2004 has been repealed.

NESREA has responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines. Some functions of the agency, amongst others include to:

a. Enforce compliance with laws, guidelines, policies and standards on environmental matters;
b. Coordinate and liaise with, stakeholders, within and outside Nigeria on matters of environmental standards, regulations and enforcement;
c. Enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment including climate change, biodiversity conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;
d. Enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement;
e. Enforce compliance with guidelines, and legislation on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;
f. Enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;
g. Enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste, other than in the oil and gas sector;
h. Enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector;
i. Ensure that environmental projects funded by donor organisations and external support agencies adhere to regulations in environmental safety and protection;
j. Enforce environmental control measures through registration, licensing and permitting systems other than in the oil and gas sector;
k. Conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;

l. Create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions; and
m. Carry out such activities as are necessary or expedient for the performance of its functions.

NESREA has several powers including: prohibit processes and use of equipment or technology that undermine environmental quality; conduct field follow-up of compliance with set standards and take procedures prescribed by law against any violator; subject to the provision of the constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulation; the powers to issue environmental regulation and in exercise of this powers since its inception in 2007. The agency has issued eleven regulations which include:

1. National Environmental (pollution abatement in mining and processing of coal, ores and industrial minerals) Regulations, 2009.
2. National Environmental (sanitation and wastes control) Regulations, 2009.
3. National Environmental (pollution abatement in chemicals, pharmaceuticals, soaps and detergent manufacturing industries) Regulations, 2009.
4. National Environmental (pollution abatement in food, beverages and tobacco sector) Regulations, 2009.
5. National Environmental (pollution abatement in textiles, wearing apparel, leather and footwear industry) Regulations, 2009.
6. The National Environmental (wetlands, river banks and lake shores protection) regulations, 2009.
7. The National Environmental (watershed, hilly, mountainous and catchment areas) Regulations, 2009.
8. National Environmental (ozone layer protection) Regulations, 2009.
9. National environmental (noise standards and control) regulations, 2009.
10. National Environmental (access to genetic resources and benefit sharing) Regulations, 2009.
11. National Environmental (permitting and licensing systems) Regulations, 2009.

National Agency for Food and Drugs Administration and Control

The next Federal Enforcement Agency we shall be examining is the National Agency for Food and Drugs Administration and Control (NAFDAC). NAFDAC was established by Decree No. 15 of 1993 as amended is a parastatals of the federal ministry of health, with the mandate to regulate and control quality standards for foods, drugs, cosmetics, medical devices, chemicals, detergents and packaged water imported, manufactured locally and distributed in Nigeria.

Although NAFDAC is not strictly an environmental law enforcement agency, it enforces public health laws relating to food and drugs hence it is listed as an enforcement agency. By the mandate of NAFDAC in accordance with the enabling laws, NAFDAC is authorised to:

1. Regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of regulated products.
2. Conduct appropriate tests and ensure compliance with standard specifications.
3. Undertake appropriate investigation of the production premises and raw materials of regulated products.
4. Compile standard specifications, regulations, and guidelines for the production, importation, exportation, sale and distribution of regulated products.
5. Control the exportation and issue quality certification of regulated products intended for export.
6. Establish and maintain relevant laboratories for the performance of its functions.
7. Ensure that the use of narcotic drugs and psychotropic substances are limited to medical and scientific use only.
8. Undertake the registration of food, drugs, medical devices, bottled water and chemicals.
9. Undertake inspection of imported regulated products.
10. Pronounce on the quality and safety of regulated products after appropriate analysis.

Standard Organisation of Nigeria

The other federal body involved in environmental laws enforcement is the Standards Organisation of Nigeria (SON). The Standard Organisation of Nigeria is the sole statutory body that is vested with the responsibility of standardising and regulating the quality of all products in Nigeria. It was established by the General Yakubu Gowon military regime through Act 56 in 1971, as the Nigerian Standards Organisation.

The Act establishing the body was amended in 1976 by the military regime of General Olusegun Obasanjo, in 1984 by the short-lived regime of Major General Muhammadu Buhari and in 1990 by the regime of General Ibrahim Babangida. In 1990, the amendment of the Act conferred partial autonomy on the SON from the ministry of industry. It now has full autonomy. Just like NAFDAC, SON is not a direct environmental law enforcement agency, but it regulates the standard of products. The statutory functions of the SON are as follows:

1. To investigate the quality of facilities, materials and products in Nigeria, and establish a quality assurance system, including certification of factories, products and laboratories.
2. To ensure reference standards for calibration and verification of measures and measuring instruments.
3. To compile an inventory of products requiring standardisation.
4. To foster interest in the recommendation and maintenance of acceptable standards by industry and the general public.
5. To develop methods for testing materials, supplies and equipment, including items purchased for use by State and Federal departments and private establishments.
6. To register and regulate standard marks and specifications.
7. To undertake preparation and distribution of standard samples.
8. To establish and maintain laboratories or other institutions, as may be necessary for the performance of its functions.
9. To advise state and federal departments of government on specific problems relating to standards.
10. To sponsor appropriate national and international conferences.
11. To undertake research as may be necessary for the performance of its functions.
12. To use research facilities, whether public or private, according to terms and conditions agreed upon between the organisation and the institutions concerned.

The other federal agencies involved in environmental health laws enforcement are the national agency for oil spill detection and control, the various Federal Courts (Federal High Court, Court of Appeal and the Supreme Court). Courts are to determine whether a public health law has been breached and mete out relevant punishment. They also determine issues relating to environmental pollution, civil matters dealing with compensation, damages and nuisance.

3.3.2 State Level

We shall not be discussing the state enforcement bodies in details because most of their functions are similar to those of the federal bodies and again because the enforcement bodies vary from state to state.

However, some of the environmental health laws enforcement bodies at the state level include: the State Environmental Protection Agency, the State Environmental Sanitation Authority, the Housing and Property Development Authority, the State Capital Development Authority and the Courts (Magistrates and State High Courts).

3.3.3 Local Government Level

The local governments do not have independent bodies like the federal and state government, which are involved in environmental health enforcement. However, the environmental health department of the local government or the environmental health section of primary health care department in the local government as the case may be, has the responsibility of enforcing environmental health laws at the local government level. Also, some at the federal and state government levels, there are environmental health officers unit performing and complementing their counterparts at the local government. Some the powers of the environmental health officers include but not limited to the following:

1. Inspect premises and the community on a regular basis.
2. Determine the existence of pollution.
3. Determine the existence of nuisance.
4. Inspect industries to determine level of compliance with environmental health standard.
5. Serve abatement and other notices to ensure the prompt removal of statutory and other nuisances.
6. Determine whether any environmental health law is being or has been breached.
7. Prosecute offenders.
8. Write report of inspection.
9. Inspect meats and other food products meant for human consumption among other functions.

3.3.4 Environmental Health Remedies

We shall now consider some of the remedies available to a victim of environmental pollution or harm. There are several remedies available to a victim of environmental harm or threat that is any person who has or is likely to suffer environmental harm or threat. These include: injunction, compensation, damages, action for loss of profit, abatement and sensibility claim. We shall now examine each of these remedies briefly.

3.3.5 Injunction

One of the remedies available to a person who has suffered or is likely to suffer or is continuously suffering from environmental harm or threat is to apply for an injunction against the polluter to prevent from continuing the acts that is leading to the environmental harm or pollution or threat. It is an order of the court usually a high court restraining the defendant from taking particular act complained of by the plaintiff in the suit. However, to succeed in an action for injunction in environmental law the plaintiff must have a strong case against the defendant (Wolf *et al.,* 2002). For example, in the Case of Hasley v. Esso Petroleum Co. Ltd (1961) W.LR 683 the plaintiff was able to successfully obtain an injunction restraining the defendant from causing noise pollution which was being generated from his boilers and vehicles. Similarly, in the Case of Allison v. Merton, Sutton and Wandsworth *AHA* (1973) CLY 2450, the plaintiff obtained an injunction restraining the noise from the defendants' hospital boilers which were interfering with the plaintiff sleep and were causing him depression.

3.3.6 Compensation

Another remedy available to a victim of environmental pollution or harm is an action for compensation for damages suffered as result of the defendant's action which led to the pollution. Usually compensation actions are more appropriate if negligence is established it has not been successfully applied in case of nuisance and trespass. Compensation is usually for damages to property and chattels and not personal injury suffered (Wolf *et al*., 2002).

3.3.7 Damages

Equally a victim of environmental pollution or harm or threat can action for damages suffered. Damages may be exemplary or specific or general. Exemplary damages has very limited success in environmental health actions, however, where the plaintiff can prove that the defendant undertook the act because he calculated he could make profit that would outweigh the cost of damages he is to pay then exemplary damages would be awarded. This is because there is some sense of wilfulness in the act of the defendant. General damages may also be awarded for destruction of property and personal injuries where there was negligence, but not for economic loss. See the Case of Murphy v. Brentwood DC (1990)

3.3.8 Loss of Profit

Also a victim of environmental pollution or harm can action for loss of profit and it is availed the plaintiff once damage has been proved in a nuisance action. It is not for any other damages but purely for economic loss (Wolf *et al.*, 2002). See the Case of Blackburn v. ABC Ltd (1998) Env. L.R 469 where the plaintiff claim for profit suffered as a result damage to a renovated house was rejected as it does not constitute economic loss.

3.3.9 Sensibility Claim

This is a remedy available to person who has suffered very severe and persistent nuisance as result of environmental pollution which has resulted in some permanent loss. If the plaintiff cannot prove serious, severe and permanent loss of amenity then the damage to be awarded might not be too high. See the Case of Bone v. Seal (1975) 1 All E.R 787, where the damage of £6,000 awarded to the plaintiff for exposure to odour from a piggery was reduced to £1,000 by the court of appeal because the plaintiff could not proof serious and permanent loss of amenity.

3.3.10 Abatement

Furthermore, a victim of environmental pollution could action for abatement of the nuisance caused by the action of the defendant. This is an action in which the plaintiff is seeking an order of court to compel the defendant to remove the nuisance he caused. This is very common in cases of public nuisance where the relevant environmental laws enforcement agencies have refused or neglected to take steps to abate the nuisance.

From the above discussion you can see that there are several bodies responsible for the enforcement of public health and environmental health laws. Some have direct enforcers others are indirect enforcer because it not their primary duties to enforce environmental health laws. Also you can see the various remedies available to a victim of public health or environmental harm or threat or pollution.

4.0 CONCLUSION

In this unit, our focus was on enforcement role of environmental health officers in relation to environmental health laws, regulations and policies. We defined enforcement and the various processes of enforcing environmental health or public health laws. We also discussed and listed some of the other bodies responsible for environmental health/public

health laws enforcement at both the federal, state and local government levels and some of their function, the remedies available to a victim of environmental pollution or harm.

It is hoped you would now be able to define enforcement, list some environmental health/public health laws enforcement bodies at the various level of government, and discuss their functions and some remedies that are available to a victim of environmental pollution.

5.0 SUMMARY

We defined the term enforcement and also mentioned and discussed some processes of enforcing environmental laws. Also discussed are the bodies responsible directly and indirectly for the enforcement of environmental health law at various levels of government and the remedies that are available to a victim of environmental, pollution threat and harm.

6.0 TUTOR- MARKED ASSIGNMENT

1. Define the term law enforcement in your own words.
2. List three processes of enforcing Environmental/public health laws you know.
3. List two environmental/public health laws enforcement bodies at the federal level and enumerate four of their functions.
4. (a) List four remedies available to victim of environmental pollution.
   (b) Briefly discuss three of remedies listed in 4(A) above.

7.0 REFERENCES/FURTHER READING

Ewhrudjakpo, Lawrence (2012).*CHS 411: Introduction to Public Health Laws*. National Open University of Nigeria.

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UNIT 3 ENVIRONMENTAL HEALTH OFFICERS REGISTRATION COUNCIL OF NIGERIA

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1.0 INTRODUCTION

In this unit, you will be exposed to the environmental health officers' registration council of Nigeria. Also we are going to explore the founding board members, the establishment of the Environmental Health Officers' Council, Code of Ethics etc. I am very sure you are going to enjoy studying this unit.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state the history of EHORECON
- state the founding board members of the council
- state the act that established EHORECON
- enumerate the code of ethics

3.0 MAIN CONTENT

3.1 Environmental Health Officers Registration Council of Nigeria

Environmental health remained unregulated in Nigeria over the years until 2002, when the democratic government then decided to grant it

professional recognition through the enactment of the Environmental Health Officers (registration, etc) Act 11 of 2002.

The Act established the council charged with the responsibility of regulating environmental health profession in Nigeria. The specific objectives of the council include:

1. Determining what standards of knowledge and skill are to be attained by persons seeking to become members of the profession of environmental health and improving those standards from time to time as circumstances may permit;
2. Securing in accordance with the provisions of the act the establishment and maintenance of a register of persons registered under the act as members of the profession and the publication from time to time of lists of those persons ;
3. Conducting examinations in the profession and awarding certificates or diplomas to successful candidates as appropriate and for such purpose, the council shall prescribe fees to be paid in respect thereof; and
4. Performing the other functions conferred on the council by the act.

The first council of eleven members was inaugurated in March 2004 by Colonel Bala Mande (rtd), the then Hon. Minister of Environment, on behalf of the president of the federal republic of Nigeria**.** Since then, the members have dedicated themselves to the cause with great determination, in the face of daunting challenges to carry out the mandate of the council. To this end, the council opened register in July 2004, in which members have been registering. It has developed various curricula for the training of its members and has also been conducting examinations for new entrants into the profession. The council is reaching out to other professional bodies and stakeholders for the proper regulation of the field and is determined to continue to explore every avenue to ensure that Nigerians live in an environment devoid of hazards and threats to their lives, which also increase disease burden, which is currently more than 70% environment, related in the country.

3.2 Board Members of the Environmental Health Officers Registration Council of Nigeria.

The following were the founding board members of the Environmental Health Officers' Registration Council of Nigeria. The members are:

1. Chairman - His Royal Highness Yunusa Muhammadu Danyaya (1st Class Emir) Emir of Ningi, Bauchi State
2. Late Mr. Peter A. Bamigboye

3. Mr. Matthew Olajide Idowu
4. Chief Anthony Okechukwu Ezekwesili
5. Mr. Aniefiok J. Moses
6. Mr. Pius A. Dawa
7. Mr. Sunday A. Ojewale
8. Alhaji Ibrahim Malami
9. Registrar - Ebisike Augustine Onyekachi.

Board Members of Environmental Health Officers Registration Council of Nigeria are:

Chairman
His Royal Highness Yunusa Muhammadu Danyaya (1st Class Emir) Emir of Ningi, Bauchi State. HRH was born in Ningi emirate council Bauchi. He attended the Ningi elementary school 1941-1946, Bauchi Middle School 1946-1953, and school of hygiene Kano 1954-1955, Ahmadu Bello University Zaria 1960-1962. HRH started his career as a sanitary inspector (environmental health officer) after his studies at the school of hygiene, Kano. He practiced briefly as a health inspector in Ningi before going on to other areas of human endeavour. HRH has served in various boards and committees such as:

- Member National Council of State – 1979 – 1983
- Member Several Federal Government Hajj Delegations
- Member National Constitutional Conference – 1994 -1995.
- Member Traditional Rulers sub – committee of Vision 2010 committee – 1996 – 1999.
- Member Board of Directors Inland Bank Nigeria Plc. – 1989 – 1991.

Mr. Peter A. Bamigboye
Mr Bamigboye hails from Osun State. He holds the royal society of health diploma for environmental health officers in West Africa. With his quest for improvement in his educational pursuit and improve his knowledge in the field of environmental health, he obtained a B.Sc. degree in environmental health with a first class honours from the Obafemi Awolowo University, Ile-Ife. He is a fellow of the royal society of health London. He also holds an M.Sc. degree in community health from Germany (where he was conferred the “award of excellence in public health” by the coordinating centre for public health in Germany in 1993). Presently he is working on his doctorate degree in environmental health at the College of Medicine, University of Ibadan.

Mr. Matthew Olajide Idowu
Mr. Idowu hails from Kwara State. He trained as a sanitary inspector (environmental health officer) in the 1960s. He holds the Royal Society

of health London diploma for environmental health officer. He also holds a Master of Public Health degree from the famous Dundee University, Scotland and any other diplomas and certificates in the field of environmental health. Mr M.O. Idowu is a fellow of the Royal Society of Health London. Mr Idowu worked for many years with the federal ministry of health and rose to the post of assistant director (water and sanitation) before his retirement in 1999. Mr. Idowu is a distinguished environmental health officer of note. He is an authority in community water supply and sanitation in federal ministry of health, this was demonstrated on the world acclaimed Rusafiya project, where he was the national counterpart coordinator.

Chief Anthony Okechukwu Ezekwesili

Chief Anthony Ezekwesili hails from Anambra State. He is an environmental health officer who trained at the School of Hygiene, Aba. He obtained the Royal Society of Health Diploma in London for environmental health officer. He worked as an environmental health officer, from 1970–1980. He also holds a Diploma in Business Administration from the famous University of Nigeria Nsukka and a Honourary Doctorate degree in Business Administration from the University of Stockton, California, USA. He went into private business and has become a successful businessman with investments in petroleum distribution, hospitality industry and other diverse areas.

Mr. Aniefiok J. Moses

Mr. Aniefiok Moses hails from Akwa Ibom State. He is a distinguished environmental health officer, hardworking and has contributed in numerous ways to the development of the environmental health profession in Nigeria. Mr. Moses holds a Diploma in environmental health; B. Sc Degree from the university of Nigeria Nsukka and M.Sc. in Environmental Management. He is a fellow of the Royal Society of Health, London.

Mr. Pius A. Dawa

Mr. Pius A. Dawa hails from Borno State. He trained as an environmental health officer at the School of Hygiene, Institute of Health, A.B.U, Kano between 1972-1975 from where he obtained the Royal Society of Health Diploma for environmental health officers in West Africa. He also attended the University College Hospital, Ibadan Diploma Programme for professional health tutors and again (passed with distinction) He again trained and qualified as a community health officer, having attended the course at the College of Medicine, University of Lagos.

Mr. Sunday A. Ojewale
Mr. Sunday A. Ojewale hails from Oyo State. He obtained the Royal Society of Health Diploma. He also obtained a B.Sc. Degree from the University of Nigeria Nsukka and an M.Sc. in Environmental Management. Mr. Ojewale for many years has been a teacher at the Federal Training Centre for teachers of health sciences, University College Hospital, Ibadan where several lecturers who teach at our various institutions for health professionals come to learn the skills necessary for teaching health professionals.

Alhaji Ibrahim Malami
Alhaji Ibrahim Malami hails from Kano State. He trained as an environmental health officer at the School of Hygiene, Institute of Health, A.B.U Kano from where he obtained the Royal Society of Health Diploma, London for environmental health officer. He also holds an M. Sc in Public Policy and Administration and other diplomas. He is reliable, hardworking, and principled with sound leadership qualities. He is a distinguished environmental health officer and has held various posts in the Kano State ministry of health rising to post of director.

Ebisike Augustine Onyekachi
Mr. Ebisike Augustine Onyekachi hails from Ahiazu Mbaise in Imo State. He trained as an environmental health officer at the School of Health Technology Akure, Ondo State from where he obtained the West Africa Health Examination Board Diploma for environmental health officers in West Africa. He also holds a B. Sc Degree from the University of Nigeria Nsukka, Enugu State Nigeria and a Master of Science Degree in Environmental Management from the Ondo State University, Nigeria. His dedication to duty and desire to ensure the appropriate recognition of environmental health profession in Nigeria led to his appointment as the pioneer Registrar of the Council on its establishment in 2004. He has since continued to strive for greater heights for the profession in Nigeria.

3.3 The Establishment of EHORECON

Environmental Health Officer Registration Council of Nigeria (**EHORECON**) was established by Act No. 11 of 2001. The Act is divided into eight parts, twenty-eight Sections and three Schedules as follows:

Part	Sections	Title
I	1-3	Establishment of the council
II	4-5	Financial provisions
III	6-7	Staff of the council
IV	8-11	Register and registration

V	12-14	Training
VI	15-20	Privileges of registered person and offences by unregistered person etc
VII	21-26	Discipline
VIII	27-28	Supplementary

First Schedule-
Second Schedule – Supplementary provisions relating to disciplinary committee and the investigating panel.

Third schedule accepted minimum qualification for the purpose of registration on the register established under this act.

3.4 The Code of Ethics

Below is the code of professional ethics for environmental health officer in Nigeria.

Environmental Health Officers Registration Council of Nigeria (Established by Act 11 of 2002)

Code of Professional Ethics (Section 27)
Whereas environmental health is the management of all those factors in man's physical, chemical and biological environment which exercise or may exercise a deleterious effect on his complete physical mental and social well-being and survival. As a licensed professional environmental health officer:
I (Name)…………..………………………
……………………………

1. Shall uphold the laws of Nigeria perform the duties of citizenship, work with other citizens to uplift the human resource base of environmental health profession and cooperate with other professionals in promoting efforts towards health and development needs of the entire citizenry.
2. Accept that my fundamental responsibility as an environmental health officer is to work to improve and preserve the environment, alleviate poverty and to promote public health out of an ecological, humanitarian and democratic viewpoint.
3. Shall work objectively and reliably on the basis of environmental health principles, legislation and regulations and maintain a high competence within the field of environment and health protection, applying a holistic view within my field of competence and work.
4. Shall not do anything, which shall or can or may be misconstrued to bring my integrity or the profession to any disrepute, and

maintain my integrity towards others and their legitimate interests.

5. Shall not deliberately, falsely or maliciously injure the professional reputation of another member of the profession for whatever reason.
6. Shall provide services based on human need, integrity of the environment with respect for human dignity, unrestricted by considerations of nationality, race, creed, religion, colour, or status.
7. Shall not use my professional knowledge and skill in any enterprise detrimental in any way to the promotion of environmental health in particular and public health in general.
8. Shall respect and hold in confidence all information of a confidential nature obtained in the course of performance of my professional duties unless required by law or a superior officer to divulge same.
9. Shall participate in all environmental health professional organisations as demanded by the council.
10. Shall participate responsibly in defining and upholding minimum standards of professional practice and continuing professional education.
11. Shall maintain professional competence and demonstrate regard for the competence of other members of the profession, and shall not lay claim to competence i do not possess.
12. Shall assume responsibility for my professional actions and judgement, both in dependent and independent functions, and uphold the laws, which affect the practice of environmental health profession always.
13. Shall through the professional organisation, participate effectively and responsibly in the establishment of terms and conditions of employment for the profession.
14. Shall participate in the study of, and act on all matters of legislation affecting environmental health profession and the services of the profession to the public.
15. Shall adhere to the highest standards of personal ethics, which reflect creditably upon my personality and accord due regard to my profession.
16. Shall adhere to prescribed dress code while on duty and shall maintain the dignity of the profession in every manner of dressing.
17. Shall protect the general public from harm by not delegating to a person less qualified any duty or services, which requires the professional competence of an environmental health officer.
18. Shall refuse to participate in unethical procedures and processes and shall assume the responsibility to expose incompetence or unethical conduct from others to the appropriate authority.

19. Shall serve my client faithfully and avoid any situation that may give rise to conflict of interest between me and my client and shall make full disclosure where such conflict occurs.
20. Shall protect the legitimate interest of my employer, perform my job honestly and maintain professional standard; and shall endeavour to treat my employees with respect, offer fair remuneration and provide safe working environment for my workers.
21. Shall support my colleagues in their professional development and provide opportunity for the development of new entrants to the profession, and regard students under my tutelage as public trust for the promotion of learning and professional development.
22. Shall keep myself abreast with development in the profession, willing to share ideas and information with other members and where necessary, with the general public, keep accurate records, maintain integrity in all conduct and publication and give due regard and credit to the contributions of others.
23. Shall consider and anticipate the environmental consequences of my work and act in a manner to avoid pollution and to protect the environment.

So help me god.

Signature…………………………........…**Date** ……………………........…
Registration No.....….................……………………………………..

3.5 Organisational Structure of the Council

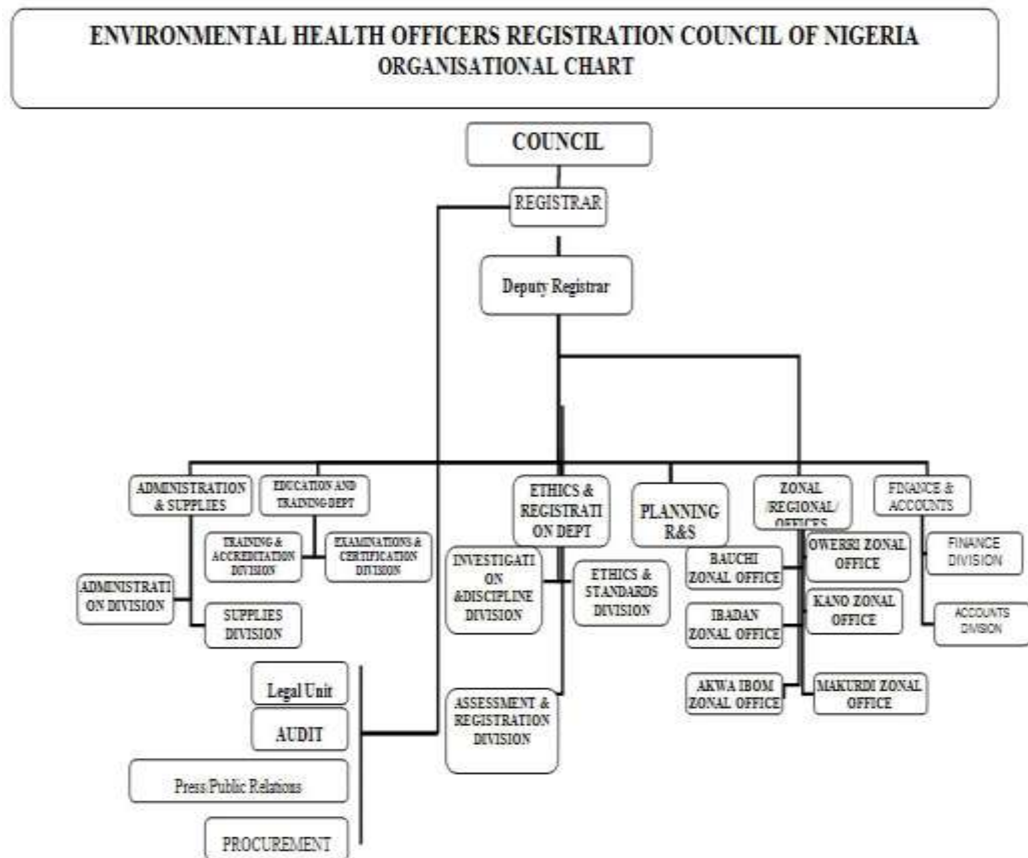
The council has currently has the office of the Registrar/CEO (Chief Executive Officer) and six functional departments namely:

1. Administration and Supply
2. Finance and Accounts
3. Education and Training
4. Registration Ethics and Standards
5. Audit
6. Planning, Research and Statistics

The Council has Zonal Offices in the six geo-political areas of the Country as follows:

1. North West Zonal Office is located in Kano, Kano State
2. North East Zonal office is located in Ningi, Bauchi State
3. North Central Zonal office is located in Markudi, Benue State
4. South East Zonal office is located in Owerri, Imo State
5. South-South Zonal Office is located Akaw Ibom State
6. South West Zonal Office is located Ibadan, Oyo State

The Council Working Organogram as shown below:



3.6 EHO Activities of the Council

The followings are the activities of the council:

1. Administration, inspection, education and regulation in respect of EH. EHO is a generalist across the range of basic Environmental Health (EH) activities.
2. Surveillance over health related environmental conditions, including necessary monitoring activities, providing professional advice and guidance, thereby gaining community confidence and encouraging participation.
3. Acts as a public arbiter of eh standard, maintain close contact with community. Must at all time be aware of the general environmental circumstances including new hazards to health in his area of jurisdiction and what resources are available to tackle them?
4. Application of professional standard in his work in relation to non-professionals involved in eh, and relate professionally with other health professionals like physician, veterinarian, toxicologist, sanitary engineer, laboratory scientist, and nurse etc.

5. Maintenance of effective liaison with other professional officers who have a contribution in promoting eh e.g. water resource manager; waste manager; housing manager; rodent, pest, insect control officers; and recreational facility manager. EHO is much a team concept and this must be recognised in any organisational arrangement.
6. Carry out the well-established duties of sanitarian, including inspection of housing and food hygiene, monitoring and control of new hazards due to intensive industrialisation e.g. pollution by chemical, biological and physical agents; and preventive role in relation to environmental hazard to health.
7. Understanding the principles and practical knowledge involved in personal health, animal health, microbiology, provision of water etc. this will enable him contribute to broad base decisions and to make the decisions alone. He must understand the environmental aspects of the problems, which are the concern of other professionals, and contribute to their solution.
8. Plan and coordinate activities between different professional discipline, agencies, authorities, and maintain continuous link with these professionals e.g. physician, microbiologist, chemist, civil engineers, veterinarian, lawyers, technician and other ancillary personnel and artisans.
9. Act independently in both advisory and enforcement capacities, exercising self-reliance and initiatives, functioning as a member of broader team with other professionals in implementing environmental health programme.
10. Interpret legislation, promote and maintain standard and solve problems, which may come to light.
11. Acquaint self with actual or potential environmental hazards and ensure that appropriate action is taken to deal with them with the backing of strong legislation.
12. Combine training in public health, toxicology and environmental sciences to enable him cope with such problems as soil pollution, chemical pollution, liquid radioactive wastes from industries, pollution of the home environment due to such products as cosmetics, detergents, paints, pesticides and gas fuel; heavy metal contaminant for example mercury, barium, cobalt and other metals, and new problems in food safety such as irradiation of food.
13. EHO within the Public Service should perform the following basic functions:-
    - Improve and protect human health from environmental hazards
    - Enforce environmental health legislation
    - develop liaison between the inhabitants and local authority, and between local authority and higher authority

- Act independently to provide advice on environmental health matters
- Initiate and implement advocacy and health promotion and education programmes to promote an understanding of environmental health principles

14. Operate in a managerial capacity, due to his range of functions, in collaboration with other environmental agencies and services.

4.0 CONCLUSION

In this unit, we have discussed Environmental Health Officers' Registration Council of Nigeria, the founding board members of the environmental health officers' registration council, the establishment of the environmental health officers' registration council, the code of professional ethics, the organisational structure of the council including the zonal offices the organogram and the environmental health officers' activities of the council.

5.0 SUMMARY

We have learnt about the coming into being of the environmental health officers registration council, we have also discussed the forming members of the board, the act establishing the board, the organisational structure, the departments within the council, the professional ethics among others and lastly, the environmental health officers activities of the registration council.

6.0 TUTOR- MARKED ASSIGNMENT

1. State the history of EHORECON.
2. State the numbers of the founding board members of the council and write briefly on any four.
3. State the act that established the EHORECON.
4. Enumerate the code of ethics and write briefly on five.

7.0 REFERENCES/FURTHER READING

www.ehorecon.org.ng.

https://www.facebook.com/.../Environmental-Health-Officers-Registration-Council-of-Nigeria.

UNIT 4 NATIONAL ENVIRONMENTAL STANDARD REGULATIONS ENFORCEMENT AGENCY

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 Establishment of NESREA
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1.0 INTRODUCTION

National Environmental Standard Regulations Enforcement Agency (NESREA) was established on July 30, 2007 as a body corporate with perpetual succession and a common seal. It may sue and be sued in its corporate name. It is responsible for the enforcement of environmental standards, regulations, rules, laws, policies, guidelines and policies, such as the national policy on the environment, 1999. The national policy is indicative of the importance and relevance of standards, rules, policies and guidelines on the environment. Although they may not have the force of law, they are a vital and necessary element in the protection and preservation of the environment. The agency is charged with responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources as well as environmental technology.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- discuss the evolution of NESREA
- state the enforcement powers of NESREA
- enumerate the mandate and powers of NESREA
- list the limitation of the mandate and powers of NESREA

3.0 MAIN CONTENT

3.1 Establishment of NESREA

NESREA was established on July 30, 2007 as a body corporate with perpetual succession and a common seal. It may sue and be sued in its corporate name. It is responsible for the enforcement of environmental standards, regulations, rules, laws, policies, guidelines and policies, such as the national policy on the environment, 1999. The national policy is indicative of the importance and relevance of standards, rules, policies and guidelines on the environment. Although they may not have the force of law, they are a vital and necessary element in the protection and preservation of the environment.

The agency is charged with responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources as well as environmental technology.

3.2 Structure and Composition of NESREA

The agency is headed by a director-general/chief executive appointed by the president acting on the recommendation of the minister. He or she is required to be a person with good working knowledge of the environment and with a minimum of 15 years postgraduate experience in environmental management or related discipline.

The provision for the qualification of the director-general of the agency is commendable and a clear improvement on the repealed FEPA act which was silent on the qualification of the director-general. The provision would ensure that the position is filled on the basis of merit and competence. It is important that NESREA consist of core of experts on environmental – related fields. A technical field like environmental protection cannot be adequately administered by political appointees who lack the requisite specialised knowledge for organisational efficiency. The agency is divided into five directorates, each headed by a director. They are namely: director of administration and finance, directorate of planning and policy analysis, directorate of inspection and enforcement, directorate of environmental quality control and directorate of legal services.

Furthermore, the agency has zonal offices in the geopolitical zones of the country. these are needed to address environmental zones problems of the various ecological and industrial ones and to place within the reach of the states the required technical and advisory support needed by the state environmental protection agencies.

3.3 Enforcement Power of the NESREA

NESREA possesses broad enforcement powers. thus an officer of the agency may at all times enter and search with warrant issued by a court any premises including land, vehicle, tent, vessel and floating craft, inland water and other structure which he reasonably believes carries out activities or stores goods which contravene environmental standards or legislations for the purpose of conducting inspection, searching and taking sample for analysis. This power to enter and search premises excludes oil and gas facilities such as maritime tankers, barge and Floating Production, Storage Offload (FPSO).

To constitute a lawful search, the search has to be carried out with a search warrant issued by the Federal or State High Court. This is in contrast to Section 26 of the repealed FEPA Act and Section 10 of the Harmful Waste (special criminal provisions) Act where environmental protection agencies were empowered to search without warrant. The new requirement of a search warrant by a Court is in recognition of the right to privacy guaranteed under the constitution. This involves the recognition of the citizen's right to be secure in their persons, premises, etc against unreasonable and unlawful searches and seizures. Thus, the right of NESREA and other environmental protection bodies to search and seize environmental substances considered harmful is not absolute. It must be based on a reasonable belief that the premises are used for activities or storage of goods which contravene environmental standards or legislation. The Courts, in the interest of the 'privacy of the citizens' has construed narrowly the police power of entry, search and seizure. as lord Denning stated in *Ghani V. Jones* (1970,1 QB 693,708) the requirements of reasonable grounds for searches and seizures was based on the principles that the individuals privacy and his possession are not to be invaded except for the most compelling reasons. The right to privacy can be constrained by legislation that is reasonably justifiable in a democratic society in the interest of the public.

The requirement of a search warrant also brings the NESREA's act in conformity with the criminal procedure code and the criminal procedure act where a search warrant is required for a search to be lawful.

NESREA's act in addition gave the agency powers to examine any article found pursuant to the search to which the act or regulations apply or which he reasonably believes is capable of being used to the detriment of the environment. the officer of the agency may in furtherance of his investigation also take a sample or specimen of any article, open and examine any container or package and examine and make copies of any book, document or any other record found in the

search, which he reasonably believes may contain any information relevant to the enforcement of the act or the regulations.

He may also seize and detain any articles by means or in relation to which he reasonably believes the provision of the act or regulation has been contravened and issue a written receipt for the thing seized. The agency may obtain a court order to suspend activities, seal and close down premises. Thus, the enforcement powers conferred upon the NESREA are far reaching, extending even to the closure of the premises used in contravention of the law.

The requirement of a court order would guard against arbitrary exercise of its powers. It could however have the effect of working delay in favour of the polluting facility.

3.4 Mandate and Powers of NESREA

Part Two of the NESREA Act contains the functions of the agency. The agency is authorised to enforce compliance with laws, guidelines, policies and standards of environmental matters. Such standards include the federal water quality standards and air quality standards. In carrying out its functions, NESREA is to coordinate and liaise with stakeholders within and outside Nigeria, on matters of environmental standards, regulations and enforcement. Relevant stakeholders include the organised private sector, environmental groups at both national and international levels, and other ministries and parastatals.

A notable provision of the NESREA Act is Section 7(c) which mandates the agency to enforce compliance with the provision of international agreements, protocols, conventions and treaties on the environment ... and such other agreement as may from time to time come into force. Nigeria has ratified several international agreements on the environment in matters such as climate change, biodiversity, desertification, forestry, oil and gas, hazardous waste, marine and wildlife and pollution. However, most of these environmental treaties to which Nigeria is a state party are yet to be domesticated. This provision could therefore be interpreted in two ways.

First, it could be interpreted in terms of giving NESREA the authority to enforce such environmental treaties in Nigeria whether or not they have been domesticated in the country. This would be based on the fact that by ratifying the relevant treaty, Nigeria has signified its intention to be bound by the provision of the treaty. The state can therefore, not shy away from the performance of its treaty obligation under international law. This principle is expressed in Article 26 of the Vienna Convention on the law of treaties which provides that “every treaty in force is

binding upon the parties to it and must be performed by them in good faith". This principle is also known as the principle of good faith (*pacta sunt servanda*). This thinking was reflected in the judgement of the court of appeal in the case of *Mojekwu V. Ejikeme.* (2002) 5 NWLR (pt. 657) at 402, where despite the fact that the Convention for the Elimination of Discrimination Against Women (CEDAW) had not been domesticated in Nigeria, the Court referred to it in its judgement and had no difficulty in holding that the 'Ili Ekpe' custom was a form of discrimination against women.

Secondly, the provision could be interpreted in such a way as to limit the enforcement powers of NESREA to those international agreements and treaties on the environment that have specifically been domesticated in Nigeria by an Act of the National Assembly in accordance with section 12(1) of the CFRN 1999 which provides that "no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the national assembly. It should be noted that where the treaty deals with matters not included in the exclusive legislative list, it must in addition be ratified by a majority of all the State Houses of Assembly in the Federation.

For NESREA to enforce compliance with the provisions of such treaties to which Nigeria is a state party, the relevant treaty would first of all have to be domesticated before it could be said to have properly 'come into force'. Treaties on the environment that has been domesticated in Nigeria include the convention on international trade in endangered species of fauna and flora and convention on the prevention of pollution by the sea by oil. There is also the African Charter on Human and People's Rights, containing provisions relevant to environmental protection. NESREA could play a vital role in the domestication process.

Whatsoever view is taken by the court, in the event of the relevant section being referred for judicial interpretation, Section 7c of the NESREA act has the laudable effect of highlighting the importance and relevance of international environmental law as a veritable source of Nigerian environmental law.

Once ratified, a treaty becomes binding on the state party. Nigeria is therefore under obligation to domesticate her environmental treaties by incorporating them as part of her national law to ensure effective implementation. This requires political will on the part of both the executive and legislative arms of government to comply with the provisions of Section 12 of the CFRN 1999. However, Nigerian Courts are free to take the provisions of ratified treaties into consideration in

arriving at decision involving questions of rights of access to justice in environmental matters, non discrimination and equality.

The inclusion of ‘oil and gas’ in the list of international treaties on the environment to be enforced by NESREA is contradictory in light of the sections of the act which expressly remove oil and gas from purview of NESREA. Section 7(b) for example, empowers NESREA to ‘enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector.

The inclusion of ‘oil and gas’ in Section 7c introduces some confusion as the other provisions of the act have the effect of precluding the NESREA from exercising its enforcement powers in the oil and gas sector. the phrase ‘oil and gas’ should therefore be struck out, to bring section 7c in conformity with the rest of the act and to give effect to the intention of the legislation with the rest of the act which was to clearly remove the oil and gas sector from the authority of NESREA.

The agency is mandated to enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation including pollution abatement. The establishment of such policies and laws are primarily directed at the prevention of pollution and environmental degradation. It can therefore be implied that the functions of the NESREA are directed primarily at the prevention of pollution and environmental harm rather than remedying harm that has already occurred to the environment.

NESREA is also concerned with the enforcement of the guidelines and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria’s natural resources. This provision confers broad powers on NESREA over a wide range of issues. Guidelines and legislations on the sustainable management of the ecosystem and biodiversity conservation include the sea fisheries act and the regulations made pursuant to it, the endangered species (control of international trade and traffic) act, the national park act.

NESREA likewise possesses oversight functions over hazardous chemicals and waste other than in the oil and gas sector, it is to enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemical and waste. It is also to enforce compliance with legislation on sound chemical management, safer use of pesticide and disposal of spent packages. This provision establishes beyond any doubt, the authority of NESREA in this important issue. it also has the effect of putting to rest the dispute in the 1990s between the defunct FEPA and

the national for Foods and Drugs Administration and Control (NAFDAC) on which agency had oversight/responsibility for the control of hazardous chemicals and wastes in environmental agencies.

This provision is also commendable as it takes cognisance of the fact that hazardous chemicals and wastes need to be strictly monitored at every stage. Having been victims of a reckless discharge of polluting substances from industries and of the dumping of toxic wastes, Nigerians are becoming increasingly aware of the dangers posed by the careless use and disposal of oil, harmful and toxic product of industrialisation. There is the need for strict regulation and monitoring of such substances from the point of their source to the point of final disposal as handling at every stage poses great risk to the environment and man. There is an urgent need for environmental protection agencies to take preventive action to forestall environmental harm due to the improper productions stages, sale, use, handling and disposal of such substance. There must be religious enforcement of the law in such regard.

The laws to be enforced by NESREA in relation to hazardous chemicals and waste include; the Basel Convention on the control of the trans-boundary movement of hazardous wastes and their disposal. This also includes the Bamako convention NESREA Act, the Harmful Waste (special criminal provision etc) Act and the National Environmental Protection (management of solid and hazardous wastes) Regulations 1991.

NESREA's performance of its functions faces many challenges. It is not possible to properly assess performance of its functions in view of its short lifespan. However the challenges faced by FEPA (its predecessor) and Directorate of Petroleum Resources (DPR) in the enforcement of laws on hazardous waste management are succinctly highlighted as follows:

Their staff, particularly the inspectorate staff: are handicapped. they perform their jobs under hazardous and unhealthy conditions ... their field inspection teams depend on oil companies and industries respectively ... a worker on inspection of pollution abatement equipment recently imported and installed was embarrassed when he could not operate the machine due to lack of the necessary equipment that would have enhanced his performance.

It is hoped that NESREA will overcome the obstacles and pitfalls that beset its predecessor agency in the enforcement of the preventive principle. This cannot be achieved by wishful thinking. There is need for adequate funding of the new agency to adequately perform its oversight

and enforcement duties. There is also the need for trained technical manpower. Hazardous and waste chemical and waste management is a comparatively new field in Nigeria and requires multifaceted technical and expert services.

In Nigeria, we have a situation whereby industrial waste with its hazardous and toxic component is disposed of as municipal waste. Apart from industrial facilities, the hospitals also generate toxic waste. This can be found in used syringes, x-ray materials etc, most of these waste are supposed to be immediately incinerated. However, these wastes are often disposed of as ordinary wastes and sent to the dumpsites where street urchins and beggars regularly scavenge.

The situation with regard to the management, use and disposal of chemical and/or pesticides and their packages is not different. These dangerous chemicals are sold in the open market without any form of regulation. Instances abound of the use of banned pesticides to kill mosquitoes. The instructions for disposal are usually not followed.

Rather, they are simply disposed as household waste and sent to the dumpsite. This poses great danger to the quality of the land, air, water and the environment as a whole. NESREA is mandated to enforce through compliance monitoring, the environmental regulations and standards on noise, air, lands, seas, oceans and other bodies. NESREA is thus expected to enforce the environmental standards covering water quality, air quality, noise control and atmospheric protection; this would prevent an alternation of the chemical, physical or biological quality of the environment to a definition of ‘pollution’ under the act. In fulfilling this mandate, it behoves on the agency to establish effective monitoring mechanisms. In line with this, the agency may establish monitoring stations or networks to locate sources of atmospheric pollution and determine their actual or potential danger.

The agency possesses supervisory functions over environmental projects funded by donor organisations and support agencies. It is to ensure that such projects adhere to regulations in environmental safety and protections. With the exception of the oil and gas sector, it is the body responsible for the enforcement of environmental control measures through registration, licensing and permitting systems. The use of licenses and permits is a useful tool for the prevention of environmental harm, this system enables NESREA to set and enforce limits on the concentration of particular pollutants which are permitted to enter the environment, it regulates for instances the amount of substances released into the air and thus prevent water pollution. The use of licenses and permit means that no one may discharge polluting substances to any of

the environmental media without holding a permit or licence to do so. In this way, the quality of the environment is preserved and safeguarded.
All industrial facilities generating waste would be required to register with the agency and to obtain permits and licenses. For example, the national environmental pollution abatement in industries and facilities generating wastes regulations require industries and other facilities to possess a permit issued by the agency for the discharge of effluent with constituents beyond permissible limits into public drains and other waters.

Furthermore, no person can engage in the storage treatment and /or transport of hazardous wastes within Nigeria, without a permit issued by NESREA. The conduct of environmental audit is also the responsibility of NESREA.

The agency, as part of its enforcement mechanisms, is also mandated to establish data bank on regulatory and enforcement mechanisms of environmental standards. This is necessary to enable the agency carry out its functions. The bank would include current information on the number and state of industrial facilities operating in Nigeria, detailing persons (natural or artificial) engaging in activities that could impact adversely on the environment, for example, the storage, treatment and transport of harmful or toxic waste.

In addition to the foregoing, NESREA is to create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations and publish general scientific or other data resulting from the performance of its functions. This is an important provision in light of the fact that the use of law as an instrument to obtain compliance has its limits.

The mere existence of law (and a regulatory body) does not in itself create or bring about a change in behaviour. A clean and healthy Nigeria cannot be obtained solely by statutes. There is the added need for information on environmental education and enlightenment of the public. This is the best form of prevention of environmental harm. There must be instilled in the minds of a sizeable number of the population an unambiguous message clearly urging the need for a healthy environment. This environmental consciousness will enable the law to function better. The persistent use not only of the media but also education and social institutions to force a change of thinking and behaviour in conformity with the demands of a healthy environment, will ease the duty of enforcement bodies. This is because enforcement will be against a minority. It will make it possible for the environmental

agencies to succeed and not collapse under the severe pressure of trying to contain large scale disobedience of the laws.

In furtherance of this objective, education on the environment should start at the primary school level. It could be incorporated as part of the social studies curriculum. NESREA would need to liaise with the federal and state ministries of education in this regards. In this way, the citizen would be taught to value and protect the environment from a tender age. Public education and enlightenment could also be achieved through the mass media (which has been adjudged to play an important role in shaping and affecting people's perceptions), published walk through inspections of industrial facilities and residential quarters, attendance, hosting and sponsoring of workshop, seminars and conferences on the environment and conferences on the environment and information dissemination through newsletters and bulletins etc.

Section 7(m) provides a general clause that enables NESREA to carry out 'such activities as are necessary or expedient for the performance of its functions'. Having consideration to the mandate of NESREA, the agency seems to have been conferred with broad powers. These include the power to prohibit processes and use of equipment or technology that undermines environmental quality, conduct field follow up of compliance with set standards and take procedures prescribed by the law against any violator , and established mobile courts to expeditiously dispense cases of violation of environmental regulations. The purpose of the mobile court is to ease pressure on the higher courts and ensure that cases are treated with dispatch. At present, Rivers, Akwa Ibom and Lagos States operate mobile environmental sanitation tribunals/courts. The establishment of such courts must be in accordance with the provisions of the constitution or else their legality could be called into question. NESREA is also empowered to conduct public investigations on pollution and the degradation of natural resources and to submit proposals for the evolution and review of existing guideline, regulations and standards on the environment to the minister of the environment for approval.

The agency is to develop environmental monitoring networks, compile and synthesise environmental data from all sectors (other than in the oil and gas sector) at national and international levels. The monitoring networks and data are to assist the agency in adequate and effective enforcement of the existing law. There is a critical need for legal requirements for self reporting or for preparing and safekeeping of environmental and compliance information by corporations. This will make for an improved compliance and enhance enforcement by the enforcement bodies that will make use of such information to build up a data bank. The lack of such legal requirement for environmental self-

reporting has complicated and rendered difficult the task of the enforcement agencies. Except for the petroleum industry where records are well maintained for purposes unrelated to the environment but scrupulously withheld from the public, a lot of the firms are unconcerned about tracking their pollution monitoring programmes. The environmental agencies cannot generate this information or work without it.

NESREA is to undertake and promote research by public or private bodies on causes, effects, extent prevention, reduction and elimination of pollution and other matters related to environmental protection and natural resources conservation, enter into agreements with public or private organisations and individuals to develop and share environmental monitoring programmes, research effects and data on the effect of various activities on the environment. It is empowered further to collaborate with other relevant agencies and with the approval of the minister, established programmes for setting standards and regulations for the prevention and control of pollution and environmental degradation in the environment and for restoration and enhancement of the environment and natural resources of Nigeria. NESREA is expected to collaborate with the state environmental protection agencies and other bodies whose functions relate to the environment, in the exercise of its power this would be especially necessary in a situation where there is an overlapping of functions or roles.

NESREA is empowered to collect and make available basic scientific data and other information pertaining to environmental standards. This is in furtherance of the national policy on environment which in its strategies for implementation makes provisions for the acquisition and publication of up to date environmental information. This is an obvious necessity if public participation in environmental protection is to become a reality. Furthermore the National Policy on the Environment (NPE) provides that actions shall be taken to grant the citizenry access to environmental information and data thereby promoting the quality of environmental management and compliance monitoring.

Section 8(s) is a General Clause giving NESREA power to do such other things, other than in the oil and gas sector, as are necessary for the efficient performance of the functions of the agency.

3.5 Limitation on the Mandate and Powers of the NESREA

The NESREA act conferred NESREA with the broad wide ranging powers for the protection and development of the environment in Nigeria. This power is, however subject to important limitations. The functions and powers of NESREA do not extend to the oil and gas

sector. Sections 7 and 8 of NESREA's act dealing with the powers and mandate of NESREA contain the recurring phrase "other than in the oil and gas sector".

This has the effect of removing all environmental issues arising from the petroleum/oil and gas sector from the authority of NESREA. The limitation placed on the powers of NESREA could be seen as a response to the conflict between the defunct FEPA and the Petroleum Inspectorate Department of the Ministry of Petroleum Resources (PIDPR). Prior to the creation of FEPA, the department had been responsible for monitoring pollution in the petroleum sector. Several years after the creation of FEPA, controversy arose as to which among these two was the correct body to set the guidelines and standards for pollution control in the oil industry and which of them was to enforce these standards. The PIDPR and FEPA, after several years, resolved the issues as follows:

i. That the PIDPR was to set guidelines and standards on operational safety and environmental pollution control in the petroleum sector. However, such standards would not be weaker than and must be subordinate to the national standards that would be set by FEPA for the petroleum sector.
ii. That PIDPR would continue to monitor pollution and enforce compliance in the petroleum sector but on behalf of FEPA who reserved the right to carryout check inspections to determine how effective the PIDPR was in carrying out those functions.

It should be noted that even this arrangement did not bring a lasting solution to the issue. The NESREA Act has therefore laid the issue to rest and it is now clear that the mandate and powers of the NESREA do not extend to the oil and gas sector. The clear delineation of functions and powers between agencies is a necessity for effective enforcement of environmental laws as controversies would only act as distraction.

4.0 CONCLUSION

You will recall that in unit 2 of module 3, the enforcement roles of NESREA was discussed as one of the federal government agencies involved in the enforcement of environmental/public health laws in Nigeria. In this unit, we have discussed the establishment of NESREA, the compositions, the mandate of the agency, the powers and the limitation to the powers.

5.0 SUMMARY

NESREA was established on July 30, 2007 as a body corporate with perpetual succession and a common seal. It may sue and be sued in its corporate name. It is responsible for the enforcement of environmental standards, regulations, rules, laws, policies, guidelines and policies, such as the national policy on the environment, 1999. The national policy is indicative of the importance and relevance of standards, rules, policies and guidelines on the environment. Although they may not have the force of law, they are a vital and necessary element in the protection and preservation of the environment.

6.0 TUTOR-MARKED ASSIGNMENT

1. State the act establishing NESREA, the month and the year.
2. State the enforcement powers of NESREA.
3. Enumerate the mandate and powers of NESREA.
4. List the limitation of the mandate and powers of NESREA.

7.0 REFERENCES/FURTHER READING

Adeyemi, Rotimi (n.d). 'Lecture Note on Public Health Laws, Ethics and Policies'. Course Code: EHT 210/EVT 310.

Ladan, M. T.(2009). *Law, Cases and Policies on Energy, Mineral Resources, Climate Change, Environment, Water, Maritime and Human Rights*, Zaria: Ahmadu Bello University Press.

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