



# **IFE JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW**

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Department of International Law  
Obafemi Awolowo University, Ile-Ife, Nigeria**



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## FREEDOM OF RELIGION VERSUS THE RIGHT TO A NOISE FREE ENVIRONMENT

Sunday Akinlolu Fagbemi\*

### ABSTRACT

*This paper addresses the tension between the rights to a noise free environment and the right to worship or freedom of religion. The paper adopts doctrinal and comparative analysis of legal research methodology. The paper undertakes review of pertinent Nigerian laws on noise pollution along with the constitutional provisions on freedom of religion. On a comparative basis, the paper examines the legal approaches of some other jurisdictions in the drive to attain a noise free environment. The paper posits that the extant Nigerian legal regime for the control of religious noise pollution is inadequate; along that axis, the paper recommends some legal and pragmatic measures. Generally, the paper stresses the need for an appropriate balance between citizens' exercise of freedom to worship and the societal need for noise free environment.*

### I. INTRODUCTION

This paper discusses the issue of freedom of religion *vis-a-vis* right to a noise free environment. The pertinent questions which the paper seeks to answer among others are: What are the sources and effects of religious noise pollution? Is the right to freedom of religion an absolute right? What remedies are available for noise pollution? What steps should be taken to reduce tension between freedom of religion and right to noise free environment? Noise has been given a variety of definitions depending on the circumstances in which it occurs and the effects it produces. The traditional and most popular definition of noise is 'unwanted' or 'disturbing' sound.<sup>1</sup>

Generally, sound becomes unwanted when it either interferes with normal activities such as sleep, conversation, or disrupts or diminishes one's quality of life. According to World Health Organization (WHO),<sup>2</sup> long exposure to noise to a high intensity may cause hearing impairment, decreased efficacy, cause emotional disturbances, psychological disorder, cardiovascular disturbances, interference with

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<sup>1</sup> Senate Concurrent Resolution, No. 15, The Senate Twenty Sixth Legislature, 2011 State of Hawaii

<sup>2</sup> L. Goines and L. Hagler. (2007). "Noise Pollution: A Modern Plaque". *Oakland: Lippincott Williams & Wilkins. Southern Medical Journal*, 100 (3): 287 – 294; T. U. Dickson, S. D. Audu and S. M. Nwamah. (January 2012). "The Effects of Religious Noise on the Environment of Ilishan-Remo, Ogun State" *BJMASS*. 10 (1), 2; L. Atsegbua, V. Akpotaire and F. Dimowo, *Environmental Law in Nigeria: Theory and Practice*, (Lagos: Ababa Press Ltd., 2004), 74.

spoken communication and disturbance of sleep.<sup>3</sup> The grave impacts of noise pollution on humans and the environment have been of great concern to health practitioners, environmentalists and the society.

For instance, noise pollution has adverse effects on human being as well as other living and non-living organisms. Noise pollution, depending on the circumstances, causes damage to the ear and may lead to temporary or permanent noise induced hearing loss. For instance, if the intensity and the duration of the noise is high, it may lead to permanent loss of hearing.<sup>4</sup> Conversely, the temporary hearing loss is a physiological phenomenon and reversible. Temporary loss of hearing occurs when the ear is exposed for a short duration to excessive noise or when the ear is exposed to the noise at damaging intensities for sufficiently long period of time.

The exposure of the population to the noise source can be obtained by measurement or by using models that calculate noise exposure based on information about the source and on information about sound propagation conditions from source to receiver. Such calculation models can also be used to predict levels of noise exposure for some time in the future based on estimated changes in noise sources.<sup>5</sup> For example, noise is measured in decibels (DB).<sup>6</sup> The human ear is surprisingly sensitive to noise; it can detect approximately a one decibel change in sound intensity. Hence, prolonged exposure to noise above 90dB may cause damage to hearing. Though the level where harm to the human health may occur may vary according to duration of exposure and sensitivity of the individual.<sup>7</sup> For instance, the hearing limit of noise in man is about 140 dB. Human

<sup>33</sup> See Louis Hagler. "Summary of Adverse Effect of Noise Pollution" available at <http://www.who.int/doctore/peh/noise/guidelines2.html>, accessed on 4/2/2016; Ibiyinka Olusola Adesanya. (October, 2011). "Environmental Effects of Church Proliferation: The Redeemed Christian Church of God as a Case Study". *International Journal of Humanities and Social Sciences* 1 (15), Special Issue, 177

<sup>4</sup> Hakeem Ijaiya. (2014). "The Legal Regime of Noise Pollution in Nigeria" *Beijing Law Review*, 1-6: 4.

<sup>5</sup> See generally Lin Fritschi A, Lex Brown, Rokho Kim, Dietrich Schwela and Stelios Kephelopoulous. "Burden of disease from environmental noise: Quantification of healthy life years lost in Europe". World Health Organization 2011.

<sup>6</sup> Kerse C. S. *This Common Inheritance* Cm 120C D. Van Wynsberghe *et al*, 1995; Noise is measured with a unit known as Decibel (in ten) and can be of varying degrees namely: (i). Low noise e.g. the humming of birds, normal human conversation and murmurs, droning of air-conditioners. This is generally regarded as an acceptable level of noise. (ii). Moderate noise e.g. shouts, cries and normal volume of singing. (iii). High noise e.g. noise from factories, aircraft, electrical generating plants. See generally Okediran A. Y. (1991). "Noise Pollution Control in Nigeria – Can anyone hear the Law above the Din". *The LASU Law Journal*, 11 (1), 55. See also the Schedule to The India Noise Pollution (Regulation and Control) Rules, 2000; W.H.O. (World Health Organization) has prescribed optimum noise level as 45 dB by day and 35 dB by night. Anything above 80 dB is hazardous. For instance, the EU Directive 2002/49/EC on the management of environmental noise mandated all EU Member States to produce strategic noise maps based on harmonized indicators by 2008.

<sup>7</sup> For example, what is pleasant to some ears may be extremely unpleasant to others depending upon a number of psychological factors. The sweetest music, if it disturbs a person who is trying to concentrate or to sleep is noise to him, just as the sound of a pneumatic riveting hammer is noise to everyone. In other words, any sound may be a noise if circumstances cause it to be disturbing. See generally Dr. Brind Kumar, Sharad V. Oberoi and Akash Goenka. "A Brief Review of the Legislative Aspects of Noise Pollution" Presented at the *Workshop on Environmental Pollution: Perspectives and Practices*, organized by Institute of Engineering and Technology, Lucknow, India, April 30, 2004, 53-65.

ears feel fatigue if exposed to over 80 dB for more than half an hour and it may cause temporary ear deafness if the loudness of the noise is 100dB. It is painful at 140dB.<sup>8</sup> In other words, many people suffer from permanent or temporary hearing loss depending on exposure. Amongst the common sources of noise pollution having direct health hazards are: electricity generating plants, honking noise, industrial noise, traffic noise pressure horns, machinery noise, household noise and noise from religious worship centres.<sup>9</sup> Putting this in perspective, the sources of noise pollution in Nigeria are: industrial activities, automobile, air traffic and household generating sets. However, of recent, the daily worship activities of various religious groups coupled with the proliferation of churches and mosques in the nook and cranny of Nigeria have added to the sources of environmental noise pollution.

## II. BRIEF EXPLANATION OF PRELIMINARY CONCEPT IN NOISE POLLUTION AND RIGHT TO FREEDOM OF RELIGION

Central to noise pollution and right to freedom of religion are concepts like: noise, pollution and right to the freedom of religion. Noise is one of the most pervasive pollutants; noise is derived from the Latin word "nausea", which implies 'unwanted sound' or sound that is loud, unpleasant or unexpected<sup>10</sup>. Scientifically, the US Environmental Protection Agency<sup>11</sup> defines noise as 'discordant sound resulting from non-periodic vibration in air' and in common sense, it is defined as 'sound without value' or 'any noise that is unwanted by the recipient'. Noise is a major environmental issue, particularly in urban areas, affecting a large number of people. To date, most assessments of the problem of environmental noise have been based on the annoyance it causes to humans, or the extent to which it disturbs various human activities.<sup>12</sup>

Pollution, according to section 37 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 is '[m]an made or man alteration of chemical, physical or biological quality of the environment beyond acceptable limits and the pollutant shall be construed accordingly'. Looking at pollution from another perspective, the United Nations Conference at Stockholm<sup>13</sup> defines pollution as 'the discharge of toxic substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless'. Again, the WHO while describing the cause and effect of pollution took different view

<sup>8</sup> Kanr K. Noise Pollution a Serious Environmental Threat to Health: Law and Its Control". Fift International Conference on International Environmental Law, Organised by the Indian Society of International Law from 8-9 December, 2007, New Delhi, India.

<sup>9</sup> Olokooba S. M, Ibrahim Imam and Abdurraheem-Mustapha M. A. (2010) "Noise Pollution: A Major Catalyst to Climate Change and Human Health Catastrophe". Available at [unilorin.edu.ng/work%20shop%noise%pollution.pdf](http://unilorin.edu.ng/work%20shop%noise%pollution.pdf), last visited 12/2/2016.

<sup>10</sup> Narendra S and Davar S. C. (2004). "Noise Pollution- Sources, Effects and Control" *J. Hum. Ecol.*, 16(3), 181.

<sup>11</sup> The US Environmental and Protection Agency Office of Noise Abatement and Control, Public Health and Welfare Criteria for Noise, Us Environmental Protection Agency, Washington D.C 20460 (July 27, 1993).

<sup>12</sup> See generally Hakeem Ijaiya *op cit*; A. E. de Hollander *et al.* (1999). "An Aggregate Public Health Indicator to Represent the Impact of Multiple Environmental Exposures" *Epidemiology*, 10, 606-617.

<sup>13</sup> The conference was held in 1972. It gave birth to the United Nations Environmental Programme (UNEP).

and stated that pollution occurs when the environment is altered in composition or condition directly or indirectly as a result of activities of man so that it becomes less suitable for all or some of the uses for which it was naturally suitable.<sup>14</sup> From the above analysis, pollution is any alteration or introduction of any substance such as liquid, gas and or chemical into the environment beyond the carrying capacity of the natural environment.<sup>14</sup> Majority of the activities causing environmental pollution is attributable to man.

One significant challenge facing legal attempts to define religion is that the very definition of religion can be seen as a religious issue. According to Durham *et al*,<sup>15</sup> the act of defining religion, particularly in legal contexts, is not neutral and scientific but partisan by nature, as it is always presupposes some particular point of view with which not all religions will agree. Furthermore, the act of define religion can have serious implications both for religious groups in particular and for society as a whole. However, one common denominator is that religion is often used interchangeably with faith or set of beliefs. The word 'religion' is derived from a Latin word *Religare* (to bind) which reflects the effort by fellow man to re-establish contact with his creator. Belief in life after death, which is the pillar of religion preaching, promoting its (religion) emotive pursuance by the believer or faithful.<sup>16</sup> In summary, religion is the belief in the existence of a supernatural ruling power, the creator and controller of the universe, who has given to man a spiritual nature which continues to exist after the death of the body.<sup>17</sup>

<sup>14</sup> Fagbemi.(2010). "Reflections on the Causes, Effects and Legal Mechanisms for the Control of Environmental Pollution in Nigeria" *University of Ibadan Journal of Public and International Law*, 1, 151-152; see also Ogbodo S. Gozie. (2008). "The Role of the Nigerian Judiciary in the Environmental Protection Against Oil Pollution: Is it Active Enough" *University of Benin Law Journal*, 11 (1 & 2), 252; A. Ibidapo-Obe (1989). "Criminal Liability for Damage Caused by Oil Pollution". In *Environmental Law in Nigeria Including Compensation*, Prof. J. A. Omatola (ed), Faculty of Law, University of Lagos, 1989, 231; Oludayo G. Amokaye. *Environmental Laws and Practices in Nigeria*, (Lagos: University of Lagos Press, 2004), 10 and Hakeem Ijaiya. *op cit*.

<sup>15</sup> Durham W. Cole, Jr and Scharffs G. Brett. *Law and Religion: National, International and Comparative Perspectives*. (New York: Aspen Publishers, 2010), 45.

<sup>16</sup> Chukwuka Chudi-Oji. "National Population Census – Ethnicity, Religion and their Possible Impact on It". Available at <http://www.doublegist.com/national-population-census-ethnicity-religion-impact/>, accessed on 6/12/2014 at 8.00 pm; Religion, Merriam Webster, *Webster Dictionary, Webster.com* 2010.

<sup>17</sup> See the case of *Davis v Baeson*, 133 U. S. 333, 342 (1890). In that case, the term religion was defined as having reference to one's views of his relations to his creator, and to the obligations they impose of reverence for his being and character, and obedience to his will. In the Australian case of *Church of the New Faith v Pay Roll Tax Commissioners* (1983) 57 AJLR 785 at 790, ACJ Mason J and Brennan J stated that 'to constitute religion, there was a need for belief in supernatural being, things, or principle plus an acceptance of canons of conduct which gave effect to that belief. See further Emile Durkheim E. *The Elementary Forms of the Religions Life* (London: Goerge A Em and Unwin, 1915), 10; Peter Mandaville and Paul James. *Globalisation and Culture*. (London: Sage Publication, 2010), 17. Note however that not all religions belief in the existence of Supreme Being or higher being. For instance, the U. S Supreme Court in the case of *Torcaso v Watkins* 367 U. S. 488, 495 (1961) implicitly overturned the definition it had used in *Beason Case* (supra) recognising the existence of religions which do not teach what would generally be considered a belief in the existence of God and including in this category 'Buddhism, Taosim, Ethical Culture, Secular Humanism and others'.



The three forms of religion in Nigeria are Christianity, Islam<sup>18</sup> and African Traditional Religion.<sup>19</sup> Within each religion, different denominations exist but all depict various approaches to reaching the same higher being. These religion beliefs are scattered across different ethnic groups and tribes in Nigeria. The domineering stance of Islam in the North is deeply rooted to their geographical boundary with Niger through where Islam originated. In East, their romance with the missionaries who are Christians was supported by the location of ocean through where the missionaries came to the Nigerian coast. The extension of Christian and Islamic religion in the western region made significant converts in the western region because jihad war extended to the axis of Ilorin, Ekiti and Oyo States while Christian missionaries through passionate appeal and their (western) love for education also had some converts.<sup>20</sup> The word 'freedom' according to *Encarta Dictionaries*<sup>21</sup> means 'a state in which somebody is able to act and live as he or she chooses without being subjected to any undue restraint or restriction'. It also means, 'release or rescue from being physically bound, or from being confined, enslaved, captured or imprisoned'.<sup>22</sup>

Relating the above to religion practices, freedom of religion or freedom of belief is a principle that supports the freedom of an individual or community, in public or private, to manifest religion or belief in teaching, practice, worship, and observance; the concept is generally recognised to include the freedom to change religion or not to any religion.<sup>23</sup> Freedom of religion is considered by many people and nations to be fundamental human rights and codified in various municipal laws or Constitution.<sup>24</sup>

<sup>18</sup> The practice of Islamic religion is premised on the observance of the five pillars of Islam namely: to testify and believe that there is no God except Allah and that Mohammed is the messenger of Allah; to perform the prayer five times daily; to pay the legal alms which is Zakat one time yearly; to fast in the month of Ramadan every year and to perform the pilgrimage to the holy house of Allah which is Mecca once in a life time. See the case of *Ahmadiya Movement in Islam v Y.P.O Shodehinde* (1983) 2 SCNLR 284.

<sup>19</sup> The traditional beliefs and practices of African people include various traditional religions. Essentially, these traditions are oral rather than scriptural and include belief in a supreme creator, belief in spirits, veneration of ancestors and use of magic and traditional medicine.

<sup>20</sup> Agi S. P. *Political History of religious Violence in Nigeria*, (Calabar: Pigasiann and Grace International, 1998), 16

<sup>21</sup> Encarta Dictionaries Online 2009

<sup>22</sup> *ibid*

<sup>23</sup> See Article 18 of the Universal Declaration of Human Rights (UDHR). The provision of article 18 of UDHR is *impari materia* with the provisions of section 38 of the Federal Republic of Nigeria Constitution, 1999 (as amended). Again, Nigeria is a member of United Nations and therefore is under obligation to observe and enforce the provision, even if we do not have the same in our Constitution. The right is also contained in the provision of Africa Charter on Human and People Rights (Ratification and Enforcement) Act, Cap A9, Laws of Federation of Nigeria, 2004, which has been domesticated and forms part of Nigeria municipal law.

<sup>24</sup> See Davis Derek. H. "The Evolution of Religious Liberty as a Universal Human Right" *Archived from the Original on 1 February 2008*. Retrieved January 25, 2016. See further Chapter Four of the Constitution of Federal Republic of Nigeria 1999 (as amended) titled: Fundamental Human Rights. See further Ruma Pal. (2012). "What can be learned from the Indian Experience? Can there be a Legitimate Pluralism in Modes of Protecting Religious Freedom?" *Universal Rights in a World of Diversity. The Case of Religious Freedom* Pontifical Academy of Social Sciences, Acta 17, 235.

### III. FREEDOM OF RELIGION IN BRIEF

Nigeria has a geographical area of approximately 923,768 square kilometres with an estimated population of about 184,635,279 million people as at January 2016.<sup>25</sup> Nigeria is a multi-religious country<sup>26</sup> with three predominant religions: Christian, Muslim and African Traditional Religion. To safeguard the liberty of religious beliefs and values of Nigerians, section 10 of the 1999 Constitution forbids the adoption of any religion as state religion. Furthermore, the Constitution, the supreme law in the country,<sup>27</sup> under section 38 guarantees the freedom of thought, conscience and religion, right to change ones religion and to manifest and propagate religion or belief in worship, teaching, practice and observance. In protecting this freedom and preventing its violation, section 46 of the Constitution provides legal-avenue for redress thus: '[a]ny person who alleges that any of the provisions of the Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress'.<sup>28</sup>

Religious freedom has been globally recognised as a fundamental human right of every person. The universality of freedom of religion is captured in Article 18 of the *Universal Declaration on Human Rights* which provides that, 'everyone has the right to freedom of thought, conscience and religion, which right include the right to change his religion or belief and freedom, either alone or in community with others and public or private, to manifest his religion or belief in teaching, practice, worship and observance'.<sup>29</sup> Reflecting on freedom of religion, Adam Smith<sup>30</sup> had noted that in the long run it is the best interest of society as a whole and the civil magistrate (government), in particular, to allow people to freely choose their own religion, as it helps prevent civil unrest and reduces intolerance. He further maintained that laws that prevent religious freedom and seek to preserve the power and belief in a particular religion will, in the long run, only serve to weaken and corrupt that religion, as its leaders and preachers become complacent, disconnected and un-practice in their ability to seek and win over new converts.

The three predominant religions in Nigeria: Christianity, Islam and African Traditional Religion are characterised by similar religious activities; these principally include: congregational worships that involve prayer, music, ministrations, propitiations, mysticisms and other physical and spiritual activities. These religious activities are referred to as religious behavioural complexes.<sup>31</sup> Freedom of religion is

<sup>25</sup> Nigeria Demographics Profile 2015 estimation

<sup>26</sup> Fagbemi, S. A. (2015). "A Reflection on the Socio-Legal Perspectives of Islamic Banking in Nigeria", *BIU Law Journal*, 2 (1), 273-307.

<sup>27</sup> Section 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>28</sup> Section 38 is among the sections cover by the phrase 'of this Chapter' in section 46 of the 1999 Constitution (as amended). The chapter in section 46 is Chapter 1V of the 1999 Constitution of Fundamental Human Rights

<sup>29</sup> Section 38 of the 1999 Constitution is a replica of the above provision.

<sup>30</sup> Adam Smith. *Wealth of Nations*, (Penn State Electronic Classic Edition, 1776, Republished in 2005) 643-649.

<sup>31</sup> Wallace Anthony F. *Religion: An Anthropological View*, (New York: Random House, 1996), 90.

highly important for peace and order in a society of people. Lack of religious freedom can create political, socio-economic and other dislocation.

#### IV. RELIGIOUS WORSHIP AND NOISE POLLUTION IN PERSPECTIVE

Increasingly, religious worship activities are being highlighted among the sources and cause of noise pollution in Nigeria. Fadairo,<sup>32</sup> among others, has commented that noise from religious activities constitutes a substantial proportion of urban pollution. He also noted that the most substantial portion of religion-related noise emanated from the activities of two dominant religions in Nigerian urban centres (that is Christianity and Islam). Religion-related noise pollution has been adduced largely to the proliferation of diverse denominations and worship centres across Nigeria's urban and other areas.<sup>33</sup>

Religious noise constitutes a serious discomfort to neighbours at domestic level. Family prayers in the mornings and at bedtimes are often accompanied with loud resonating songs accompanied with diverse musical instruments such as bells, tambourines and clapping of hands at relatively high decibels. In other veins, noises blaring from speakers mounted on the roofs of churches and mosques dotting city residential area as tend to be forms of disturbance and inconvenience to people.<sup>34</sup> At another level, congregational religious activities constitute unwanted noise to people who are in the vicinity of such religious activities. The religious activities in question take diverse forms and include Sunday and other worship session including night vigils, crusades, revival services, conventions and related ceremonies for Christians. For Muslim adherents, weekly Friday jumat services, daily five-times prayer sessions and calls to the prayers are typical noise-generating activities.

For the non-adherents who are at the receiving ends of religion-related noise pollution. It would be preposterous to rule out the existence of displeasure and grievances. Thus, while it is desirable to protect liberties of religious adherents, the concomitant need of non-adherents to be protected from unwanted and hazardous noise is also important in the overall interest of the society. Put differently, the conflict between the exercise of freedom of religion and desire for a noise free environment cannot be over-emphasised in the Nigerian contemporary society.

Religious freedom is not without limit: this freedom cannot extend to the level of engaging in activities that constitute affronts on the peace and quiet of others by subjecting them to unwholesome noise against their will. It is thus imperative to ensure that there is a reasonable balance between the exercise and enjoyment of religious right by adherents on one hand and the rights of others to peace and quiet on

<sup>32</sup> Gabriel Fadairo. (2013). "Urban Centres Noise Pollution: Case Study of Akure, Nigeria". *British Journal of Arts and Social Sciences*, 14 (11), 28

<sup>33</sup> Ibiyinka Olusola Adesanya, *op cit*, 178. For instance, in Ibadan, virtually all the Christian denominations have their Zonal or Regional Headquarters (Cathedral) with some contiguous to each other as witnessed in Aduloju Village along Ojo Lagos/Ibadan/Oyo Express way. Similarly, there are several church buildings and NASFAT Worship Centre and Mosques of various sizes at Samonda axis of Ibadan metropolis. The consequences of these are incessant noise pollution during the activities of these worship centres.

<sup>34</sup> Ibiyinka Olusola Adesanya, *Ibid*

the other.<sup>35</sup> It is, indeed, trite that the Nigerian Constitution does not guarantee a boundless religious right. This is underscored by section 45 of the Constitution which provides *inter alia* that nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society:- (a) [i]n the interest of defence, public safety, public order, public morality or public health or (b) [f]or the purpose of protecting the rights and freedom of other persons.<sup>36</sup> It is along that axis that some statutes which have been enacted to tackle noise pollution in its various dimensions are examined below.

Section 22 of the *National Environmental Standards and Regulation Enforcement Agency (Establishment) Act*, (NESREA), 2007 provides that: '[t]he Agency shall, on the commencement of this Act, in consultation with appropriate authorities: (a) identify major noise sources, noise criteria and noise control technology; and (b) make regulations on noise emission, control, abatement, as may be necessary to preserve and maintain public health and welfare'. The NESREA Act further empowers the Agency to enforce compliance with existing regulations and recommends programmes to control noise originating from industrial, commercial domestics, sports, recreation, transport or other similar activities.<sup>37</sup> In addition, section 8 of the NESREA Act empowers the Agency to submit for the approval of the Minister, proposals for the evolution and review of existing guidelines, regulations and standards on noise control.

In similar vein, the provisions of sections 192 and 194 of the Penal Code operating in the Northern Nigeria and section 234 of the Criminal Code operating in the Southern part of the country in a way prohibit and criminalise any act or omission that interferes with health, safety and comfort of the public. Also in Lagos State, section 166 (1) (d) of the Criminal Law of Lagos State was invoked by the Police to arrest six persons for allegedly disturbing the peace of residents of Olaomibi Street, Ogba, during a church service. The suspects were charged to court on two counts charge of engaging in a conduct capable of causing a breach of peace.<sup>38</sup>

The foregoing are related statutory provisions in Nigeria which could be used to address noise pollution. However, it should be noted that these provisions are not strong enough to combat noise pollution. Hence, Nigerian government should take cue from other countries such as: South Africa, United States of America, India and Pakistan just

<sup>35</sup> See generally Kenny J. "Facing Ethnicity and Religion: A Concern in Nigerian Education" in Ernest Uwazie (ed) *Inter-Ethnic and Religious Conflict solution in Nigeria*, (USA: Lexington Books, 1999), 53. A good example observed during the preparation of this paper is that the only road that passes through Sabo at Fajuyi Area of Ibadan is always turned to praying ground every Friday and blocked such that motorist cannot drive through Sabo during Jumat service. Similar occurrence is the order of the day on the road that passes through Bodija Market every Friday.

<sup>36</sup> The issue of noise pollution is an issue that affects public safety, order, health and directly has impact on the rights and freedom of other citizens.

<sup>37</sup> See section 22 (2) of NESREA Act. The section did not mention religious activities as one of the sources for environmental pollution. Also in the past, the action taken by the Lagos State Police is not common for fear of being tag an Anti-Christ.

<sup>38</sup> The story was released by Afeez Hanafi under the caption: 'Church members arrested during service for noise pollution'. The suspects were charged to court under section 166 (1) (d) of the Criminal Law of Lagos State, Nigeria, 2011. See The Punch Newspaper, Thursday February 11, 2016, 4.

to mention few, where laws had been specifically enacted to tackle noise pollution. For instance, in South Africa, the right to peaceful noise free environment has been elevated to constitutional matter. In this connection, section 24 of the South African Constitution provides among others that everyone has a right to an environment that is not harmful to their health and wellbeing, to have environment protected for the benefit of present and future generation, through reasonable legislative measures that, prevent pollution and ecological degradation....

In the United States of America, communities since colonial days have enacted ordinances against excessive noise primarily in response to complaints from residents. Consequently, the US government enacted the following laws to take care of environmental noise pollution: the National Environmental Policy Act of 1969, the Noise Pollution and Abatement Act 1970 and Noise Control Act 1972; the 1972 Act appointed the Environmental Protection Agency (EPA).<sup>39</sup> Similarly, the European Union<sup>40</sup> requires that 'noise maps' of big cities are drawn up by 2002.<sup>41</sup> To safeguard against the effect of noise, the laws of Netherlands do not permit building of houses in areas where 24-hour average noise levels exceed 50 dB. In Great Britain, the Noise Act empowers the local authorities to confiscate the noisy equipment and fine people who create excess noise at night.

In India, the Noise Pollution (Regulation and Control) Rules, 2000 made pursuant to the Environmental (Protection) Act, 1986 set up guidelines for regulation and control of noise. The ambient levels of noise for different areas/zones specified in the rules are indicated in the table below:

#### Indian Ambient Noise Standards

Area code	Category of Area/Zones	Limits in dB	
		Day Time	Night Time
(A)	Industrial Area	75	70
(B)	Commercial Area	65	55
(C)	Residential Area	55	45
(D)	Silence Zone	50	40

Source: Indian Environment (Protection) Act, 1986 as amended in 2002.<sup>42</sup>

<sup>39</sup> Saenz A. L and Stephens R. W. B (eds) *Noise Pollution: Effects and Control*, (New York: Wiley, 1986) p 23; see also Geary James: "Saving the sounds of silence". *New Scientist*, 13 April 1996, 45.

<sup>40</sup> With more than 250,000 inhabitants. See Narendra Singh and S. C. Davar *op cit*, 182.

<sup>41</sup> Narendra Singh and S. C. Davar *ibid*

<sup>42</sup> *Ibid*. See also sections 3 to 5 of Indian Noise Pollution Regulation and Control Rules, 2000. Also in the India case of *Church of God (Full Gospel) in India v KRR Majestic Colony Welfare Association* (2000) 7 SCC 282, the Indian Supreme Court considered the issue of amplified music from religious buildings on a number of occasions in the appellant's prayer hall causing excessive noise contrary to the Environment (Protection) Act 1986. The High Court had directed the police to ensure that the Church turned their music down. On

Furthermore, the Pakistan Environmental Protection Agency (PAK-EPA) exercising its power under clause (d) of section 6 (1) of the Pakistan Environmental Protection Council (PEPC) established National Environmental Quality Standards (NEQS) for regulating noise emission.<sup>43</sup>

## V. COMMON LAW REMEDIES AS MEANS OF CONTROLLING NOISE POLLUTION

Noise pollution is basically a nuisance and could be redress under the tort of nuisance. The *Black's Law Dictionary*<sup>44</sup> defines nuisance as 'a condition, activity or situation (such as a loud noise or foul odour) that interferes with the use or enjoyment of property; especially, a non-transitory condition or persistent activity that either injures the physical condition of adjacent land or interferes with its use or with the enjoyment of easement on the land or of public highways'. According to Kodinlyne *et al.*,<sup>45</sup> nuisance is used in popular sense to mean any source of inconvenience or annoyance which is actionable including emission of noxious fumes from factories, excessive smell and noise and interference with the easement of the way. The law of nuisance primarily deals with liability to one's physical neighbours.<sup>46</sup> How the tort of nuisance operates in private and public domains are further considered below.

### A. Private Nuisance

Private nuisance is aimed at the protection of the individual occupier of land from any substantial interference therewith. According to Kodinlyne *et al.*,<sup>47</sup> three categories of nuisance are: physical injury to the plaintiff's property, interference with the plaintiff's use and enjoyment of his land and interference with easements and profit. Noise pollution falls under the second category. To succeed in private nuisance, the injury or interference complained of must be substantial and the defendant's conduct must be unreasonable in the circumstances.<sup>48</sup>

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appeal, the Church claimed that its members' right to practice religion was being infringed. The Supreme Court noted that (1) the right to practice religion is not absolute and is subject to limitations of 'public order, morality or health'; (2) in a civilised society, religious activities disturbing the peace of others cannot be justified (noting that no religion prescribes or preaches that prayers must be performed through voice amplifiers or by beating drums) and that there is no religious right to breach the permissible limits of the 1986 Act; and (3) even if the noise pollution in certain cities already exceed those limits, this is not a sufficient ground for permitting others to increase the noise. See further Samantha Knights. (2008) "Sacred Space and the City: Religious Buildings and Noise Pollution". *Harvard ILJ Online*, 49, 53-54.

<sup>43</sup> See Abdullah. (2006). "Sources and Consequences of Environmental Pollution and Institution's Role in Pakistan" *Journal of Applied Science*, 6 (16), 3135.

<sup>44</sup> Bryan Garner, *Black's Law Dictionary*, (8 Ed. Thomson West, 2004), 1096.

<sup>45</sup> Kodinlyne, G and Aluko, O. *The Nigerian Law of Torts*, (2<sup>nd</sup> ed. Ibadan: Spectrum Books Limited, 1999), 89.

<sup>46</sup> See generally Dr. Brinda Kumar, Sharad v Oberoi and Akash Goenka. (2004). "A Brief Review of the Legislative Aspects of Noise Pollution" Presented at the *Workshop on Environmental Pollution: Perspectives and Practices*, organized by Institute of Engineering and Technology, Lucknow, India, April 30, 2004, 6-7.

<sup>47</sup> Kodinlyne G and Aluko O. *op cit.* 89.

<sup>48</sup> See also the case of *Abiola v Ijoma* (1970) 2 All WLR 286.

The courts in Nigeria have been consistent in awarding damages in cases involving private or public nuisance arising from noise pollution to the annoyance or discomfort of a claimant. For instance, in the case of *Tebite v Nigeria Marine Co. Ltd.*<sup>49</sup> the plaintiff, a Legal Practitioner complained that the noise and smell made by the defendant while carrying on the business of boat building and repairing was interfering with the enjoyment of his law chambers. The court found on evidence that the area, though a mixed commercial and residential area, the noise and smell generated by the defendant amounted to substantial interference with the plaintiff's comfort and convenience and awarded damages and injunction to restrain the defendant. Similarly, in *Adediran & Another v Interland Transport Ltd.*<sup>50</sup> where the plaintiffs sued for and on behalf of the residents of a residential estate to complain about the excessive noise suffered by them as a result of the defendant's haulage activities within the estate, the court found for the plaintiffs, despite the defendant's argument that the activities complained against was a public nuisance, and awarded substantial damages against the defendant.

### B. Public Nuisance

Public nuisance is the unlawful act or omission to discharge a legal duty which consequently endangers the lives, safety, health, property or comfort of the public. It also amounts to a crime. Provisions relating to noise pollution in Nigerian Criminal Law statute are rather scanty and tersely contained in sections 192 and 194 of the Penal Code operating in the Northern Nigeria and section 234 operating in Southern part of the country as stated earlier. As a general rule, public nuisance is actionable at the instance of the Attorney General of the Federation or the State as the case may be. In further response to noise pollution, section 22 of the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act, 2007 in section 22 (2) has now criminalised noise pollution. To this end, section 22 (3) and (4) provide penalty for infraction of the provision on noise pollution as follows:

A person who violates the Regulations made pursuant to sub-section (1) of this section commits an offence and shall on conviction be liable to a fine not exceeding ₦50,000.00 or to imprisonment for a term not exceeding one year or both such fine and imprisonment and an additional fine of ₦5,000.00 for every day the offence subsists. Where an offence under subsection (3) of this section is committed by a body corporate, it shall on conviction be liable to a fine not exceeding ₦500,000.00 and an additional fine of ₦10,000.00 for every day the offence subsists.

<sup>49</sup> (1971) 2 All NLR 268,

<sup>50</sup> (1991) 9 NWLR (Pt.214) 155

## VI. CONCLUSION AND RECOMMENDATIONS

As discussed in this paper, the adverse health effects of noise pollution are numerous. These adverse effects represent significant public health problems that can lead to social handicaps, reduced productivity, impaired learning, absenteeism, increased drug use, and accidents. Everyone is adversely affected by noise pollution; however, some groups are particularly vulnerable and these include infants, children, those with mental or physical illnesses, and the elderly. It is observed that the existing legal frameworks in Nigeria did not have direct bearing on noise pollution emanating from religious activities. For example, section 22 of NESREA did not mention religious activities as one of the sources of noise pollution. Similarly, the provisions of sections 192 and 194 of the Penal and section 234 of the Criminal Codes are overdue for amendment and cannot meet the situations of the present times, there is need to have specific and effective legislation to control noise pollution in Nigeria that will be well suited to her diverse cultures and social set-up. Also taken cue from other climes such as Indian, United States of American, Europe and South African to mention but few, the 1999 Constitution should be amended to create a separate head of rights of citizens to noise-free environment.

As corollary to the above and in order to reduce tension between freedom of religion and a noise free environment, government should prescribe volume or pitch level for the noise from religious places and programme. To ensure compliance, government should appoint Inspectors in all the 774 local governments in the country to monitor and check noise pollution from religious worship centres and social activities. These Inspectors, when appointed, should be empowered to educate the populace about adverse effects of noise pollution on human health and social wellbeing.