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Public Interest Litigation: A Veritable Avenue for the Fight Against Corruption in Nigeria

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Abstract:
Public interest litigation connotes the institution and sustenance of legal action in court in pursuit of a pecuniary or legal right in favour of the general public, a community or class of persons by an individual, group or organization, who might have some or no personal interest in the outcome. There is a very low level of knowledge and use of public interest litigation in Nigeria. The few persons that have knowledge of it, and willingness to exploit it, are impeded by the unavailability of adequate enabling legislations. The only law that made express provision for individuals to approach the courts for public interest is the Fiscal Responsibility Act, 2007. The preamble to the Fundamental Rights enforcement Procedure Rules (FREPR) 2009 only advised Judges to encourage public interest litigation and may not dismiss or strike out a case for want of locus standi. There are instances where individuals or groups of persons would have questioned the activities of public office holders through litigation but could not, due to some impediments such as lack of locus standi against them. This paper examine the concept of public interest litigation, its relevance to the fight against corruption, its challenges and recommends the need to review the existing legislations, and ensure unhindered access to courts as ways by which there can be improvement in the fight against corruption through public interest litigation.

Key words: Public Interest, Litigation, Corruption

1. Introduction

Access to courts and justice should be a fundamental or universal right without any restrictions. Any society or government that fails to provide unrestricted means for its citizens to access the law courts and ventilate their grievances has failed in its core responsibility and duty to its people. The 1999 Constitution vested the courts with judicial powers[1] but did provide how Nigerian citizens, particularly the poor, can have easy access to the courts to get justice. Section 36(1) of the 1999 Constitution provides for the right to fair hearing. Unfortunately, the only express provision for easy access to justice

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[1] s. 6(1-6)

was provided in Chapter II of the 1999 Constitution[2]; the Fundamental Objective and Directive Principles of State Policy, which are not justiciable.[3] It provided for the independence, impartiality and integrity of Courts of law and easy accessibility thereto.

Apart from the absence of any enforceable provisions in the Constitution[4] for easy access to justice for the people, other impediments such as, lack of *locus standi*, high cost of litigation, technicalities in litigation process and poverty have also hindered easy access to justice, which consequently impede and discourage individuals and organizations from approaching the law courts through public interest or private interest litigation even where there are obvious reasons to do so. One of the greatest setbacks to Nigeria development today is corruption in public and private places. The court remains one of the veritable avenues and institutions, through which this monster called corruption, can be adequately fought and drastically reduced to a bearable level. Public interest litigation is a viable means through which the public can be part of the fight against corruption. Unfortunately, the low awareness of the application and usage of legal processes by the people directly hinders the success that would have been recorded in the fight against corruption in Nigeria.

2. The Concept of Public Interest Litigation

The Black's Law Dictionary[5] defines public interest as "The general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake and interest that justifies government regulation". It is also defined as "the welfare or well-being of the general public, commonwealth that directly affect the public interest, appeal or relevance to the general populace"[6].

Litigation on the other hand is defined as judicial controversy, a contest in Court of justice, for the purpose of enforcing a right[7]. Litigation is a process of participation in a law suit[8]. It is also defined as a process of making or defending a claim in a court of law[9]. Public interest litigation, according to Otteh was conceptualized thus;

> Public Interest litigation is about using the law to empower people, to knock down oppressive barriers to justice, to reclaim and restore the right of social justice for the majority of the people; to attack oppression and denial that disenfranchises our people, and about winning back human

[2] s. 17(2(e))
[3] CFRN 1999 (as amended)s.6(6)(c)
[4] The CFRN, 1999 *(*as amended*)*
[5] BA Garner, *Black's Law Dictionary* (9th edn. St. Paul: M. N West publishing, USA 2009).
[6] <http://www.dictionary.combrowser> accessed 30/10/2020.
[7] BA Garner, *op cit.*
[8] <http://www.thelawdictionary.org/litigation (T&S)>. accessed 30/10/2020.
[9] HS Hornby, *Oxford Advanced Dictionary of Current English* (6th edn.) London, Oxford Press, 2000) p.692

> dignity of the people. It is about caring for the rights of others, beside oneself. It is about getting lawyers and judges committed to this struggle and using the law more for the benefit of the collective not just for individual or private interest[10]

Public interest litigation is therefore a selfless activism using the court's process or procedure in achieving results that promote the enforcement of the rights of the masses, accountability and attracting government attention to the needs of the people and to the performance of its obligations as a government. It fosters respect for human rights by the government and those in authority.

According to Forster and Jivan[11], its emergence can in part be linked to fundamental changes in global legislative and constitutional provisions in the modern era which saw a shift from the prioritization of individual interest to protection of the interest of groups of individuals. Some called it strategic impact litigation. This caused a shift from the hitherto major concern of law courts in civil cases which was the protection of individual rights. At a time, laws that tend to promote industrial relations, social welfare, racial and gender equality, minority and vulnerable persons, women and children rights attracted serious attention from various governments and this provoked concerted effort by interest groups in pursuing public rights through public interest litigation.

It is argued that public interest litigation has its origin in the United States of America (USA) in the 1960s during the civil rights movements by the civil or nongovernmental organizations (NGOs) to assist the less privileged get justice to breaches of their collective human rights by the government.

In Nigeria, both the government and individuals are yet to recognize and encourage selfless or social activism that would raise public consciousness for the fight against corruption; activities of the strong against the weak and government policies that are anti-people as well as abuses of human rights. Public interest litigation is relatively new in Nigeria. What we had was a few Lawyers and activists[12] carrying out a kind of *pro bono* services for the down trodden individuals and not in the general interest of the public as a whole. However, some impacts were created and messages sent to the effect that government or its agencies and powerful individuals in the society cannot infringe on the rights of the people and leave the victims without redress.

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10 FO Orbin, *Public Interest Litigation*. Being a paper he presented at the Nigeria Institute of Advanced Legal Studies on 7/7/2010 wherein he quoted Chioma Otteh.

11 C M Forster, and V Jivan,'Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience' in *Asian Journal of Comparative Law* (vol.3, Issue1, 2008).

12 The India Constitution gave the courts the powers to protect human rights and to facilitate their implementation. This has led to the broad interpretation given to fundamental rights such as right to life to include environmental rights.

3. **Relevance of Public Interest Litigation in the fight against Corruption**

The highest perpetrators of corruption are those in government, or in power. The government that appoints these officials always protect even to the extent of turning blind eyes to substantiated allegations of corrupt practices against such officials[13]. The agencies that are created by government to fight corruption also ignore calls for the prosecution of corrupt officers or institutions as they must get approval from the government before going against suspects of corruption and corrupt practices, or worse still, embark on selective prosecution in Nigeria whereby, those in power go against their perceived enemies[14] whose allegations of corruption cannot in most cases be substantiated, leading to the failure of some high profile corruption cases in courts.

It therefore takes an active and protective public to put a government, and those in power, on the edge in its response to the needs of the people and the recognition of human rights, prudent use of public funds and prompt prosecution of corrupt persons. Public interest litigation provides a veritable avenue for individuals, groups and organizations to approach the courts to seek redress for human rights violations, constitutional infractions and corrupt practices by those in government [15].

Public interest litigation goes beyond the protection of individual rights. It affects a large number of the members of the public. It brings about impactful changes in the society if well applied. It creates awareness as to the rights that the public has over government and those in power and this enables the people to ask questions on, or monitor how public funds are spent, and where there is any act of abuse or corrupt practice, redress is sought.

Effective public interest litigation would reduce the burden that is almost solely borne by government agencies in the fight against corruption. For instance, the Economic and Financial Crimes Commission (EFCC) is flooded everyday with many cases for both investigation and prosecution. It has limited man power and resources to carry out these duties. Effective public interest litigation could be a viable alternative and support to institutions, such as the EFCC, in the fight against corruption.

Public Interest Litigation, especially in countries with robust democracy, sends serious warning to potential leaders or those that might come into public office or in charge of public funds that it is not only government agencies that are watching over the handling of public funds, but that anybody can institute court actions against them if they engage in corrupt practices. It holds public bodies accountable.

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[13] For instance the Minister of Transport was indicted by a panel set up by Rivers State government for corruption and several well articulated petitions written to the EFCC for his prosecution, yet nothing is said or done about it.

[14] Former Senate President Bukola Saraki for the reason of government wanting to remove him from office hurriedly filed corruption charges against him at the Code of Conduct Tribunal (CCT) etc and all failed.

[15] C M Forster and V Jivan, *op cit* p.31

Public interest litigation encourages participation of the people in governance. Where people have access to the facilities that enable them to question and know how their common resources are managed, then they are participating, or are part of the business of governance. It also encourages obedience to law and compliance to the restrictions of the law by those in power. Administrative lawlessness can drastically be reduced where people have better access to the courts through public interest litigation[16].

4. **Growth of Public Interest Litigation in Nigeria**

The level of awareness and utilization of public interest litigation in Nigeria is low. However, some individuals and organizations[17] have made some impact in utilizing this avenue in seeking redress and creating awareness for the rights of the people to question the actions or inactions of government and those in power in the discharge of their duties.

For instance, Femi Falana (SAN) in the case of *IGP v ANPP*[18] challenged the constitutionality of the Public Order Act[19] which made it mandatory for political parties to seek and obtain the permission and approval of the Police before they can hold public rallies and meetings. He has also filed a fundamental right suit against the federal government over the bad condition of hospitals and health services in Nigeria, praying the court to order the federal government to, with immediate effect put the hospitals in order and improve the health services to Nigerians[20]

The Socio-Economic Rights and Accountability Project (SERAP) has also done a lot in prosecution of cases for public interest. SERAP has instituted an action[21] in the ECOWAS Court of Justice against the federal government, attempting to enforce the right to quality education to Nigerians under the *African Charter on Human and Peoples' Rights* (*ACHPR*). The jurisdiction of the court was challenged by the federal government on the ground that, right to quality education is under *Chapter II* of the *Constitution* and is nonjusticiable and the plaintiff has no *locus standi* to sue the government. This argument was dismissed by the Court relying on *Article 17* of *ACHPR* which provided for

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[16] generally S A Joshua, 'The Relevance of Public Interest Litigation to Democracy and Good Governance in Nigeria' in *Journal of Law, Policy and Globalization* (vol. 71, 2018) and A J Roman, 'The Role of Public Interest Litigation and other Alternatives' in *Canada – United States Law Journal* vol. 17, Issue 2, 1991) available at <https://www.scholarlycomments.law.case.edu/cusij/vol 12182/23> accessed 1/11/2020.

[17] For instance SERAP, Chief Femi Falana (SAN), Olisa Agbakoba (SAN) etc.

[18] (2007) 18 NWLR (pt 1066) 457 and also F.O Orbih, *op cit.*

[19] Section 1(2) and 2 of the Public Order Act and the case of *Chukwuma v COP* (2005) 17 WRN 55 where the Court of Appeal upheld the provision of Section 1&2 of the Public Order Act requiring the direction by the Governor of a State to a superior police officer to issue a licence for public assemblies or meetings.

[20] Suit No FHC/IKI/CS/M59/10(unreported) and many other cases instituted by Falana on infrastructure maintenances and accountability in governance.

[21] *Registered Trustees of SERAP v FRN suit No ECW/CCJ/APP/0808* (unreported)

the right to access to quality education to all citizens of member states and it is justiciable and thus that the plaintiff has *locus standi* to sue[22]

It is also now well settled law that in enforcement of fundamental rights under the *Fundamental Rights* (*Enforcement Procedure*) *Rules* (*FREPR*), a party does not need to prove special interest or harm he has suffered to have *locus standi* to sue but has to show that the right sought to be protected is a public right. The courts in this regard are encouraged to proactively pursue enhanced access to justice for class and public interest litigation and no case shall be dismissed or struck out for want of *locus standi*[23]

SERAP in petitioned the *International Criminal Court* (*ICC*) prosecutor to investigate what it described as grand corruption in Nigeria and to bring perpetrators to book which is still pending. The *Social Justice* and *Civil Right Initiative* (SJCRI) had also taken actions against government over alleged corrupt practices in the appointment of Judges into the Federal Capital Territory High Court and challenged the whole process.

Olisa Agbakoba (SAN) has also instituted some cases which have significantly improved the level of public interest litigation in Nigeria. Some of the cases directly questioned unconstitutional exercise of government powers and the utilization of the common wealth of Nigeria.

In the case of *Director of State Security Services & Anor v. Agbakoba*[24], the Respondent Olisa Agbakoba was to travel to The Hague for a human right conference. On getting to the air port his passport was impounded by men of the *State Security Service*. Agbakoba went to court under the *FREPR* challenging the unlawful withdrawal of his passport and the breach on his fundamental right to freedom of movement. The Supreme Court held that the *SSS* acted unlawfully and thereby breached the right to freedom of movement of the Respondent. This decision by the Supreme Court, though on a complaint by an individual, made pronouncement in the interest of the general public, upholding the right to freedom of movement of Nigerians.

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[22] the cases *Adesanya v President of Nigeria* (1981) 12 NSCC 146 and *Ajagungbade III v Adeyelu* (2000) 9 WRN 92 where it was held that for one to institute an action, he must show *locus standi* to do so and the action must be justiciable between the parties. also *AG Kaduna state v Hassan* (1985) 2 NWLR (pt. 7) 483, *Fawehimi v Akilu* (1987) 11-12 SCNJ. 151,*Okoye v LSG* (1990) 2 NWLR (pt 136) 115, *Elendu v Ekoaba* (1995) 3 NWLR 386; *Adefolu v Oyesile* (1995) 5 NWLR (pt 122) 577. Recently, the case SERAP and others filed against NBC, the minister of information and others for imposing fines on AIT, Channels TV and others for alleged breach of broadcast rules on Lekki shooting reports, was struck out for lack of *locus standi* on the part of SERAP and other plaintiffs in the case by the Federal High Court.

[23] the case of *Fertilizer Corporation Kamager Union v Union of India* (1981) AIR (SC) 344, also preamble to the *FREPR* 3(d-e) 2009, *AG Bendel State v AG Federation* (1982) NCLR 1, *British America Tobacco v Environmental Action Network Ltd* (2005) 2EA *Butto v Federation of Pakistan PLA* (1988) (SC) 416.

[24] (1999)3 NWLR (pt. 593, 314 or (1999) LPELR. Sc 5. 1995

Also in the case of *Agbakoba v AG Federation*[25], Agbakoba as Plaintiff asked the Court to order for the government of the Federal Republic of Nigeria to implement financial independence of the judiciary as guaranteed by the Constitution[26], contrary to the present practice where the judiciary draws the funds from a Consolidated Revenue Fund of the federal government which encourages corruption in the judiciary.

Though some of these cases did not produce outright victory for the litigants that instituted them and while some are still pending in court, a strong message has been sent to the government and those in power that through Public Interest Litigation the poor masses can have a means to seek redress and justice where their fundamental rights are likely to be breached or are actually breached, and where there is a failure in the prudent management of public resources.

5. **Hindrances to Effective Public Interest Litigation in Nigeria**

i. **Issue of *locus standi***

The issue of *locus standi* is one of the biggest hindrances to effective public interest litigation in Nigeria. *Locus standi* is the legal capacity a party has to institute and sustain an action in court. Where a person does not have the *locus standi*; indeed he lacks the competence or legal capacity to bring an action in court[27]. In Nigeria, where there is a challenge to the *locus standi* of a party in a suit, what such party is required to do is to prove that it has *locus standi*. The party must show that ithas sufficient interest which the Court should protect[28]. The phrase 'sufficient interest' is wide and vague. It has no precise legal meaning. Its definition is left to the Court, and it is decided based on the circumstances and facts of each case. In the case of *Nwogu v N.L.N.G Ltd*,[29] the Court of Appeal held thus;

> If a plaintiff is incompetent to file a suit, he lacks *locus standi*. The suit lacks competence. Such is a fundamental vice that goes to the jurisdiction of the Court. Thus the Court becomes incompetent to exercise its powers to entertain the suit.

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[25] Suit No FHC/ABJ/CC/63/2013 (unreported). There is also the Ekiti State version of the judicial funding case instituted by Agbakoba against AG Ekiti State and others. And also I M Babalola, *Public Interest Litigation in Nigeria* in https://www.thenigerialawyer.com/publicinterestlitigation. Accessed 6/11/2020 and W Mamah, 'Public Interest Litigation: Landmarks and Challenges in *Development Law Hub*, *Thisday Lawyer* 26 May, 2015.

[26] Sections 80, 81 and 84 of the CFRN 1999 (as amended) and generally the cases of *Nemi v AG Lagos state* (1997) SC 303, *Kalu v the State* on public interest litigation by Agbakoba (SAN).

[27] the case of *Admin/Executors v Eke Spiff* (2009) 37 NSCQR 364.

[28] T A Adekota, *op cit* and P Ifeoma, 'Another Victory for Public Interest Litigation – Olamide Babalola *v* AG Federation' 2018 at <https://www.anllegalandstyle.com>. accessed 7/10/2020.

[29] (2005) ALLFWLR (pt280) 1593 and also *Lawal v Gov. Kwara State* (2005) 3WRN 171 and V Oyewo,'Locus Standi and Administrative Law in Nigeria: Need for Clarity of Approach by the Courts' in *International Journal of Scientific Research and Innovative Technology*, vol.3 No 1, 2016.

Aderemi JCA (as he then was) in the case of *Ilorri v Benson*[30] set out two tests for what sufficient interest is thus;

> One test of sufficient interest in a matter is whether the plaintiff who instituted the action could have been joined as a party to the suit if some other party commenced the action. Another test is whether the plaintiff seeking the redress or remedy will suffer some injury or hardship arising from the litigation if some other person instituted it.

Unfortunately, in Nigeria, the powers to institute legal action for the purpose of asserting a public right or the enforcement of the performance of a public duty by public office holders is vested in the Attorney General of the Federation or of a State[31]. This has made it impossible for persons or organizations that cannot show special or sufficient interest in a subject matter in dispute, or the right allegedly breached, to institute actions in court to enforce public right or interest.

However, some laws and rules of Courts have provisions that tend to ameliorate this hindrance to public interest litigation. The National Human Rights Commission is empowered by the law establishing it to institute legal action on any matter it deems fit in the exercise of its function[32]. Its core functions include the protection of human right. This saving provision has been minimally utilized and little or no impact has been made by the Commission. The Fiscal Responsibility Act[33] also made similar provision for persons to approach the court for the purposes of obtaining prerogative orders or other orders in the Federal High Court without having to show any special or particular interest[34]. Again, the scope is limited and access to the requisite information and materials to institute court actions in this regard is also very limited due to the unwillingness of officers to release information and materials relevant to cases, and unnecessary bureaucratic bottle necks that dominate public institutions especially when it involves the requests for information or materials that may be used against the institution or government.

The Fundamental Rights (Enforcement Procedure) Rules is innovative for its encouragement of public interest litigation. Unfortunately, the Rules are subsidiary procedural rules and their application does not carry weighty influence as principal

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[30] (2009) 9 NWLR (pt 673) 570. also *AG Federation v AG Imo State & ors* (1982) 12 SC 274 and *Adesanya v President Federal Republic of Nigeria* (1981) 2 NCLR. 385 which is *locus classicus* in the law of *Locus Standi*.

[31] Section 20 Supreme Court Act; CFRN 1999 (as amended)ss.150(1-2), 174(a-c), 195(1-2) & 211(a-c); Petitions of Right Act of the Federation and Laws of the various States, and also G Kodilinye, *Nigerian Law of Torts* (Sweet and Maxwell, London, 1982 p.90.

[32] the National Human Right Commission (Amendment) Act, 2010,s(1)(6)

[33] Fiscal Responsibility Act, Cap C23 LFN 2004, s 31.

[34] Ibid.

legislations. However, the FREP Rules is a welcome development to the Nigerian jurisprudence, as it, in effect, encourages public interest litigation.[35].

ii. ***Non Justiciablility of the Provisions of Chapter II of the Constitution.***
Chapter II of the 1999 Constitution provides for socio-economic rights which are declared non-justiciable. They can only be enforced or implemented by government only when it is convenient or suitable and no one has the right to complain or take legal actions against the government where it fails to respect or implement the rights[36]

Chapter IV of the Constitution made provision for fundamental rights which are justiciable. These rights are made in general terms without any substance that directly affect the real needs of the people. For instance the right to life has little or no meaning where people live in hazardous and unsafe environment with high insecurity and very low level of life expectancy[37]. It is in *Chapter II of the Constitution* that the general provisions in *Chapter IV of the Constitution* are given meaning and effect but yet are unenforceable.

The unenforceable nature of the rights provided for in *Chapter II of the Constitution* hinders and defeats the essence of public interest litigation, thereby forcing those interested in it, to come under fundamental rights enforcement procedure rules that are limited in scope and remedies, in enforcing public rights.

iii. ***Fusion of the Offices of Attorney General (AG) and Minister of Justice***
With the realities of the present provisions of our laws, the Attorney General of the Federation and Minister of Justice, and Attorneys-General and Commissioners of Justice of States ought to be leading other institutions, persons and organizations in the fight against corruption through public interest litigation[38]. It is under this office that the

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[35] Preamble is not legally speaking part of a legislature or rules that can be enforced. It has a persuasive effect at most. K Roach,'The Uses and Audience of Preamble in Legislation', in *McGill Law Journal/Revenue De McGill vol. 47,2001* at< https://www.lawjournalmcgill.ca> accessed 10/11/2020 and B Leiter, et al 'A Reconsideration of the Relevance and Materiality of the Preamble in Constitutional Interpretation' in *University of Chicago Law School,Chicagounbound,1990.Heinonline-12CardozoL.*Rev.118,1990-1991at<https://www.chicagounbound, uchicago.ed… pdf>accessed 10/11/2020.

[36] U O Umozurike, 'The Juridical Nature of Economic and Social Rights in Nigeria' in *Abia State University Law Journal, vol. 10 2008 pp 33-47.*

[37] Sections 33-43 of the 1999 CFRN (as amended) where other rights such as Right to Freedom to Discrimination; Right to Acquire and own Immovable Property anywhere in Nigeria, Right to Freedom of Expression; Right to Fair Hearing etc were provided without any enabling provisions for their enjoyment except as provided for in Chapter II of the constitution which is unenforceable. In countries like India and others, right to life has been interpreted to include right to a safe environment.

[38] Supreme Court Act, s.20; CFRN 1999 (as amended)ss.150(1) & (2); 174(a-c); 193(1-2); Petitions of Rights Act of the Federation and Laws of the various States of the federation.

powers to institute legal action for the purpose of asserting public rights or for public interest is reserved[39].

In Nigeria, the office of the AG and Minister of Justice and the AG and Commissioners of Justice of various States are political offices. They are given to frontline party men who have put in their best elect the ruling government. They are often appointed as compensation for their hard work in politics. Consequently, the political nature of the office cannot promote the use of public interest prosecution, because political consideration will outweigh the need for pursuing justice through litigation. [40].

Few actions taken by the AG and Minister of Justice in Nigeria and the AGs of the States are basically for government interest and not for public interest. The situations in Nigeria clearly show that there is a difference between the government and the people. This has seriously affected the level of public interest litigation and the fight against corruption in Nigeria.

The AGs of both Federal and States governments are encumbered by party politics and interest in instituting legal action for public interest and in the fight against corruption. A few legal actions taken are for enhanced sharing of power and revenue in government[41].

iv. ***Poverty***

Nigeria was recently declared as the poverty capital of the world[42]. The areas of assessment were on corruption, unemployment and inequality within the nation[43]. Litigation is an expensive venture in Nigeria and the myriad of poor citizens cannot obtain justice. The justice system is demanding, obsolete and expensive. There are some individuals, organizations and institutions that have shown serious interest in the pursuit of public interest litigation but are constrained by fund and resources. Some of them do not have Lawyers and legal units to handle cases for them. Those that have the resources cannot meet the requirement of instituting and prosecuting legal actions in court especially while suing government or its agencies. This is because the judicial process is technical, and administrative delays also affect the speed of justice. Also, in the event of an appeal, the case would futher become protracted, and necessarily incur more costs. Therefore poverty constrains and disincentivizes public interest litigation in Nigeria.

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39 Ibid.

40 In Nigeria the AG is a law officer for the government and the party in power not for the public.

41 the case of *AG Abia v AG Federation* (2003) 16 NWLR (pt 1005) 280; *AG Federation v AG Abia* (2002) 6 NWLR (pt 764) 542; *AG Ondo v AG Ekiti* (2001) FWLR (pt 79) 1431,

42 Reported by Borgen Magazine on Humanity, Politics and You @ <https://www.borgenmagazine.com, august, 2020> accessed 10/11/2020

43 F O Orbih, op *cit* Pp. 4-7; T A Adekola, *op cit*;C M Foster, et al, *op cit,* generally J K Krishnan, 'Public Interest Litigation in a Comparative Context' in *Buffalo Public Interest Law Journal* vol. xx, 2001-2002 at <Https://www. Repositorylaw.India>accessed 10/11/2020 and VJaichand,'Public Interest Litigation Strategies for Advancing Human Rights in Domestic Systems Laws' in *Journal of International Law* at <https://www.sur.connectas.org/en/publicinterestlitigation>. accessed 11/11/2020.

6. Lessons from Other Jurisdictions:

i. India:

India has a significantly developed its public interest litigation model. This was made possible by the concerted efforts of both the Courts and Lawyers in achieving one of the main purposes of law in the society, which is protecting public interests. The Bench applies judicial activism and other liberal interpretations of laws in their conducts and pronouncements particularly where issues on rights of the people are considered. Lawyers, on their part, engage in effective public interest practice. The Constitution of India has provisions that regulate the relationship between the government and the people and India has very liberal laws that are people oriented.[44]

Like in Nigeria, Part IV of the Indian Constitution is not justiciable as it contains socio-economic right as contained in Chapter II of the Nigerian Constitution, yet the Courts through judicial activism give broad and conscious interpretation to laws on the enforceable human rights for the wellbeing of the people, thereby reading into them the unenforceable ones. India has a well developed Legal Aid Scheme where a commission is set up by the courts to assist the indigents in collecting information and evidence to be presented at the hearing of their cases so that even the poor and weak in the society can have access to information and evidence to prosecute their cases.[45]

ii. United States of America (USA)

Public interest law and practice became common in the USA during and after the social disorder of the 1960s. It was inspired by Louis Brandeis who made public interest litigation an important part of his practice as a lawyer before he became a Justice of the Supreme Court. He was a promoter of public interest litigation and had condemned the practice where lawyers were more interested in corporate practice and have no interest in public interest practices[46].

This led to more lawyers taking up public interest litigation and a significant number of American lawyers followed this trend. Some lawyers focus on instituting actions in court on class interest actions, while others were *amicus curae* in public interest or social wellbeing cases. There is a high level of respect for human rights and the willingness of the government in meeting the demands of its people. This made public interest litigation become very effective in USA.

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[44] F O Orbih, *op cit* p. 4-7; T A Adekola, *op* cit; C M Foster, et al, *op cit*, also generally J K Krishnan, *op cit*

[45] F O Orbih, *op cit*.

[46] Ibid and H S Carrasco,'Public Interest Litigation in the Inter-American Court of Human Rights: The Protection of Indigenous People and the Gap Between Legal Vctories and Social Change' in *Hors-series* (*Mars 2015*) *Revueguep.ecoise.detroit international* at <http://www.prer.fr/doc/rqdi-0828-9> accessed 11/11/2020, and J K Krisahan, *op.cit*.

Again, judicial decisions have added so much impetus to the development of public interest litigation in USA, which also had a tremendous impact on the legislation and public policies, advancement of civil rights and legal reforms. Presently the USA's model of public interest litigation has advanced into using public interest litigation as a public policy tactics to influence government policies, and had also widen the scope of *locus standi* to reduce its hindrance to access to justice. Federal and States laws were passed to remove those hindrances against easy access to Court and filing of suits. These new laws made it easy for people to sue and awarded cost against government or its institutions for breach of their fundamental rights[47].

6. **Conclusion**

Any society that values development must create for its people means of gaining easy access to justice. The essence of law, government programs and policies is to apply them and cause them to function conscientiously for the good of the public. Litigation is one of the most veritable means by which societal ills, including corruption can be fought successfully.

Where the public can gain easy access to the law courts to ventilate their grievances particularly against offending public office holders or policies of government, they are as well fighting corruption. Any government or administration that sincerely wants to fight corruption must encourage public interest litigation by its policies and the enactment of laws. People shy away from approaching the Court to make complaints against corrupt politicians and public office holders to avoid being labeled 'busy bodies' who are complaining against ills they do not have interest in.

Everybody is trying to mind his own business to avoid being labeled a busy body and this has translated into the popular belief that public property or interest is nobody's property or interest and everyone should wait for his turn to take his share of the national cake when he gets into public office. There is a serious lack of public spirited individuals in our society and most people do not want to spend their resources in fighting a public cause. The government is very comfortable with the present situation and is doing nothing to change it.

7. **Recommendations**

i. Concerted efforts should be made by the legislature to enact laws that would remove the bottlenecks such as *locus standi*, procedural technicalities in Court process and promote easy access to Courts.

ii. Immediate bifurcation of the office of the Attorney General and the Minister of Justice and the Attorney General and Commissioner of Justice into two distinct offices so that the Attorney General becomes a career position, while the Minister

[47]*Ibid* and J K Krishan, *op cit*.

or Commissioners become political offices This is to enable the Attorneys General function effectively, independently and impartially and in the interest of the general public and not for the government or its political party as it is the case presently.

iii. Judicial activism should be encouraged whereby judges engage in liberal and broad base interpretations of laws especially the fundamental rights and social interest laws, expounding them to include the so called non justiciable socio-economic rights and to give them more effect for the promotion of the wellbeing of the people.

iv. Nigerian lawyers should understand that they owe the public particularly the less privileged a duty of care and as lawyers, they must make Public Interest Litigation part of their practice to awaken government consciousness for the wellbeing of the public in their policies and programmes.

v. Specific institutions and enabling legislation should be created for the purposes of providing public interest litigation and the existing ones such as the Legal Aid Council should be given better attention and made viable.

vi. Lawyers are trained public interest and social justice activists. They must come out to lead in the fight against corruption using public interest litigation as an avenue in achieving this.