

The protection of the rights of the taxpayer: A legal conundrum in Nigeria

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Abstract

Globally, taxation has been recognised as a pillar for redeeming and resuscitating an ailing economy. The taxpayer who is the main player in this scenario deserves some protection. However, it is doubtful whether or not the taxpayer is accorded any meaningful protection under the law. Through the doctrinal approach, this paper has established that the Nigerian taxpayer appears to be accorded the right to fair hearing, assessment, appeal and secrecy. However, these rights have been eroded by evasive provisions in the Constitution and tax laws like Section 44(2) (a), which take away even the fundamental right to own property when it comes to the issue of imposition of tax or any rate, Sections 104 of the Personal Income Tax Act and 29 of the Personal Income Tax (Amendment) Act which also deny the taxpayers right to fair hearing and ownership of property and Section 28 of the Federal Inland Revenue Service (Establishment) Act, 2007, which denies the taxpayers right to privacy. The paper takes the position that the taxpayer is consequently left without any protection. It proceeds to canvass that though non justiciable, Chapter II of the Constitution can be enforced by an aggrieved taxpayer relying on the African Charter to call on the government to account for revenue collected, and that a single taxpayer has the locus standi to sue on behalf of a group or community. The paper finally calls for the amendment of the offensive provisions in both the Constitution and tax laws. Only then will the Nigerian taxpayer have confidence in the tax system and voluntarily comply.

Keywords: taxpayer, protection, rights, legal, conundrum

1. Introduction

In both developed and developing economies of the world, taxation has been identified as the most viable and sustainable pillar for economic development and growth. Taxation has gained for itself this global prominence as an economic motivator due to the fact that if properly managed, it has the potentials to resuscitate a tumbled-down economy. It is in realisation of these potentials that global attention towards tightening and strengthening national tax systems for maximum output is now trending, Nigeria not being an exception.

In this move towards ensuring maximum efficiency and output, there are two major players. These are the taxpayer and the tax authority. Where and whenever carefully carved phrases like 'tax reforms' or 'efficiency in tax administration' feature, the focus is on the taxpayer. In view of the vulnerability of the taxpayer, he needs protection, be he an individual, group or a corporate body. In the power relationship between the taxpayer and the state, the state is a superior partner no matter how powerful the taxpayer may appear to be.

The taxpayer is consequently granted rights under the constitution and the various tax laws in Nigeria. These include the right not to be subjected to arbitrary and unfair tax assessment, right to appeal, right to privacy, right to refund of excess tax and right to own property. These rights are founded on the fundamental rights of the citizen as enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Simply put, the taxpayer is protected by the same constitutional guarantees for the protection and preservation of the fundamental rights

of a Nigerian citizen.

However, the protection of the Nigerian taxpayer in most cases appears utopian. There exist statutory provisions which make nonsense of the entire idea of the taxpayers' protection, most of which have received judicial blessings. This paper therefore begins with an examination of the evolution of protection accorded the taxpayer, and turns to an examination of the utility of the protection seemingly accorded the Nigerian taxpayer by the constitution and tax laws under the backdrop or evasive statutory provisions and judicial pronouncements in that regard. The paper then proceeds to take a stand on the vexed issue of whether or not the Nigerian taxpayer is accorded any protection at all. It then concludes by synthesizing the various protective legislative provisions of the taxpayer and enactments that have eroded this protection, and on that basis advocate legislative reforms capable of according the Nigerian taxpayer the desired protection to voluntarily play his role in the development of the country.

2. Who is a Taxpayer?

To adequately appreciate the subject matter of this discussion, it is necessary to identify who the actual beneficiary of this protection is. The National Tax Policy ^[1] defines a taxpayer as a person, group of persons or an entity that pays or is liable to tax. In *D.S.A. Agricultural Machinery Manufacturing Company Limited V. Lagos State Internal Revenue Board* ^[2], the Court of Appeal (Lagos Division) adopted the definition of a taxable person under the Personal Income Tax Act to mean any individual or body of individuals (including family) and any corporation

sole, trustee or executor, having any income which is chargeable with tax under the provisions of the law. The word 'person', as used here, has been defined by the Interpretation Act to include anybody or persons corporate or incorporated^[3].

A taxpayer would therefore mean an individual or group of individuals or corporate body that earns an income which is subject to tax under the law. This would extend to families, trustees or estates. It is the protection of these classes of persons that is in focus in this paper.

3. Historical Evolution of the Protection of the Taxpayer

The legal regime for the protection of the taxpayer is generally derived from the fundamental rights of a citizen which is a product of the social contract theory. The theme of the principle of the social contract theory is that there was a time when men had neither law, order, nor government and there came a time when they submitted their natural rights to a sovereign who they undertook to choose for themselves, respect and live in peace^[4].

This theory is the foundation of modern democracies beginning with the American Declaration of Independence of 1776, the Declaration of the Rights of Man of the French Revolution of 1789 and the Charter of the United Nations Organisation of 1945. The constitutions of modern democracies therefore incorporate the fact that the citizens have fundamental rights which have been submitted to the state to protect.

The modern evolution of taxpayers' rights have been summarised by Hatice^[5] Yortsever in the following words:

Development in the world about the protection of the taxpayers and taxpayers' rights is stated to have undergone three stages, namely, protection of taxpayers, expansion of tax base and establishment of taxpayers' rights. The first stage is the protection of taxpayers as an extension of general constitutional protection. The second stage is the process of expansion of the tax base in the process from World War II to the 1970s. In this process, taxpayer-administration relations intensified and as a result, the framework of legal protection was filled with legislation, administrative procedures, and judicial decisions. At the third stage with the tax reforms in 1980-1990 periods, the protection of taxpayers was carried to a broader ground. A transition was made from the concept of protection of taxpayers with state content to the concept of taxpayer rights with taxpayer contents and declarations of taxpayer rights issued.

In the pre-colonial and colonial eras of the territory now known and called Nigeria, the taxpayer had no rights. He was simply under obligation to pay tax to the Obas in the South and Emirs in the North respectively. In event of default, the taxpayer was subjected to hard labour or seizure of his livestock or even wives and children on the orders of the chief. The protection of the rights of the taxpayer in Nigeria started alongside with the constitutional government. The preamble to the Constitution of the Federal of Republic of Nigeria therefore affirms the idea of fundamental rights and states in part as follows:

...to provide for a constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, equality and justice and for the purpose of consolidating the unity of our people: Do hereby make, and give to ourselves the following constitution:

This ideal of freedom, equality and justice has been spelt out in details in Chapter 4 of the Constitution and coined "Fundamental Rights". These fundamental rights are provided for under Sections 33 to 44 of the Constitution and include Right to life, Right to dignity of human person, Right to personal liberty, Right to fair hearing, Right to private and family life, Right to freedom from discrimination, Right to acquire and own immovable property, among others. The Nigerian constitution has gone further to provide for Fundamental Objectives and Directives Principles of State Policy which guarantee the observance of the fundamental rights of the citizen in Chapter II. Under Section 24 of the Constitution, payment of tax is made a civic obligation of the citizen to enable the government fulfill her obligations to the people.

Oliver Wendell Homes, J. therefore observed that taxes provide the wherewithal for public benefits we associate with civilised life^[6]. In his dissenting judgment, Oliver Wendell Homes, J. observed that "taxes are what we pay for civilised society"^[7]. President Franklin D. Roosevelt in his address Worcester, Massachusetts took up this phrase and said that taxes were "the dues that we pay for the privileges of membership in an organised society"^[8].

In essence, payment of taxes and guarantee of fundamental rights are two sides of the same coin. The state protects the rights of the citizens while citizens pay taxes for this protection. The rights and protection of the taxpayer can therefore be equated with the fundamental rights of the citizenry. The protection accorded to taxpayers in Nigeria extends to foreigners whose incomes are chargeable to tax under Nigerian tax law.

4. Rights of the Nigerian Taxpayer

The rights of the taxpayer in Nigeria are not codified under a single document that can be easily referred to but scattered in the various tax laws. However, from a careful perusal of these laws, some which form the basis for the protection of the taxpayer stand out. In the ensuing discussion, the statutory rights are examined under the backdrop of other statutory provisions and judicial authorities that appear to erode them.

4.1 Right to Fair Hearing

Section 31(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) states that:

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 a manner as to secure its independence and impartiality.

This principle does not exclude taxpayers. In *JGC Corporation V. Federal Inland Revenue Service*^[9], the Federal High Court, Lagos Division set aside the judgment of the Tax Appeal Tribunal on the ground of lack of fair hearing. In the words of the court:

It is settled proposition of law that where a judge or tribunal refuses to hear a party to a cause or his witness, or shut its eyes against material documentary evidence before it which is relevant to the issue in controversy between the parties, the proceedings as well as the entirety of the decision resulting there from will amount to a nullity having regard to fundamental breach of the constitution of the Federal Republic of Nigeria, 1999 (as amended).

This judgment has far reaching implications on the protection of the taxpayer's rights. He must be given fair hearing. The Tax Appeal Tribunal, Enugu Zone had the cause to set aside a tax assessment on the ground that the tax authority did not comply with the law ^[10]. Similarly, the court held in *Panalpina World Transport Nigeria Limited V. Lagos State Board of Internal Revenue & 2 Ors* ^[11] that where a tax authority has no power or seals, a taxpayer's property without regard to the relevant tax law and regulations, the taxpayer can recover damages under Fundamental Rights Enforcement Procedure. In *Esso Exploration and Production Nig. Ltd. V. Federal Inland Revenue Service* ^[12], even the Tax Appeal Tribunal was said to be under obligation to ensure fair hearing.

These judgments are commendable and show that Nigeria belongs to the League of Nations that respects taxpayer rights. However, there are certain statutory provisions and judicial decisions that are completely evasive of the rights of the taxpayer. For instance, Section 33(1) of the Federal Inland Revenue Service (Establishment) Act ^[13] empower the service to distrain a defaulting taxpayers' goods or other chattels, bonds or other securities and land or premises and sale anything so distrained in order to recover the amount of tax owed. Section 104 of the Personal Income Tax Act ^[14] on the other hand also provide for the power of the tax authority to distrain the property of the taxpayer where a final assessment has been made and served on the taxpayer and he has defaulted in payment. Similarly, Section 33 of the Federal Inland Revenue Service (Establishment) Act provides that: "Nothing in this section shall be construed so as to authorise the sale of any immovable property without an order of a High Court, made on application in such form as may be prescribed by the rules of court". Section 29 of the Personal Income Tax (Amendment) Act, which amends Section 104 of the Personal Income Tax Act provides, that the procedure for levying execution on the property of a defaulting taxpayer is that an officer duly authorised by the relevant tax authority to apply to a judge of the High Court sitting in chambers through motion exparte. Specifically, Section 29(3) of the Personal Income Tax (Amendment) Act provides, that ^[15]:

The judge may, on application made exparte, authorise such an officer referred to in sub-section 3 of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the day time for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.

In *Independent Television/Radio V. Edo State Board of Internal Revenue* ^[16], it was argued before the Court of Appeal on behalf of the taxpayer, that Section 104 of the Personal Income Tax Act violates the taxpayer's rights to own property, fair hearing and freedom from compulsory acquisition of property. The court conceded to this submission in the following words:

Enforcement of tax no doubt affects the right of the individual to own property, right to privacy and freedom from compulsory acquisition of property as enshrined in Sections 37, 43 and 44 of the Constitution.

Surprisingly, the court held that:

Owing to the provision of Section 44(2) (a) of the Constitution above, the question of whether Section 104 of

the PITA offends the taxpayer's rights to own property, privacy and freedom from compulsory acquisition of property, is of no moment in matters of tax enforcement. To argue contrary will be to argue that because a debtor has freedom from compulsory acquisition of property, his property cannot be taken even when a court order for enforcement of a debt payment is given. Let us not forge the position that a taxpayer who has failed to pay tax due is that of a debtor. As such, to that extent, Section 104(2) of PITA is constitutional ^[17].

The honourable court gave this judgment with the backing of Section 44(2) (a) of the Constitution which says, that the right to own property does not operate when it involves issues of imposition or enforcement of tax, rate or duty. The court assumed that the taxpayer was given fair hearing through the service of Notice of Assignment to tax on him but did not take into consideration the fact that the procedure for the above enforcement as contained in Section 29(3) of the Personal Income Tax (Amendment) Act ^[18] is through motion exparte. Thus, the taxpayer is not given any opportunity to be heard. This is a classical case of denial of fair hearing anticipated by Section 36(1) of the Constitution. Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the citizen the right to fair hearing. Section 36(1) states that:

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.

A combined reading of Section 36(1) of the Constitution shows that Sections 44(1) of the Constitution, 104(2), (3) of the Personal Income Tax Act ^[19], and 29(3) of the Personal Income Tax (Amendment) Act ^[20] are in conflict. The issue of distrain and sale of the taxpayer's property comes within the principle of fair hearing contemplated by Section 36(1) of the Constitution. Consequently, in issues as serious as the deprivation of a taxpayer of his property, an exparte application amounts to denial of fair hearing. He must therefore be put on notice.

4.2 Right to Object to a Disputed Assessment

The taxpayer has a right to object to any disputed assessment to tax by the tax authority. The Personal Income Tax Act has granted the taxpayer the right to object to an assessment. The Act provides thus:

If a person disputes an assessment he may apply to the relevant tax authority by notice of objection in writing to review and to revise the assessment, and the application shall state precisely the grounds of the objection to the assessment and shall be made within thirty days from the date of the service of the notice of assessment.

However, this right appears to have several exceptions that tend to reduce its utility. Section 59(2) (a) and (b) state as follows ^[21]:

- 2) An assessment shall not be impeached or affected –
 - a. by reason of a mistake therein as to –
 1. the name of a taxable person or of a person whose name a taxable person is charged; or
 2. the description of income; or
 3. the amount of any income tax charged or shown to be payable;
 - b. by reason of any variance between the assessment and

the notice thereof:

The Companies Income Tax Act ^[22] has also made similar provisions. It provides that:

If a company disputes the assessment, it may apply to the Board, by notice of objection in writing, to review and to revise the assessment made upon it.

Again, the Companies Income Tax Act also states a wide variety of errors or defects in the assessment and notice that may not impeach the assessment. These include mistakes in respect of the name of a company liable to tax or of a person in whose name a company is chargeable; or the description of any profits; or amount of tax charged.

In *Elf Oil (Nig.) Ltd. V. Oyo State Board of Inland Revenue* ^[23], the court held that a taxable person who claims to have erroneously paid excessive tax in error for any particular year of assessment can make an application to the tax authority for repayment of such excess tax not later than six years after the end of the assessment year, and that the relevant tax authority shall after due enquiry into the matter, grant such relief by way of repayment of tax as appears reasonable and just.

Though the right to object to assessment to tax has been provided, the exceptions listed in Section 59(2) (a) of the Personal Income Tax Act ^[24] and Section 69(1) of the Companies Income Tax Act have left the taxpayer with little or nothing over which to object.

Similarly, in both the Personal Income Tax Act and the Companies Income Tax Act, objections to assessment are made to the concerned tax authority. Thus, making the tax authority a judge in its own cause. This is a breach of the fundamental principle of fair hearing ^[25].

4.3 Right to Appeal

Closely related to the right to object to assessment is the right of the taxpayer to appeal. This right which is available to the taxpayer in event of the refusal of the taxpayer to amend a disputed assessment is variously granted the taxpayer under Section 32(2) of the Petroleum Profits Tax Act ^[26], Section 66(1) of the Personal Income Tax Act ^[27], Part XI of the Companies Income Tax Act ^[28], and Section 9 of the Second Schedule to the Value Added Tax Act ^[29].

This right of appeal lies to the Tax Appeal Tribunal ^[30] or the Federal High Court. Tax Appeal Tribunal has the power to adjudicate on disputes, and controversies arising from tax laws made by the National Assembly ^[31]. Section 251(1) of the Constitution of the Federal Republic of Nigeria confers exclusive jurisdiction on the Federal High Court in matters relating to the revenue of the federal government. Section 251 (1) provides that:

1. Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –

- a. relating to the revenue of the Government of the Federation in which the said Government or any organ therefore or a person suing or being sued on behalf of the said Government is a party;
- b. connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to federal taxation.

Two issues arise from the powers conferred on the Tax Appeal Tribunal to adjudicate on tax matters and the exclusive jurisdiction of the Federal High Court on matters relating to the revenue of the federal government. First, where the tax authority fails to reverse a disputed assessment, does the aggrieved taxpayer approach the Tax Appeal Tribunal or the Federal High Court? The second issue is whether or not Section 59 of the Federal Inland Revenue Service (Establishment) Act which established the Tax Appeal Tribunal is in conflict Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which confers exclusive jurisdiction on the Federal High Court in matters relating to the revenue of the federal government. In *Chemiron International Ltd. V. Lagos State Board of Internal Revenue* ^[32], one of the issues for determination, was whether or not an individual taxpayer can challenge a tax assessment at the High Court instead of the Tax Appeal Tribunal. In that case, the contention of the learned counsel for the defendant, was to the effect that the claimant ought to have exhausted the internal mechanisms as provided in Sections 58 and 60 of the Personal Income Tax Act (PITA) by taking his grievances before the Tax Appeal Tribunal before resorting to the court, and that having failed to exhaust the internal mechanisms, the action amounted to an abuse of the judicial process and urged the court to strike out the action. The Lagos High Court rejected this contention and held that the citizen has the right to directly approach the court to ventilate his grievances.

In *Federal Inland Revenue Service V. General Telecom Plc* ^[33], the issue arose as to whether or not the Tax Appeal Tribunal is a court. In the words of the Tax Appeal Tribunal, Lagos Zone;

...a factor which in addition necessitates and compels its existence and rational is that many, perhaps most of the cases that come before this Tribunal cannot even be commenced at the Federal High Court at the phase they are brought here. There are cases that are not ripe for litigation. An example is where a taxpayer appeals here against an assessment by the FIRS without first filing an objection to its assessment, let alone waiting for Notice of Refusal to amend. A normal court like the Federal High Court would jettison such a claim as premature.

The implication of this judgment, is that the Tax Appeal Tribunal is not a court but an internal mechanism for resolving tax disputes by the tax authority. Therefore, where a dispute is ripe for litigation, the taxpayer can bring his suit at the Federal High Court or State High Court, as the case may be. However, where the dispute cannot be adjudicated upon by the court on the basis of being premature, an aggrieved taxpayer can take his grievance to the Tax Appeal Tribunal. Section 59 of the Federal Inland Revenue (Establishment) Act does not therefore violate Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Despite the available avenues for exercising their rights, it is doubtful whether the taxpayer can effectively enforce his rights in view of Section 44(2) of the Constitution or not. Section 29 of the Personal Income Tax (Amendment) Act, 2011 and the judgment in *Independent Television/Radio V. Edo State Board of Internal Revenue* ^[34], where the court clearly ruled out the possibility of the taxpayers' protection when it involves issues of tax.

4.4 Right to Privacy

The right to privacy is guaranteed by Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The section provides that:

The privacy of the citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

However, this protection guaranteed the Nigerian citizen cannot be said to be available to the taxpayer. The relevant Sections of the Federal Inland Revenue Service (Establishment) Act ^[35] which have toyed with the right to privacy of a taxpayer are Section 28(2) which requires the bank to deliver to the service on quarterly basis individual transactions involving the sum of Five Million Naira (N5,000,000.00) and above and corporate transactions involving the sum of Ten Million (N10,000,000.00) and above, and Section 29 which has granted unrestricted access to the Service to all buildings, lands, places, books and documents for the purpose of tax. Section 29(5) has made a rather elusive attempt at preserving the taxpayer's right to family life. According to the said Section; "Notwithstanding subsection (1) of this Section, the authorised officer shall not enter a private dwelling except with the consent of an occupier or pursuant to an authorisation issued under subsection (7) of this Section". Subsection 6 further states that the authorisation by a judicial officer shall be upon an application by an officer of the service. Nowhere has the mode of this application been prescribed. That is, whether it shall be by notice or *ex parte*. However, *ex parte* application for enforcement of tax is provided by Section 29(3) of the Personal Income Tax (Amendment) Act ^[36], where the taxpayer has no opportunity to be heard. This procedure falls below global standards of fair hearing.

In all, the Nigerian taxpayer cannot be said to be accorded any protection under the laws. Even the evasive constitutional and other enactments that appear to be in favour of the taxpayer have been eroded under the same legislation and received judicial blessings.

5. Emerging Legal Issues

There exist salient emerging legal issues which need consideration in the protection of the taxpayer. Firstly, where the government has obviously failed to provide infrastructure from the taxpayer's monies or misappropriated same, can the taxpayer sue the government for account? Secondly, if the answer to the above is in the affirmative, who exactly has *locus standi* to bring an action? Chapter II of the Constitution of the Federal Republic of Nigeria which contains relevant provisions in answer to the first issue above provides for the economic, social and cultural rights known as the Fundamental Objectives and Directive Principles of State Policy. Constitutional provisions in this regard are contained in Sections 13 to 24. Specifically, Chapter II places obligations on the government to ensure the security and welfare of the people, control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity, that the material resources of the nation are harnessed and distributed as best as possible, and that there are adequate medical and health facilities for all persons, among others.

Unfortunately, these beautiful provisions have been heard to be non-justiceable. In *Bishop Olubunmi Okogie V. Attorney*

General, Lagos State ^[37], the court held that the Fundamental Objectives of the nation and the Directive Principles of State Policy laid down in Chapter II of the Constitution are non-justiceable. It is therefore not possible for taxpayer to sue to enforce the provisions of Chapter II or challenge the government on that basis or even call on the government to account for revenue collected under the Constitution or any local legislation. However, recent developments in the field of fundamental rights enforcement have moved away from the recognition of only local legislation in enforcing fundamental rights, and the reasoning in *Bishop Okogie V. Attorney General, Lagos State* ^[38]. It has been argued that the domestic application of human rights norms is now regarded as a basis for implementation of constitutional values beyond the minimum requirements of the Constitution and that a consciousness is now emerging that in the sphere of human rights, the citizen of a particular state is no less a citizen of all other states and that each citizen is entitled to due process of law and equal protection of all states ^[39]. Consequently, in *Registered Trustees of the Constitutional Rights Project (CRP) V. The President of the Federal Republic of Nigeria & Ors* ^[40], the court held that the African Charter on Human and Peoples' Rights being an international treaty is superior to local legislation including Decrees of the Military Government of Nigeria. Nigeria is a member of the African Union and a signatory to the African Charter on Human and Peoples' Rights which has been domesticated. A Nigerian taxpayer may therefore call in aid the Charter in order to ventilate his grievances despite the fact that Chapter II of the Constitution is non-justiceable. The relevant provisions of the African Charter that come to mind in this regard are Articles 13(3), 22(2) and 24. Article 13(3) provide that: "Every individual shall have the right of access to public property and service in strict equality of all persons before the law", Article 22(2) is to the effect, that "States shall have the duty, individually or collectively to ensure the exercise of the right to development", while Article 24 stipulates that "All people shall have the right to a general satisfactory environment favourable to their development".

In *Richard Akinola V. General Ibrahim Babangida & 3 Ors* ^[41], where the issue of enforceability of the African Charter arose, the Supreme Court held that the African Charter as embodied in Cap. 10 Laws of the Federation of Nigeria, 1990 is a law to which the court and the executive are to enforce. The implication for our present purposes is that an aggrieved Nigerian taxpayer can initiate his action on the basis of the African Charter on Human and Peoples' Rights despite the non-justiceability of issues under Nigerian legislation.

The above issue having been resolved in the affirmative, the next issue for consideration is who exactly has the *locus standi* to sue since the infringement may not be peculiar to any particular person but to a group, community or class of people. The issue of *locus standi* is very central since it touches on the jurisdiction of the court to entertain the suit ^[42]. *Locus standi* is a Latin expression which means the "standing" or "legal standing" to sue ^[43]. It simply means the right of audience in a court to initiate judicial proceedings. One or a group is said to have *locus standi* in a given situation if the person or group can establish that the issue at hand has caused him harm and that an action undertaken by the court could redress the harm ^[44]. The right of *locus stand*

is deeply founded in Constitution of the Federal Republic of Nigeria, 1999 (as amended) where Section 6(6) (b) provides that the judicial powers vested in the Nigerian courts, “shall extend to all matters between persons, or between governments or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of the person”. The court has therefore established that one taxpayer has the locus standi to challenge the action of the government. In *Fawehinmi V. President, Federal Republic of Nigeria*, the plaintiff, a taxpayer challenged the jumbo pay for then Minister of Foreign Affairs as a violation of certain Political, Public and Judicial Holders (Salaries and Allowances, etc.) Act^[45]. The trial High Court dismissed his case for want of locus standi. He appealed to the Court of Appeal which allowed the appeal and reversed the judgment of the High Court, quoting with approval the judgment of the English Court in *Inland Revenue Commissioners V. National Federation Ltd*^[46] as per Lord Diplock, where it heard that:

It would in my view be a grave locuna in our system of public law if a pressure group, like the Federation or even a single public spirited taxpayer, were prevented by the outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.

Furthermore, an aggrieved taxpayer can bring his petition to the court through Fundamental Rights Enforcement Procedure on behalf of other taxpayers since it has now been recognised that actions arising from income tax can give rise to an action under the Fundamental Rights Enforcement Procedure^[47], and the enforcement of community or group rights can be brought in a representative capacity where the plaintiff shows sufficient interest^[48]. In *Fawehinmi V. President*^[49], the issue before the court was that of the proper person to approach the court to challenge the government where it violates or fails to enforce any provision of the Constitution or laws, where an Attorney General will not. Overruling the High Court which had struck out the case for want of locus standi, the Court of Appeal heard thus;

...judicial function must primarily aim at preserving legal order by confining the legislature and executive within their powers in the interest of the public and since the dominant objective of the Rule of Law is to ensure the observance of the law, it can best be achieved by permitting any person to put the judicial machinery in motion in Nigeria whereby any citizen could bring an action in respect of a public derelict. Thus, the requirement of locus standi becomes unnecessary in constitutional issue as it will merely impede judicial functions.

From the foregoing, an aggrieved taxpayer can successfully challenge the tax authority or government action even in the face of the constitutional provisions and other enactments that infringe on his right. The problem however is that the Nigerian taxpayer has not developed that willingness and courage to take up the violation of his rights in the court. Apart from corporate personalities, mostly multinationals in the oil sector, even disputed assessments to tax are hardly challenged in court. This may be attributed largely to the poverty rate and lack of awareness on the part of the taxpayer.

6. Conclusion

The paper has traced the evolution of the taxpayer’s protection and come to the conclusion that they are an integral part of the fundamental rights of a citizen entrenched in the Constitution.

It has further examined utility of the taxpayer’s rights under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and tax laws under the backdrop of obnoxious provisions that have eroded the enjoyment of these rights. The position taken here is that under local legislation, the taxpayer has not been accorded the desired protection to developed confidence in the tax system for voluntary compliance.

Under the foregoing antecedents, it has been advocated that the unprotected Nigerian taxpayer can resort to the African Charter on Human and Peoples’ Rights for protection.

The paper has also established that apart from the corporate organisations mostly multinationals in the oil sector, the Nigerian taxpayer lacks the resources and consciousness to challenge tax authorities or even government inaction.

It is consequently advocated that Section 104 of the Personal Income Tax Act and 29 of the Personal Income Tax (Amendment) Act, 2011 which have completely stripped the taxpayer of his right to fair hearing be amended. Recommended for abrogation is Section 44(2) (a) which deprives the taxpayer of his right to own property where the issue of enforcement of tax rate or duty is involved.

The Nigerian taxpayer also needs enlightenment in the area of his rights. In this regard, Non-Governmental and professional Associations like the Tax Justice Advocacy and the Nigerian Bar Association (NBA) have a role to play. It is only when one is aware of his rights that the issue of protection comes into play.

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17. *Ibid* at pp. 80-81.
18. (n13).

19. (n12).
20. (n13).
21. PITA Ibid.
22. CITA Section 69(1).
23. FWLR (pt. 138) 1352 at 1367, 2003.
24. Section 69(1) of the Companies Income Tax Act Cap. C21 LFN (with 2011 Amendments), 2004.
25. See the case of
26. Cap. P13 LFN 2004.
27. PITA (n13).
28. CITA (n12).
29. Value Added Tax Act, 2004.
30. Section 59(2) of the Federal Inland Revenue (Establishment) Act, 2007.
31. These laws are listed in the First Schedule to the Federal Inland Revenue Service (Establishment) Act. Ibid.
32. 39 TLRN 1 at 10-12, 2018.
33. 7 TLRN 108 at 134, 2012.
34. (Supra).
35. (n30).
36. (n17).
37. 2 NCLR 337 at 350, 1981.
38. (Supra).
39. UO Umozurike. 'The Application of International Human Rights Instruments and Norms of Nigeria'. Paper presented at Human Rights Training Seminar for Law Students organised by Constitutional Rights Project, Nike Lake Hotel, Enugu 8-11 October, 1997, pp. 14, 103-104.
40. UNLAG, p. 669, 1987.
41. See the case of Ejikeme V. Amaechi 3 NWLR (pt. 542) 456 where it was held that where a plaintiff without locus standi brings a suit, the suit is incompetent and the court lacks the jurisdiction to entertain it. See also Green V. Green (1987) 3 NWLR (pt. 61) 480; Ogunsanya V. Dada (1990) 6 NWLR (pt. 156) 347, 1998.
42. 14 NWLR (pt. 1054) 275 at 334, 2007.
43. S Alolade. 'Understanding the Principle of Locus Standi'. The law yerschronicle com. understanding (accessed on 20th December), 2019.
44. Ibid.
45. Section 2 No. 6 of, 2002.
46. 2 WLR 722 at 740, 1981.
47. See Panapina World Transport Nig. Ltd. V. Lagos State Board of Internal Revenue & 2 Ors 10 TLRN 174 at...., and Egbounu V. B.R.T.C. (1997) 12 NWLR (pt. 531) 29 at 44, 2013.
48. See Fawehinmi V. President (Supra).
49. Supra.