

## SOCIO-LEGAL APPROACHES TO THE ENFORCEMENT OF TAX COMPLIANCE IN NIGERIA\*

### Abstract

*This article is about the negative attitude to compliance in Nigeria and how to resuscitate it. Nigeria has a very low rate of tax compliance. One of the causes of this is over dependence on revenue from oil and other related factors. With the decline in oil revenue, it has become imperative for government to harness the tax sector in other to meet its obligations to the people. Lots of initiatives, which include taxpayer education programs, tax enforcement strategies, and increasingly sophisticated systems of tax administration using new technologies, have been taken by government to enforcing tax compliance. However, the Nigerian citizens are not responsive to tax compliance. The deterrent tax measures have not yielded the anticipated results. This paper seek to propagate policy measures that could entrench voluntary tax compliance in Nigerian tax system. The research was theoretically based; accordingly, reliance was placed on the study of both primary and secondary sources of law like the Constitution, Federal and State enactments, text books, journals, newspapers and internet base materials respectively. The study would help government improvise ways to incentivize voluntary tax compliance as application of force would achieve very little results. It was found that the existing deterrent tax measures have not helped to promote tax compliance in the country. It was also observed that policies like review of existing tax laws to purge the system of multiple taxation, accountability of tax funds and justiciability of tax payers right will enhance tax compliance.*

### 1.0 Introduction

Taxation is an integral part of every country's developmental policies. It is indispensable in every government hence the definition that tax is a compulsory levy imposed by the government.<sup>1</sup> Tax is a compulsory extraction of money by a public authority for public purposes; it is a system of raising money for the purposes of governance by means of contributions from individual persons or corporate bodies.<sup>2</sup> The Nigerian government is not oblivious of the importance of taxation, However, in the last four decades, the country was inundated with revenue from oil which made it consider less of taxation. But with decline in revenue from oil, the indispensable importance of taxation has been re-awakened. The government is therefore determined to harness the gains of taxation to maximize accessibility to funds for development. Consequent upon this is there has been in recent time major reforms in the tax sector. Good examples of these reforms include Federal Inland Revenue (Establishment Act), 2007, Company Income Tax (amendment) Act 2007, Value Added Tax (amendment) Act 2007; and the recent Personal Income Tax Act which makes it compulsory for the President, the Vice- President and other political office holders to pay tax.

Notwithstanding the various reforms undertaken by the Government to increase tax revenue, the rate of tax compliance in Nigeria is still very low.<sup>3</sup> A number of factors may be responsible for the declined attitude of tax compliance. Some of the factors are suggested to include poor tax culture; inadequate tax awareness and sensitization, and lack of accountability in the utilization of the tax fund, non justiciability of tax payer's right.

## 2 Primary Essence of Taxation Examined

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<sup>1</sup> See Chamber Encyclopedia where tax is defined as "a compulsory levy to finance goods and services as provided by governing body for the collective satisfaction of wants."

<sup>2</sup> SL.Soyode and S.O Kajola : *Taxation: Principles and Practice in Nigeria*, First edition (Ibadan: Silicon Publishing Company) 2006, p 2.

<sup>3</sup> O James. Alabede, Z Zainol Ariffin and K M Idris: "Public Governance Quality and Tax Compliance Behavior in Nigeria: The Moderating Role of Financial Condition and Risk Preference" *Issues in Social and Environmental Accounting Vol. 5, No. 1/2 December 2011, p 5.*

The primary essence of taxation is to provide social amenities in the interest of the public. The interest of the public is the protection and provision of the general welfare of the public. This is why Sayode and Kojola<sup>19</sup> averred that “tax is a compulsory extraction of money by a public authority for public purposes.” In the same light, J.K Naiyeju opines that “taxation is therefore more or less the price of the social contract between the government and the governed for the provision of basic goods and amenities.”<sup>20</sup> Abiola Sanni<sup>21</sup> while examining the justification for taxation holds that “members of the public who enjoy or desire to enjoy the benefits of security of lives and property, provision of water supply, roads, electricity and allocation of land, among other things, have to pay for them in certain ways, hence, taxation was devised to provide government with regular, dependable and continuous source of revenue. Ifueko<sup>22</sup> gave more insight into the essence of taxation when she noted that “revenue from taxation should be applicable in a manner that will ensure that taxation is not an end in itself, but a means to achieving the various ends which Government commits to provide and which taxpayers and the entire citizenry expect from Government.”

Justification for taxation was also given a thoughtful elaboration in National Tax Policy<sup>23</sup> wherein it is submitted that “in its basic form, taxation is simply a means of generating revenue for Government.” However, in developed nations and economies, taxation is no longer viewed as a mere avenue for revenue generation by Government. Rather, it is a means by which citizens contribute to a common purse for the provision of infrastructure, utilities, security and other needs by the Government. It is viewed as an important component of the social contract between the Government and the governed. Citizens therefore partner with their Governments to raise revenue by means of taxation in order to provide funds, which will be utilized for the benefit of the entire citizenry.<sup>24</sup>

From the foregoing, it has been underscored that taxation is not just a means of raising revenues but also a means of providing social services to the people. This reiterates the position that governance is a social contract between the government and the governed where persons in authority hold their positions in trust for the entire citizenry, with the understanding that the government will look out for the best interests of the citizens in all their decisions and actions. It therefore means that tax is a price we pay for the enjoyment of social services. This is the end which taxation seeks to justify. Negating these objectives denotes total extermination of the general essence of taxation and that leads to total reduction in the rate of tax compliance. Taxation revenue is so sacrosanct and distinguished from other revenue sources because it is the people’s contributions.

If there is this understanding between the government and the governed, it is less likely that the rate of tax compliance in Nigeria will continue to be low. The citizens wish for improved social services and good conditions of living, therefore, they will willingly comply to pay their taxes to enjoy the social services.

### 3. Analysing the Concept of Tax Compliance

Tax compliance is the degree to which a taxpayer responds to tax rules and regulations. James and Alley describes tax compliance as “...the willingness of individual and other taxable entities to act in accordance

<sup>19</sup> SL.Soyode and S.O Kajola *op. cit.*

<sup>20</sup> J.K Naiyeju, *Value-Added Tax: The Facts of a Positive Tax in Nigeria*, Kupag Public Affairs, Nigeria, 1996 p. 9

<sup>21</sup> A Sanni, *Revenue Law*, CITN Tax Practice Series, No. 28, Published by Chartered Institute of Taxation of Nigeria, 2010, p. 6

<sup>22</sup> I O Okauru, “Emerging Issues in Tax Administration: The Way Forward for Nigeria’ being a paper delivered at the 4th National Conference of the Department of Finance, Faculty of Business Administration, University of Lagos, p. 6.

<sup>23</sup> National Tax Policy for Nigeria, Final Draft submitted to the Federal Executive Council (2010), retrieved available at [www.citn.org](http://www.citn.org). assessed 12/6/2019.

<sup>24</sup> This position has also been given judicial stamp in Australian case of *Matthew v. Chicho Marketing Board* where the court insisted that tax is a *compulsory exaction of money by public authorities, for public purposes*. Derogating from this position may also incur the wrath of the Court.

within the spirit as well as the letter of tax law and administration without the application of enforcement activity.”<sup>25</sup> The behaviour and responsiveness of people to the dictates of tax laws and policies describes the attitude of tax compliance. Where the degree of the responsiveness is elastic, tax compliance is positive. Where, on the other hand, it is inelastic, tax compliance is said to be negative.

There are different categories of tax compliance. McBarnett<sup>27</sup> identifies three forms of compliance, which include committed compliance, capitulative compliance and creative compliance. Committed compliance is the willingness to discharge tax obligations by a taxpayer without grumbling. While capitulative compliance is the reluctant discharging of tax obligations by taxpayer, creative compliance refers to any act by a taxpayer aimed at reducing taxes by redefining income and deductible expenditure within the confine of the law.<sup>28</sup>

According to the Organization for Economic Cooperation and Development (OECD),<sup>29</sup> tax compliance is categorized into administrative compliance and Technical compliance. Administrative compliance is made up of reporting compliance, procedural compliance and regulatory compliance and it is generally concerned with complying with the rules relating to lodging and payment of tax while technical compliance is concerned with meeting up technical requirement of tax laws in computation of tax liability.<sup>30</sup> The payment of tax is a compulsory duty of every citizen, whether natural or corporate.

### **3.1 Some Factors Responsible for Poor Attitude of Tax Compliance in Nigeria** **Non Utilization of Tax Revenue**

A major reason for poor attitude to tax compliance in Nigeria is non utilization of the tax revenue to provide the desired social services. It is disheartening that a person could cuff out his or her hard earned resources to pay tax and at the end he would have nothing to gain from it. A situation where a taxpayer is charged to pay road tax, development levy and yet the roads are impassable, does not do justice to the taxpayer. That is why people often retort to questions on tax payment, “Why would we pay tax? What are they doing with the money?”<sup>32</sup>

In analyzing the relationship between taxpayers and government, Levi<sup>33</sup> opines that tax compliance is influenced by vertical contract. According to him, the contract between taxpayers and government is vertical contract, which he refers to as “*quid pro quo of taxation*.”<sup>34</sup> Vertical contract is concerned with whether taxpayers get public goods in exchange for taxes paid. According to the argument of *quid pro quo*, complying with tax law provision depends in part, on whether the political goods provided by the government are sufficient in return to the taxes they are paying.<sup>35</sup> Levi<sup>36</sup> further argues

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<sup>25</sup> S James, & C Alley. C. “Tax Compliance, Self-Assessment and Tax Administration. “ *of Finance and Management in 2002 p. 12.*

<sup>27</sup> D McBarnett, “When Compliance Is Not the Solution But the Problem: From Changes in Law to Changes in Attitude.” Cited In J O. Alabede, Z Z Ariffin and K Idris *op. cit*

<sup>28</sup> The committed compliance as postulated by McBarnett indicates positive tax compliance where the people spontaneously comply with tax issues. The capitulative and creative compliance are both negative attitude of tax compliance. Both could be described as tax evasion and tax avoidance respectively; it indicates people’s unwillingness to yield to tax issues.

<sup>29</sup> Organization for Economic Cooperation and Development (OECD) “*Compliance Measurement-Practice Note*” Paris: Central for Tax Policy and Administration, 2001

<sup>30</sup> *Ibid.*

<sup>32</sup>The point became suggestive that tax is an imposition to enrich the pocket of few other than the interest of the masses. This is one of the reasons we had wild criticism against the re-introduction of toll gate. People perceive it as a burden which, at the end, there would be nothing to show for it while the collecting agents would be maintaining fat accounts at the expense of the people see M T Okafor (2011), “FG to Re-Introduce Toll Gates.” <http://tcoinmunity.vanguardngr.com/forurn/topics/on-fg-to-re-introduce-toll-gates> November 9, 2018.

<sup>33</sup> B Levi, M. *Of Rule and Revenue*. Berkeley: University of California Press, 1988. P 9.

<sup>34</sup> *Quid pro quo* means something that is given or taken in return for something else as a substitute. *Quid pro quo* of taxation

therefore means that tax is given or paid in return of good government through the provision of social goods.

<sup>35</sup> D D Lassen, “Ethnic division and the size of the informal sector, “, 2003. Working paper, Institute of Economics,

that if it is perceived by the taxpayers that the rate of transformation from tax to political goods is low then the taxpayers will feel that the government has not kept its obligation of the contract, as a result, voluntary tax compliance will dwindle.

### 3.1.1 Low per Capital Income

Low per capital income is another factor responsible for low voluntary tax compliance in Nigerian tax system. Research has shown that financial condition and family obligations moderate the individuals' financial commitments and performances.<sup>37</sup> The moderating effect of individual financial condition on tax compliance and its determinants, as buttressed by Brett,<sup>38</sup> is more obvious in the society where there is high poverty rate as is the case in Nigeria. It therefore means that financial condition of an individual may have positive or negative effect on the relationship between his/her attitude to tax compliance. This is in line with the postulation of Bloomquist when he identified financial strain as one of the sources of taxpayer's stress and submitted that "individual taxpayer with meagre financial resources may be tempted by his bad financial condition to be noncompliant where the expenses of his household are more than his income."<sup>39</sup>

### 3.2 Poor Tax Policy as a Result of Over Dependence on Oil Revenue

Nigeria's over dependence on oil in the past fifty years affected the entire structure of her tax culture leading to general absence of a strong tax attitude and compliance among Nigerians. Bobek<sup>40</sup> has argued from the perspective of the theory of functional attitude that the consistency of an attitude will determine whether attitude will be positive or negative. Accordingly, a taxpayer whose attitude towards tax system is consistent is expected to judge the fairness of the system objectively.<sup>41</sup> Nigerian tax policies and programmes have been very inconsistent. Constant changes in the management of FIRS and other tax bodies affect the stability of tax policy.

## 3 Policy Measures Toward Enhancing Tax Compliance In Nigeria

### 4.1 The Role of Educational Institutions

The educational institutions have roles to play in the enhancement of Nigerians attitude to tax compliance. Educational institutions play good roles in the moral and civil orientation of the people. Unfortunately, it has been observed that Nigerian's current educational system from primary to tertiary institutions give little or no attention to taxation.<sup>49</sup> Taxation as a course is hardly taught in Nigerian institutions and where it is taught, it is usually offered as an elective rather than a core course; and it is often not thought as a separate course of study. The government should also promote research and scholarship in tax related courses. This is in line with the submission of the National Tax Policy that "government and tax

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University of Copenhagen p. 23.

<sup>36</sup> Levi, M. *op.cit.*

<sup>37</sup> J E Mathieu, & D M Zajac, "A Review and Meta-Analysis of the Antecedents, Correlates and Consequences of Organization Commitment." *Psychology Bulletin*, 108,171-194, 1990.

<sup>38</sup> J F Brett,, W L Cron, & J W Slocum Jr. "Economic Dependency on Work: A Moderator of the Relationship between

Organizational Commitment and Performance. "*Academy of Management Journal*, 38 (1), 261-271, 1995.

<sup>39</sup> K M Bloomquist, "Income Inequality and Tax Evasion: A Synthesis." *Tax Notes International*, 3 I(4),347-367.2003. The postulation of Bloomquist is not far from what is obtainable in Nigerian Environment where there is low rate of per capital income. The expenses of a Nigerian household who makes about 10,000 a month in his petty business is more than the income; thus, such a person may be reluctant to pay tax.

<sup>40</sup> D D Bobek, "*How Do Individuals Judge Fairness and What Effect Does It Have on Their Behavior?*" (Federal Income Tax, Theory of Planned Behavior). Ann Arbor: UMI 1197.

<sup>41</sup> *Ibid.*

<sup>49</sup> National Tax Policy *op.cit.*

authorities should consider providing incentives, such as scholarships and employment to graduates who undertake the study of taxation and to members of the academia who wish to specialise in the area of taxation”<sup>50</sup>

#### **4.2 Review of Tax Laws to Getting Rid of Multiple Taxations**

Multiple taxations is inimical to the development of tax system. Where there are too many taxes, it retards the compliance attitude of taxpayers. Recognizing the inherent problems of multiple taxations as a barrier to tax compliance attitude, the National Tax Policy<sup>51</sup> submitted that multiple taxations by all tiers of Government should be avoided. The incidences of multiple taxations are attributed to different tiers of government we have in Nigeria that have powers to impose taxes as provided by the Constitution.<sup>52</sup> It has caused a lot of problems in tax compliance.

The solution is encapsulated in the view of Ifueko<sup>53</sup> when she opines that “There are several challenges in the tax system, which can be resolved by the enactment of explicit Constitutional provisions on such matters. The Constitution in some instances does not set out provisions, which are detailed or elaborate enough to deal with the dynamics and ever changing circumstances that we face in our tax system. Accordingly, it is a priority to ensure relevant amendments to the Constitution, which will cater for these matters and resolve issues, such as jurisdiction over certain taxes, legislative powers over taxation and need to make tax compliance a major criterion for holding public office in Nigeria amongst others”.

In line with her submission, what is therefore required is constitutional review that would define the taxing powers of each tier of government in clear terms. It is more desirable that the taxing powers be left in the Exclusive list to enable the National Assembly make tax laws on taxes to be collected by all tiers of government. There is also need for the review of Taxies and Levies (Approved List for Collection) Act<sup>54</sup> to bring it into conformity with the Constitution. An action in this direction would promote voluntary attitude of tax compliance by eliminating multiple taxations.

#### **4.3 Accountability of Tax Revenue**

Accountability of tax revenue is the utilization of the tax revenue in providing good governance to the people. Good governance quality is necessary to have good tax system and equally good tax system is essential to achieve quality public governance.<sup>55</sup> Arguing in the same vein, Torgler<sup>56</sup> notes that when government’s integrity is down, individuals’ tax compliance may be crowded out since government fails to honour its responsibility. He further observes that positive actions by the government may cause taxpayers’ to develop positive attitudes and commitment to tax system and tax payment resulting into enhanced compliance behaviour.<sup>57</sup> Mann and Smith<sup>58</sup> also submitted that taxpayers are conscious of the exchange relationship with government when taking decision relating to tax compliance.

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<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> It has been submitted that the incidence of Multiple Taxation is attributed to different tiers of Government we have in Nigeria that have Powers to Impose Taxes. See M.N. Umenweke “Checking *the Incidence of Double Taxation in Nigerian Tax Regime*,” Faculty of Law, *Apogee Journal of Business, Property and Constitutional Law*, Vol 1 No 2, Oct-Dec,2009. P4.

<sup>53</sup> I O Okauru, *op. cit.*

<sup>54</sup> Cap. T2, Laws of the Federation, 2004.

<sup>55</sup> M Everest-Phillip, & R Sandal,. “Linking Business Tax Reform with Governance: How to Measure Success.” Working Paper, Investment Climate Department, World Bank Group, 2009. P. 19.

<sup>56</sup> B Torgler. “Tax Morale: Theory and Analysis of Tax Compliance” Unpublished *Doctoral Dissertation University of Zurich*. Switzer cited in O J Alabede, Z. Zainol, and K Idris. *op. cit*

<sup>57</sup> *Ibid.*

<sup>58</sup> A J Mann.. & R Smith, “Tax Attitudes and Tax Evasion in Puerto Rico: A Survey of Upper Income Professionals.” *Journal of Economic Development*, 13(1), 121-141, 1988 p.7.

Examining the further relationship between public governance quality and tax compliance, Everest- Philips and Sandall<sup>59</sup> note that there is linkage between public governance quality and taxation and that quality governance delivers good tax system. Quality governance entails the provision of quality public goods to the public; where the government fails to provide public amenities and infrastructure to the citizens in exchange for tax payment, citizens may become reluctant to pay tax.<sup>60</sup>

The Nigerian government has not been excellent in terms of accountability of tax funds. According to Abati,<sup>61</sup> the state of decay in Nigeria's public infrastructure and economic activity are reflection of poor public governance quality which is in deterrence to tax payment. Insecurity, decay in infrastructure such as education, power supply, health and road etc are all indicators and symptoms of poor public governance in Nigeria.<sup>62</sup>

There is therefore need for government to be more committed in utilizing and accounting for revenue from tax if it desires maximum tax compliance attitude. Conversely, there is no body that would want to pay tax where the dividend of taxation is not seen. People are afraid that their taxes may end up in the pockets of corrupt politicians and there may be no means to seek legal redress. This was why Ifueko depicts that "there is a need to create a continuous value chain so that taxpayers can monitor the uses to which tax revenue has been put. Where taxpayers can see that tax revenue is used for their ultimate benefit, it increases compliance rates, improves taxpayer confidence and creates a better relationship between tax authority and the taxpayer."<sup>63</sup>

#### 4.4 Justiciability of Taxpayer's Right

We have seen from the above that accountability of tax revenues is indispensable in institutionalizing positive attitude to tax compliance. However, the level of accountability expected in this regard is not often ensured by the governments hence there is need for the taxpayer to monitor it. This is the import of the sagacious exposition of Ifueko as noted above.<sup>65</sup> While supporting this assertion, it is submitted that while citizens support government in its responsibilities through the provision of finance in form of tax payment, what is happening to the fund should matter to the taxpayers because they provided it.

The question therefore is: how can the taxpayer monitor the uses to which tax revenue is put? Does it include access to the court on the issues of the expenditure of tax revenue? Does a taxpayer have the right to approach the court in this regard? Can a taxpayer have *locus standi*<sup>66</sup> to institute action against the government for failing to utilize tax fund?

The answer to these issues is not clear in the Nigerian legal jurisprudence. There is no statute or any other authority which confers *locus standi* on taxpayer to institute action in respect of tax fund. However, there is a provision of the Constitution which if properly construed tends to confer this right to a taxpayer in public interest litigation. Section 6 (6) (b) of the Constitution<sup>67</sup> provides that:

The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons, or between government 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 that person.

<sup>59</sup> M Everest-Phillip, & R Sandall, *op. cit.*

<sup>60</sup> U Akpo, "The People as Government: The Importance of Tax Payment," Akwa Ibom State Revenue Summit. Uyo: Akwa Ibom State Revenue Service p. 15.

<sup>61</sup> R Abati. "Nigeria's Deplorable Roads." *The Guardian Newspaper*, October 13, 2006.

<sup>62</sup> O I Natufe, "Governance and Politics in Nigeria,," *Staff and Graduate Seminar*. Benin city: University of Benin, 2006 p.12

<sup>64</sup> Ifueko *op. cit.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Locus standi* is the legal right of a person to bring an action in court.

<sup>67</sup> CFRN, 1999, as amended, 2011.

The provision was given a strict and narrow interpretation in the case of *Adesanya v. The President*.<sup>68</sup> In this case, the second respondent, Hon. Justice Victor Ovie-whiskey was appointed by the first respondent (President of the Federal Republic of Nigeria) as the Chairman of the Federal Electoral Commission, and the appointment was ratified by the senate, the plaintiff/appellant, Senator Abraham Adesanya challenged the appointment, claiming that the second respondent was a public officer ( Chief Judge of the then Bendel State) both at the time of the appointment and the time of the confirmation, and as such ,he was disqualified from being appointed a member of the Federal Electoral Commission, and that such appointment was null and void.

The High Court of Lagos held in favour of the plaintiff. The respondent appealed to the Federal Court of Appeal, contending that the plaintiff had no *locus standi* to institute such action since he had no personal interest in the matter. The matter was later referred to the Supreme Court for correct interpretation of section 6(6) (b) of the 1979 Constitution.<sup>69</sup> The Supreme Court unanimously held that the Plaintiff/Appellant lacked the requisite locus to institute the action. In the word of the Court, per Sowemimo, J.S.C, for an applicant or litigant to have the right of bringing an action,

The claimant must have some justiciable interest which may be affected by the action or that he will suffer injury or damage as a result of the action.

The judgment of the court in the aforementioned case triggered sufficient interest as prerequisite for *locus standi* in public interest litigation. The basis for the enjoyment of such right became that the party must show that he has suffered personal injury over and above those suffered by the general public. In view of the judgment in the *Adesanya*'s case, does a taxpayer have sufficient interest to institute public interest litigation especially as it concerns utilization of taxpayers' fund? Has he/she suffered injury over and above those suffered by the public?

This issue arose again for determination in the case of *Gani v the President of the Federal Republic of Nigeria and Other's*<sup>70</sup> In this case, Dr (Mrs) Ngozi Okonjo-Iweala and Ambassador Olufemi Adenji were appointed the Minister of Finance and Minister of Foreign Affairs respectively pursuant to section 147 of the Constitution of Nigerian. On the instruction of the President, Chief Olusegun Obasanjo, the two Ministers were paid in foreign currency, which is contrary to the provisions of Certain Political, Public and Judicial Office Holders (Salaries and Allowances, et cetera) Act.<sup>71</sup> Consequent upon the breach of the law by the President, Chief Gani sued the President, the Revenue Mobilization, Allocation and Fiscal Commission, Dr (Mrs) Ngozi Okonjo-Iweala- Minister of Finance , Ambassador Olufemi Adeniji- Minister of External Affairs for a declaratory order that the action of the president contravened the provision of the Constitution which he (Mr president) swore to defend, and for an injunction restraining the respondents from doing same.

The Federal Government brought a preliminary objection challenging the *locus standi* of Gani to institute the suit. In the objection filled by Kola Awodein (SAN), counsel to the Federal Government, he contended that Gani has no locus since he has not been able to show sufficient interest or threat of injury he would suffer in the matter over and above those of the general public. He urged the position of the Supreme Court in the *Adesanya*'s case upon the Court.

The counsel also argued that the Federal High Court lacked the jurisdiction to entertain the case, saying that the facts of the matter fell under section 16 of the 1999 Constitution which relates to Fundamental Objective and State Policy of the Constitution, and are not justiciable by the effect of

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<sup>68</sup> (1981) N.S.C.C..

<sup>69</sup> Similar to section 6(6) (b) of the 1999 Constitution.

<sup>70</sup> (2007)14 N. W.L.R.

<sup>71</sup> Act No 6 of 2002). The Act in Part I- IV of its Schedule itemized the annual basic salaries, allowances and benefits for certain

political office holders: the annual salary and allowances of a minister of the Federal Republic of Nigeria were fixed at N794,085 .00.

section 6(6)(C) of the 1999 Constitution.<sup>72</sup>Gani on his own part argued that he is a taxpayer and that he has *locus standi* to challenge the government on what it is using the tax payers' money to do.

The trial court found for the Federal Government and struck out the suit on the ground that Gani had no locus to challenge the policy of the Federal Government. Undaunted, Gani appealed to the Court of Appeal, the Appeal Court, remarkably and commendably held that the trial court was wrong to have declined jurisdiction. The court further averred that if a taxpayer lack jurisdiction to challenge the action of the government, who would. According to the Court,

...it will definitely be a source of concern to any taxpayer who watches the funds he contributed or is contributing towards the running of the affairs of the state being wasted when such funds could have been channelled into providing jobs, creating wealth and providing security to the citizens. If such an individual has no sufficient interest of coming to court to enforce the law and to ensure that his tax money is utilized prudently who else would have sufficient interest other than him.

The decision in the Gani's case represents a good position of a taxpayer's right concerning public interest litigation especially as it concerns expenditure of taxpayers' fund. The court was not deterred by the clause of section 6(6) (C) of the Constitution which precludes the court from determining matters relating to Chapter II of the Constitution that contains provisions with regards to payment of salary of minister.<sup>73</sup>

The brevity of the Court was also not deterred by the sufficient interest notion propagated in the *Adesanya's* case. The exposition of the Court underscores the sacrosanct nature of tax fund. If every other fund can be misappropriated, it should not be tax fund; for it will amount to fraud and extortion of money from the citizen in the name of tax and misappropriate it.

Consequent upon the court's decision in the above case, it is the view of this paper that if Gani had *locus* in the case as a taxpayer, a prospective litigant would have *locus* to query why our roads are bad; why we do not have stable electricity; why we cannot have good and qualitative education; why unemployment; why insecurity yet we pay for them in over 50 kinds of taxes in different forms and names. This is how a taxpayer can monitor the uses to which tax revenue has been put in line with the submission of Ifueko.<sup>74</sup> Section 6(6)( C) of the Constitution which relates to Fundamental Objective and Directive Principles, and contains the provision of the social services, the dividend of tax payment, should be construed as subject to tax payer's fund.

We therefore submit that *locus standi* should not be a bar to a taxpayer in any public litigation that concerns the appropriation of tax fund.<sup>75</sup>

<sup>72</sup> Section 6(6)(C) of the 1999 Constitution provides that: the Judicial Powers vested in accordance will the Foregoing Provision of this section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any Judicial decision is in conformity with the Fundamental Objective and Directive Principles of State policy set out in Chapter II of this constitution.

<sup>73</sup> See section 16 of the Constitution.

<sup>74</sup> Ifueko *op.cit.*

<sup>75</sup> There is this argument that widening the *locus standi* of a tax payer would lead to floodgate of litigation against the government. This is not correct considering the nature of taxation as people's fund. What should rather be considered is the justice of a matter rather than the number of it. See the case of *Shell Petroleum Development Co. Ltd & 5 Ors v EN. Nwawka and Anor*, (2001) 10 NWLR (pt. 7200,) where the Court of Appeal per Pats-Acholonu, J.C.A (as he then was and of the blessed memory) held that: the development of the law of *locus standi* has been retarded extensively due to fear of floodgate of persons meddling into matters not even remotely connected with them. In my opinion, let them in edc lie and let the court remove the wheat from the chaff.. I believe that it is the right of any citizen to see that law is enforced where there is an infraction of its being violated in matters affecting the public law and in some cases of private law such as where widows, orphans are deprived, and a section of the



We may not have averted our minds to this because those who should have championed the course may not be able to produce evidence of tax payment. It is therefore expedient that we should pay our tax frequently so that we would not only have locus to institute action but courage to hold government accountable in respect of our taxes fund.

This position is not different from what is obtained in other jurisdictions. In U.S, the American Supreme Court, in the case of *Paschal v Secretary of Public Works*<sup>76</sup> held that “a taxpayer’s suit is enough to confer *locus standi* to a party where the act complained of directly involve the illegal disbursement of public fund derived from taxation. Also, in the case of *Flast v. Cohen*<sup>77</sup> the American Supreme Court held that “taxpayer’s suit is an exception to the standard rule of requiring a party who invokes the exercise of judicial power to have a real and personal interest or a direct injury in the outcome of the controversy.” In the Philippine case of *Municipal Corporation v Govind Laxman Savent*<sup>78</sup>, it was held that the right of a taxpayer against local bodies even in the absence of personal injury had been permitted because the taxpayer has a , it was held that the right of a taxpayer against local bodies even in the absence of personal injury had been permitted because the taxpayer has a special interest on the function of the local body.

#### **4.5 Tax Revenue Implementation Committee**

The just utilization of a taxpayer’s fund in providing social services and recognizing his/her right as canvassed above should be fostered in order to ensure voluntary tax compliance. To encourage this process, full autonomy should be granted to tax administration, collection and implementation at all levels of government. Since FIRS was established in 2007 to grant full autonomy to the agency in respect of tax collection and administration, it is desirable that an independent committee be created to be responsible for tax fund implementation and utilization. For instance, we should create an independent committee that would be responsible for implementation and utilization of all forms of road taxes in providing good roads; and independent body for the implementation of educational taxes. It is disheartening that educational taxes are collected in Nigeria; yet the level of decay in quality of education alarming. Where the independent bodies fail to provide good roads and fund education, a taxpayer would sue them to account for the tax fund. This will reinvigorate people’s confidence in tax system and encourage maximal tax compliance.

#### **5. Conclusion**

Tax compliance in Nigeria remains very low despite government’s efforts to harness the sector in recent years. This has been blamed on number of factors. The most subsisting is lack of accountability in the utilization of the tax fund. It is therefore suggested that better policy measures should be enthroned to instil formidable attitude of tax compliance among Nigerians. There is also need to review the constitutional provisions on tax jurisdictions and taxing powers of government to get rid of multiple taxation; and ensure maximal accountability in the utilization of tax fund, independent body should be responsible for tax implementations and taxpayer’s right should be justiciable.

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society will be adversely affected by doing nothing. The justice of a taxpayer’s suit lies in granting him the purpose for which the tax is paid and not on the number at’ suit that could be instituted thereto. The only way the issue of floodgate could be reasonable curtailed is ensuring judicious and judicial use of taxpayer’s money. No taxpayer would go to court when he is seeing the dividend of his tax fund.

<sup>76</sup> *110 phil. 331.*

<sup>77</sup> *392u.s 83.*

<sup>78</sup> Unreported. Available at [www.pinoykwyer.ore](http://www.pinoykwyer.ore) taxpayer, assessed 5/6/2019