Human rights enforcement by people living in poverty: access to justice in Nigeria

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Introduction

Human rights remain unfulfilled promises for large numbers of people throughout the world, despite their recognition in national constitutions and in widely ratified international treaties, and regardless of the availability at the national level of judicial mechanisms for their enforcement. People living in poverty are generally most likely to see their human rights violated, and least likely to enforce their rights. Improving human rights protection for people living in poverty is not a challenge for the judiciary – or even the legal system – alone. Yet judicial enforcement at the national level is where human rights can show their teeth. The real and visible perspective that perpetrators of human rights violations will be held accountable and that victims will be compensated, is crucial for the strength of any human rights protection system. It sustains its credibility in the eyes of the rights holders and acts as a deterrent towards potential perpetrators.

With a population of approximately 140 million, Nigeria is the most populous nation in sub-Saharan Africa. According to World Bank data, about 54 % of the population live on less than 1 dollar per day.[3] Poverty in economic means goes hand in hand with poverty in terms of the enjoyment of human rights. This paper will first present the legal provisions for human rights protection in Nigeria, before examining the obstacles experienced by people living in poverty in having access to justice for the enforcement of their human rights. It will conclude with a number of suggestions for procedural and institutional changes that may help further access to justice in fundamental rights cases in Nigeria.

1. Fundamental Rights in the Nigerian Constitution

The first Bill of Rights in Nigeria can be traced to the Independence Constitution of 1960. Shortly before independence, when the colonial government introduced regional governments, minority ethnic groups expressed fears of domination and marginalisation. In response to these concerns, the colonial government set up a Minorities Commission in 1957. Based on its recommendations, a Bill of Rights was included in Chapter III (sections 17-32) of the 1960 Constitution.[4] The Constitution also introduced a political arrangement modelled on the Westminster Parliamentary system and retained the English monarch as the Head of State. In 1963, Nigeria became a Republic, and adopted the 1963 Republican Constitution

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3 World Bank, Country brief: Nigeria, at www.worldbank.org.

4 Chinonye Obiagwu and Chidi Anselm Odinkalu, "Combating Legacies of Colonialism and Militarism", in Abdullahi Ahmed An-Na'im (ed.) (2003), *Human Rights under African Constitutions; Realizing the Promise for Ourselves*, University of Pennsylvania Press; Committee for the Defence of Human Rights (2000), *Boiling Point*: *A Publication on the Crisis in the Oil Producing Communities in Nigeria*, CDHR, Lagos p. 3; see also, L.N. 228 of 1959 in which statutory instrument No. 1772 was published as an amendment of the Nigerian Constitution (Amendment) Order-in-Council.

which did away with the monarchy.[5] The 1963 Constitution retained the fundamental rights provisions. In 1979 – upon the return to democracy after a difficult period in Nigerian history- another Constitution came into being; this contained fundamental rights provisions similar to the provisions in the previous Constitutions. After another difficult period, the current 1999 Constitution came into force on 29 May, 1999. Chapter IV of the 1979 and 1999 Constitutions includes only civil and political rights. Economic, social and cultural rights can be found in Chapter II as 'Fundamental Objectives and Directive Principles of State Policy'.[6] They are declared to be non-justiciable.[7]

Nigeria ratified/acceded to many of the major international and regional human rights instruments.[8] However, they do not have direct effect in Nigerian law. The status of these conventions in the domestic legal system is determined by section 12 (1) of the Constitution, which states that 'No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.'[9] Only the African Charter on Human and Peoples' Rights has so far been incorporated[10]. That the African Charter is now part of Nigerian law, was confirmed by the Supreme Court in *Abacha v. Fawehinmi.* [11]

2. Legal Mechanism for Fundamental Rights Enforcement

For the purpose of entertaining suits for the protection and redress of fundamental rights violations, section 46 of the 1999 Constitution confers original jurisdiction on the High Court in a State. The section further empowers the Chief Justice of Nigeria to make rules with respect to the practice and procedure of a High Court in connection with the enforcement of those rights.

2.1. The Fundamental Rights (Enforcement Procedure) Rules

The then Chief Justice in 1979 made the current rules, the Fundamental Rights (Enforcement Procedure) Rules, 1979 (hereinafter called 'the Rules') pursuant to section 42 (3) of the 1979 Constitution. The Rules came into force on 1st January, 1980. The 1999 Constitution under section 46 (3) provided for similar rules to be made by the Chief Justice of Nigeria, but this

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5 Christof Heyns (ed) (2004), *Human Rights Law in Africa*, Vol. 2, Martinus Nijhoff Publishers p. 1387.

6 Sections 13-24 of the 1999 Constitution.

7 Section 6 (6) (c).

8 These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, ratified by Nigeria on 29 July 1993; International Covenant on Civil and Political Rights (ICCPR), 1966, ratified on 29 July 1993; International Covenant on the Elimination of All Forms of Racial Discrimination (CERD), 1966, ratified on 16 Oct. 1967; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, ratified on 13 June 1985; Optional Protocol to the CEDAW, 1999, ratified on 22 Nov. 2004; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, ratified on 28 June 2001; Convention on the Rights of the Child (CRC), 1990, ratified on 19 April 1991; Rome Statute of the International Criminal Court, 2002 acceded to on 27 Sep. 2001; Regional instruments include The African Charter on Human and Peoples' Rights, 1981 ratified on 22 June 1983; the Optional Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, 1998 ratified on 20 May 2004; African Charter on the Rights and Welfare of the Child, 1990 ratified 23 July 2001; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 ratified 16 Dec. 2004.

9 *Abacha v. Fawehinmi,* [2000] 6 N.W.L.R. (Pt. 660) p. 228 at p. 288.

10 Act No. 2 of 1983.

11 [2000] 6 NWLR (Pt.660) 228.

has not been done. The implication of this is that the existing Rules by virtue of section 315 of the 1999 Constitution remain in force until new rules are made.

Although section 46 of the 1999 Constitution confers original jurisdiction on the High Court in a State, it has been held by the Supreme Court in *Jack v. University of Agriculture, Makurdi,*[12] that both the Federal and State High Courts have concurrent jurisdiction in respect of enforcement of fundamental rights, and that an application for fundamental rights enforcement can either be made to the Federal High Court or the High Court of the State in which the breach occurs.

The Rules can only be invoked where the principal claim is in respect of a human rights violation. Where the violation of human rights was a mere appendage to the main claim, the Supreme Court of Nigeria held, in *Tukur v. Government of Taraba State,*[13] that a party cannot rely on protection under the Rules. On the other hand, where a violation is the principal claim, the Rules can be invoked for other tangential claims.[14] In *Abacha v. Fawehinmi,*[15] the Supreme Court also held that the procedure for the enforcement of rights under the African Charter is the same as that for the enforcement of fundamental rights under the 1999 Constitution.[16]

2.2. Procedure

In order to embark on legal redress of a fundamental rights violation under the Rules, an applicant must file an *ex parte* motion for leave to apply for the enforcement of a breach of a fundamental right. The application for leave must be filed within 12 months from the date when the cause of action arose or any longer period as may be allowed by the court.[17] It must be accompanied by an affidavit in support, verifying the relevant facts giving rise to the breach.[18]After obtaining the leave of court, the applicant can apply for an enforcement order. The process of seeking leave has been described as an in-built delay mechanism.[19] The step of applying *ex parte* for permission to enforce the right has been labelled unnecessary, cumbersome, and capable of frustrating the fundamental rights of the Nigerian citizens.[20] Another concern is the likelihood of the court dabbling in the merits of the main application

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[12] [2004] 14 WRN 91; [2004] 5 NWLR (Pt. 865) 208, a similar decision was arrived at by the Court of Appeal in *Exec. Gov. Kwara State v. Lawal,* [2005] 20 WNR 679 and by Lagos High Court in *Fasawe v. A-G., Federation and Others,* Suit No. M/490/2006 [Unreported], in Ikeja Judicial Division before Hon Justice Inumidun E. Akande, ruling of which was delivered on 28 November, 2006.

[13] [1997] 6 NWLR (Pt. 510) p. 549; see also *Awguocha v. Zubair,* [2002] F.W.L.R. (Pt.99) p. 1129.

[14] *Dongtoe v. Civil Service Commission, Plateau*, [2001] F.W.L.R. (Pt. 50) p. 1639.

[15] [2000] 6 N.W.L.R. (Pt. 660) 228.

[16] It has been decided in *Constitutional Rights Project v. The President of the Federal Republic of Nigeria* [Unreported Suit No. M/102/93 judgment delivered on 5 May, 1993 by the High Court of Lagos State, Lagos Judicial Division] that the provisions of the African Charter on Human and Peoples' Rights cannot be ousted by local legislation. As laudable as this decision is, it does not serve much purpose as a result of the principle of binding precedent based on the hierarchy of courts, in view of the decision of the Supreme Court in *Abacha v. Fawehinmi,* [2001] 6 N.W.L.R. (Pt. 660) 228 which decided that non-justiciable provisions of Chapter II of the Nigerian Constitution cannot be enforced indirectly through the provisions of the Charter. This means that human rights under the African Charter which are not justiciable under the Nigerian Constitution cannot be enforced notwithstanding the fact that the same is covered by the African Charter, which is itself incorporated into Nigerian laws.

[17] Order 2 of the Rules.

[18] Constitutional Rights Project, *Guide to Human Rights Litigation in Nigeria,* 2006 at pp. 27-32.

[19] Justice Niki Tobi, 'Speedy Trials in the 1990's', *Constitutional Rights Journal* No. 6, p 24 cited in Constitutional Rights Project (2006), *Guide to Human Rights Litigation in Nigeria,* Abuja p. 31.

[20] Chief Gani Fawehinmi (SAN) (2001), *The Way Law Should Go*, Nigerian Law Publication, Lagos p. 18.

during the consideration of an application for leave. For these reasons, the issue of leave may be described as dysfunctional.

On the hearing date, the hearing may be adjourned if the court is of the opinion that the applicant has improperly failed to serve any person, whether or not such a person is directly affected by the proceedings. On the other hand, the court may on its direction grant an opportunity to be heard to any person or body that so desires, even if such person has not been properly served. This provision has been said to give the status of *amicus curiae* to practically every Nigerian (which effectively means any interested party, irrespective of nationality) who desires to be heard in the application.[21]

Generally, under the Rules, a fundamental rights application can either be brought to question the validity and quash an order, warrant, commitment, conviction, inquisition or record, or for the production and release of detained persons, in cases of wrongful or unlawful detention.

Both section 46 (2) of the 1999 Constitution and Order 6 Rule 1 (1) of the Rules dictate that the court may make such orders, issue such writs and give such directions as it may consider just or appropriate for the purpose of enforcing or seeing the enforcement of constitutionally guaranteed fundamental rights. Although the Rules make no provision for specific remedies, it has been held in *Asemota v. Yesufu,*[22] that the language implies the availability of certain remedies, i.e. order of *certiorari, mandamus* and prohibition, as well as a certain writ, i.e. *habeas corpus*, and this list was by no means intended to be exclusive.[23] However, under Order 6 Rule 2 any party disobeying a court order may be subject to imprisonment.[24]

In *Dele Giwa v. Inspector General of Police*,[25] the court awarded monetary compensation to the applicant who had been illegally detained by the police and a public apology was also offered to the applicant. In the Court of Appeal's decision in *Adeyemi Candide-Johnson v. Mrs Esther Edigin,*[26] the propriety of monetary compensation in fundamental rights violation cases was confirmed; also in *Minister of Internal Affairs v. Shugaba*,[27] the Supreme Court stated as follows: *'...in cases involving an infraction of fundamental rights of a citizen, the court ought to award such damages as would serve as a deterrent against naked, arrogant, arbitrary and oppressive abuse of power…However, such award must not be excessive.'*

In other words, the courts will permit the recovery of damages for violation of rights in addition to the traditional remedies of *certiorari*, *mandamus*, prohibition, declarations and injunctions.

3. Obstacles to effective human rights enforcement

Despite a constitutional bill of rights and the availability of a specific procedure for fundamental rights enforcement in Nigeria, people living in poverty are confronted with enormous obstacles that stand in the way of their accessing justice for the enforcement of their rights. Some of the main problems are ignorance and illiteracy, procedural complexity, the cost of legal procedures, the strict interpretation of *locus standi* rules, corruption, the

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[21] Justice Philip Nnaemeka-Agu, *The Role of Lawyers in the Protection and Advancement of Human Rights*, a paper presented during the Law Week Celebration of the Nigerian Bar Association, Imo State, 10 February, 1992 p. 21, cited in Constitutional Rights Project (2006), op.cit p. 31.

[22] [1980] Suit No. M/21/80 decision of the State High Court, Abeokuta, cited in Fewehinmi, *Nigerian Law of Habeas Corpus*, p 259 at 307, also referred to in Constitutional Rights Project (2006), op. cit. p. 32.

[23] Constitutional Rights Project (2006), op. cit. p. 32.

[24] *Fame Publications Ltd. v. Encomium Ventures Ltd.* [2000] 8 N.W.L.R. (Pt.667) p. 105.

[25] Unreported Suit No FHC/12C/83, cited in Gani Fawehinmi (1989), *Nigerian Press under the Constitution and the Criminal Laws*, Nigerian Law Publications Ltd., p. C479.

[26] [1991] 1 N.W.L.R. (Pt. 129) 659.

[27] [1982] 3 N.C.L.R. 915 at 928, per Karibi-Whyte, JSC.

inefficient administration of justice, lack of assertiveness of rights holders, and lack of trust in the justice system.

3.1 Ignorance/illiteracy

In the words of Justice Suleiman Galadima, JCA, *'The Constitution may be a common document to those in the course of whose activities it is a regular feature. However, it is no gainsaying that a majority of Nigerians do not know what rights they have, enshrined in the Constitution…'*[28] Ignorance and illiteracy are indeed major obstacles to fundamental rights awareness and enforcement in Nigeria. The Nigerian Constitution is written only in the country's official language, which is English and has not been translated into the major local languages spoken by the local people. Thus, given the level of illiteracy in Nigeria[29] illiterates and even functional illiterates[30] are generally not aware of their fundamental rights as provided in the Constitution or have no knowledge of human rights generally. An individual can hardly enforce rights he/she is ignorant of or take up the cause of others without being aware of those rights.
In Nigeria's 2006 Sixth periodic report to the CEDAW, it was moreover observed that the use of the English language, rather than local languages as the communication medium in court and the complex nature of the court system are barriers to women accessing justice in Nigeria.[31] The same barriers apply to men as well.

3.2 Procedural Complexity

In the 2006 Assessment of the Integrity and Capacity of the Justice System in three Nigerian States by the United Nations Office on Drugs and Crime, the report indicated that the biggest obstacle to using the courts as perceived by the people is the complexity of the process of courts.[32] As the above overview of the Rules makes clear, the procedure is complex and highly technical, which makes it difficult to understand for an average person. Apart from the fact that illiterates cannot comprehend such provisions, a poor but literate person is likely to find it impossible to successfully go through a procedure without the services of counsel - an expense he/she may be unable to meet.

3.3 Costs-filing, service fees, legal fees, transport costs

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[28] Olisa Agbakoba, SAN and Stanley Ibe (2004*), Travesty of Justice. An Advocacy Manual Against the Holding Charge*, The Human Rights Law Service, Lagos, p. 4.

[29] An expert report in September 2007 has it that 'there are still about 60 million adults in Nigeria, 85 percent of them under the age of 35 years who can neither read nor write'. See Kelechi Okoronkwo and Nkechi Onyedika, *Illiteracy still high in Nigeria, says experts*, The Guardian, 27 September 2007 at <http://www.guardiannewsngr.com/news/article08> accessed 27 Sept. 2007; Reuben Abati, *Dynasties of poverty and educational challenge*, The Guardian, 4 May 2008. <http://odili.net/news/source/2008/may/4/18.html> accessed 5 May 2008.

[30] A person is functionally illiterate if he cannot engage in all those activities in which literacy is required for effective functioning of his group and community and also for enabling him to continue to use reading, writing and calculation for his own and the community's development. See the Organisation for Economic Co-Operation and Development (OECD), Functionally Illiterate, <http://stats.oecd.org/glossary/detail.asp?ID=1279> accessed 10 April 2008.

[31] CEDAW/C/NGA/6 of 5 October 2006.

[32] United Nations Office on Drugs and Crime (2006), *Assessment of the Integrity and Capacity of the Justice System in Three Nigerian States*, Technical Assessment Report, January, 2006, United Nations, New York, p. 33.

Nigeria's 2006 Sixth periodic report to CEDAW earlier referred to, mentions the high cost of litigation, including lawyers' fees, and the inaccessibility of courts of law due to their locations coupled with poor transportation systems as major inhibitive factors for poor/rural women having access to justice.[33] This report is reflective of the challenge faced by people living in poverty in Nigeria irrespective of gender.

Protecting or enforcing one's right in a court of law in Nigeria can be very expensive. Litigants have to bear several costs, such as filing fees - which in some cases depend on the claim of the plaintiff. An additional cost that should not be underestimated is that of transportation to and from court, at each sitting. For people living in poverty, access to justice can indeed be hindered by the impossibility to physically reach the court building. The inability of people living in poverty to bear any expense for transport often constrains people to walk to the court.[34] The cost of attending court sittings, either as a witness for prosecution in criminal matters or as plaintiff in civil matters can be challenging. The Director of Public Prosecutions (DPP) at a State Ministry of Justice stated in an interview with the authors that sometimes she has to pay transportation costs for poor people to attend court to give evidence in matters in which they are the victims. The DPP added that the government has to resort to rendering this financial assistance because victims have been seen to abandon prosecution of crimes owing to their inability to afford the cost of attending court sittings.

In many states of the federation, the costs of filing fundamental rights enforcement cases are unduly high. In Lagos State High Court, for an action to be filed for a fundamental rights enforcement, a litigant might pay about N7, 500 (approx $60); to file a simple motion costs N350 (approx $3), while no payment is required for a claim for a liquidated sum. The Federal High Court fees have recently become astronomical: to file a new action may cost about N50,000 (approx $400) if one is making a monetary claim, while a simple motion costs about N330 (approx $3),[35] in a country where the minimum wage is N7,500 (approx $60), and the majority of the people live below the poverty level. In cases of appeal, the appellant has to contend with various fees.[36]

Where a matter being filed includes a claim for a specified sum at the Federal level, some State High Courts require that prospective plaintiffs should pay a certain percentage of that amount in addition to the filing fees. It would seem more reasonable that such percentage should be payable after judgment has been entered for the plaintiff and the judgment is to be executed, not before filing the action.

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[33] CEDAW/C/NGA/6 of 5 October 2006, p. 100.

[34] The extreme poor's lack of resources of livelihood or means to approach or even reach court has been described as the biggest obstacle to justice. See Justice R. K. Abichandani, *Obstacles to Justice and the Suffering Humanity*, <http://gujarathighcourt.nic.in/Articles/accesstojustice.htm> accessed 21 August 2007.

[35] Under Order 53 Rule 1(1) of the Federal High Court (Civil Procedure) Rules 2000, fees set out in Appendix 2 to the Rules ranging from recovery of a specified sum - not exceeding N20,000 (approx $160) a filing fee of N1,000 (approx $8) is payable, for claims exceeding N20,000 but not exceeding N100,000 (approx $800) the sum of N1,500 (approx $12) is payable, while for claims exceeding N100,000 but not above N1,000,000 (approx $8,000) a filing fee of N2,500 (approx $20) is payable, up to a maximum filing fee of N50,000 (approx $400). Originating summons costs about N680 (approx $5), while a motion on notice also costs about N330 (approx $3), and an *ex parte* motion costs as much as that on notice. All are exclusive of the costs of service, which is calculated per distance, but not less than N100 (approx $0.8) per each. In other cases, the fees for different motions may increase upwards, depending on the type of application being filed, such that application for a writ of Habeas Corpus is N500 (approx $4). An aggregation of these fees may be payable by a party filing a suit for the enforcement of his fundamental rights if he is claiming damages for the violation of his right.

[36] Such as the filing fee for a motion for leave to appeal; if appeal is not as of right, a filing fee for notice of appeal where leave is granted, and other filing fees as may be necessary. The fees are specified in the Third Schedule to the Court of Appeal Rules 2002 under Fees in Civil and Criminal Matters, Order 1, Rule 5 and they range from N500 (approx $4) to N100 (approx $0.8) per filing of each motion.

Then there is the cost of legal counsel. Engaging the services of a lawyer in fundamental rights enforcement cases will cost not less than N50,000 (approximately $400).[37] This amount is exclusive of the cost of filing, service and other administrative expenses to be borne by the prospective applicant. In a Technical Report on the Nigerian Court Procedures Project conducted in 2001, litigants generally expressed the view (74.2 percent of the data collected) that lawyers' fees are excessive for poor citizens.[38]

3.4 Strict application of *locus standi* rule

Locus standi deals with the right or competence of a person to institute proceedings in a court of law for redress or assertion of a right enforceable in law. This concept is predicated on the assumption that no court is obliged to provide for a claim in which the applicant has a remote, hypothetical or no interest. In fundamental rights enforcement cases, it is the person whose right has been, is being or is likely to be breached who can bring such an action to court in Nigeria.[39]

The constitutional basis for the *locus standi* rule in Nigeria can be found in Section 6(6)(b) of the 1999 Constitution, in respect of which someone can only approach the court 'for the determination of any question as to the civil rights and obligations of that person', such that only the person whose right is threatened or infringed can apply to court for redress.[40] The courts in Nigeria have been strict on the application of this rule. The court will thus not ordinarily entertain an action that is brought on behalf of another person, irrespective of the social status of the person.[41] This has created major impediments for human rights NGOs or individual activists to bring actions to enforce generic or group rights. Even individual victims rarely succeed because they have to show a personal interest over and above the interests of members of the general public. Nigeria's apex court has adopted a strict conservatism to the issue of *locus standi* on the premise that liberalizing on this front will open the floodgate of litigation to busybodies.[42] Yet the consequence of the *Adesanya* ruling has been to frustrate the enforcement of fundamental rights in Nigeria for people living in poverty by public spirited people,[43] and hence shutting out people living in poverty with a cause from justice.[44]

The Supreme Court attempted to broaden the restrictive interpretation of *locus standi* as enunciated in *Adesaya*'s case in its decisions in *Fawehinmi v. Akilu* and *Fawehinmi v. Akilu*

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[37] Interviews with Nigerian lawyers revealed that to brief a counsel to handle a fundamental rights enforcement matter in court will cost not less than N50,000 (about $400), in counsel fees alone.

[38] I.A. Ayua, and D.A. Guobadia (eds) (2001), *Technical Report on the Nigerian Court Procedures Project, including Proposal for Reform of the High Court of Lagos State Civil Procedure Rules*, Nigerian Institute of Advanced Legal Studies, Lagos, p. 43.

[39] *Shugaba v. Attorney General of Federation*, [1982] 3 N.LCL.R. p.895; *University of Ilorin v. Oluwadare*, [2003] 3 N.W.L.R. (Pt.806) p.557. See further, Akin Ibidapo-Obe, *Enforcement of Rights and the Problem of Locus Standi in Nigeria*, (2003) 2 UNAD L.J. 113-132, p. 120.

[40] Related to this provision are sections 36(1) and 46. Section 36(1) deals with the right to fair hearing and provides for someone's 'determination of his civil rights and obligations', while section 46 provides for the right of anyone to go to court for 'any person who alleges that any of the provisions of the Constitution has been, or is being or likely to be contrived' …for redress.'

[41] *Adesanya v. President of Nigeria* [1981] 2 NCLR 358.

[42] *Adesanya v. President of Nigeria (supra) In Senator Abraham Adesanya v. The President of the Federal Republic of Nigeria*, (1981) 1 All N.L.R. (Part I) 1).

[43] Chinonye Obiagwu and Chidi Anselm Odinkalu, "Combating Legacies of Colonialism and Militarism", in Abdullahi Ahmed An-Na'im (ed.) (2003) *Human Rights under African Constitutions; Realizing the Promise for Ourselves*, University of Pennsylvania Press,. p. 233.

[44] Hon Justice Kayode Eso (1990), *Thoughts on Law and Jurisprudence*, MIJ Professional Publishers, Lagos, p. 109.

(No.2).[45] Unfortunately however the apex court in doing this distinguished between civil and criminal cases, with the effect that only in criminal matters the rule is somewhat liberalized.[46] Even in criminal matters, the courts still require a party to disclose a personal interest or a close bond with the victim of the rights violation.[47]

In the 2006 case of *Theophilus Uwalaka & 2 Ors v. Police Service Commission,*[48] a human rights NGO instituted an action on behalf of two others as applicants, seeking an order of *mandamus* to compel the respondent to investigate the allegation of bribery/extortion and other investigative malpractices alleged against some police officers, which the respondent had refused or neglected to investigate. The court held that the NGO had no *locus standi* to institute the action for itself and on behalf of the 1st and 2nd applicants, as its civil rights or obligations were not in danger. The case typifies the setback that the issue of *locus standi* is giving to human rights NGOs in their bid to assist the indigent to enforce their rights.

It has been argued that 'there should be a very broad and liberal interpretation of Section 6(6) to make it accord with the preamble to the Constitution and a relax of the extreme legalism and the undue rigidity involved in the concept of *locus standi* at least where constitutional issues are called in question…'[49] Given the divergent interpretations of *locus standi* in some of the cases that have come before the apex court in Nigeria,[50] it has moreover been suggested that section 6(6) be amended to put the controversies to rest, and in order to allow more access to the court in constitutional matters.[51]

3.5 Lack of Assertiveness

Under the Draft Guidelines on a Human Rights Approach to Poverty Reduction Strategies, (Guideline 13 on the right of equal access to justice), it was noted that the most important tool for people living in poverty to defend themselves against human rights abuses is court protection, yet that even if legal assistance is provided for them, they often lack the capacity to assert themselves in court.[52] Indeed, people living in poverty suffer exclusion, and the lack of a voice as a result of poverty so that even if they have access to courts,[53] they often lack the necessary assertiveness to have their human rights enforced.[54]

In a developing country such as Nigeria, the legal process – and in particular the adversarial procedure - tends to intimidate the litigant, who feels alienated from the system. A poor

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[45] [1989] 2 NWLR (Pt. 102) p. 122.

[46] This is because the narrow confines which section 6(6)(b) restricts have already been broadened by the Criminal Code, the Criminal Procedure Law and the Constitution of Nigeria 1979, based on the various powers of arrest and prosecution conferred by the various sections of the Criminal Procedure Law and the Criminal Code on 'any person'. Private persons can initiate criminal proceedings as provided in s. 59(1) of the Criminal Procedure Act and s. 143(d) of the Criminal Procedure Code.

[47] *Fawehinmi v. Akilu (No.2)* . [1989] 2 NWLR (Pt. 102) p. 122.

[48] Unreported Suit No. FHC/ABJ/M570/2005, Ruling delivered on 11 July, 2006 by Hon. Justice B.O. Kuewumi, Federal High Court, Abuja.

[49] Hon Justice Kayode Eso (1990), op cit p. 211.

[50] *Abraham Adesanya v. The President*, (supra) and *Col. Haliliu & Anor v. Gani Fawehinmi (NO. 2)* (1989) 2 NWLR (Pt. 102) 122.

[51] Hon Justice Kayode Eso (1990), op cit p. 109.

[52] Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies, Guideline 13 para 192 <http://www.unhchr.ch/development/povertyfinal.html#guid13> accessed 12 August 2007.

[53] In Nigeria's 2006 report to CEDAW (CEDAW/C/NGA/6, p 98), lack of capacities for asserting rights was noted as one of the factors responsible for the limited access to justice among rural women.

[54] Wouter Vandenhole, "Human Rights Law, Development and Social Action Litigation in India", *Asia-Pacific Journal on Human Rights and the Law* 2: 136-210, 2002 p. 177.

person who enters the legal system, whether as a litigant, a witness or a party, may well find the experience traumatic.[55]

3.6 Corruption

The incidence of corruption which has plagued the judicial system in Nigeria relates to unofficial payments to judges, lawyers, court staff and police with the purpose of obtaining favourable judgments.[56]

Corruption in the justice administration system in Nigeria takes many forms. These include the acceptance of gratification or other considerations by the presiding judge or magistrate to influence the decision in the case in favour of one of the parties, collusion between litigants (often the plaintiffs) and the court bailiffs, faking actual service of court process and forged endorsements of service in the court records, with the aim of ensuring the non-appearance of the defendant to defend the suit, such that the plaintiff can obtain default judgment against the real defendant, who has no knowledge of the suit.[57]

Also, corrupt practices may characterize every stage of filing and processing new suits before they are assigned for hearing. Litigants may have to pay bribes to court officials for speedy processing of their matters, to get the suit officially recorded in the Registry, to get a writ issued, signed and endorsed, to get bailiffs to effect service of court processes and file necessary affidavits of service, to obtain assignment of cases to the appropriate judge and to fix a date for mentioning of the case in court.[58] The various stages of filing and actual assignment of cases for hearing may be subject to corrupt practices by litigants and their lawyers who offer gratification to court officials and in some cases to the judicial officers themselves, for the purpose of facilitating speedy processing of a procedure or to obstruct or delay its processing. The choice of judge or magistrate who is to hear the matter may be influenced, with the aim of perverting the course of justice. In criminal matters, corrupt practices also influence the granting or refusal of bail to accused persons. Bail may sometimes depend on the ability to pay gratification, while accused persons who cannot pay may be denied bail or be given onerous bail conditions, which may be difficult to fulfil.[59]

Court bailiffs, who are central to service of court processes and the execution of judgments in Nigeria have been particularly identified as the most mischievous and corrupt personnel of the judiciary, who act as barriers to speedy trials and dispensation of justice.[60]

The Justice Kayode Esho Judicial Panel set up in December 1993 by the late dictator, General Sani Abacha, investigated various allegations of corruption against some judicial officers in Nigeria. The Panel issued a damning report against some judicial officers, and recommended the "withdrawal" of 47 judicial officers comprising eight Chief Judges, 21 High Court Judges and 18 Magistrates.[61] The report of the Panel was not considered by the government until

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[55] Ashok H. Desai and S. Muralidhar, "Public Interest Litigation: Potentials and Problems", in B.H. Kirpal et al. (eds) (2001), *Supreme but not Infallible – Essays in Honour of the Supreme Court of India*, Oxford University Press, p. 3

[56] United Nations Office on Drugs and Crime, Assessment of the Integrity and Capacity of the Justice System in three Nigerian States, Technical Assessment Report, 2006, United Nations, New York, 2006 p. 29.

[57] A. A. Adeyemi, "The Impact of Corruption on the Administration of Justice in Nigeria", in I.A. Ayua and D.A. Guobadia (eds) (2001), *Political Reform and Economic Recovery in Nigeria*, Nigerian Institute of Advanced Legal Studies, Lagos p. 681.

[58] Ibid at p. 682.

[59] Ibid at p. 685.

[60] I.A. Ayua, and D.A. Guobadia (eds) (2001), *Technical Report on the Nigerian Procedures Project*, op. cit. p. 40.

[61] Eddy Odivwri and Lilian Okenwa, *Six Judges May be Sacked as FG implements Kayode Esho panel report,* This Day, 16th November, 2004; www.thisdayonline.com/archive/2002/09/26/20020926news07.html ; Justice

eight years later,[62] during the regime of Olusegun Obasanjo. As a result of the long delay, the National Judicial Council (NJC)[63] set up another five-man committee which later reviewed the recommendations of the Esho Panel report and confirmed the indictment of two Chief Judges and four High Court Judges, while absolving two other judges of blame.[64]

Official findings of corruption in the Nigerian justice system abound. In the 2006 Assessment of the Integrity and Capacity of the Justice System in three Nigerian States by the United Nations Office on Drugs and Crime, one of the findings was that 'the more corruption the less the trust; the less trust the more people accept bribery as a given fact when dealing with justice sector institutions.'[65] In the technical report on the Nigerian Court Procedures Project, corrupt personnel among lawyers, litigants and judges were generally agreed as one of the main causes of trial delays and denial of justice in the civil justice system[66] in Nigeria.[67] Likewise, in the Annual Report of Nigeria's Public Complaints Commission,[68] some of the complaints handled included allegations of extortion by court officials, demand for gratifications and suppression of appeal by a judicial officer.[69]

As noted above, corruption in whatever form affects people living in poverty most, and shuts them out from access to justice. Moreover, public perceptions of the integrity and performance of the justice system are crucial to maintaining respect for the rule of law and the role of the courts in a healthy democracy.[70] Having one's case before an independent and impartial court or institution is an integral part of the right to a fair hearing.[71] Lack of impartiality and independence of the judiciary is often linked to corruption. In fact, widespread corruption subverts the entire formal legal system.[72]

3.7 Inefficient Administration of Justice

Observatory, *Justice Babalakin Review Committee on Eso Panel's Report: Claims of Fair Hearing Denials are Mischievous*, Access to Justice, Lagos 2004 pp. 57-63.

[62] The delay occasioned by the government in implementing the recommendations of the Kayode Esho Panel report had resulted in some of the indicted judicial officers being able to escape justice one way or the other, as four of the chief judges recommended for removal had died, while 13 of the judges had retired from service by February 2001 when the National Judicial Council began consideration of the recommendations of the Kyode Esho Panel. See Eddy Odivwri and Lilian Okenwa, op cit.

[63] A body established by the 1999 Constitution for the appointment, discipline and removal of judicial officers in Nigeria. See section 153(1).

[64] Eddy Odivwri and Lilian Okenwa, op cit.

[65] United Nations Office on Drugs and Crime, Assessment of the Integrity and Capacity of the Justice System in three Nigerian States, Technical Assessment Report, 2006, United Nations, New York, 2006 p. 33.

[66] I.A. Ayua, and D.A. Guobadia (eds) (2001), *Technical Report on the Nigerian Procedures Project,* op. cit. Table 2 and pp. 28 and 39.

[67] Others are inadequate personnel, poorly trained personnel, poor administrative organization, inadequate infrastructure and resources, deficiency in the system of assigning cases, poor office and court administration by judges, tardiness on the part of counsel, abuse of court procedures, poor conditions of service, inadequate use of time saving procedures and too many cases. See I.A. Ayua, and D.A. Guobadia (eds), see I.A. Ayua, and D.A. Guobadia (eds) (2001), *Technical Report on the Nigerian Procedures Project,* op. cit. pp. 28-29 Tables 2 and 3.

[68] The Nigeria's Public Complaints Commission, established in 1975 through Decree No. 31 of 1975 as amended by Decree No. 21 of 1979. The Decree was entrenched in the 1979 Constitution and is now Cap. 377 Laws of the Federation 1990 which is the only body by law which has investigative power over the courts.

[69] See The Public Complaints Commission Annual Reports for 2004 and 2005.

[70] Ivor Richardson, "The Courts and Access to Justice", 31 *Victoria U. Wellington L. Rev.* 164 (2000) at p. 172.

[71] Budlender, Geoff, "Access to Courts", 121 S. *African L.J.* 339 (2004) p. 340.

[72] S. Muralidhar, "Judicial Enforcement of Economic and Social Rights: The Indian Scenario", in Fons Coomans (ed.) (2006), *Justiciability of Economic and Social Rights: Experiences from Domestic Systems*, Intersentia, Antwerpen-Oxford, p. 262.

Probably the greatest problem with the Nigerian judiciary is the excruciatingly slow pace of justice – as a result of which parties have to be present in courts on countless occasions from the filing of the case before its actual conclusion.[73] The Rules were made not only as a guide for bringing fundamental rights enforcement actions, but essentially for speedier hearing of cases compared to other civil cases. In the technical report on the Nigerian Court Procedures Project conducted in 2001, it was found that civil matters such as personal injuries/tort cases take an average of 3.4 years to be disposed of while family disputes and divorce cases take 2.5 years to conclude.[74]

The said technical report also found that numerous actual delays in civil proceedings can cause a matter to be protracted to between 7 to 20 years.[75] The case of *Wilson Bolaji Olaleye v. NNPC,*[76] for instance took 13 years before judgment was given and damages awarded to a dead victim of a kerosene explosion and his dependants. In *Ariori v. Elemo,*[77] the Supreme Court of Nigeria ordered a retrial *de novo* of the case after 20 years of litigation on the ground that the trial High Court's inordinate delay (of 15 years) had occasioned a miscarriage of justice. The report noted other causes of prolonged delays when matters are adjourned *sine die*.[78] Trial courts often resort to this procedure when they are awaiting the decision of a superior court (the Supreme Court in most cases) in matters in which issues in respect of interlocutory appeals are pending.[79]The effect of the slow pace of justice affects people living in poverty most, as they cannot fund litigation spanning over a long period of time. A fundamental rights enforcement case may last for an average of five years or may even be prolonged for as long as the rich defendant wants.

Affirming the adverse effect of the inefficient administration of justice in Nigeria, Hon. Justice T. Akinola Aguda stated as follows: *'The whole system of administration of justice is heavily weighted against the vast majority of the people, who are unable to afford the expense of any search after justice. If however the poor is foolhardy enough to enter the temple of justice, he and his family may regret it for the rest of their lives. For in the process-in the pursuit of what he considers to be just- he may become bankrupt and die a pauper. Because, no matter how little a claim may be if one of the parties is a wealthy person or is the State, such a case may traverse eight courts in between 5 and 20 years'*.[80]

Criminal trials in Nigeria are also bogged down by inordinate delay.[81] Poor accused persons are the worst affected by having to spend long periods in detention awaiting trial,[82] especially owing to an inability to afford legal representation. The 2005 Report of the National Working

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[73] United Nations Office on Drugs and Crime, Assessment of the Integrity and Capacity of the Justice System in three Nigerian States, Technical Assessment Report, 2006, United Nations, New York, 2006 p. 17.

[74] I.A. Ayua, and D.A. Guobadia (eds) (2001), *Technical Report on the Nigerian Procedures Project*, op. cit. p. 23.

[75] Ibid.

[76] Reported summarily in The Guardian of Thursday 3rd July, 1997 and cited in I.A. Ayua, and D.A. Guobadia (eds) (2001), *Technical Report on the Nigerian Procedures Project*, op. cit. p. 23.

[77] (1981) 1 S.C.N.L. 1 commented upon in I.A. Ayua, and D.A. Guobadia (eds) (2001), *Technical Report on the Nigerian Procedures Project*, op. cit. p. 23.

[78] Ibid at p. 24.

[79] Ibid.

[80] See Hon. Dr. T. Akinola Aguda (1987), *The Jurisprudence of Unequal Justice*, A Foundational Lecture delivered at the Lagos State University, pp. 4 and 6.

[81] In *Garba v. The State*, [1972] 4 S.C. p 118, the Supreme Court of Nigeria condemned the inordinate period of two years and two months which the appellant spent in custody before trial. Presently, accused persons spend between five and over ten years in custody before they are tried or released.

[82] In *Saidu v. The State*, [1982] 4 S.C. p.41, cited in Olisa Agbakoba, SAN and Stanley Ibe (2004) , op. cit. p. 46 the Supreme Court of Nigeria condemned the long period of detention of awaiting trials and stated as follows: '*It does not give the court any joy to see offenders escape the penalty they richly deserve, but until they are proved guilty under the appropriate law in our law courts, they are entitled to walk about in our streets and tread the Nigerian soil and breathe the Nigerian air as free as innocent men and women'.*

Group on Prison Reforms and Decongestions,[83] indicated that 64 percent of the inmates of Nigerian prisons are awaiting trial, and that most spend between two to fifteen years in prison awaiting trial.

However, in the High Court of Lagos State of Nigeria, the case flow in civil litigation has been streamlined, improved and automated, under the Civil Process Improvement & Automation Project commenced in 2006.[84] Under this project, the entire civil litigation case flow from filing to final disposition has been improved upon through the Court Automated Information Management System (CAIS). Disposition standards of fundamental rights cases have now been put at within 6 months, while other general civil cases are said to be concluded within 12 months.[85] It is to be noted that the CAIS only covers a few of the judicial divisions in the State.[86] Moreover, in interviews with the authors, lawyers, human rights activists and human rights NGOs in Lagos State claimed that in practice, fundamental rights cases are not concluded within 6 months as stipulated and expressed the view that the situation has only improved marginally.

In a 2006 technical assessment of the Integrity and Capacity of the Justice System earlier referred to, the report indicated that the length of trial was the most serious problem of the country's justice system when compared with other factors hampering justice delivery.[87] In its findings, the report stated that 'Court users who had more negative perceptions and experience when it came to seeking access to justice, were likely not to use the courts when needed', and that 'inefficient courts are likely to encourage citizens not to seek solutions in accordance with the law but to resort to other, often illicit, means including corruption'.[88]

3.8 Mistrust

In his final report in 1996, the Special Rapporteur on human rights and extreme poverty, Leandro Despouy, in addition to some of the issues raised above,[89] included mistrust among the obstacles barring access to justice for the very poor. He stated that this stemmed from their experience of the justice system.[90] According to the Special Rapporteur, 'Whether they are defendants or accused, they often see their petitions turned against them: "There is a strong possibility that they would be reproached with some unlawful aspect of everyday life quite unrelated to the grounds for the petition; the poorest have learned that, in seeking their due in a given matter, it is often preferable not to be in the wrong in some other respect".[91]

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[83] Report of the National Working Group on Prison Reforms and Decongestion, February, 2005, Federal Republic of Nigeria, pp. 6-7.

[84] Key advantages and benefits of the Lagos CAIS to stakeholders in the administration of justice in Lagos state <www.lagosjudiciary.gov.ng/d003/main.aspx?dbName=DB_News192>.

[85] Key advantages and benefits of the Lagos CAIS to stakeholders in the administration of justice in Lagos state,.Disposition standards of other civil matters, such as matrimonial causes will be concluded within 3 months (undefended), defended within 12 months, while probate and other matters will be concluded within 18 months, revenue matters within 6 months, commercial matters within 12 months and land matters within 24 months.

[86] Lagos, Ikeja, Ikorodu and Badagry.

[87] United Nations Office on Drugs and Crime (2006), *Assessment of the Integrity and Capacity of the Justice System in three Nigerian States*, op. cit. p. 20.

[88] Ibid at pp. 20 and 22.

[89] The Special Rapportuer gave six obstacles as some of those barring the poor from access to justice; these are: (i) their indigent condition; (ii) illiteracy and lack of education and information; (iii) the complexity of procedures; (iv) mistrust; (v) the slow pace of justice, and (vi) in many countries, the fact that they are not allowed to be accompanied or represented by solidarity associations which could also bring criminal indemnification proceedings. See Special Rapporteur, Mr. Leandro Despouy's final report on human rights and extreme poverty published in 1996 (E/CN.4/Sub.2/1996/13), para 163.

[90] Special Rapporteur, Mr. Leandro Despouy's final report (E/CN.4/Sub.2/1996/13), para 163.

[91] Ibid.

In the technical report on the Nigerian Court Procedures Project referred to above, it was generally agreed among litigants and lawyers that people living in poverty are not fairly treated by the civil justice system in Nigeria.[92] There is consequently a low level of public trust in the courts and declining willingness of citizens to use the courts to protect their rights.[93] Thus people living in poverty do not access the legal system willingly unless they are forced into it as an accused or as a defendant in a law suit.[94] They see the law as an instrument of oppression and try to avoid it.[95]

4. Improving Human Rights Enforcement in Nigeria Through Access to Justice

Access to justice is crucial to human rights enforcement, and is increasingly recognized as a component of poverty reduction programmes.[96] Yet for people living in poverty in Nigeria today, access to justice for the enforcement of their human rights is the exception rather than the rule. Improving access to justice requires reforms in the justice system. These should be based on the lessons learned by other states that are confronted with similar problems. In particular, the Indian experience with Public Interest Litigation is worth examining.

4.1. Judicial Reforms

As discussed above, litigation in Nigeria is associated with inordinate delays. This problem is further compounded by the long trajectory of a case through the judicial hierarchy from the High Court to the Court of Appeal and then to the Supreme Court. The current chain or hierarchy of courts in Nigeria may unduly prolong both litigation and prosecution in criminal trials, especially in view of the slow pace of the administration of the justice system.

Timely dispensation of justice may be facilitated by justice sector reforms that would shorten the length of judicial ladders to be traversed in order to exhaust judicial remedies.

One option for such a reform is the elimination of the Court of Appeal from the current judicial hierarchy in Nigeria, with the High Court and Supreme Court remaining as the only superior courts of record. As a result appeals would lie directly from the High Court, which is the court of first instance in human rights cases, to the Supreme Court, which is the final court. Alternatively, the Court of Appeal might continue to exist, but be bypassed in constitutional and human rights cases.

A third scenario is the establishment of a Constitutional Court with competence in constitutional and human rights matters. This would relieve the Supreme Court of Nigeria from the burden of workload which results from its serving as the final appellate court on all legal and constitutional matters. An additional benefit of this scenario would be that a constitutional court is likely to pay special attention to human rights matters and to avoid excessive legalism in their interpretation.

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[92] I.A. Ayua and D.A. Guobadia (eds.) (2001), *Technical Project on the Nigerian Court Procedures Project*, op. cit. p. 21.

[93] United Nations Office on Drugs and Crime, Assessment of the Integrity and Capacity of the Justice System in three Nigerian States, op. cit. p. 27.

[94] S. Muralidhar, (Judicial Enforcement of Economic and Social Rights: The Indian Scenario", in Fons Coomans (ed.) (2006), op. cit. p. 261.

[95] Ibid at p. 262.

[96] E.g. UNDP (2004), *Access to Justice Practice Note*; UNDP (2005) *Programming Justice: Access for all, A Practioner's Guide to a Human Rights-Based Approach to Access to Justice*; see also Guideline 13 in Paul Hunt, Manfred Nowak and Siddiq Osmani (2002), Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies, http://www.unhchr.ch/development/povertyfinal.html#*

In addition, any proposed judicial reforms will require a thorough examination of the current justice system in order to determine where inordinate delays usually occur. The justice administration system should be completely overhauled to address inefficiency; and the rules of procedure should be reviewed to remove technicalities which breed delay.

4.2. Public Interest Litigation

Nigeria can learn from other developing countries that have been exploring ways to improve access to justice for people living in poverty. A particularly promising experience is that of Public Interest Litigation (PIL) in India. PIL as practised in India has been described as a doctrine of procedural relaxations in cases of human rights violations, in order to make both access to justice and furnishing of proof easier.[97] Through an innovative use of judicial power[98], it represents a classic example of the courts becoming directly involved in solving the problem of legal services to the poor through their court rules.[99] While the focus is mostly on procedural liberalizations, there is also a strong principled substance, leading for example to the finding that the State is under a constitutional obligation to see that there is no violation of the fundamental rights of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him.[100] PIL in India can thus be described as a platform for vindicating the rights of people living in poverty. Its main characteristics are the liberalization of rules of standing, the relaxation of procedural requirements of access, the appointment of commissioners for the purpose of gathering evidence, its non-adversarial nature, the innovative character of relief and remedies, and the Court's supervision of its own orders.

Locus standi liberalization

The Indian Supreme Court declared that the rules governing *locus standi*, developed by Anglo-Saxon jurisprudence, are manifestly uncongenial to the social and cultural setting of India.[101] Starting with the *locus classicus* decision in *S.P. Gupta v. Union of India*,[102] popularly known as the Judges' Transfer case, the *locus standi* of citizens to institute public interest cases before the Supreme Court was upheld. It became firmly established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of their constitutional or legal rights, and such person or determinate class of persons is by reason of poverty or disability in a socially or economically disadvantaged position and unable to approach the Court for relief, any member of the public or a social action group acting *bona fide* can maintain an application in a High Court or the Supreme Court seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.[103] The strict rule of *locus standi* therefore became relaxed in two

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[97] Wouter Vandenhole, "Human Rights Law, Development and Social Action Litigation in India", op. cit. p. 144.
[98] P.N. Bhagwati, "Judicial Activism and Public Interest Litigation", 23 *Colum.J.Tranat'l L*. 561 (1984-1985), at 572.
[99] Talbot D'Alemberte, "The Role of the Courts in Providing Legal Services: A Proposal to Provide Legal Access for the Poor", 17 *Fla.St.U.L.Rev.* 107 (1989-1990), at 108.
[100] *Bandhua Mukti Morcha V. Union of India*, (AIR 1984 S.C. 802; 1984 SCC (3) 161 para 3.
[101] G.L. Peirisp, "Public Interest Litigation in the Indian Subcontinent: Current Dimensions", 40 *Int'l Comp. L.Q.* 66 (1991) p. 68.
[102] 1981 Supp SCC 87; AIR 1982 SC 149.
[103] P.N. Bhagwati, op. cit. p. 571.

ways, representative standing and citizen standing.[104] Representative standing occurs in situations where a person is by reason of poverty or disability in a socially or economically disadvantaged position and unable to approach the Court for relief. In such cases, a third party is allowed to prosecute the matter on his behalf.[105] Citizen's standing is also granted to any member of the public with sufficient interest to maintain an action for redress of a public wrong or injury caused by an act or omission of the State or a public authority which is contrary to either the Constitution or the law.[106]

In sharp contract with the strict position of the Nigerian courts on locus standi as described above, the Indian Supreme Court has thus been making human rights truly 'human' by granting other people the legal right to defend the rights of fellow human beings.[107] Some Nigerian judges already see the benefit of locus standi liberalization. In *Ozekhome v. The President*,[108] the High Court in a rare move gave standing to a legal practitioner to sue on behalf of his clients who were being detained without trial by the then military government. As a decision of the High Court the case however cannot serve as precedent. Instead, a relaxation of locus standi rules through an amendment to section 6 (6) of the Nigerian Constitution is desirable.

Relaxation of procedural requirements of access

A related feature of Indian PIL is the Supreme Court's dispensing with formal writs drawn in legal language[109] despite the fact that there are formal rules for the filing of petitions.[110] The treating of ordinary letters, telegrams or even a post card[111] as a petition was initiated informally and followed on an *ad hoc* basis by some of the judges of the Indian apex Court. It became institutionalized by the Supreme Court in the case of *S.P. Gupta v. Union of India*, decided in December 1981.[112] The Court consequently held in this and a host of other cases[113] that procedure being merely a handmaiden of justice, it should not stand in the way of access to justice to the weaker sections of Indian humanity. It became established that where the poor and the disadvantaged are concerned, the Supreme Court will not insist on a regular writ petition, such that a simple letter addressed by a public spirited individual or a social action group acting *pro bono publico* would suffice to activate the jurisdiction of the court.[114] The court thus accepts letters[115] and telegrams.[116] This is irrespective of whether the letter was

[104] *D.C.Wadhwa v. State of Bihar*, AIR 1987 S.C. 579.
[105] *S.P. Gupta v. Union of India* (supra).
[106] Ibid.
[107] See Katarina Tomasevski, Sanctions and Human Rights, in Janusz Symonides (ed.), Ashgate Publishing Ltd. 2003 p. 316.
[108] [2002] 1 NPILR 345.
[109] S. Muralidhar, "Judicial Enforcement of Economic and Social Rights: The Indian Scenario", in Fons Coomans (ed.) (2006), op. cit. p. 241.
[110] Sandra Fredman (2008), *Human Rights Transformed: positive rights and positive duties*, Oxford University Press , p. 127.
[111] Wouter Vandenhole, "Human Rights Law, Development and Social Action Litigation in India", op. cit. p.152; P.N. Bhagwati, op. cit. p. 570.
[112] Ibid. See also P.N. Bhagwati, op. cit. p. 572.
[113] *People's Union for Democratic Rights v. Union of India*, (1983) 1 SC 1473: and *Bandhua Mukti Morcha v. Union of India*, (1984) 2 SCR 67: (AIR 1984 Sc 802).
[114] *M.C. Mehta v. Union of India*, Air 1987 SC 1086.
[115] *Ram Kumar Misra v. State of Bihar* (1984) 2 SCC 451cited in Ashok H. Desai and S. Muralidhar, "Public Interest Litigation: Potentials and Problems", in B.H. Kirpal et al. (eds) (2001), op. cit note 38.
[116] *Paramjit Kaur v. State of Punjab* (1996) 7 SCC 20 cited in Ashok H. Desai and S. Muralidhar, "Public Interest Litigation: Potentials and Problems", in B.H. Kirpal et al. (eds) (2001), op. cit. note 39.

addressed to the court or an individual judge.[117] 'The Supreme Court thus evolved what has come to be known as "epistolary jurisdiction".[118]

Meanwhile, in Nigeria, the procedure for fundamental rights enforcement remains technical, cumbersome and lawyer-centred as described above. The drawbacks of this system are accentuated by inconsistent judicial decisions some of which tend to strict adherence to procedural laws whereas others promote liberal construction of those laws. In *Raymond Dongtoe v. Civil Service Commission of Plateau State,*[119] the Supreme Court of Nigeria held that where a special procedure is prescribed for the enforcement of a particular right or remedy, non-compliance with or departure from such a procedure is fatal to the enforcement of that remedy.[120] This however conflicts with the earlier decision of the Supreme Court in *Saude v. Abdullahi,*[121] where it held that there are no clear words that the Rules were the only procedure by which redress could be sought. So adopting a particular procedure will not impeach the remedy sought. In that particular case, the originating summons was signed by the legal practitioner to the respondent instead of the presiding judge as required by the Rules, and it was held not to impeach the proceedings for the enforcement of fundamental rights.

This position rejecting excessive legalism was affirmed by the Court of Appeal in *Olisa Agbakoba v. The Director of State Security Service,*[122] where the Court held that the end purpose of the Rules is to ensure that where infringement of fundamental rights has been complained of or threatened, there is a speedy enforcement of such rights and simplification of the procedure for dealing with such complaints.

It is submitted that Nigerian courts should allow claimants in fundamental rights cases to come to court by any convenient means, without strict adherence to the Rules. It has been recognized that these Rules, first put in place in 1980, are due for a comprehensive review, to address the flaws in them and enable applicants to secure judicial redress with ease and without delay.[123]

Some Nigerian judges are already on this track. In *Alhaji Mohammed Shaaba Lafiaji v. Military Administrator of Kwara State,*[124] the High Court seemed to fully appreciate the importance of enforcing rights when it held that matters concerning the enforcement of fundamental rights of citizens are so important that the mode of access to courts to enforce these basic rights should not be restricted to one particular means nor the procedure used in the attainment of the enforcement of these basic rights be made cumbersome and technical. Also, in *Nnamdi Azikiwe University & Ors v. Nwafor,*[125] the Court of Appeal held that in order to render meaningful the provisions of the Constitution dealing with fundamental rights, the court should not be tied to the apron strings of the principle of practice and procedure governing trial of normal civil cases such as parties being bound by their pleadings,[126] and

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[117] In *Bandhua Mukti Morcha v.Union of India,* (supra) the petitioners had addressed a letter to Hon'ble Bhagwati, J. alleging a violation of their rights..

[118] *M.C. Mehta v. Union of India*, Air 1987 SC 1086.

[119] [2001] N.W.L.R. (Pt. 717) p. 132.

[120] Supporting this decision are, the Court of Appeal decision in *Abia State University v. Chima Anyaibe*, [1996] 1 N.W.L.R. (Pt. 439) p. 646; Supreme Court's decision in *Din v. Attorney General of Federation*, [1988] 4 N.W.L.R. (Pt. 87) p. 147.

[121] [1989] 4 N.W.L.R. (Pt. 116) p. 387 at p. 419 per Eso JSC.

[122] [1994] 6 N.W.L.R. (Pt. 351) p. 470 at p. 500.

[123] See Edoba B. Omoregie, *Enforcement of Fundamental Rights in Nigeria: Proposals for Reforms*, University of Benin Law Journal, (2005) 8 (1) U.B.L.J. pp. 100-105.

[124] [1995] F.H.C.L.R. 321.

[125] [1999] 1 N.W.L.R. (Pt. 585) p. 116 at p. 133 per Salami JCA.

[126] As enunciated in the cases of *Emegokwue v. Okadigbo* (1973) 4 S.C. 113 and *Olabanji v. Ajiboye* (1992) 1 N.W.L.R. (Pt. 218) 473 at 485.

that in the matter of enforcement of the fundamental rights, courts are less slavish to the rules of court; rather they use them as a handmaiden to do substantial justice.
The next step would be for the Supreme Court to reverse its decision in *Raymond Dongtoe.*[127]

Non-adversarial system of evidence through expert committees

The Indian Supreme Court moreover reasoned that where one of the parties to litigation is weak and helpless and does not possess adequate social and material resources, he or she is bound to be at a disadvantage under the adversarial system, not only because of the difficulty in getting competent legal representation, but more than anything else because of the inability to produce relevant evidence before the Court. It was obvious to the court that the problem of proof presents difficulties to vindicate the rights of the poor.[128] This led to the practice of appointing diverse people such as lawyers, professors of law, court officials, journalists, bureaucrats, district judges, mental health professionals, experts and bodies of experts as commissioners in order to gather material facts on behalf of the poor petitioner(s)[129] and to make a report to the court, which might also contain recommendations.[130] This practice of appointing socio-legal commissions of inquiry for the purpose of gathering relevant evidence was institutionalized by reason of the judgment of the Supreme Court in *Bandhua Mutki Morcha v. Union of India.*[131] The reports of the commissioners serve as *prima facie* evidence of the facts and data stated in those reports, although it is left for the court to determine what weight it should attach to those in light of the various affidavits filed in the proceedings.[132] Moreover, the role played by the Court under PIL in India is more assertive than in traditional actions[133] as the 'judge is given a greater participatory role in trials so as to place the poor as far as possible on a footing of equality with the rich in the administration of justice'.[134]
In Nigeria on the other hand, courts adhere strictly to the adversarial procedure inherited from Britain, where the court is seen as an unbiased umpire who must not descend into the arena of justice. As a result, the burden of proof remains a serious hurdle for people living in poverty in Nigeria who wish to enforce their fundamental rights.
Another important aspect of PIL that deserves to be mentioned is the practice by courts of appointing lawyers – including very senior lawyers- as *amicus curiae*. Where PIL is initiated in person, the courts also appoint lawyers to act as *amicus curiae* thus indirectly providing legal aid to the poor.[135] They assist the court to sift out relevant facts from documents and pleadings, bring out the legal issues involved, narrow down the issues and sharpen the focus of discussion.[136] The lawyers discharge this duty professionally without charging a fee, and

[127] Supra.
[128] P.N. Bhagwati, op. cit. p. 573; see also *Bandhua Mukti Morcha v. Union of India* (supra).
[129] Ashok H. Desai and S. Muralidhar, "Public Interest Litigation: Potentials and Problems", in B.H. Kirpal et al. (eds) (2001), op. cit. p. 5.
[130] P.N. Bhagwati, op. cit. p. 573.
[131] 1984 A.I.R. 802, 816-17, 845, 848-49 (S.C.); see Bhagwati, P.N., op. cit. p. 575, where the case was also cited.
[132] *Bandhua Mukti Morcha v. Union of India* (supra).
[133] *Bandhua Mukti Morcha v. Union of India* (supra).
[134] Ashok H. Desai and S. Muralidhar, "Public Interest Litigation: Potentials and Problems", in B.H. Kirpal et al. (eds) (2001), op. cit. p. 2.p. 2.
[135] Sandra Fredman, op. cit. p. 127.
[136] S. Muralidhar (2002), "Implementation of Court Orders in the Area of Economic, Social and Cultural Rights: An Overview of the Experience of the Indian Judiciary", paper presented at the First Asian Regional Judicial Colloquium on Access to Justice, New Delhi, 1-3 November 2002, p. 4. The author mentioned that in the case of *Vishaka v. State of Rajasthan* (1997) 6 SCC 241 dealing with sexual harassment of women in the workplace, Mr. F.S. Nariman, Senior Advocate assisted the Supreme Court as *amicus curie* in the matter.

they feel honoured for being called upon by the court to assist.[137] This adds beyond doubt to the quality of justice that goes to people living in poverty, who would ordinarily not have been able to afford the services of lawyers in the first place, but now enjoy the services of some of the most prominent among them.[138]

Innovative remedies

Under PIL, the Indian Supreme Court devised innovative remedies. The reliefs granted are corrective rather than compensatory and are focused on the future.[139] They include detailed and far-reaching directions to specific government bodies or agencies, judicial monitoring of State institutions, granting of damages to victims of government brutality and the unique order of interim compensation,[140] among others. In the case of *Bandhua Mukti Morcha*, the Supreme Court made an order giving various directions for identifying, releasing and rehabilitating labourers who were held in debt bondage. Directions were also made for observance of labour laws,[141] creating legal awareness, providing safe drinking water, provision of medical assistance and educational facilities.[142] In *Hussainara Khatoon v. State of Bihar*,[143] concerning pre-trial detention, the Supreme Court directed the State government to prepare an annual census of prisoners on trial as of 31 October of each year and submit it to the High Court, and further directed the High Court to ensure early disposal of cases where prisoners have been in detention for too long. PIL has also been used to invoke legal aid for the poor in a novel way. The court for instance has held that the right to legal aid services is incidental to the right to life in Article 21.[144] In *Khatri v. State of Bihar II* ,[145] the Supreme Court held that the State is under an obligation to provide free legal service to an indigent accused not only at the stage of trial but also at the stage where he is produced before the Magistrate as well as when he is remanded from time to time. The court further held that if a trial is held without affording legal aid to an indigent accused at State expense, the conviction will be set aside.

For this reason PIL has been viewed as 'a strategic arm of the legal aid movement intended to bring justice within the reach of those who, on account of their indigency, illiteracy, and lack of resources, were not able to reach the courts.'[146] This is yet another reason why introducing PIL in Nigeria would be highly beneficial.

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[137] Ibid at p. 6.

[138] In Nigeria, it was recorded that only wealthy or educated litigants often hire lawyers to represent them in court, while others appear without representation. See Thomas Spear, "Section Introduction: New Approaches to Documentary Sources" in Toyin Falola and Christian Jennings (eds.) (2003), *African History: Spoken, Written, Unearthed*, University of Rochester Press, p. 204.

[139] Wouter Vandenhole, "Human Rights Law, Development and Social Action Litigation in India", op. cit. p. 159.

[140] In *BodhisattwaGautam v. Subhra Chakraborty* (1996) 1 SCC 490, the Supreme court ordered the accused to pay Rs.1,000 per month as interim compensation to the victim of rape during the pendancy of the criminal case. The court held rape to be violative of the right to life under Article 21 which includes the right to live with human dignity. This is as opposed to the procedure in common law where such interim relief will be normally limited to maintaining the status quo in the matter, until the final disposition of the case.

[141] *Bandhua Mukti Morcha v. Union of India* (2000) 10 SCC. In that case the Court found that legislation dealing with welfare of the people, such as the Bonded Labour (Abolition) Act 1976 and the Minimum Wage Act 1948 which could contribute to the dignity of the people had not been implemented.

[142] Ibid at pp 848-49 cited in P.N. Bhagwati, op. cit. p. 576.

[143] 1979 A.I.R. 1360 (S.C.) cited in P.N. Bhagwati, op. cit. p. 576.

[144] *Sheela Barse v. Union of India* (supra).

[145] (1981) I SCC 627.

[146] See Ashok H. Desai and S. Muralidhar, "Public Interest Litigation: Potentials and Problems", in B.H. Kirpal et al. (eds) (2001), op. cit. p. 2.

Innovative interpretations

Another commendable feature of the Indian PIL is the practice of giving innovative interpretations to constitutional provisions, expanding the scope of fundamental rights in order to increase their meaning for people living in poverty. A case in point is the right to life in article 21 of the Indian Constitution. In the landmark case of *S.P. Gupta v. Union of India,*[147] the Supreme Court interpreted the right to life to include the right to a means of livelihood and the right to human dignity. Also in *Bandhua Mukti Morcha v. Union of India*[148] the Supreme Court upheld the right of bonded labourers to live in dignity and free of exploitation. Of particular importance to enhancing ESC rights is the case of *Francis Coralie v. Union Territory of Delhi*[149] where the Court also held that the right to life under Article 21 includes the right to live with human dignity with the basic necessities of life appertaining to it, such as adequate nutrition, clothing, shelter, facilities for reading and writing, etc. The right to health was also upheld by the apex court in *Paschim Banga Khet Majoor Samity v. State of West Bengal,*[150] as an integral part of the right to life. The Supreme Court's beneficial construction of constitutional provisions in its PIL jurisdiction in the above manner enabled it to overcome the non-justiciability of ESC rights under the Indian Constitution.[151]
This stands in contrast to the Nigerian courts that have consistently stated that the Directive Principles of State Policy provisions in Chapter II of the Nigerian Constitution are not justiciable, and have moreover extends this to the ESC rights provisions in the African Charter on Human and Peoples' Rights, despite their incorporation into Nigerian law. [152]

Court's Supervision of Its Own Orders

Making far-reaching pronouncements is one thing, having them executed is another. The Court's dependency for the execution of its orders on state agencies that are not necessarily favourably disposed, proved to be a major obstacle. In response, the Indian Supreme Court created monitoring mechanisms adapted to specific cases. For example in the case of *Bandhua Mukti Morcha v. Union of India,*[153] concerning labour matters, the Supreme Court gave detailed directives concerning actions to be taken on the welfare of the quarry workers and appointed the Joint-Secretary in the Ministry of Labour in order to secure implementation of the directive of court and requested him to visit the quarry after three months and ascertain compliance or otherwise with the directives of court. In PIL cases, the court also has the practice of not disposing of matters by one-off judgments. Instead, the court passes a series of short orders and sees to their effective implementation before a final judgment is handed down in the matter.[154] This methodology has been termed by the court a 'continuing

[147] Supra.
[148] Supra.
[149] (1981)1 SCC 608, AIR 1981, SC 746.
[150] (1996) 4 SCC 37.
[151] S. Muralidhar (2002), op. cit. p. 3.
[152] See Supreme Court's decision in *Abacha v. Fawehinmi*, [2001] 6 N.W.L.R. (Pt.660) 228, to the effect that the African Charter cannot be superior to the Constitution and as such, anything not permitted under the Constitution cannot be enforced through the African Charter. This is in view of the fact that the Supreme Court held earlier in *Ogugu v. The State*, [1994] 9 N.W.L.R. (Pt.366) 1, that the provisions of the African Charter are enforceable in the same manner as those of Chapter IV of the 1979 Constitution.
[153] Supra cited in P.N. Bhagwati, op. cit. p. 577.
[154] S. Muralidhar (2002), op cit p. 3.

mandamus'.[155] At the post-judgment stage, the court sometimes retains the case file for the purpose of monitoring compliance with its orders.[156] Where detailed guidelines are laid down in the main judgment it can thus monitor their implementation for a period of time afterwards.[157]

The Nigerian conception of the separation of powers relegates this function to the executive under its responsibility for the execution and maintenance of the Constitution and all laws.[158] With the exception of the court's possibility to mete out punishment for contempt,[159] the enforcement of court orders in respect of fundamental rights thus depends on the cooperation of the executive. It therefore follows that Nigeria needs an activist judiciary to be able to go the way of the Indian judiciary in PIL, both in terms of innovative construction of the Constitution and radical procedural liberalization that will throw open the gate of justice to the poor and the deprived.

5. Conclusion

The example of PIL in India clearly shows that it is possible for the judiciary in a developing country to make a significant contribution to fighting human rights violations specifically affecting people living in poverty. The analysis of the Nigerian case has shown on the one hand that the basic formal ingredients for human rights enforcement – a bill of rights and a procedure to deal with violations – are present, and on the other hand that numerous serious obstacles hamper the enforcement of fundamental rights by people living in poverty.

This paper suggests that this creates a great challenge for the Nigerian legislator and judiciary, to make the necessary reforms – learning from the successes and mistakes of India and other countries – that would enable real access to justice to all who need it in Nigeria.

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[155] *Vineet Narain v. Union of India* (1998) 1 SCC 226 at 243 cited in S. Muralidhar (2002), op. cit. p. 3.

[156] S. Muralidhar (2002), op cit p. 3.

[157] Ibid, see *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 (main judgment) where detailed guidelines concerning arrest were specified, compliance with the directions of court was monitored till six years after the main judgment. 'For a sampling of subsequent orders see those reported in (1999) 7 SCALE 222; (2000) 5 SCALE 353 and (2001) 7 SCALE 481' See S. Muralidhar (2002), op. cit. p. 3.

[158] See *Ekeocha v. The Civil Service Commission of Imo State & Ano.* (1981) 1 N.C.L.R. 154.

[159] See Order 6 rule 2 of the Rules which provides for committal proceedings for the contempt of a party disobeying its order.