**THE RIGHT TO FAIR HEARING: A COMPARATIVE ANALYSIS**

SOLAGBADE OLUWOLE .S.[[1]](#footnote-2)

# ABSTRACT

*This seminar paper presents a comparative analysis of the right to a fair hearing in Nigeria, United States of America, United Kingdom, Germany and South Africa, focusing on the international human rights standards applicable in the countries with considerable consideration of the bill of rights. The study examines the legal frameworks, case studies, and challenges associated with fair hearing rights in each country. Through a comprehensive review of literature and analysis of relevant legal provisions, the research highlights the issues of presumption of innocence, access to legal representation, impartiality of the judiciary, and the protection of vulnerable groups. The findings contribute to a better understanding of the practical implementation of fair hearing rights and provide insights into areas that require attention and improvement. The research concludes by emphasizing the importance of aligning domestic laws and practices with international human rights standards to ensure comprehensive protection of fair hearing rights in Nigeria.*

# Keywords: Human rights, fair hearing, judiciary, legal representation.

**INTRODUCTION**

The right to a fair hearing is the right that everyone has to have fair and equal treatment under the law, especially in judicial procedures. The right to a fair hearing comprises the right to have one's case heard in public, before a judge who is free from bias and acts independently, in a manner that is efficient and prompt, and the right to have access to the legal representation and evidence that is essential to mount a successful defense. A human right that is recognized by international law is the right to a trial that is conducted fairly. This right is recognized and protected by a variety of international human rights agreements, including but not limited to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and others. The right to a fair hearing encompasses a variety of rights, including the right to an open trial, the right to be believed innocent unless proven guilty, the right to legal representation, the ability to cross-examine witnesses, and the right to appeal a verdict. The right to a fair hearing is internationally acknowledged; nevertheless, the manner in which it is implemented differs from country to country. Concerns have been raised about the protection of the right to a fair trial in the context of anti-terrorist policies and the administration of criminal justice in countries such as United Kingdom and United States, for instance. In United State the government has successfully prosecuted perpetrators of terrorism, but there have been reports of violations of international human rights rules and standards. It is essential to keep in mind that the right to a fair trial is not just a concern in the realm of law, but also in the realms of society and politics according to an obiter posited in an LLM class in UNILAG by **Dr. S.A. IGBINEDION.** The legitimacy of the legal system and the rule of law are closely related to the right to a fair hearing, which is an essential component of the rule of law. In order to ensure the preservation of the right to a fair hearing, not only does the legal system need to be reformed, but also the attitudes and behaviors of society need to be altered. In conclusion, the right to an impartial trial is a fundamental human right that is acknowledged everywhere. However, the manner of execution differs depending on the nation and the circumstances. The right to a fair trial must be protected, which necessitates not only the reform of the legal system, but also changes in societal attitudes and behaviors. The right to a fair hearing is one of the most basic principles of justice, since it guarantees that everyone will be treated in a way that is just and unbiased throughout the legal process. This right is the bedrock upon which the rule of law is built, and it is an essential component of a democratic society. This comparative approach will provide valuable insights into the implementation of the rights to a fair hearing and shed light on the potential for reforms to enhance these rights in line with international human rights standards.

**PART ONE**

1. **CONCEPTUAL CLARIFICATION:**
	1. Fair trial and fair hearing rights are contained in article 14 of the [International Covenant on Civil and Political Rights (ICCPR)](http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/8B8C6AF11AFB4971CA256B6E0075FE1E)[[2]](#footnote-3) The right to a fair trial *and a fair hearing applies to both criminal and civil proceedings and* in cases before both courts and tribunals.[[3]](#footnote-4) In ***Orisakwe v. State***[[4]](#footnote-5) On whether fair hearing is the same as fair trial, Per. Ademola CJN at page 426 posit inter alia …in Kano Native Authority (1968)[[5]](#footnote-6), “it has been suggested that a fair hearing does not mean fair trial. We think a fair hearing must involve fair trial of a case, it consist of the whole hearing.

**2.0 BACKGROUND OF THE STUDY**

2.1 The right to fair hearing has been said to be as old as mankind. Fair hearing is very evident in the biblical account of what transpired when God discovered that Adam and Eve had eaten the forbidden fruit. God did to condemn them immediately but sought to know from them what happened. Simply put Fair Hearing means that the other person will be given an opportunity to be heard and that one will not be a judge in his own case. In Nigeria, the doctrine of fair hearing which is one of the twin pillars of natural justice is well enshrined in the constitution. This article x-rays the application of the doctrine of fair hearing under the Nigerian Constitution using the doctrinal method as its tool. This work found out that in most cases especially in administrative tribunals and other quasi tribunals, or military courts; the principles of fair hearing is to be adhered to which is the problem that culminated to this work. It is recommended that both judges, magistrates, president of customary and Sharia courts as well as administrative heads in various institutions of public and private nature be exposed to training and awareness of this principle through workshops, seminars , conferences etc.[[6]](#footnote-7)

**RESEARCH OBJECTIVES**

The main aim of this study is to examine the context of fair hearing and its continuing retention as a ground for justice dispensation in Nigeria. To achieve this, the research sets out to achieve the following objectives:

1. An analysis of the concept of fair hearing in order to understand its true nature, causative rationale, historical development, the penal modalities and statutory basis for its continuity as a ground for administration of justice in Nigeria.
2. An appraisal of the intricacies of fair hearing, and justification for legal regulation in the society and whether its retention, modification or deletion is indispensable in the present context or otherwise.
3. An analysis of fair hearing under the Nigerian laws, with particular reference to the comparative positions,when juxtaposed with other jurisdictions like the United Kingdom, United States, Germany, South Africa, etc.
4. Proffer recommendations on the way forward at the cross road.

**RESEARCH QUESTIONS**

In view of the foregoing, this research formulates the following research questions in order to arrive at a reliable conclusion, provide viable solutions and recommendations that can provide a deeper understanding of the relevance of fair hearing in the Nigerian Criminal and Civil jurisprudence:

1. Should fair hearing be considered enough bases to upturn a case?
2. Is the legal regulation of fair hearing still relevant? and if so, to what extent?
3. Is the consequence of the down play of fair hearing sufficient enough to cause a deterrence of its continuity?
4. Can the right to a fair trial and fair hearing be limited?

**SCOPE OF THE RESEARCH**

The right to a fair trial and a fair hearing applies to both criminal and civil proceedings and in cases before both courts and tribunals. It also applies to military disciplinary hearings. ***The right is concerned with procedural fairness, rather than with the substantive decision of the court or tribunal.***

**PART TWO**

**1.0**  **MEANING AND** **STATUTORY PROVISIONS GOVERNING FAIR HEARING**

 Fair hearing according to Black’s Law Dictionary[[7]](#footnote-8) is … ***a judicial or administrative hearing conducted in accordance with due process …*** in its literal sense, it is giving equal opportunity to the parties to be heard in the litigation before the court[[8]](#footnote-9). According to **Yinka Olomojobi**[[9]](#footnote-10)**… *A fair trial is an indispensable component of rule of law and the principle of due process. He went further to assert that these rules are crucial for the protection against human right abuses…***It implies that where parties are given opportunity to be heard, they cannot complain of breach of the fair hearing principle[[10]](#footnote-11). In ***Owners MT “Venture” v. NNPC***[[11]](#footnote-12) , the court held that the rationale of all binding authorities on the matter is that fair hearing imposes an ambidextrous standard of justice in which the court must be fair to both sides of the conflict. What constituted fair hearing or lack of it in one case may not necessarily apply to another case except the facts and circumstances are the same[[12]](#footnote-13). In ***Eze v FRN***[[13]](#footnote-14), the Supreme Court on the fundamental nature of issue of fair hearing and effects of the breach of it, held that the principle of fair hearing in the process of adjudication and administration of justice is fundamental and so entrenched in the Constitution of the Federal Republic of Nigeria and the common law. The concept is more preeminent that once it is established that there is a breach thereof, the entire proceedings no matter how well conducted comes to naught. In ***Oni-Orisan & Anor V. Edunjobi & Ors***[[14]](#footnote-15) it was also submitted that …the issue of fair hearing is fundamental to a case, after a court assume jurisdiction the next thing a court should concern itself about is to ensure that the principle of fair hearing is applied strictly.[[15]](#footnote-16) In the same vein, in ***Orugbo V. UNA***[[16]](#footnote-17) Per Niki Tobi JSC. Posit that …Section 36 of the 1999 CFRN as amended, breach of it will vitiate or nullify the whole proceedings, fair hearing lies in the procedure followed in the determination of the case, not in the correctness of the decision; where court arrives at a decision in breach of the principle of fair hearing an appellate court will throw out the correct decision in favour of the breach of fair hearing, he posited further that the fair hearing is designed for both parties in the litigation and the court as the umpire in the interest of Justice …[[17]](#footnote-18)

***In the real sense, fair hearing lies in the procedure followed in the determination of the case, not in the correctness of the decisions*** [[18]](#footnote-19) is only when the party aggrieved has been heard that the trial judge would be seen as discharging the duty of an unbiased empire. It connotes the impression given to an ordinary reasonable person watching the proceedings of a court or tribunal, as the case may be, if he goes away with the impression that the person has not been treated fairly, then the mode of hearing and a complaint of its breach is one directed to the manner of the hearing in contradistinction to the content of the hearing.

When a hearing is said to be in breach of the rights of fair hearing, the court does not have to go into the question whether or not the decision itself was correct. What is complained of is the circumstances of arriving at the decision and not the decision itself[[19]](#footnote-20).In Nigeria legal system, the purport of fair hearing and by virtue of the Constitution[[20]](#footnote-21) is what, in the determination of his rights and obligation, a person is entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. In the words of the noble Lord, Hon. Justice Adekeye, JSC in

***Rear Admiral Francis Echive Agbiti v. the Nigeria Navy***[[21]](#footnote-22) fair hearing requires the observation of the twin pillars of natural justice namely;

(a) *Audi alteram partem*, that is, hear the other side

(b) *Nemo judex in causa sua*, that is, no one should be a judge in his own cause. This is the rule against bias.

As rightly stated, the procedure adopted in our courts, whether customary or English courts must conform to the two fundamental principles of natural justice recognized by the English law. Fair Hearing by a court or other tribunal under section 36 (1) of the Constitution incorporates the *audi alteram partem* rule as well as the rule of *nemo judex in causa sua*[[22]](#footnote-23).

**The Rules of Natural Justice:**

Generally, the rules of natural justice apply to require the maker of a decision to give prior notice of the decision to persons affected by it and an opportunity for those persons to make representations.

Again, it enjoins that any person with direct primary or preparatory interest to disqualify himself or otherwise he might be biased. These rules are historically closely tied to judicial decision making in the courts, but they have been extended to apply to administrative authorities and to administrative decision – making. That is, where a party is not heard at all in a matter which affects his rights or the trial is adjudged unfair, any judgment resulted there from becomes a nullity and of no legal consequence. It is bound to be set aside[[23]](#footnote-24). The two principles of natural justice are so fundamental to any system of law and are applied to judicial and quasi-judicial hearing. In ***Adewunmi v. Nig. Eagle Flour Mills***[[24]](#footnote-25). The Court held:

*The Rules of Natural justice must be observed in an administrative enquiry. Such was not done in the proceedings leading up to the dismissal of the appellant. A procedure where an accuser is shielded from the accused all through the inquiry is certainly not one in compliance with natural justice. Presence and direct confrontation has a lot of impact and produce different results from a one sided inquisition by an executive of his subordinate.*

Equity, fair play and equal treatment are what constitute justice, which we all clamor for. This principle finds expression in Holy Bible[[25]](#footnote-26) as stressed in the introduction of this work, where the Lord God Almighty, after creating all things created man and woman in His own image and gave them authority to rule and dominate all “things”. The relationship between other humans all of whom were created in the image of God is to be governed by negotiation not domination or rulership.

The theory behind the principles was aptly stated in 1723 in ***R. v. Chancellor of Cambridge (Dr. Bentley's case)***[[26]](#footnote-27) where, Forescue J, held that even God Himself did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God, “where art thou? Have thou eaten of the tree whereof I commanded thee that thou shall not eat”. Fair hearing therefore, is a hearing that does not contravene the principles of natural justice. The principles are easy to proclaim but the difficulty lies in their scope and application to particular facts of a case.

**Audi Alteram Partem:**

The principle often expressed by the latin maxim *audi alteram partem*[[27]](#footnote-28) which means “hear the other side”, has been long enshrined in the Nigerian jurisprudence[[28]](#footnote-29). The importance of hearing before condemnation has always been recognized and emphasized under our law just like the great judges in English legal history. Lord Kenyon and Blackburn made it clear that it is an invariable maxim of English law that no man should be punished before he has had the opportunity of being heard[[29]](#footnote-30). In ***Imonikhe v. Unity Bank Plc***[[30]](#footnote-31), the Apex Court per Rhodes-Vivour, JSC held that the natural justice principle of *audi alteram partem* is a maxim denoting basic fairness. It is a canon of natural justice that has its' root in the Old Testament. The Good Lord heard Adam before he passed sentence. It simply means hear the other side.

The word audi means hear. Natural justice within the meaning of the maxim audi alteram partem means that a person to be affected by the decision must be given opportunity to be heard before the decision is reached. The emphasis is on opportunity to be heard in ***Muhammed v. ABU Zaria***[[31]](#footnote-32), the court held that it is the requirement of the law that a person who has some charges leveled against him or is facing a trial before a regular court or a disciplinary committee is entitled to a fair hearing before he is found guilty and made to suffer. By the principle *audi alteram partem,* no man should be condemned unheard. It means where a person's rights and obligation are affected, there is a duty on the relevant authority to accord him the opportunity to be heard before taking any adverse decision against him[[32]](#footnote-33). Once the opportunity is given but he or she decides to absent himself or otherwise not to take advantage of it, he cannot complain[[33]](#footnote-34).

In ***Eze v. FRN***[[34]](#footnote-35), the Apex court held that right to fair hearing can be waived. Thus, where a court has given every opportunity to a party to be heard but that party decides not to utilize it, he will be deemed to have waived the right, hence, he cannot be heard to complain that his right to fair hearing was breached. This rule applies equally to a defendant refusing in a criminal trial to utilize the opportunity of fair hearing given to him. The reasoning of the court was based on the precedent set up in ***News-Watch Communications Ltd. v. Attah***[[35]](#footnote-36), wherein the principle was laid down. The principle here is a two-edged sword to the plaintiff to be heard timorously and for the defendant to avail itself of the rights, constitutional rights extended to it by the court to present its side of the case.

In ***Owner's Mt “Ventures” v. NNPC***[[36]](#footnote-37) wherein the approach of the trial court on the proceedings of November 5, 2003 was declared a nullity as the court upheld a preliminary objection that was not moved, and the court dismissed the Plaintiff's case without more, which was an affront to the inviolable canon of fair hearing. Anything that will facilitate parties in the presentation of their cases should be done, where not done will be regarded as a breach of the rule[[37]](#footnote-38) basically; it is the role of the judge to hold the balance between the contending parties and to decide the case on the evidence brought by both sides. Under no circumstances must a judge under the adversary system do anything which can give the impression that he has descended into the arena, as obviously his sense of justice will be obscured[[38]](#footnote-39).

In most cases of dismissal from certain employments done without giving the employees opportunity to defend the charges against them are in breach of this principle. In ***Eze v. University of Jos***[[39]](#footnote-40) the appellant, a lecturer was alleged to have been demanding and receiving money from newly admitted students unlawfully, was queried and suspended. Based on the report of the Disciplinary Committee, he was dismissed. Further, in ***FUT Mina v. Olutayo***[[40]](#footnote-41), the Respondent was placed on suspension until the final determination of her case by the student Disciplinary Committee. The committee report showed that the allegations against her were unfounded. Instead of reinstating the respondent, who had lost a session due to the misunderstanding, the senate of the appellant expelled the respondent from the University without affording her the right to be heard or allowing her the right to exercise her right of appeal as provided by the Act[[41]](#footnote-42).

"*Audi alteram partem*" is a Latin phrase that translates to "hear the other side" or "let the other side be heard." It's a fundamental principle of natural justice and due process that ensures fairness and procedural justice in legal proceedings. While the principle generally requires that all parties to a dispute have the opportunity to present their case and respond to the case presented by the opposing party, there are some exceptions to this rule, particularly in situations where immediate action is required to prevent harm or ensure public safety. Here are some exceptions to the "*audi alteram partem*" principle:

1. **Emergency Situations**: In cases of emergency or imminent danger where immediate action is necessary to prevent harm or protect public safety, authorities may need to take swift action without providing prior notice or hearing to the affected parties. However, affected parties should still be given an opportunity to be heard at the earliest opportunity after the emergency has been addressed.
2. **Ex Parte Orders**: In certain legal proceedings, such as applications for temporary restraining orders or injunctions, a court may issue an order based on the application of one party without hearing from the other party. This is known as an ex parte order and is typically granted in situations where there is a risk of irreparable harm if immediate action is not taken. However, the party against whom the order is issued is usually given an opportunity to challenge or contest the order at a later hearing.
3. **National Security and Confidential Information**: In cases involving national security concerns or highly sensitive information, certain proceedings or decisions may need to be conducted in camera (in private) or involve the use of classified information that cannot be disclosed to all parties. In such cases, the affected parties may be limited in their ability to fully participate in the proceedings or have access to all the evidence against them.
4. **Confidential Informants or Witnesses**: In cases where revealing the identity of a witness or informant may jeopardize their safety or compromise an ongoing investigation, courts may limit the disclosure of information or restrict the participation of certain parties in the proceedings. While this may limit the ability of the affected parties to fully cross-examine witnesses or challenge evidence, it is done to protect the integrity of the judicial process and ensure the safety of individuals involved.

These exceptions to the "*audi alteram partem*" principle highlight the tension between the need for procedural fairness and the necessity of taking immediate action in certain circumstances to prevent harm or ensure public safety. While deviations from the principle are sometimes justified, it is essential to strike a balance between protecting individual rights and safeguarding the broader interests of society.

**Nemo Judex in Causa Sua:**

The maxim means that no man shall be a judge in his own cause. It therefore, implies that the judge must decide the matter impartially and without bias. The Constitution[[42]](#footnote-43) provides that the court or tribunal established by law shall be constituted in such a manner as to secure its independence and impartiality. The rule prohibits or restrains the judge or court of law from being a judge in his own cause in order to actualize his or its impartiality[[43]](#footnote-44). It also binds persons, bodies or tribunals exercising judicial functions or whose acts, decisions or report will affect the rights of other persons. In our legal system, it is the role of the judge to hold the balance between the contending parties and to decide the case on the evidence brought by both sides. Under no circumstance must a judge under the system do anything which can give
the impression that he has descended into the area of conflict, as obviously, his sense of justice will be obscured[[44]](#footnote-45). A judge who violates the principles of nemo judex rule does not incur civil liability but prohibition may issue against him to refrain him from acting or certiorari may be
issue to quash his decision or it may be a ground of appeal. One is said to be a judge in his own cause when he is likely to be biased for reasons of interest. It is to be noted, that it is either the judge has pecuniary or proprietary interest in the subject matter of litigation. The court do not look for actual bias, they ask whether there was a real likelihood or reasonable
suspicion of bias.

In ***Dimes v. Grand Junction canal***[[45]](#footnote-46), the court had opportunity of illustrating the kind of interest that will disqualify a judge for so acting. Lord Cottenham, the Lord Chancellor who owned 90% shares in the canal company gave judgment for the company. There was however, no evidence or suggestion that his share holding interest in the company influenced him or even crossed his mind. Yet the House of Lords setting aside the judgment per Lord Campbell summed up the Principle thus:

*“No one can suppose that Lord Cottenham could be in the remotest degree, influenced by the interest that he had in the concern: but, my lords, it is of the least importance that the maxim no man is to be a judge in his own cause be held sacred. And this is not to be confined to a cause in which he has an interest”.*

It is commonly believed that Lord Cottenham who resigned while the appeal is on died of the shock from the revelation. The general principle as established in ***Deduwa v. Okorodudu***[[46]](#footnote-47) is that a breach by a court of the right to fair hearing is crucial and goes to the root of the trial Court's Jurisdiction. If established, it nullifies the entire proceedings in which the breach occurred.

**The Rule against Bias:**

According to Black's Law Dictionary[[47]](#footnote-48) defines bias to mean a mental inclination or tendering; prejudice; predilection. This could be inclination, bent, prepossession, a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction. It is further said to be a condition of mind, which sways judgment and renders judge unable to exercise his functions impartially in a particular case. It also refers to mental attitude or disposition of the judge towards a party to the litigation and not to any view that he may entertain regarding the subject matter involved.

In ***Ibrahim v. Ojonye***[[48]](#footnote-49) the court restated the Supreme Court dictum in ***Adefulu v. Okulaja***[[49]](#footnote-50) that a judge would be precluded from hearing a case when:

1. ***He has personal interest and would seem to be a judge in his own matter or***

***b. Having dealt with the same issue and it comes or resurfaces when he is in a superior court and is being called upon to decide an appeal against his own decision, or***

1. ***Because of some obvious or latent connection of him with either of the parties or all of them, it will not be conscionable of him to participate in hearing the case; or***
2. ***Generally his being a member of the tribunal would not appear to be in the interest of justice as he will not be seen to do justice.***

The rule against bias intends that when there is no personal or financial interest, the facts may nevertheless give the appearance or impression that the adjudicator might be biased. A challenge for favour may arise from such circumstances as personal relation or very high degree of friendship between the judge and one of the parties, prior to the participation by the judge in any proceedings leading to the hearing, such as where he has acted as counsel for one of the parties or had earlier expressed an opinion prejudicial to either of the parties so that he cannot be expected to approach the case with an open mind and cannot give to both parties a fair hearing. But where a judge offered to withdraw from a case because he had previously acted as counsel for one of the parties, he cannot be said to be biased after both the counsel for the parties, had expressly told him to go on with the case as was the case in ***Olue v. Enenwali***[[50]](#footnote-51).

In ***Mbaji v. Amobi***[[51]](#footnote-52), one of the issues on appeal was the relationship of Iguh J, and his elder brother Anthony Iguh JSC as a result of the appellant's application for him to disqualify himself from determining the case on the ground of real likelihood of bias based on the fact that his elder brother acted as counsel for the plaintiff/Respondent before his elevation to the bench. In resolving the issue in favour of the appellant, the Court held that Iguh J. does not have to 'guarantee' that Iguh JSC cannot and did not issue standing orders to him over the case. But we live in a society where respect for elders is of paramount importance and a Justice of the Supreme Court is a highly venerable figure in any society. As long as a reasonable man will think it likely that Iguh J, can find in favour of the respondent because of his brother's previous involvement in the case, then there is a likelihood of bias and he must step aside that is all it takes, what a reasonable man would think not what the Judge knows.

However, in the Secretary, ***Iwo Central L.G. v Adio***[[52]](#footnote-53) Chief Bola Ige as Governor of Oyo State had signed into law the Oluwo of Iwo Chieftaincy declaration that was being challenged by the plaintiff and the matter was heard by Ige J. (as she then was) who was the governor's wife. The issue of likelihood of bias was raised and it was contended that she should not have sat over the case. The Supreme Court per Iguh JSC held that when Chief Ige assented to exhibit “CI” he was only performing a constitutional duty. If Chief Ige had been sued in his personal capacity or in respect of a matter over which he had a private, personal or family interest and such a dispute found its way into the court presided over by Ige J., prudence surely, would have demanded that she should disqualify herself from adjudicating on the matter. But where, as in the present case, the act being challenged is not that of chief Bola Ige in his personal capacity or as an interested party but that of the Government of Oyo State. I cannot see my way clear why it will become necessary for Ige J., to disqualify herself from hearing the case for the simple reason she is the wife of the Governor.

But in ***Okoebor v. Police Council***[[53]](#footnote-54) the Supreme Court pointed out the situation where the judge will refuse to decline hearing the matter. In law, if a party raises objection as to the likelihood of bias on the part of the judge, it is safer and more in the interest of justice for the judge to refuse taking the matter, unless it is clear that the party is raising the objection qua opposition lacking merit and is designed to delay the court process or an outright abuse of the judicial process. A judge cannot adjudicate and act as a prosecutor in the same cause[[54]](#footnote-55). He does so when he descends from the arena of justice into the arena of conflict or litigation by taking over or appearing to take over the case of one party. In ***Akinfe v. State***[[55]](#footnote-56) a judge by asking too many questions on one party or making too many interruptions? Furthermore, when a son is appearing before his father as the counsel for one of the parties, the judge must disqualify himself. The test for determining bias or real likelihood of bias is objective in nature and not subjective[[56]](#footnote-57). The court examines the judge's conduct and then looks at the impression that would be given to other people when there is an allegation of breach of fair hearing against a judge. The law is that no matter how impartial a judge could be, if right-minded people would be of the opinion that in the circumstances of the case, there was a real likelihood of bias on the part of the judge, and then he should not sit over the case. There must be a real likelihood of bias and not a conjecture or a figment of a person's imagination.

"Nemo judex in causa sua" is a Latin phrase that translates to "no one should be a judge in his own cause." It's a fundamental principle of natural justice and due process that ensures impartiality and fairness in legal proceedings. However, there are exceptions to this principle in certain circumstances where it may not be feasible or practical to avoid a conflict of interest entirely. Some exceptions include:

1. **Waiver**: In some cases, a party may waive their right to object to a potential conflict of interest. This could occur through express consent or conduct that implies consent, such as participation in proceedings without raising an objection.
2. **Administrative Necessity**: In administrative or quasi-judicial proceedings where there is a limited pool of qualified decision-makers, it may be impractical to completely avoid conflicts of interest. In such cases, safeguards such as disclosure requirements, recusal options, and procedural fairness mechanisms may be implemented to mitigate potential bias.
3. **Historical or Traditional Roles**: In certain legal or institutional contexts, individuals may have dual roles that involve both adjudicative and other functions. For example, in small communities or specialized industries, individuals may simultaneously serve as decision-makers and members of the community or industry. In such cases, mechanisms to ensure impartiality, such as transparency and accountability measures, may be employed.
4. **Emergency Situations**: In urgent or emergency situations where time is of the essence, strict adherence to the principle of "nemo judex in causa sua" may not be feasible. Temporary or ad hoc measures may be implemented to address the situation, with a commitment to ensuring fairness and impartiality to the extent possible under the circumstances.
5. **Independent Review**: Even when there is a potential conflict of interest, the principle of "nemo judex in causa sua" can be upheld through mechanisms such as independent review or appeal processes. This allows for a fresh and impartial assessment of the decision-making process and outcomes by a neutral third party.

While these exceptions acknowledge the practical challenges of completely avoiding conflicts of interest, they also underscore the importance of upholding the principles of impartiality, fairness, and transparency in legal proceedings. Efforts to minimize potential biases and ensure due process remain essential for maintaining public trust and confidence in the integrity of the judicial system.

**PART 3**

**3.0 THE POSITION OF INTERNATIONAL CHARTERS AND CONVENTIONS ON THE CONCEPT OF FAIR HEARING WITH SPECIFIC REFERENCE TO THE UNITED NATION AGENCY.**

International charters and conventions play a crucial role in establishing standards and principles related to fair hearing, a fundamental aspect of procedural justice. While the specifics may vary across different treaties and agreements, several key international instruments articulate principles related to fair hearing, ensuring that individuals are afforded due process and fair treatment in legal proceedings. Here are some of the most notable ones:

1. **Universal Declaration of Human Rights (UDHR)**: Adopted by the United Nations General Assembly in 1948, the UDHR sets forth fundamental human rights principles. Article 10 of the UDHR states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.[[57]](#footnote-58)"
2. **International Covenant on Civil and Political Rights (ICCPR)**: Adopted by the United Nations General Assembly in 1966, the ICCPR further elaborates on the right to fair trial. Article 14 of the ICCPR guarantees various aspects of fair trial rights, including the right to a fair and public hearing by a competent, independent, and impartial tribunal[[58]](#footnote-59).
3. **European Convention on Human Rights (ECHR)**: Established by the Council of Europe in 1950, the ECHR protects human rights in Europe. Article 6 of the ECHR specifically addresses the right to a fair trial, including the right to a public hearing and the right to a fair and impartial tribunal[[59]](#footnote-60).
4. **American Convention on Human Rights**: Adopted by the Organization of American States in 1969, the American Convention on Human Rights guarantees the right to a fair trial in Article 8, including the right to be heard with due guarantees and within a reasonable time by a competent, independent, and impartial tribunal[[60]](#footnote-61).
5. **African Charter on Human and Peoples' Rights**: Adopted by the Organization of African Unity (now the African Union) in 1981, the African Charter includes provisions related to fair hearing. Article 7 guarantees the right to a fair trial, including the right to be tried within a reasonable time by an impartial court or tribunal[[61]](#footnote-62).

These international instruments establish a framework for fair hearing principles, ensuring that individuals have access to justice, fair treatment, and due process in legal proceedings. Additionally, various regional and bilateral agreements may further elaborate on fair hearing rights within specific contexts or jurisdictions. Overall, these charters and conventions reflect a global consensus on the importance of fair hearing as a fundamental human right.

**4.0 STEPS TAKEN BY NIGERIA TO GUARANTEE FAIR HEARING AS AT 2024**

4.1 Nigeria has taken several steps to guarantee fair hearing, both through its constitution and through legislative and judicial measures. Some of these steps include:

1. **Constitutional Protections**: The Constitution of the Federal Republic of Nigeria, 1999 (as amended) contains provisions that guarantee the right to fair hearing. Specifically, Section 36 of the Constitution outlines the right to fair hearing, including the right to be informed promptly and in detail of the nature and cause of the accusation against an individual, the right to legal representation, the right to present a defense, and the right to a fair trial within a reasonable time by an impartial tribunal[[62]](#footnote-63).
2. **Legislation**: Nigeria has enacted various laws aimed at ensuring fair hearing in specific contexts, such as the Administration of Criminal Justice Act (ACJA)[[63]](#footnote-64) and the Administration of Criminal Justice Law (ACJL) at the state level. These laws emphasize the principles of fair trial, including the presumption of innocence, the right to legal representation, and protection against self-incrimination.
3. **Judicial Precedents**: Nigerian courts play a significant role in upholding fair hearing rights through their decisions and judgments. Courts interpret and apply constitutional provisions and laws to ensure that individuals are afforded fair treatment in legal proceedings. Judicial review serves as a mechanism for individuals to challenge violations of their fair hearing rights.
4. **Legal Aid**: The Nigerian government provides legal aid services to indigent individuals who may not be able to afford legal representation. This ensures that all individuals have access to legal assistance and representation, thereby promoting fairness in the legal process.
5. **Judicial Independence**: Maintaining judicial independence is essential for ensuring fair hearing. Nigeria has taken steps to safeguard the independence of its judiciary, including through the establishment of bodies like the National Judicial Council (NJC) tasked with overseeing the appointment, promotion, and discipline of judicial officers.

Despite these efforts, challenges to ensuring fair hearing persist in Nigeria, including issues such as prolonged pretrial detention, corruption within the judicial system, and limited access to legal representation, particularly for marginalized populations. Efforts to address these challenges and strengthen fair hearing protections continue to be essential for upholding the rule of law and protecting human rights in Nigeria.

**PART 4**

**4.0 A COMPARATIVE ANALYSIS OF VARIOUS JURISDICTIONS**

Comparative analysis of the concept of fair hearing across various jurisdictions, including the United States, United Kingdom, Germany, and South Africa, reveals both similarities and differences in legal frameworks, practices, and interpretations. Here's an overview:

1. **United States**:
	* **Constitutional Basis**: The Fifth and Fourteenth Amendments of the U.S. Constitution guarantee the right to due process of law, which encompasses fair hearing principles[[64]](#footnote-65).
	* **Adversarial System**: The U.S. legal system follows an adversarial model, where parties present their cases before an impartial judge or jury. Key elements of fair hearing include the right to legal representation, the presumption of innocence, and the right to confront witnesses.
	* **Case Law**: U.S. courts have developed extensive case law interpreting fair hearing rights, addressing issues such as the right to a speedy trial, the exclusion of coerced confessions, and the admissibility of evidence.
2. **United Kingdom**:
	* **Common Law Tradition**: Fair hearing principles in the UK stem from the common law tradition, supplemented by statutory provisions such as the Human Rights Act 1998[[65]](#footnote-66), which incorporates the European Convention on Human Rights (ECHR)[[66]](#footnote-67) into UK law.
	* **Inquisitorial Elements**: While the UK predominantly follows an adversarial system, certain proceedings, such as tribunals, may incorporate inquisitorial elements where the tribunal actively investigates facts.
	* **European Influence**: when UK was a Member of the European Union before the Breexit she adhered to the ECHR which had influenced fair hearing standards in the UK, ensuring principles such as the right to a fair trial and the right to legal representation.
3. **Germany**:
	* **Constitutional Protection**: The German Basic Law (Grundgesetz) enshrines the right to a fair trial (Art. 103)[[67]](#footnote-68) and due process (Art. 2)[[68]](#footnote-69), providing robust protections for individuals involved in legal proceedings.
	* **Civil Law System**: Germany follows a civil law system characterized by a more inquisitorial approach, where judges play a more active role in investigating cases. Fair hearing rights include the right to be heard, the right to present evidence, and the right to a reasoned judgment.
	* **Procedural Codes**: Procedural codes such as the Code of Civil Procedure (Zivilprozessordnung) and the Code of Criminal Procedure (Strafprozessordnung) delineate procedural rules to ensure fair treatment of parties in legal proceedings.
4. **South Africa**:
	* **Constitutional Protections**: The Constitution of the Republic of South Africa, 1996, guarantees various fair hearing rights, including the right to a fair trial (Section 35)[[69]](#footnote-70) and the right to administrative justice (Section 33)[[70]](#footnote-71).
	* **Adversarial System with Inquisitorial Elements**: South Africa employs an adversarial system with certain inquisitorial elements, particularly in administrative proceedings. Fair hearing principles encompass the right to legal representation, the right to a public trial, and the right to impartial adjudication.
	* **Constitutional Court Jurisprudence**: The South African Constitutional Court plays a significant role in interpreting and applying fair hearing rights, often through landmark judgments that clarify and reinforce procedural safeguards.

Overall, while these jurisdictions share common principles of fair hearing rooted in notions of procedural justice, variations in legal traditions, constitutional frameworks, and procedural rules lead to differences in the application and interpretation of fair hearing rights across the United States, United Kingdom, Germany, and South Africa above all in Nigeria context.

**PART 5**

**FINDINGS, RECOMMENDATION AND CONCLUSION**

**FINDINGS**

A thorough examination of fair hearing encompasses various elements, including legal principles, procedural safeguards, and practical considerations. Here are some key findings on fair hearing:

1. **Legal Framework**: Fair hearing is a fundamental principle enshrined in domestic laws, international treaties, and constitutions worldwide. These legal frameworks guarantee individuals the right to due process, including the right to be heard, the right to legal representation, the right to a fair and impartial tribunal, and the right to challenge evidence and arguments presented against them.
2. **Procedural Safeguards**: Fair hearing involves the implementation of procedural safeguards to ensure that legal proceedings are conducted fairly and transparently. These safeguards may include notice of charges or allegations, the opportunity to present evidence and witnesses, the right to cross-examine witnesses, the right to an interpreter if necessary, and the right to appeal decisions.
3. **Impartial Adjudicators**: Central to fair hearing is the requirement for adjudicators to be impartial and unbiased. This necessitates the separation of powers, independence of the judiciary, and mechanisms to address conflicts of interest or bias. Adjudicators must approach cases with an open mind, free from external influence or prejudice.
4. **Access to Legal Representation**: Fair hearing entails ensuring that individuals have access to legal representation, particularly in adversarial legal systems. Legal representation helps to balance the asymmetry of power between parties, ensures that individuals understand their rights and obligations, and assists in presenting a robust defense.
5. **Proportionality and Reasoned Decisions**: Fair hearing requires that decisions be proportionate to the circumstances of the case and supported by reasons based on evidence and law. Adjudicators must provide clear and reasoned decisions that demonstrate fairness, consistency, and adherence to legal principles.
6. **Public Scrutiny and Transparency**: Fair hearing promotes public scrutiny and transparency in legal proceedings, ensuring accountability and fostering public trust in the justice system. Open court hearings, public access to judicial decisions, and the publication of legal reasoning contribute to transparency and accountability.
7. **Adaptation to Diversity and Special Circumstances**: Fair hearing principles should be adaptable to accommodate the diverse needs and circumstances of individuals, including those with disabilities, linguistic minorities, and vulnerable populations. This may involve providing accommodations, ensuring accessibility, and addressing barriers to participation.

In summary, fair hearing is a multifaceted concept that requires a comprehensive legal framework, robust procedural safeguards, impartial adjudicators, access to legal representation, proportionate and reasoned decisions, equality of arms, public scrutiny, and adaptation to diversity. These findings underscore the importance of upholding fair hearing principles to safeguard individual rights, ensure procedural justice, and maintain the integrity of the legal system.

**RECOMMENDATION**

Based on the principles of fairness, due process, and procedural justice, here are some suitable recommendations to enhance fair hearing:

1. **Strengthen Legal Frameworks**: Governments should ensure that domestic laws, regulations, and constitutional provisions explicitly guarantee the right to fair hearing. These legal frameworks should incorporate internationally recognized fair hearing principles and provide clear guidance on procedural safeguards and remedies for violations.
2. **Promote Legal Education and Awareness**: Enhancing legal literacy among the general population, including vulnerable groups, is crucial for empowering individuals to understand their rights and obligations in legal proceedings. Governments, legal institutions, and civil society organizations should invest in legal education programs, workshops, and outreach initiatives to raise awareness about fair hearing rights.
3. **Provide Access to Legal Representation**: Governments should establish mechanisms to ensure that individuals have access to legal representation, particularly for those who cannot afford legal services. This may involve funding legal aid programs, pro bono services, and public defender systems to bridge the gap in access to justice.
4. **Ensure Impartial Adjudication**: Governments should implement measures to safeguard the independence and impartiality of the judiciary, including transparent judicial appointments processes, codes of conduct for judges, and mechanisms to address conflicts of interest or bias. Training programs for judges and judicial officers on ethical conduct and fair hearing principles can also promote impartial adjudication.
5. **Enhance Procedural Safeguards**: Legal systems should incorporate robust procedural safeguards to ensure fair hearing in all stages of legal proceedings. This includes providing adequate notice of charges or allegations, the right to present evidence and witnesses, the right to cross-examine witnesses, the right to an interpreter if necessary, and the right to appeal decisions.
6. **Facilitate Alternative Dispute Resolution**: Governments should promote the use of alternative dispute resolution mechanisms, such as mediation and arbitration, as complementary avenues for resolving disputes outside the formal court system. These mechanisms can offer parties greater control over the process, promote dialogue, and facilitate mutually acceptable solutions while upholding fair hearing principles.
7. **Ensure Transparency and Accountability**: Courts and administrative bodies should prioritize transparency and accountability in their operations, including open court hearings, public access to judicial decisions, and publication of legal reasoning. Mechanisms for monitoring and evaluating judicial performance can help maintain accountability and public trust in the justice system.
8. **Address Structural Inequalities and Discrimination**: Governments should address systemic barriers to fair hearing, including discrimination based on factors such as race, gender, ethnicity, socioeconomic status, disability, or language proficiency. Policies aimed at addressing structural inequalities and promoting diversity within the legal profession and judiciary can contribute to more equitable access to justice.

By implementing these recommendations, governments, legal institutions, and civil society stakeholders can work collaboratively to enhance fair hearing, promote access to justice, and uphold the rule of law for all individuals within society.

**CONCLUSION**

A good number of counsels resort to the principle even when it is inapplicable in the case. The constitutional principle of fair hearing is for the parties in the litigation. It is not only for one of the parties. In other words, fair hearing is not a one-way traffic but two-way traffic in the sense that it must satisfy a dual carriage way, in the context of both the plaintiff and the defendant or both the appellant and the respondent. The court must not invoke the principle in favour of one of the parties to the disadvantage of the other party undeservedly. That will not be justice. That will be injustice which is corroborated in the dictum of Lord Alfred Denning[[71]](#footnote-72)…when he posited that “you cannot put something on nothing and expect it to stand …it will fall crumble and crash”…A nation that down plays fair hearing principle that international , regional and sub regional seeks to protect; plays to the gallery.

**BIBLIOGRAPHY**

**BOOKS/CHAPTERS IN BOOK**

S. M. Cretney, ‘Principles of Family Law’ (London, 4th ed.) 1984 at 101.

* Bible Society of Nigeria authorized King James Version. Genesis chapter 3 verses 26 and 27.

E. G. Akaniro, ‘Introduction to Nigeria Legal system’ (Ikeja: Elcoon Press Limited 1998) p. 37.

* B. A. Garner (ed) Black's Law Dictionary (United States of America Reuters, 10th edition, 2014).
* Y. Olomojobi, Human Rights and Civil Liberties in Nigeria, (Princeton & Associates) 2016.
* J. Nnamdi Aduba, An introduction to Human Rights law in Nigeria, (Innovative Communication Press, Jos) 2016.
* U.O. Umozurike, (Spectrum Law Publishing) 1993.
* A. Karibi-Whyte, (International Protection of Human Rights) Series 3.

**JOURNALS**

‘Fair Hearing In Judicial Adjudication In Nigeria’, Unizik Law Journal Vol. 14, 2018.

**ONLINE SOURCES:**

* <<https://www.researchgate.net/publication/372056697_The_Right_to_a_Fair_Trial_Comparative_Analysis_of_International_Human_Rights_Standards>>. (Accessed on the 11th March 2024)
* <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/fair-trial-and-fair-hearing-rights>>. (Accessed on the 11th March 2024)
* <<http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/636560118784755BCA25726C0007D2AC>> (Accessed on the 11th March 2024)
* <<http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/E123F4F71DCAE3E7CA256B4F007F2905>> (Accessed on the 11th March 2024)

**LIST OF CASES**

Nigerian cases:

Abalaka v. Ministry of Health (2006) 2 NWLR (pt. 963) 105,

Adamu Suleman v. COP (2008) LPELR – 3126 (SC)

Adefulu v. Okulaja (1998) 5 NWLR (pt. 550) 435

Adeoye v. State (1991) 4 SSC 67.

Adewunmi v. Nig. Eagle Flour Mills (2014) 14 NWLR (pt 1428) 443 at 457.

Adigun v. Attorney – General, Oyo State (1987) 1 NWLR (pt. 53) 678.

Agbiti v. The Nigerian Navy (2011) LPELR – S9275/208,

Aguomba v. Uwais (2007) All FWLR (pt. 346) 440,

Akinfe v. State (1988) 3 NWLR (pt. 85) 729.

Akpamgbo Okadigbo v. Chidi (No 1) (2015) 10 NWLR (pt. 1466) 171 at 232.

Arije v. Arije (2018) LPELR-44193 (SC).

Arino v. Elemo (1983) I SCNLR 1.

CACN Lamido (2012) 8 NWLR (pt. 1303) 560.

Ceekay Trading Ltd. v. General Motors C. Ltd. (1992) 2 NWLR (pt. 222) 132.

Chambala v. Zambi (2003) AHRLR 27.

Chukwuma v. FRN (2011) 13 NWLR (pt. 1264) 391 at 418 – 419.

Deduwa v. Okorodudu (1976) 9 – 10 SC 329.

Eze v. FRN (2018) All FWLR (pt 923) 123 at 172.

Eze v. University of Jos (2017) All FWLR (pt. 898) 101.

First Bank of Nigeria PLC v. TSA Industries Ltd (2010) All FWLR (pt. 537) 633.

FUT Mina v. Olutayo (2018) All FWLR (pt. 935) 1255.

Gyang v. C.O.P; Lagos State (2014) 3 NWLR (pt. 1395) 547 at 558.

Ibrahim v. Ojonye (2012) All FWLR (pt. 654) 129 at 149-156.

Igwe v. Queen (1959) 4 FSC 206.

Imonikhe v. Unity Bank Plc(2011) LPELR 1503.

INEC v. Musa (2003) LPELR – 24927 (SC).

Ishaku v. Kantok (2012) 7 NWLR (pt. 1300) 457.

Iwo Central L.G. v. Adio (2000) FWLR (pt. 7) 1142.

Mohammed v. Kano Native Authority (1968) 1 All NLR 424.

LPDC v. Fawehinmi (1985) 2 NWLR (pt. 7) 300.

Magit v. University of Agriculture Makurdi (2006)133 LRCN 46 at 51.

Mbaji v. Amobi (2012) All FWLR (pt. 613) 1915.

Mohammed v. Olawunmi (1990) 2 NWLR (pt 133) 458.

MTN Nigeria v. Anene (2018) LCN/10760(CA)

Muhammed v. ABU Zaria (2014) 7 NWLR (pt. 1407) 500 at 537.

Nat. Palm Prduce Ass. (Nig.) Ltd v. Udom (2014) 8 NWLR (pt. 1410) 479.

News-Watch Communications Ltd. v. Attah (2006) All FWLR (pt 318) 580 at 600-601.

Nigeria Arab Bank Ltd v. Comex Ltd (1999) 6 NWLR (pt. 608) 648.

Obimonure v. Erinosoho (1966) 2 SCNLR 228.

Odutola v. Kayode (1994 (2 NWLR (pt. 324).

Okafor v. A. G. Anambra State (1991) 6 NWLR (pt. 200) 659.

Okoduwa v. the State (1988) 2 NWLR (pt. 76) 333.

Okoebor v. Police Council (2003) 12 NWLR (pt. 834) 444

Okoebor v. Police Council (2003) FWLR (pt. 164) 189.

Okorie v. State (2018) All FWLR (pt. 922) 828 at 874.

Okoye v. CPM Bank Ltd. (2008) 15 NWLR (pt. 1110) 335.

Olue v. Enenwali (1976) 2 SC 23.

Olufeagba v. Addu – Raheem (2010) All FWLR (pt. 512) 1033 at 1019;

Onigbede v. Balogun (2002) 6 NWLR pt 762 AC

Oni-Orisan & Anor v. Edunjobi & Ors (2018) LPELR-49368 CA

Orisakwe v. State (2004) LPELR, 2764.

Orugbo v. UNA (2002) 16 NWLR PT 792 PG 175.

Owners MT “Venture” v. NNPC (2014) 2 NWLR (pt 1390) 74 at 105.

Rear Admiral Francis Echive Agbiti v. The Nigeria Navy (2011) 4 NWLR (pt. 1236) 175

Transamerica Corp. v. Akande (2014) 15 NWLR (pt. 1431)502,

Tukur v. Government of Gongola State (1989) 4 NWLR (pt. 117) 517.

UBN Ltd v. Nwaokolo (1995) LPELR – 3385 (SC).

Victino fixed Odds Ltd v. Ojo (2010) 9 NWLR (pt. 1197) 486.

Wowiloju & Ors v. Anibere & Ors (2010) LPELR – SC 211/2002.

Yakubu v. Gov. Kogi State (1997) & NWLR (pt. 511) 66.

**FOREIGN CASES:**

Dimes v. Grand Junction canal (1852) 3 HLC 759.

Jones v. National Coal Board (1957) 2 All ER 155.

R v. Chancellor of Cambridge (Dr. Bentley's case) (1723) 1 Str 557 at 567.

McFoy V. U.A.C. (1961)3 ALL ER

**LIST OF STATUTES**

* Administration of Criminal Justice Act (ACJA) 2015.

Constitution of the Federal Republic of Nigeria, 1999 as amended, section 36 (1), section 36 (6) (b), section 17(2) (e).

Constitution of the Republic of South Africa 1996, Section 33, Section 35.

Federal University of Technology Act (FUTA) 2004, Sections 17(1), 17(2) and 7(16).

German Basic Law (Grundgesetz) (Art. 103), (Art. 2).

* Human Rights Act 1998
* U.S. Constitution, Fifth and Fourteenth Amendments.

**TREATIES**

* **African Charter on Human and Peoples' Rights (ACHPR) 1981,** Article 7.

**American Convention on Human Rights 1969,** Article 8.

* [Convention on the Rights of Persons with Disabilities (CRPD)](http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/636560118784755BCA25726C0007D2AC), Article 13.
* [Convention on the Rights of the Child (CRC)](http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/E123F4F71DCAE3E7CA256B4F007F2905), Article 40.
* European Convention on Human Rights (ECHR) 1950, Article 6.

**International Covenant on Civil and Political Rights (ICCPR)** 1966, Article 14.

**Universal Declaration of Human Rights (UDHR) 1948,** Article 10.

**LIST OF ABBREVIATIONS**

* LRCN - Law Reports of Courts of Nigeria (LRCN)
* **ACHPR - African Charter on Human and Peoples' Rights**
* ACJA - Administration of Criminal Justice Act
* ACJL - Administration of Criminal Justice Law
* All ER – All England Report
* All FWLR – Federation Weekly law Report
* CRC - Convention on the Rights of the Child
* CRPD - Convention on the Rights of Persons with Disabilities.
* ECHR - European Convention on Human Rights
* **ICCPR - International Covenant on Civil and Political Rights**
* LPELR – Law Pavillon Electronic Law Report
* NJC - National Judicial Council
* NWLR – Nigeria Weekly Law Report
* SCNLR – Supreme Court Of Nigeria Law Report
* **UDHR - Universal Declaration of Human Rights**
1. SOLAGBADE OLUWOLE .S. is a legal practitioner and LL.M candidate at the University of Lagos State. [↑](#footnote-ref-2)
2. See also Article 40 of the [Convention on the Rights of the Child (CRC)](http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/E123F4F71DCAE3E7CA256B4F007F2905) and Article 13 of the [Convention on the Rights of Persons with Disabilities (CRPD)](http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/636560118784755BCA25726C0007D2AC). [↑](#footnote-ref-3)
3. https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/fair-trial-and-fair-hearing-rights. [↑](#footnote-ref-4)
4. (2004) LPELR, 2764. [↑](#footnote-ref-5)
5. 1 ALL NLR 424. [↑](#footnote-ref-6)
6. ‘Fair Hearing In Judicial Adjudication In Nigeria’ UNIZIK Law Journal, Vol. 14, 2018.

 by **Kachidobelu J. Bielu**, LL.B (Hons) B.L, LL.M. Ph.D, Lecturer, Faculty of Law, [↑](#footnote-ref-7)
7. Bryan A. Garner, Black’s law lexicon Ninth Edition, at page 738. [↑](#footnote-ref-8)
8. Okorie v. State (2018) All FWLR (pt. 922) 828 at 874. [↑](#footnote-ref-9)
9. LLM, PHD. Human Rights and civil Liberties in Nigeria, Princeton & Associates Publishing co.ltd at pg 111. According to the legal luminary Article 11(1) of UDHR states that “everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence”. Reaffirming this code in a similar tone, Article 14 of the 1966 ICCPR states that “All persons shall be equal before the law and all persons shall be presumed innocent until proved guilty” See also the human rights committee decision on fair trial in Chambala V. Zambi (2003)AHRLR 27 where it was held that arrest and detention without charge violated the right to fair hearing. [↑](#footnote-ref-10)
10. INEC v. Musa (2003) LPELR – 24927 (SC) and UBN Ltd v. Nwaokolo (1995) LPELR – 3385 (SC). [↑](#footnote-ref-11)
11. (2014) 2 NWLR (pt 1390) 74 at 105. [↑](#footnote-ref-12)
12. Okorie v. State (supra) 875, Adamu Suleman v. COP (2008) LPELR – 3126 (SC) [↑](#footnote-ref-13)
13. (2018) All FWLR (pt 923) 123 at 172, Adeoye v. State (1991) 4 SSC 67 [↑](#footnote-ref-14)
14. (2018) LPELR-49368 CA [↑](#footnote-ref-15)
15. See also MTN Nigeria v. Anene (2018) …in the determination of a breach to fair hearing it is subjective i.e in that it is not a blanket issue to be applied in all respect s, it depends upon the facts and peculiar circumstances of each case. As held by SC. In MAGIT v. University Of Agriculture Makurdi (2006) 133 LRCN 46 At 51 [↑](#footnote-ref-16)
16. (2002) 16 NWLR (Pt 792) Pg. 175. [↑](#footnote-ref-17)
17. The principle of fair hearing is helpless or completely dead outside the facts of the case. See Arije v. Arije (2018) LPELR-44193 (SC) Per Kekere Ekun JSC. …it is one of the twin pillars indispensable part of the process of adjudication in any civilized society. They *are audi alteram partem and nemo judex* in causa sua. [↑](#footnote-ref-18)
18. 18 Opinion of Solagbade Oluwole Esq. [↑](#footnote-ref-19)
19. Victino fixed Odds Ltd v. Ojo (2010) 9 NWLR (pt. 1197) 486, Tukur v. Government of Gongola State (1989( 4

NWLR (pt. 117) 517 [↑](#footnote-ref-20)
20. CFRN 1999, 4th Alteration, section 36 (1). [↑](#footnote-ref-21)
21. (2011) 4 NWLR (pt. 1236) 175 [↑](#footnote-ref-22)
22. Transamerica Corp. v. Akande (2014) 15 NWLR (pt. 1431) 502, CACN Lamido (2012) 8 NWLR (pt. 1303) 560,

Ishaku v. Kantok (2012) 7 NWLR (pt. 1300) 457 and Nigeria Arab Bank Ltd v. Comex Ltd (1999) 6 NWLR

(pt. 608) 648. [↑](#footnote-ref-23)
23. Akpamgbo – Okadigbo v. Chidi (No 1) (2015) 10 NWLR (pt. 1466) 171 at 232, Mohammed v. Olawunmi (1990)

2 NWLR (pt 133) 458, Okafor v. A G Anambra State (1991) 6 NWLR (pt. 200) 659. [↑](#footnote-ref-24)
24. (2014) 14 NWLR (pt 1428) 443 at 457. [↑](#footnote-ref-25)
25. Genesis chapter 3 verses 26 and 27. [↑](#footnote-ref-26)
26. (1723) 1 Str 557 at 567. [↑](#footnote-ref-27)
27. In Yoruba Land it is well encapsulated in the proverb that says “agba to ba gba ejo eniyan kan da agba oshika ni”. Which simply means in the conversional sense as hear both sides in an argument, [↑](#footnote-ref-28)
28. Gyang v. C.O.P; Lagos State (2014) 3 NWLR (pt. 1395) 547 at 558. [↑](#footnote-ref-29)
29. EG Akaniro, Introduction to Nigeria Legal system (Ikeja: Elcoon Press Limited 1998) p. 37. [↑](#footnote-ref-30)
30. (2011) LPELR 1503. [↑](#footnote-ref-31)
31. (2014) 7 NWLR (pt. 1407) 500 at 537. [↑](#footnote-ref-32)
32. Nat. Palm Produce Ass. (Nig.) Ltd v. Udom (2014) 8 NWLR (pt. 1410) 479, Ceekay Trading Ltd. v. General

Motors C. Ltd. (1992) 2 NWLR (pt. 222) 132, Yakubu v. Gov. Kogi State (1997) & NWLR (pt. 511) 66. [↑](#footnote-ref-33)
33. Okorie v. State (supra) at 874. [↑](#footnote-ref-34)
34. (2018) All FWLR (pt. 923) 123, Arino v. Elemo (1983) I SCNLR 1, First Bank of Nigeria PLC v. TSA Industries

Ltd (2010) All FWLR (pt. 537) 633, Olufeagba v. Addu – Raheem (2010) All FWLR (pt. 512) 1033 at 1019;

Chukwuma v. FRN (2011) 13 NWLR (pt. 1264) 391 at 418 – 419. [↑](#footnote-ref-35)
35. (2006) all FWLR (pt 318) 580 at 600-601, per Tobi JSC (Rtd) “Counsel quite a legion, found the fair hearing

principle duly entrenched in the constitution as a pathway to success whenever they are in trouble on the merits

of the case before the court. Some resort to it as if it is a magic wand to cure all ills of the litigation [↑](#footnote-ref-36)
36. Odutola v. Kayode (1994) 2 NWLR (pt. 324) “Obimonure v. Erinosoho (1966) 2 SCNLR

228, Okoye v. CPM Bank Ltd. (2008) 15 NWLR (pt. 1110) 335. [↑](#footnote-ref-37)
37. Constitution of the Federal Republic of Nigeria 1999, section 36 (6) (b). [↑](#footnote-ref-38)
38. However, see the dissenting judgment in Okorie v. State (supra) at 905 – 908 per Eko JSC, wherein a witness to

the defence, Dr. Egejuru (DW7) was giving his testimony without any objection from the prosecutor, the learned

trial judge, suo motu, intervened and stopped the witness from giving evidence to explain and or throw light on his medical report exhibit D4 which was recorded at page 256 of the records of proceedings, stating that *ex facie* the record is *res ipsa* spelling. Jones v. National Coal Board (1957) 2 All ER 155. [↑](#footnote-ref-39)
39. (2017) All FWLR (pt. 898) 101. [↑](#footnote-ref-40)
40. (2018) All FWLR (pt. 935) 1255. [↑](#footnote-ref-41)
41. Federal University of Technology Act (FUTA) 2004, Sections 17(1), 17(2) and 7(16). According to my research on this work, I found out that Contempt *in faciae curea* and contempt *ex facea curea* are also radical exemptions under this rule. [↑](#footnote-ref-42)
42. CFRN, 1999, sections 17(2) (e) and 36(1) [↑](#footnote-ref-43)
43. FUT Mina v. Olutayo (supra) at 1287. [↑](#footnote-ref-44)
44. Okoduwa v. the State (1988) 2 NWLR (pt. 76) 333. [↑](#footnote-ref-45)
45. (1852( 3 HLC 759. [↑](#footnote-ref-46)
46. (1976) 9 – 10 SC 329 Adigun v. Attorney – General, Oyo State (1987) 1 NWLR (pt. 53) 678. [↑](#footnote-ref-47)
47. BA Garner (ed) Black's Law Dictionary 10th edition (United States of America Reuters, 014) 192. [↑](#footnote-ref-48)
48. (2012) All FWLR (pt. 654) 129 at 149-156, Mbaji v. Amobi (2012) All FWLR (pt. 613) 1915. [↑](#footnote-ref-49)
49. (1998) 5 NWLR (pt. 550) 435, Onigbede v. Balogun (2002) [↑](#footnote-ref-50)
50. (1976) 2 SC 23. Okoebor v. Police Council (2003) All FWLR (pt. 164) 189. [↑](#footnote-ref-51)
51. (2012) All FWLR (pt. 613) 1915 at 1931. [↑](#footnote-ref-52)
52. (2000) FWLR (pt. 7) 1142. [↑](#footnote-ref-53)
53. (2003) 12 NWLR (pt. 834) 444 [↑](#footnote-ref-54)
54. Igwe v. Queen (1959) 4 FSC 206. [↑](#footnote-ref-55)
55. (1988) 3 NWLR (pt. 85) 729. [↑](#footnote-ref-56)
56. Agbiti v. The Nigerian Navy (2011) LPELR – S9275/208, Abalaka v. Ministry of Health (2006) 2 NWLR (pt. 963) 105, LPDC v. Fawehinmi (1985) 2 NWLR (pt. 7) 300, Aguomba v. Uwais (2007) All FWLR (pt. 346) 440,

Wowiloju & Ors v. Anibere & Ors (2010) LPELR – SC 211/2002. [↑](#footnote-ref-57)
57. **Universal Declaration of Human Rights (UDHR) 1948** Article 10 [↑](#footnote-ref-58)
58. **International Covenant on Civil and Political Rights (ICCPR)** 1966, Article 14 [↑](#footnote-ref-59)
59. **European Convention on Human Rights (ECHR) 1950,** Article 6 [↑](#footnote-ref-60)
60. **American Convention on Human Rights 1969,** Article 8 [↑](#footnote-ref-61)
61. **African Charter on Human and Peoples' Rights 1981,** Article 7 [↑](#footnote-ref-62)
62. Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section 36 [↑](#footnote-ref-63)
63. Administration of Criminal Justice Act (ACJA) 2015 [↑](#footnote-ref-64)
64. U.S. Constitution, Fifth and Fourteenth Amendments. [↑](#footnote-ref-65)
65. Human Rights Act 1998. [↑](#footnote-ref-66)
66. European Convention on Human Rights (ECHR). [↑](#footnote-ref-67)
67. German Basic Law (Grundgesetz) (Art. 103). [↑](#footnote-ref-68)
68. German Basic Law (Grundgesetz) (Art. 2). [↑](#footnote-ref-69)
69. Constitution of the Republic of South Africa, 1996, Section 35. [↑](#footnote-ref-70)
70. *Ibid* Section 33 [↑](#footnote-ref-71)
71. In McFoy V. U.A.C. (1961)3 ALL ER. [↑](#footnote-ref-72)