



Right to a fair hearing: An appraisal of the misconception between Nigeria and United Kingdom

Simeon Olaosebikan Oni

Senior Lecturer, Department of Public and International Law, Faculty of Law, Lead City University, Ibadan, Nigeria

Abstract

The Western philosophers traced the origin of the concept of fair hearing to the British and they argue that the concept is unknown to pre-colonial Nigerian customary law. They believe it never existed under the indigenous justice system and that the concept was alien to the indigenous Nigerian society because according to them, indigenous Nigerian judicial system lacks established fair hearing rules. The British perception of the pre-colonial Nigerian society was that its laws and practices were barbaric and that it was a society of jungle justice. This article sets out to correct the age-long misconception that the right to fair hearing was not known to the indigenous Nigerian society. It also examines the denial of the right to a fair hearing under the military regime as well as under the democratic government and makes recommendation for a better Nigeria where human rights are respected.

Keywords: Right, fairness, hearing, justice, Nigeria, United Kingdom

Introduction

The right to fair hearing is a basic human right that is being abused in countries across the globe with devastating human, political and social consequences. This is evident in the increasing development of swifter ways countries are imposing punishments without court trial; the growing number of people that are directly affected by justice, the increasing number of people being jailed; the use of justice as a tool of oppression by the dictatorial and authoritarian administrations and the increasing cross-border threats that human rights face in crime fighting.

A hearing can only be fair when all the parties to a dispute are given opportunity to be heard regardless of status, age, race, religion, tribe, political affiliation, etc. If any of the parties to a dispute is denied the opportunity to be heard, such hearing devoid of the principle of fair hearing. In other words, each side is entitled to know that a case is being made against it and be given an opportunity to defend himself/herself. The concept of fair hearing simply means a hearing where authority is consistently and fairly exercised in line with the fundamental principles of the acceptable manner of due process of law ^[1].

Fairness does not mean perfection *strictu sensus* because perfection belongs to the province of gods and far from that of men. Hence the concept of fairness is beyond humanity and does not require perfection but justice and equity in the assessment of a reasonable person. No wonder that the fundamental human right is viewed as not being that of a legal system that is infallible, but that of a legal system that is fair ^[2].

The fairness of a hearing can be measured from the commencement of the trial up to and including the delivery of final judgment. The concept of fair hearing stands upon the premise that all the parties to a dispute are given opportunity to be heard by an independent and competent judicial body. If one of the parties is not given an opportunity to be heard, the hearing cannot qualify as fair and if the process of hearing the parties devoid of fairness at any stage of the proceeding, or the judicial body is neither competent in its composition and jurisdiction nor

independent of the executive power and impartial in its decision, the principle of fair hearing would have been breached. In other words, the concept of fair hearing means a hearing in which the authority is fairly exercised and consistent with the fundamental principles of justice embraced within the concept of due process of law ^[3].

The fulcrum upon which human rights are predicated is fairness *simpliciter*. The phrase 'fair hearing' means a trial that is 'reasonably free from blemish'. In the context of Administration of Justice, whether national or international, a hearing can only be fair when all the parties to a dispute are given opportunity to be heard. In order to understand the meaning of fair hearing, grappling with the issue of fairness is sacrosanct because the concept of fairness is the correct exercise of what is judicially right in any proceedings of the court particularly where the rights of a human person is involved ^[4]. The essential assessment question is has the accused had a fair chance of dealing with the allegations against him? If the answer is in affirmative, it means that the accused has been given a reasonable degree of fair hearing.

The concept of fair hearing has implications on the nature of human rights and some scholars are of the opinion that it is universal and inherent in humans. Others believe that it is a culturally exported concept like English language and English law and custom that spread across the world. The universality of the concept of fair hearing is premised on the argument that it is as old as human creation and this is exemplified in the ancient event at the garden of Eden. Even in the garden of Eden, God did not pronounce judgement on both Adam and Eve until He gave them the opportunity to defend themselves ^[5]. He thereby established the rule, *Audi alteram partem* (i.e. the other party must be heard), which is one of the pillars of natural justice. In view of this Biblical account, it is safe to submit that the right to fair hearing is an ancient one that is synonymous with the ancient trial process itself ^[6].

The concept of fair hearing includes the exercise of governmental power in a consistent, fair and in line with the fundamental principles of justice embraced within the concept of due process of law. Thus, it implies that both

sides be given an opportunity to present their respective cases, and that each side is entitled to know that a case is being made against him and be given an opportunity to reply to same.

Fair hearing concept later became an internationally recognized human right which includes the right of the parties to present evidence, the right to cross examine, the right to be heard, the right to public hearing and the right to be tried by an independent judiciary. Human rights foundationalism is believed to be part of the inherent attributes of human nature from which human rights sprang up and that after centuries of global implementation in practice, the right to fair hearing was finally codified in the international human rights instruments following World War II and is now universally recognized as a right.

The right to fair hearing is the only way to prevent miscarriage of justice and it is an essential part of a just society. Every person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. It is not just about protecting suspects and defendants, but also about making societies safer and stronger^[7]. Without the right to fair hearing, the rule of law and public faith in the justice system will collapse, hence, the victims lose the confidence that justice will be done.

1. The Origin of Fair Hearing

While the English writers argue that as far as the concept of fair hearing is concerned, it is an imported one to Nigeria because the indigenous Nigerian communities did not know anything like fair hearing^[8], there are a number of counter arguments by writers who accept that the indigenous Nigerian customary law had fair hearing as a way of life and practice even before the advent of the English colonial masters, In order to understand the veracity of these arguments, one needs to understand the evolution of fair hearing in the United Kingdom.

There are two myths about the origin of fair hearing in the United Kingdom: the first is that the United Kingdom did not have any fair hearing law until much later and the second myth is very much tied to the first as being a new concept^[9]. Kohen argues against the attribution of the concept of fair hearing to ancient belief and thus states that human dignity is a recently developed concept^[10]. A similar view is held by Schulz who also states that the concept of fair hearing is a fad that could just as well not be in fashion tomorrow as it is the best way we know at the moment to counter cruelty and build a decent society^[11].

The origin of fair hearing law in the United Kingdom is dated back to the times of the Greeks and the Romans^[12]. What the United Kingdom now considers as fair hearing law can be found in the basis of fundamental rights widely recognized by the Greeks and the Roman lawyers as natural law otherwise referred to as *ius naturale* by the Romans. Natural law was a central theme of Roman political and legal thinking and not that of the English^[13].

Since the times of the Greeks and the Romans, England major legal developments have had enormous impacts on the concept of fair hearing. The concept of fair hearing as mentioned in Magna Carta made a considerable contribution to the English notion of fundamental rights:

[n]o man shall be punished except by the judgment of his peers or the law of the land., to none should justice be denied^[14].

Then follows the familiar phrase of the British Bill of Rights which drew much of its influence and inspiration from the Magna Carta.

due process of law should be observed.’ Also, ‘No free man shall be taken or imprisoned or outlawed or exiled or in any way ruined, except by the lawful judgment of his peers or by the law of the land^[15].

Magna Carta is considered as part of the unwritten constitution of England as a result of its absence of codification. In the same vein, there were no written laws in the Nigerian pre-colonial era, there were laws rooted in customs and traditions of the indigenous societies. However, there were judicial structures, which performed the very functions of judicial organs of modern government^[16]. In fact, there existed, for example, a formidable justice system among the Igbos, the Yorubas and the Hausa-Fulanis which characterised the cultural development of the pre-colonial Nigerian societies^[17].

The fact that the indigenous Nigerian concept of fair hearing did not conform *mutatis mutandis* with the United Kingdom concept, does not mean that fair hearing never existed in the indigenous Nigerian justice system. The indigenous justice system has its own traditionally unique concept of fair hearing that was premised on the culture of the individual indigenous society^[18].

There is no doubt that the concept of fair hearing possesses a long and rich history but it did not originate exclusively from any single legal system, from any single geographical region of the world or from any single country, or any single political form of government or even any single century^[19]. Over the centuries, the concept of fair hearing emerged from many societies, many religions, secular traditions and cultures through different means of expression. Indeed in some communities, it is from solemn reflection and quiet contemplation based upon religious belief or philosophical opinion. In some other occasions, it took the form of visions or thoughts about the future and how human dignity might be protected. It gradually developed into a universal right from outrage over a sense of injustice, revolution, violent abuse and brutal atrocities which all formed the pains of World War II. Fair hearing also includes the need to protect the individual against the abuse of power by the monarch, the rich and the tyrant. There is no doubt that the right to fair hearing is one of the cornerstones of a just society, it is also the best means of protection against injustice.

2. The Concept of Fair Hearing

The wording and placement of the various fair hearing rights under international human rights instruments define the right to fair hearing in broadly the same terms. The aim of the right is to ensure the proper administration of justice by a competent, independent and impartial tribunal, the right to a public hearing, the right to be heard within a reasonable time, the right to counsel, the right to an interpreter, the right to be represented by a counsel of one’s choice, etc. Contrary to the circumstances specified in the human rights instruments, the socio-political agenda of governments of some States not only makes them to limit and vary the right to fair hearing but also makes them to derogate from the basic principles of the right^[20].

In line with the concept of fair hearing, a person who will be affected by the result of a decision must be given an opportunity to be heard. For a decision to be fair, it must be fair to the parties in the suit. Fair hearing does not

contemplate a standard of justice which is biased on favour of one party and the prejudice of the other. The Nigerian Constitution ^[21] has the right to fair hearing as one of its fundamental rights provisions that rests on the twin pillars of justice namely: *audi alteram partem* (the other party must be heard) and *nemo iudex in causa sua* (one cannot be a judge in his own cause) ^[22].

A fair trial is a part of fair hearing which consists of the whole concept of fairness that permeates pre-trial, trial and post-trial stages. The true test of fair hearing is determined by the impression that a reasonable (impartial) person (who is present at the trial) has about the whole trial regarding whether justice has been done or not ^[23].

The rule of fair hearing is not a technical doctrine but one of substance. The question is not whether injustice has been done because of lack of hearing but whether a person that is entitled to be heard before his case is decided has in fact been given the opportunity of a hearing. Where such person is not given fair hearing, any such trial would be declared not fair ^[24].

In a judicial or quasi judicial body, a hearing is fair when the accused person is not prevented from being present throughout the proceedings, when he is made to hear all the evidence against him, when he is given the opportunity to cross-examine and contradict all the witnesses that testify against him, when he is allowed to read all the documents to be tendered against him, when he is given adequate opportunity to prepare for his defence or give evidence by himself, when he is allowed to call witnesses (if he likes) and he is allowed to make oral submission either personally or through lawyer of his choice. Even where it is absolutely clear that the person accused is guilty, he should not be denied of his right to fair hearing because it is his fundamental right ^[25].

In numerous regional and international human rights instruments, the right to fair hearing is defined as one of the most extensive human rights and in fact the most litigated of all human rights. The right to fair hearing seeks to protect individuals from unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, especially the right to life and liberty of human person ^[26].

The right to fair hearing is a procedural right which enables the court or tribunal to arrive at justice in any judicial proceeding. It is about how trial is conducted, be it civil or criminal and this is explained in two ways. First, it applies to trials where correct verdict is reached and second, it could be used to measure the correctness or otherwise of the verdict reached. While explaining the two, Grim admits that the two interpretations may be questionable as fair hearing should not only be applicable to the procedures but also to the trial itself ^[27].

The right to fair hearing permeates round the entire trial and it runs through the applicable rules and procedures from the commencement to the end. It ensures the equilibrium between the parties and implement structures that are capable of safeguarding acceptable standard of human treatment, judicial independence and impartiality. It is central to a nation's search for social equilibrium and justice because all the rights guaranteed by any constitution mean nothing if citizens do not have the right to fair hearing.

Fair hearing questions could arise in both civil and criminal hearings before administrative bodies that are not independent and impartial, or in trials in which one party has a significant advantage over the other, thereby breaching

the principle of equality of arms. The questions could arise where there are excessive delays in bringing a case to trial or completing court proceedings, or in secret trials, or by denying procedural protection to accused persons, including the presumption of innocence. The right to fair hearing is essential to the protection of all other fundamental rights and freedoms.

3. The indigenous Nigerian Justice System

The indigenous Nigerian style of justice was informal and was operating especially among African communities ^[28]. At times, there was access to justice that was designed by the natives in the administration of justice within the locality and such access was through native law and customs and any transgression was met with stiff sanctions. One of which was to ostracise the law breaker. Fair hearing during Nigerian pre-colonial era includes a case whereby each party was required to bring his witnesses without any confrontation, instead witnesses helped one another to recall the facts ^[29]. The underlying principle was that everyone present at the proceedings was entitled to have a say and the public had to listen attentively and not interrupt. After each party has stated his case, the right and wrong of the parties would be pointed out by the family heads or the traditional title holders who were customarily entitled to serve as judges and a decision would be taken right there at the hearing and in the full glare of the public. This collective verdict is the hallmark of the indigenous Nigeria justice systems as against the one-man verdict that the English is known for.

The country now known as Nigeria comprises of three major tribes: Hausa, Yoruba and Igbo with over 250 (two hundred and fifty) ethnic groups. The indigenous Yoruba judicial system starts with the family head court. The jurisdiction of the family head was normally over civil matters between members of his extended family, and his authority was persuasive and moral as opposed to the compulsory and legal decisions of chiefs and/or the King's court. The primary concern at the stage of family head court was not so much to administer justice but to reconcile the quarrelling members of his group. In doing this, the family head would appeal to his family sentiments rather than to strict legal principles. In some jurisdictions, the king or the chief would directly get involved in the proceedings and direct the proceedings. This was the position before the colonialists imposed the British system of justice on the indigenous Nigerian communities.

The Igbo society has a rich penal system contained in its customary laws. Largely unrecorded, this legal system was integrated into the Igbo society and its development processes and predates the arrival of the British. The traditional Igbo people lived in dispersed settlements in a small face-to-face society ^[30]. A number of closely clustered compounds and families form the Igbo village and several villages make up towns. The family head, the elders, the age grade, secret societies etc. played key roles in the socio-political and judicial structure of the Igbo tribe.

The Igbo indigenous justice system holds intrinsic values that need recognition for development, Victims received adequate compensation and restitution. The victims of the offence seemed to be satisfied with the punishment since the victim or his family were given the opportunity to prescribe the type of punishment to be meted out to the offender. Victims were well informed about the hearing and

sentencing, situation of the offender and the processes to be undertaken and the possible outcomes so they could have a voice in determining consequences. Victims were well supported by the community and the system brought back to the victims the required reparations ^[31].

In other cases the victims would have family and friends sitting with them through all the court process. The victim also receives adequate material, spiritual and psychological (emotional) support from both the community and family of the offender. Like in the case of murder, food would be given to the family of the deceased person, spiritual cleansing and prayers would be made for both the village and the victim. The community members would stay with the victim late into the night giving him emotional support. In fact community members would sleep with the victim family for as long as may be necessary.

The Igbo, Yoruba, and other Nigerian tribes highly respect land. Thus, a person who makes a claim and swears on land without suffering negative consequences is regarded as having told the truth ^[32]. The justice systems of the Nigerian tribes include the fact that justice management organs are close to the citizens. Many members of the organs were natives of the relevant community.

Another important characteristic of the indigenous justice system is its credibility with the locals. The credibility of the system is derived partly from the integrity of the individuals and groups that perform various functions to achieve justice. Thus, in traditional Igbo for example, different individuals, groups, and organizations including the age grades of the young and old, the women and male groups, etc. perform different functions toward the societal goals of control, justice, and law ^[33].

The Igbo society usually rely on the elders of each community to manage grievances and conflicts and to settle disputes. Achebe captures this in his description of the trial in Umuofia which illustrates the elders' role in judicial proceedings among the Igbo people. Achebe writes: "It was clear that the ceremony was for men. The titled men and elders. The study of the Afikpo (Igbo) and the study of the Onitsha (Igbo) ^[34] shows that community elders, along with the traditional ruler of each community, are the judges in judicial proceedings. In some cases among the Igbos, some elders might serve as advocates in the proceedings ^[35]."

4. The British Misconceptions about the Indigenous Nigerian Justice System

In the context of British history for example, conceptions of justice have radically changed as societies transformed from primitive to communal, then to feudal and to capitalist order ^[36]. The negative perception of the indigenous Nigerian justice systems by the British makes them to erroneously conclude that the indigenous Nigerian justice system was insensitive to fair hearing and that the Nigerian concept of fair hearing has its origin in colonialism. Despite the well structured indigenous Nigerian justice system, the Western scholars believe that the indigenous Nigerian justice systems were obstacles to the promotion of justice and human rights and they consequently propagated the belief that the Nigerian communities did not have a standard justice system. In order to justify the colonization of the indigenous Nigerian territory, the British imposed their justice system on the indigenous Nigeria. This stigmatisation ignores the fact that justice has meant different things in different societies with different cultures at different historical times.

In an attempt to establish the originality of the indigenous human rights system, it is submitted that human rights in Nigeria have a deep and tumultuous history that culminates in the age of rights that Nigerians live in today. The comprehensive and interpretative history of human rights in Nigeria reveals the benevolent but complex account of indigenous Nigerian rights traditions embodied in the wisdom of elders and sages.

According to the available literature in communal societies, right to fair hearing was hardly a virtue of generosity and sociability but a priority generally required for the promotion of established natural rights ^[37]. In today's advanced capitalist society, right to fair hearing may be viewed as giving to people what the people deserve ^[38].

In any legal matter, every adult member of the indigenous Nigerian community was actively involved in solving a conflict and they all focused on the need to resolve issues so as to attain peace and maintain social harmony. The community was involved in the entire process; from disclosure of problems to discussion and resolution, to making amends and restoring relationships. In view of the Western belief and propagation, the indigenous Nigerian concept of fair hearing has been patently misunderstood as an organic attribute of the British values that has portrayed the British as the mode, the yardstick and arbiter over fair hearing concerns in Nigeria.

The judicial system of a particular society is normally the sum total of the peculiar circumstances of that society. In most traditional Nigerian societies, less serious crimes went through a number of stages of dispute settlement. The parties to the dispute could call upon family members, co-residents, co-lineage members, age-mates, or senior and influential people in the community to assist in resolving a dispute before turning to a more public forum. The indigenous Nigerian judicial system had the obligation to maintain the existing inter-family relationship by being fair and neutral to the parties in dispute so as to ensure the social cohesion and communal ideals progress.

The indigenous Nigerian judicial system was basically premised on the unwritten laws, traditions and practices that were learnt primarily through the teachings of the elders that were passed down from generation to generation. In any legal matter, every adult member of the community gets actively involved in solving a conflict and they all focus on the need to resolve issues so as to attain peace and social harmony. Compliance with fair hearing standards by the indigenous Nigerian particularly in the area of the right to a fair and public hearing; the right to be heard by an independent and impartial tribunal; the right to legal representation; and the right not to incriminate oneself, are strong attestations to the fact that the indigenous Nigerian judicial systems observe the concept of human right in general and the right to fair hearing in particular.

The plural justice system that exist in the contemporary Nigeria is a fusion of the British and the indigenous Nigerian paradigms of justice. While the British paradigm is retributive, hierarchical, adversarial, punitive, codified and procedural, the indigenous Nigerian concept of fair hearing includes inclusiveness, consultation, consensus and communal participation.

5. Concept of fair hearing in Contemporary Nigeria

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) which

officially stated that all human beings have the same fundamental rights, irrespective of race, colour, sex, language, religion, political affiliations, birth or other social characteristics^[39]. This was indeed a reaction to the challenges of human dignity conditions worldwide particularly at the time when just four independent African States were members of the United Nations: Egypt, Ethiopia, South Africa and Liberia while others including Nigeria were under colonial rule. Today, the fifty-three African States (including Nigeria) in the United Nations have signed and ratified many of the core United Nations human rights treaties, including the one involving fair hearing. As a result of these treaties and other international instruments which Nigeria ratified, the rights to fair hearing have been incorporated in the laws of the Nigerian States^[40].

Though the Nigerian Human rights system recognizes the right to fair hearing as entrenched in the Nigerian Constitution, its application in Nigeria has been an unresolved problem particularly if the protection of the right would negatively affect the people in governance. The non-protection of the rights has put serious doubt on the sincerity of Nigeria as regards the protection of the right to fair hearing principles enshrined in the 1999 Constitution of the Federal Republic of Nigeria^[41].

The Nigerian judicial system is theoretically based on the conceptualized human rights system particularly premised on the right to fair hearing. It is disturbing when one observes that the contemporary Nigerians are victimised by their leaders without being given fair hearing on the pretext that such people have been accused of committing certain crimes. It is more troubling when such victimisation is carried out without referring the accused to a court of justice because most times, the allegations are usually false and unfounded.

It is unfortunate when one comes across instances where Nigerians are treated like second-class citizens with impunity in their country by the very agents employed to protect them. As Jungle justice is a gross violation of the right to fair hearing, so also is torture by the police or any other member of the armed forces that use such investigative tactics. However, the recognition of the inherent human dignity is the foundation of freedom, justice and peace in the world. Lack of these leads to pariah State where disregard and contempt for human person resort to barbarous act that outrages the conscience of mankind^[42].

However, this thesis discusses, the egregious human rights violations of right to fair hearing by Nigerian military governments and the governments headed by former army generals in civilian regalia. It is not just a pity but a danger that if caution is not applied, Nigeria might slide back into despotism that the military regimes are known for. The African Union has a responsibility to prevent such drift, by calling on its Member States including Nigeria to take necessary steps at all levels to make their human right commitments crystallise and become fixed and enforceable before the relevant judicial institutions. Nigerians will not take their governments seriously in their human right rhetorics until the lines of enunciated principle are connected by dots of practice to bring about shapes of legitimate rules. Nigerians should continue to resist authoritarianism in all shapes or forms and be mindful that a submissive sheep is an easy prey for a wolf.

For fair hearing to be realistic, the government must play a significant role to ensure that it brings to justice those responsible for violations of other peoples' rights. This is why the right to fair hearing tests the State's commitment to respecting the dignity of human person because trials aim at rendering justice, but when people are subjected to unfair hearings, the cause of justice cannot be fulfilled and the State eventually would lose the emotional attachment of the people^[43]. For instance when suspects are ill-treated by law enforcement officials, when innocent individuals are convicted, or when trials are manifestly unfair or are perceived to be unfair, the justice system loses credibility^[44]. This means that the right to fair hearing is a basic necessity in modern State and it is along this line of thought that this work examines fair hearing and its abuses by the States' power Nigeria. This work sets out with the assumption that fair hearing is a key variable of a just and stable society imbued in the rule of law.

Choice of Study Area

To what extent should fair hearing be fair to a human person? What does fairness mean to a human person? And to what extent does the State have to make a hearing fair to a person? In order to answer these salient questions, I will examine the right to fair hearing in both Nigeria and United Kingdom vis-a-vis the protection of the right to fair hearing of the vulnerable human person which includes that of witnesses during trial. The critique of these reforms shall be carried out in this thesis, and appropriate suggestions and recommendations shall be proffered.

As far as the right to fair hearing is concerned in Nigeria, the police, the courts and the correctional institutions have their various shares of blame in its violation^[45]. The police is the major violator of right to fair hearing and most times, they are considered as tools in the hands of the oppressive leaders. Ordinarily, any suspect that is arrested for any offence is presumed to be innocent until proved guilty and ought to be promptly informed in writing the reasons for his arrest, but in reality, suspects are practically denied all these constitutionally guaranteed rights and are subjected to all manners of torture to force or coerce them to make confessional statements.

In the hands of the police, suspects are exposed or subjected to crude and barbaric ordeal or torture such as using hot electric iron, electric cables, hanging of suspect on ceiling, sticking pins or sharp objects in the private parts of suspects, merciless beating, chaining of hands and legs, shooting of suspects on the limb, use of cigarette lights to inflict burns on suspect etc. Most police served with questionnaires conceded that in the absence of an efficient means of investigating crimes, torture becomes the quickest means of extracting information from suspects. It appears that torture and brutality are institutionalized technique of investigation by the Nigerian police and this led to the '#End SARS Protest' by the Nigerian youth in October, 2020.

The ineffective and inefficient police force explains the increase in reported cases of accidental discharge, unresolved murders and assassinations, poor investigation of cases and high level of insecurity in Nigeria. There are several reported cases of rape, extra-judicial and arbitrary executions, use of excessive force, arbitrary arrests and detention, general harassment of the individual and communities, inhuman and degrading treatment of inmates in police custody made against personnel of the Force. The

Nigerian police is bedeviled with multifarious problems, ranging from corruption, poor pay package, poor welfare, indiscipline, poor training, high level of illiteracy, inadequate facilities, shortage of manpower, lack of expert in specialized fields, delayed promotions and dishonesty.

The courts have likewise played some roles in the violation of right to fair hearing in that access to courts and justice are obstructed by inefficient legal aid, court congestion, high costs of litigation, poor and inadequate court facilities, poor condition of service of judicial workers, cumbersome system of recording court proceedings (leading to delay and abuse of processes), archaic and non-uniform rules of procedure, and corruption in the clerical and administrative cadres.

Above all, the concept of fair hearing in Nigeria and United Kingdom are chosen as the focus of this thesis to elicit and provide the avenue for comparing and analyzing the area of strength and weakness of either of the two countries regarding the protection of right to fair hearing and thereby makes the protection of right to fair hearing of the two countries better.

Statement of the Problem

This thesis, among other things, shall identify the difficulties of fair hearing in Nigeria and compare them with that of the United Kingdom and proffer appropriate solutions to them. It shall also suggest appropriate recommendations on what the Nigerian government should do to create not only a Nigerian culture of fair hearing leading to an enabling environment for the foreign investors but also how fair hearing can be made realisable in the Nigerian courts.

The indigenous Nigerian concept of fair hearing is believed by the Western scholars to be at variance with the socio-economic and political needs of the people. The right to fair hearing otherwise referred to as 'fair administration of justice,' is one of the cornerstones of a democratic society abiding by the rule of law^[46]. It is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. There is also the language problem in Nigeria where most Nigerians have different cultures and dialects which cause major problems in courts where English language is the official language of the courts.

The right to a fair hearing in Nigeria has always been said to fall short of the universal standard. Article 10 of the Universal Declaration of Human Rights clearly states the rights that are associated with fair hearing of which Nigeria fails to observe. In Nigeria, the 'imported' right to fair hearing is seen in some communities as not meeting the needs of Nigerians, hence it is extremely difficult to protect the peoples' rights with such western limitations^[47]. This is the main reason most indigenous cultures in Nigeria tend to prefer their own justice and fair hearing systems.

One of the problems is that the right to fair hearing under the indigenous Nigerian justice system has been viewed largely as United Kingdom concepts^[48]. This leads to a number of difficulties. First, it is the belief of the Western scholars that the right to fair hearing under the indigenous Nigeria justice system was impractical and mechanisms of protecting the right are not comparable to their British counterpart that is based on individualism as opposed to

communalism on which the indigenous justice system stands. Secondly, Nigeria in some cases has failed to abide by its international fair hearing obligations because, probably, these standards are impractical given the realities like poverty, illiteracy, strong cultural beliefs and inordinate desires of the leaders that characterize most Nigerian communities. This explains the reason why the indigenous Nigerian communities resort to cultural and traditional justice systems irrespective of State recognition or otherwise.

Objectives of the Study

The objectives of this thesis can be divided into two: the general objectives and the specific objectives. The general objectives of this work are:

1. The need to reaffirm the value and dignity of human person despite the alarming violence and violations of the right to fair hearing in our society,
2. To gain valuable insights into the philosophies of the human person and dignity which can serve as our moral guide in our relation with one another.

The specific objectives of this thesis are as follows:

1. It focuses at evaluating indigenous Nigerian justice systems vis-a-vis its English counterpart as regards the right of the human person to fair hearing. The basis for evaluation is to show their features and attributes taking into account the philosophy upon which these systems are based as opposed to the belief of the Western scholars that Nigeria is a country with little or no observance of fair hearing.
2. To create an awareness of the fact that enforcement of the fair hearing rules is not only conducive to enhancing the protection of human rights, but also conducive to encouraging economic investment and promoting national and international peace and security.
3. To show the importance of applying these legal rules in order to protect the right to fair hearing in a society based on the rule of law;
4. It intends to find out whether there must be a uniform measurement for the respect of the right to fair hearing irrespective of socio-cultural differences inherent in both United Kingdom and Nigerian justice systems.
5. To state the primordial role of judges, prosecutors and lawyers in the enforcement of the rule of law, including individual rights during criminal investigations and trials;
6. Comparing some of the principal international legal rules concerning the right to fair hearing that must be secured during criminal investigations and trials;

Research Questions

In pursuit of the stated general and specific objectives, this thesis shall attempt to answer the following questions:

1. Did the concept of right to fair hearing ever exist in the pre-colonial communities of Nigeria? If yes, what effects had it on the pre-colonial Nigerian political system?
2. Despite the institutional frameworks that shape the Nigerian domestic Law, why is compliance with the right to fair hearing a perennial problem in Nigeria?
3. What similarities and differences exist between the concept of right to fair hearing in Nigeria and United Kingdom?

4. How have the international instruments on Human Rights affected and made better the African and English concepts of rights to fair hearing?

Scope of the Study

This research work attempts to give a general overview and evaluate the compliance or otherwise of both the Nigerian and United Kingdom concepts of fair hearing with international standards on right to fair hearing. This work examines procedures in both the Nigerian and the United Kingdom courts system *vis-à-vis* the international human rights obligations with respect to the right to fair hearing. This study further focuses on the observance of the right to fair hearing in both Nigeria and United Kingdom and this entitles individuals to be recognized as subject and not as object.

Though the concept of fair hearing has a universal acceptance particularly among the countries under the aegis of the United Nations which includes the two countries under reference, the scope of the degree of compliance with this non-derogable right in Nigeria shall be from pre-colonial era to the contemporary period, and United Kingdom from medieval period, through Magna Carter era of 1215 to the contemporary period.

Significance of the Study

The right to fair hearing as a norm of international human rights law is designed to protect the individual from the unlawful and arbitrary curtailment or deprivation of his basic rights that are associated with the liberty of the human person. The quest to retain political power and control has made the authoritarian and the totalitarian political systems, the over-riding principles of governance and this has not only had negative impact on fair hearing ideals but also made democratic ethics unachievable. Hence it is extremely difficult under such a situation to protect the human person under the prevailing political order.

In Nigeria, the selective trial of the political party in power of former office holders who are non-party members show sufficiently that the Nigerian governments and agencies like the Police and the Economic and Financial Crimes Commission (EFCC), Directorate of State Security (DSS), etc. are tools of oppression in the hands of the political party in power, used to dehumanise and to flagrantly violate the right to fair hearing through non-compliance with orders of courts.

The Nigerian democratic system is claimed in some quarters to be undergoing 'subversion' of right to fair hearing ^[49]. The legal-politico life of Nigeria is substantially changing both structurally and procedurally. The government's reform initiative takes place in the context of its desire to better achieve the objectives contained in its political manifestoes as well as to give Nigeria a position of honour amongst comity of nations.

This research is significant to the extent of its evaluation of the right to fair hearing in Nigeria and United Kingdom, and how it sheds light on recent occurrences relating to fair hearing. This work is significant in that it elucidates the importance and the need to ensure compliance with the international standards of the right to fair hearing and the rule of law in addition to making significant contributions towards achieving the goals of making Nigeria a better country for foreign investments.

Lastly, this study is also significant to the extent of its evaluation of the right to fair hearing in Nigeria and United Kingdom, and how it sheds light on recent occurrences relating to fair hearing in the three basic segments of trial: pre-trial, trial and post-trial.

Recommendation

In the cause of examining the right to fair hearing in both Nigeria and United Kingdom, certain flaws that were extensively discussed in this thesis became noticeable as both countries struggle in some areas to comply strictly with the provisions of the international protection of human rights. These noticeable flaws show that there is no perfect adherence to the observance of the right to fair hearing in the two countries.

For instance in the United Kingdom, to conclude that the concept of fair hearing in United Kingdom is perfect over the years is to sweep the truth under the carpet. In August, 2017 British trade union UNISON won a landmark court case protecting workers' access to justice and protection against ill-treatment in the workplace. The fact is that for four years, the UK government introduced fees of up to 1,340 pounds for anyone who wanted to pursue a complaint against an employer in an employment tribunal, thereby blocking poorer workers' access to a fair hearing and imposing huge costs for trade unions. The move led to a drop in tribunal cases against the UK government.

Following a ruling in the Supreme Court, the charges have been withdrawn with immediate effect and the government will have to repay over 30 million pounds to workers who have already incurred fees. The court found that the fees were unlawful and indirectly discriminatory and that the right of access to courts is inherent in the rule of law and fundamental to parliamentary democracy.

The following recommendations are also proffered:

1. The governments of Nigeria and United Kingdom should provide human right education to their inhabitants through media, lectures, and simulation exercises among others. It will help to educate the people on their rights and on how to seek redress when their rights are violated.
2. The violators should be brought to book without fear or favour no matter whose horse is gored because it will act as a deterrent to other human right offenders.
3. The Nigerian governments should follow the rule of law. It has to ensure that corruption in the judiciary is checked by another agency. This will make it easier for the inhabitants to trust the judiciary and seek redress in court whenever their rights to a fair hearing are violated.
4. In periods of crisis the military and other law enforcement agencies should be educated to use minimal force when called upon to restore law and order. The law enforcement agencies must be re-orientated to understand what their duties are and how to go about their duties without violating the right to fair hearing of the people. They should be taught to be proud of serving their father land and not only to work for their pockets as the case is in some African States.
5. To whom much is given, much is expected. The States should be accountable and responsive by ensuring that they are not the perpetrators of the violations of right to fair hearing. The government should also go beyond rhetoric but should rather rule by good examples.

Contribution to Knowledge

This research work is built on existing work of scholars and jurists that were reviewed before identifying the research gap. Concerning the research gap, it is noted without exception that all reviewed works point to fair hearing as it affects a given community or nation-state. Having reviewed the related literature on human rights and particularly, right to fair hearing as it relates to both Nigeria and United Kingdom, the following contributory theories are hereby postulated:

1. Cultural Relativism Theory

Culture is a primary force in the socialization of individuals and a major determinant of the consciousness and experience of the community. The impact of culture on human behavior is often underestimated because it is so powerful and deeply embedded in human-identity and consciousness. The universality of human rights is thus in question if human rights are not appreciated in the light of differences in cultural character of nation-states. In view of this, there is a differentiation made on the varying perceptions of human rights between Western and non-Western societies.

In view of this, instead of attributing the origin of human right to the Western societies, which thus projects fair hearing as an imported concept in Nigeria, I believe that cultural relativism theory has a global application to the human rights concept of various tribes in the world. The human rights concept of any community though it is based on the tradition and culture of such community, it is unique to such community. That the Nigerian concept embraces some features of human rights concept in the West does not mean that human rights is non-existing in the indigenous Nigerian community, rather its concept of human rights is based on the culture of the Nigerian people. Hence, cultural relativism respects the individual concept of human rights regardless of the different cultures, after all they are rights bestowed on human by the supernatural regardless of culture.

2. Populism Theory

This theory is premised on sovereignty of the people for the enhancement of fair hearing and human dignity. In order to forestall the violation of right to fair hearing and the perennial misuse of state sovereignty and immunity, which leads to failure of the national government to uphold and enforce the right to fair hearing, State sovereignty and immunity should be discarded with and replaced with popular sovereignty. By popular sovereignty, free access to legal services for those seeking justice on human right violations should be a right and not a privilege and this will go a long way in making it easier for all the aggrieved to seek justice no matter their financial status in society.

Conclusion

Though the indigenous Nigerian justice system evolved from the customs and traditions of the various socio-political communities, the contemporary Nigerian justice system is mainly a derivative of the United Kingdom common law system of the erstwhile colonial masters. Hence, in this thesis, it was demonstrated that the concept of fair hearing developed from a simple rule of procedural fairness that is applicable to courts of law, tribunals, administrative tribunals and other bodies that act judicially.

This thesis shall clear the misconception of the western scholars that right to fair hearing is alien to the indigenous African justice system. In this regard, it shall evaluate the compliance of the indigenous Nigerian justice system with the concept of fair hearing standards in the United Kingdom. It will also debunk the opinion of the western critics that consider indigenous Nigerian justice system as being too traditional and simplistic to protect and promote human rights.

It shall be suggested in this thesis that the United Kingdom conception of justice and fairness should not be the yardstick with which the indigenous Nigerian justice system should be measured, for the two systems are based on different philosophical and cultural foundations. The United Kingdom style is characterised by retribution, procedural rigidities and the need to establish guilt and innocence, while the indigenous Nigerian justice system aims at rehabilitation, reintegration and reconciliation of the offenders to their societies so as to safeguard or promote social cohesion.

Though the indigenous Nigerian justice system does not on all fours conform to the letters of the United Kingdom justice system as regards fair hearing, with time, the noticeable defects are improved upon in the subsequent legislations and regional instruments which clearly show the willingness of the Nigerian justice system to borrow from common law of England and international instruments so as to make it better.

References

1. Ese Malemi: *The Nigerian Constitutional Law*, Princeton Publishing Company, Nigeria, 2017, 329.
2. William Idowu, *African Philosophy of Law: Transcending the Boundaries between Myth and Reality*, Brunel University, 2015.
3. Nwagbara Chigozie, *The Role of Fair Hearing In the Dispensation of Justice in Nigeria - A Legal Perspective*, International Journal of Innovative Legal & Political Studies, 2016:4(4):1-10.
4. Gwynn MacCarrick, *The Right to fair hearing in International Criminal Law (Rules of Procedure and Evidence in Transition from Nuremberg to East Timor)*, Paper presented at the 19th International Conference of the International Society for the Reform of Criminal Law, Edinburg, Scotland, 2017.
5. Genesis chapter 3, New King James Version (NKJV), Thomas Nelson Publishers, 1994, 4-5i.
6. Wook GT, Chang TF. *The Ultimate Foundation of Human Dignity* in Human Rights Paraphernalia, IOSR Journal of Humanities and Social Science (IOSR-JHSS), 2016:3(8):37-46.
7. Human Rights, 2016 <https://www.ohchr.org/Documents/pdf> (Accessed May 19, 2023).
8. William Idowu, *African Philosophy of Law: Transcending the Boundaries between Myth and Reality*, Brunel University, 2015.
9. Douglas W. Vick, *The Human Rights Act and the British Constitution*, 37 TEX. INT'L L. J., 2012, 31-32.
10. Kohen Ari. *The problem of secular sacredness: Ronald Dworkin, Michael Perry, and human rights foundationalism*. Journal of Human Rights, 2016, 235–256.

11. Schulz William. *In Our Own Best Interest: How Defending Human Rights Benefits us All*, Boston: Beacon Press, 2017.
12. Martha C. Nussbaum, *Human Rights on the Eve of the Next Century: Beyond Vienna and Beijing*, 66 *FoR-Ham L. Rev*, 2017, 295-296.
13. David V. Snyder, *The Romanist Tradition in Louisiana: Legislation, Jurisprudence and Doctrine*, 56 *LA. L. Rev.* 2017:423:424-425.
14. Magna Carta, 1215.
15. The Bill of Rights and the Fifth and Fourteenth Amendments.
16. Townsend Rick, Human Rights Structure and Functioning, *Journal of Human Rights on JSTOR*, 2015, 27(4).
17. Fines Desiree. A Brief Overview of West African History: 2017 <https://medium.com/@desireefines/a-brief-overview-of-west-african-history> (Accessed, 2018)
18. Ibid, Nwagbara.
19. Robertson AH, Merrills JG. *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights* Manchester UP 9, 1996.
20. Patrick Grim, *The Right to fair hearing* 2 *J. Lib. Stud.* 2016:115:116.
21. Section 36, 1999 Constitution (As Amended) of the Federal Republic of Nigeria.
22. *Moses Adebayo Omuya Ochu v Federal Republic of Nigeria* (2010) LPELR-4673, CA
23. *Isiyaku Muhammed v Kano NA*, 1968. 1 All N.L.R. 42
24. *Kotoye v C.B.N. & Ors.* (1989) 1 NWLR (Pt. 98) 421
25. *Baba v NCATC* (1991) 3 NWLR (Pt.192) 388 at 423-424
26. Article 4(2) International Covenant on Civil and Political Rights (ICCPR), 1966.
27. Patrick Grim, *The Right to fair hearing* 2 *J. Lib. Stud.* 2016:115:116.
28. Yesufu TM. *The Human Factors in National Development in Nigeria*, Nigeria: Spectrum Books Limited, 2018.
29. Achebe Chinua. *Things Fall Apart*, Heinemann, London, 1981, 63.
30. Okafor Nonso, *Relevance of African Traditional Jurisprudence on Control, Justice, and Law: A Critique of The Igbo Experience*, *AJCJS*, 2006, 2(1).
31. Nzimiro Ikenna, *Studies in Ibo Political Systems: Chieftaincy and Politics in Four Niger States*, Berkeley, California, USA: University of California Press, 3rd ed, 2015, 47.
32. Okafor Nonso, *Relevance of African Traditional Jurisprudence on Control, Justice, and Law: A Critique of The Igbo Experience*, *AJCJS*; Volume 2, No. 1, June 2006.
33. Ottenberg Simon. *Leadership and Authority in an African Society: The Afikpo Village-Group*. Seattle, Washington, USA: University of Washington Press, 1971.
34. Isichei Nduka, *A History of the Igbo People*. New York, USA: St. Martin's Press, eds, 2016, 65.
35. Bonny Ibhawoh, *Human Rights in Africa (New Approaches to African History)*, Cambridge University Press, 2018, <https://www.amazon.com/Human-rights-in-Africa> (Accessed on, 2023)
36. Hunt Davis, *The Politics of Inequality: South Africa Then and Now*, <http://asq.africa.ufl.edu/files/Davis-pdf> 2007 (Accessed on April 27, 2023).
37. Bonny Ibhawoh, *Human Rights in Africa (New Approaches to African History)*, Cambridge University Press, 2018, <https://www.amazon.com/Human-rights-in-Africa> (Accessed on, 2019.)
38. Falk R. Anderson, *International Jurisdiction: Horizontal and Vertical Conceptions of Legal Order*, 1959, 2978.
39. Human Rights Appeal, 2019, <https://www.ohchr.org/Documents/pdf> (Accessed February 29, 2020).
40. *Nigeria: Human Rights Agenda*, 2019, <https://www.justice.gov/eoir/page/file> (Accessed November 20, 2019)
41. Ifowodo Ogaga, Annual Report 1994, A CLO Report on the State of Human Rights in Nigeria, 1994.
42. Akintokunbo A., *The Nigeria Police and Public Safety in Adua*, J.N "The Right to Life "NIALS 2011 at P.26
43. Ajomo M. Ayo. *The Concept of Human Right and Human Rights Abuse in Nigeria*. Lagos, Nigeria: Bit Press 2nd ed. 2017, 75.
44. Aborisade A. R., *Policing and Human Rights in Nigeria: Marxism and Symbolic Interactionism*. *AGOGO: Journal of Humanities*, 2017, 3.
45. Robert Daniel, *Human Rights Violations*, 9 *Afr. Hum. Rts. L. J.* 299, 2017, <https://www.researchgate.net/publication> (Accessed October 23, 2019).
46. Human Rights Appeal, 2019, <https://www.ohchr.org/Documents/pdf> (Accessed February 29, 2020).
47. Nsirimovu cited in Umozurike, *The African Charter on Human Rights and People's Rights*. The Hague: Martinus Nijhoff Publishers, 2nd ed, 2016, 8.
48. Ifowodo Ogaga, Annual Report 1994, A CLO Report on the State of Human Rights in Nigeria, 1994.
49. Ibid, 41 Ibhawoh.