DOI: https://doi.org/10.68193/unijoslawjournal.2025.3zhx7wr9

APPRAISAL OF THE LEGAL FRAMEWORK FOR THE RIGHT TO A FAIR TRIAL IN NIGERIA AND ITS IMPACT ON THE RULE OF LAW AND DEMOCRACY

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ABSTRACT

Human rights issues have not only become a global concern but remarkable interest aimed at protecting and promoting universal respect for, and observance of human rights. The right to a fair trial is one of the universally applicable right guarantees recognized in the Universal Declaration of Human Rights and also constitutionally. Using the doctrinal method of legal research, this article appraised the right to fair trial, its legal framework and further examined the impact on the rule of law and democracy in Nigeria. The article found out that, the right to a fair trial is the cornerstone of justice that upholds rule of law and the principles of democracy in every democratic society. Fair trial guarantees the protection of individuals against unjust and or arbitrary prosecution and ensures a proper balance between the rights of the accused and state's interests in ensuring public safety and maintaining order. Finally, the article concluded that the right to a fair trial is important because it ensures that everyone is treated equally and fairly within the judicial system. It upholds the principle of justice, which is a cornerstone of rule of law and democracy and recommended among other recommendations that, there should be strict and total compliance with all the national, international, regional and constitutional rights as it relate to fair trial.

Key Words: Fair Trial, Rule of Law, Democracy, Constitution, Human Rights.

1. INTRODUCTION

Today, human rights issues have not only become a global concern but remarkable interest aimed at protecting and promoting universal respect for, and observance of human rights. Indeed, the issue of human rights, in the recent past, has penetrated the international dialogue, becoming an active ingredient in interstate relations and has burst the sacred bounds of national sovereignty.[1] Human rights are rights that are inherently inalienable to human beings irrespective of age, race, colour, nationality, and sex or otherwise. These rights are considered an integral part of human existence, without which life would be worthless. Some of these rights include, the right to life, privacy, freedom from torture, slavery, freedom of movement, own property, fair trial etc.[2] Democracy will be deficient if human rights are not protected.[3] The right to a fair trial is a human right. It is one of the universally applicable guarantees

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1 Unini Chioma, *Fundamental Human Rights and Their Safeguards Under the Nigerian and International Law - Miracle Akusobi, Esq.* available at https://thenigerialawyer.com/fundamental-human-rights-and-their-safeguards-under-the-nigerian-and-international-law-miracle-akusobi-esq/ accessed on 24 May 2024.

2 The Universal Declaration of Human Rights (UDHR).

3 Colm O'Cinniede, *Human Rights and the UK Constitution* (The British Academy 2012) 11.

recognised in the Universal Declaration of Human Rights (UDHR), which is the cornerstone of the international human rights system, adopted in 1948 by the world's governments and also recognised constitutionally all over the world.[4] The Constitution of the Federal Republic of Nigeria, 1999 (as amended), as well as other statutes make elaborate provisions for some safeguards to protect the citizens especially where a citizen is standing trial for criminal offence.[5] The Constitution proposes the protection and guarantee these inherent rights. The basic consideration is that a person remains human being despite infractions and violation of the laws of the state therefore, should be treated as human being and be afforded every inherent right enjoyable by a human during his trials.[6]

The right to fair trial recognised in the CFRN, 1999 (as amended) and the UDHR has since become legally binding on all states as part of customary international law. The fundamental principles of fair trial are applicable at all times, including during states of emergency and armed conflict.[7] The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.[8] The right to a fair trial is a fundamental aspect of the rule of law and a cornerstone of democratic societies. Understanding this crucial right involves examining its definition, the elements that constitute a fair trial, and the legal framework protecting it.[9] The right to a fair trial has been reaffirmed in Section 36 of the CFRN, 1999 (as amended), and elaborated since 1948 in legally binding treaties such as the International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly in 1966. It has been recognised and the component parts (constituent rights) have been set out in numerous other international and regional treaties as well as non-treaty standards adopted by the UN and by regional intergovernmental bodies.[10] These human rights standards were drafted to apply to legal systems throughout the world and take into account the rich diversity of legal procedures – they set out the minimum standards that all systems should provide to ensure justice, respect for the rule of law and respect for the right to fair criminal proceedings. They apply to investigations, arrests and detention, as well as throughout the pre-trial proceedings, trial, appeal, sentencing and punishment. These international fair trial standards constitute a collective agreement by the international community on the criteria for assessing how governments treat people suspected, accused and convicted of crimes – from the most egregious to minor crimes.[11]

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4 Amnesty International, *Fair Trial Manual* (2nd Edition, Amnesty International Publications 2014) xv.
5 J.A. Agaba, *Practical Approach to Criminal Litigation* (3rd Edition, Emerald Publication 2015).
6 Lilian E. Effiong, "Examining the rights of Suspects under the Constitution and Administration of Criminal Justice Act: The Role of Legal Aid Council" *International Journal of Criminal, Common and Statutory Law* (2021) (1) (2) 09.
7 Ibid xvi.
8 See UN Human Rights Committee, General Comment No. 32: Article 14: Right to Equality before Courts and Tribunals and to Fair Trial, UN Doc CCPR/C/GC/32 (23 August 2007) available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F32&Lang=en accessed on the 24 May 2024.
9 Study Smarter, *Right to a Fair Trial* available at https://www.studysmarter.co.uk/explanations/law/human-rights-law/right-to-a-fair-trial/ accessed on the 1 May 2024.
10 Amnesty International (n 4) xvi.
11 Ibid.

2. CONCEPTUAL CLARIFICATIONS

2.1 The Right to Fair Trial

The Black's Law Dictionary defines fair trial as a trial by an impartial and disinterested tribunal in accordance with regular procedures; especially a criminal trial in which the defendants constitutional and legal rights are respected.[12] To the Merriam-Webster Dictionary fair trial is a trial that is conducted fairly, justly, and with procedural regularity by an impartial judge and which the defendant is afforded his or her rights under the U.S. Constitution or the appropriate state constitution or other law.[13] According to Boggs the old *Black's Law Dictionary* defines "fair trial" in terms of language drawn primarily from two Eighth Circuit cases,[14] *Goldstein v United States*[15] *and Sunderland v United States,*[16] which read as follows:[17]

> The term "fair trial" is often used, but not often defined [a truism, as you will find]. It is of broad scope. While we shall not undertake to give a formal definition of the term, yet it may not be amiss to mention, in part at least, its content.... It means a trial before an impartial judge, an impartial jury, and in an atmosphere of judicial calm… Being impartial means being indifferent as between the parties.[18]

The right to a fair trial is an essential component of a just legal system, which safeguards the rule of law and protects individuals from arbitrary prosecution.[19] This right is recognized and protected by various national, international and regional human rights instruments, such as the, Administration of Criminal Justice Act (ACJA), Childs Right Act (CRA), Universal Declaration of Human Rights (UNDR), African Charter on Human and Peoples' Right (ACHPR), Convention on the Rights of the Child (CRC) and the European Convention on Human Rights (ECHR) etc.[20]

2.2 Rule of Law

The Black's Law Dictionary[21] defines rule of law as the supremacy of regular law as opposed to arbitrary power, the doctrine that every person is subject to the ordinary law within the jurisdiction.[22] According to the Oxford Advanced Learner's Dictionary, rule of law is defined as the condition in which all members of the society, including its rulers, accept the authority of the law.[23] The term "rule of law" refers to a situation in which rulers and citizens are equally subject to the law and entitled to its protection. Many writers regard the rule of law as an ideal, and a formula such as "government been subject to law" and "government bound by

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12 B. A. Garner, *The Black's Law Dictionary* (7th edn West Group Publishing Co 1999) 676.
13 See https://www.merrriam-webster.com/legal/fair%20trial accessed on the 24 May 2024.
14 Boggs, Danny J. "The Right to a Fair Trial" *University of Chicago Legal Forum*: (1998) (1) (2) available at http://chicagounbound.uchicago.edu/uclf/vol1998/iss1/2 accessed 30 May 2024.
15 63 F2d 609 (8th Cir 1933).
16 19 F2d 202 (8th Cir 1927).
17 Boggs, (n 14).
18 See *Goldstein,* 63 F2d at 613; and *Sunderland,* 19 F2d at 216.
19 Study Smarter (n 9).
20 Ibid.
21 Garner (n 12) 1332.
22 Ibid.
23 A. S. Hornby, *Oxford Advanced Learner's Dictionary* (6th edn Oxford University Press 2000) 1031.

law" are sometimes used to describe a particularly valuable feature of that ideal.[24] Therefore, rule of law is known as the framework for laws and institutions in which there are four universal principles including;[25]

1. Accountability: The government as well as private actors are accountable under the law.
2. Just laws: The laws are clear, publicised, stable, and just, are applied evenly, and protect fundamental rights, including the security of persons, contract and property rights, and certain core human rights.
3. Open government in which laws are enacted, administered, and enforced are accessible, fair, and efficient.
4. Accessible and impartial dispute resolution.

In the case of *Governor of Lagos State v Ojukwu*[26] the Supreme Court, per Oputa JSC (of blessed memory as he then was), explained the concept of rule of law as follows:[27]

a. That the state is subject to the law
b. That the judiciary is a necessary agency of rule of law
c. That government should respect the right of individual citizen under the rule of law.

The rule of law is not the exclusive preserve of any single government, it transverses all actions and jurisdiction. It is a universal concept; this is because the International Commission of Jurists has on at least three occasions attempted to throw light on the doctrine. In 1955, in Athens, the Commission declared that the rule of law means that law must bind the state like the governed; all governments must respect individual rights and provide effective means of enforcing such and that judges must adhere to the rule of law and adjudicate without fear or favour. They must resist attempt from any quarter to jeopardise their independence in the performance of their function and duties. Lawyers all over the world must guide the independence of their profession and uphold the rule of law in the practice of their profession.

In 1959,[28] there was another conference in Delhi, India, in which the meaning and scope of the concept was re-examined and a communiqué issued to the effect that:

> The rule of law is recognized as a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance civil and political rights of individual in a free society but also to establish social, economic, cultural

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24 Anne Amuche Obiora, 'Rule of Law in Nigeria: Challenges and Prospects' *Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law* (2021) (3) (1) 241.

25 Ibid 245.

26 [1986] 1 NWLR (Pt.19) 621, 647-8.

27 Ibid.

28 In 1959, an international gathering of over 185 judges, lawyers, and law professors from over 53 countries otherwise known as the International Commission of Jurist, meeting in New Delhi and speaking as the International Commission of Jurists, made a declaration as to the fundamental principle of the rule of law. This was the Declaration of Delhi. They declared that the rule of law implies certain rights and freedoms, that it implies an independent judiciary, and that it implies social, economic and cultural conditions conducive to human dignity. The Declaration of Delhi did not, however, suggest that the rule of law requires legislative power to be subject to judicial review.

> and educational conditions under which his legitimate aspiration and dignity may be realized.

In 1961, in Lagos, Nigeria,[29] the Delhi declaration was re-evaluated and contained in a document called "The Law of Lagos" which in its declaration stated that the concept is a

> dynamic concept which should be employed to safeguard and advance the will of the people and the political rights of the individuals to establish rights of the individual to establish social, economic, educational and cultural condition under which the individual may achieve his dignity and realise his legitimate aspirations or independent.

In every society, the rule of law is very essential. Without the rule of law, societies will be in a perpetual state of conflict. Just as one observes the rule of grammar in order to make sense in conversation, so a society must abide by rule of laws to maintain peace and order. The rule of law is therefore imperative for the maintenance of public order.[30] The rule of law is a veritable aspect of every democratic system of government throughout the world, Nigeria inclusive.[31]

2.3 Democracy

The word "democracy" is one that is familiar to many and it has been variously defined by scholars and politicians. Admittedly, the concept of democracy is one that does not lend itself to a universally acclaimed or accepted definition.[32] Democracy emanated from two Greek words, *demo*: people and *krati*: Government. Abraham Lincoln defined Democracy as the government of the people, by the people and for the people. It is a system of governance that gives power to the people. Democracy can be exercised by citizens or through elected agents and or representatives. It was first established by the Greeks, it didn't appear on a global scale until after the 17th century.[33] Democracy is a rule by the people, especially as a form of government; either directly or through elected representatives.[34] The Black's Law Dictionary defines democracy as government by the people, either directly or through representatives elected by the people.[35] According to the Advanced Learner Oxford Dictionary, rule of law is defined firstly, as a system of government in which all the people of a country can vote to

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29 During the International Commission of Jurists 1961 Lagos Conference on Rule of Law the 194 judges, practicing lawyers and teachers who participated in the conference adopted a resolution which is known as the Law of Lagos. The main conclusion that emerged from the Lagos Conference was that dignity of human person is a universal concept, regardless of the different form it may assume in one or another cultural environment. African lawyers emphatically rejected any notion of a purely African juridical system, as distinct from other systems, construed solely on the basis of native custom. Africans have elaborated a concept of human dignity during the curial years leading to their emancipation which recognizes no limitations whatsoever.

30 Elijah Okon John, 'The Rule of Law in Nigeria: Myth or Reality?' *Journal of Politics and Law* (2011) (4) (1).

31 BA Haruna, and AM Yusuf, 'A Conceptual Analysis of the Rule of Law in Nigeria' *Bayero Journal of International Law& Jurisprudence (BJILJ)* 101.

32 AO Alubo, Arome Moses Okwori, 'Judicial Haemorrhage as a Catalyst for Anaemic Democracy in Nigeria-Assessing the Danger Posed by Conflicting Judgements' *University of Jos Law Journal* (2016) (11) (1) 48.

33 Chinelo Ruth Akorah, 'Electoral Offences and Democracy in Nigeria' *Journal of Public and Private Law, UNIZIK* (2020) (10) 31.

34 Ibid 30.

35 Garner (n 12) 497.

elect their representatives and secondly as fair and equal treatment of everyone in an organisation etc. and their right to take part in making decisions.[36]

Democracy embodies responsive and responsible governance, rule of law, human rights, civic participation and peaceful transfers of power through electoral processes. Each of these underpins a peaceful and stable society.[37] In a democracy, the judiciary is free from the control of the other two organs of government; i.e., the decisions and pronouncements of the judiciary are not subject to either executive or legislative control. The Constitution is the Supreme law of the land in a democracy, and both the government and citizenry are subject to the laws of the country.[38] Democracy guarantees and respects the fundamental rights as stated in the constitution.[39]

3. THE LEGAL FRAMEWORK OF THE RIGHT TO FAIR TRIAL IN NIGERIA

Legal frameworks are laws that are more specific than constitutional provisions. They lay down general obligations and principles but leave to governing authorities the task of enacting the further legislation and other specific measures required.[40] The legal frameworks to be considered below are the system of rules and laws that provides for the right of fair trial in Nigeria. The legal framework of the right to fair trial in Nigeria to be considered are the Constitution of the Federal Republic of Nigeria 1999 (as amended) which the fundamental law that provides for the right to fair trial in Nigeria. The Constitution is also the ground norm or supreme law of the country; the Administration of Criminal Justice Act which is the procedural law that governs, regulates and guides criminal trials in Nigeria; the African Charter on Human and People Rights; and the Legal Aid Act.

3.1 Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

The basic and the most important legal framework for human rights in Nigeria is the Constitution. This is the whole body of fundamental laws, customs, conventions, principles, rules and regulations according to which a particular government of a country or an organisation operates.[41] It embodies the scope and power of the government, from the executive, legislature and judiciary. In Nigeria, as at today, the CFRN 1999 (as amended) is the ground norm. According to the Supreme Court, it is the fountain of all laws; it is the composite document setting out how the country is to be held together and the very foundation of Nation's existence.[42] Furthermore, with the entrenchment of fundamental human rights in Chapter Four of the Constitution, it is apparent, beyond reasonable doubt, that the Constitution is one in support of democracy; and having been so, the justification for the guarantee of rule of law in Nigeria. The reasons are that: Firstly, the rule of law is an inherent feature of democracy; and secondly, even, by the chapter four of the constitution

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36 Hornby (n 23) 389.
37 United State Institute of Peace, *Democracy and Governance* available at https://www.usip.org/issue-areas/democracy-governance accessed 30 May 2024.
38 Akorah (n 33) 32.
39 Ibid 31.
40 Wikipedia, *Framework Law* available at https://www.en.m.wikipedi.org/wiki/Framework_law accessed on the 30 May 2024.
41 Anyaele, J.U. *Comprehensive Government for Senior Secondary School* (A Johnson Publishers Ltd, 2003) 54.
42 A.G. of the Federation v A.G. Abia State (2001)11 NWLR (Pt. 725) 689, 736.

itself, and particularly with the provision of section 46 which guarantees the enforcement of those rights in the court of law, the practice and probable existence of rule of law in Nigeria is justified; because, fundamental human rights and their enforcement are basic characteristics of rule of law.[43]

The right to fair trial in Nigeria is constitutionally guaranteed and provided for in the Constitution.[44] Chapter IV (Section 33 – 42) of the CFRN, 1999 (as amended) has constitutionally guaranteed certain rights, which are referred to as fundamental human rights and such rights are inalienable rights, however the rights are subject to certain limitations. The rights are, the right to life,[45] right to dignity,[46] right to personal liberty,[47] right to fair hearing,[48] right to privacy and family life among others[49] Under Chapter IV of the CFRN, 1999 (as amended). The rights of an accused person standing trial for a criminal offence are fully guaranteed. The relevant sections are Sections 35 and 36. Such right includes, the right to be informed promptly in the language that he understands and in detail the nature of the offence; right to be given adequate time and facilities for the preparation of his defence; to defend himself in person or by legal practitioner of his own choice, to be presumed innocent until he is proved guilty, the right to remain silent, have without payment the assistance of an interpreter *inter alia*.[50]

The right to fair hearing is a constitutional right enshrined in Section 36(1) of the CFRN, 1999 (as amended). Although the Constitution did not define the term "fair hearing", yet the courts have proffered some judicial definitions to it.[51] In *Ezechukwu v Onwuka,*[52] the Court pointed out that fair hearing is hearing which is fair to all parties in the suit. Fair hearing entails doing, during the course of the trial all that will make an impartial observer to believe that the trial has been balanced to both sides.[53] Fair hearing is equivalent to a fair trial. The right to a fair hearing within a reasonable time is the fundamental right of an accused person guaranteed in the Constitution.[54] Section 36(4) of CFRN contains two distinct rights for every accused person. First, there must be a fair hearing; second, the trial must be conducted within a reasonable time.[55] The trial judge must also ensure compliance with the fundamental rights of the accused in Section 36 (6) of the constitution and there cannot be a fair trial, when any of the constitutional rights of the accused are violated.[56]

The law on fair hearing connotes that no one should be condemned without being heard or without being given an opportunity to be heard as that is one of the fundamental requirements of the rule of law. In other words, the principle of fair hearing connotes a fair

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43 Anyaele (n 41) 63.
44 Y. Ademola, *Press Law in Nigeria* (Malthouse Law Books 1992) 2.
45 See Section 33 CFRN 1999, (as amended).
46 See Section 34 CFRN 1999, (as amended).
47 See Section 35 CFRN 1999, (as amended).
48 See Section 36 CFRN 1999, (as amended).
49 See Sections 37-42 CFRN 1999, (as amended).
50 Ademola (n 44) 2; See also Section 36 of the CFRN, 1999 (as amended).
51 T. J. Omidoyin, "Epileptic Legal Aid Scheme in Nigeria: A Breach of the Right to Fair Hearing in Nigeria" *Journal of Public Law and Constitutional Practice* (2017) (10) 219.
52 (2005) All FWLR Pt. 280 p1514 at 1542.
53 Omidoyin (n 50) 219.
54 Section 36 (1) 0f the CRFN, 1999 (as amended).
55 Section 36 (4) 0f the CRFN, 1999 (as amended).
56 J. Bodede, *Criminal Evidence in Nigeria* (Revised Edition, Florence & Lambard (Nig) Ltd. 2008) 89.

trial and its true test is the impression of a reasonable man who was present at the hearing whether from his observation or impression, justice has actually been done in the case.[57]

In *Torri v National Park Service of Nigeria,*[58] 'The right to fair hearing' is described as an extreme fundamental right in the Constitution and the breach thereof has its implication on the proceedings. This right is inalienable and an indispensable requirement of any judicial decision.[59] However, fair hearing is not some kind of abstract principle. In *Uwazurike v Attorney-General of the Federation*[60] the principle of fair hearing is described to entails a trial done in accordance with the rules of natural justice. Natural justice in the broad sense is justice done in circumstances which are just equitable and impartial. Fair hearing is really in the procedure followed in the adjudication of a case and not in the correctness of the decision.[61]

What constitutes a fair trial is encapsulated in the maxim: *Audi alteram partem* and *Nemo judex in causa sua or Nemo debet esse judex in propria causa*.[62] *Audi alteram partem* means "hear the other side." This rule is otherwise known as the 'rule of fairness'. The rule is not a technical doctrine but a rule of substance. The rule postulates that when court is hearing a matter, both parties to the case must be heard before the matter is determined.[63] *Nemo judex in causa sua* means "a man may not be a judge in his own case." A judge who is handling a case should not have interest or be connected whether remotely or otherwise with the case before him. Where he does, he is disqualified from adjudicating over the case. A judge should be free from bias or likelihood of bias as justice must not only be done, but it must be seen to be done.[64] In *Olufeagba v Abdur-Raheem*,[65] it was said that fair hearing encompasses the twin pillars of natural justice namely: Audi Alteram Partem meaning hear the other side and *Nemo debet esse judex in propria causa*– meaning no one can be a judge in his own case. Niki Tobi JSC of blessed memory (as he then was), dealt with the issue of fair hearing, he stated *inter alia*,

> That the fair hearing principle enshrined in the constitution is so fundamental in the judicial process or the administration of justice that breach of it will vitiate or nullify the whole proceedings and a party cannot be heard to say that the proceedings were properly conducted and should be saved because of such proper condition. Once the appellate court comes to the conclusion that there is/was a breach of the principle of fair hearing, the proceedings (and/add decision) cannot be salvaged as they are null and void *ab initio*.[66]

The yardstick for determining the observance of fair hearing in trials is not the question whether any injustice has been occasioned to any party due to want of hearing, it is rather the

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57 A. F. Afolayan, *Criminal Litigation in Nigeria* (2nd Edition, Samok Printers 2015) 182.
58 (2009) All FWLR (pt.495) p. 1779.
59 Ibid 1789.
60 (2009) All FWLR (pt489) p. 549.
61 Ibid 553.
62 Afolayan (n 57) 181.
63 Ibid.
64 Ibid 184.
65 (2010) All FWLR (pt. 512) p.1033.
66 Ibid 1042.

question whether an opportunity of hearing was afforded to parties entitled to be heard. Fair hearing lies in the procedure followed by a court at a particular time in arriving at its decision and not necessarily in the soundness of the decision. The test of a fair hearing is the impression of a reasonable man present at the trial whether, from his observation justice has been done in the case.[67] The onus of showing any irregularity as regards fair hearing is on the complainant. Once these four canons of criminal procedures in Nigeria are present in a trial, laid down rules and procedure, speedy trial and public hearing, unbiased or an impartial trial and absolute conformity a fair trial or fair hearing has been enforced.[68]

The test of measuring fairness of proceedings is that of a reasonable man who was present at the trial. Fair hearing under Section 36(1) of the Constitution has been held to be a trial conducted according to all legal rules formulated to ensure that justice is done to the parties.[69] The elements of fair hearing under Section 36(1) of the Constitution are:[70]

1. There must be fair hearing;
2. The Court or tribunal must be one established by law;
3. The adjudicatory process must be conducted within a reasonable time;
4. The adjudicators must be independent and impartial.

3.2 Administration of Criminal Justice Act

The Administration of Criminal Justice Act, 2015 is an Act which provides for the administration of criminal justice in the courts of the FCT, Abuja and other Federal Courts in Nigeria; and for related matters. The purpose of the Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.[71] The courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of the Act for the realisation of its purposes.[72]

The provisions of the Act are applied to all criminal trials for offences established by an Act of the National Assembly and offences punishable in the Federal Capital Territory, Abuja. However, the provisions of the ACJA does not apply to a Court Martial.[73] The Act is divided in 46 Parts and has several provisions safeguarding or protecting the rights of suspects and accused persons. Some of those provisions include: No unnecessary restraint during arrest;[74] Notification of the cause of arrest and rights of suspects;[75] Humane treatment of arrested suspect;[76] Release on bail of suspects; General entitlement to bail;[77] non trial again for same or kindred offence, or offence upon which the defendant has been convicted or

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67 D. O. Adesiyan, *An Accused Person's Right in Nigerian Criminal Law* (Heinemann Educational Books 1996) 67.
68 Ibid.
69 Afolayan (n 57) 185.
70 Ibid.
71 Section 1(1) of the ACJA.
72 Section 1(2) of the ACJA.
73 See Section 2 and 86 of the ACJA.
74 Section 5 of the ACJA.
75 Section 6 of the ACJA.
76 Section 8 of the ACJA.
77 Sections 30-32 and 158 of the ACJA.

pardoned;[78] among several other provisions. The ACJA also provides for the establishment of the Administration of Criminal Justice Monitoring Committee charged with the responsibility of ensuring effective and efficient application of the Act by relevant agencies.[79] The Committee is saddled with the responsibility of ensuring that criminal matters are speedily dealt with; congestion of criminal cases in courts are drastically reduced; persons awaiting trial are, as far as possible, not detained in prison custody among others.[80]

3.3 African Charter on Human and Peoples' Rights

The African Union (AU) has three principal mechanisms for protecting human rights on the continent: a Charter, a Commission and a Court all devoted to Human and Peoples' Rights. These are complemented by other specific instruments, by the work of the African Union institutions and by various international and national laws.[81] Despite this complex web, human rights are still violated in numerous African countries. The reasons stem from the fact that many legal instruments have not been ratified, that the human rights system suffers from weak capacity and – crucially – that many African Union member states lack the political will to improve the situation.[82]

The African Charter (1981) is the foremost legal instrument promoting human rights on the continent. The African Charter on Human and People's Rights (Charter) is the foremost legal instrument for the promotion of human rights in Africa. It was approved by the OAU's Assembly of Heads of State in 1981 and entered into force on 21 October 1986 after being ratified by a majority of members. In 1999 all OAU members had ratified the Charter and at present, only Africa's newest independent state, South Sudan, has yet to ratify it. A Protocol allowing the creation of the African Court on Human Rights has been subsequently adopted. The Charter establishes duties for states and individuals and recognises the most universally accepted civil and political rights, as well as economic, social and cultural rights. Acknowledging the indivisibility and the collective dimension of rights such as self-determination, peoples' rights to development and the free disposal of natural resources is perhaps the most distinguishing feature of the African human rights system.[83]

Article 7 (1) of the ACHPR relates directly to the right to fair trial, it states that;[84]

Every individual shall have the right to have his cause heard. This comprises:

a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and generally guaranteed by conventions, laws, regulations and customs in force;
b. The right to be presumed innocent until proven guilty by a competent court or tribunal;
c. The right to defence, including the right to be defended by counsel of his choice;
d. The right to be tried within a reasonable time by an impartial court and tribunal.

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78 Section 238 and 277 of the ACJA.
79 Section 469 (1) of the ACJA.
80 Section 470 of the ACJA.
81 Manuel Manrique Gil, Anete Bandone and Anastasia Calvieri, *Policy Briefing Human Rights Protection Mechanisms in Africa: Strong Potential, Weak Capacity* (European Union, 2013) 1.
82 Ibid.
83 Ibid.
84 Article 7 (1) of the ACHPR.

3.4 Legal Aid Act

The Legal Aid Act[85] enacted in 2011 in line with international standards, provides for the establishment of legal aid and access to justice fund into which financial assistance would be made available to the Legal Aid Council of on behalf of the indigent citizens to prosecute their claims in accordance with the Constitution and further to empower the existing Legal Aid Council to be responsible for the operation of the scheme for the grant of legal aid and access to justice in certain matters or proceedings to persons with inadequate resources in accordance with the provision of the Act.[86] The Legal Aid Council is a parastatal under the Federal Ministry of Justice, established pursuant to the promulgation of Legal Aid No. 56 of 1976 Chapter 205 Law of the Federation of Nigeria (LFN) 1990. The Legal Aid Council of Nigeria (LACON) is a statutory body under the supervisory jurisdiction of the Federal Ministry of Justice. Their slogan is "Voice for the Voiceless and Justice for All". 'The Council shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name'.[87]

The purpose of the creation of this Council is found in the Act and it is for the purposes of providing legal services for economically deficient Nigerian. The Council is the only institution empowered by law and charged with the onerous responsibility of providing free Legal Aid Services to indigent Nigerians whose income does not exceed the minimum wage i.e., whose income are below N60,000.00 per annum and those who are unemployed and those whose income are above but cannot afford the services of private legal practitioner.[88] Legal Aid is a scheme set up to provide free legal advice and representation in court in certain criminal and civil offences. Although there is no express definition of the concept under the Act provides that 'Legal Aid shall consist on terms provided for in the Act of:[89]

1. The assistance of a legal practitioner including all such assistance as it is usually given by a legal practitioner in the steps preliminary or incidental to any proceedings.
2. Representation by a legal practitioner before any court; and
3. Such additional aid (including advice in civil cases and matters) as may be prescribed.

By virtue of the Act, the proceeding in connection with which legal aid may be granted shall be in respect of proceedings not so satisfied. The second schedule provides for the categories of proceedings in respect of which legal aid may be given.[90]

Legal Aid ranges from rendering legal services through consultation, advice or representation in court. Several Non-Governmental Legal Service Organisations also provide legal aid service, what they provide are usually in the form of giving legal advice and

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85 Chapter L9, Volume 8, LFN 2004.
86 See the Explanatory Memorandum and the Preamble of the Legal Aid Act.
87 See Section 1 of the Legal Aid Act.
88 Legal Aid Council Functions and Mandate available at https://legalaidcouncil.gov.ng/function-and -mandate/ accessed on the 25 May 2024.
89 Section 8 (5) Legal Aid Act.
90 See the 2nd Schedule of the Legal Aid Act.

assistance and helping the people to access justice. Thus, the pillar of justice sector reform, which is access to justice, incorporated Legal Aid reforms in strong terms.[91]

3.5 Child Rights Act

The Child Rights Act[92] is an Act to provide and protect the rights of a Nigerian child; and other related matters,[93] The Act is the law that guarantees the rights of all children in Nigeria. The Act domesticate the Convention on the Rights of the Child, the Act expands the human rights bestowed to citizens in Nigeria's 1999 Constitution to children.[94] The Act provides among other things that best interest of a child to be paramount consideration in actions, in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, the court of la or administrative or legislative authority, the best interest of the child shall be primary consideration and a child be given protection and care necessary for the well-being of a child.[95] A Child/Young person means a person who has attained the age of fourteen (14) years but who has not attained the age of eighteen years. The Child's Right Act defined children as any person under the age of 18 years.[96] A child shall not be ordered to be imprisoned however, there are juvenile courts.[97] In relation to a child, under the CFRN, 1999 (as amended), any child who is a suspect equally has the right set out in the provision of the Child Rights Act.[98]

Part XX of the Act provides for the Child Justice Administration,[99] every child is to be subjected to only child justice system and processes,[100] every child has the right to be represented by a legal practitioner and to free legal aid in the hearing and determination of any matter concerning the child in the court. If he has no lawyer the court proceedings shall be conducive to the best interest of the child and shall be conducted in an atmosphere of understanding, allowing the child to express himself and participate in the proceedings.[101]

4. THE IMPACT OF THE RIGHT TO FAIR TRIAL ON RULE OF LAW AND DEMOCRACY

As stated, earlier democracy will be deficient if human rights are not protected.[102] When the UN UDHR was adopted in 1948 in response to the atrocities of the World War II and the years that preceded it, one of its prime drafters Eleanor Roosevelt, called it "the Magna Carta mankind". However, this influence also proved a two-way street. The 'universal' language of human rights, equality and non-discrimination reflected in the UDHR and the various treaties

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91 Adewumi Adeyemi, *The Legal Aid Counsel in Nigeria: Challenges and Possible Solutions* available at https://academia.edu/4206495/THE_LEGAL_AID_COUNCIL_IN_NIGERIA_CHALLENGES_AND_POSSIBLE_SOLUTIONS_ADEWUMI_IBRAHIM_ADEYEMI_1 accessed on the 25 May 2024.

92 Cap C50 LFN, 2004.

93 See the Preamble of the Child Right Act.

94 Child Right Act in Nigeria available at https://en.m.wikipedia.org/wiki/Child_Rights_Act_Nigeria accessed on the 25 May 2024.

95 See Section 1 of the Child Rights Act.

96 See section 277 of the CRA.

97 The Laws of Kwara State of Nigeria, 1 Cap29 p.255.

98 Section 3 (2) Child Right Act Cap50 LFN 2004.

99 See Sections 204-238 of the CRA.

100 Section 204 of the CRA.

101 Section 155 of the CRA.

102 O'Cinniede (n 3) 11.

it has spawned has added a new dimension to the 'native' tradition of civil liberties and respect for the formal rule of law.[103] Furthermore, international organisations like the UN, countries like the UK and US like other democracies, have come to place great emphasis on its own internal human rights record when it comes to promoting respect for democracy, rights and the rule of law across the world.[104] The right to a fair trial is the cornerstone of justice and it upholds rule of law and the principles of democracy in democratic societies. It guarantees the protection of individuals against unjust and or arbitrary prosecution and ensures a proper balance between the rights of the accused and state's interests in ensuring public safety and maintaining order.[105]

The right to a fair trial is one of the fundamental guarantees of human rights and the rule of law, aimed at ensuring the proper administration of justice. It comprises various interrelated attributes and is often linked to the enjoyment of other rights, such as the right to life and the prohibition against torture and other forms of cruel, inhuman or degrading treatment or punishment. All persons must have equal rights of access to the courts and tribunals, including access to remedies and reparations, which is relevant not only to persons subject to criminal and non-criminal proceedings but also to the victims of terrorism.[106] Justice must be administered in a way that achieves fairness for all, regardless of the identity of the parties to the proceedings or the nature of the proceedings themselves. Criminal charges, or a person's rights and obligations in a 'suit at law', must be determined by a competent, independent and impartial tribunal established by law. Justice must be administered openly and in accordance with specific guarantees applicable to the determination of criminal charges, and parallel guarantees in the determination of non-criminal matters that may be applicable as a result of the overarching need to ensure fairness and equality of arms.[107]

The rule of law and any democracy cannot be achieved or maintained without the presence of an independent, impartial and effective judiciary. This means that the courts, judges and judicial staff must be able to do their work without pressure, influence, interference or restriction of any kind or from any source; any impediment to the exercise of their functions would obstruct the application of the law and the maintenance of a peaceful and just society.[108] When an individual stands trial on criminal charges, he or she is confronted by the machinery of the state. How the person is treated when accused of a crime provides a concrete demonstration of how well that state respects individual human rights and the rule of law.[109]

Every criminal trial test the state's commitment to justice and respect for human rights. The commitment is tested even more when a person is accused of crimes which threaten the security of a society, such as acts of terrorism, crimes against humanity, war

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103 Ibid 14.
104 Ibid 15.
105 Study Smarter (n 9).
106 United Nations Counter-Terrorism Implementation Task Force, *CTITF Working Group on Protecting Human Rights while Countering Terrorism Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism* (United Nations Publications 2014) 8.
107 Ibid.
108 Puis Dafuas Damulak, *The Thoughts of a Jurist.* (Jos University Press 2018) 71.
109 Amnesty International (n 4) xv.

crimes, or crimes which threaten the security of those who hold power.[110] Every government has a duty to bring to justice those responsible for crimes in independent, impartial and competent courts in a manner that respects international standards of fairness. Whatever the crime, if people are subjected to unfair trials, justice is not served for the accused, the victim of the crime or the public.[111] The criminal justice system itself loses credibility when people are tortured or ill-treated by law enforcement officials, when trials are manifestly unfair and when proceedings are tainted by discrimination. Unless human rights are upheld during arrest, and in the police station, the interrogation room, the detention centre, the court and the prison cell, the state has failed in its duties and betrayed its responsibilities.[112]

For effective enjoyment of the right to access to justice, courts and tribunals must have the competence to hear cases where questions arise concerning a person's legal rights or obligations.[113] The Human Rights Committee has explained that:[114]

> The failure of a State party to establish a competent tribunal to determine… rights and obligations or to allow access to… a tribunal in specific cases would amount to a violation of article 14 if such limitations are not based on domestic legislation, are not necessary to pursue legitimate aims such as the proper administration of justice, or are based on exceptions from jurisdiction deriving from international law such, for example, as immunities, or if the access left to an individual would be limited to an extent that would undermine the very essence of the right.

When accused persons are not afforded a fair trial, it increases the risk of false or unreliable evidence being used against them. This can lead to wrongful convictions and the denial of justice to innocent individuals. It also undermines the legitimacy and effectiveness of the criminal justice system. When constitutional safeguards are disregarded, it opens the door for authorities to act with impunity, violate individual rights, and engage in corrupt practices. This can lead to a culture of abuse and disregard for the rule of law, ultimately undermining the integrity and credibility of law enforcement agencies.[115] It is established that certain constitutional safeguards are enshrined in the CFRN1999 (as amended) and other statutes to ensure fair trial of accused persons in criminal matters. A breach of any of the constitutional safeguards will vitiate trial and may consequently nullify the entire proceeding depending on the degree of breach.[116]

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110 Study Smarter (n 9).
111 Amnesty International (n 4) xv.
112 Study Smarter (n 9).
113 United Nations Counter-Terrorism Implementation Task Force (n 106) 11.
114 Ibid.
115 Study Smarter (n 9).
116 C. O. Micheal, "Communication of an Interpreter and Fair Trial Under Nigerian Criminal Justice System" *International Journal of Legal Discourse* available at https://doi.org/10.1515/ijld-2016-0006 accessed on the 1 June 2024.

5. CONCLUSION AND RECOMMENDATIONS

The Constitution of the Federal Republic of Nigeria, 1999 (as amended), as well as other national statutes and the ACHPR make elaborate provisions with regards to the right to fair trial in Nigeria. The right to a fair trial is very important because it ensures that everyone is treated equally and fairly within the judicial system. It upholds the principle of justice, which is a cornerstone of democracy and rule of law. Without the right to fair trial as constitutionally provided for and guaranteed, there is a great risk of miscarriages of justice, such as wrongful convictions and unjust treatment. Furthermore, a fair trial safeguards individuals' rights and promotes public confidence in the legal system thereby entrenching rule of law the principles of democracy in the society. In the light of the above, this research recommends the following:

1. The equal and fair treatment of all persons within the judicial system.
2. Strict and total compliance with all the international, regional, constitutional rights as it relates to fair trial.
3. Derogation of the right to fair trial should only be made in accordance with the law.
4. The need for an open administration of justice system which is one of the central pillars of a fair trial and an important factor to ensuring the transparency of proceedings thus providing an important safeguard for the interest of the individual and of society at large.
5. The need for adequate training and re-training on the right to fair trial for all stakeholders involved in the criminal justice system.