



Impediments To A Fair Criminal Trial In Nigeria

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ABSTRACT

Chapter IV of the Nigerian Constitution makes provision for a particular class of rights regarded as fundamental rights and referred to as such because of their significance to human existence. Among these rights is the right to fair trial. The right to fair trial is of central importance to fundamental rights because all other fundamental rights protected by the Constitution would be meaningless without the right to a fair, just and impartial trial. In other words, it is through fair trial that other fundamental rights can be enforced. Adopting a doctrinal approach, this article examines the impediments to fair trial in criminal proceedings in Nigeria. The discussion therein is divided into five parts. The first part provides an introductory perspective. The second part examines the basic safeguards for a fair criminal trial under Nigeria's Constitution. The third part outlines and appraises the factors that impede fair criminal trials in Nigeria. The fourth is a set of proposals towards surmounting the impediments to a fair criminal trial in Nigeria while the final part concludes the discussion, albeit with the aim of creating a starting point rather than a finishing line towards further discourse on the subject.

Keywords: Fair Trial; Fair Hearing; Fundamental Rights; Nigerian Constitution, Constitutional Safeguards.

1. INTRODUCTION

Fair trial is a trial that is conducted fairly and justly with procedural regularity by an impartial adjudicator and in which the defendant or accused person is afforded his or her rights.¹ In all criminal proceedings the accused has the basic right to a speedy public trial within a reasonable time and by a court or tribunal constituted in such a manner that its independence and impartiality is fully secured.² This basic right consists of several rules of procedure designed to ensure fairness and justice not only to the accused but to all parties affected by the adjudicatory process whether as actual parties or as nominal parties. These rules of procedure are not limited to the actual trial but include the pre-trial stage, the actual trial and the appellate stage of a criminal trial. Fair trial is a basic element of fundamental rights which all men enjoy by virtue of their universal humanity and it has continuously gained global recognition as a fundamental right. It is not only about protecting the rights of the accused but it is a way of ensuring a just, equitable and safe society. Without fair trial, the accused leaves the dock feeling that justice was lost; the victim leaves the gallery feeling that justice was crushed and the State leaves the courthouse feeling that justice was bought. In the words of Osamor,³ fair trial does not only give integrity to the legal system but also ensures the confidence of the society in the administration of criminal justice.

Every person accused of a crime is entitled to have his guilt or innocence determined in a fair, potent and impartial process. A fair trial therefore hears before it condemns. It proceeds on inquiry and renders judgement only after trial. The vital ingredients of a fair trial are an adequate hearing and an impartial adjudicator free from any interest, bias or prejudice. A fair trial presupposes full justice within human limitations.⁴ Without a fair trial the principles of natural justice are jettisoned and without the principles

of natural justice the rule of law cannot be established.⁵ It is therefore practically impossible to overemphasise the importance of fair trial to the administration of criminal justice. It is fundamental to every procedure of criminal justice administration both in and out of the courtroom and a complaint of its denial is a serious affair which, like a complaint of lack of jurisdiction, will vitiate the entire proceedings however well conducted.^{6,7,8} The right to fair trial is one of the most extensive of the different varieties of fundamental rights as it is enshrined in numerous regional and international human rights instruments.^{9, 10,11} In Nigeria, the right of an accused person to a fair trial is jealously safeguarded by the Constitution. Section 36 lays down a number of procedures to be followed by a court or tribunal to ensure that the accused is not unjustly dealt with at the trial stage. Section 35 confers certain advantages in the course of investigation, arrest and detention to ensure that the right to personal liberty of the accused is still safeguarded despite being suspected of running afoul of the law. These safeguards stem from the longstanding principle of the adversarial system of criminal justice administration, that an accused is presumed innocent until his guilt is proven. According to Ojo,¹² these safeguards are an attempt to give constitutional backing to the principles that have evolved in common law as the prerequisites for a fair trial. Even after his guilt is proven at trial, the Constitution still safeguards the right of the accused person to appeal to a competent court or tribunal of appellate jurisdiction in order to have the pronouncement of guilt overturned or affirmed.¹³ It can therefore be safely concluded that the constitutional safeguards for a fair trial commences with the investigation of the offence and continues throughout the trial up to the apex appellate stage.

The protection of the right of an accused person to a fair trial is not limited to the Constitution but extends to other legislations regulating criminal procedure in Nigeria such as the Evidence Act, the Administration of Criminal Justice Act and the Administration of Criminal Justice Law of the various States that have domesticated the provisions of the ACJA. Despite the substantial and procedural safeguards to ensure the fair trial of those in conflict with the law there appears to be factors that continuously undermine the ability of stakeholders in the administration of criminal justice to secure fair trial. These factors affect all the stages of a criminal trial from investigation and arrest down to the filing of an appeal. These factors range from the provisions of some penal legislations that are in conflict with the right to fair trial to the attitude of both the investigative and the adjudicatory authorities towards the fair trial rights of an accused person.

2. CONSTITUTIONAL SAFEGUARDS FOR FAIR TRIAL

The following safeguards are provided in the Constitution to safeguard the rights of an accused person before, during and after trial:

i. Timely Arraignment

By the provision of section 35(4)(a) and (b) of the Constitution, any person who is arrested, detained and brought to court in accordance with the provisions of the Constitution must be tried within a period of two months from the date of his arrest or detention in the case of a person in custody and within a period of three months from the date of his arrest or detention in the case of a person who has been released on bail. In the absence of a trial within these stipulated periods such a person shall be entitled to be released either unconditionally or upon such condition as the court may deem fit to make in order to secure his attendance at his trial on a later date.

Though the word “tried” is used in section 35(4) (a) and (b) of the Constitution, the word as used in relation to that section means a formal indictment of a person accused of a crime in the form of an arraignment before a court of competent jurisdiction. The word does not necessarily refer to the entire trial from arraignment to sentence. This is because every criminal trial commences with arraignment.¹⁴ An arraignment of an accused person within the stipulated period is therefore sufficient compliance with the constitutional provision provided the arraignment is before a court with competent jurisdiction to try the accused person.

ii. Right to Silence

The right to silence can be invoked by an accused person at the investigation or pre-trial stage or at the stage of trial. By section 35(2) of the Constitution, any person who is arrested or detained has the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his choice. This right is further protected by section 29 of the Evidence Act, 2011 which makes any statement obtained involuntarily from an accused person inadmissible in criminal proceedings. Despite the use of the phrase “until after consultation with a legal practitioner or any person of his choice” the right to silence does not abate after such consultation is made. In fact, the right subsists even throughout the trial until sentence. Thus, by section 36(11) of the Constitution an accused person is not a compellable witness at his own trial.

iii. Impartiality of the Adjudicator

The impartiality of an adjudicator is best expressed in the twin principles of natural justice, “*audi alteram partem*” and “*nemo iudex in causa sua.*” While the first describes the duty of the adjudicator to listen to both parties to a case before coming into conclusion, the second describes the duty of the adjudicator to desist from trying a case if he has any interest to protect in the case. Section 36(1) of the Constitution guarantees the right of an accused person to fair hearing by an impartial and independent adjudicator. Fairness in the part of an adjudicator connotes being impartial, just, equitable, disinterested and free of bias or prejudice.¹⁵ Any successful complaint of partiality or bias on the part of the adjudicator renders the proceedings null and void and liable to be set aside on appeal even if other aspects of fair hearing were observed.^{16,17}

iv. Publicity of Trial

Publicity of a trial is one of the distinctive features of fairness in a criminal trial. Members of the public are not prohibited from attending a criminal trial even when they do not have any form of involvement in the proceedings. The place of trial must, therefore, be a place where members of the public have unhindered access to as far as it can conveniently contain them. However, there are certain circumstances where members of the public may be restricted from having access to the venue of a criminal trial. The circumstances include: the interest of defence, public safety, public order or public morality; protection of the welfare of minors; special circumstances necessitating the protection of the private lives of parties to the proceedings and when a minister of the Federal Government or a commissioner of a State provides satisfactory information that it will not be in the public interest for certain matters to be disclosed publicly.¹⁸

v. Timely Trial

By section 36(1) and (4) of the Constitution, an accused person is entitled to have his guilt or innocence determined by a court or tribunal within a reasonable time. This means that the trial of an accused person must be timely held and without inordinate delay as it is injustice to delay justice. The expression, “within a reasonable time” as used in section 36 is not defined in the Constitution. However, in the case of *Effiom v. The State*,¹⁹ the Supreme Court held that the expression in its ordinary meaning means moderate, tolerable or not excessive but that the question of whether an accused person had a fair trial within a reasonable time will depend on the circumstances of each particular case, including the place or country where the trial took place and the resources available to the appropriate organs in the country. Also in the case of *Gozie Okeke v. the State*,²⁰ apex court identified four factors to be considered in determining what a reasonable time is for a criminal trial. The court listed the factors as: the length of the delay, the reasons given for the delay, the responsibility of the accused person in asserting his right and the prejudice to which the accused may be exposed as a result of the delay.

Trial within a reasonable time is fundamental to a criminal trial because undue delay may impair the ability of the accused person to defend himself and witnesses might have died or the interval or recollection of the facts by the witnesses might have become blurred.²¹ The rights, in relation to the time limits for trial, conferred on an accused person by section 35(4)(a) and (b) of the Constitution must be distinguished from that conferred by section 36(1) and (4). While the former relates to arraignment, the later relates to the entire trial.

vi. Presumption of Innocence

Section 36(5) of the Constitution provides that every person charged with a criminal offence shall be presumed innocent until his guilt is proven. Unlike the inquisitorial system of criminal justice practiced in continental countries where the accused is required to prove his innocence, it is the prosecution that is required to prove the guilt of an accused person in Nigeria's criminal justice system which is adversarial. The right to presumption of innocence is further protected by section 135 of the Evidence Act which requires the standard of proof of the guilt of an accused person to be beyond reasonable doubt. It is only after such proof beyond reasonable doubt that the burden shifts to the accused to establish his innocence. The proviso to section 36(5), however, recognises statutory provisions that may require the accused person to establish particular facts. For instance, an accused that makes a plea of alibi is required to prove it.²²

vii. Information on Nature of the Offence

The right to be informed of the nature of his offence, like the right to silence, avails the accused person both at the investigation or pre-trial stage and at the trial stage. By section 35(3) of the Constitution, any person arrested or detained shall be informed in writing within twenty-four hours of the facts and grounds of his arrest or detention and this must be done in the language he understands. Also, by section 36(6)(a) of the Constitution, an accused person, upon being charged with an offence, is entitled to be informed promptly of the details and nature of the offence for which he is charged and this must also be in the language he understands. However, where an accused person is charged with a grave offence for which he was informed, he may be convicted for a lesser offence having similar ingredients as the grave offence without the necessity of informing him of the lesser offence.²³

viii. Adequate Time and Facilities to Prepare His Defence

By section 36(6)(b) of the Constitution, any person who is charged with a criminal offence is entitled to adequate time and facilities to prepare his defence. The time referred to in this paragraph is the requisite adjournment required by the accused person to secure the services of a counsel, the attendance of witnesses and the production of documents and the time to present his arguments. Facilities in the context of the paragraph means that the court or tribunal has a duty to assist the accused in producing any document or securing any compellable witness required to establish his defence. A breach of this right may vitiate the entire proceedings.²⁴ It should be noted that an accused person who is given a reasonable time to prepare or present his defence but fails to utilise such opportunity cannot complain of denial of fair hearing. This is because adjournment is a matter that is within the discretionary powers of the court and the only standard is for it to be exercised judiciously and in accordance with the principle of fair hearing.^{25,26,27}

ix. Legal Representation

It is a fundamental principle of criminal justice administration that an accused person is entitled to be represented by a legal practitioner of his choice. This right is duly safeguarded by section 36(6)(c) of the Constitution which provides that an accused person is entitled to defend himself either in person or by a legal practitioner of his own choice. The right of an accused person to legal representation is further protected by section 267(1) of the Administration of Criminal Justice Act²⁸ and recognised in numerous international and regional legislations to which Nigeria is a party.^{29,30,31} However, the counsel chosen by an accused person must be one that is not subject to any limitation that might preclude him from appearing in the case.³² Where an accused person elects not to employ the services of a legal practitioner, the court or tribunal shall inform him of his right to legal representation and the consequence of his failure to get legal representation and where he decides to waive that right he cannot complain of fair hearing. Where it is a capital offence the court has the duty of providing legal representation for the accused person.^{32,33}

x. Right to Present and Examine Witnesses

An accused person has the right to present witnesses in his defence and examine, either by himself or by his legal practitioner, the witnesses called by the prosecution. This is by virtue of the provision of section 36(6)(d) of the Constitution. The right to examine and cross-examine witnesses is applicable to the

accused person on the same condition as is applicable to the witnesses called by the prosecution. However, an accused person can only secure the attendance of competent and compellable witnesses and the examination of the witnesses must be in accordance with the rules of evidence. By virtue of right to silence, an accused person may elect not to call any witness nor testify for himself. The prosecution or the court may comment on or draw inference from such refusal but cannot assert that such failure is an admission of guilt.³⁴

xi. Right to Interpreter

Where an accused person does not understand the language of the court, he is entitled to have the service of an interpreter without any expenses by him for such service. The interpreter must interpret clearly and correctly to the accused person anything said in the course of trial and there should be apposite interpretation to the court of anything said by the accused person. Whereas English, being the lingua franca, is the official language of the courts in Nigeria,^{35, 36, 37} there exist a large percentage of illiterate populations which do not understand the English language making it necessary for the services of interpreters to be frequently required in criminal trials in the country. However, where the proceedings of the court are conducted in any language different from the English language, an accused person who does not understand the language of the proceedings is equally entitled to the interpretation of the proceedings in any language he understands.³⁸

The service of an interpreter is the only means of ensuring proper understanding by, and participation of an accused person in a criminal trial where the proceedings are conducted in a language he does not understand. It does not only ensure proper participation of the accused person in the proceedings but also ensures that justice is done in the trial.³⁹ However, it is the duty of the accused person to inform the court either personally or through his counsel, where he is represented by one, that he does not understand the language of the proceedings. Where the accused person fails to inform the court that he does not understand the language used at the trial, failure to provide one will only be treated as a procedural irregularity unless it occasioned a miscarriage of justice and where he is represented by counsel he cannot subsequently complain of denial of fair hearing.^{40,41}

xii. Prohibition of Trial by Retroactive Legislation

A retroactive legislation is a legislation that affects acts or facts that were in existence before the legislation came into force.⁴² By section 36(8) of the Constitution, an accused person cannot be convicted for an offence unless the offence and the penalty are contained in a written law as at the time the act constituting the offence was committed. Also, by the second leg of the section, no penalty shall be imposed for an offence where such penalty is heavier than the existing penalty in force as at the time the offence was committed.⁴³

xiii. Prohibition of Double Jeopardy

Double jeopardy is the fact of being prosecuted or sentenced twice for substantially the same offence.⁴⁴ Section 36(9) of the Constitution provides that no person who shows that he has been tried for a criminal offence by a court or tribunal of competent jurisdiction and has either been convicted or acquitted shall undergo another trial for the same offence or another offence having similar ingredients. According to Akpambang,⁴⁵ the underlying idea in the doctrine of double jeopardy is that the resources, power and arsenal at the disposal of the State should not be permitted to be employed in the conviction of an individual in order to subject him to embarrassment, expense and ordeal and to compel him to continue to live in a state of anxiety and insecurity. However, for the plea of double jeopardy to avail an accused person, the following conditions must be fulfilled:

1. The first trial of the accused person must be for a criminal offence contained in a written law (an offence known to criminal law).
2. The first trial of the accused person must be by a court of competent jurisdiction.
3. The first trial of the accused person must have ended with either a conviction or an acquittal (not a mere discharge, *nolle prosequi* or withdrawal).
4. The first and second trial must be for the same offence or offences having similar ingredients.

It should be noted that the plea of double jeopardy does not affect the powers of an appellate court to order a retrial for the same offence or a similar offence after a conviction or acquittal.

xiv. Right to Plea of Pardon

Almost similar to the prohibition of double jeopardy is the right of an accused person to plea of pardon. Pardon is an executive action that mitigates or set aside punishment for a crime and restores the rights and privileges that were lost on account of conviction.⁴⁶ By section 36(10) of the Constitution, no person who shows that he has been pardoned by the appropriate authority for a criminal offence shall again be tried for that same offence for which he was pardoned. The appropriate authority in this context is the President of Nigeria for a federal offence or a State Governor for a State offence.^{47,48,49}

xv. Recording of Proceeding and Right to Copy of Judgement

By section 36(7) of the Constitution, a court or tribunal is bound to keep record of proceedings of a criminal trial and an accused person or his authorised representative is entitled to copies of the judgement within seven days of the conclusion of trial. However, failure of the court or tribunal to comply with this constitutional safeguard will be treated as a mere irregularity and cannot vitiate the trial unlike most other constitutional safeguards.⁵⁰ This is because such failure could hardly affect the guilt or innocence of the accused person. Moreover, the accused person could resort to other means of obtaining copies of the judgement like an order of mandamus against the registrar of the court or tribunal, petitioning the relevant regulatory body like the National Judicial Council or moving an appellate court to mandate the release of copies of the judgement.

xvi. Right of Appeal

An accused person who is convicted at the end of his trial can resort to a superior court to have the proceedings reconsidered. However, the powers of a superior court to reconsider the decision in a criminal trial are not spontaneous. Such powers must be conferred by statute either as of right or with leave of the lower court or the superior court. Where leave to appeal is required either by the Constitution or any other statute regulating criminal proceedings, a superior court has no jurisdiction to reconsider the decision unless leave is sought from and granted either by the lower court or by the superior court.^{51,52,53}

3. IMPEDIMENTS TO FAIR TRIAL

As noted earlier, there are a number of safeguards contained in the Constitution and other procedural penal legislations meant to protect the fair trial rights of persons accused of running in conflict with the law. These safeguards are also recognised in several international and regional human rights instruments to which Nigeria is a party, including the United Nations Universal Declaration of Human Rights,⁵⁴ the International Covenant on Civil and Political Rights⁵⁵ and the African Charter on Human and Peoples' Rights.⁵⁶ Despite the existence of these safeguards, there are some factors that impede fair trial in Nigeria. These factors range from the content of some penal legislation to the attitude of the courts and counsel down to the attitude of law enforcement officials. These factors shall be classified as legislative, judicial, administrative and law enforcement impediments.

i. Legislative Impediments

Section 1 of the Constitution makes provision for its supremacy and renders any other law that it inconsistent with constitutional provisions null and void to the extent of such inconsistency. This means that the safeguards for fair trial contained in the Constitution are supreme to any penal legislation, whether substantive or procedural. However, the provisions of some penal legislation in the country raise fundamental rights concerns due to their inconsistency with some clear provisions of Chapter IV of the Constitution relating to fair trial. Some examples of such penal legislations are The Terrorism (Prevention) Act.⁵⁷

The TPA contains a number of provisions that undermine the tenets of fair trial as contained in the Constitution. By section 28(1) of the TPA (as amended by section 13 of the 2013 amendment) where a person is arrested upon reasonable suspicion of having committed any offence under the Act, the relevant law enforcement or security officer may direct that the person arrested be detained in custody for a period not exceeding forty-eight hours from his arrest. This is inconsistent with the requirement of section 35(5)

of the Constitution which stipulates the maximum time limit for such detention to be twenty-four hours in a situation where there is a court of competent jurisdiction within the radius of forty kilometers from the place of arrest or detention. The sub-section also empowers law enforcement or security officers to limit access to the detainee to only medical officers of the detaining agency and the counsel to the detainee, in clear contravention of section 35(2) of the Constitution which entitles any person arrested to remain silent until after consultation with a legal practitioner or any other person of his choice.

The new Section 27(1) of the TPA as contained in the 2013 amendment empowers the court to grant an ex-parte order for the detention of a suspect for a period not exceeding 90 days subject to a renewal for a similar period until the conclusion of investigation and prosecution of the suspect. By this sub-section, courts seem to be at will to perpetually grant 90 days detention orders against terrorist suspects until anytime the prosecuting authority is ready or willing to prosecute the suspect. This is in clear conflict with the two months minimum period provided by the Constitution within which a detained suspect can be brought for trial. Also worthy of mention is the new section 28(4) of the TPA contained in the 2013 amendment. By this sub-section, a suspect who is granted bail by the court within the 90 days period provided in section 27(1) may still be placed on house arrest on the approval of the head of the investigating agency. This particular provision not only violates the fair trial right of the suspect but is a brazen affront on the inherent powers of the court to release suspected offenders on bail.

The Economic and Financial Crimes Commission Act⁵⁸ makes elaborate provisions on the forfeiture of assets of persons who are suspected to be involved in economic or financial crimes. Sections 26(1) and 28 of the Act empower the Economic and Financial Crimes Commission (EFCC) to attach and seize properties of persons undergoing investigation by the Commission. The Commission shall then apply to the court for an interim attachment order against the seized property. By giving the Commission powers to attach properties of persons undergoing investigation before resorting to the courts, the Act has succeeded in putting the cart before the horse rather than the other way round. This offends section 36(5) of the Constitution which protects the fundamental right of every suspected offender to presumption of innocence. Since section 24 of the Act defines property subject to forfeiture as property obtained in violation of the Act or in violation of the laws of a foreign country, by attaching such property before resort is made to the court, the Commission has been given powers, in one way or the other, to determine that there has been a violation by the suspected offender. The provisions of the Act empowering the Commission to attach properties of suspected offenders before resorting to the court is also inconsistent with the constitutional right to fair hearing enshrined in section 36(1) and (4) of the Constitution.

An attempt was made to invoke the original jurisdiction the Supreme Court by the Abia State Government in 2007 in setting aside some of the provisions of the EFCC Act, relating to forfeiture of assets, for being inconsistent with the Constitution. This was in the case of *Attorney General of Abia State v. Attorney General of Federation and Others*.⁵⁹ The Supreme Court declined jurisdiction on grounds that the acts complained of relate to the EFCC, an institution with a separate legal entity from the Federal Government, and that it does not fall under the original jurisdiction of the Supreme Court. Regrettably, with due regards to the decisions of the courts, the High Courts and the Court of Appeal in Nigeria have severally upheld the powers of the EFCC to attach properties and freeze bank accounts in the course of investigation as not being inconsistent with the fundamental right to fair hearing.^{60,61,62} Sections 37, 45(4) and 49 of the Corrupt Practices and Other Related offences Act⁶³ make similar provisions relating to attachment and seizure of property before resort is made to the court.

ii. Judicial Impediments

A number of factors within Nigeria's judicial system make it difficult or nearly impossible for persons accused of crime to access fair trial. Prominent among these factors is the snail pace of criminal trials in the country. Due to problems ranging from shortage of judicial personnel to the lackadaisical attitude of some of the available judicial personnel, it takes ages for criminal trials to be resolved. This is contrary to the constitutional provision that criminal trials, like any other form of trial, must be held within a reasonable time. The slow pace of trials in the country's courtrooms is not limited to criminal trials but extend to trials in civil cases prompting a consistent call for the adoption of alternative dispute resolution.

Alternative dispute resolution is, however, seldom practicable in criminal matters. It was in response to the snail pace at which criminal justice was running in the country, among a few other difficulties in criminal justice administration, that the Administration of Criminal Justice Act was introduced in 2015 and domesticated by most states in the country. The introduction of ACJA has only improved the situation a little. The wheel of Nigeria's criminal justice system still appears to turn without grinding, making fair trial a mirage.

The competition for political power has made politicians to infiltrate the judicial system with their political intrigues and manoeuvres thereby depriving the judiciary of its independence. This is made possible by the fact that right from the stage of appointment of judicial officers, the politicians are able to have their say by ensuring that their friends, associates and family members become judges or heads of court. This has in no small way affected the ability of the courts to ensure fair trial for suspected offenders. Political opponents are easily detained on trumped-up charges and rather than being the bastion of hope for the oppressed, the courts become culpable as some judicial officers are used to legitimise the illegitimate actions of these politicians. Pre-trial detention are consistently used as alternative punishment for political detractors with the bench watching approvingly as the fair trial rights this class of alleged offenders are being breached. Even where criminal trials are not politically motivated, the mere fact that the trial is being undertaken by a department or agency of the executive arm makes some judges to budge for fear of arrest, investigation, removal or as a means of currying favour from the executive arm.

Judicial corruption is another factor within the judiciary that impedes the fair trial rights of suspected offenders. Because of the distinctive role judges play in the society, the judicial office ought ordinarily to be reserved for men and women of impeccable character. However, disreputable individuals without any trait marking them out for the distinguished role of judges have continuously found their way into the judicial office. With the connivance of a retinue of corrupt support staff, they commercialise the judicial process by giving judgements and rulings in favour of the highest bidders. The result is the breach of the fair trial rights of suspected offenders affected by the commercialisation of judicial verdicts. According to Langseth and Stolpe, when a litigant bribes a judge, he immediately acquires a privileged status in relation to other litigants who have not offered a bribe and the preferential treatment secured and the resulting discrimination obliterates objectivity and neutrality from the judicial process.⁶³ Judicial corruption not only affects litigants but has a deleterious effect on the wider society. It weakens the judicial institution, impedes fundamental rights, obstructs the administration of justice and is a means of oppression of the poor who ought to see the judiciary as their last bastion of hope

Inadequate manpower and infrastructural facilities within the judiciary also impedes the fair administration of criminal justice in the country. An efficient judiciary is not only a product of a just and unbiased adjudicator but also depends on good human support structure and a wide range of judicial paraphernalia. The reverse is the case for the Nigerian court system as most Nigerian judges are deficient of the requisite human and physical resources meant to enable them function efficiently and effectively. Infrastructural facilities that are absent from most Nigerian courts include well equipped courtrooms, well stocked libraries, information and communication technology gadgets, internet facilities, continual power system and some other modern equipment. This, in addition to the unavailability of well trained interpreters, ICT specialists, stenographers and data analysts make the judicial process slow, outmoded and burdensome. In some States of the federation, judges and magistrates are known to share courtrooms with their colleagues thereby interrupting their court sittings and introducing unnecessary hiatus to the free flow of the judicial process. In some others where court rooms are sufficient, the absence of a continual power system may make court sittings inconveniencing and sometimes impossible. It is also a known fact that most Nigerian judges record court proceedings in long hand. All these have the long run effect of impeding the fair trial rights of suspected offenders.

iii. Administrative Impediments

The actions or inactions of some stakeholders in the administration of criminal justice have a substantial influence on the fair trial rights of suspected offenders. The executive arm of government leads the pack in this regards. The executive could influence a criminal trial in a number of ways, including directly and

evasively. The executive arm of government in Nigeria, both at the federal and State levels, have been known to issue reckless executive orders that usurp the functions of the legislature and the judicial powers of the court both safeguarded by the Constitution. An example of such executive order is Executive Order No. 6 of 2018⁶⁴ signed by President Muhammadu Buhari on 6th July, 2018. The Order gives the executive arm powers to seize the assets of any Nigerian citizen engaged in corrupt practices or related offences in order to prevent such property from dissipation until the final determination of a corruption related matter against such person by a competent court. This could be done even without recourse to the courts as the Order gives the Attorney General of the Federation unfettered discretion whether or not to seek the appropriate Order of Court in the course of such seizure.⁶⁵ Examples of reckless executive orders at the State level are no movement orders issued by State governors during monthly environmental sanitation exercises and some reckless orders issued by some State governors at the peak of the recent Corona virus outbreak especially pertaining to the seizure, detention or destruction of the personal property of individuals. The executive could also impede fair trial by external interference in the adjudicatory process thereby making the outcome of the case dependent on the whims and caprices of the relevant executive authority or executive agency.

Absence of legal aid for indigent defendants could also impede fair criminal trial for this class of litigants. Access to justice is a constitutional right that is embedded in the doctrine of fair hearing which, among others, includes the right to adequate facilities for a defendant to present his defence and the right to a legal practitioner of the defendant's choice. However, the constitutional right of a defendant to adequate facilities for his defence and to legal representation will remain a mirage when he does not have the financial means for such legal necessities. This is where legal aid ought to come into play. A number of international and regional human rights instruments make it an obligation on State parties to provide legal aid to indigent defendants. The Legal Aid Council of Nigeria is the body statutorily empowered to oversee this function in the country. However, the Council is short-staffed⁶⁶ and obviously does not have the resource and manpower to coordinate or provide legal aid services to indigent defendants countrywide. Added to this is the lackadaisical attitude of private legal practitioners to complementing the efforts of the Council through pro bono legal services. The result is that the rights of many litigants to legal facilities and legal representation remain unprotected.

Legal practitioners who appear before Nigerian courts also play a part in impeding fair criminal trial in the country. A legal practitioner who appears in a criminal trial, whether as a prosecutor or as a defence counsel, has a professional duty to assist the court in ensuring a fair trial. In doing so, such legal practitioner ought to act within the bounds of the constitutional safeguards for fair trial, the extant procedural laws and the ethics of the legal profession. The reverse is the case for most criminal trials in the country as legal practitioners are often culpable in delayed trials, untimely arraignments, secret trials, biased adjudication and unprosecuted or poorly prosecuted appeals among other breaches of a defendant's constitutional rights. In some cases, legal practitioners refuse or neglect to undertake the defence of alleged offenders whose alleged offences are subject to public unpopularity or on mere account of suspicion of guilt or because of the severity of the alleged offence. This is despite the knowledge that their action is contrary to the ethics of the legal profession. In the case of *Udofia v. The State*,⁶⁷ Nigeria's Supreme Court famously held that it is the paramount duty of a legal practitioner to defend an accused person, which means to ensure an accused person is never left unrepresented at any stage of the trial. If the counsel for the accused person has obviously and scandalously not discharged this duty, the trial can never be said to be fair (per Oputa JSC, of blessed memory). In other cases, prosecution counsels persecute rather than prosecute alleged offenders. They cause defendants to be prosecuted repeatedly for substantially the same offence, bring defendants before trial on retroactive or non-existent legislation, delay trials by slothful and indolent prosecution and suppress facts or evidence at their disposal that would lead to the discharge of defendants. The role of ministries of justice in this regard must be mentioned. In most cases legal advice take years to be received causing alleged offenders to suffer lengthily, and often illegal, pre-trial detention.

iv. Law Enforcement Impediments

The process of law enforcement in Nigeria, arguably, forms the greatest impediment to a fair criminal trial in the country. Law enforcement agencies remain the first contact between defendants and the criminal justice process. They oversee the preliminary stages of a criminal trial from arrest to pre-arraignment and in certain cases they are involved in the prosecution of offences. Their role in ensuring fair trial for suspected offenders can therefore not be overemphasised. However, the atmosphere of lack of professionalism and unethical conducts among law enforcement officers in Nigeria has made criminal trials to be anything but fair. Law enforcement agencies in the country have become synonymous with human rights violation. Cases of intimidation of suspects, unlawful detention, refusal to grant administrative bail or to recognise court bail, torture, inhuman and degrading treatment, forced disappearance and extrajudicial killings have been continuously reported among law enforcement agencies in the country⁶⁸ and these have made fair trial a mirage. In addition, other problems of law enforcement in the country such as institutional weaknesses, corruption, poor training, lack of knowledge, skill and expertise in law enforcement and inadequate funding have a way of impeding the fair trial rights of offenders.

In some cases law enforcement agencies apply unlawful force, unwarranted crackdowns, harassment and intimidation to gain unfair advantage in a criminal trial. When suspects, witnesses, legal representatives of parties or even adjudicators approach a trial with apprehension or fear of physical or mental injury, the result is that the trial becomes unfair *ab initio*. This is the exact consequence of the creation of an atmosphere of oppression, harassment and intimidation in a criminal trial by a law enforcement agency. Judges may become mindful of accusations or indictment from such agency. Such intimidated judges may do anything to avoid falling out of favour with the agency concerned, which may include sacrificing the fair trial right of the defendant. According to Umana,⁶⁹ trials conducted by intimidated judges lead to miscarriage of justice and makes a mockery of the constitutional requirement of fair trial.

4. SURMOUNTING THE IMPEDIMENTS TO FAIR TRIAL: PROPOSALS

In order to surmount the impediments to a fair criminal trial in Nigeria, the following proposals are made:

i. Removal of Legislative Impediments to Fair Trial

It is observed that whenever a crime becomes prevalent, generates public opinion or relates to national security, sentiments come into play in legislating against such crime. This should not be the case. Sentiments have no place in legislation and the provisions of the Constitution and extant international and regional legal instruments must be considered when enacting new penal laws or reviewing existing ones. Nigeria's extant substantive and procedural penal laws should be reviewed and all provisions that are inconsistent with the constitutional rights to fair trial or any other fundamental right recognised by domestic, regional or international law should be excised from our penal laws.

ii. Judicial Independence

The judiciary must be kept away from the other arms of the government to avoid improper influences of the adjudicatory system. Judicial officers should not be subjected to domination or coercion by the executive or by partisan influences in order to give them room to make unbiased, objective, dispassionate, just and equitable decisions. Full financial autonomy should be granted to the judiciary at all levels of government to strengthen their role of checks and balances to executive or legislative recklessness.

iii. Review of the Process of Appointment of Judges

The process of appointment of judicial officers needs to be reviewed both in terms of policies and precedents. The National Judicial Council, the Federal Judicial Service Commission and State Judicial Service Commissions should rise to the occasion and ensure that judicial appointments are safeguarded from external influences, corruption, nepotism and other forms of abuse. The selection process for judicial officers must be immunized against irregularities and obscurities and only men of proven integrity and outstanding intellectual prowess should make it to the high calling of a judge.

iv. Review of the Disciplinary Mechanisms in the Judiciary

The National Judicial Council, the principal body responsible for disciplining erring judicial officers, should introduce more stringent measures against judges engaged in corrupt practices or abuse of office. The act of sitting extremely late in court, neglect of court sittings, indiscriminate absence from place of judicial assignment, harassment of defendants, witnesses or legal practitioners and deliberate withholding of record of proceedings from litigants, among others, are common misconducts by judges that impede fair trial. These are areas of discipline that the Council has not adequately zoomed its focal length on. The heads of the executive arms of government at the federal and State levels, the National Assembly, State Houses of Assembly and other bodies saddled with the responsibility for regulating the conduct of judicial officers and judicial support staff also need to be more objective and decisive in their regulatory function.

v. Digitalised Courtrooms

The Nigerian judiciary needs to migrate from the present manual and analog courtroom system to a digitalised courtroom system. Modern courtroom technologies such as e-filing of court processes, electronic recording of court proceedings, court stenography, voice translator, electronic law reporting and virtual court proceedings should be introduced into Nigerian courts. A digitalised court system, though not without its own shortcomings, has the overwhelming advantage of speed and efficiency in the administration of justice.

vi. Specialised Courts

Specialised courts should be set up to hear and determine criminal complaints. This will not only facilitate speedy and fair administration of criminal justice but will also reduce the burden of cases in regular courts. Case management in criminal matters will also be more effective with specialised courts. Specialisation of courts in criminal cases in Nigeria will, no doubt, be a daring and important development reform in criminal justice administration. The proposed specialised criminal courts would be manned by judges with special expertise in criminal law and criminal procedure and this will help to create a more informed decision making process and promote legal certainty.

vii. Legal Aid and Assistance for Indigent Litigants

Adequate human, financial and material resources should be made available to the Legal Aid Council of Nigeria, the body saddled with the responsibility of co-coordinating legal aid in the country. As mentioned earlier, the provision of legal aid for indigent litigants is both a fair trial right and an international obligation under several international and regional legal instruments. However, studies have shown that the Legal Aid Council is short-staffed and do not have the resource and manpower to effectively coordinate legal aid in the country.⁷⁰ The organised Bar in the country should complement the efforts of the Council by encouraging the participation of private legal practitioners in the provision of legal aid services through Pro Bono Committees of the Bar.

viii. Enforcement of the Rules of Professional Conduct against Legal Practitioners Who Impede Fair Trial

By the Rules of Professional Conduct for Legal Practitioners,⁷¹ a lawyer shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice. This means that a lawyer who does anything or conducts himself in any manner that impedes fair trial is liable for professional misconduct. There are also provisions in the Rules that enjoin prosecuting counsels to seek the ends of justice rather than a conviction in criminal trials, not to file frivolous charges and not to suppress facts of secrete witnesses capable of establishing the innocence of an accused person. Defence counsels are also enjoined to exert their best efforts towards the defence of persons accused of crimes.⁷¹ All these provisions are meant to ensure that lawyers protect the right to a fair trial of persons accused of crimes. They should be consistently enforced against erring lawyers.

ix. Legal Advice

The federal and States ministries of justice should fashion a workable framework for expediting action on cases sent to them by law enforcement agencies for legal advice. Law officers should also make it a duty to visit detention facilities in order to identify and address cases where legal advice ought to be sought but

were not sought by the investigating agency. The recent pacesetting effort of the Lagos State Ministry of Justice in respect of legal advice is commendable. On the 19th day of May, 2021, the Attorney-General of Lagos State launched an online portal⁷² via the Ministry's website where the status of legal advice issued by the Ministry could be ascertained and a certified true copy obtained.

x. Adequate Funding, Training and Retraining of Law Enforcement Agencies

The protection of human rights has its cost implication. To this end, law enforcement agencies should be adequately funded by the combined efforts of the three tiers of government. This is to enable them carry out their law enforcement functions of criminal investigation and prosecution effectively and efficiently. Corporate bodies should also assist in funding law enforcement as part of their corporate social responsibilities. In addition to funding, law enforcement agencies should be consistently trained and retrained on the importance of human rights and fair trial to a democratic society.

5. CONCLUSION

It can be safely concluded that a bulk of the impediments to a fair criminal trial in Nigeria resides with the court system. To this end, all stakeholders involved in the management and administration of the law courts in Nigeria must put all hands on deck towards the gradual obliteration of all limiting factors to fair criminal trials in the country. The constitutional safeguards for a fair criminal trial from the stage of arrest down to sentencing must be sustained by Nigerian judges as a pre-condition for any criminal proceeding before them. Law enforcement agencies, legal practitioners and functionaries of the executive and the legislative governments both at the State and the federal levels must tighten all loose ends on their part as regards the fair trial roadmap and ensure that they are not complicit in impeding fair trial. This is because fair trial does not only ensure justice for the defendant under trial; it ensures justice for the victims of crime and justice for the larger society. It also makes the society safer and more secured, boosts the rule of law and is an antidote for anarchy and disorder.

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