

**MAINSTREAMING HUMAN RIGHT IN MILITARY JUSTICE SYSTEM IN
NIGERIA**

Vivian Chukwudumebi Madu Ph. D

ASSOCIATE RESEARCH PROFESSOR NIGERIA INSTITUTE OF
ADVANCED LEGAL STUDIES on Sabbatical Leave at the NATIONAL
HUMAN RIGHTS COMMISSION.

*The authors declare
that no funding was
received for this work.*

*** Correspondence:** Vivian Chukwudumebi Madu Ph. D



Received: 17-July-2025

Accepted: 27-July-2025

Published: 03-August-2025

Copyright © 2025, Authors retain
copyright. Licensed under the Creative
Commons Attribution 4.0 International
License (CC BY 4.0), which permits
unrestricted use, distribution, and
reproduction in any medium, provided
the original work is properly cited.
[https://creativecommons.org/licenses/b
y/4.0/](https://creativecommons.org/licenses/by/4.0/) (CC BY 4.0 deed)

This article is published by **MSI
Publishers** in **MSI Journal of Arts,
Law and Justice (MSIJALJ)**
ISSN 3049-0839 (Online)

Volume: 2, Issue: 8 (August-2025)

ABSTRACT: The principle of fair hearing is fundamental to
national development, playing an indispensable role in the
administration of justice. Despite its importance, its
application is often beset by significant challenges and
inconsistencies that compromise the possibility of a fair trial.
Nigeria's military justice system contends with numerous
issues, notably procedural irregularities and delays. Factors
such as inefficient case management and prolonged pre-trial
detentions contribute to these delays, which not only extend
the legal ordeal for defendants but also risk compromising
the integrity of the trial process itself. This situation fosters
an unequal legal environment that inherently undermines the
fairness of military trials. As the right to legal representation
is a foundational element of a fair hearing, its absence can
lead to profound injustice. This study aims to integrate
human rights principles into the military justice system of
Nigeria. The research finds that while the Nigerian
constitution provides for the enforcement of fundamental
human rights—including the right to a fair hearing, the right
of an accused to remain silent, and the right to a timely
trial—these mandates are not consistently upheld within the
military justice framework. The study concludes that the

Constitution guarantees a fair hearing and equitable treatment for any accused individual. Consequently, it is incumbent upon military commanders and courts-martial to ensure fairness is maintained at every stage, from arrest and pre-trial detention to arraignment and sentencing.

Keywords: *Military Jurisprudence, Procedural Justice, Constitutional Guarantees, Nigerian Armed Forces Law, Court-Martial Integrity.*

1. Introduction

Every functional organization or society relies on a body of laws to regulate member conduct and, when strictly and impartially applied, to secure the greatest good for the majority. Such legal frameworks foster social stability and harmonious coexistence. The idea of justice is inextricably linked to the rigorous application of law, defined as fairness and reasonableness in the treatment of people, the making of decisions, and the enforcement of legal standards. Justice therefore involves the impartial resolution of conflicts and the equitable assignment of both rewards and penalties. This notion is deeply embedded within the administration of any criminal justice system, which is the procedural mechanism tasked with the just adjudication of all legal violations within an organization, including the military.

The Nigerian army is tasked with protecting the nation's sovereignty from both external and internal threats and preserving national security. It is therefore essential for service members to maintain discipline and loyalty. When an officer fails in their duty, prescribed punishments are administered through the system of military justice. However, significant criticism has been leveled against this system, questioning whether it can be truly just, fair, and unbiased. This skepticism arises from the method of appointing court-martial members, the temporary (ad hoc) nature of these courts, and the inherent characteristics of the military hierarchy.

This paper seeks to embed human rights principles within the military justice system. To do so, it evaluates the principle of fair hearing as a critical tool for achieving a fair trial, considering the constitutional rights of the accused and the practical challenges of applying these principles within Nigeria's military justice framework. Justice is the adhesive that binds society; any force that threatens to weaken it must be addressed

and neutralized. While the court-martial system in Nigeria endeavors to comply with the principle of fair hearing, this study will explore not only the evolution of military justice in relation to this doctrine but also its importance in ensuring due process. Meaningful reform must begin with adjustments to the laws governing military justice, starting with the commanders at all levels who are responsible for its administration. Furthermore, this research aims to enhance the understanding among military personnel of their constitutional rights, which are not diminished by their service in the armed forces. The findings herein are intended to serve as a practical blueprint for improving the military justice system and fostering public confidence in its operations.

2.0 Historical Development of the Military Justice System in Nigeria

The term "military" relates to the armed forces and their engagement in warfare. It denotes a body of troops recruited, trained, and maintained by the state to manage violence in pursuit of national objectives. In Nigeria, this encompasses the Army, Navy, and Air Force, all of which are governed by the Armed Forces Act.

2.1 Military Justice

Military justice constitutes a distinct legal framework applicable to members of the armed forces. Its primary objective is to uphold discipline and good order. The structure and procedures of military justice can differ substantially from civilian legal systems, often operating through a separate court system with stricter rules to ensure internal discipline and operational readiness. This distinction can raise questions regarding compliance with international human rights standards and fair trial guarantees.

Military justice is defined as the body of laws and procedures governing armed forces personnel. Many nations utilize separate legal codes and special judicial bodies for their militaries. Unique legal issues within this domain include the preservation of discipline, the legality of orders, and the appropriate conduct for service members. In some instances, military justice systems are empowered to handle civil offenses committed by military personnel. It is crucial to distinguish

military justice from martial law, which is the imposition of military authority over a civilian population during an emergency and is typically restricted by law.

The phrase "military justice" can appear to be a contradiction in terms. As noted by Yemi Akinseye-George, the term "military" connotes force, which seems to neutralize the concepts of fairness and equality central to "justice". He suggests that "justice in the military" might be a more accurate descriptor for the application of law to service personnel.

2.2 The Military Justice System in Nigeria

In Nigeria, the military justice system serves as the principal legal enforcement mechanism for the armed services, operating separately from the civilian criminal justice system. The Armed Forces Act (AFA) of 2004 is the primary legislation enacted by the National Assembly to regulate the conduct of service members. Under the AFA, military commanders are authorized to convene courts-martial on an ad hoc basis to try personnel accused of violating the military code. This involves a convening officer empanelling military officers of appropriate rank to perform a quasi-judicial function. The president, judge advocates, and members of a court-martial are appointed temporarily, and their duties expire at the conclusion of the trial, unlike their permanent counterparts in the civilian judiciary.

This ad hoc structure has fueled debate over whether military court proceedings can satisfy the standard of a fair and public hearing by a competent, independent, and impartial tribunal, as mandated by international and regional human rights treaties. Notably, sections 134, 169, and 171 of the AFA do contain provisions for impartiality and fair hearing. For instance, an accused has the right to object to the president or any member of the court-martial on reasonable grounds and is protected from double jeopardy.

3.0 The Principle of Fair Hearing

The concept of fair hearing is ancient, rooted in the principles of natural justice. These principles, often summarized by the Latin maxims

audi alteram partem (hear the other side) and *nemo judex in causa sua* (no one shall be a judge in his own cause), demand that decision-making bodies act fairly, in good faith, and without bias. A fair hearing requires that a person be given an adequate opportunity to present their case before a decision affecting their rights is made. It is a cornerstone of justice and a prerequisite for the just resolution of disputes. This right is constitutionally enshrined in Section 36 of the 1999 Constitution of the Federal Republic of Nigeria, which guarantees a fair hearing within a reasonable time by an independent and impartial court or tribunal.

A violation of the fair hearing principle renders the proceedings null and void, regardless of whether the outcome would have been the same. The rights of an individual in legal proceedings are tripartite, encompassing pre-trial, trial, and post-trial rights, all of which are constitutionally protected.

4.0 Theoretical and Conceptual Framework

4.1 Constitutional Safeguards for the Accused

The Nigerian Constitution provides several safeguards to ensure a fair trial for any person accused of a crime. An individual formally charged with a wrongdoing is referred to as "the accused" but retains the presumption of innocence until proven guilty.

- **Right to Dignity of the Human Person:** Section 34(a) entitles every individual to respect for their personal dignity and prohibits torture or any inhuman or degrading treatment. This right applies before trial, during police custody, and after conviction for those sentenced to imprisonment. As illustrated in

Sani v Nigerian Army, a breach of the right to a fair hearing led the court to set aside the court-martial's judgment and order a retrial. An accused person must not be subjected to unnecessary restraints like handcuffs unless there is a reasonable fear of violence or escape.

- **Right to Personal Liberty and Timely Arraignment:** Section 35(1) protects personal liberty, stipulating that no one shall be deprived of it except through

lawful procedure. An arrested person must be brought before a court within a "reasonable time," defined as one day if a competent court exists within a 40km radius, and two days otherwise. If an individual is not tried within two months (if in custody) or three months (if on bail), they must be released, though further proceedings are not precluded. This provision, however, does not typically apply to those charged with capital offenses. Undue delay can impair a defense and lead to a miscarriage of justice.

- **Right to Remain Silent:** Section 35(2) grants an arrested or detained person the right to remain silent and to avoid answering questions until they have consulted with a legal practitioner or another person of their choice. This right protects against self-incrimination and reinforces the presumption of innocence. An accused cannot be compelled to give evidence at their trial, and their silence cannot be used as an admission of guilt, although a court may draw appropriate inferences.
- **Right to Be Informed of the Offense:** An arrested person must be informed in writing, within 24 hours and in a language they understand, of the facts and grounds for their arrest. This ensures the accused understands the precise nature of the charges against them, a foundational element of a valid arraignment.
- **Right to Counsel:** Section 36(6)(c) guarantees that every person charged with a criminal offense is entitled to defend themselves in person or through a legal practitioner of their own choice. This right is fundamental, and its denial can invalidate a trial. For capital offenses, the state must provide counsel if the accused cannot afford one. The scope of "counsel of his own choice" was examined in.

Chief Obafemi Awolowo and others v The Federal Minister of Internal Affairs, where the court ruled that the chosen legal practitioner must be someone who can enter Nigeria as of right and is enrolled to practice there.

- **Right to Adequate Defence Preparation:** Section 36(6)(b) ensures that an accused person is given adequate time and facilities to prepare their defense. This includes the right to request that witnesses be summoned. In

Udo v The State, a conviction was quashed because the trial judge had denied a reasonable request for an adjournment, thereby violating this right.

- **Right to Be Tried Only for a Known Offense:** Section 36(12) states that a person cannot be convicted of a criminal offense unless that offense and its penalty are defined in a written law. In

Aoko v Fagbemi, a conviction for adultery was overturned because it was not a codified offense.

4.2 Court-Martial Jurisdiction and Composition

The authority of a court-martial to hear a case is contingent upon its proper establishment.

- **Convening of Court-Martial:** A court-martial is brought into existence by the order of a commander who is legally authorized to convene it. As established in legal precedent, these courts must be convened in strict accordance with statutory requirements; otherwise, their proceedings are void and any conviction is a nullity.
- **Membership:** The president and members of a court-martial must be of at least the same rank as, and senior to, the accused. The law prohibits a junior officer from sitting in judgment of a superior, a principle that upholds military tradition. A trial was quashed by the Court of Appeal because two captains, who were junior to the accused major, were members of the court-martial that tried him.

4.3 Pre-Trial Procedures and Rights

Summary Trials and Command Punishment: The AFA grants commanders the authority to conduct summary trials and impose punishments for disciplinary

infractions. These powers vary based on the commander's level and the rank of the accused.

- **Company Commander (or equivalent):** Can try personnel up to the rank of Captain. Punishments range from admonition and extra duties to short-term confinement or imprisonment for lower ranks.
- **Battalion Commander (or equivalent):** Has jurisdiction over personnel up to the rank of Major. Punishments can include fines, stoppages of pay, and for lower ranks, reduction in rank or imprisonment.
- **Brigade Commander (or equivalent):** Can try personnel up to Lieutenant Colonel. Available punishments are more severe, including larger fines and longer forfeiture of pay.
- **General Officer Commanding (GOC) (or equivalent):** Exercises jurisdiction over Colonels and above. This level of command can impose significant fines, forfeiture of pay, and demotions.

Court-Martial Pre-Trial Process: For offenses requiring a court-martial, a Commanding Officer (CO) must seek permission for trial from an appropriate superior authority (ASA). The ASA may order an independent investigation before deciding whether to dismiss the charge or convene a court-martial. There are two types: a General Court Martial (GCM), which can impose the maximum punishment including death, and a Special Court Martial (SCM), which is limited to sentences of up to one-year imprisonment.

Preparation of Defence: No later than 24 hours before trial, the accused must be served with the convening order, charge sheet, and a summary of evidence. This is a mandatory step to ensure the accused can adequately prepare their defense. The accused is entitled to a legal practitioner of their choice, who can be civilian or military personnel. If an accused cannot afford counsel, the convening authority must provide one, a protection that goes beyond the civilian system where it is typically reserved for capital cases.

4.4 Trial Phase

Assembly and Swearing-In: The trial formally begins with the assembly of the court, the reading of the convening order, and the swearing-in of its members. The accused must be given the opportunity to object to any member of the court they believe may be biased. Denying this right can lead to the nullification of the trial. To avoid bias, a commanding officer who reports a case should not also sit as a judge in the same matter.

Arraignment: This involves reading the charge to the accused in a language they understand and obtaining a voluntary plea. Any plea that is coerced or forced is invalid. The practice of using harsh interrogation methods to extract confessions is unlawful and contrary to the Evidence Act and the Constitution.

Trial Proceedings: A trial involves the examination, cross-examination, and re-examination of witnesses by all parties. The court must exercise care to ensure fairness. In

Lieutenant Colonel E. O. Anene v Nigerian Army, the Court of Appeal found that the appellant's right to a fair hearing was breached when the court-martial president subjected him to excessive questioning on irrelevant matters. Similarly, a court must not take over the role of the prosecution, as this creates an impression of bias.

Decisions: Section 140 of the AFA governs how court-martial decisions are made.

- Decisions are determined by a majority vote.
- In the case of a tie on the finding, the accused must be acquitted.
- A death sentence requires the unanimous agreement of all members, both for the finding of guilt and the sentence itself.
- In case of a tie on sentencing (for non-capital offenses), the president of the court has a casting vote.

5.0 Conclusion

This analysis of the Nigerian military justice system reveals a fundamental tension between the need for military discipline and the constitutional right to a fair hearing.

While the system has evolved and incorporated procedural safeguards, significant challenges persist in aligning its practices with the constitutional principles of fair hearing. The ad hoc nature of courts-martial and the influence of command authority continue to raise valid concerns about judicial independence and impartiality, which are essential tenets of natural justice.

Practical implementation often falls short of formal standards, with instances of procedural irregularities and inadequate legal representation undermining the fairness of proceedings. Achieving a balance between military discipline and individual rights is possible through strategic reforms that bolster judicial independence, enhance procedural rights, and improve access to competent legal counsel. A justice system perceived as fair and impartial by service members enhances morale, reinforces discipline, and strengthens the institutional integrity of the Nigerian Armed Forces. The primary challenge lies not just with the Armed Forces Act itself, but with its administration by those in command. The rule of law demands that all actions be based on legal provisions, and it is the duty of commanders and courts-martial to ensure fairness at all times, as guaranteed by the Constitution.

6.0 Recommendations

To better align the military justice system with constitutional standards of fair hearing, the following reforms are recommended:

Legal and Structural Reforms

- **Amend the Armed Forces Act:** The National Assembly should conduct a comprehensive review of the AFA to reinforce provisions concerning fair hearing, the independence of courts-martial, and procedural protections for the accused.
- **Establish a Permanent Military Court:** Transition from the ad hoc court-martial system to a permanent structure with legally trained, full-time military judges who serve fixed terms and are insulated from command influence.

- **Create a Military Judicial Service Commission:** Form an independent body to oversee the appointment, promotion, and discipline of military judicial officers, thereby enhancing institutional independence.

Procedural Safeguards

- **Enhance Pre-trial Rights:** Implement robust pre-trial procedures, including mandatory evidence disclosure and sufficient time for defense preparation.
- **Set Time Limits for Trials:** Introduce statutory time limits for all stages of military justice proceedings to prevent undue delays.
- **Strengthen Legal Representation:** Guarantee that all accused personnel have access to qualified, independent, and well-resourced military defense counsel.
- **Standardize Rules of Evidence:** Develop comprehensive evidence rules for military courts that are consistent with constitutional standards.

Appeals and Oversight

- **Expand Appellate Review:** Broaden the grounds for appeal from courts-martial to include errors of both fact and law.
- **Allow Civilian Judicial Oversight:** Consider permitting direct appeals from military courts to civilian courts on constitutional matters, especially those concerning fair hearing.
- **Mandate Automatic Review:** Institute an automatic review for all cases involving severe penalties, such as dismissal or substantial confinement, to ensure legal consistency.

REFERENCES

Legal Cases Cited

- *Adigun v Attorney General of Oyo State*
- *Akinbinu v Nigerian Army*

- *Aoko v Fagbemi*
- *Anyankpele v Nigerian Army*
- *Ariori v Elemo*
- *Army v Hassan and another*
- *Attorney General of the Federation v Dr. Clement Isong*
- *Awusa v Nigerian Army*
- *Chief Obafemi Awolowo and others v The Federal Minister of Internal Affairs*
- *Egbe v Nigerian Army*
- *Erizea v Nigerian Army*
- *Ezechukwu v Onwuka*
- *Hamidu Musa v Nigerian Army*
- *Hopkins v Smethwick Local Board of Health*
- *Ifeagwu v Federal Republic of Nigeria*
- *Josiah v The State*
- *Lebile v Registered Trustees of Cherubim and Seraphim Church of Zion of Nigeria, Ugbonla*
- *Lieutenant Colonel A. D. Karim v Nigerian Army*
- *Lieutenant Colonel E. O. Anene v Nigerian Army*
- *Mahe v Nigerian Army*
- *Monday Edet v Nigerian Army*
- *Nigeria Custom Prison Service v Adekeye*
- *Nigerian Army and another v Ogar and others*

- *Ogbomor v The State*
- *Olufeagba v Abdur-Raheem*
- *Oton Asuabiat and 53 others v Chief of Army Staff and another*
- *Rufai v Nigerian Army*
- *Salu v. Egeibon*
- *Sani v Nigerian Army*
- *Sgt. Amarachi Madu v FGN and 3 others*
- *Solola v State*
- *Thompson org. v N. I. P. S. S.*
- *Timothy v FRN*
- *Torri v National Park Service of Nigeria*
- *Tpr Oogwu Amos v Nigerian Army and Another*
- *Udo v The State*
- *Uwazurike v Attorney-General of the federation*
- *Zakari v Nigerian Army*

Legislation and Constitutions Cited

- African Charter on Human and Peoples Right, 1986
- Armed Forces Act (AFA) of 2004
- Constitution of the Federal Republic of Nigeria, 1999
- Constitution of Nigeria, 1960
- Constitution of Nigeria, 1963

- Constitution of Nigeria, 1979
- Criminal Procedure Act
- Criminal Procedure Code
- European Convention for the protection of Human rights and Fundamental Freedoms 1950
- Evidence Act
- Immigration Act
- International Covenant on Civil and Political Rights (ICCPR)
- Legal Practitioners Act
- Rules of Procedure Army 1972
- Universal Declaration of Human Rights 1948

Books, Dictionaries, and Other Authors Cited

- Akinseye-George, Yemi
- Black's Law Dictionary
- Encarta Dictionary
- Garg, Aniruddh Atul
- Kejawa (former Deputy Director Nigerian Army Legal Service)
- Nwabueze, Prof.
- Shakespeare, William (Julius Caesar)