COMMAND INFLUENCE IN THE ADMINISTRATION OF MILITARY JUSTICE IN NIGERIA: AN AFFRONT TO THE PRINCIPLES OF NATURAL JUSTICE[1]*

Abstract

The concept of natural justice is ageless, having been in existence from time immemorial. Its principles are meant to guide civil and criminal adjudication of matters. The cardinal principle of natural justice is a fundamental right recognized both in national and international statutes .The Nigerian military justice system (the court martial) is not excluded from upholding this cardinal law of nature; but what obtains in Nigeria is contrary to global best practice. We observed that the conveners of the Court Martial that tries accused defiant military officers are also military officers in active service. At the end of judicial proceedings and pronouncement of sentence, the confirming authorities of the sentence are also military officers. Although the argument is that the convening and confirming authority lies on separate heads; notwithstanding this argument, the fact remains that both the convening and confirming authority are still loyal and pay obeisance to the same person (the Nigerian Military) and there is every possibility for elements of bias to be found in the judicial processes therein. This research brings to the fore some safeguards needed to have a valid and acceptable mode of appointment of the members of Court Martial in the Nigerian Military Judicial System. It also critically examines the compliance of the country's court martial with principles of fair hearing (which includes right to an independent and impartial tribunal) as stipulated in the Nigerian Constitution and other international human rights instruments. We adopted the analytical and comparative methodology. Source materials were garnered from textbooks, journals, law reports, United Nations documents, statutes, internet sources and other related literature on the subject. From the findings, this paper strongly argues that the Nigerian Military Justice system (court martial) cannot be said to be independent and impartial since they do not guarantee the essential objective conditions for ensuring the independence and impartiality of a tribunal. They are institutionally not independent, their members and the judge advocates do not have adequate tenure and financial security to guarantee their independence and impartiality. We however recommended the necessary redress to cure the shortcomings.

Keywords: *Natural Justice, Court-Martial, Independence, Military Justice System*

1. Introduction

The adversarial legal system is in vogue in Nigeria whereby the accused person is deemed to remain innocent till the contrary is proved. This is meant to ensure fair hearing. It differs from the inquisitorial legal system whereby the accused remains guilty until the contrary is proved. The right to fair hearing as a fundamental right is enshrined in chapter 4 of the Nigerian Constitution[2]. The Constitution incorporated the twin doctrines of natural justice – *audi alteram partem* (always hear the other party too) and *nemo iudex in causa sua* (no one is a judge in his/her own case). Section 36 of the Constitution makes a copious provision on fair hearing. Subsection (1) of the section specifically provides thus: 'In determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality'. In laying credence to the principle of fair hearing, the Supreme Court of Nigeria in the case of *Agbiti v. Nigerian Navy*[3], wherein the appellant objected to his trial at the court martial in that some members of the court were biased toward him. The Supreme Court in upholding his objection held that: The term fair hearing connotes the impression given to an ordinary reasonable person watching the proceedings, if he goes with the impression that a person has not been treated fairly then there is a breach of fair hearing. In the Nigerian legal system, fair hearing is not only a common law right but a constitutional right. By virtue of section 36(1) of the 1999 Constitution, the purport is that in the determination of his civil rights and obligations, a person is entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. The Apex Court further held that fair hearing requires the observance of the twin pillars of the rules of natural justice namely, which entails hearing the other party as

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[2] Constitution of the Federal Republic of Nigeria (CFRN) 1999 As Amended

[3] (2011) FWLR (pt 570) p.1229

well without bias. The Supreme Court went further to rule on the issue of bias by holding that fair hearing requires that 'The Nigerian military justice system is also not excluded from upholding this cardinal law of nature in the practice and procedure of criminal adjudication. It must be of mention that a person who is subject to service law is as much a Nigerian as every other citizen of the country, and as such must be availed every constitutional safeguard for fair hearing accorded to other Nigerian citizens'. We shall now explore the rudiments of this natural justice and see how the military justice in Nigeria upholds them.

2. Concept of Natural Justice:

The word 'Natural Justice' is a combination of two key words, natural and justice. To understand this concept, necessity calls for an in-depth understanding of them. The word 'Natural' is a philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative or judicial action; moral law embodied in principles of right and wrong[4], while Justice is the fair and proper administration of laws.[5] In English law, natural justice is technical terminology for the rule against bias (*nemo iudex in causa sua*) and the right to a fair hearing (*audi alteram partem*); while the term natural justice is often retained as a general concept, it has largely been replaced and extended by the general 'duty to act fairly'.[6]Natural justice can also be defined as ' the principles and procedures that govern the adjudication of disputes between persons or organizations, chief among which are that the adjudication should be unbiased and given in good faith and that each party should have equal access to the tribunal and should be aware of arguments and documents adduced by the other.[7] To further buttress on the concept of natural justice, in the Nigerian case of *Adeboanu Manufacturing Industries (Nig.) Ltd. v. Akiyode*,[8]the Court of Appeal held that: 'Perhaps, the concept of natural justice is better explained in two Latin maxims viz: *audi alteram partem* and *nemo iudex in causa sua*. The first maxim simply translates into the golden rule that no one shall be condemned, punished or deprived of property in any judicial or quasi – judicial proceedings *unless*[9] he has been heard or be seen to have been given an available opportunity to be heard. That has long been a received rule of the principles of natural justice. The second directs that no one shall be a judge in his own cause. These are the twin pillars on which the concept of natural justice rests...[10]

Nemo iudex in causa sua is also known as the rule against bias. In other words, the rule against departure from the standard of even –handed justice required of those who occupy judicial office. This means that the decision of any adjudicatory body however fair it may seem, is invalid, if made by a person with any financial, or other interest in the outcome or any known bias that might have affected his impartiality.[11]It is a rule, which is principally concerned with impartiality preventing an umpire from prejudging whoever is standing trial before any tribunal. The instances of bias may arise in many ways, some of which are: (i). Where the umpire has a direct pecuniary interest in the subject matter before him, in which case he ought to transfer the matter to an independent adjudicator (or tribunal). This was illustrated in the case of *Dimes v. Grand Junction Canal*,[12] where the decision of the Lord Chancellor was set aside, the reason being that he was a shareholder in the company appearing before him. (ii). Where an umpire has no pecuniary interest in the matter being litigated before him. Under such circumstance, he may still be disqualified on the ground of bias. This was enunciated in *R. v. Sussex Justices, Ex parte McCarthy*.[13] In the instant case, a Solicitor was acting as clerk to the Justice in the hearing of a traffic offence, following a collision. In this case, the clerk's firm was due to act for the other party to the accident in civil proceedings. Although, the Solicitor's clerk was obviously passive in the course of hearing, yet a writ of certiorari to quash the conviction was granted. Lord Hewart, C.J. held that it is of fundamental importance that justice should not only be done, but should

[4] Bryan Garner, *Black's Law Dictionary*,(8th Ed., Minnesota: West Group, 2004) p.3264
[5]*Ibid*, p.2528
[6] Natural Justice <https://en.wikipedia.org/wiki/Natural_justice> Accessed on 8 January 2019
[7]*Collins English dictionary* (Glasgow: HarperCollins Publishers, 1994) <https://www.collinsdictionary.com/ > Accessed on 3 March 2019.
[8](2001) 13 NWLR (pt.685) 576 @ 581.
[9] Researchers' Emphasis.
[10]D. O. Odeleye, 'The Doctrine of Natural Justice under Civil and Military Administrations in Nigeria' [2013] (6) (2) *Journal of Politics and Law*, 233.
[11] *Porter v. Magill* (2001) UKHL 67, (2002) 2 AC 357
[12](1825) 3 H.L. 759.
[13] (1924) 1 KB 156

manifestly be seen to be done. Equally in *Metropolitan Properties Co. FGC Ltd. v. Lannon*,[14] the Chairman of a Rent Tribunal was also a Solicitor who had been involved in protracted disputes with the Landlords. His determination of the rent was quashed by certiorari since right-minded persons might think that there was a real likelihood of bias. Hence, the real essence of the rule against bias is to divest an individual of an undue opportunity of assuming adjudicatory power or partake in the subject matter of which he is in any manner whatsoever connected with a view to engendering confidence of the affected parties in the verdict reached since justice is rooted in confidence.

3. International Instruments Recognizing the Principles of Fair Hearing

Globally, in the protection of human rights and fundamental rights of fair hearing, the right to an independent tribunal is indispensable. The right to an independent tribunal is protected in international human rights law, not necessarily for the benefit of the persons who exercise judicial power rather it is protected to ensure that the persons who hold judicial office uphold the rule of law and the rights of accused persons without fear and interference. The right to an independent and impartial tribunal is recognized and protected by a number of regional and international human rights instruments to which Nigeria is party. Key among these is the International Covenant on Civil and Political Rights (ICCPR),[15] and the African Charter on Human and Peoples' Rights (African Charter).[16] The African Commission on Human and Peoples' Rights (African Commission) also emphatically stressed that 'military tribunals must be subject to the same requirements of fairness, openness, and justice, independence and due process as any other process'. Also, Article 7(1)(d) of the African Charter guarantees the right to an impartial tribunal. The United Nations (UN) Human Rights Committee, the international body charged with the responsibility of interpreting and enforcing the provisions of ICCPR, emphasised that the right to a fair trial contained in Article 14 of ICCPR includes the right to an independent and impartial tribunal. The Human Rights Committee also stressed that the provisions of Article 14, applies to military tribunals as well as to the civilian and other specialized tribunals.[17] More so, it cannot be limited or modified because of the military or distinctive character of the court concerned'.[18] However, the provisions of the ICCPR (which is the main human rights instrument providing for the right to an independent and impartial tribunal) is drafted in generic terms. Even though it provides for the right to an independent and impartial tribunal, it does not elaborate upon the content, nature and scope of this right. Hence, the nature and scope of the right to an independent and impartial tribunal can be ascertained from a careful examination of the various human rights documents in which it has been expounded and the jurisprudence of the major human rights supervisory bodies and courts.

4. Right to an Independent Tribunal

The right to an independent tribunal is one of the essential means of ensuring a fair trial and possibly the most essential canon in the administration of justice in any democratic society. It is a major prerequisite for access to justice, without which justice remains illusory. Only an independent tribunal can render justice impartially on the basis of law.[19] More so, the right to an independent tribunal is critical for securing the rule of law. Without independent courts, there can hardly be any rule of law.[20] Right to an independent tribunal will be discussed under two headings: Institutional independence of the tribunal and Individual independence of members of the tribunal.

[14] (1969) 1 Q.B.579

[15] International Covenant on Civil and Political Rights, adopted 16 December 1966; GA Res 2200A (XXI) UN Doc A/6316 (entered into force 23 March 1976). Nigeria acceded to ICCPR on 29th July 1993.

[16] The African Charter on Human and Peoples' Rights, adopted 27 June 1981 (entered into force 21 October 1986). Nigeria ratified the African Charter on 22nd June 1983.

[17] See para 22 Human Rights Committee General Comment 32: Right to equality before courts and tribunals and to a fair trial CCPR/C/GC/32.

[18] *Ibid*

[19] Office of the High Commissioner for Human Rights.Human rights in the administration of justice: A manual on human rights for judges, prosecutors and lawyers (2003) 115.

[20] S. Trechsel, *Human Rights in Criminal Proceedings* (2005) 46.

Institutional Independence of the Tribunal

Institutional independence as an aspect of the right to an independent tribunal requires, firstly that all courts should have adequate safeguards to protect herself from political and other interferences.[21] In other words, in the administration of military justice, it is required that military tribunals must be free from interference, especially from the executive and the hierarchical military command with respect to matters that relate to their judicial function. They must not only be independent as regards their administrative and operational matters but must also be independent in their decision making. In the case of *R v Généreux*,[22] Justice Lord Lamer while delivering the judgment of the Supreme Court of Canada emphasised that it is not acceptable that the convening authority, who is responsible for appointing the prosecutor, also have the power to appoint members of the court-martial, who serve as triers of fact. He also stressed that, at a minimum, 'where the same representative of the executive, the 'convening authority,' appoints both the prosecutor and the triers of fact, the requirements of section 11(d)[23] will not be met'.[24] Also, in *R v Généreux*,[25] while emphasizing the necessity of the institutional independence of the general court-martial, Chief Justice Lamer stressed that, in order to comply with the right to an independent tribunal, the appointment of military personnel to sit as judge advocates at military tribunals should be in the hands of an independent and impartial judicial officer.[26] There was another similar scenario in Ireland where members of military courts and prosecutors were found to be appointed by the same authority in the Military law of Ireland. This led to amendment of the Military Law in 2007 to separate the functions of convening military courts and appointing the prosecutors. Hence, the notion of institutional independence requires that military courts ensure that they have sufficient safeguards which guarantee their independence from the military hierarchy and the executive in the discharge of their judicial functions.

Individual Independence of Members of the Tribunal

Individual independence of military judges is another important aspect of the right to an independent tribunal. The Human Rights Committee has thus stressed that States should take specific measures protecting judges from any form of political influence in their decision making through the constitution or adoption of laws establishing clear procedures and objective criteria for 'the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary.'[27] There are three critical factors considered for ensuring the individual independence of members of a tribunal. These are the manner of appointment, security of tenure and financial security.

The Manner of Appointment of Judicial Officers

The method of judicial selection must safeguard against judicial appointments for improper motives and must ensure that only individuals with integrity, requisite qualification and appropriate training are appointed. The Draft Principles Governing the Administration of Justice through Military Tribunals (Principles on Military Justice)[28] thus stated that the persons selected to perform the functions of judges in military courts 'must display integrity and competence and show proof of the necessary legal training and qualifications.'[29] This was explicitly stated in *Incal v Turkey*,[30] where the European Court held that among the issues that made the Izmir National Security Court's independence questionable was the fact that it comprised of members of the armed forces who still belonged to the army, which in turn took orders from the executive. The Court was

[21]Ronald Naluwairo, 'Military courts and Human rights: A Critical Analysis of the Compliance of Uganda's Military Justice with the Right to an Independent and Impartial Tribunal' [2012] (12) (2) *African Human Rights Law Journal*, 448.
[22][1992] CanLII 117 (SCC) 1.
[23] Sec 11(d) of the Canadian Charter of Rights and Freedoms
[24]Ronald Naluwairo, *op. cit.* 448
[25]Supra.
[26]Ronald Naluwairo, *op. cit.* 449.
[27] Para 19 General Comment 32 (no 8 above)
[28]Principle13 of the Draft Principles Governing the Administration of Justice through Military Tribunals (Principles on Military Justice) UN Doc E/ CN.4/2006/58 (2006).
[29]Ronald Naluwairo, *op. cit.* 450.
[30] (2000) 29 EHRR 449 para 68

concerned that such members remained subject to military discipline and that assessment reports were compiled on them by the army for that purpose.[31]

Security of Tenure

The second key factor considered for ensuring the individual independence of military judges is the security of tenure. The essence of security of tenure as an important aspect in securing the individual independence of judges is that their tenure must be secured against interference by the executive or other appointing authority in a discretionary or arbitrary manner. In other words, once a judge is appointed or elected, he should only be dismissed on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. In *Media Rights Agenda v Nigeria*,[32] the African Commission held that the selection of serving military officers, with little or no knowledge of law, as members of the special military tribunal that tried Malaolu, contravened Principle 10 of the Basic Principles on the Independence of the Judiciary[33] which provides thus, 'Judges whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists'.[34]

Financial Security

The final condition for ensuring the independence of judicial officers is regarding the issue of financial security. This condition was well explained by the Supreme Court of Canada, the essence of financial security as an essential condition for securing the independence of a tribunal is that 'the right to salary and pension should be established by law and not be subject to arbitrary interference by the executive in a manner that could affect judicial independence'.[35] In *R v Généreux* (supra), it was held that the requirement of financial security will not be satisfied if the executive is in a position to reward or punish the conduct of members of the military tribunal and the judge advocate by granting or withholding benefits in the form of promotions and salary increases or bonuses. Salaries, allowances, pensions and other remunerations and benefits of military judges, like their civilian counterparts, must not, therefore, depend on the grace or favour of the executive or the military hierarchy. They must be secured in a way that does not allow the executive or its representative to influence or manipulate the judges. In conclusion, the legitimate test for determining the independence of a particular tribunal was succinctly stated in the words of Lamer CJ in *R v Généreux* (supra), as follows: An individual who wishes to challenge the independence of a tribunal …need not prove an actual lack of independence. Instead, the test for this purpose is the same as the test for determining whether a decision maker is biased. The question is whether an informed and reasonable person would perceive the tribunal as independent … The perception must, however be a perception of whether the tribunal enjoys the essential objective conditions or guarantees of judicial independence, and not a perception of how it will in fact act, regardless of whether it enjoys such conditions or guarantees.[36]Then arises the vital question, whether all the requirements of the right to an independent tribunal apply to the judge advocates as they do to the other members of the tribunal? In *Holm v Sweden*,[37] the European Court explicitly stated that the principles established in its case law regarding the independence and impartiality of tribunals 'apply to *jurors* as they do to professional and lay judges'.[38] This decision of the court is important because both the judge advocates and the members of the court-martial play judicial roles and they therefore need to be independent even as the judge advocates advise on the issues of law and procedure.

5. Right to an Impartial Tribunal

The right to an impartial tribunal is also one of the essential means of ensuring a fair trial. This right is protected as part and parcel of the right to a fair trial by both the Universal Declaration and ICCPR.[39] The

[31]Ronald Naluwairo, *op. cit.* 451.
[32] (2000) AHRLR 262 (ACHPR 2000) para 60
[33]Ronald Naluwairo, *op. cit.* 451.
[34] Principle 12 of the Basic Principles on the Independence of the Judiciary
[35]*Valente v Queen*[1985] 2 SCR 704
[36]*R v Généreux* (supra).
[37]*Ibid.*
[38]Judgment of 25 November 1993, Series A 279-A para 30. See also *Cooper v United Kingdom*[2003] EHRR 48843/99 para 123
[39]Articles 10 & 14(1) respectively.

requirement for impartiality of a tribunal comprises two aspects: Firstly, the tribunal must be free of personal bias. The Human Rights Commitee has thus stated that persons who exercise judicial power must not be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them. Secondly, the tribunal must also appear impartial to a reasonable person. In *Constitutional Rights Project (in respect of Akamu and Others) v Nigeria*,[40] the African Commission was faced with the issue of a special tribunal which consisted of one retired judge, one member of the armed forces and one member of the police force. While observing that the tribunal was composed of persons belonging largely to the executive branch of government, the same branch that passed the Robbery and Firearms Decree, the African Commission held that regardless of the character of the individual members of such tribunal, its composition alone creates the appearance, if not actual lack of impartiality'.[41] As a result, it held that the tribunal in question violated article 7(1)(d) of the African Charter which guarantees the right to an impartial tribunal. The requirement for impartiality of a tribunal in the administration of justice is that the tribunal must appear to reasonable observers to be impartial. In other words, justice must not only be done, but should manifestly and undoubtedly be seen to be done.

6. Creation of Court Martial

Court martial derives its constitutional flavor by the provisions of section of 240 of the Nigerian Constitution which provides thus'Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court… and from decisions of a Court Martial or other tribunals as may be prescribed by an Act of the National Assembly'. Since the court martial is a creation of the Constitution, its appointment of judicial officers, adjudication of matters and judicial decisions ought to be done in accordance with the provisions of the Constitution of the Federal Republic of Nigeria. The Constitution is the *grundnorm* and the supreme law of the land. Section 1(1) of the Constitution provides thus, 'This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria'. Then Section 1(3)[42] also provides that 'If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void'. Thus, the supremacy of the Constitution is not in any doubt and any other legislation is subservient to it. Therefore, if any other law is inconsistent with the provisions of the Constitution, then that other law shall to the extent of its inconsistency be void. More so, Thomas JCA in the case of *Yakubu v. Chief Naval Staff*[43] also confirmed that the Court martial being a constitutionally created court is bound by section 1 which provides for the supremacy of the Constitution over authorities and persons through Nigeria. Therefore, the qualification and mode of appointment of court martial should be in tandem with the provisions of the Constitution and the cardinal principles of natural justice especially as it relates to right to fair hearing.

7. Judicial Appointment under the Nigerian Military Justice System (Court Martial)

Section 129 of the Armed Forces Act (AFA)[44] provides that 'there shall be, for the purposes of carrying out the provisions of this Act, two types of courts-martial, that is— (a) A general court-martial, consisting of a President and not less than four members, a waiting member, a liaison officer and a judge advocate; (b) A special court-martial, consisting of a President and not less than two members, a waiting member, a liaison officer and a judge advocate.' Section 131(1) AFA provides that Subject to the following provisions of this section, a court-martial may be convened by—

(a) the President; or
(b) the Chief of Defence Staff; or
(c) Service Chiefs; or
(d) a general officer commanding, a brigadier, colonel or lieutenant colonel or their corresponding ranks having command of a body of troops or establishments; or
(e) an officer for the time being acting in place of those officers.

[40] (2000) AHRLR 180 (ACHPR 1995)
[41]Constitutional Rights Project case (supra)
[42]CFRN as Amended.
[43](2004) 1 NWLR (pt 853) 94.
[44]Armed Forces Act (AFA) CAP.A20 LFN 2004

(2) A general court-martial may be convened by—
(a) the President; or
(b) the Chief of Defence Staff; or
(c) the Service Chiefs; or
(d) a general officer commanding or corresponding command; or
(e) a brigade commander or corresponding command.

(3) A special court-martial may be convened by—
(a) a person who may convene a general court-martial; or
(b) the commanding officer of a battalion or of a corresponding unit in the Armed Forces.

Section 133(2) AFA[45] provides that an officer shall not be appointed to be a member of a court-martial unless he is subject to service law under this Act and has been an officer in any of the services of the Armed Forces for a period amounting in the aggregate to not less than five years. From the extant provisions, it is the duty of the convening authority to appoint the court martial president, the judge advocate and the other members of the court and this is clearly an affront to the principles of natural justice.

A careful look at these provisions reveals that the conveners of the Court Martial which is responsible for trying defiant military officers are also military officers. At the end of judicial proceedings and pronouncement of sentence, the confirming authorities of the sentence prescribed by the court martial are also military officers. Although the argument is that, the convening and confirming authority lies on separate heads. Notwithstanding, the above stated argument, the fact remains that both the convening and confirming authority are still loyal and pay obeisance to the same person (the Nigerian Military) and there is every possibility for elements of bias to be found in the judicial processes therein.

8. Judicial Appointment under Nigerian Civilian Justice System (High Court)
Section 256[46]provides thus,

1. The appointment of a person to the office of Chief Judge of the High Court of the Federal Capital Territory, Abuja shall be made by the President on the recommendation of the National Judicial council, subject to confirmation of such appointment by the senate.

2. The appointment of a person to the office of a Judge of the High Court of the Federal Capital Territory, Abuja shall be made by the president on the recommendation of the National Judicial Council.

3. A person shall not be qualified to hold the office of a Chief Judge or a Judge of the High Court of the Federal Capital Territory, Abuja unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years.

The appointment of judicial officers under the superior courts of record follows a similar pattern. Under the High Court of the Federal Capital Territory, Abuja (our case study), three different statutory bodies play vital roles in the appointment process. The appointment of the chief judge passes through a rigorous process; first is the appointment which is done by the President of the Federal Republic of Nigeria; second is the recommendation of judicial officers (legal practitioners duly qualified under the Constitution) made to the President by the National Judicial Council (NJC) and lastly, the confirmation of the judicial appointees by the Nigerian Senate. Though, the appointment of judges is less rigorous as it only requires appointment by the President on the recommendation of the NJC; it differs from the judicial appointment under the military justice system, which is by the sole order of the convening officer without any form of supervision, recommendation or confirmation by any other body/authority whatsoever. Meanwhile, both judicial systems have similar jurisdictions except that court martial is primarily concerned with defiant service men and in some cases civilians. The duo also in grave offences, impose punishment as severe as death sentence. The question then is, if both have similar jurisdictions and impose punishments that could lead to loss of life, why

[45] *Ibid.*
[46] CFRN 1999 as amended.

then should there be such disparity in their mode of appointment? The application of precise and exacting standards in the judicial appointment under the civil justice system is to ensure that all is done in conformity with the principles of natural justice. However under military justice system, such safeguards are absent.

9. Conclusion and Recommendations

The aim of the principle of fair hearing is to ensure that justice is not only done, but is also manifestly seen to be done. Notwithstanding the argument that convening and confirming authority in the Nigerian Military Justice system lies on separate heads, the fact remains that both are still loyal and pay obeisance to the Nigerian Military. Hence, any reasonable person will obviously see the elements of bias rear its ugly head in the judicial adjudication therein. Under the extant arrangement, the Nigeria's military justice system cannot be said to be institutionally independent because ordinarily, members would work towards pleasing their superiors and the appointing authority so as to secure their re-appointment, financial security and security of tenure. It is very unlikely that a court which is not independent will be impartial. Courts which are institutionally not independent from the executive and the military chain of command, whose members and judge advocates are military personnel subject to military discipline and whose tenure and financial security are not guaranteed, cannot be said to be impartial. There is little justice that can be expected from such courts. This paper has established that the Court Martial cannot be said to be independent and impartial in the adjudication of criminal trial since they do not guarantee the essential objective conditions for ensuring the independence and impartiality of a tribunal as provided for in the Nigerian Constitution and other relevant International Instruments. They are institutionally not independent, their members and the judge advocates do not have adequate tenure and financial security to guarantee their independence and impartiality. In a dynamic society, laws should be reflective of the ever-changing status of the world in order to ensure that justice is done at all times. The Nigerian Military judicial system should ensure that in its administration and decisions, the principles of natural justice should form the bedrock. This article therefore recommends relevant measures that can be undertaken to achieve independence and impartiality in the Nigerian Military Judicial System.

It is hereby proposed that Nigeria establishes the Office of an Independent Principal Military Judge (IPMJ) and other military judges whose appointment shall be rigorous and independent as that of High Court Judges, Justices of the Court of Appeal as well as the Supreme Court of Nigeria. The class of judge-appointees of IPMJ should come from retired judges of the High Court, retired justices of the Court of Appeal, retired justices of the Supreme Court and retired military officers with the requisite knowledge of the military law. Also, the power to appoint judge advocates to the different military tribunals should vest in this office. To safeguard the independence of the office of the IPMJ, the IPMJ should enjoy sufficient security of tenure and should be insulated against the military chain of command. The appointment of Independent Principal Military Judges could be on a fixed term of ten years and should only be removable from office on the same conditions and following the same procedure governing the removal of a High Court judge. Again, it is also recommended that the Nigeria's military system should establish the office of an Independent Director of Military Prosecutions (IDMP) akin to the position of the Director of Public Prosecutions (DPP) in the Nigerian Ministry of Justice. The power to appoint prosecutors to the different military tribunals and undertake decision making in respect of the prosecution of criminal and quasi-criminal matters in the military justice system should lie on this office. The IDMP should enjoy sufficient security of tenure and should be insulated against the military chain of command, as has been proposed in respect of the IPMJ. It is worthy of note that a number of countries, including the United Kingdom, Ireland, Canada and South Africa, have undertaken similar reforms to secure the institutional independence of their military tribunals. Moreover, we also propose that the Nigerian Military Justice should establish a Military Judicial Service Commission to determine the conditions of service of members of the Court Martial; and that the Military Act should clearly spell out the circumstances and manner under which the members of the court martial, court martial judges and judge advocates can be removed prematurely. The circumstances have to be similar to those pertaining to the removal of judicial officers in the civilian justice system such as reason of infirmity of the body or mind, misbehavior or misconduct unbecoming of a judicial officer, or incompetence. In conclusion, there is an urgent need for the reformation of the relevant provisions of Armed Forces Act in such a manner as to ensure that the people standing trial in the country's military courts enjoy their internationally and constitutionally-protected right. If these recommendations are successfully undertaken, they can go a long way in addressing the unfortunate situation prevalent in the Nigerian Military Justice system.