

## RIGHT TO FAIR HEARING IN NIGERIA UNDER THE IMPERATIVES OF COVID-19 CONTROL\*

### Abstract

*When the Corona Virus Disease struck the world in December 2019 no one predicted the magnitude of damage it was bringing. Many medical practitioners concerned about the challenge nursed optimism that the virulence would not escalate beyond China. The pandemic spread throughout the world – scoring the recrudescence of a peculiar killer disease in medical history. Nations have applied diverse procedures to reduce its spread in their respective jurisdictions, thereby affecting the social structure, dispensation of citizens' rights and other state obligations. Yet there should be respect for right to fair hearing, as evidence of the rule of law among civilized people. The objective of this study is to project the importance of this right in Nigeria. The data came from regulations implemented by four constituencies in Nigeria viz. Kaduna, Lagos and Rivers States, and the Federal Capital Territory, where the Governors wrongly applied the COVID-19 transmission prevention scheme to exhibit illegal use of force which infringed on the citizens' right to fair hearing. Even in emergencies this right should be preserved because of its sacrosanctity, since the constitution did not create any exception to warrant its infraction.*

**Keywords:** COVID-19, Fair Hearing, Transmission, Jurisdiction.

### 1.0 Introduction

Corona Virus Disease (COVID-19) pandemic has to be appreciated not only as a health challenge but also as a test of humankind's efficiency in integrating the rule of law into management of medical exigencies. Symptoms of the disease were first experienced in Wuhan, Hubei Province in China in December 2019; it went viral thereafter. World Health Organization (WHO) records show that as at 10 July 2020 it had ravaged 213 countries all over the world, killing about 559,143 persons of all age brackets.<sup>1</sup> The virus possesses so much negative potency that up till now, seven months into its manifestation, the world has not found a certified cure for it. All that is being done by various countries is the application of precautionary measures to curb its spread in the interim. Understandably because of its multiple means of contagion – in the air, by body-to-body touch, object and surface touch, self-touch, etc. – Governments were constrained to resort to some unusually harsh methods to stop the spread. In Nigeria, at a time, the Federal and State Governments introduced the policy of total lockdown, meaning the complete restriction of human and vehicular movements on land, sea and in the air space. This led to the closure of businesses and the shutting of the economy during the period. In so doing the authorities issued Executive Orders which specified the applicable rules.

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<sup>1</sup> NCDC, 'COVID-19 Update in Nigeria', Nairametrics 18<sup>th</sup> June, 2020. Available at <https://covid19.ncdc.gov.ng>

Along the line some individuals and corporate bodies were apprehended in several States for ‘violating’ the Executive Orders. Many of them were reported to have been arraigned in court. There are, however, some whose properties were demolished without prosecution on the orders of the Governors who applied the aforesaid Executive Orders. This work is a critical examination of those novel ‘sentences’ against the background of the constitutional provision on right to fair hearing in Nigeria.

## **2.0 Meaning and Connotation of ‘Fair Hearing’**

In general, non-legal usage, the concept ‘fair’ coupled as a prefix to ‘hearing’ has a plain meaning of a trial or determination of right in which a party is granted a hearing showing no partiality, prejudice or favoritism; hence just, upright, honest<sup>2</sup> In normal legal parlance the term is more direct and comprehensive. For instance, it is defined as ‘one in which authority is fairly exercised; that is, consistently with the fundamental principles of justice embraced within the conception of due process of law. Contemplated in a fair hearing is the right to present evidence, to cross examine, and to have findings supported by evidence.’<sup>3</sup>

In Nigeria the right to fair hearing is guaranteed under section 36 (1) of the Constitution of the Federal Republic of Nigeria. It provides as follows:

- (1) In the 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.
- (2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law-
  - (a) provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and
  - (b) contains no provision making the determination of the administering authority final and conclusive.
- (3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.
- (4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.<sup>4</sup>

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<sup>2</sup> J E Baltzell and others (eds.) *The New International Webster’s Comprehensive Dictionary of the English Language*, (New York: Lexicon International Publishers Guild Group, 2004) 455.

<sup>3</sup> H C Black, *Black’s Law Dictionary*, (St. Paul, MN: West Publishing Co., 1999) 597.

<sup>4</sup> The Constitution of the Federal Republic of Nigeria, 1999, section 36.

The Supreme Court in interpreting this provision<sup>5</sup> viewed it as a compression of the plenitude of natural justice in the special technical context of the ancient twin pillars of justice – *audi alteram partem*, and *nemo iudex in causa sua*. This is also based on the wide understanding of what is both equally right and fair to all affected parties.<sup>6</sup>

In the case of *Baba v Civil Aviation*<sup>7</sup> the apex court expatiated on the ingredients that make up this hallowed concept, *viz.* a party's right of presence during the proceedings and to hear all the evidence against him, to cross-examine or otherwise confront or contradict all the witnesses who testified against him; to have read before him all the documents tendered in evidence; to be acquainted with the nature of all material documentary or real evidence prejudicial to him; to be apprised of the case against him and be afforded opportunity to prepare his defence; and to present his defence personally or through his chosen Counsel.<sup>8</sup> The simplest connotation of these requirements is that the party be given unhindered opportunity to present his case before a court, tribunal, or body that will dispassionately determine his right.<sup>9</sup> In this vein the Court of Appeal has held that an ad hoc panel set up by the Chief Registrar of a High Court to investigate allegations made against a person may not necessarily follow procedures and practice of a regular court of law, but it has to observe and apply the principles of natural justice as anybody adversely affected by its decision has the right to claim adequate opportunity to know and answer the case against him.<sup>10</sup>

Essentially, therefore, the dispensation of the right to fair hearing can be demonstrated when the court is not determining its own case directly or indirectly, and the parties are given equal opportunity to present their cases.<sup>11</sup> From the numerous authorities the purport of this rule is to secure the independence and partiality of the 'court' as to enable it perform its functions justly. It is also on this ground that every exercise of judicial or quasi-judicial authority is tested on this parameter to ascertain its validity.

### 3.0 COVID-19: A Novel Global Challenge

COVID-19 originated in Wuhan,<sup>12</sup> in December 2019. On January 23, 2020 the authorities of that city shut down all transport links as a result of which the neighbouring city of Huanggang was placed in quarantine, and the train stations in Ezhou city were closed. The impact of the virus has no previous equal.<sup>13</sup> Initial statistics released by China National Health Commission gave details of the first 17 deaths on 22 January 2020 as 13 males and 4 females, with a median

<sup>5</sup> Same as s. 33(1) of the 1979 Constitution.

<sup>6</sup> See generally *Ogundoyin v Adeyemi* (2001) 13 NWLR, Pt. 730, 403; *Kotoye v CBN* (1989) 1 NWLR Pt. 98, 419 at 444; *Bamgboye v University of Ilorin* (1999) 6 SCNJ 295 at 331; *Salu v Egeibon* (1994) 6 SCNJ 223 at 234; and *Kim v State* (1992) 4 SCNJ 81.

<sup>7</sup> (1991) 7 SCNJ, Pt. 1, 1.

<sup>8</sup> *Ibid.*, p. 23.

<sup>9</sup> *Newswatch Communication Ltd v Atta* (2006) 2 NWLR, Pt. 993, 144 at 181 – 182; *Ekpeto v Wanogho* (2004) 18 NWLR, Pt. 905, 394.

<sup>10</sup> *Tionsha v Judicial Service Commission, Benue State* (1997) 6 NWLR, Pt. 508, 307 at 322.

<sup>11</sup> See *Bill Construction Co. Ltd v Imani & Sons Ltd* (2006) 19 NWLR, Pt. 1013, 1 at 12; *Action Congress v INEC* (2007) 12 NWLR, Pt. 1048, 222 at 291; *Ndukauba v Kolomo* (2005) 4 NWLR, Pt. 915, 411 at 429; *Otapo v Sunmonu* (1987) 2 NWLR, Pt. 58, 587; and *Ex parte Olakunrin* (1985) 1 NWLR, Pt. 4, 652.

<sup>12</sup> Wuhan is the largest city in Central China with a population of over 11 million people, in December 2019.

<sup>13</sup> WHO; 'Wuhan Lockdown Unprecedented Shows Commitment to Contain Virus: WHO Representative in China' *Reuters*, Jan. 23 2020.

age of 75 i.e. ranging from 48 – 89 years.<sup>14</sup>The virus infects the upper gastrointestinal and respiratory tract of mammals and birds – causing diverse diseases. Its symptom usually show up within 2 to 4 days after the infection in the form of fatigue, muscle pain, sneezing, sore throat, dry cough, high fever, respiratory distress, etc., with some severe cases causing pneumonia, acute respiratory syndrome, kidney failure and even death.<sup>15</sup>

The common observation is that the risk of this virus is greater in older people, kids and patients having other existing health problems such as lung diseases, diabetes and cancer.<sup>16</sup>There appears to be a connection to the weakness of the immune system in this category of patients,<sup>17</sup> which has been confirmed to be responsible for the aggravation of its effect on them and complication – usually deterioration – of their condition in almost all cases.<sup>18</sup>The spread of the virus is another alarm in medical circles all over the world. Apart from the known human-to-human transmission, it also spreads through air droplets; fecal oral spread and air borne transmission are other possible sources.<sup>19</sup>As at 18 June 2020 the disease had affected 213 countries in the world recording 8,407,373 cases, 451,439 deaths and 4,417,509 recorded patients.<sup>20</sup> It is equally frightening that so far no drug has been licensed for its treatment or prevention.<sup>21</sup>

#### **4.0 The Position in Nigeria**

Like what happened in many other countries the virus struck hard on Nigeria, creating alarming data of confirmed cases and deaths in all the States.<sup>22</sup> Under the threat some State Governors

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<sup>14</sup> China National Health Commission; ‘Updated Understanding of The Outbreak of 2019 Novel Corona Virus in Wuhan, China’ (2020 Jan 29) *Journal of Medical Virology*.

<sup>15</sup> J Gu and others, ‘COVID-19: Gastrointestinal Manifestations and Potential Fecal-Oral Transmission’ *Gastroenterology* March 2020 p. 1; IN Doremalen and others, ‘Aerosol and Surface Stability of SARS – CoV-2 as compared with SARS – Cov-1’ *N Engl J Med* 2020, p382. pp1564-1567. See also F D’ Amico and others, ‘Diarrhea During COVID-19 Infection: Pathogenesis, Epidemiology, Prevention, and Management’, *Clinical Gastroenterology and Hepatology*, 2020, pp.1-10.

<sup>16</sup> C Huang and others, ‘Clinical Features of Patients Infected with 2019 Novel Corona-Virus in Wuhan, China’ *The Lancet* 2020, pp.,497-506; D S Hui and others, ‘The Continuing Covid-2019 Epidemic Threat of Novel Coronaviruses to Global Health – The Latest 2019 Novel Coronavirus Outbreak in Wuhan, China’ , (19) *International Journal of Infectious Diseases* , pp. 264-266; and LL Ren and others, ‘Identification of A Novel Coronavirus Causing Severe Pneumonia in Human: A Descriptive Study’, (133) (9) *Chinese Medical Journal*, 2020, pp. 1015-1024)

<sup>17</sup> Centers for Disease Control and Prevention, ‘People Who Are At Higher Risk’ at <<https://www.sc.gov>> accessed 18 June 2020.

<sup>18</sup> M A Knoll, ‘Why COVID-19 Coronavirus Infections Are So Serious in the Elderly’ *Forbes* (Mar 6, 2020).

<sup>19</sup> C Ohia and T Ahmad, ‘COVID-19 and Nigeria: Putting The Realities in Context’, *International Journal of Infectious Diseases*, Volume 94 June 2020, pp. 279-281; O A Adegboye and others, ‘Early Transmission Dynamics of Novel Coronavirus (COVID-19) in Nigeria’ *Int. J. Enviro. Res Public Health* volume 17(9), 2020, p.3054.

<sup>20</sup> Coronavirus Update, available at <https://www.worldometers.info> visited 18 June 2020

<sup>21</sup> WHO, ‘Coronavirus Disease (COVID-19) Advice for the Public: Myth Busters’ available at <<https://www.who.int>> accessed on 18 June 2020. Cf. I Ali and O M L Alharbi, ‘COVID-19: Disease, management, treatment, and social impact’ *Science of the Total Environment* 2020 P 728.1; S Jean and others, ‘Treatment Options for COVID-19: The Reality and Challenges’ (2020) (53) *Journal of Microbiology, Immunology and Infection* 436-443.

<sup>22</sup> Lagos 7,616/107; FCT, Abuja 1,391/28; Kano 1,160/50; Rivers 696/26; Edo 695/31; Oyo 661/9; Ogun 586/14; Kaduna 490/10; Borno 457/30; Gombe 443/12; Bauchi 430/11; Katsina 414/22; Delta 367/17; Jigawa 317/6; Plateau 186/5; Nasarawa 177/6; Abia 173/0; Kwara 172/5; Ebonyi 162/0; Imo 159/3; Sokoto 133/14; Bayelsa 111/3; Enugu 93/5; Ondo 89/14; Zamfara 76/5; Kebbi 67/6; Anambra 66/9; Niger 66/1;

were constrained to promulgate Executive Orders prescribing rules to aid curbing the spread of the disease.<sup>23</sup> This article will focus on the enforcement of the Executive Orders and similar instruments issued in Kaduna, Lagos and Rivers States as well as the Federal Capital Territory, Abuja, by which buildings belonging to alleged defaulting citizens and business outfits were demolished without due court process.

Admittedly, international law recognizes the need to concede part of human rights when there are serious life-threatening emergencies in an entire nation, and beyond. However, such restrictions, infringements and infractions can only be justified when they have legal basis, are ineluctable, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the desired purpose.<sup>24</sup>

Therefore, across the world, the numerous cases of excessive use of power by Government, and outright brutality by the Police associated with measures taken to control the spread of COVID-19 have been widely condemned.<sup>25</sup> For instance, in Thailand and Cambodia there have been threats by Government to lay off medical staff who speak out about inadequate supplies of essential needs in hospitals.<sup>26</sup> Police in Sri Lanka has warned that anyone criticizing public officials over the pandemic will be arrested.<sup>27</sup> In some parts of Russia under lockdown local

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Yobe 55/8; Osun 50/4; Akwa Ibom 48/2; Adamawa 42/4; Benue 36/0; Ekiti 30/2; Taraba 18/0; Kogi 3/0. Total of 17,735 confirmed cases, and 469 deaths. Sourced from NCDC, "COVID-19 NIGERIA", <<https://covid19.ncdc.gov.ng>>; S Oyekanmi, "COVID-19 Update in Nigeria", Nairametrics (accessed on 18th June 2020).

<sup>23</sup> Credit must be given to public spirited medical experts and other concerned citizens who raised early alarm that proactive steps be taken to check the spread of the virus. See for example, O A Adegboye and others, 'Early Transmission Dynamics of Novel Coronavirus (COVID-19) in Nigeria' 17 *Int. J. Environ. Res. Public Health* 2020, pp.1-10; S Olu; 'COVID-19: How We Plan to Implement Social Distancing in Lagos Markets, Transport System' available at <<https://www.chennelstv.com/2020/103/26>> visited on 19 June 2020; C Ihekweazu, 'Steps Nigeria is Taking to Prepare for Cases of Coronavirus,' *The Conversation* Jan. 28, 2020, p 78.

<sup>24</sup> S Olu; 'COVID-19: How We Plan to Implement Social Distancing in Lagos Markets, Transport System' available at <<https://www.chennelstv.com/2020/103/26>> visited on 19 June 2020; C Ihekweazu, 'Steps Nigeria is Taking to Prepare for Cases of Coronavirus,' *The Conversation* Jan. 28, 2020, p 78.

<sup>25</sup> Credit must be given to public spirited medical experts and other concerned citizens who raised early alarm that proactive steps be taken to check the spread of the virus. See for example, O A Adegboye and others, 'Early Transmission Dynamics of Novel Coronavirus (COVID-19) in Nigeria' 17 *Int. J. Environ. Res. Public Health* 2020, pp.1-10;

<sup>26</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), G. A. Res. 2200 A (XXI), Art. XXII (1966). Available at <<https://www.ohchr.org/en/professionalinterest/pages.cesr.aspx>>; International Covenant on Civil and Political Rights, General Comment No. 29, States of Emergency (Article 4); UN Doc. No. CCPR/C/21/Rev.1/Add.11 (2001). Available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/71eba4be3974b4f7c1256ae200517361](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/71eba4be3974b4f7c1256ae200517361); and International Covenant on Civil and Political Rights, General Comment No. 27, Freedom of Movement (Art. 12). UN Doc. No. CCPR/C/21/Rev.1/Add.9 (1999). Available at <[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/6c7be1b8ee1710e380256824005a10a9](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/6c7be1b8ee1710e380256824005a10a9)>; and Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, U. N. Doc E/CN.4/1985/4, Annex (1985). Available at <<http://www1.umn.edu/humanrts/instree/siracusaprinciples.html>>; Human Rights Watch, 'Human Rights Dimensions of COVID-19 Response' (Press release), March 19, 2020. Available at <<https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>>.

<sup>27</sup> J J Amon and M Wurth, 'A Virtual Round Table on COVID-19 and Human Rights with Human Rights Watch Researchers,' (J) *Health and Human Rights Journal*, June 2020 Vol, 22(1), pp. 399 – 413. See also

authorities have introduced ‘pass’ systems requiring residents to prove legitimate reasons for travel within a particular city.<sup>28</sup> In India (West Bengal) Police generally maltreated citizens who were trying to get essential supplies, and beat a 32-year old man to death for stepping out of his home to get milk during lockdown.<sup>29</sup> On the first day of curfew in Mombasa, Kenya, people who were rushing home, over two hours before curfew, were beaten and tortured with teargas by the police.<sup>30</sup> Relatively, the early reaction of the Government in Nigeria, both Federal and State, to the pandemic was more cordial and encouraging. Concentration was largely on the orientation of the citizenry to adapt to the threat of the disease by observing the precautionary measures religiously.<sup>31</sup> What followed was the promulgation of some alien regulations and orders for enforcement of transmission control strategies. In Nigeria, the statute from which the State laws and regulations derived their validity is the Quarantine Act.<sup>32</sup> It is therefore pertinent to examine the legality of these actions in the face of the said law.

#### **4.1 Constitutionality of The Demolitions under The Executive Orders**

During the COVID-19 lockdown in the country, three States – Kaduna, Lagos, Rivers and the Federal Capital Territory, carried out separate demolitions of buildings belonging to persons who were alleged to have contravened regulations made to prevent the spread of the disease. They include a popular Inn, GM Car Park and Relaxation Centre in Kaduna, about 30 houses in Lagos, 2 hotels in Rivers State, and structures including mechanic workshops in Abuja.<sup>33</sup> In view of the fact that the Quarantine Act is the source of the authority purportedly exercised under the various State Regulations and Executive orders, the relevant provisions need to be perused.

Section 2 covers the interpretation of the entire Act. It defines “dangerous infectious disease” as, among others, “any disease that is infectious or contagious in nature which can be so

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Human Rights Watch, ‘Nigeria: Protect Most Vulnerable in COVID-19 Response,’ available at <<https://www.hrw.org>> accessed on 30 June 2020.

<sup>28</sup> Human Rights Watch, ‘Thailand: COVID-19 Clampdown on Free Speech’ (press release), March 25, 2020. Available at <<https://www.hrw.org/news/2020/03/25/thailand-covid-19-clampdown-free-speech>>; Human Rights Watch, ‘Cambodia: COVID-19 Clampdown on Free Speech’ (Press release), March 24, 2020. Available at <<https://www.hrw.org/news/2020/03/24/cambodia-covid-19-clampdown-free-speech>>. Accessed on 20<sup>th</sup> March 2020.

<sup>29</sup> Human Right Watch, ‘Sri Lanka Uses Pandemic to Curtail Free Expression’ (Press release), April 3, 2020. Available at <<https://www.hrw.org/news/2020/04/03/sri-lanka-uses-pandemic-curtail-free-expression>>. Accessed on 01 /04/2021.

<sup>30</sup> M Ilyushina, ‘Moscow Rolls Out Digital Tracking to Enforce Lockdown. Critics Dub It A Cyber Gulag’ *CNN* (April 14, 2020). Available at <<https://edition.cnn.com/2020/04/14/world/moscow-cyber-tracking-qr-code-intl/index.html>>.

<sup>31</sup> R Venkataramakrishnan, ‘The Indian Police Must Understand that The Coronavirus Cannot Be Beaten with A Lathi’, *Scroll.in* (March 26, 2020). Available at <<https://scroll.in/article/957269/the-indian-police-need-to-understand-that-coronavirus-cannot-be-beaten-with-a-lathi>>; “West Bengal: Man who was buying milk dies hours after police thrash him,” *Wire* (March 26, 2020). Available at <<https://thewire.in/rights/west-bengal-police-curfew-man-thrashed-dies>>.

<sup>32</sup> Cap Q2, Laws of the Federation of Nigeria 2004; Human Rights Watch, ‘Kenya Police Abuses Could Undermine Coronavirus Fight’ (press release), March 31, 2020. Available at <<https://www.hrw.org/news/2020/03/31/kenya-police-abuses-could-undermine-coronavirus-fight>>.

<sup>33</sup> T Ayeni, ‘Coronavirus: Nigeria’s Varied Responses to Controlling COVID-19’, *The Africa Report* (10-15 May 2020, p.1; J Campbell and J McCaslin, ‘How Nigeria Has Responded to COVID-19 So Far’ *Council on Foreign Relations* April 28 2020, p.1; C Alagboso and B Abubakar, ‘The first 90 days: How Has Nigeria Responded to The COVID-19 Outbreak?’, <<https://medium.com>> visited 17 July 2020; P Adepoju, “Nigeria responds to COVID-19; first case detected in sub-Saharan Africa,” *Naturemedicine* (11 March 2020).

declared by the President alone.” The meaning here is crucial because the Quarantine Act was enacted solely to prevent the introduction into and spread in, and transmission from, Nigeria of dangerous infectious diseases.

In line with this provision the President signed the COVID-19 Regulations, 2020 on Monday, 30<sup>th</sup> March 2020 and declared the disease a dangerous infectious disease. Section 4 vests the President with power to make regulations prescribing steps to be taken when any part of the country is declared an infected area, preventing the transmission of such designated disease, etc., and generally for executing the purposes and provisions of the Act. Related to that section is section 8 of the Act. The Act also empowers the State Governors to make declarations and regulations in their States concerning dangerous infectious disease,<sup>34</sup> and identification of a place as an infected local area,<sup>35</sup> where the President fails to exercise that power there. The condition upon which the Governors can make such declaration and regulation is that they are subject to the same conditions and limitations applicable to the President.

Therefore, the plain meaning is that even in situations where the President fails to make declarations and regulations as required in the Act, it is not for a State Governor to issue orders in that regard beyond the scope of the Act. More importantly the Act also provided for penalties,<sup>36</sup> and the authority to determine contravention of its provisions and imposition of fines and prison terms.<sup>37</sup> Thus, under s. 5 it stipulates that contravention of any regulation made under the Act attracts a fine of N200 or 6 months’ imprisonment or both. On the other hand, s. 7 provides thus:

Proceedings for imposing any fine or imprisonment under this Act or for recovering any expenses incurred or charged by the Government in carrying out the provisions of this Act may be commenced before and determined by any magistrate.

The above provision purports that magistrates have jurisdiction to hear proceedings and determine disputes arising from the Act. A common scenario in all the cases analyzed in this work is that during the COVID-19 lockdown the relevant authorities issued regulations, declarations and orders pursuant to this Act. Incidentally in all of them the Governor (or head of Government in the case of Federal Capital Territory, Abuja) who promulgated the instrument in question was the same person who found that the said persons had violated the law; and was the same person who sentenced them by ordering demolition of their buildings. The Governors and their cronies have also made bold to admit that they carried out these demolitions in enforcement of their orders, and that to the best of their knowledge the actions

<sup>34</sup> Cap Q2, Laws of the Federation of Nigeria 2004; section 2

<sup>35</sup> Cap Q2, Laws of the Federation of Nigeria 2004; section 3

<sup>36</sup> See for instance, Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020; Quarantine (Coronavirus [COVID-19] and other Infectious Diseases) Regulations (No. 3) 2020 in Rivers State of Nigeria Official Gazette No. 15, Vol. 56 of 5<sup>th</sup> June, 2020; and Rivers State Executive Order RVSG – 12 2020 Pursuant to Sections 2, 4 and 8 of The Quarantine Act, Cap Q2, Laws of The Federation of Nigeria 2004 and Regulation 11 of the Quarantine (Coronavirus (COVID-19) and other Infectious Diseases) Regulations, 2020.

<sup>37</sup> See K Ebiri and others, ‘Demolished Pub Owner Accuses El-Rufai of Witch-Hunt, Threatens Action.’ *Nigeria* (12 May 2020); <<https://m.guardian.ng>>. Accessed on 19<sup>th</sup> June 2020; O Adeshokan, ‘Coronavirus: Demolition of Hotels in Rivers State Illegal Use of Lockdown?’ *The African Report.com* (18-22 May 2020); S Nwakaudu, ‘Nigeria: Rivers Fight Against COVID-19 and Examples,’ *THIS DAY* (13 May 2020); <<https://allafrica.com>> Accessed on 19<sup>th</sup> June 2020.

had legal backing.<sup>38</sup>In all these cases the impression being disseminated is that the pandemic is so dangerous that Governors were constrained to exercise unusual powers to promulgate novel regulations intended to protect the populace from the rampage. Consequently, the rather queer and extreme actions of Governments in demolishing buildings at this time are interpreted by them to suit the prevailing challenge.

However, whatever may be the perceived motives of the perpetrators of these acts, it is pertinent to recall that in a democracy, such as Nigeria, every order or action is subject to the rule of law.<sup>39</sup> It is this tenet that translates to the application of the fundamental legal principles which alone determine whether any action, or related order, is in compliance with the law whenever disputes ensue from decisions bordering on supposed enforcement of the law. It is for this reason every law or subsidiary instrument, complemented by the Constitution contains comprehensive provisions to guide enforcers and victims of the legislation on its propriety.

#### **4.1.1 Jurisdiction**

Jurisdiction (which itself is the authority to entertain and determine cases) is a creation of statutes and the constitution.<sup>40</sup> It therefore follows that whenever there is failure to comply with any of the statutory or constitutional provisions conferring the jurisdiction, it deprives such 'Court' of the authority to adjudicate on the case.<sup>41</sup> The law is strict, that jurisdiction forms the life blood of adjudication. Consequently any decision by a 'court' which lacks jurisdiction to hear and determine a matter is a nullity however well-conducted.<sup>42</sup> In order to ensure compliance with this rigid posture, the law requires that for any court to assume jurisdiction it has to be satisfied that the following conditions are met, *viz*:

proper constitution as regards number and qualification of members; the subject matter falls within its scope as governed by the enabling law; the action is initiated by due process of law and any condition precedent to the exercise of jurisdiction is fulfilled.<sup>43</sup>

This issue is paramount in legal circles, and is respected by all persons and stakeholders. Even the Supreme Court has declared that it does not have the power to confer on itself the jurisdiction to adjudicate on a matter where there is no such legal backing.<sup>44</sup> This position has been amplified by the apex court in the following manner:

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<sup>38</sup> Cap Q2, Laws of the Federation of Nigeria 2004; s .5

<sup>39</sup> Cap Q2, Laws of the Federation of Nigeria 2004; s. 7.

<sup>40</sup> See L Abolade, 'Why We Demolished Houses During Lockdown – Lagos State Government,' <[www.icirnigeria.com](http://www.icirnigeria.com)> Accessed on 20 June 2020; N Orjinmo, 'Coronavirus Lockdown: Two Hotels Demolished in Nigeria for Breach of Rules' *BBC News*, Lagos (11 May 2020), available at [bbc.co.uk](http://bbc.co.uk) visited on 20 June 2020.

<sup>41</sup> *A.N.P.P. v B.S.I.E.C.* (2006) 11 NWLR, Pt. 992, 585; *Gov. of Lagos State v Ojukwu* (1986) 1 NWLR, Pt. 18, 621; *Panasian African Co. Ltd v National Insurance Corporation (Nig.) Ltd* (1982) 9 SC 1.

<sup>42</sup> *Skye Bank Plc. v Iwu* (2017) 16 NWLR, Pt. 1590, 24; *Obiuweubi v CBN* (2011) 7 NWLR, Pt. 1247, 465; *Onuorah v KRPC* (2005) 6 NWLR, Pt. 921, 393; *Osi v Accord Party* (2017) 3 NWLR, Pt. 1553, 387; *Cocacola (Nig.) Ltd v Akinsanya* (2017) 17 NWLR, Pt. 1593, 74; *Ugba v Suswam* (2014) 14 NWLR, Pt. 1427, 264; *Afribank (Nig.) Plc v Akwara* (2006) 5 NWLR, Pt. 974, 619.

<sup>43</sup> *Osi v Accord Party*, *supra*, note 27; *A. G., Lagos State v A. G. Federation* (2014) 9 NWLR, Pt. 1412, 217; *Tiza v Begha* (2005) 15 NWLR, Pt. 949, 616.

<sup>44</sup> *Nwachukwu v Nwachukwu* (2018) 17 NWLR, Pt. 1648, 357; *Onyema v Oputa* (1987) 3 NWLR, Pt. 60, 259; *Adeyemi v Opeyori* (1076) 9-10 SC 31; and *CBN v Okojie* (2015) 14 NWLR, Pt. 1479, 231



no court, including this court exercises jurisdiction unless it is statutorily prescribed and since jurisdiction cannot be inferred or implied, nor can the parties by agreement confer jurisdiction on this court or any other court for that matter; I am inclined to agreeing with the respondent that this court, by dint of section 243(4) of the Constitution, lacks jurisdiction to entertain this appeal.<sup>45</sup>

This stand calls for close examination of the authority by which the Governors demolished the buildings in their respective States. Of course it is settled that in all the cases there is no denial of the demolition. Primarily, section 7 of the Quarantine Act provides that the trial of cases is to be conducted by any Magistrate. Since jurisdiction is the factor that determines whether or not a court has power to entertain any dispute, by mentioning Magistrate as the officer to conduct trials in this category of cases, the law is clear that a Governor has no power to handle this assignment. In the circumstance by conferring upon himself the power to conduct cases flowing from the said Act, every affected Governor erred in law. This is because in modern society where the law prevails, he lacks such power.<sup>46</sup> Apart from the fact that the Governor *qua* Governor lacks the power to exercise judicial function, the law remains that even courts which are statutorily established and properly constituted are restrained from acting beyond their statutorily allocated power.

Accordingly, all decisions arrived at in excess of jurisdiction are null and void.<sup>47</sup> In relation to the actions of the Governors, though purportedly taken in pursuance of statutory instruments which ought to emanate from the Quarantine Act, such acts are alien to the jurisdictional flow therefrom and completely contrary to its intendment. In effect they acted without legal foundation.

#### 4.1.2 Fair Hearing and Its Application

Whenever reference is made to, or demand is urged for, the enforcement of fair hearing, it translates to the observance of the twin pillars of natural justice – *Nemo iudex in causa sua* (no person shall be a judge in his own cause), and *Audi alteram partem* (Hear the other party) as the inherent structures guiding the exercise of every judicial and *quasi-judicial* authority. Consequently it is a deliberate crafting of justification for the judiciary to exercise power and perform an exclusive obligation to determine actions and proceedings relating to matters in dispute between parties.<sup>48</sup> As it carries out this function, observers and stakeholders expect the judiciary to be excellently impartial and independent so that justice is not only done but is visibly done.<sup>49</sup>

<sup>45</sup> *Madukolu v Nkemdilim* (1962) 2 SC NLR 341; *Dangaha v Usman* (2013) 6 NWLR, Pt. 1349, 50; *N.U.R.T.W. v R.T.E.A.N.* (2012) 10 NWLR, Pt. 1307, 170; *Amobi v Nzegwu* (2014) 2 NWLR, Pt. 1392, 549; *Skye Bank Plc. v Chidebere* (2017) 7 NWLR, Pt. 1564, 213; *NDIC v CBN* (2002) 7 NWLR, Pt. 766, 272; *Western Steel Workers Ltd v Iron and Steel Union* (1986) 3 NWLR, Pt. 30, 617; and *Alims (Nig.) Ltd. v UBA Plc.* (2013) 6 NWLR, Pt. 1722, 40.

<sup>46</sup> *Cocacola (Nig.) Ltd v Akinsanya*, *supra*, note 27; *Gafar v Govt. Kwara State* (2007) 4 NWLR, Pt. 1024, 375; *Ansa v R.T.P.C.N.* (2008) 7 NWLR, Pt. 1086, 421; *Garadima v Tambai* (2000) 11 NWLR, Pt. 677, 1; *African Newspapers of Nigeria v FRN* (1985) 2 NWLR, Pt. 6, 137; *Ugwa v Lekwauwa* (2010) 19 NWLR, Pt. 1226, 26; *Onuaguluchi v Ndu* (2001) 7 NWLR, Pt. 712, 309.

<sup>47</sup> Per Eko, JSC in *Cocacola (Nig.) Ltd v Akinsanya*, *supra*, note 27, 125.

<sup>48</sup> See again *Cocacola (Nig.) Ltd v Akinsanya*, *supra*, note 27.

<sup>49</sup> *F.B.N. Plc v T.S.A Ind. Ltd* (2010) 15 NWLR, Pt. 1216, 247; *Garba v Mohammed* (2016) 16 NWLR, Pt. 1537, 114; *Owoniboy Tech. Services Ltd v John Holt Ltd* (1991) 6 NWLR, Pt. 199, 550; *Okadigbo v Emeka*

On the other hand, by application of the twin rule, *nemo iudex in causa sua*, no one is allowed to be a judge in his own cause.<sup>50</sup> Applying these principles, it is glaring that the victims of the demolitions in all the States were not given fair hearing. There is no difficulty in rationalizing this conclusion. First, the Governors, even without legal authority, carried out the demolitions. Second, they acted arbitrarily and unilaterally, not bothering to know whether the victims had any, plausible defence to the alleged violation. Third, they were judges in cases in which they were the complainants, and so passed judgment against the same persons they had earlier accused of wrong doing and without trial. In the circumstance they breached both the rule against being a judge in one's case, and the one directing that the other party be heard. The actions also contravened the segment of the rule of law which engenders civility and promotes the protection of the rights of the citizenry from the wild powers of the administration. The duty to respect this guarantee was succinctly stated in the case of *R v Chancellor of Cambridge University*<sup>51</sup> in the following words –

The poorest man may in his cottage bid defiance to all the forces of the crown—the storm may enter – the rain may enter – but the King of England may not enter – all his forces dare not cross the threshold of the ruined tenement.<sup>52</sup>

To a great extent the actions share similarities with the case of *Legal Practitioners' Disciplinary Committee v Fawehinmi*.<sup>53</sup> In that case the Respondent, a legal practitioner, was accused by the office of the Honourable Attorney-General of the Federation of unethical conduct, to wit, publishing the fact that he is “the famous, reputable and controversial Nigerian lawyer.” Under the Legal Practitioners Act, Cap 15, 1975, the Honourable Attorney-General who was the accuser in the case was to be the Chairman of the disciplinary body (the Appellant) that was to try the Respondent. Moreover, three members of the National Executive Committee of the Nigerian Bar Association who took part in the decision to “try” the Respondent were to sit with the Attorney-General on the disciplinary panel. Contending that the presence of the Attorney-General and the three members of the National Executive Committee of the Nigerian Bar Association automatically meant that the disciplinary Committee was not constituted in such a manner as to secure its independence and impartiality. The Respondent filed an action to enforce his right to fair hearing. The High Court, Appeal Court and Supreme Court all upheld this argument. The Supreme Court ultimately declared that the presence of those persons traversed all sense of impartiality.<sup>54</sup>

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(2012) 11 NWLR, Pt. 1311, 237. In *Kisarin v Ltd v La-Terminal Co. Ltd*, it was held that in an undefended list procedure, the refusal of the trial High Court to entertain the Defendant's motion for extension of time to file a notice of intention to defend amounted to a denial of the right to fair hearing, to wit, *audi alteram partem*. Similarly in the case of *Ogundoyin v Adeyemi* the Supreme Court held that dismissing an appeal in a situation where the party was not invited, *via* hearing notice, to argue his case did not comply with fair hearing. In other words, the rule, *audi alteram partem* was breached.

<sup>50</sup> *R v Sussex Justices, ex parte McCarthy* (1924) IKB 256, (1923) All ER Rep 233.

<sup>51</sup> (1716) 1 Str. 557.

<sup>52</sup> *ibid.* at 558.

<sup>53</sup> *LPDC v Fawehinmi* (1985) 2NWLR, Pt 7, 300, p. 4; *Garba v The University of Maiduguri* (1986) All NLR 149; *Metropolitan Properties Co. (FCG) Ltd v Lannon* (1968) All ER 304 at 310; *Oyelade v Araoye & Anor* (1968) NMLR 44 at 47; *Pearlberg v Varty* (1972) 1 A. L. R. 534; *Lawson v Local Authority Aba* (1944) 10 WACA 28; *Alakija v The Medical Disciplinary Committee* (1959) 4 FSC 38.

<sup>54</sup> E M Schur, *Law and Society* (New York: Random House, Inc., 1968) p 70; K Greenawalt, 'The Natural Duty to Obey The Law', 84 *Mich. L. Rev.* 1985, p1. A Agbanusi, 'Unjust Law as a Justification for Civil Disobedience' (2015) (4) *Mgbakoigba Journal of African Studies*, 2015, p1; T R S Allan, 'Citizenship and Obligation: Civil Disobedience and Civil Dissent' (Mar. 1996) *The Cambridge Law Vol* 55(1), March 1996, pp 89-121.

As a matter of fact, this right has a primordial origin, traceable to the days when mankind was under the direct rulership of God Almighty. That society later adopted it and hallows it for all times, is a testimony not only of its social essence as an invaluable contribution, but also an inherent part of the human being. It is for that reason the principle is anchored on its earliest precedent which was adopted by the English Court in the 18<sup>th</sup> century thus – “Even God himself did not pass sentence upon Adam before he was called upon to make his defence.”<sup>55</sup>

Its practical test is that every person who is assigned a ‘judicial’ duty to perform stands disqualified if he has a bias which renders him otherwise than a dispassionate Judge, if he has so conducted himself concerning the matters to be inquired into as to lead a reasonable man to suspect that he may have such a bias.<sup>56</sup>In essence then it is not necessary that the bias be apparent, as mere likelihood of interest in the cause is enough blemish to rob the person of the moral quality to be upright in his determination of the dispute throughout the proceedings in the eyes of neutral observers. For instance, concerning these actions, even without the essential legal ingredient of jurisdiction, it is very difficult to expect the non-partisan public to express satisfaction with the Governors’ exercise of power after declaring the victims guilty of the perceived offences. Nor can there be accurate assessment of the devaluation of their sense of justice which the incidents will impact on them. This is also because the standard of impartiality required of full-time Judges is the same as that expected of all persons who adjudicate in administrative or disciplinary boards, even though vested with power to make only preliminary orders touching people’s rights.<sup>57</sup>

Sanity in society and the permanency of orderliness associated with the predominant obedience to law are the visible products of unflinching confidence in the rule of law.<sup>58</sup>This culture is strengthened tremendously when landmark transactions and litigation results evince the fact that all parties, even Government, are subject to the dominion of law.<sup>59</sup>As its principal contribution to the harmonious coexistence of the whole fabric of the nation, the judiciary has always emphasized the need for the Executive arm of Government to show respect for the law

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<sup>55</sup> See *Liversidge v Anderson* (1942) AC 206; *Shugaba v Minister of Internal Affairs* (1981) 1 NCLR 125; *A. G. Bendel State v Aideyan* (1989) 4 NWLR, Pt. 118, 646; *Okogie v A. G, Lagos State* (1981) 1 NCLR 218; *Agbakoba v Director of SSS* (1999) 3 NWLR, Pt. 595, 314; *Ubani v Director of SSS* (1999) 11 NWLR, Pt. 625, 129.

<sup>56</sup> R Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974) p 34; *Military Governor Lagos State v Ojukwu* (1986) All NLR 233. J Rawls, *Legal Obligation and the Duty of Fair Play* (Cambridge: Harvard University Press, 2001) p 119.

<sup>57</sup> O Shasore and B Salihu, ‘Nigeria: of A Renewed Justice Sector, Law, Order and The Rule of Law,’ *Mondaq* (2 Nov. 2018); F Egbokhare, ‘Disobedience and Lawlessness are Nigeria’s Undoing,’ *Business day* (18 May 2020); A Kabir, ‘Analysis: SSS Nigeria’s Security Agency Notorious for Disobeying Court Orders,’ *Premium Times* (June 24, 2020); A J Adekun, ‘Civil Disobedience and Democratic Sustainability in Nigeria: Study of Acts’ 5: pp17-42 *Ilorin Journal of Religious Studies* 2016 vol 6(9), pp 17-30; M V Naidu, ‘Civil Disobedience: What? When? How?’ Nov. 2005 vol (37) (2) *Peace Research* 5.

<sup>58</sup> H Okoeguale, ‘Strengthening Legislative Controls Over Delegated Legislation in Nigeria’ (2019) (2) *NAUJILJ* 35; A W Bradley and K D Ewing, *Constitutional and Administrative Law* (Edinburgh: Pearson Education Limited, 2011) 622; P A Oluyede, *Nigerian Administrative Law* (Ibadan: University Press Plc., 2007) 326-327; M C Okany, *Nigerian Administrative Law* (Onitsha: Africana First Publishers, 2005) 48-49; J N Egwummuo, *Modern trends in Administrative Law* (Enugu: Academic Printing Press, 2000) 214; B O Iluyomade and B U Eka, *Cases and Materials in Administrative Law in Nigeria* (Ile- Ife: Obafemi Awolowo University Press Plc., 2007) 72-73.

<sup>59</sup> *Ebhota v Plateau Investment and Property Development Co. Ltd* (2005) 15 NWLR, Pt. 258, 139

by obeying all orders made by the court.<sup>60</sup>This call is necessary to avoid gradual breakdown of law and order as in general it is easier for Government and its agencies to break the law and flout orders of court with impunity.<sup>61</sup>

Another quandary is the propriety of the law under which the properties were demolished. On one hand we have the Quarantine Act, a Federal law, and on the other hand there is a set of State regulations made by Governors pursuant to the Act referred to. At best therefore they qualify as subsidiary legislation or delegated legislation at the State level but made under Federal law.<sup>62</sup>In this case they derive validity from s. 8 of the Quarantine Act as follows:

If and to the extent that any declaration under section 2 or 3 of this Act has not been made, and to the extent that regulations under section 4 of this Act have not been made by the President, power to make any such declaration and to make such regulations may be exercised in respect of a State, by the Governor, thereof as fully as such power may be exercised by the President, and subject to the same conditions and limitations.<sup>63</sup>

#### **4.1.3 Statutory Issue**

The declaration referred to herein is in respect of the existence of dangerous infectious disease in an infected local area under sections 2 and 3 of the Act, while the regulations, in section 4, are generally for carrying out the purposes of the Act. However, the last clause in s. 8 which restricts the power of a Governor to the same conditions and limitations as those of the President, is instructive. Without more it means that in making the needed statutory provisions in the State the Governor has to abide by the set conditions, thus subordinating the State regulations to their origin as contained in the Act.<sup>64</sup>To fortify this distinction the Act also provides that the Governor's powers can only be exercised when the President has failed to make the necessary declaration or regulation in that State. It is also noteworthy that under the Act even the President is not granted unlimited powers.

Thus in all aspects of the subject where the Act has made specific and adequate provisions, he lacks the authority to substitute his input or superimpose his choice. Examples of these are the penalties in section 5, and jurisdiction in section 7. For it has to be understood that even in this circumstance, the President does not enact laws as of right but is only exercising delegated authority to make regulations and declarations which essentially draw validity from the supreme authority.<sup>65</sup>Thus the Governor, who is only empowered to fill a vacuum in his State makes a second-degree administrative legislation. Yet in compliance with universal

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<sup>60</sup> J Salmond, *Jurisprudence* (9<sup>th</sup> ed., London: Sweet and Maxwell Ltd, 1937) 210. *NNPC v Famfa Oil Ltd* (2012) 17 NWLR, Pt. 1328, 148 at 174-175; *Federal Government of Nigeria v Zebra Energy Ltd* (2002) 18 NWLR, Pt. 798, 162; *Ogunlaji v A. G. Rivers State* (1997) 6 NWLR, Pt. 508, 209

<sup>61</sup> Application of the same principle in resolving conflict between Federal and State laws: *A. G. Ogun State v Aberuagba* (1985) 1 NWLR, Pt. 3, 395; *A. G., Ogun State v A. G., Federation* (1982) 3, NCLR 166 at 179.

<sup>62</sup> *Raleigh Ind. (Nig.) Ltd v Nwaiwu* (1994) 4 NWLR, Pt. 341, 760; *A. G. Abia State v A. G., Federation* (2005) 12 NWLR, Pt. 940, 452; *A. G., Ondo State v A. G., Ekiti State* (2001) 17 NWLR, Pt. 743, 706; *Awolowo v Shagari* (1979) 6-9 SC 51; *A. G. Ogun State v A. G., Federation* (1982) 1-2 SC 13; *A. G., Bendel State v A. G., Federation* (1981) 10 SC 1.

<sup>63</sup> Quarantine Act Cap Q LFN 2004 as amended, section 8.

<sup>64</sup> Constitution of the Federal Republic of Nigeria, 1999, section 4(5).

<sup>65</sup> *Bamgboye v University of Ilorin* (1991) 8 NWLR, Pt. 207, Official Secrets Act, Cap 03 LFN 2004, section 4(3).

jurisprudence formula and consolidated by the provision in section 8 herein, his regulations are of a lower class than those of the President and can only survive when they do not conflict with those of the President.

Accordingly, the law under which a person can be prosecuted for contravening any provision of the Quarantine Act or its subsidiary legislation must correspond with the specific provisions of the Act which is the principal legislation. This, among others, is because of the clear enactment in section 7 of the Act specifying the jurisdiction of magistrates. In that light no other court, body or person can appropriate this jurisdiction to itself as the law demands that this clear and unambiguous provision be given its ordinary meaning.<sup>66</sup>In this situation, the actions of the Governors in appropriating to themselves the power of adjudication are not so provided in the Act. The follow up is that even if a contrary provision is contained in the Executive Orders variously promulgated in the states concerning jurisdiction it will not have legal foundation in view of the fact that such conflicting provision suffers invalidation *ab initio*.<sup>67</sup>Here there is need for coordination and exercise of control over delegated legislation.<sup>68</sup>The situation echoes the call for coordination and exercise of control over delegated legislation.<sup>69</sup>Invariably the scenario leads to another subtle ingredient of the victims' rights which was not contemplated initially, to wit, the right of the affected citizens to be tried only by a court or tribunal validly established under an extant law.<sup>70</sup>

This is linked to the novel conferment of power *via* delegated legislation under emergency circumstances. To meet that expectation the Governors as beneficiaries of this pseudo-legislation have an obligation to demonstrate that their use of the power is compatible with the authorisation;<sup>71</sup>they have not departed from the objective;<sup>72</sup> and that the power is exercised reasonably.<sup>73</sup>It can be garnered from the foregoing that in the contemplation of the law, no State Executive Order with provisions inconsistent with those of the principal Act herein can exist. Therefore, it does not make sense, from legal perspective, to affiliate the controversial demolitions to the Act. For both in law and in fact it is not possible to place something on nothing and expect it to stand.<sup>74</sup>

#### 4.1.4 Sentencing

The demolition orders made by the Governors equated to punishment. Under normal circumstances the law in Nigeria only allows punishment of a citizen when his guilt is

<sup>66</sup> *Garba v University of Maiduguri* (1986) 1 NWLR, Pt. 18, 550; *Baba v Civil Aviation* (1991) 7 SCNJ (Pt. 1) 1; *Sofekun v Akinyemi* (1980) 5-7 SC 1; *Denloye v Medical and Dental Practitioners Disciplinary Committee* (1968) 1 All NLR 306.

<sup>67</sup> H Okoeguale, *supra*, note 51, 40; S. 1(3) CFRN 1999; *Chairman of the Board of Inland Revenue v Joseph Rezcallah & Sons Ltd* (1961) NRNLR 32 at 38.

<sup>68</sup> *Howard v Bodington* (1877) 2 P. D. 203,

<sup>69</sup> R Rogers; R Walters; *How Parliament Works* (7<sup>th</sup>. Ed. London: Routledge, 2015) p224, S O Imanobe,; Delegated Legislation' in E Azinge and V Madu(eds) *Fundamentals of Legislative Drafting*(Lagos: NIALS, 2012), p.196

<sup>70</sup> M M Akanbi, 'Rule of Law in Nigeria' *Journal of Law, Policy and Globalization*, pp1-9.

<sup>71</sup> Y Tanaka *Delegated Legislation and the National Diet* (Nihonhyoronsha, 2012), p212.

<sup>72</sup> A T Olew, *Administrative Law in Nigeria* (Lagos: Jator Publishing Company, 1997) p.66.

<sup>73</sup> *Williams v Majekodunmi* (1962) All NLR 328.

<sup>74</sup> See *Macfoy v UAC Ltd* (1962) AC 150 or (1961) 3 WLR (P.C.) 1405 at 1409; *Akpene v Barclays Bank* (1977) 1 SC 47 at 59.

established during a trial.<sup>75</sup> It is never allowed to be done arbitrarily as it is an exercise of statutory power. Therefore, even when a citizen is properly convicted of an offence and is being sentenced to a permissible form of punishment, the law still protects his rights. For instance, the court will not sentence him to a punishment exceeding that prescribed by the law under which he was tried and convicted.<sup>76</sup> On the other hand, because this sanction is not provided to be exercised for the perpetual condemnation of convicts but for the gradual restoration of rectitude, the law has long-term objectives for its dispensation.<sup>77</sup> In addition, even at that point the law allows him to call a witness or personally give evidence of his character in order to guide the court in making a moderate, not an excessively punitive, sentence.<sup>78</sup>

The law further allows mitigation of sentence where the appellate court finds the sentence made by the trial court inappropriate.<sup>79</sup> What is apparent from this analysis is that if the law can respect and protect the rights of persons who have been found to have committed offences against the State and the people, it will be appreciated better when it jealously and readily enforces the right to fair trial of law-abiding members of the society who have not been legally pronounced guilty. Moreover, this universal right attracts special attention in this nation at this time when it is feared that the political climate is beginning to threaten it.<sup>80</sup> That notwithstanding there is every need to give effect to all its terms in view of domestic ratification and global recognition.<sup>81</sup>

Generally, part of the trial process is the sentencing stage when the court imposes punishment on the offender.<sup>82</sup> Failure of the Governors to give the victims the opportunity to plead *allocutus* is an aggravation of the breach of their right to fair trial, in the circumstance. The demonstration of the unfairness lies in the fact that if there had been impartial determination of the cases by an independent ‘court’, it would have called for evidence preceding sentence to enable it decide whether or not it would be appropriate to impose maximum punishment.<sup>83</sup> The latent ground

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<sup>75</sup> See ss. 310, 311 of the Administration of Criminal Justice Act, 2015; *Mohammad v Olawunmi* (1993) 4 WLR, Pt. 288, 348; *Garba v C. O. P.* (2007) 16 NWLR, Pt. 1060, 378; B Ayua, “Towards a More Appropriate Sentencing Policy in Nigeria” (1983) 1 *A.B.U. L. J.* 12

<sup>76</sup> See U J Idem and N E Udofia, ‘Sentencing and Administration of Criminal Justice in Nigeria’ (2016) (4) (1) *Donn. J. Law Conflict* 1-10; *Essien v C. O. P.* (1996) 5 NWLR, Pt. 449, 489 at 503.

<sup>77</sup> E.g. deterrence, retribution, rehabilitation, compensation of victim, reconciliation, etc. See s. 401 (1) Administration of Criminal Justice Act, 2015; A Adaramaja, ‘Character as a basis of Criminal Liability in Nigerian Law’ *Nig. L. J.* 1969, Vol 3, p116; M Akram, ‘Individualization of Sentencing – A Nigerian Experience’, *Journal of Indian Law Institute* vol 30(2), 1988, pp196-203;

<sup>78</sup> See ss. 310 and 311 ACJA, 2015.

<sup>79</sup> See, for instance, *Dawodu v C. O. P* CCHCJ/2/74, 133 where a magistrate imposed 3 years’ imprisonment on a 55-year-old convict for theft at Apapa Quay. On appeal the High Court reduced it to 12 months because the magistrate failed to take into account the convict’s age and antecedent, Cf. *Onyilokwu v C. O. P* (1981) 2 NCR 49.

<sup>80</sup> I E Iwara and S O Oni, ‘Rights of Fair Trial and the Human Person in Nigeria’s Political System: A Legal – Politico Perspective’; *International Journal of Arts Humanities and Social Sciences* 2016, vol 1(4), p 106.

<sup>81</sup> Universal Declaration of Human Rights, 1948, Art 10; African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004; G Alfredsson and A Eide, *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Martinus Nijhoff Publishers, 1999) 222-226; P Lemmens, ‘The Right to A Fair Trial and Its Multiple Manifestations’ in E Brems and J Gerards (eds.) *Shaping Rights in the ECHR: The Role of European Court of Human Rights in Determining the Scope of Human Rights* (Cambridge: Cambridge University Press, 2014) 294-314.

<sup>82</sup> R Varghese, ‘Sentence Hearing: Intent and Scope in Criminal Proceedings’, *Journal of the Indian Law* vol 34(3) July-Sept-1992, pp456-465; *Giasuddin v State of A. P.*, A. I. R. (1977) SC. 1926; B Osamor, *Fundamentals of Criminal Procedure Law in Nigeria* (Lagos: Ella – B Ventures Nigeria, 2004)p98.

<sup>83</sup> See *Dawodu v C. O. P.*, *supra*, note 75.

for protection of the right to fair trial in general is that its infraction causes invaluable damage to the victim to the extent of making him lose faith in the whole justice system and its ability to maintain durable social stability. It is also interrelated with the international reputation of the nation and investment attraction to boost its economy and citizens' well-being.<sup>84</sup>

## **5. Conclusion**

At all times – even during crisis – the fundamental nature of right to fair hearing and its inextricability from the personality of every human being must be respected in all civil societies, including in Nigeria. This confirms its practice of the rule of law. Nevertheless, it has to be acknowledged that the novel COVID-19 pandemic has constrained the Government to sacrifice some important rights of the citizenry to curb its spread and save lives.

Despite that, the paramountcy of the role played by law in the country demands that the right to fair hearing, being a cornerstone of social co-existence, be spared from this stampede to lawlessness. Accordingly, the demolitions of buildings by some State Governors under the guise of curbing the spread of COVID-19 constitute excessive show of power and intolerable breach of the right to fair hearing. Whilst the pandemic persists Government should devise a moderate strategy to control its transmission without tampering with the inherent rights of the citizens unduly, illegally and irrationally.

## **6. Recommendations**

As long as the nation remains, both normal and abnormal tragedies can only be handled adequately when the law is allowed to run its course by regulating the life and prospects of the people.

Right to fair hearing should be respected during COVID. Government should obey the rights of citizens by obeying the law.

Courts should be allowed to interpret controversial laws.

Old laws in the nation should be revised to give them modern impact. The powers of the President and Governors in the Quarantine Act, should be reviewed to avoid conflict.

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<sup>84</sup> J C Azu, 'Nigeria: How COVID-19 Affects Human Rights,' *AllAfrica* (19 May 2020) available at <<https://africa.com>> visited on 27 June 2020; B Ward, 'It's Not Just Covid-19 That Threatens UK's Human Rights,' *Human Rights Watch* (May 12, 2020); European Students Union, 'European Students' Union review of Human Rights Violation During the COVID-19 Pandemic,' at <<https://www.esu-online.org>> visited on 27 June 2020, published in *European Students' Union* (June 3, 2020); D Piana, *Judicial Accountabilities in New Europe: From Rule of Law to Quality of Justice* (Oxfordshire: Routledge, 2016); Banwo & Ighodalo, 'The Place of Law in National Development,' <<https://www.banwo-ighodalo.com>> accessed 27 June 2020.