

Scrutinizing the Constitutionality of Remand Order Proceedings under the Administration of Criminal Justice Legislations in Nigeria: A Comparative Analysis

Ugochukwu Charles Kanu^{1*}, Don Onuora Okanyi², Leonard Ibekwe Ugwu³

¹Law (Department of Criminal Litigation), Nigerian Law School, Lagos Campus, Nigeria

²Law (Department of Criminal Litigation), Nigerian Law School, Enugu Campus, Nigeria

³Nigerian Law School Lagos, Victoria Island, Lagos, Nigeria

Email: *kanu@lawschoollagos.org, *ugochukwu.kanu@nigerianlawschool.edu.ng, okanyi@nigerianlawschool.edu.ng, ibekwe.ugwu@nigerianlawschool.edu.ng, leoibu@yahoo.com

How to cite this paper: Kanu, U. C., Okanyi, D. O., & Ugwu, L. I. (2022). Scrutinizing the Constitutionality of Remand Order Proceedings under the Administration of Criminal Justice Legislations in Nigeria: A Comparative Analysis. *Beijing Law Review*, 13, 1030-1050.

<https://doi.org/10.4236/blr.2022.134065>

Received: September 22, 2022

Accepted: December 27, 2022

Published: December 30, 2022

Copyright © 2022 by author(s) and Scientific Research Publishing Inc.

This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

The Constitution of the Federal Republic of Nigeria 1999 (as amended) hereinafter referred to as CFRN stipulates that any person who is arrested and detained should be brought before a court of law within a reasonable time. The Constitution did not leave the meaning of “reasonable time” to conjecture, rather, it defined same in a later provision. In order to circumvent or rather avoid breaching these provisions, the Law Enforcement Agencies resorted to filing what is referred to as “Holding Charge” usually in a Magistrate Court lacking jurisdiction, to enable them to continue and conclude investigation without incurring consequences attendant upon infringement of the Constitutional Rights of the suspects. This procedure (holding charge) became an avenue for abuses and corrupt practices as it brought unprecedented hardship on suspects in the hands of law enforcement agencies and nominal complainants. The evil and unpalatable experience of suspects and the concomitant damage it occasioned on the criminal justice system necessitated the search for a near perfect procedure to regulate situations where a suspect is arrested but investigation will extend beyond a “reasonable time” as contemplated under the CFRN. The outcome of this search is the emergence of “Remand Order Proceedings” in Nigerian Criminal Justice system. This work, adopting the doctrinal research approach, will consider the constitutionality or otherwise of holding charge and remand order proceedings as it relates to detention time limit in the various jurisdictions within and outside Nigeria.

Keywords

Holding Charge, Remand Order, Constitutionality, Arraignment

1. Introduction

It is presumed that over three million people around the world are being held in prison while they wait for their trial¹. In the realm of criminal investigation, it is not unusual especially in developing countries such as Nigeria to have law enforcement agencies and officers in their department caught up with paucity of time to conclude investigation before the arraignment of a suspect in the court of law. The arraignment of a suspect in court signals the conclusion of investigation and heralds the prosecution of the defendant in the court of law. The above problem is as a result of the untoward action of law enforcement agencies that will always place the cat before the horse. Ordinarily, investigation to an alleged commission of a criminal offence ought to be concluded prior to the arrest of the suspect, thereby paving the way for arraignment within a reasonable time as contemplated by the CFRN, but unfortunately this is not the case in Nigeria, hence the need for a procedure that will accommodate the lapses created by ineffective criminal investigation. The law enforcement agencies and prosecutors in their ingenuity introduced the procedure of “holding Charge” which ultimately birthed the present “Remand Order Procedure” in our criminal justice system. The researchers will examine the distinctions and similarities in the procedure; mission, purpose and intent of Holding Charge Procedure and that of Remand Order Procedure under the Nigerian laws. It will also compare Remand Order Proceedings as provided and practiced under the Nigerian criminal justice laws and the Criminal Justice System of other climes with a view to making a far reaching recommendation for the improvement of our criminal justice system where the inordinate delay ultimately defeats justice.

Definition of Key Concepts

Holding Charge:

The term “Holding Charge” has been variously construed and defined. The Black’s Law Dictionary (Garner, 2009) defines it as “a criminal charge of some minor offence filed to keep the accused in custody while the prosecutor takes time to build a bigger case and prepare more serious charges.” “Holding Charge” has also been described as “the practice of bringing suspects before an inferior Court that lacks jurisdiction for the primary purpose of securing a remand order, to look for evidence in support of the allegation against them and thereafter abandon the suspects in prison under the pretext of awaiting trial” (HumAngle, 2022). In Nigeria where there is over-crowding in Correctional centres (Sabilaw, 2022) as a result of majority of inmates serving time for pre-trial detention issues, it is submitted that corruption (Human Rights Watch, 2010) is one major

¹<https://www.fairtrials.org/campaigns/pre-trial-detention/> visited 18th September 2022 at 07:00am.

reason why officers from law enforcement agencies are unable to conclude their investigation before arraigning a suspect in court; a specie of this corruption is where officers has been compromised with money by the family of the suspect and they deliberately set out to frustrate every attempt at speedy conclusion of investigation so that the case will get cold and material evidence lost in the process which will ultimately lead to a decision of non-prosecution of the suspect or his acquittal if eventually he is arraigned in court; another factor is inadequate financing of the law enforcement agencies leading to officers demanding that families of victims of crime should finance investigation to cover their movement from one place to the other and often time the humongous amount demanded is not readily available, will cause delay in the investigation until the family provides the money; also indiscipline and lack of professionalism by some officers causes delay in conclusion of investigation; inadequate remuneration of law enforcement officers leads to lack of motivation, interest, and excitement in their job performance which will certainly impact on their output thereby causing delay in conclusion of investigation; obsolete or near absence of modern facilities needed in crime investigation and policing, for instance electronic recording gadgets such as video cameras and recorders, absence of closed circuit television installed in public places by Government or individuals for crime control are other reasons for delay in conclusion of investigation as officers are made to resort to near manual and orthodox system of investigation (*A.G Abia State v A.G Federation, 2002*).

Remand Order

The Black's Law Dictionary captures the meaning of the word "remand" as "To recommit (an accused person) to custody after a preliminary examination" (*Garner, 2009*). Also, Webster's Dictionary considers the word "remand" to mean "To return to custody pending trial or for further detention"². The Nigerian Supreme Court in *Lufadeju v Johnson (2007)* defined "remand" to mean to send to prison or send back to prison from a court of law to be tried later after further inquiries have been made; often in the phrase "remanded in custody". It also means to "recommit accused to custody after a preliminary examination".

Constitutionality

This is defined by the Black's Law dictionary as the quality or state of being constitutional (*Garner, 2009*). The constitution's superiority above every other law has been underscored by the Nigerian Supreme Court in the case of *Abacha v Fawehinmi (2000)* and more particularly enshrined in Section 1 of the *CFRN (1999)* that the supremacy of the constitution is unlimited and unquestionable. Consequently, if any other law is inconsistent with the provisions of the constitution, the constitution shall prevail and that other law shall to the extent of its inconsistency be void (*Nurudeen Ademola Adeleke & Anor v. Adegboyega Isia-ka Oyetola & Ors, 2020*).

Arraignment

This is defined by the Black's Law Dictionary as "the initial step in a criminal prosecution whereby the defendant is brought before the court to hear the

²Merriam-Webster's Collegiate Dictionary, Eleventh Edition.

charges and to enter a plea” (Garner, 2009). Without arraignment there can be no criminal trial as it is not court sensitive (ACJA, 2015, Section 271(2)), (ACJL, Lagos, 2021, Section 211)³ and criminal trial cannot commence without the plea of the defendant (Imam v Federal Republic of Nigeria, 2019). The implication is that the defendant must be present in court in order to take his plea and any trial conducted in the absence of the defendant is a nullity (State v Yanga, 2021) save in exceptional circumstances permitted by law, known as trial in absentia (ACJA, Section 352(4) & (5)), (ACJL, Lagos, 2021, Section 235), (ACJL, 2019)⁴. Previously, the position of the law was that trial in absentia is unknown in Nigerian law based on the authority of Adeoye v State (1999) as the defendant must be present in court during the whole of the trial (Section 266 ACJA, 2015), (Section 208 ACJL Lagos, 2015, amended in 2021), (Section 268 ACJL Kano, 2019). The Supreme Court recently validated the above position in the case of State v Yanga (2021) that any trial conducted in the absence of the defendant is a nullity. However, to the above general rule there is an exception:

1) Where a court in exercise of its discretion grants bail to a defendant in the course of a trial but defendant fails to attend court in two consecutive sittings (adjournments) without reasonable explanations, the hearing shall continue in his absence and he may be convicted, but sentence shall not be imposed until the defendant is arrested or surrenders (ACJA, 2015, Section 352(4) & (5)), (Section 352(4) & (5) ACJL Kano 2019), (Section 235(4) ACJL Lagos 2021 as amended).

2) A defendant who is not in custody but has been served summons but fails to appear in court for arraignment and/or the commencement of trial without reasonable excuse shall have his trial commenced and a plea of not guilty entered for him under the Lagos Jurisdiction (Section 235(5), (6), and (7) ACJL Lagos, 2015, as amended in 2021).

3) At the Hearing of interlocutory application (ACJA, 2015, Section 266(b)), (ACJL Kano, 2019, Section 268(b)).

4) Where the defendant misconducts himself before the court by consistently interrupting proceedings in such a manner as to render his continuing presence impracticable or undesirable (Section 208 ACJL Lagos, 2021), (Section 268(a) ACJL Kano, 2019), (Section 266(a) ACJA, 2015).

5) In proceedings or enquiry by the court to establish through a medical practitioner whether or not the defendant is of unsound mind as to be able to stand his trial (Section 217 ACJL Lagos, 2021).

6) Where defendant pleads guilty in writing or appears and so pleads by his legal practitioner in cases where penalty is fine not exceeding N10, 000.00 (ten thousand naira) or imprisonment not exceeding six months or both subject to approval by the Magistrate (ACJA, 2015).

³See Section 271(2) Administration of Criminal Justice Act 2015; Section 211 Administration of Criminal Justice Law, Lagos 2015 as amended in 2021.

⁴See Section 352(4) & (5) Administration of Criminal Justice Act 2015; Section 235 Administration of Criminal Justice Law 2021 Laws of Lagos State 2021 as amended; Section 352(4) & (5) Administration of Criminal Justice Law of Kano State 2019.

2. The Distinction between Holding Charge Procedure and Remand Proceedings under the Administration of Criminal Justice Act and Administration of Criminal Justice Law (Lagos and Kano) States

The distinctions between Holding Charge Procedure and Remand Order Procedure under the ACJA and ACJL (Lagos or Kano) are deciphered from practice, case laws and the provisions of the relevant statutes (*Lufadeju v Johnson*, (2007)), (ACJA, 2015, Sections 293-299), (ACJL, Lagos 2021, Sections 264-267), (ACJL, Kano, 2019). Such distinctions are itemized hereunder:

1) In a Holding Charge Procedure, a formal charge must be filed, whilst in Remand Proceedings under the ACJA and ACJL (Lagos and Kano), no charge is filed.

2) In Holding Charge Procedure, there must be an attempt at arraignment wherein the defendant attempts to take plea, whilst in Remand Procedure under the ACJA and ACJL (Lagos and Kano), there is no arraignment;

3) Holding Charge Proceeding is initiated with a Charge, whilst Remand Proceeding under the ACJA and ACJL (Lagos and Kano) is initiated by a Motion Exparte;

4) In Holding Charge Procedure a defendant is remanded pending the “Advice” of the Director of Public Prosecution (DPP) or Police prosecutor, whilst under the ACJA and ACJL (Lagos and Kano), Remand Order is made pending investigation, formal charge and arraignment;

5) In Holding Charge Procedure, a Defendant is remanded without any time limit, whilst in Remand Order Proceeding under the ACJA and ACJL (Lagos and Kano), remand has a time limit;

6) In Holding Charge Procedure, the parties are referred to as “Complainant and Defendant” whilst in Remand Procedure under the ACJA and ACJL (Lagos and Kano), the parties are called “Applicant and Suspect”⁵.

Consequently, in *Attorney General of Lagos State v. Keita* (2016) a case that emanated in Lagos, the court observed that a Magistrate shall have powers to remand a person after examining the reasons for the arrests exhibited in the request form filed by the Police, and if satisfied that there is probable cause to remand such person pending legal advice within the time limits stated in the law/Act shall proceed to make the order.

3. Constitutionality of Holding Charge and Remand Order Proceedings under the Nigerian Criminal Justice Administration

The emergence of the practice of Holding Charge in the Nigerian Criminal Justice system is not an invention of law but an ingenuity created by Prosecutors to circumvent the provisions of Section 35(4) and (5) of the constitution (CFRN, 1999). These sections in a nutshell provides that a suspect who is arrested or de-

⁵The Term “Defendant” is used under ACJL, Lagos.

tained shall be brought before a court of law within a period of one (1) day where there is a court of competent jurisdiction within a radius of forty (40) kilometres, or a period of two (2) days or such longer period as the court may consider reasonable in the absence of same. In *Danfulani v Economic and Financial Crimes Commission* (2016), the court held that to detain a suspect without arraignment in court beyond the period stipulated by the constitution is unconstitutional. Consequently, detention of a suspect beyond the permissible period comes with unpalatable consequences in terms of award of damages and other sanctions for any law enforcement agency, especially where the suspect was arrested for offences which punishment is not death sentence. Section 61(1) of the Nigeria Police Act (2020) is in conformity with the provisions of the constitution while stating that a suspect arrested without a court warrant, other than a capital offence, should be granted bail, where it is impracticable to charge him to court within 24 hours.

It is the researcher's opinion that the practice of holding charge and the adjudged reason for its emergence when placed side-by-side with the constitutional provisions under reference cannot legally survive any scrutiny, especially as there are no known provisions of the law backing it. Assuming without conceding that there is a provision of the law backing it, the clear and unambiguous letters of Section 1(3) of the constitution (*State v Yanga*, (2021) which 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" makes such a provision unconstitutional. The Supreme Court was therefore emphatic and categorical when it held in the case of *Lufadeju v. Johnson* (2007), *Enwere v Commissioner of Police* (1993) that the practice of holding charge is illegal and unknown to Nigerian law, same being in conflict with the constitution. In that same case, the Supreme Court also held that the practice of remand order is constitutional and went on to state that it is meant to complement the realisation of the constitutional provisions on the right to personal liberty (CFRN, 1999, Section 35(4) & (5)). In support of the above constitutional provision is the African Charter on Human and Peoples' Rights which provides in Article 6 that "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained"⁶. The Charter has been signed and ratified by 54 African countries (including Nigeria) to underscore its importance, and the only country yet to sign and ratify same is South Sudan. Detaining a suspect above the period prescribed by law is arbitrary detention.

4. Comparism of the Provisions on Remand Order Proceeding in the Criminal Procedural Laws in Nigeria

It was earlier noted in this work that the Criminal Procedural laws to be considered are the Administration of Criminal Justice Act, 2015; the Administration of

⁶Article 6 African Charter of Human and Peoples' Rights came into force on 21st October 1986.

Criminal Justice Law (ACJL), Lagos State (as amended, 2021); and the Administration of Criminal Justice Law, Kano State. The justification for the choice of these laws is that in the Nigerian Law School, the teaching of Criminal Litigation has for convenience been divided into three jurisdictions, wherein each of the ACJL, Lagos and ACJL, Kano have been adopted to represent the entire Southern and Northern jurisdictions respectively (Okanyi et al., 2022); whilst the ACJA, 2015 applies to all criminal trials before any court in the Federal Capital Territory, Abuja as well as other criminal trials conducted before any Federal Courts⁷ in Nigeria, and in the State Courts where an offence created by an Act of the National Assembly is tried (ACJA, 2015, Section 2(1)). It is considered necessary for clarity and to buttress our points to reproduce the enabling sections of the Laws which will constitute the immediate compass within which this article and our discussions herein on remand will navigate.

The relevant provisions of Section 293 of ACJA provide as follows (ACJA, 2015, Section 2(1)):

- 1) *“A suspect arrested for an offence which a magistrate court has no jurisdiction to try shall, within a reasonable time of arrest, be brought before a magistrate court for remand.*
- 2) *An application for remand under this section shall be made ex parte and shall*
 - a) *be made in the prescribed “Report and Request for Remand Form” as contained in Form 8, in the First Schedule to this Act; and*
 - b) *be verified on oath and contain reasons for the remand request.”*

Conversely, the relevant provisions of Section 264 ACJL, Lagos 2015 provides as follows (ACJL, 2015, Section 264):

- 1) *“Any person arrested for any offence triable on Information shall within a reasonable time of arrest be brought before a Magistrate for remand and the Magistrate shall have powers to remand such a person after examining the reason for the arrest exhibited in the request form filed by the Police, and if satisfied that there is probable cause to remand such person pending legal advice of the Director of Public Prosecution or the arraignment of such person before the appropriate Court or Tribunal.*
- 2) ...
- 3) *The request form filed by the Police in accordance with subsection (1) of this section shall contain reasons for the request for remand.”*

Furthermore, the salient provisions of Section 295 ACJL, Kano provides as follows (ACJL, 2019, Section 295(1) & (2)(a) & (b)):

- 1) *“A Magistrate before whom a suspect is brought within a reasonable time of his arrest may take cognizance of the offence and on application order the remand of the suspect into custody even though he has no jurisdiction to try the offences alleged.*
- 2) *An application for remand under this section shall be made ex parte and*

⁷For instance, the Federal High Court and the National Industrial Court of Nigeria.

shall:

a) *be made in the prescribed “Report and Request for Remand Form” as contained in Form 8, in the Appendix D of this Law; and*

b) *be verified on oath and contain reasons for the remand request.”*

The inexorable inference from the three Procedural Laws above referenced are that Remand Order applications can only be made in the Magistrate Courts. However, whilst the Administration of Criminal Justice Act, provides that Remand application can be made only in respect of offences which the Magistrate Court does not have the jurisdiction to try⁸, the Administration of Criminal Justice Laws, Lagos and Kano States appear to have expanded the scope and did not limit remand applications only to offences which the Magistrate Court does not have jurisdiction to try. Although the ACJL, Lagos provides that remand application can be made against a person arrested for an offence triable on information; an offence triable on information is construed under the provision to mean any offence which on conviction shall be punished by a term of imprisonment exceeding two (2) years; any offence which on conviction shall be punished by imposition of fine exceeding Fifty-Thousand Naira (N50000.00; or offence which on conviction shall be punishable by death (Section 264(10) (a, b, & c) ACJL, Lagos, 2021). In Lagos State the maximum sentence a Magistrate Court has jurisdiction to impose is 14 years (*Magistrates’ Courts Law of Lagos State, 2009, Section 29(5)*). Thus, by implication, application for remand can be brought to a Magistrate Court in Lagos State or Kano State whether or not the Magistrate has the jurisdiction to try the alleged offence or not.

Also, the ACJA and the ACJL Kano made it express that an application has to be made ex-parte, but the ACJL, Lagos implied a similar provision when it stipulates that a request form shall be filed, which for all intents and purposes is not to be served on the suspect or his counsel. One sensitive question that arises from these provisions is whether Remand Proceedings as a whole is not designed to breach the right of the suspect to fair hearing as there is no opportunity for the suspect to be heard before his right to liberty is circumscribed (*Adamu v. Federal Republic of Nigeria (2020)*); (*Bio v. State (2020)*)⁹. This question shall be addressed later in this Article. Furthermore, the power to grant an application for Remand is not automatic in all the jurisdictions, but based on the existence of a probable cause¹⁰ after examining the reasons proffered, given or advanced by the Police on its Report on oath accompanying the request for Remand

⁸Capital offences like Murder as provided in Section 316 Criminal Code Law; Culpable homicide punishable with death as provided under Section 221 Penal Code Law; Armed Robbery as provided under Section 2(1) Robbery and Firearms (Special Provisions) Act, 1985; Treason and Conspiracy to commit Treason as provided under Section 37 of the Criminal Code Act etc.

⁹Fair Hearing is constitutionally guaranteed in Section 36 (1), 1999 Constitution of the Federal Republic of Nigeria (as amended). See also *Adamu v. Federal Republic of Nigeria (2020)* 2 NWLR (Pt. 1707) 129 S.C.; *Bio v. State (2020)* 7 NWLR (Pt. 1723) 218 SC.

¹⁰Section 264(2) ACJL, Lagos defines: “Probable Cause” to include: circumstance of the individual case, nature and seriousness of the alleged offence, reasonable grounds that the person has been involved in the commission of the alleged offence and reasonable grounds that the person may abscond or commit further serious offence. See also Section 296(2) (a, b, c, & d) ACJL, Kano and Section 294(2) ACJA.

(ACJA, 2015, Sections 293(2) (a) and (b), and 294(1)), (ACJL, Lagos, 2021 Section 264(1)(2) & (4)), (ACJL, Kano, 2019 Sections 295(1) & (2) and 296(1)). The Laws also provides that the Magistrate may take cognizance of the alleged offence if the suspect is brought before it within a reasonable time of arrest (ACJA 2015, Section 293(1)), (ACJL, Lagos, 2021 Section 264(1)), (ACJL, Kano, 2019 Section 295). The meaning of reasonable time under the laws is as defined in Section 35(5) of the Constitution of the Federal Republic of Nigeria (as amended).¹¹ The implication is that Remand Order may be refused if the suspect and the application for remand are not brought before the Magistrate within a reasonable time of arrest. However, what is not clear is whether the Magistrate shall mandatorily refuse an application for remand or has some measure of discretion if the application for remand is not brought within a reasonable time. This is because the meaning of reasonable time is clearly defined under the 1999 Constitution of the Federal Republic of Nigeria (as amended), which definition has been adopted by the Criminal Procedural Laws herein being discussed.

5. Detention Time Limit and Protocol for Remand Orders under the Nigerian Criminal Procedure Laws

The lifespan of a Remand Order granted by the court is limited. Generally, it remains valid pending the receipt of a copy of the legal advice from the Attorney General of the Federation ((ACJA, 2015, Section 294(1)), Director of Public Prosecutions (Section 264(1) ACJL, Lagos, 2015 as amended in 2021). Attorney General of the State (Section 296 ACJL, Kano 2019) and/or arraignment of the suspect in the appropriate Court or Tribunal. The beauty of the detention time limits contained in the laws under reference are that they act as restraint and or checks/balances on the Prosecution/Government Agency charged with the matter to report back to the court on intervals on cognizable steps taken regarding the conclusion of investigation and arraignment of the suspect. In the case of *Joshua Idokoiji v Nigeria Police Force & 7 Ors*, the applicant was arrested and detained for a period of 5 days without arraignment. The court stated and held that steps to keep a suspect further in custody pending investigation must be in strict compliance with the provisions of Sections 293 and 294 of the ACJA by approaching the court within one day of the suspects' arrest, for permission to keep him in custody as regulated by the Act; and that any other contrary act must be viewed as and declared a breach of the applicants/suspects fundamental right to personal liberty guaranteed under Section 35 of the Constitution.

1) **In the regime of Administration of Criminal Justice Act** (Section 296(1)) the duration of the order shall be in the first instance for a period **not exceeding 14 days** and adjourned within the same period. The implication of this provision is that the Attorney General of the Federation shall within a period of 14 days of receipt of the Police case file issue and serve his legal advice indicating whether or not there is a prima facie case against the defendant for which he can be prosecuted (ACJA, 2015, Section 376(2)). Where on the return

¹¹See 494 ACJA and Section 2 ACJL, Kano. However, ACJL, Lagos did not define "Reasonable Time".

date, an application is made in writing upon good cause shown (reason) requesting for extension, and the court is satisfied, the order may be extended for a further period of **14 days** and adjourn the case within the same period (ACJA, 2015, Section 296(2)). If at the expiration of the remand order above granted, the suspect is still in custody, charge not filed and trial not commenced, the court will issue a hearing notice to the authority in whose favour the remand order was made or the Attorney General of the Federation/Inspector General of Police/Commissioner of Police as the case may be to show cause why the suspect should not be unconditionally released and adjourn the matter for another **14 days** (ACJA, 2015, Section 296(4)). Where good cause is shown consequent upon receipt of the hearing notice and request for extension is made, the court may extend the order for a final period not exceeding **14 days** for the suspect to be arraigned before a competent court (ACJA, 2015, Section 296(5)). It is also the law that at the expiration of the final period granted and the suspect is still in remand custody, the court is mandated compulsorily to make an order discharging the suspect whether or not an application for this purpose is made (ACJA, 2015, Section 296(6)). Most importantly the law places a bar on further remand application being brought in any court at the conclusion of the proceedings above where the court discharged the suspect (ACJA, 2015, Section 296(7)). This is to guard against the suspect being persecuted by State Agencies who may nurse the evil ambition of approaching another court for remand. Thus under the ACJA, the cumulative lifespan of a remand order is **56 days**.

2) The Administration of Criminal Justice Law of Lagos State (Section 264(6)) provides that the lifespan of a remand order in the first instance is for a period of **30 days** (ACJL of Lagos State, 2015, amended 2021) upon a probable cause shown in the request form containing reasons for the application for remand filed by the authority. At the expiration of this period, the law empowers the Magistrate to order the release of the suspect unless sufficient reason is given to the contrary. Where sufficient reason is adduced, the order is renewed for another period of **1 month** upon good cause shown (ACJL of Lagos State, 2015, amended 2021). At the expiration of the above renewal and the suspect is still in custody and have not been arraigned or charge filed, a hearing notice will be issued to the Commissioner of Police and Director of Public Prosecution for them to show cause why the person remanded should not be released and adjourn the matter to ascertain the position of the case. The Magistrate is empowered to extend the remand order if satisfied by the reason adduced by the authority (ACJL of Lagos State, 2015, amended 2021, Section 264(7) and (8)). The law is silent on the period of the extension, but it is the view of the researchers that the period will not be less than or exceed **1 month** based on the last extension. Therefore, the cumulative period for the lifespan of Remand Order under ACJL Lagos is approximately **90 days**.

3) The Administration of Criminal Justice Law of Kano State stipulates that a Remand Order is not granted by the court as a matter of course, but based

cogent reasons and probable cause shown by the applicant and it shall be for a period not exceeding **21 days** (ACJL, 2019, Section 298(1)) returnable within the same period. On application in writing and where good cause is shown on why there should be extension of remand period, the court may make an order for further remand of the suspect for a period not exceeding **14 days** (ACJL, 2019, Section 298(2)). However, where the suspect is still in remand after the expiration of the initial period and its extension with his trial having not commenced or charge having not been filed in the relevant court, a hearing notice shall be issued on the Commissioner of Police and the Attorney General including but not limited to any relevant authority in whose custody the suspect is or at whose instance the suspect is remanded (ACJL, 2019, Section 298(4)(a)), and adjourn the matter for a period of **14 days** (ACJL, 2019, Section 298(4)(a)) to enable the Court inquire as to the position of the case and for the authority on whose instance the suspect is remanded to show cause why the suspect remanded should not be unconditionally released (ACJA, 2015, Sections 296(4)(d)), (ACJL, Lagos, 264(7), 2015, amended 2021), (ACJL, 2019, 296(4)(a)). The ACJL, Kano empowers the magistrate to further extend the remand lifespan for **a final period of 14 days** provided good cause is shown and there is a request for extension and make the case returnable within the same period from the date of issuance of the hearing notice (ACJL Kano, 2019, Section 298(5)(b)). Furthermore, upon the expiration of the final period and the suspect is still in custody, the court shall with or without application to that effect grant bail to the suspect (ACJL Kano, 2019, Section 298(6)) who shall immediately be released from custody. It is worthy of note that the law prohibits the commencement of another remand proceedings at the conclusion of the extension in sub-section 5 of Kano law (ACJL Kano, 2019, Section 298(7)). Cumulatively, the total lifespan of a remand order under the ACJL of Kano State is **63 days**.

6. Remand Order under the Nigerian Terrorism Act 2022

The Terrorism Act (2022) provides in Section 66(1) as follows:

“Notwithstanding provisions in any other law, the court may, pursuant to an ex-parte application, grant an order for the detention of a suspect under this Act for a period of not more than 60 days, subject to renewal for a similar period, until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with provided that in the case of renewal, the relevant agency shall involve the Attorney General” (underlining ours for emphasis).

The interpretation is that under the Nigerian Terrorism Act, a suspect may be detained pursuant to an ex-parte application by the relevant agency for a period of not more than **60 days** in the first instance without involving the office of the Attorney General. The detention order may be renewed for another period of **60 days** (Achem v. Federal Republic of Nigeria (2014)), (Mohammed v. State (2015)). In this renewal the Act provides that the relevant agency shall involve

the Attorney General. The extent of the involvement of the Attorney General is not disclosed in the Act and accordingly the role of the Attorney General is unknown. The involvement of the Attorney General who is a Government representative is questionable, as he will always be on the side of the relevant agency which is usually the case in Nigeria. Unlike the provisions of the criminal procedural laws regulating the grant of remand Orders (ACJL, Lagos 2015 as amended, Sections 264) (ACJL, Kano 2019, Section 298); (ACJA, 2015, Section 296), the parameters and conditions precedent to be satisfied by the relevant agency for the grant and or extension of the detention order is not listed. This has been left to conjecture and to the wisdom or otherwise of the court and the relevant agency detaining the suspect. The Act is silent as to whether or not the suspect is entitled to bail within this period of detention. It is submitted that this apparent lacunae is not in favour of the suspect and will certainly lead to arbitrary detention and torture. Consequently, as expressly provided in the Act, the cumulative period of detention under the Act is a period of **120 days**.

Curiously, a critical analysis of the above provision indisputably shows that the suspect may even be in detention until the completion of investigation and prosecution of the matter. This is deducible from the underlined portion in the above section. A Remand Order was granted under the repealed Terrorism Act by Hon. Justice Taiwo Taiwo of the Abuja Division of the Federal High Court in August 2019 in favour of the State Security Service (SSS)¹² remanding Omoyele Sowore for an initial period of 45 days¹³ anchored on the then **Section 27(1) Terrorism Act (2013)**. The trial of this case seems to have been abandoned as it appears to be a political punishment on the detainee. It is our view that matters relating to terrorism must not be handled with levity because it threatens the safety and wellbeing of all.

7. Interventions by the Court during the Period of Remand

In the course of remand proceedings the Court may without any application, order, where it is desirable, that a suspect who is remanded be brought before it during the period of remand (Sections 298(1) ACJA), (Section 265 ACJL, Lagos, 2015, amended 2021), (Section 300(1) ACJL, Kano, 2019). This provision, in our view, is a window which would enable a Counsel to the suspect, to apply for the bail of the suspect, and not to wait till the next return date knowing that remand applications are made ex-parte. The ACJA and ACJL, Kano also provides that the Court may order that the suspect remanded be transferred to a hospital, asylum or any suitable place for the purpose of accessing medical services, or may make any order that it considers necessary to make at any time during the remand period (Section 298(2) ACJA) (Section 300(2) ACJL, v), (Section 267 ACJL Lagos, 2015, amended 2021). Also, the Laws are in agreement that it is

¹²<https://www.premiumtimesng.com/news/headlines/345675-just-in-court-remands-sowore-in-detention-for-terrorism.html> accessed 16th September 2022 at 06:10am.

¹³Note that the SSS in their application had requested for a period of 90 days.

within the discretion of the court to either commit the suspect to prison¹⁴ or any other place of safe custody (Section 299 ACJA, 2015), (Section 267 ACJL Lagos, 2015, amended 2021), (Section 301 ACJL, Kano, 2019). What this implies is that the best interest of the suspect is the prime consideration on whether the suspect should be committed to prison or remanded in police cell or any place where in the opinion of the Court, the safety of the suspect is guaranteed.¹⁵

8. Grant of Bail and Release of a Suspect during Remand Proceedings

In remand proceedings, there are two instances where bail could be granted to the suspect.

Grant of bail during remand proceeding is not only discretionary but can either be made *suo motu* (U.B.N. Plc. v. Awmar Properties Ltd (2018)) by the Magistrate or on application by the suspect (Sections 296(3) ACJA, 2015; Section 298(3), ACJL, Kano, 2019) or on application by a person in charge of the prison or other place of custody where the suspect remanded is detained (Section 297(1)(b) ACJA, 2015; Section 299 (1)(b) ACJL, Kano, 2019). The Court may on its own volition instead of remanding a suspect brought before it grant the suspect bail, which for convenience is referred to as pre-remand bail (Section 295 ACJA, 2015; Section 264(5) ACJL, Lagos, 2015; Section 297 ACJL, Kano, 2019). The Court can also on the application of the suspect after remanding him and where the suspect still remains in custody after the remand period and its extension, grant him bail. (Sections 296 (3) ACJA, 2015; Section 298(3), ACJL, Kano, 2019) It is our humble opinion that an application for bail can be brought at any point during remand period and the Court is empowered to make an order that the suspect be brought before it and in deserving circumstances grant the suspect bail (Section 298(1) ACJA, 2015; Section 265, ACJL, Lagos, 2015 and Section 300(1), ACJL, Kano, 2019). Ultimately, where a good cause is not shown for the continued remand of the suspect after the remand period *a fortiori* its extension, the Court shall, with or without an application to that effect, discharge the suspect and the suspect shall be immediately released from custody¹⁶. Also, where the Legal advice of the Attorney General indicates that the suspect remanded has no case to answer, the court shall release the suspect immediately.¹⁷

¹⁴It should be noted that “Prison” has been rename Correctional Centre” in Nigeria, although the various Criminal Procedural Laws still retains the Term “Prison”; See Section 1(1) of the Nigerian Correctional Service Act 2019 which repealed the Prisons Act, Cap. P29 Laws of the Federation of Nigeria, 2004.

¹⁵It is our opinion that other Courts with Original Criminal Jurisdiction can exercise the discretion to remand a Defendant facing trial in their Court to safe custody other than the Correctional Centre, and this is the justification for remanding the leader of Indigenous People of Biafra, Mr. Nnamdi Kanu in DSS custody.

¹⁶See Section 296(6) ACJA; Section 298(6) of the ACJL, Kano provides that the suspect will be granted bail and shall immediately be released from custody; Whilst Section 264 ACJL, Lagos only provides that the relevant authorities shall show cause why the person remanded should not be released. Impliedly if the relevant authorities fail to show good cause, the suspect will be released from custody.

The court before granting bail to a suspect detained under a remand order must impose such conditions of bail as will guarantee the availability of the suspect to stand trial if at conclusion of investigation a case to answer is established (Section 162(b) ACJA, 2015). Ultimately before the exercise of discretion to grant bail during remand, the court must ensure that such exercise will not undermine/jeopardize the objectives or purpose or the functioning of the criminal justice administration, including the bail system (Section 162(f) ACJA, 2015). The impression should not be created such that it will be perceived that suspects will stroll in and out of detention without any consequences when a complaint has been made. The sacrosanct of criminal justice system must be ensured. Other factors the court will consider include the likelihood of suspect attempting to influence, interfere with, intimidate witnesses, and or interfere with investigation if granted bail (Section 162(c) ACJA, 2015); the suspect will not attempt to conceal or destroy evidence (Section 162(c) ACJA, 2015) and that he will not commit further offence if granted bail (Section 162(c) ACJA, 2015), (Section 172 ACJL Kano, 2019). Where either of the above enumerated factors is not guaranteed, the suspects should not be released on bail we submit.

It has been held by the Supreme Court in the case of *Dokubo-Asari v Federal Republic of Nigeria* (2007) that the court must balance the interest of the individual citizen against that of the larger society.

9. Remand Proceedings and Constitutionally Guaranteed Rights of a Suspect

The Constitution of the Federal Republic of Nigeria provides safeguards to ensure that the fundamental rights of a suspect or a defendant in a criminal trial are protected (Chapter IV of CFRN, 1999, as amended). Among these safeguards are right to personal liberty (CFRN, 1999, Section 35 as amended), and right to fair hearing (CFRN, 1999, Section 36(1) as amended) which encompasses right to be presumed innocent until he is proved guilty (CFRN, 1999, Section 36(5) as amended). A cursory look at the provisions and tenor of Remand Proceedings will present a picture that the proceedings are skewed to violate the rights of a suspect arrested and remanded in custody. However, it is noteworthy to point out that aside the fact that these rights are not absolute; there is the need to strike a balance between these rights and the need to ensure that criminal offenders do not escape justice by being at large. For instance, the right of a suspect can be circumscribed in order to secure the fulfilment of any obligation imposed upon him by law (CFRN, 1999, Section 35(1)(b) as amended); or upon reasonable suspicion of his having committed a criminal offence; or to such extent as may be reasonably necessary to prevent his committing a criminal offence (CFRN, 1999, Section 35(1)(c) as amended). What these imply is that Remand Proceedings and its tenor as it relates to the personal liberty of the suspect, are clearly enabled by the Constitution, and the Criminal Procedural Laws¹⁸ only

¹⁸See Section 297(3) ACJA; Section 299(3) ACJL, Kano; there is no such express provision as to the release of the suspect in ACJL, Lagos but it can be implied in Section 264(8), ACJL, Lagos.

provide the procedure for complying with the provisions of the constitution. Also, on the issue of fair hearing as encapsulated in the maxim *audi alterem partem* (Adamu v. F.R.N (2020)), and presumption of innocence until proven guilty, it is again not in contention that a criminal trial commences with arraignment, wherein the Defendant takes a plea (Abubakar v. F.R.N (2020)), (Asakitikpi v. The State (1993)), (Idemudia v. State (1999)), (Oyediran v. The Republic (1967)). Thus, in Remand Proceedings, there is no hearing or requirement for proof before the Court could act, rather, what the court requires to act are whether the Report and Request for Remand and the Verifying Affidavit disclosed a probable cause that the Police or any other relevant authority acted on reasonable ground that a crime was committed.

10. Pre-Charge/Pre-Trial Detention in Other Jurisdictions

10.1. The United Kingdom

By pre-charge detention, we mean the period that a person can be detained by the police between the time of being arrested and being either charged with a criminal offence or released¹⁹. In the United Kingdom, a person shall not be kept in police detention for more than **24 hours** without being charged to court (PACE, 1984, Section 41(1)). The time, from which the period of detention of a person is to be calculated, known as “the relevant time” is the time at which the person arrives at the relevant police station or 24 hours after the time of that person’s arrest. However, where a police officer of the rank of superintendent or above who is responsible for the police station at which the person is detained has reasonable grounds for believing that the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him; the offence for which he is under arrest is an indictable offence and the investigation is being conducted diligently and expeditiously, he may authorise the keeping of that person in police detention for a period expiring at or before **36 hours after the relevant time** (PACE, 1984, Section 42). The person detained shall be released not later than 36 hours after the relevant time without bail unless the pre-condition for bail is satisfied, or on bail if those preconditions are satisfied (PACE, 1984, Section 42(10)). Where, on application on oath is made by a constable and supported by information, a magistrates’ court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention (PACE, 1984, Section 43(1)). The information must be served on the detained person (PACE, 1984, Section 43(2)) and the detained person is entitled to legal representation at the hearing of the application for a warrant (PACE, 1984, Section 43(3)). In deserving circumstances, the Court may further detain the suspect for a period re-

¹⁸By Criminal Procedural Law, we mean ACJA, and ACJL (Lagos and Kano) respectively.

¹⁹<https://justice.org.uk/pre-charge-detention-terrorism-cases/> visited 17th September 2022 at 08:49 pm.

quested on the application otherwise the suspect will be charged or released. Such period granted by the Magistrate under warrant of further detention shall not exceed **36 hours bringing the cumulative total to 72 hours** (PACE, 1984, Section 43(12)).

Detention under the UK Terrorism Act of 2000 (as Amended)

In the United Kingdom under the **Terrorism Act of 2000 (as amended)**, a person arrested unless detained under any other power, shall be released not later than the end of the period of **48 hours beginning with the time of his arrest** (UK Terrorism Act, 2000 (as amended), Section 41(3)(a)). However, a review of the period of detention can be done periodically by a **reviewing officer** in cases of terrorism who may authorise continued detention only if it is necessary to obtain relevant evidence whether by questioning the detainee or otherwise, or to preserve evidence, or pending a decision whether to apply to the Secretary of State for a deportation notice to be served on the detained person, or pending the making of an application to the Secretary of State for deportation notice to be served on the detained person, or pending the consideration by the Secretary of State whether to serve a deportation notice on the detained person, or pending a decision whether the detained person should be charged with an offence (UK Terrorism Act, 2000 (as amended), Section 23(1)). The reviewing officer will not authorise the continued detention of the suspect unless he is satisfied that the investigation in connection with the person detained and the process pending the completion of deportation which detention is necessary are being conducted diligently and expeditiously (UK Terrorism Act, 2000 (as amended), Section 23(2) & (3)). Under the 2000 Act, the maximum period of detention was **7 days** but it was reviewed upwards to **14 days** in 2003 pursuant to the **Criminal Justice Act**. It was subsequently extended to **28 days** in 2006 Terrorism Act. Incidentally, the United Kingdom is bound by the provisions of European Convention on Human Rights which provides that a person arrested “shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial”²⁰. A detention for a period of about 4 days²¹ was held to be a violation of the word “promptly” contained in the above section by the European court of Human Rights (*Brogan v United Kingdom*).

10.2. The United States of America

In the United States of America the pre-charge detention period allowed under the US Constitution is **48 hours**.²² The right of the people to be secured in their person, house, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.²³ The Fourth Amendment to

²⁰See Article 5(3) European Convention on Human Rights (ECHR).

²¹Under the Prevention of Terrorism Act (Temporary Provisions) Act 1984.

²²See the fourth amendment to the US Constitution.

the constitution applies to “seizures” and it is not necessary that a detention be a formal arrest in order to bring to bear the requirements of warrants, or probable cause in instances in which warrants are not required.²⁴ In the United States of America, the police have almost unbridled discretion to decide whether to issue a summons for minor traffic offence or whether instead to place the offending motorist in jail, where he/she may be kept for up to 48 hours with little recourse (*Atwater and Riverside v. McLaughlin*, 1991). In *County of Riverside v. McLaughlin* (1991) the United States Court held that detention, without a specific charge on the basis of probable cause, was constitutionally permissible for less than 48 hours. In *Gerstein v. Pugh* the United States court further held that States “must provide a fair and reliable determination of probable cause as a condition for any significant pre-trial restraint of liberty...by a judicial officer either before or promptly after arrest”.

10.3. Australia

In Australia, the power of arrest, detention and extension of period of detention is subdivided into non-terrorism offences²⁵, and terrorism offences.²⁶ In non-terrorism offences, the investigation period begins when the suspect is arrested, and ends at a time thereafter that is reasonable, having regard to all the circumstances, but does not extend beyond: 1) if the person is or appears to be under 18, an Aboriginal person or a Torres Strait Islander, **2 hours**; or 2) in any other case, **4 hours**; after the arrest, unless the period is extended under Section 23DA by a Magistrate (*Crimes Act of Australia, 1914, Section 23C(4)(a) & (b)*). An application must be made by an investigating official by telephone or in writing to a magistrate for extension of investigation period at or before the end of the investigation period (*Crimes Act of Australia, 1914, Section 23D(1) & (2)*). The application must be detailed including but not limited to the age of the suspect, period already expended on investigation and the outcome of such investigation, the maximum amount of time by which the investigation period could be extended, the reason why the investigating official believes the investigation period should be extended; and the period by which the investigating official believes the investigation period should be extended (*Crimes Act of Australia, 1914, Section 23D(3)(a-h)*). Information relating to national securities or that will compromise the safety of officers is excluded in the application (*Crimes Act of Australia, 1914, 23D(4)(a-d)*).

The procedure for application for extension of investigating period in terrorism offences is the same with the procedure for non-terrorism offences, except

²³Law.justia.com: justia > US Law > US Codes > and Statutes > US Constitution Annotated > Fourth Amendment-Search and Seizures > Arrest and other detentions: last seen on 23rd August 2022.

²⁴The Court has made it clear that the fourth amendment applies to pre-trial detention. See *Manuel v. Joliet*, 580 U.S., No.14-9496, slip op.at 1(2017) (holding that a petitioner who “was held in jail for seven weeks after a judge relied on allegedly fabricated evidence to find probable cause that he had committed a crime” could “challenge his detention on the ground that it violated the Fourth Amendment”).

²⁵Division 2-Powers of detention: subdivision A, Crimes Act 1914.

²⁶Division 2-Powers of detention: subdivision B, Crimes Act 1914.

that the application in terrorism offences must not be made unless the application is authorised, in writing, by an authorising officer (*Crimes Act of Australia, 1914, Section 23DE(2)*). The Australian *Anti-Terrorism Act (2005)* enables the Australian Federal Police to detain a person without arrest or charge for a period of up to **48 hours**. This Act birthed the “Preventive Detention Orders” (DPO) into the Australian Criminal Code²⁷. This is the practice of detaining a suspect before trial on the belief that his release will not be in the best interest of the society or prejudicial to investigation²⁸. This is geared towards preventing an imminent terrorist act or destruction of evidence. All the State and Territories in Australia has through legislation extended the period of detention under the DPO regime to **14 days**²⁹. This scheme is viewed as arbitrary and an extreme measure has gone through several reviews though it was meant to expire on 15th December 2015, but it has been extended to 7th December 2025 by Committee recommendation³⁰ because of terrorism threat.

11. Conclusion and Recommendations

The remand order provisions in Nigerian laws seek to eliminate the illegality and anguish foisted on suspects by law enforcement agencies within the period of pre-trial detention as a result of corruption in the criminal justice system and complete failure of individual responsibility. The injustice of the holding charge regime birthed the remand order regime. As evidenced in this work the practice obtainable in developed climes refers to detention in hours and not days, weeks and even months contained in our laws, terrorism related cases exempted. It now appears that the provisions of the Nigerian criminal procedural laws on remand proceedings have been abused by incessant grant of remand orders by our courts in favour of law enforcement officers at the mere filing of remand applications. It now seems as though remand orders are a clandestine introduction of the evil regime of “holding charge” which has been declared unlawful.

The delay occasioned by the Police or other law enforcement agencies during the period of purported investigation of criminal cases is ominous. Ordinarily as the case should be, investigations are meant to be completed or near at least 90% completed before arrest is affected to enable the Police work within the time frame afforded by the constitution for detention, capital offences and other complicated cases exempted. We recommend that the Nigerian Police and by extension other law enforcement agencies adopt the international best practice of concluding investigations before arresting the suspects.

There is no time line provided for in the *Nigerian Police Act* or any other law

²⁷Criminal Code Act 1995 (Cth) schedule 1 (“Criminal Code”).

²⁸<https://www.britannica.com/topic/preventive-detention> visited 21st September 2022 at 06:52am.

²⁹Law Council of Australia, *Submission 10*, p. 37;

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/ReviewofAFPPowers/Report/section?id=committees%2Freportjnt%2F024517%2F73529# visited 18th September 2022.

³⁰https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/ReviewofAFPPowers/Report/section?id=committees%2Freportjnt%2F024517%2F73529 visited 22nd September 2022.

in Nigeria within which investigations should be concluded and the case file sent to the Attorney General for legal advice. In order to carry out effective and efficient investigation, financial resources must be made available to officers and relevant equipment/gadgets for 21st century policing. Consequently, there must be budgetary increase and close monitoring to ensure adequate utilization of available funds. The welfare and motivation of officers must be a priority if there is a true intention to ensure speedy completion of investigations. Concerted effort should be made to stem corruption bedeviling the law enforcement agencies by blocking all the loopholes already mentioned in this work used by officers to corruptly undermine the criminal justice system.

Where the office of the Attorney General is functional as the case should be, the preparation and service of legal advice to the court and relevant agency detaining the suspect should not be a matter of concern, but such is a challenge in Nigeria at both the Federal and State levels because they do not comply with the stipulated time line. We opine that the criminal justice system must work as an integrated system as there should be synergy in exorcising bottlenecks and obstacles associated with the administration of criminal justice.

Our courts should be courageous enough to make orders guided by the provisions of the law to release suspects in remand proceedings where the detaining authority has exhibited gross indolence towards completion of investigation. Application for extension of remand orders should not be granted as a matter of course, irrespective of who is the applicant, hence we advocate for a complete independence of the Judiciary, and that the appointment of judicial office holders should not be left to the relative of persons occupying political or judicial offices.

The courts should be more serious in the award and enforcement of damages against any law enforcement agency that has breached the provisions of Section 35 of the constitution by detaining suspects arbitrarily without a court order. The courts should assist and make the enforcement of orders against law enforcement agencies and their personnel that are involved in human rights abuse less cumbersome in order to serve as a deterrent to violators. Therefore there is the need to amend the *Sheriff and Civil Process Act/Law Cap S6 Laws of the Federation of Nigeria 2004* to delete the cumbersome or controversial Section 84 that makes it mandatory to obtain the consent of the Attorney General before enforcing a judgment against government and its agencies.

There should be no collusion between the judiciary and the executive in the unlawful detention of anyone in Nigeria. The pains and anguish suffered by Nigerians in the hands of law enforcement agencies has led to untrammelled relationship strain and lack of trust in law enforcement officers. There is the need to repair this damage in relationship.

We further advocate a periodic training and retraining of law enforcement officers on the importance of respecting the fundamental rights of all persons in the execution of their duties. There must be a mental reawakening by law en-

forcement officers in the area of international best practices in policing.

In dealing with terrorism related detention in Nigeria, the extended detention time limit cannot be justified when compared with what obtains in foreign jurisdictions; it is suggested that there must be inter-agency collaboration in the investigation of terrorism related cases and the formation of an elite team in each security agency specially skilled and trained to international standard in the investigation of terrorism related cases to be headed by an experienced investigator coordinating their activities presumably an officer with a legal background. It is also our suggestion that an experienced lawyer from the Nigerian National Human Rights Commission (NHRC) should be included as part of the investigation team charged with advisory responsibilities relating to the maintenance of rule of law and ensuring the protection of fundamental rights of detained suspects. Where there is an accelerated investigation process, it will definitely impact positively in reduction of terrorism detention time limit in Nigeria.

Finally, we emphasise most importantly the need to build strong institutions rather than strong persons or individuals. Where strong institutions are built, it controls and sanctions the excesses of errant individuals and or law enforcement officers by holding them accountable for their misdeeds. This anguish manifested in the social movement christened “EndSARS” which was a protest against Police brutality in Nigeria. We should do all things necessary to avoid a repeat of the EndSARS protest.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

- A.G Abia State v A.G Federation (2002) 6 NWLR (Pt. 763) 204.*
Abacha v Fawehinmi (2000) 4 SC. (Pt. 11) 1.
Abubakar v. F.R.N (2020) 9 NWLR (PART 1729) 268 AT 284-285, paras. H-B SC
Achem v. Federal Republic of Nigeria (2014) LPELR-23202 (CA).
Adamu v. Federal Republic of Nigeria (2020) 2 NWLR (Pt. 1707) 129 S.C.
Adeoye v State (1999) 6 NWLR(Pt.605) 74.
Administration of Criminal Justice Act (ACJA), 2015.
Administration of Criminal Justice Law (ACJL), 2015 Laws of Lagos State.
Administration of Criminal Justice Law of Kano State (ACJL), 2019.
Anti-Terrorism Act (No. 2) 2005.
Asakitikpi v. The State (1993) 5 NWLR (Pt. 296) 641.
Attorney General of Lagos State v. Keita (2016) LPELR-40163 (CA).
Atwater and Riverside v. McLaughlin 500 U.S. 44 (1991).
Bio v. State (2020) 7 NWLR (Pt. 1723) 218 SC.
Brogan v United Kingdom 11 EHRR 117.

- Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as Amended).*
- County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).
- Crimes Act of Australia*, 1914.
- Criminal Justice Act 2003.*
- Danfulani v Economic and Financial Crimes Commission*, (2016) 1 NWLR (Pt.1493) 223 at 247.
- Dokubo-Asari v Federal Republic of Nigeria*, (2007) All FWLR (Pt.375)588.
- Enwere v Commissioner of Police* (1993) 4 NWLR (Pt. 229) 333.
- Garner, B. A. (2009). *Black's Law Dictionary* (9th ed., p. 800). West Publishing Co.
- Gerstein v. Pugh* 420 U.S. 103, 125.
- Human Rights Watch (2010). *Everyone's in on the Game*.
<https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force>
- HumAngle (2022). *Nigeria's "Holding Charge" Policy Affecting access to Justice*.
<https://humanglemedia.com/nigerias-holding-charge-policy-affecting-access-to-justice>
- Idemudia v. State* (1999) LPELR-1418 (SC).
- Imam v Federal Republic of Nigeria* (2019) 8 NWLR (Pt. 1674) 197 SC.
- Joshua Idokoiji v Nigeria Police Force & 7 Ors*, Unreported FCT/HC/M/2167/16.
- Lufadeju v Johnson* (2007) 8 NWLR (Pt. 1037) 535 at 562 SC.
- Lufadeju v Johnson*, (2007) 8 NWLR (Pt. 1037) 535 at 562 SC.
- Magistrates' Courts Law of Lagos State*, 2009.
- Mohammed V. State* (2015) 10 NWLR (Pt. 1468) 496 at 512.
- Nigerian Police Act 2020.*
- Nurudeen Ademola Adeleke & Anor v. Adegboyega Isiaka Oyetola & Ors* (2020) 6 N.W.L.R. (Pt. 1721) Pg.440 at Pp. 555-556, paras. G-C.
- Okanyi, D. O., Kanu, U. C., & Ugwu, L. I. (2022). Can a Defence Counsel Plead Allocutus on Behalf of a Convict? Interrogating Nweke Chibueze Francis v. Federal Republic of Nigeria. *Benin Journal of Public Law*, 9.
- Oyediran v. The Republic* (1967) N.M.L.R 122.
- Police and Criminal Evidence Act (PACE) 1984 (as Amended) Operational in England and Wales.*
- Sabilaw (2022). *Overcrowding in Nigerian Prisons*.
<https://sabilaw.org/overcrowding-in-nigerian-prisons/#:~:text=According%20to%20the%20NCS%20record,prison%20in%202022%20is%2070%2C797>
- State v Yanga* (2021) 5 NWLR (Pt. 1769) 375 at 392 SC.
- Terrorism (Prevention) Amendment Act 2013.*
- U.B.N. Plc. v. Awmar Properties Ltd* (2018) 10 NWLR (Pt. 1626) 64 at 86, Para. E, SC for the meaning of *Suo Motu*.
- UK Terrorism Act, 2000 (as Amended).*