

Custodial Congestion: An Examination of the Legal Hurdles of Holding Charge Practice in Nigeria

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Abstract: *Custodial congestion still persists as one of the biggest challenges to Nigeria’s Criminal Justice System. This is attributed to the operation ineptitudes of the Nigerian police force which employs means such as holding charges. This paper examines the practice of holding charges in Nigeria as a major contributor to the congestion of correctional facilities in Nigeria. This paper contends that the practice of holding charges is unconstitutional; in violation of the principles of fair hearing; and presumption of innocence and merely a means of administrative expediency. This paper concludes that the practice of holding charge in Nigeria undermines the rights of accused persons and calls for urgent reforms to the Nigerian criminal justice system to ensure that the protection of human rights is in tandem with the basic international human rights laws which mandate States to respect and ensure everybody’s right to personal liberty and security, and therefore, proffer some policy recommendations.*

Keywords: *Accused, Criminal Justice, Holding Charge, Police, Prison.*

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I. Introduction

The police being one of the ambits of the criminal justice system in Nigeria is the preliminary institution in which a criminal suspect comes into contact with whenever there is an allegation of crime. In other words, the fate of the suspect is determined to a large extent, by the manner the police go about in executing its duty in the criminal justice system. Under the Nigerian legal order, the police, apart from its general duties of preservation of law and order¹; protection of life and property, are also empowered to prosecute criminal cases in courts.² Pursuant to section 66(1) of the Police Act (as amended), it is only a police officer who is a legal practitioner that is empowered to prosecute a suspect in a competent court, otherwise, such prosecution will be declared null and void. Prior to the amendment of the Act, a police officer need not be a legal practitioner to commence such proceedings. This laudable initiative is, however commendable as it would greatly lead to better and more substantial prosecutions backed by legal expertise.

Apart from some special tribunals established to try certain specialised offences in Nigeria, there are three levels of courts in Nigeria in which criminal proceedings may be instituted. They include: the Magistrate Courts³, State High Courts⁴ and the Federal High Court.⁵ Among the above mentioned, it seems that it is only the Magistrate Courts that the police can commence criminal proceedings. For instance, in the southern States of Nigeria where the Criminal Procedure Act (CPA)⁶ is applicable, criminal proceedings may be commenced in the magistrate Courts by laying a complaint before a Magistrate whether on

¹ Section 4, *Police Act*, Cap P19, Laws of the Federation of Nigeria (LFN), as amended by the *Police (Establishment) Act* (2020).

² *Osabon v. Federal Republic Nigeria* (2003), The Federal High Court of Nigeria, 89.

³ Subject to special provisions contained in the Magistrate Court Law of each State, a Magistrate in a district shall be presiding officer of the Court. He shall have and exercise all criminal jurisdiction and power conferred upon him by Statute and his appointment. For instance, Section 110, *Oyo State Administration of Criminal Justice Law* (ACJL) (2016) provides that, ‘...criminal proceedings may, in accordance with this Law, be instituted in a Magistrate court, by a charge or a complaint whether or not on oath’. See also Section 110, *ACJL of Edo State*.

⁴ Section 272, *Constitution of the Federal Republic of Nigeria* (1999).

⁵ Section 251, *Constitution of the Federal Republic of Nigeria* (1999).

⁶ Cap. C41, *Laws of the Federation of Nigeria* (2004).

Oath or not, it suffices that, an offence has been committed, or by bringing a person arrested without a warrant before the court upon a charge, specifying the particulars of the accused, the charge against him/her, the time and place where the offence is alleged to have been committed.⁷ In the northern States of Nigeria where the Criminal Procedure Code (CPC)⁸ is applicable, criminal trials in magistrate courts are not commenced by charges but by ‘particulars of the offence’ which is expected to be read to the accused person.⁹ The tenet of the above procedure connotes that, the court must have taken cognisance of the offence and decide whether to proceed against the accused person or not, especially when the particulars of the offence against the accused must have been read and therefore, asked to show cause as to why he should not be convicted.¹⁰ Where the accused denies the particulars of the offence or signifies intention to show cause, the court will then proceed with the hearing of the case. If at the choice of the prosecution’s case or at any stage of the hearing, the evidence presented discloses grounds for the presumption that the accused person has committed an offence, which is triable by the court, it may frame a charge declaring with what offence the accused is charged.¹¹

Although the provisions of both the CPA, as well as the CPC have been repealed by virtue of the provisions of section 493 of the Administration of Criminal Justice Act (ACJA), 2015, the CPA and the CPC are still applicable in states that are yet to domesticate the ACJA of 2015. Fundamentally, the essence of the aforementioned procedures in the administration of justice in Nigeria are majorly two-folds. On the one hand, it is to bring the accused person to face trial, while on the other hand, it is to bring to the notice of the accused person the alleged crime for which he is accused.¹² It follows that the majority of cases in Nigeria are prosecuted by the police at the magistrate courts. In other words, when a complaint is received at the police station that a

⁷ Section 7, *Criminal Procedure Act* (Nigeria).

⁸ Cap. C42, *Laws of the Federation of Nigeria* (2004).

⁹ Section 156, Cap. 30, *Laws of Northern Nigeria* (1963) (as amended); See *Wambai v. Kano Native Authority* (1965), Nigeria Monthly Law Reports, 15 (Area Court of Northern Nigeria).

¹⁰ Section 143, *Criminal Procedure Act* (Nigeria) (noting that: ‘Cognisance is the point when a Magistrate first takes judicial notice of an offence, it is a different thing from initiation of proceedings’). See *Gboruko v. Commissioner of Police* (1962), NNLR, 17 (High Court Judgement-North. It was an Appeal from the Magistrate Court).

¹¹ Section 160, *Criminal Procedure Act* (Nigeria).

¹² Section 78(b), *Criminal Procedure Act* (Nigeria).

person has been alleged to have committed an offence, the suspect is arrested with or without warrant depending on the circumstances of his arrest and brought to the police station, pending investigations into the case. At this stage, the police in performing its constitutional duties, may either grant an administrative bail to the suspect pending further investigation¹³, or if the nature of the alleged offence is a capital (serious) one in which bail may not be granted to the accused, it is therefore expected that the suspect be arraigned in a court of competent jurisdiction within a reasonable time.¹⁴ By implication, the phrase ‘reasonable time’ connotes one day where a competent court exists within 40 kilometre radius of the place of arrest and in other circumstances, two days as the case may be.¹⁵

Regrettably, these statutory safeguards are being abused by the Nigeria Police with impunity. Thus, where an accused person is alleged to have committed an offence and, in its nature, it is a capital offence (murder, manslaughter, rape or treasonable felony), the police would ordinarily arrest such offender. In Nigeria, it is also trite law that the police do not grant bail in capital offences¹⁶ and what they usually exhibit in such circumstances is to arraign the suspect before a magistrate court whom they are aware has no jurisdiction over such offences. The magistrate would, in turn remand the suspect either in police cell or prison custody, pending when the case is taken before a court of competent jurisdiction. This exercise is achieved under what they practically referred to as ‘holding charge’.

It is against the foregoing background that this paper will provide an overview of the legality or otherwise of holding charge practice in Nigeria particularly, as it affects the protection of human rights provisions contained in the Constitution of the Federal Republic of Nigeria (CFRN) 1999, (as amended). The paper will also provide a brief analysis of the basic legal rules governing arrest, detention on remand and administrative detention in international human rights law. The paper will further analyse some of the legislative enactments touching on the holding charge practices in some states in Nigeria. The paper will equally address the difficulty posed by the practice of

¹³ Section 163, *Administration of Criminal Justice Act* (2015).

¹⁴ Section 161, *Administration of Criminal Justice Act* (2015).

¹⁵ Sections 35(4) and (5), *Constitution of the Federal Republic of Nigeria* (1999).

¹⁶ Section 161, *Administration of Criminal Justice Act* (2015).

holding charge in the administration of the criminal justice system in Nigeria and therefore, proffer some policy recommendations.

II. Concept of Holding Charge in Nigeria

In Nigeria, the practice known as ‘holding charge’ has become so common or conventional to prompt one to conclude that it is constitutional. Thus, under the Nigerian legal order, neither the Constitution (the *grund norm*) nor any other existing law applicable in its municipal spheres, defines the phrase ‘holding charge’. That is to say, there is no authoritative definition on the subject matter and it has been consistently maintained that the practice is unknown to law. Affirming this assertion in *Ogor v. Kolawole*,¹⁷ the court held that, ‘our constitution or any other existing law in force in this country does not provide for a holding charge...’ In a similar vein, the Court of Appeal in *Ewere v. Commissioner of Police*¹⁸ held that:

As the Constitution of the Federal Republic of Nigeria or any other existing law in force in this country does not provide for a ‘holding charge’, an accused ought to be released on bail within reasonable time before trial...’

In consequence, regardless of the absence of any statutory definition of the concept of holding charge however, in practice it does exist and it portrays grave danger to the criminal justice system in Nigeria. A holding charge practice may arise where an accused person is brought before a magistrate court for a criminal charge (usually in capital offences) and he is remanded in prison custody to await the commencement of his prosecution. *Adekola* gave a succinct explanation on *holding charge* as a system of bringing an accused person before an inferior court that lacks jurisdiction to try him or her for the primary purpose of securing a remand order and thereafter abandon him or her in prison under the pretence of awaiting trial.¹⁹ Holding charge also connotes the outcome of inability of the police to carry out investigations and prosecute criminal acts within the time stipulated by the law. According to Ozekhome, a holding charge is a charge brought by the police and other law enforcement officers against an accused person before an inferior court that lacks

¹⁷ *Nigerian Constitutional Law Reports*, 1985, 534 at 540.

¹⁸ *Nigerian Weekly Law Reports*, 1993,7, (Pt. 303) 49 at 107.

¹⁹ Adekola T, ‘Holding charge’ has no place under the law’ <https://thenationonline.ng.net/holding-charge-has-no-place-under-the-law/> on 14 March 2023. on 14 March 2023.

jurisdiction to try the offence charged, pending the receipt of legal advice from the office of the Director of Public Prosecution (DPP), to recommend the accused person's trial in a court of competent jurisdiction, or tribunal, set up to try the particular offence.²⁰ It is further argued that Nigerian courts have however consistently declared this “arrest-before-investigation”, rather than “investigation-before-arrest”, (as done in civilised criminal jurisprudences of the World), as anomalous, unconstitutional and illegal.²¹ This practice is prevalent in the inferior courts of records in Nigeria, particularly, the Magistrate courts (as applicable in Southern States) and the Area Courts (in the Northern States).²²

According to Black's Law Dictionary²³, holding charge implies a criminal charge of some minor offence filed to keep the accused in custody while prosecutors take time to build a bigger case and prepare more serious charges. In effect, it follows that holding charge is a creation of police prosecutors. The overall intention of the police prosecutor here is to detain the accused person for as long as it pleases and which may culminate into holding charge proceedings in order to arraign the accused before a magistrate court. Under this guise, the accused does not have the right to take a plea (whether a guilty plea or not), instead, the police prosecutor applies for an adjournment for the purpose of forwarding the case file to the office of the Director of Public Prosecution (DPP) for further legal advice. On this note, the accused person will now be remanded in prison custody on the order of the Magistrate, pending receipt of legal advice.

Sadly enough, the purported legal advice expected from the DPP's office may invariably not come forth for a period of a year or more. The implication is that the accused person may continue to languish in prison custody without any form of trial. In short, a good number of accused persons awaiting trials in the Nigerian prison custody fall under this category. More so, even when a *prima facie* case is established against the accused and as such, a

²⁰ Ozekhome M, 'A holding charge is patently illegal under the constitution' Premium Times, 19 November 2015 — <https://www.premiumtimesng.com/featuresandinterviews/195426aholdingchargeispatentlyillegal-under-the-constitution-part-1.html?tztc=1> on 12 March 2023.

²¹ Ozekhome M, 'A holding charge is patently illegal under the constitution' Premium Times, 19 November 2015 — <https://www.premiumtimesng.com/featuresandinterviews/195426aholdingchargeispatentlyillegal-under-the-constitution-part-1.html?tztc=1> on 12 March 2023.

²² Section 78(a), *Criminal Procedure Act* (Nigeria).

²³ Black's Law Dictionary, 8th ed.

decision has also been reached to prosecute the accused person, yet, the actual filing of information before the appropriate court of competent jurisdiction (usually the High Courts) may as well, take a much longer period of time for prosecution. In essence, this has led to the rights of the accused being violated or abused.

In view of the foregoing explanations, it is argued that, holding the utilisation of holding charge as a panacea for instituting criminal proceedings has amounted to a dangerous precedent in the Nigerian justice system. Rather than to carry out adequate investigation, acquire sufficient evidence and as well, obtain proper professional legal services before proffering charges against the accused person, the police prosecutors are quick to arrest and hurriedly rush to magistrate courts on a ‘holding charge’ and hope to stumble on any sufficiently incriminating evidence subsequently against the accused and not minding the fact that, justice is not a one-way traffic but a three-way traffic. In *Josiah v. State*,²⁴ Justice Oputa stated that:

...justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even only two-way traffic. It is really a three-way traffic - justice for the appellant accused of a heinous crime...; justice for the victim..., the deceased, ‘whose blood is crying out to heaven for vengeance’ and finally justice for society at large – the society whose social norms and values had been desecrated and broken by the criminal act complained of.

The erudite Jurist went on to say that, “... *justice which seeks to protect the appellant alone is not even-handed justice but justice sacrificed in the shrine of guilt.*”

In addition, this argument was further expressed with sentiment by the Court of Appeal in *Bola Kale v. The State*²⁵ in the following words:

It is an aberration and abuse of judicial process for an accused person to be arraigned before a magistrate court for an offence over which it has no jurisdiction only for the accused person to be remanded in prison custody and not tried or properly charged before a competent court for trial. It will be an infraction on the rights to fair hearing and liberty of the accused person.

The CFRN contains copious provisions which guarantee the rights of an accused person before, during and after trial in a court of law. Thus, section 36(1) of the CFRN (as amended) provides that:

²⁴ *Nigerian Weekly Law Reports*, 1985,1, (Pt. 1) 96.

²⁵ *Nigerian Weekly Law Reports*, 2006,1, (Pt. 962) 507 at 765.

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.

Accordingly, every person who is charged with a criminal offence shall be presumed innocent until the contrary is proven. In the same vein, the CFRN guarantees the right to personal liberty,²⁶ with certain limitations. In addition, the CFRN also provides that any person arrested or detained of any criminal offence, may be released conditionally or unconditionally in order to avail himself the opportunity of appearance to stand trial in a court of competent jurisdiction.²⁷

Also, the court in a plethora of cases had decided that holding charge is illegal and unknown to the Nigerian criminal jurisprudence. For instance, in *Shagari v. C.O.P.*,²⁸ it was held that holding charge is unknown to Nigerian law and any person or an accused person detained thereunder is entitled to be released on bail within a reasonable time before trial. The court took a similar view in *Ahmed v. C.O.P Bauchi State*,²⁹ where it held *inter alia* that a holding charge is unknown to Nigerian law, and it is illegal and unconstitutional.

In essence, it is axiomatic to state that the police and/or the court hiding under the guise of lack of jurisdiction, is often the bedrock of remand order in the Nigerian justice system where the accused is brought before it on holding charge. By implication, the use of holding charge as a mechanism to enhance administrative expediency in the performance of police's duties under the above guise, reflects a clear reluctance of the political will to safeguard human rights as guaranteed by the Nigerian Constitution.³⁰

III. Recent Legislations and Practice of Holding Charges in Nigeria

The first legislative attempt to give a legal backing to the practice of holding charge in Nigeria was the enactment of the Administration of Criminal

²⁶ Sections 35(1), *Constitution of the Federal Republic of Nigeria* (1999).

²⁷ Sections 35(a) and (b), *Constitution of the Federal Republic of Nigeria* (1999).

²⁸ *Nigerian Weekly Law Reports*, 2007, 5, (Pt. 1027) 272.

²⁹ *Nigerian Weekly Law Reports*, 2012, 9, (Pt. 1304) 104.

³⁰ Sections 36, *Constitution of the Federal Republic of Nigeria* (1999).

Justice Law (ACJL) of Lagos State, with the intent to increase the jurisdiction of the magistrate court, but in essence, it does engage in the practice of holding charge. The ACJL was first passed in Lagos State in 2007 and an amended version passed in 2011. Thus, section 264 of the ACJL provides that:

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 power to remand such a person after examining the reasons for the arrest exhibited in the request form filed by the police, and if satisfied that there is a probable cause to remand such person pending legal advice of the Director of Public Prosecution or arraignment of such person before the appropriate court or tribunal.

Moreso, under the ACJL of Lagos State, an order of remand made by a Magistrate shall not exceed a period of thirty (30) days in the first instance and at the expiration of which the Magistrate shall order the release of the person remanded unless, good cause is shown by the accused, why there should be a further remand order for a period not exceeding one month.³¹ At the expiration of any further order made by the Magistrate pursuant to the above provision, it shall issue a hearing notice to the Commissioner of Police (COP) and Director of Public Prosecutions (DPP) and accordingly, adjourn the matter in order to inquire as to the position of the case and for the COP and DPP to show cause why the person remanded should not be released.³²

In an attempt to have a uniform criminal procedure law in Nigeria, its national assembly enacted the Administration of Criminal Justice Act (ACJA), 2015 into law. The ACJA provides for procedures for the statutory recognition and practice of holding charge in Nigeria.³³ Under section 293 of the ACJA, 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. The procedure under the ACJA has a similarity in its substance with that of the ACJL of Lagos, but the only difference being that, under the ACJA, an application for remand order is by an *ex parte* application.³⁴ Again, another slight difference between the ACJA and ACJL of Lagos is that, in the former, the order shall be for a period not exceeding 14 days in the first instance, and the case shall be returnable within the same period if there is

³¹ Section 264 (6), *Administration of Criminal Justice Law, Lagos State* (2015).

³² Section 264 (7), *Administration of Criminal Justice Law, Lagos State* (2015).

³³ Section 293-299, *Administration of Criminal Justice Act* (2015).

³⁴ Section 293(2), *Administration of Criminal Justice Act* (2015).

need to so further remand an accused person³⁵; while a remand order under the latter made by a Magistrate shall not exceed a period of thirty (30) days in the first instance and at the expiration of which the Magistrate shall order the release of the person remanded unless, good cause is shown by the accused, why there should be a further remand order for a period not exceeding one month.³⁶

In a similar vein, this practice and procedure was also adopted by the government of Edo State of Nigeria with the passing into law of the Administration of Criminal Justice Law of Edo State (ACJL, Edo State), 2016. Section 293(1) of the ACJL, Edo State provides that, 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 High Court for remand. In the ACJL, Edo State, an application for remand is expected to be made through an *ex parte* application.³⁷ The above provision is, however, similar both in substance and in content with what is obtainable under the ACJA.³⁸ Also, under the ACJL, Edo State, the court may remand the suspect in custody, after examining the reasons for the arrest and for the request for remand and if satisfied that there is probable cause to remand the suspect, pending the receipt of a copy of the legal advice from the Attorney-General of the State and arraignment of the suspect before the appropriate court.³⁹ In addition, section 296(1) of the ACJL, Edo State provides that, where an order of remand of the suspect is made, the order shall be for a period not exceeding fourteen days in the first instance, and the case shall be returnable within the same period. In effect, the above provision is also similar both in substance and in its contents with that of the ACJA.⁴⁰

However, it looks like the old form of holding charge is gradually giving way to a new practice following the enactment of the above Criminal Justice legislations. It appears that there is a new dimension to holding charge

³⁵ Section 296(1), *Administration of Criminal Justice Act* (2015).

³⁶ *Nigerian Weekly Law Reports*, 1993,7, (Pt. 303) 49 at 107.

³⁷ Section 293(2), *Administration of Criminal Justice Law, Edo State* (2016).

³⁸ Ozekhome M, 'A holding charge is patently illegal under the constitution' Premium Times, 19 November 2015 — <https://www.premiumtimesng.com/featuresandinterviews/195426aholdingchargeispatentlyillegal-under-the-constitution-part-1.html?tztc=1> on 12 March 2023.

³⁹ Section 294(1), *Administration of Criminal Justice Law, Edo State* (2016).

⁴⁰ Section 78(a), *Criminal Procedure Act* (Nigeria).

following the enactment of the Administration of Criminal Justice Act,⁴¹ and the Administration of Criminal Justice Laws in the states earlier mentioned.⁴² These legislations permit the police and other security agencies to obtain court orders to detain criminal suspects for a limited period. Probably, there is nothing wrong in the new practice, but the issue or challenge, to my mind, remains in the abuse of such powers or impunity. Related to that challenge is the incompetence or recklessness of some judicial officers who fail to exercise their judicial powers judiciously in granting such detention orders. They should be able to balance the competing interests before granting applications, and especially by protecting the human rights of citizens against clear cases of abuse.

In some cases, some of their complaints do include that the system is confronted with the challenge of an accused person jumping bail and/or tampering with investigation processes if not remanded in prison custody. For instance, in *Dantata v. The Police*,⁴³ the court refused to grant the request for a bail application made by an accused person on the ground that it was earlier established that the accused offered a bribe to the police in order to retrieve evidence of the offence while in prison custody. It is also argued that, the remand procedure was introduced into the Nigerian criminal justice system to ensure that, the accused persons in deserving cases, are kept in detention to enable the police conclude its investigations to ascertain whether or not, such an accused can be arraigned. Under the above procedure, upon an arraignment of the accused, he will be ordered by the presiding officer to be remanded in prison custody without being given any opportunity to make a plea. By implication, the only time frame opportunity available to the accused person is until he has been arraigned in a court of competent jurisdiction, which in most times, it becomes a dream in the pipeline.

For the avoidance of doubt, the ACJA was never enacted to whittle down, truncate or take away the much-cherished rights, freedoms and liberties duly granted to citizens by the Constitution of the Federal Republic of Nigeria (CFRN) 1999, (as amended). It is axiomatic to state that the National Assembly has no power to abrogate or diminish constitutionally donated rights of any

⁴¹ Section 293, *Administration of Criminal Justice Act* (2015).

⁴² Section 264, *Administration of Criminal Justice Law, Lagos State* (2015); Section 296, *Administration of Criminal Justice Law, Edo State* (2016).

⁴³ *Northern Region of Nigerian Law Reports* (1958), 3.

citizen under the guise of making laws. In other words, section 4(2) of the CFRN merely states that the National Assembly shall have power to make laws for the peace, order and good government of the Federation. The National Assembly is presumed therefore, to have made laws only, for the peace, order and good government of the Federation, and nothing more in the fight against corruption or any other socio-economic or security matter in Nigeria. Such intention must be done within the constitutional ambit and legal regime existing in Nigeria. It is further argued that the National Assembly or a State House of Assembly (as the case may be), in enacting laws, can neither exceed the powers accruable to it by the Constitution nor, can it make laws that oust, or purports to oust the jurisdiction of the courts. In the same vein, section 4(8) of the CFRN specifically provides that:

Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

In consequence, where the National Assembly makes laws that are inconsistent with the provisions of the Constitution, such laws become automatically void to the extent of their inconsistency.⁴⁴

Nonetheless, the practice of holding charge is an attempt to outmanoeuvre the constitutional protection available to the accused under the Nigerian legal order. Thus, section 35(4) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended) enjoins the State to produce the accused person who has been arrested or detained, before a court of law having jurisdiction in respect of such offences within a reasonable time. It is further argued that, the misconception about holding charge is that, the accused person is purported to be arraigned before the court, while in reality, the purported method of holding charge lacks proper arraignment.⁴⁵ In

⁴⁴ Sections 1(3), *Constitution of the Federal Republic of Nigeria* (1999).

⁴⁵ Igwe O and Philip H, 'Understanding the basis of implementation of non-custodial measures for Nigerian correctional service: The need to create awareness among the people of Ebonyi State,' (2020) — <https://www.Researchgate.net/project/UnderstandIngtheBasisofImplementatiofNoncustodialMeasuresforNigerianCorrectionalServicetheNeedtoCreateAwarenessAmongthePeoplofEbonyi-State> on 14 March, 2023.

addition, for there to be a valid procedure of an arraignment, such procedure must be in conformity with the provisions of CPA or CPC (which are still applicable in states that are yet to domesticate the ACJA of 2015). For instance, section 215 of the CPA provides that:

The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith.

Reaffirming the position of the CPA, the Supreme Court of Nigeria in *Lufadeju v. Johnson*,⁴⁶ further outlined the above requirements for there to be a valid arraignment. The court stated that, the aforementioned requirements of the law are mandatory and must therefore be strictly complied with in all criminal trials.

It is further stated that failure to satisfy any of the aforementioned requirements will render the whole trial processes defective, null and void, hence they have been specifically provided to guarantee the fair trial of an accused person, as well as to safeguard his interest in such trial.⁴⁷ Moreso, in *Omoteloye v. State*,⁴⁸ The Court of Appeal held that a criminal trial commences with the proper arraignment of the accused before the court. The court further affirmed that, where an accused person is not properly arraigned but a mere cognisance of the fact that an offence exists, it is doubtful whether the constitutional provisions as encapsulated under section 35(4) and (5) of the CFRN (as amended) have been complied with. In the above circumstance, the accused person cannot be said to have been properly brought before any court of competent jurisdiction as contemplated by the constitution. Yet, another hurdle associated with the holding charge concept is not just that the court before whom the accused person is brought lacks jurisdiction to entertain the matter, but in addition, it suffices that the court makes such order(s) in an offence which *ab initio*, it has no jurisdiction to remand the accused pending when he is arraigned before any other court with competent jurisdiction as a

⁴⁶ *All Nigeria Law Reports*, 2007, 2, 559.

⁴⁷ *Asakitikpi v. State* (1993), LLJR, 46307 (Supreme Court of Nigeria).

⁴⁸ *Omoteloye v. State* (2017), 1 NWLR (Pt. 1547) 341 (Supreme Court of Nigeria).

prerequisite by the constitution. For instance, in *Commissioner of Police v. Abubakar and others*,⁴⁹ the prosecutor through an *ex parte* application before the Edo State High Court, Benin Judicial Division ordered the accused persons to be remanded in Correctional Centre, Benin City for an initial period of fourteen days pending the legal advice on the case from the office of the DPP, Ministry of Justice, Edo State, on an alleged kidnapping, armed robbery and other related social vices. An order remanding the accused was granted by the court wherein the accused were remanded. The Edo State High Court maintained a similar position in *Commissioner of Police v. Thomas Odey and others*,⁵⁰ where the accused persons were also remanded in prison custody pending the DPP's advice.

Again, another purported justification for the concept of holding charge is that, a magistrate court in Nigeria does not need to assume jurisdiction for a remand order to be made against an accused.⁵¹ In effect, the intention of the above provision is contrary to the provision of section 35 of the CFRN (as amended) which provides that the accused person should be brought before a court of competent jurisdiction to face his trials within a reasonable time. Rather, the combined effect of the provisions of section 293 of the ACJA, section 264 of the ACJL (Lagos State) and section 293 of the ACJL (Edo State) appeared to be inconsistent with the aforementioned provisions of the CFRN, which is the *grundnorm* and therefore, the concept of holding charge cannot be successfully used as a justification for the deprivation of the accused persons rights as guaranteed by the CFRN.

From the above instances, it appears that there is no legal justification for the usage of holding charge in the Nigerian criminal justice system as it currently stands. It is further argued that the practice of holding charge, as well as the stringent bail conditions in which the accused person is expected to go through are clear limitations on the personal liberty envisaged by the CFRN. However, despite the legal protection outlined above, there continues to be a high incidence of arbitrary arrest leading to holding charge detention, which ultimately culminates in the overcrowding of the correctional centres in Nigeria. In its resultant effect, there is a high incidence of attempted jailbreaks

⁴⁹ Charge No: B/CD/1076M/2020 (Unreported).

⁵⁰ Charge No: B/CD/1507M/2021.

⁵¹ Section 293, *Administration of Criminal Justice Act* (2015); Section 264, *Administration of Criminal Justice Law, Lagos State* (2015); Section 293, *Administration of Criminal Justice Law, Edo State* (2016).

and riots in the correctional centres which, in the authorities' efforts to suppress these, resulted in loss of life among inmates due to the alleged use of excessive force by security agencies.⁵²

Furthermore, it is argued that the concept of holding charge *ab initio*, violates the constitutional rights of the accused persons which have characterised the administration of criminal justice system in Nigeria. Thus, in *Albaji Toyin Jimoh v. Commissioner of Police*,⁵³ it was held that the holding charge is unknown to Nigerian Law and the accused person detained thereunder is entitled to be released on bail within a reasonable time before trial. As such, the practice of holding charge could be equated as 'jungle justice' against the accused persons and it has led to the deliberate abandonment of some innocent persons in prison custody which ultimately, results in custodial congestion, among others.⁵⁴

IV. Effect of Holding Charge on the Fundamental Rights of the Accused

As a notorious fact, the Constitution of the Federal Republic of Nigeria (CFRN) 1999, (as amended), in its current status has enormous provisions guaranteeing the fundamental rights of an accused person before, during and after trial in a court of competent jurisdiction. It is also safe to state that the CFRN safeguards an accused person in the determination of his civil rights and obligation, including his entitlement to fair hearing within a reasonable time by a court or tribunal established by law.⁵⁵ For clarity purpose, section 36(1) of the CFRN provides that:

⁵² Aliyu I, 'Decongestion of Nigerian prisons: An examination of the role of the Nigerian police in the application of the holding charge procedure in relation to pretrial detainees', https://www.researchgate.net/publication/339231876_Decongestion_of_Nigerian_prisons_An_examination_of_the_role_of_the_Nigerian_police_in_the_application_of_the_holding-charge_procedure_in_relation_to_pre-trial_detainees on 14 March 2023.

⁵³ (2004) JELR 55873 (Court of Appeal).

⁵⁴ Fagbohun O, 'Holding charge and remand in prison custody prior to trial: An agenda for urgent reforms' (2017), <https://www.google.com/search?client=firefoxbd&q=%E2%80%98Holding+charge+and+remand+in+prison+custody+prior+to+trial%3A+An+agenda+for+urgent+reforms%E2%80%99+> on 6 July 2022.

⁵⁵ Sections 36(1), *Constitution of the Federal Republic of Nigeria* (1999).

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 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.

Furthermore, the CFRN specifically provides that every person who is charged with a criminal offence is presumed to be an innocent person until proven guilty.⁵⁶ In the same vein, any person who is charged with a criminal offence is entitled to be informed promptly in the language he understands and in detail of the nature of the offence.⁵⁷ Constitutionally, the accused is also expected to be provided with adequate time and facilities for the preparation of his defence and as well, to defend himself in person or by a legal practitioner of his choice.⁵⁸ Thus, as earlier noted in this study, the CFRN guarantees the right to personal liberty⁵⁹ though, with certain limitations. Section 35(4) provides that, any person arrested or detained of any criminal offence shall be released either unconditionally or upon such conditions as are reasonably necessary to avail him the opportunity of appearance to stand trial at a time and place specified.

On the international sphere, the importance of the rights of an accused person has also been of immense recognition in some notable international human rights laws. For instance, the jurisprudence of the United Nations Human Rights Committee⁶⁰, the Inter-American and European Courts of Human Rights and the African Charter on Human and Peoples' Rights (ACHPR), provide interpretations which are indispensable for a full understanding of the meaning of the international legal rules governing arrest and detention. Under the international setting, all human beings have the right to enjoy respect for their liberty and security. Also, with regard to the principle of legality, it is argued that it is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation.⁶¹ In other

⁵⁶ Sections 36(5), *Constitution of the Federal Republic of Nigeria* (1999).

⁵⁷ Sections 36(6)(a), *Constitution of the Federal Republic of Nigeria* (1999).

⁵⁸ Sections 36(6)(b) and (c), *Constitution of the Federal Republic of Nigeria* (1999).

⁵⁹ Sections 35(1), *Constitution of the Federal Republic of Nigeria* (1999).

⁶⁰ This body is composed of 18 experts, established by a 1966 human rights treaty, the International Covenant on Civil and Political Rights (ICCPR).

⁶¹ Communication No. 702/1996, *C. McLawrence v. Jamaica*, in UN Doc. GOAR, A/52/40 (vol. II), 230-231, para. 5.5.

words, the grounds for arrest and detention must be established by law.⁶² It is axiomatic that, without an efficient guarantee of the liberty and security of the human person, the protection of other individual rights becomes increasingly vulnerable and often illusory.⁶³ Yet, it has been argued by the international monitoring bodies that arrests and detentions without reasonable cause, and without there being any effective legal remedies available to the victims concerned, are unacceptable.⁶⁴ In this guise, when such arbitrary and unlawful deprivations of personal liberty occurs, the victims are also deprived of access both to their counsel and their families, and also subjected to torture and other form of ill-treatment.⁶⁵ In the same vein, under the universal legal responsibility, all states are bound by laws. For instance, article 9(1) of the International Covenant on Political and Civil Rights; article 6 of the African Charter on Human and Peoples' Rights; article 7(1) of the American Convention on Human Rights; and article 5(1) of the European Convention on Human Rights guarantee a person's right to "liberty". Moreover, as judicially stated by the International Court of Justice (ICJ) in its ruling in the *Hostages in Tebran* case, held that "wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself incompatible with the principles of the UN Charter, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights"⁶⁶, and article 3 of which guarantees "the right to life, liberty and security of person".

Furthermore, article 7 of the ACHPR succinctly provides that:

every individual shall have the right to have his case heard. This comprises: the right to an appeal to competent national organs against violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force; the right to be presumed innocent until proven guilty by a competent court or

⁶² Communication No. 702/1996, *C. McLaurance v. Jamaica*, in UN Doc. GOAR, A/52/40 (vol. II), 230-231, para. 5.5.

⁶³ United Nations Publication, 'Human rights in the administration of justice: A manual on human rights for judges, prosecutors and lawyers' (2003) — <https://www.ohchr.org/sites/default/files/Documents/Publications/training9Titleen.pdf> on 25 August 2023.

⁶⁴ United Nations Publication, 'Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers', 161.

⁶⁵ United Nations Document E/CN.4/1999/63, *Report of the Working Group on Arbitrary Detention*.

⁶⁶ *Case Concerning United States Diplomatic and Consular Staff in Tebran (United States of America v. Iran)*, ICJ Reports 1980, 42, para. 91.

tribunal; the right to defence, including the right to be defended by counsel of his choice; and the right to be tried within a reasonable time by an impartial court or tribunal.⁶⁷

Thus, in the case of *ACHPR, World Organisation against Torture and Others v. Zaire* the African Commission held that, “indefinite detention of persons can be interpreted as arbitrary, as the detainee does not know the extent of his punishment”, article 6 of the African Charter had been violated in that, the victims concerned were detained indefinitely after having protested against torture.⁶⁸ In a similar vein, such detention constitutes an arbitrary deprivation of personal liberty within the meaning of article 6 of the African Charter to detain people without the possibility of bail.⁶⁹

Also, the Inter-American Court on Human Rights has held, with regard to the provisions of article 7(2) and (3) of the American Convention on Human Rights, that:

...no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.

By way of juxtaposition, the Administration of Criminal Justice Act (ACJA), 2015, also mandates the police officer or other persons making the arrest to inform the suspect immediately of the reason for the arrest.⁷⁰ This position of the ACJA is also in tandem with the provision section 36(6)(a) of the CFRN which provides that, “every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence.” In other words, it is statutorily recognised that any such person while in custody shall be given reasonable facilities for obtaining legal advice, taking steps to perfect his or her bail condition(s) and otherwise, making arrangements for his or her defence or

⁶⁷ Article 7, *African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act*, Cap A10, Laws of Federation of Nigeria (LFN), 2004.

⁶⁸ Communications Nos. 25/89, 47/90, 56/91 and 100/93, decision adopted during the 19th session, March 1996, para. 67; for the text, see — <http://www.up.ac.za/chr/>.

⁶⁹ *ACHPR, Constitutional Rights Project and Civil Liberties Organisation v. Federal Republic of Nigeria*, Communication No. 102/93, decision adopted on 31 October 1998, para. 55 of the text published here: — <http://www1.umn.edu/humanrts/africa/comcases/102-93.html>.

⁷⁰ Section 6(1), *Administration of Criminal Justice Act* (2015).

release.⁷¹ From the foregoing, it is not far-fetched that the tenet for the prescription of law is for the proper treatment or handling of the accused person, and any delay occasioned by the inability of the State to bring the accused person to trial within a reasonable time may, depending on the circumstances, cause his release.⁷²

Theoretically, one would agree that the above provisions on the fair and speedy dispensation of criminal justice in Nigeria, when compared side by side with what is obtainable at the international spheres, are laudable, but however and in reality, it is sad to state that the said constitutional provisions are at best honoured in their breach than in their observance. In actual sense, a process in which an accused person is denied the right to speedy trial for a criminal allegation made against him and yet, not able to have access to fair trial within a reasonable time is a fundamental breach to his fundamental rights as entrenched in the constitution especially, when the accused person is still presumed to be innocent until the contrary proven.⁷³

Moreso, where the concept of holding charge runs contrary to the personal liberty of the accused person as guaranteed by the constitution and as well as what is obtainable as a universal legal responsibility of Nigeria, rather, the accused is brought before a court that expressly lacks jurisdiction on a charge sheet which is read to him and where he neither has an opportunity to take his plea nor bail granted to him, but remanded in custody. This kind of practice cannot be regarded as a proper arraignment envisaged by the constitution and other recognizable international legal instruments as highlighted in the preceding paragraphs, but a mere holding charge practice where it has been copiously argued in a number of judicial authorities that holding charge is illegal and unknown to the criminal justice system. For instance, in *Shagari and other v. Commissioner of Police*,⁷⁴ The accused persons were charged before a magistrate court, which on the face of it, lacked jurisdiction in homicide offences and there was no formal charge framed against them and the charge itself was devoid of proof of evidence as at the time the bail application was heard. The court held that the holding charge is unknown to

⁷¹ Section 8(1)-(4), *Administration of Criminal Justice Act* (2015); Sections 36(6)(b)-(c), *Constitution of the Federal Republic of Nigeria* (1999).

⁷² Sections 34(a) and (b), *Constitution of the Federal Republic of Nigeria* (1999).

⁷³ *Adegbite v. COP* (2006), 186 – 187 (Court of Appeal).

⁷⁴ *Nigerian Weekly Law Reports*, 2007, 5, (Pt. 1027) 272.

the Nigerian law and any person or an accused person detained thereunder is entitled to be released on bail within a reasonable time before trial. The court further held that, the concept of holding charge has no place in the Nigerian judicial system and as such, any person detained under it must unhesitant be released on bail.

The court maintained this view in *Abmed and others v. Commissioner of Police*⁷⁵, where the accused persons were arrested on the allegation of criminal conspiracy, mischief and culpable homicide punishable by death. The accused persons were arraigned in a magistrate court, Bauchi State vide first information reports in terms of the criminal allegations. In consequence, the Magistrate ordered them to be remanded in prison custody. On appeal, the court held *inter alia* that, a holding charge is unknown to the Nigerian law, it is illegal and unconstitutional. The court further held that, an accused detained thereunder, is entitled to be released on bail within a reasonable time before trial. In the same vein, the court in *Enwere v. Commissioner of Police*⁷⁶ also held that, holding charge is unknown to the Nigerian law and an accused person detained thereunder is entitled to be released on bail within a reasonable time before trial.⁷⁷

In effect, the fact remains that holding charge practice as currently prevalent in Nigeria has infringed directly on the fundamental right of the accused person who is entitled to his liberty and to be brought before a competent court within a reasonable time, and transcends to other areas like the physical and mental health of the accused. These implications of holding charge on the victim can also be referred to as an ‘ordeal’. The ordeal of the victim of holding charge (the suspect or accused) includes presumption of guilt without fair hearing, restriction of movement, physical brutality, mental deterioration, health hazards exposure and financial downgrade.⁷⁸ Accordingly, it is argued that holding charges are responsible for the rising number of awaiting trials in Nigeria’s prison, and as such, a major source of prison

⁷⁵ *Nigerian Weekly Law Reports*, 2012, 9, (Pt. 1304) 104.

⁷⁶ *Nigerian Weekly Law Reports*, 1993, 6, (Pt. 279) 333.

⁷⁷ *Ani v. The State* (2002), 53 (Supreme Court of Nigeria).

⁷⁸ Unini C, ‘Holding charge: The ordeal, the legality, the repair’ *The Nigeria Lawyer*, 10 January 2021 — <https://thenigerialawyer.com/holding-charge-the-ordeal-the-legality-the-repair/> on 12 March 2023.

congestion.⁷⁹ It is further stated that this position need not be over-emphasised on the ground that the overwhelming number of awaiting trial persons in Nigeria prisons is frightening.⁸⁰

In consequence, an accused person ought not to be adjudged guilty before his trial by reason only of an allegation of a crime purportedly to have been committed by him. It should be noted with caution that suspects or accused persons are not convicts, and neither should they be seen nor treated as such in the administration of criminal justice in Nigeria. To this end, it is an irrebuttable assumption that the degree of liberty obtainable in any society depends ultimately on the attitude of the court. Therefore, the court should interpret any law sanctioning holding charge narrowly against the party seeking to rely on it and more liberally and sympathetically, in favour of the accused person who is being deprived of his fundamental right enshrined in the CFRN and other relevant statutory provisions.

V. Some Policy Recommendations

In this study, it has been observed that the practice of holding charge represents one of the most critical challenges under the Nigerian criminal justice system. Thus, for the Nigerian justice system to have a strong influence in the global crusade against human rights abuses, it is hereby recommended as follows:

1. It is very obvious that a key challenge facing the administration of criminal justice in Nigeria is a lack of forensic skills by police and other law enforcement officers. At times, criminal suspects are intimidated to give confessions that are then used as evidence in courts. However, when these cases go to trial, many suspects disown most of these statements as not theirs. This often leads to long trials and delays in criminal justice administration, and leads to a high number of awaiting trial persons on remand in prisons across Nigeria. Although the Administration of Criminal Justice Act (ACJA) came into force in Nigeria in 2015, the Act contains provisions that require investigators to

⁷⁹ Chigozie C and Ajah O, *Holding Charge and Pre-trial Detention vis-à-vis the Doctrine of Fair-Hearing in Nigeria*, (2011) (Lagos: The Lawyers Chronicle).

⁸⁰ Ukwayi K, Adewoyin S, John T and Ofem N, 'Public perception of small arms epidemic and conflict in Oke-Ogun Area of Oyo State, Nigeria' 5(2), *The International Journal of Humanities & Social Studies*, 2017, 100-108.

record confessional statements of suspects by video. However, law enforcement agencies, particularly the police, lack the infrastructure needed to comply. Based on this argument, the Nigerian government (Federal and State) is expected to play a leading role in curbing the menace of holding charge syndrome in that, the prosperity of any nation is not measured in its economic might alone, rather, at the global level, the observance, as well as the protection of human rights practices are fast becoming the parameter for the acceptance of a nation as a member of comity of nations. It suffices therefore, since the members of the police force in Nigeria are more involved in crime investigation and detection, the State should seriously consider the imperativeness of reactivating and equipping the force with modern technologies in light of the socio-economic architecture in Nigeria.

2. While imprisonment is necessary in many cases involving violent offenders, it does not constitute a panacea with regard either to crime prevention or to the social reintegration of offenders. Moreover, in Nigeria, the prison system faces major challenges because of overcrowded and outdated facilities, with the resultant effects that prisoners often find themselves in deplorable conditions of detention that can have adverse effects on their physical and mental health and impede their educational and vocational training, thereby also affecting their chances of future adjustment to an ordinary life in the community. The impact of long-term imprisonment on a person's family and work life are also considerable. Despite the above, the population of inmates in the Nigerian prison is still embarrassingly high. Hence, there is the call for the adoption of non-custodial measures/sentences by the courts, in order to reduce the number of persons who are kept in prison, especially those awaiting trial. Generally, the purpose of non-custodial measures is to find effective alternatives to imprisonment for offenders and to enable the authorities to adjust penal sanctions to the needs of the individual offender in a manner proportional to the offence committed. The advantages of individualising sentencing in this way are evident, given that it permits the offender to remain at liberty, thereby also enabling him or her to continue work, studies and family life.

3. It is also recommended that there should be periodic review of cases handled by magistrates and those found culpable in abusing their powers shall be sanctioned. Thus, sanction may involve reprimand, suspension, removal and/or dismissal depending on the gravity of the offences. This periodic exercise should also be applicable to officers of the police force who are saddled with the responsibility of initiating and investigating criminal trials within the ambit of the Nigerian criminal justice system. Moreso, it is also a truism that the police as an institution under the Nigerian criminal justice system, which by implication, it is a sieving institution. It sieves, using the barometer of ‘probable cause or reasonable suspicion’ to decide whether or not, a *prima facie* case has been established against the suspect or accused person before initiating criminal charges against him. The police institution more often than not, is criticised for its nonchalant role in reviewing the evidence against accused persons. In Nigeria, it is also a notorious fact that, evidence gathering is usually untidy yet, the police are always not willing to let the accused person go free, even when there is no *prima facie* case established against him or no probable cause to prosecute him.⁸¹
4. Again, another vital institution expected to play a significant role is the Civil Society Organisations (NGOs). The NGOs have very crucial roles to play in the fight against the menace of holding charges. The vital role expected of them to play is that of educating and enlightening the general public particularly, the accused persons on the need to be aware of their rights as guaranteed by the CFRN. It is also not in doubt that the majority of the Nigerian populace do not have access to basic human rights education, and as such, unable to appreciate the intricate connection between respect for human rights and good governance. Therefore, it is expedient for the NGOs to take up the initiative in providing quality human rights education to Nigerians.
5. Above all, being arrested or detained by the police can be a very frightening experience. When this is done unlawfully or using

⁸¹ *Oduaran Adjarbo v. Inspector General of Police and Others* (2021) JELR 108832 (Court of Appeal); *Ayegbajeje v. C.O.P.* (2020) JELR 110170 (Court of Appeal), (noting that the law is very elementary and settled that the system of criminal administration of justice in Nigeria is accusatorial and not inquisitorial. What this means is that the defendant is presumed innocent until his guilt is established).

unnecessary aggression under the guise of holding charge, individuals who have been under preventive imprisonment may claim compensation, provided that they have sustained any damages therefrom. Compensation will be determined considering the time they were remanded in custody and in view of the personal and family consequences. This recommendation has its legal backing by virtue of section 35(6) of the CFRN which provides that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, ‘the appropriate authority or person’ means an authority or person specified by law. In view of the above provision, a public conscientisation is highly encouraged under this ambit, the reason being that many citizens do not know that the Constitution makes provisions for public apology and compensation to them for their unlawful arrest or detention. Other people do not even believe such a provision exists. That is why many people get arrested and detained unlawfully by the Police, and the transgressors go scot-free, while the victim dances to his church or mosque for thanksgiving whenever he or she is released from detention.

VI. Conclusion

Having established that fact that the police, are no doubt statutorily empowered apart from their general duties of preservation of law and order, the protection of law and property, enforcement of law and order, detecting and prevention of crimes and amongst others, usually, the majority of criminal cases in Nigeria are initiated by the police at the magistrate courts. However, the police in most instances drag an accused person to magistrate court on indictable offences in order to secure a remand order before starting any form of investigation, notwithstanding that the magistrate lacks jurisdiction on those offences.

Notwithstanding the above notoriety, this paper has also provided a brief account of the basic international legal rules that regulate States’ power to resort to arrests and detentions, as well as the legal guarantees that exist which aim at preventing unlawful and arbitrary deprivations of personal liberty. Thus, at the general level, adherence to these rules is a *sin qua non* in any democratic society governed by the rule of law, and is an indispensable condition for

ensuring respect for the rights and freedoms of the individual human being, including, in particular, respect for his or her physical and mental integrity.

In consequence, this practice by the police and/or the magistrate and any legal instrument sanctioning such an act is illegal and unconstitutional, as it offends the tenet of the CFRN and the universal legal responsibility that all States are bound by the law. In essence, the function of the prosecution is not to rush a charge to a magistrate court, a court which has no jurisdiction to try capital cases and play for time while investigation is in progress. Therefore, by effectively guaranteeing everyone's right to personal liberty and security at all times, States will also be promoting their internal security, without which human rights cannot be fully realisable. To this end, all institutions in the Criminal Justice System in Nigeria must work together to end the unconstitutional concept known as holding charge because justice delayed means justice denied. It is time for reformative training for the Police, promoting the rule of law and weeding out any form of unconstitutional practice and it would therefore go a long way to help decongest the Nigerian prisons.