AN EXAMINATION OF THE CHALLENGES FACING THE NIGERIAN CRIMINAL JUSTICE SECTOR: THE HOLDING CHARGE PRACTICE

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DECLARATION

I, SUNDAY AYEGBA do hereby declare that this dissertation is a record of my own research. It has not been published or presented anywhere for a higher degree by anybody to my knowledge. All quotations and references have been duly acknowledged.

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SUNDAY AYEGBA

CERTIFICATION

This is to certify that this dissertation titled **theChallenges facing the Nigerian Criminal Justice Sector: The holding charge practice**has been duly presented by **SUNDAY AYEGBA(NSU/LAW/LLM/195/15/16)** of the Faculty of Law, Nasarawa State University, Keffi and has been approved by examiners for its contribution to knowledge and Literary Presentation.

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Having met the stipulated requirements, the dissertation has been accepted by the postgraduate School.

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Dean
Postgraduate School

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Date

DEDICATION

This dissertation is dedicated to God Almighty who made this research work a dream come through.

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LIST OF ABBREVIATIONS

ALL. N. L. R.	-	ALL Nigeria Law Report
Cap.	-	Chapter
CCHCJ	-	Certified Copier of High Court (of Lagos State) Judgments)
C.P.A	-	Criminal Procedure Act
C.P.C	-	Criminal Procedure Code
F.W.L.R	-	Federation Weekly Law Report
H.R.L.A	-	Human Rights Law Assistance
H.R.L.R.A	-	Human Rights Law Reports of African
M.J.S.C.N	-	Monthly Judgment of the Supreme Court of Nigeria
N.C.C	-	Nigerian Criminal cases
N.C.CL	-	Nigeria Constitutional Law Reports
N.M.L.R	-	Nigeria Monthly Law Reports
N.N.L.R	-	Northern Nigeria Law Reports
N.R.N.L.R	-	Northern Region of Nigeria Law Reports
N.S.C.C	-	Nigerian supreme court case
N.S.C.Q.R	-	Nigeria Supreme Court Quarterly reports
S.C	-	Nigeria Supreme Court
S.C.N.J	-	Supreme Court of Nigeria Judgment

S.C.N. L. R	-	Supreme court of Nigeria Law reports
U.S	-	United States
W.R.N	-	Week Reports of Nigeria
ACJA	-	Administration of Criminal Justice Act

ABSTRACT

The practice of Holding Charge which is a form of pre-trial detention has been viewed as one of the major legal constraints to proper and swift administration of Criminal Justice in Nigeria and has remained unabated despite the apparent opposition against such practice in advanced legal systems like England and United States of America. This research work is an exposition of the said practice, making a case for either its repeal or resort for possible alternatives to the practice by making a comparative analysis of municipal, regional and international instruments, case law and statutes on the practice of holding charge (pre-trial detention) as well as analyzing the legality or otherwise of this phenomenon. Holding charge which involves the bringing of a suspect before an inferior court that lacks jurisdiction to try him or her for the primary purpose of securing a remand order, in order to look for a prima facie evidence in support of the allegation against the suspect and thereafter abandon him or her in prison under the pretext of awaiting trial, leaves one to wonder whether the presumption of innocence is tenable in Nigeria. Also, the crisis of congestion in our prison is the result of the holding charge practice. It is trite that jurisdiction is the life-wire of any litigation whether civil or criminal and the base on which adjudication rest. It follows that there is obviously an anomaly in bringing a suspect for remand before a magistrate who has no power to impose penalty for the indictable offence allegedly committed by the suspect. Therefore, the practice by magistrate courts who lacked jurisdiction in indictable offence, but goes on to remand the suspect under holding charge have been considered unconstitutional, because it is a threat to the accused person's rights to personal liberty, dignity, and fair hearing granted by the 1999 constitution (as amended). However, some states laws have given magistrate court the impetus to continue with this harmful practice without regard to the provisions of the Nigerian Constitution. The new Administration of Criminal Justice Act (ACJA), 2015 equally did not abolish the practice. Consequently, this research work, in chapter one will take a look at the historical inception of holding charge; chapter two will focus on the meaning of the monster called holding charge, the reason for its adoption and the illegality. Chapter three will discuss on the rights of accused persons and how holding charge have thwarted its realization. Chapter four will examine the effect of holding charge in the criminal justice administration in Nigeria. Chapter five the last chapter contains observation and recommendation, mainly on abrogation of all the laws that gave magistrate courts power to remand suspects on indictable offences when they have no jurisdiction to entertain such cases.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Criminal justice is the method by which the society deals with those who are accused of having committed infractions of the criminal code. Criminal justice system is the collective institutions through which an accused/offender passes until the accusation have been disposed or the assessed punishment concluded. The system typically has three components; the police,judiciary, prison[1]. The Criminal Justice System essentially is the system of practices and institutions of government directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. Those accused of crime have some protections against abuse of investigatory and prosecution powers.[2]

By this study, the researcher carries out examination of the challenges facing the Nigerian Criminal Justice System. This study identifies holding charge syndrome and delay as the major challenges facing the criminal justice system. These delayare usually caused by, inadequate court rooms infrastructural facilities, poor working condition, delay caused by legal practitioners, delay caused by judges, delay caused by supporting staff of courts, investigation and detection of crime, sponsorship of investigation, deficient prosecution of criminal cases, delay in giving legal advice, delay caused by the system of admitting an accused person to bail, delay arising from prison authorities in not producing an

1. Bryan A Garner, Blacks Law Dictionary 9th Edition P. 431
2. Walker, Samuel (1992). "Origin of the Contemporary Criminal Justice Paradigm: The American Bar Foundation Survey, 1953-1969". Justice quarterly. 9 (1): 47-76. Doi:1080/07418829200091251

problem of funding, corruption, delay in duplication of case files, inefficient forensic science facilities and experts, poor public record keeping, high cost of litigation, transfer of judges, reliance on technical rules aresome of the challenges facing the criminal justice system in Nigeria.

However with the advent of the new Administration of Criminal Justice Act (ACJA) 2015; some innovative provisions therein contained make Administration of Criminal Justice Act the hottest criminal law legislation in Nigeria presently.[3]

The researcher's comprehensive reading of Administration of Criminal Justice Act, 2015 revealed that, much still needed to be done; the Act has substantially taking care of the challenges of delaybut the same cannot be said of "*the holding charge syndrome*", a challenge in the administration of criminal justice system in Nigeria. This study shall therefore focus on the subject titled holding charge syndrome; a challenge in the administration of criminal justice system in Nigeria.

Before an accused is brought before the Court, it should be assumed that the case is ripe for hearing, not for further investigation. He must not be there on mere suspicion, which cannot be regarded as reasonable suspicious under the constitution. If there can be no sensible and prima facie inferences that can be drawn that an offence has been committed then the accused cannot be deprived of his liberty even for a second. There cannot be a "holding charge" hanging over an accused in court pending the completion of investigations into the case against him.[4]

3. The Administration of Criminal Justice Act, (ACJA) 2015.
4. Per Galadima J.C.A in Ogor v. Kolawole (1985)6 NCLR 534 at 540.

Also, Niki Tobi J.C.A in *Onagoruwa V State*[5] as he then was stated thatin a good number of cases, the police in this country rush to court on what they generally refer to as a "holding charge" ever before they conduct investigation. Where the investigation does not succeed in assembling the relevant evidence to prosecute the accused to secure conviction, the best discretion is to abandon the matter and throw in the towel. On no account should the prosecution go out of its way in search for evidence to prosecute when it is not there.

The decision of the two justices excerpted above is pertinent in considering the police usual excuse that investigations are continuing while the suspect is kept away in perpetual detention. It is apparently one of the greatest forms of disservice to suspects, to have them brought before the courts and then proceed to investigate the allegations leveled against them. It is an indictment on the system of criminal administration and an affront to the course of justice. The administration of criminal justice, involves three institutions, viz: the Nigerian Police Force, the Courts and Prison. The Nigerian Police Force is the product of the Constitution[6]. One of the constitutional responsibilities of this body is to ensure that law and order are maintained in the society, and also to detect and prevent crimes[7]. Thus, when a crime is committed, the criminal justice process begins with the police, who have the primary obligation of investigating the criminal act and apprehending the offenders[8].

It follows therefore that the police are empowered by the statutes apart from their general duties of preservation of law and order, protection of life and property, enforcement of

5. (1993) 7 NWLR (pt. 303) p. 49. at 107.
6. Section 23 of the Police Act. Op. Cit.
7. Section 214 of the 1999 Constitution (as amended)
8. Section 4, Police Act, Cap P. 19 L.F.N, 2004,

court. Thus, any police office may conduct in person criminal prosecution before any court whether or not the information or complaint was laid in by the Attorney General of the Federation[9].

It should be noted that apart from some tribunals established to try certain specialized offences especially during the military era in Nigeria, there are perhaps three levels of courts in Nigeria in which criminal proceedings may be instituted. These are the magistrates' courts, State High Courts and Federal High Court. Of these, it seems that it is only at the Magistrate Courts that the police commence criminal proceedings.

In the southern and northern states of Nigeria for instance, criminal proceedings may be commenced in the Magistrate Courts by laying a complaint before a magistrate whether or not on Oath, that an offence has been committed,[10] or by bringing a person arrested without a warrant before the Court upon a charge contained in a charge sheet specifying the name and occupation of the person charged, the charge against him and the time and place where the offence is alleged to have been committed.[11]

The main objects of these proceedings are two folds. The first is to bring the offender to the court to face his trial, while the other, is to bring to the notice of the accused the crime for which he is accused of. From the above, it follows that majority of cases are prosecuted by the police at the Magistrates and Area/CustomaryCourts. Thus, immediately a complaint is received at the station that a person has committed an offence, the suspect is arrested with or without a warrant and brought to the station

9. Waldron, et al, The Criminal Justice System: An Introduction p. 44.
10. Section 79(a) Criminal Procedure Act Cap. 41 LFN 2004 (hereinafter referred to as C.P.A) and Section 143 of the Criminal Procedure Code.
11. Ibid

9. Section 79(a) Criminal Procedure Act Cap. 41 LFN 2004 (hereinafter referred to as C.P.A). and Section 143 of the Criminal Procedure Code

constitutional duties to perform in the smooth administration of justice. They are to grant bail to the suspect pending the completion of investigation into the case, or if the alleged offence is of a serious nature in which bail cannot be granted to arraign the suspect in court within a reasonable time[12].

By constitutional definitions[13] reasonable time is one day where a competent court exists within 40km radius of the place of arrest and in other circumstance, two days as the case may be. The essence of the above provision is to ensure fair administration of criminal justice in the country, by respecting the accused person's rights.

Unfortunately, these statutory safeguards have been abused by the men of the Nigerian Police force with impunity. Thus, where an offence is committed and it is in the nature of a capital offence, say, attempted murder, murder, manslaughter or even treasonable felony, the police would ordinarily arrest such an offender. It is trite law that the police do not grant bail in capital offences. What they do in the circumstance is to arraign such offenders before a magistrate Court whom they are aware has no jurisdiction over capital offences. the magistrate would in turn, remand these suspects either in police or prison custody, pending when the police gather enough evidence on the offence allegedly committed, as well as pending when the matter is taken before a court of competent jurisdiction. This is done under the ignoble practice of "holding charge."

According to George O.S.A[14], a holding charge is brought about when the police are investigating a capital or other serious offence. In this situation, the police are always

12.Section 341 (1) and (2) of the Criminal Procedure Code and Section 17,18 of the Criminal Procedure Act
13. Section 35(5) of the 1999 Constitution FRN as amended
14. Amadi G.O.S "Police Powers in Nigeria" (A fro-Orbis Publishing Co. Ltd. Nsukka (2000) P. 198

matter to court as well as their legal incapacity of granting bail to the suspect when he could not be brought to court within time.But since the police are intent in keeping the suspect in detention pending investigation, the so called holding charge is an apparent lawful response to the forgoing legal dilemma. What the police do as a result is to bring the suspect "before a Court of Law" as required by the constitution. But the court, where the police head to, is that of summary jurisdiction, i.e a magistrate court which in law is incompetent to have a capital crime. This ingenious approach is aimed at killing two birds with one stone: to remove the suspect from police custody and put him in prison custody through the Instrumentality of a court of law, albeit a court of incompetent jurisdiction. By so doing, the police perceive themselves as not violating the law. Indeed, if there is any such violation, then the Magistrate's Court should bear the responsibility, for the court, after all, should have declined jurisdiction and sent back the suspect to police custody rather than remand him in the prison custody.

Curiously, this unwholesome practice which the police adopts is permitted by an inferior law[15] in Lagos, the offending Law as S. 236(3) of the Criminal Procedure Law of Lagos 1994 (now Section 264 of the Criminal Justice Administration (Lagos State 2011) which allowed the Magistrate Court to remand offenders in indictable offences. Surprisingly also, the Supreme Court out of sentiment have upheld this practice in E. A Lufadeju & Anor. V. Evangelist Bayo Johnson[16].

15. I am using "inferior law" advisedly. The Criminal Procedure Law of Lagos State is inferior to the constitution of Nigeria which provides for right to personal liberty and fair healing relevant to this reflection
16.[2007] 8 NWLR (pt. 1037) 535

nothing can justify the incalculable harm being wrecked on the Nigerian Criminal Justice system by the holding charge.

1.2 Statement of the Problem

Section 35(5) (a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that no citizen of this country ought to be detained in any cell (without being taken to a court of law) for more than 24 hours.[18]

The terrible effects of pre-trial incarceration was captured by Galadima J.C.A citing with approval the decision in *Hartage V. Hendrick*[19],states that imprisonment of an accused prior to a determination of guilt is a rather awesome thing.It costs the taxpayers tremendous sums of money, deprives the affected individual of his most precious freedom and liberty. It also deprives him of his ability to support himself and his family, may quite possibly costs him his job, restricts his ability to participate in his own defence, subjects him to the dehumanization of prison, separates him from his family without trial as well as casts over him an auraof criminal guilt.

Those very illuminating words clearly encapsulate the dilemma of the awaiting trial prisoners (detained consequent upon a holding charge) in Nigeria. He is not anticipated and therefore not provided for in the nation's budget and has to content with the harsh realities of prison life. All these coupled with the fact that he may turn out to be innocent

17. C.A. Igwe, A legal Review of the Administration of criminal Justice in the Magistrate Court of Ebonyi State (Ebonyi State University Law Journal, 2011] vol. 4 No. 1. See also Frank Agbedo, Rights of Suspects and Accused Persons under Nigerian Criminal Law (Lagos, Crown Law Publication, 2009) P. 253.
18. Section 35 (5) (a) and (b) of the 1999 Constitution FRC as amended. See also Nnamani, J.S.C. "Contemporary Nigeria and the Practice of Law" p. 8, Paper Presented at the 1990 Annual Conference of the Nigeria Bar Association, held in Benin from 27-31 August, 1990.
19. Ibid

The utilization of the holding charge as a method of instituting criminal proceedings amounts to putting the cart before the horse[20]. For, rather than carryout proper investigation, gather sufficient evidence and obtain proper professional legal advice before filing a charge, the police prosecutors merely arrest and rush to court on a "holding charge" and hope to stumble on sufficiently incriminating evidence subsequently. There is no proof of evidence against him while the "holding charge" is continuously held against him like a sword of Damocles[21].Niki Tobi J.C.A[22] expressed the sentiment that the practice of the prosecutor in rushing a suspect charged of committing a criminal offence to a magistrate's court which has no jurisdiction to try murder cases, and play for time while investigation is in progress. It was further held that the unique police phraseology of a "holding charge" is not known to our criminal law and jurisprudence. It is either a charge or not. There is nothing like a 'holding charge'[23].

It is unfortunate to observe that notwithstanding the criticism of this practice of holding charge by the police due to its negative implications in our criminal justice system, the practice still persists. It has been shown that those remanded by the order of court accounted for about 50% of awaiting Trial Persons (ATPs) in the country and consequently, a major cause of overcrowding and congestion in our prisons[24].

Without fear of contradiction, the consequences of the present system of administration of criminal justice at the lower bench in Nigeria are punitive and unfair to the accused

20. Dele Peters Nigerian Current Legal Problems, 1996-1998) vol. 4 and 5 p. 258
21 Per Galadima J.C.A in Ogor V Kolawole (1985)6 NCLR 534 at 540
22 Anaekwe v. C.O.P (1996) 3 NWLR (pt. 436) 330
23 Ibid at p. 332
24. www. Hurilaws.com

the detention of suspect under different nomenclature called prison custody, albeit brought about unlawfully.[25]

For instance, criminal suspects who are presumed innocent until the contrary is proved under the Constitution[26]are made prisons through the machinery of the court under non existing law, and at times under an inferior law. This practice has created the problem where relevant provisions of the constitution (especially chapter four), which courts have the primary responsibility to enforce in any part of Nigeria to be under-enforced nay breached. Also following the practice of holding charge, the much touted prison decongestion is more congested than before in the execution of remand order of the learned Magistrates.

As a rule, Awaiting Trial Persons (ATPs) constitute a significant percentage of the prison population[27]. The most challenging aspect is that from the moment those remanded under holding charge steps into the confines of a prison, they are considered "a thing" beyond the fringe of humanity and, consequently, of humane treatment. Moreover, the sprawling prison system of Nigeria is not only infested with myriad of human rights violations, the entire structure seems, indeed, dependent on these violations for its very survival in its present, ugly form.

Little wonder Professor Adedokun Adeyemi[28] has described the Nigerian prison system as lacking both deterrent and reformative value. Accordingly, it has become very costly

25 George O.S.A, Op Cit. P. 7
26 Section 36(5) of the 1999 constitution (as amended)
27 As at early September 2003, the number of ATPS hovered between 55% and 75% of the total population of all those incarcerated in our prisons. Out of 40,082 inmates in all of Nigeria's prisons, more than half were awaiting trial. See Uwais M; "The Prisons of Tomorrow: a Civil Society Perspective" paper presented at the 3rd summit of stake holders on the Administration of Justice in Lagos on 17th June 2004. However, by July 2004, the number of ATPs reached 63% mark. According to a Prisons Assessment Report by the Controller General of the Nigerian Prisons Service, Mr. Abraham Akpe, submitted to the Committee on Prison Decongestion, 25,000

Adeyemi's views are supported by the assertion of H.S. Labo[30] that the vast majority of prison inmates belong to the 16-50 year old economically productive bracket most of whom remain in prison awaiting trial for many years, in a most de-humanizing condition… immense emotional and psychological stress are common antecedents of the custodial circumstances of imprisonment.

Finally, in making the remand order by Magistrate, most victims are not informed of the charge against them till they are docked. And the court has no inkling of the facts of the case save as read to the accused in the open court. This has been described as an unlawful court ordeal proceeding[31].

In my humble view, this practice is a clear breach of law, derogation and affront to our Constitution, which guarantees fundamental human rights[32], and provide for the procedures of treating criminal suspect in order to ensure fairness. Thus, it is my view that magistrate court should not always hesitate in declining to make any order whatsoever in any holding charge proceeding. This is because the court has the primary responsibility to uphold fair and impartial proceeding in line with the extant laws to guarantee proper administration of justice. And it is trite law that a magistrate has no power to assume jurisdiction in capital offences, let alone make an order to remand an accused in prison or police custody.[33]

28. Adeyemi A.A, Penal Reform in Nigeria: paper submitted for publication in a new Judicial Order. Essays in Honour of Justice Akinola Aguda (unpublished) p.1
29 Ibid
30. Socio-Economic Burden of Imprisonment: paper presented at the 1st Nigerian Prison Service Civil Society Dialogue on the State of Nigerian Prisons held at Abuja on 12th -14thth February, 2002
31 See C.A Igwe. Op cit. p. 280
32 See Chapter 4 of the 1999 Constitution (as amended).
33 See Anakwe v. C.O.P (1996) 2 NWLR (pt. 436); Chinemelu v. C.O.P/ (1993) 4 NWLR (pt. 390); Onagaruwa v. The State (1937) NWLR (pt.303) 149' Enwere v. C.O.P (1993) 6 NWLR (pt. 299) 133

wheel of effective and efficient administration of our criminal justice in Nigeria, the

following questions have been formulated, with the hope to address them in the course of this research.

1. What is the legality of taken a suspect accused of committing a capital offence to magistrate courts that have no jurisdiction in order to secure a remand by the police?
2. If the practice is illegal, then why is it still in practice?
3. What is the attitude of the judiciary towards this practice in the course of interpreting the constitution and administering justice?
4. What is the attitude of the executive arm of government who enforce the law as regards courts decision about the practice?
5. What is the validity of states law that has legalize this practice vis-a-vis the constitution of Nigeria?
6. What is the legality of remand orders by our magistrate courts on indictable offences which they lack the jurisdiction to entertain?
7. Whether by the decision of the Supreme Court in *E.A. Lufadeju and Anor V. Evangelist Bayo Johnson*[34], it could be rightly said that the apex court approves holding charge practice?

34. Supra.

1.4 Aim and Objectives of the Study

The aims and objectives of the study are:

1. To critically examine the legal concept of holding charge

2. To critically examine holding charge as it affect human rights of a suspect as provided in the Constitution.
3. To unearth the difficulties posed by the practice of holding charge in the administration of criminal justice system in Nigeria.
4. To state the constitutionality or otherwise of the holding charge syndrome.
5. To examine the effect of holding charge to prison congestion and the inhuman conditions of prisoners under awaiting trial.
6. To examine case laws and statutes in order to understand the courts' view on the holding charge syndrome, and to proffer suggestions on how criminals in Nigeria should be dealt with.
7. To provoke wider thoughts on better ways to safeguard the rights of the suspects as against what is obtained under holding charge practice.
8. To proffer solutions to all the problems identified during the research work.

1.5 Research Methodology

In this work, the doctrinal approach has been employed, though empirical method was partly adopted. The work relies on two main sources that is, the primary and secondary sources of the law and related literature. As within the approved context, the primary source consisted of statutes, subsidiary legislations and the judicial precedence whereas the secondary source consulted were the relevant text books, articles, seminar papers, newspapers, magazines, internet source and in addition, a reasonable number of other materials like workshop papers, journals, conference papers, presented in different places

and occasions by legal scholars and human right activists mostly on criminal justice reform in Nigeria.

The empirical aspect involved visiting in-mates in the prisons to get relevant information from them which they would be beneficial and helpful in the essay writing. By the dint of this methodology, the work and laws of other jurisdictions than Nigeria were equally examined.

1.6 Relevance of the study

The study of what the practice of holding charge is, and its effect on the administration of criminal justice in Nigeria is of utmost importance. According to the Human Rights Watch, in numerous countries-including Bangladesh, Chad, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Mali, Nigeria, Pakistan, Paraguay, Peru, Rwanda, Uganda, Uruguay and Venezuela-un-sentenced prisoners make up the majority of the prison population. Such detainees may in many instances be held for years before being judged not guilty of the crime with which they were charged. They may even be imprisoned for periods longer than the sentences they would have served had they been found guilty. This state of affairs not only violates fundamental human rights norms it contributes significantly to prison overcrowding a problem that is itself at the root of numerous additional abuses. The lengthy detention of un-sentenced prisoners has its origin in two common phenomena; the denial of pretrial release to criminal defendants, and the excessive duration of criminal proceedings. Both of these ingredients in themselves violate international human rights norm but combined together they

constitute a grievous affront to justice…solving the problem of excessive pretrial detention will require courage innovative thinking, an overhaul of the code of criminal procedure, strengthening the judiciary and in particular, increasing its size and efficiency; provisional release laws and effective substitutes for detention. The precise nature of adopting these reforms will require careful examination and analysis for them to fit conformably with a country's existing legal framework.

The Human Rights Watch Report quoted above offers very insightful analysis of the problem of pretrial detention (or holding charge) and possible solutions. Thus, this research work gives an insight into the implications of holding charge.

Also, the work gives an insight into the reasons why this practice is common among the police. One of the reasons is delay in carrying out proper investigation by the Police. Admittedly the police force is handicapped by numerous logistic constrains such as inadequacy of trained, dedicated and well motivated officers. The inadequacy of office accommodation, stationery, transport and communication facilities further limits their efficiency. Transfer of officers handling case and the lack of transportation facilities to bring prisoners to court constitutes additional constraints[35].

Finally, this research work considered mostly how the awaiting trials arrested and detained under the guise of holding charge are generally treated. The legality of holding

35. Criminal Justice Reform and Challenge of Holding Charge by Olisa Agbakaoba SAN. Delivered by HURILAWS p. 9.

human right provisions, the effects of holding charge in Nigerian prisons. The research work also took a look on the statutory powers of the police, and factors militating against

the police in carrying out their constitutional functions. And finally, how all these have contributed in crippling our Criminal Justice Administration.

1.7 Limitation of the Study

The scope of the study is on criminal justice system in Nigeria, the study is limited to holding charge based on Nigerian cases however, in deserving situations; references are made to other jurisdictions for purposes of comparism.

1.8. Literature review

There are several legally, academic and or general knowledge based texts writers and scholars who have examined the regime of challenges facing the Criminal Justice Sector and some of these haveculminated in a number of texts books and articles on the subject matter.

On this note, research conducted by Obi-Okoye[36] gave a historical survey of judicial trials in Nigeria tracing its way back before 1914, when trials took place in haphazard courts, some traditional, some commercial or group interest courts and other statutory. The book epitomized one of the greatest contributions as it captured the development of judicial trials in Nigeria. The author critically examined the ambit of the courts and their subsequent jurisdiction. He equally acknowledged the noticeable strides in the judicial determination of disputes, though the author did not consider the current challenges

36. Obi Okoye .J (1988) The development of Judicial trials in Nigeria, Enugu: African-Feb Publishers

Yusuf [37] emphasized diverse issues such as the role of an Independent judiciary in an emerging democracy, the right of prisoners and detainees in Nigeria, EFCC and

36.Obi Okoye, J (1988). The development of judicial trials in Nigeria, Enugu: African – Feb publishers

dispensation of justice, and the removal of judicial officers by the executive arm. The author argued that the main objectives of any criminal justice dispensation are the prevention and control of crime, the correction of offenders and by implication, the action and preservation of legitimate individual liberty rights and freedoms. The question that has arisen is whether the above position captured the essentialities of criminal justice system? To my mind the essence of criminal justice system goes beyond that. The author did not address current trends in criminal justice system such as restorative justice and compensation for victims. Plea bargainingis also not advocated in line with modern trend in criminal justice system.

Dambazau[38] made an in-depth study of the theories of law and proceeded to dissect the meaning of law and its functions in the society from the jurisprudential, sociological and anthropological perspective. He also examined by statistical data, crime that are rampant in Nigeria and the punishment as he considered the ineffectiveness of police to curb crime and also discussed the problems of the Nigeria Police. The author did not mention types of punishment to be meted out in deserving cases. The theory is old fashioned considering the emergent new crime rate in the 21st century Nigeria. This is what justify this work.

37. Yusuf, F. (2006): The Nigeria Judiciary perspective and profile. Enugu: Flc Publishers
38. Dambazau, A.B (1994). Law and Criminality in Nigeria: an analytical discourse: Ibadan; Ibadan University Press

enforcement in Nigeria pointing out the fact that there is hardly any provision that takes care of a criminal after he must have served his term of imprisonment, and as such many become recidivist with serious security implication on the citizens. The learned authors

apart from addressing the effect on convict after service of terms of imprisonment; did not address the justifiability or otherwise of the process/procedures that an accused person passes through to conviction and sentence which is the corner stone of the present study. Their work is therefore helpful in this research.

Available research made by Adeyemi [40] and Ahire [41]have established that criminal justice agents especially the police and the judiciary frequently exercise their discretion in the administration of justice to the detriment of the poor and the underprivileged and in favour of the rich. The arbitrary use of discretion by these agents of justice was reported in Adeyemi's study, of the sentencing disposition of a sample of judges and magistrates in Lagos. This study revealed that the most heavily used disposition was imprisonment. The authors did not address their mind to challenges facing the criminal justice sector in Nigeria aside discussing forms of punishment.

In the same vein, Fadipe[41] expressed his disappointment that some magistrates and judges in Nigeria do not take time to study the provisions of the Criminal Procedure Act and other relevant laws regarding sentencing which provide for other forms of sentencing. Thus, Ahire[42] dwelt extensively on the lack of "fit" between the declared policy of penal

39. Yakubu, A. and Agbede, I. O (2000). Some problems associated with law enforcement in Nigeria. Lagos: Malthouse Press
40. Adeyemi, A.A (1994). Personnel reparation in Africa: Nigeria and alternatives to imprisonment in comparative perspective. Chicago: Nelson Hall.
41. Fadipe, J. A (2000), Aim of sentencing in Nigeria London: Blackstone Press
42. Ahire (2004), Opt. Cit. P. 21

provision of the codes without regard to other actors or players in the criminal justice system such as the Prison authority, the Police, Legal Practitioners, Courtroom infrastructures, workload, corruption, delay orchestrated by the practice of holding charge, etc.

Whilst Chukkol [43] made valuable contribution by providing first-class information on the criminal and penal codes in Nigeria. He equally dwelt on the salient areas in the codes that needed change to be attuned with 21st century Nigeria. The writer is advocating areas of the existing penal provisions that needed change to be attuned with 21st century Nigeria but should have specifically address procedural challenges in the CPC, CPA, CPL, that needed change to be fashionable with current realities facing the system. The author did not proffer solution to high rate of prison congestion due to increase number of awaiting trials due to the practice of holding charge which is unconstitutional by virtue of Section 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

According to Aderemi[44] most judges believe that he who pays the piper dictates the tune or that since their bread is buttered by government, they must not give decisions that run contrary of the action even if illegal of the government. He emphasized that delay in respect of an accused who is awaiting trial or who is being tried, definitely affects the potency of the established law enforcement. The author here identifies delay arising from pre-trial proceeding and absence of judicial independence erodes judicial confidence by

43. Chukkol, K.S. (1998). Law of Crime: Zaria: Ahmadu Bello University Press
44.Aderemi, A. (2000). "The Role of judges in administration of justice in Nigeria" in Yakubu A. (ed.) Administration of Justice in Nigeria: Essays in Honour of Emure-Ekiti. Ekiti: Petora publishers

subject of discussion by this author has nothing to do with the issue in discourse the pivot of the current study.

Olisa[45] contributed to the wealth of knowledge on the legal and judicial sector performance is of immense benefit as he examined the legal and judiciary sector in Nigeria. He tackled pertinent issues such as strengthening the nation's judicial

infrastructure and personnel, improving on Nigeria's tardy and cumbersome court proceeding, the importance of a virile and responsive bar and prisons reform.The learned author advocates existence of a virile and responsive bar and prison reform as if these are the pertinent issues begging for answers instead of averting his mind to more serious issues capable of discarding holding charge practice, a phenomenon hampering the quick dispensation of criminal cases in Courts.

Abegunde and Adebayo[46] emphasized the fact that a truly independent, impartial and upright judiciary is basic to any constitutional democracy. They examined some of the internal and external safeguards necessary to sustain the independence and interest of judicial officers. They identified corruption, incompetence and deals in the dispensation of justice as some of the identified enemies of justice. The two learned jurists have in no small way contributed to the wealth of legal knowledge in the field under consideration but however, they ought to have suggested solution on how to go about the challenges of corruption and incompetence bedeviling the system. The learned authors did not think

45. OLisa, A. (2001). Legal and judicial sector reforms in Nigeria; Lagos: Hur-Law Press.
46. Abegunde, B. and Adebayo, W. (2008) "policing Nigeria on rule of law and with commitment" Essays in honour of Adebayo Adebowale the Elemure of Emure-Ekiti, Ekiti: Petora publishers

Evidence Act.

Agbola[47] has observed that the task of the criminal justice system is performed through the means of detecting, apprehending, prosecuting, adjudicating and sanctioning those

46. Abegunde, B. and Adebayo, W. (2008). "policing Nigeria on rule of law and with commitment". Essays in honour of Adebayo Adebowale the Elemure of Emure-Ekiti. Ekiti: Petora Publishers

justice system is predicated on the notions that the suspect's or defendant's dignity must be recognized and that generally, the suspect or defendant is considered innocent until

proven guilty by a court of competent jurisdiction. The author dwells mostly on definition of criminal justice and stakeholders without emphasizing on the challenges facing the system. The author equally did not address what becomes of the suspect and the victim after completion of terms of sentence. The author did not equally consider the exceptions to the application of the doctrine of presumption of innocence which exist in deserving cases.

Fitzgerald and Sims[48] argued that there is no evidence that the prison system helps people to live a good and useful life. On the contrary they claim there is considerable evidence to show that imprisonment is positively harmful. Boyle[49] supporting this argument provides us with a useful perspective from the prisoner's point of view about why reformation and rehabilitation do not work in prisons, when he refers to the systematic brutality of prison officers imposing harsh rules.

47. Agbola, T. (1997). The architecture of fear: a pilot study of planning, urban design and construction reaction to urban violence in Lagos. Ibadan: IFRA and African Book Builder.
48. Fitzgerald, M and Sim, J. (1982). British Prisons (2nd ed.) Oxford: Basill Blackwell
49. Boyle, J. (1997). A sense of freedom. London: Pan Books.

in penal sentencing is due to the vocal expression of opinion by influential public figures that imprisonment is an effective measure of justice. He argued that injustice may be done by the imprisonment of those for whom that penalty is not strictly necessary. The Home Affairs Committee (1998) therefore, noted that the rapidly increasing prison population, and the problem associated with it, is the requirement of justice to avoid unnecessary imprisonment, the strain placed on the prison service, the detrimental effect on regimes and the cost-benefit-analysis provide the context and demonstrate the importance of finding effective alternatives to prison for those who can safely be

punished in the society. The learned jurist did not suggest the need for the repeal of any of the existing laws that legalizes the holding charge practice.

It is notable that much as these authors discussed their chosen topics in the field of criminal justice system, not much has been achieved by any of them in the peculiar branch of the challenges confronting stakeholders of criminal justice delivery the pivot of this research. The above text writers, scholars, in their various books did not make a case for the repeal of the practice of holding charge (pre-trial detention) as well as analyzing the legality or otherwise of the phenomenon. Rather, they dwelt mostly on custodian sentence as against restorative justice and other emerging issues in the justice system. The theorists did not talk about the victim's entitlement to compensation, plea bargaining is also not envisaged in line with modern criminal justice system. There is therefore a serious lacuna in the above theories on criminal justice system which the researcher felt are old fashioned, moribund and did not envisaged developmental strides in day to day realities hence the need for the study.

1.9 Synopsis of the study

The work is divided into five chapters. The first chapter deals with general introductory matters. It is introductory and identifies the research problem. The chapter also addresses such issues as the objectives, scope of the research and research methodology. In the main, the chapter reviewed some existing literature related to the research topic.

Chapter two examines generally the concept of criminal justice, the holding charge practice and specifically identifies the meaning, reason, procedure and the legality or

otherwise of the holding charge practice. The chapter equally discusses the philosophical basis for the practice as a legal regime.

In chapter three, issues relating to human right; right to personal liberty, right to fair trial within reasonable time, right to presumption of innocence and right to dignity of human person were explored with specific regard to Nigerian law (constitution) on the subject of the study.

Chapter four deals with the effect of holding charge practice in so far as it has to do with speedy dispensation of criminal justice in Nigeria. The chapter equally deals with the effect of the practice on the defence of the accused person and the prison.

Chapter five the concluding chapter, summarizes the entire work, draw some conclusions and make some recommendations.

CHAPTER TWO

CONCEPTUAL CLARIFICATION AND PRELIMINARIES ON HOLDING CHARGE

2.1 Introduction

The previous chapter is introductory in nature. It gives the background to the study, statement of the problem, research questions and literature review among other issues. The present chapter intends to discuss the conceptual clarification and preliminaries on holding charge, reasons for adopting holding charge, the procedures that enabled it and justification or otherwise of the practice.

2.2 Concepts of criminal justice: The Nigeria Scenario

In Nigeria, the criminal Justice System starts to run with the commission of a crime and straddles subsequent intervention by agencies (police, courts and prisons) of the system such as arrest, arraignment, trial, sentencing) punishment of the offender, given that the country operates under a Federal arrangement, the processes are governed by an array of federal and state legislations. The Criminal Code Act and the Criminal Procedure Act as well as the Criminal Code Laws and Criminal Procedure Laws applicable in the southern state of Nigeria while the Penal Code (federal provisions) Act and the Criminal Procedure Code applicable as federal legislation in the Federal Capital Territory Abuja and the Penal Code Laws of the States and the Criminal Procedure Code applicable as state legislation in the northern states of the country.

The provisions of the codes are similar in many aspects although there are some significant varieties especially as they were at the time of their introduction. Some efforts

to ensure that these pieces of legislation reflected responsiveness to the religious and traditional cultures of the different peoples in the different part of the country.

It is unarguably true that ever since our romance with history, crime has been with us as a human entity and when taken to the extreme it becomes glaring that it is almost a product of society. A legal philosopher or colossus, Lord Denning look at the concept of crime in this manner when he says "in order for an act to be punishable as a crime; it must be morally blameworthy, from the moral prism with which the legal sage pierced through; it is clear that Lord Denning saw the word crime as synonymous to sin.

Claude Ake was of the view that the mere thought of a crime free society in today's world where immorality and the desire to do bad have become articles of faith is at best to live in a fool's paradise or pursuing loose cannon. It is only achievable in one's imagination but not in reality as certain criminologists contend that for a proper functioning of society, crime and criminals are indispensable components of the society. Little wonder that Dr Kharisu Sufiyan Chukkol now Professor of Law refers to crime as paraphernalia of modern society Cleen foundation in their survey shows that protections of lives and properties is a primary responsibility of government. The question begging for answer amongst others is how can a nation advance further from the manacles of crime and corruption in high places when its criminal justice personnel shows no modicum of sympathy towards here dilapidated and won out criminal justice system one is left miffed and obfuscated. That there is need for a spirited effort towards the rebranding and overhauling of our entire justice system at least to make it fearful by citizens and politicians who are out to cause us unfair loss and unfair gain to themselves

thereby demeaning our social value and causing our reputation in the international scene diplomatic injury. No nation can attain its dream height when her justice system is not taken the drivers seat in the change wagon. Nigeria Justice Officers or stakeholders must put hands on deck in turning the tides of our seemingly laughable criminal justice system. Nigeria has come a long way and our judiciary cannot be left out if we must make a head way toward eradicating crime to a reasonable extent much of the work is anchored on our criminal justice system prowess and how much pain the criminal justice system gavel inflicts on those who come under it. Nigeria Criminal Justice System must be dragged out of this mud it has found itself.[1]

2.3 Meaning of Holding Charge

Neither the Constitution nor any other existing law in force in Nigeria defines the concept of holding charge[2]. Accordingly, there is no authoritative definition of the term. Ayorinde J, agreed with this assertion in *Ogor V Kolawole*[3]when he said that "Our constitution or any other existing law in force in this country does not provide for a holding charge…"

Onu J.C.A made a similar observation in Chief Pat Enwere V.C.O.P[4], and proffered thatas the Constitution of the Federal Republic of Nigeria 1979, 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.

1Williams Ekposon; Crime/Security Analyst intelligencewatchdogs@yahoo.com accessed on the 18th day of January, 2017
2.Such as the Criminal Procedure Act, and the Criminal Procedure Code.
3. Ogor V. Kolawole (1985) 6 NCLR 534-540
4. (1993) 6NWLR (Pt.299) 333 at341 Paragraph G.

order to capture the essence of the practice, the following definition will suffice. A

holding charge arises where a person brought before a magistrate or Area Court for a criminal charge, (usually in capital offences) is remanded in prison custody to await arraignment and or commencement of his prosecution before a court of competent jurisdiction. It is the outcome of police inability to investigate and prosecute crime within the time stipulated by the law[5]. The practice is predominant in the inferior courts of records, particularly, the Magistrate (in Southern States) and the Area/Customary Courts (in the Northern States) [6].

According to Bryan A, Garner[7], holding charge means 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. It follows that holding charge is a creation of police prosecution[8]. The intention of the police is to detain the suspect for as long as investigation into the case lasts including the outcome of the DPP's advice and until there is a final decision whether or not to take the case to a competent court[9].

Holding charge has also been explained as a charge brought against an accused person in a court without jurisdiction to try the offence charged pending the receipt of legal advice from the office of the director of public prosecutions for the accused person's trial in the court of competent jurisdiction or tribunal set up to try the particular offence[10]. It is also

5 See Section 35 (4) of the 1999 Constitution (as amended).
6 Towards a Humane Prison System. Submission by the Civil Liberties Organization to the Nigerian Human Rights Commission, July 1996; in Tabiu, M. (ed.) (1998), Administration of Criminal Justice and Human Rights in Nigeria, Chapter Five, PP. 64-74 at P. 67.
7 Black's Law Dictionary, West Publishing co; Texas 9th ed., 2009, P. 800.
8 See Anekwe v. C.O.P (supra) at p.332.
9. Dr. Okpara Okpara, Human Rights Law and Practice in Nigeria. (Chenglo Ltd. Enugu, 2005.) p. 164.
10 D. Peter Op. cit p. 256.

From the foregoing therefore, holding charge is understood to mean a system of bringing an accused person before an inferior court that lack jurisdiction to try the accused for the

primary aim of securing a remand order and thereafter abandon the accused in prison custody under the pretence of awaiting trial. A procedure is tantamount to a holding charge if the suspect is charged to a court that obviously lacks jurisdiction to try the substantive offence and the said court makes an order remanding the accused in custody without plea[12] in lieu of striking out the charge for want of jurisdiction.

Thus, holding charge proceedings are usually instituted in the magistrate courts[13] by police prosecutors. They are common in respect of such heinous crimes carrying capital punishment as treason[14], murder[15], instigating invasion of Nigeria[16], armed robbery[17], and such other offences triable by various miscellaneous offences tribunals. It is the practice of police prosecutors in a holding charge proceeding to arraign the accused before a magistrate court. The prosecutor applies for an adjournment for the purpose of forwarding the case file to the Office of the DPP for legal advice. Thereafter the accused is remanded[18] in prison custody on the order of the magistrate pending a receipt of legal advice.

Unfortunately, the legal advice may not be forthcoming for a period of a year or more. In the interim, the accused continues to languish in prison custody. Accused persons in this category constitute the bulk of the "Awaiting Trial Men" (ATM). Also, when a decision is finally taken to prosecute, the actual filing of information in the High Court or at the

11 Ibid
12 Plea to a charge is an essential ingredient of a trial. See Achene v. The State (1991) 8 NWLR 424; Erekanure v. The State (1993) 8 NWLR 385 and Olawoye and 4 ors v. C.O.P (2006) 2NWLR (Pt 965) 427 and p. 442 paragraph G-H.
13 For various grades and criminal jurisdiction of Magistrates' Courts in Nigeria, See generally, Toyin Doherty: Criminal Procedure in Nigeria .Blackstone Press Limited.1990
14 Criminal Code Act, Cap. C.38, L.F.N, 2004. S 37 (1).
15 Ibid, S. 316
16 Ibid, S. 38
17 Robbery and Firearms (Special provisions) Act. Cap R. II L.F.N 2004, S.I (2). Cf. Criminal code, S. 402.
18 Remand orders are the usual orders made by the magistrate in a holding charge proceedings, though where applicable, the suspect may be admitted to bail. This is not just because the crimes involved are capital in nature but because the magistrate court concerned has neither jurisdiction to try the accused nor grant bail to him pending trial at the proper forum. See Fidelis Nwadiaolo, The Criminal Procedure of the Southern States of Nigeria (2nd ed). And see also Toyin Doherty, /Criminal Procedure in Nigeria/, Blackstone Press

amounts to putting the cart before the horse. For rather than carry out proper investigation, gather sufficient evidence and obtain proper professional legal advice before filing a charge, the police prosecutors merely arrest and rush to court on a

"holding charge" and hope to stumble on sufficiently incriminating evidence subsequently[19]. There is no proof of evidence, no formal charge and the accused is least aware of the quantum of evidence against him while the "holding charge" is continuously held against him like a sword of Damocles[20].

In *Bola Kale V. The State*[21], the court of Appeal expressed this sentiment that It is an aberration and an abuse of judicial process for an accused person to be arraigned before a magistrate 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."

It follows that lack of jurisdiction is often the subject matter of remand order by the magistrates' courts where the suspect is brought before it on holding charge.

19 Dele P., Op.cit p. 258.
20 Ogor & ors v. Kolawole and Anor (supra).
21 (2006) I NWLR ((Pt.962) 507 at p. 765.

2.4 Reasons behind the Adoption of Holding Charge

Having discussed that holding charge was invented into our criminal justice administration by the police, the question is, what are the reasons for adopting such an unwholesome practice? The identified reasons for adopting the holding charge by police prosecutors are as follows:

1. To circumvent the constitutional provision of reasonable time within which to bring the suspect to court[22]. Most often than not, the police are aware of the constitutional

provision of reasonable time within which to bring a suspect to court. But however, this obligation is feasible only when or after full investigation into the alleged crime committed by the suspect. In any case, the police are desirous of keeping the suspect in confinement pending the completion of investigation. This is because to them, they cannot investigate a crime and interrogate suspect within such a short period of time as provided in the Constitution. Thus, they are of the view that "there is no case that can be cracked within 24 hours unless it is a traffic offence[23].

In the words of one of the former Attorney General and Minister of Justice of the Federation, Dr. Olu Onagoruwa, the holding charge isa ploy resorted to by the police to cover their inefficiency or down right illegality by keeping arrested persons in detention beyond the constitutional limitation[24].

Holding charge is therefore a perceived lawful respond to this dilemma. This ingenious approach is aimed at killing two birds with one stone; to remove the suspect from police custody and put him in prison custody through the instrumentality of a court of law. The

22 Section 35 (4) and (5) of the 1999 Constitution (as amended) see also H.P. Faga: "Right to Liberty: Emerging Issues in the Pretrial Process in Nigeria (2006) Abakaliki Bar Journal vol. I pp. 170-171.
23See O. Onagoruwa, "The Nigerian Police, Rule of Law and Our constitutional Order, 2007.
24See Annual Report, 1994, A Civil Liberties Organization's Report on the State of Human Right in Nigeria. P. 16

custody without violating their guaranteed rights to personal liberty[26].

2. The legal incapacity of the police to grant bail to criminal suspect with respect to certain criminal offences like murder, armed robbery and treasonable felonyetc. This is because the law considered these offences by their nature to be serious and they are punishable with death[27].

However, it should be noted that the seriousness of an offence does not depend on the imagination of the police officer. In *Emezue V Okolo*[28], the court held that offences like attempted murder, rape, burglary, arson are serious offences. For these reasons where the police wish to detain a suspect beyond a reasonable time without being accused of violating the 24 or 48 hours as the case may be, provided by the constitution, they have to bring the accused before a magistrate court for the purpose of obtaining remand order. The order if obtained will be the authority for further detention of the suspect while investigation into the case last.

The former Inspector General of Police, Sunday Ehindaro, who before his appointment was a Deputy Inspector-General of Police and Head of Legal Department of the Police Force, has written that there are those who have committed or reasonably suspected of committing indictable or non-bailable offences such as murder or armed robbery and the police need them in custody to complete investigation. The law in some states like Lagos and Anambra provides that such detainees should be taken to a magistrate's court for the 'holding charge'.[29]

25 George O.S. Amadi, op.cit p. 198.
26 C. Okaro; The Scope and Impact of Police Power of Prosecution in the Administration of Criminal Justice, in Solomon E.A et al (ed.) Policing Nigeria in the 21st Century, (Spectra Books limited, 2007) p. 114.
27 Section 118 C.P.A, S. 35 (7) of the 1999 Constitution (as amended).
28. (1979)1 LRN 236

In many cases such accused persons are not granted bail because the offence is the most serious, known to criminal law. It is therefore not unexpected that the basic law, i.e the Constitution would not permit the release of such an accused within three months of

28 (1979) I L.R.N 236
29 The Guardian Newspaper on Today, July 15, 2004 p. 2

From the above, it is obvious that the main reason for adopting holding charge by police prosecutors depends on the seriousness of the offence. The police look at holding charge as a last resort during investigation, till the suspect is arraigned to a court of competent jurisdiction for his trial.

2.5 The Procedures that enabled holding charge

In Nigeria, two procedures have been identified as necessitating the practice of holding charge. The first is the procedure established by the observation of laws made to empower the magistrate courts or to increase the jurisdiction of the magistrate court in respect of capital offences. The second is the procedure established by practice to advert ills.

2.5.1 Procedures established by law

Over the years, some states in Nigeria have enacted laws with intent to increase the jurisdiction of the magistrate court, but in essence are establishing the practice of holding

29. The Guardians Newspaper on Tuesday, July 15, 2004 P. 2
30 Prof. Jadesola O.A; Introduction to the Constitution of the Federal Republic of Nigeria (Lagos, M.J Publisher, 2004) p.80.

Lufadeju V. Johnson[32].

According to Section 264(1) of the C.J,A of Lagos State:

> *Any person arrested for any triable offence 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 reasons for the arrest exhibited in the request form filed by the police, and if satisfied that there is probable cause to remand such*

persons pending legal advice of the Director of public prosecutor or arraignment of such person before the appropriate court or tribunal.

According to subsection (2) of Section 264 of the C.J.A of Lagos State:

Where applicable, a magistrate shall grant bail to any person brought before him pursuant to subsection (1) of this section pending the arraignment of such person before the appropriate court or tribunal.

Sub section (10) of the same section 264 of the C.J.A of Lagos Stateprovide thus:

"In this section unless the context otherwise requires, "offences triable on information" means any offence:

a. Which on conviction shall be punished by a term of imprisonment exceeding two (2) years.

b. Which on conviction shall be punished by imposition of a fine-exceeding fifty thousand (N50,000.00) naira; or

c. Which on conviction shall be punished by death."

Also, by virtue of Section 236(3) of the Criminal Procedure Law, trial magistrates or presi

31 Cap 33 vol. 3, Laws of Lagos State, 1994 (Now S. 264 of the Criminal Justice Administration (Lagos State, 2011.,hereinafter referred to as C J.A)
32 (Supra).

wher

nnabuife and Anor V. C.A, Maidoi-I,Esq. & Anor[33] Court of appeal upheld this provision when it decides thatthe appeal emanated and got its roots from the proceedings in the Chief Magistrate Court Owa-Oyibu in Delta State where the appellants were arrested at Mbiri on the 21st day of November, 2004 and later charged to the Chief Magistrate Court Owa-Oyibu for the offence of conspiracy and armed robbery punishable under SS. 516 and 402 of the Criminal Code.

The Chief magistrate declined jurisdiction to try the appellants but remanded the appellants. The appellants challenged the order made by the Chief Magistrate at the High Court of Justice Owa-Oyibu, Delta State. The trial Judge Osasi J on the 15th June, 2005 dismissed the case of the appellants. Dissatisfied with the decision of the High Court has appealed to the Court of Appeal.

In conclusion, the learned Justices held the appeal to be unmeritorious. The appeal was dismissed and the decision of Ogisi J, delivered on 19/6/2005 was affirmed. It should be noted that the court relied heavily on the apex court decision in Lufadeju V. Johnson[34].

2.5.2 Procedures established by practice

Apart from the power of the police to grant bail to a suspect pending the completion of investigation under section 17 or pending trial under section 18 of C.P.A, it often arraigns

33 (2007) LPELR-CA/B/262/05.
34. (Supra) P. 8 Note 16

holding charge is the practice of preferring charges especially in respect of capital offences against accused persons in Magistrate courts even when such courts are obviously incompetent to try such offences.

Admittedly, the process of investigating crime and prosecuting offenders by the police is no doubt cumbersome and in some case the system is confronted with the problem of suspect fleeing or in some case tampering with investigation. For instance, in *Dantata V. The Police*, the application of the accused person for bail was refused on the ground that he earlier on offered a bribe to the police in order to retrieve evidence of the offence while in police custody.

Thus, the remand procedure was introduced to ensure that accused person in deserving cases are kept in detention to enable the police conclude investigation as to whether or not such person can be arraigned. The Procedure in this respect is that upon the arraignment of the accused, the presiding judge or magistrate will order that the accused be remanded in prison custody without the plea of the accused being taken. The duration of the remand is until the arraignment of the accused person in a competent court.

Apparently, this practice has been resorted to by the police to circumvent the provisions of section 35(4)[35] which provides to the effect that any person arrested or detained must be brought before a court of law having jurisdiction in respect of such offences within a reasonable time. Another aspect of the procedure also practiced by the police is that when the police arrest and detain a person suspected of committing a serious offence and

35.1999 Constitution of the Federal Republic of Nigeria (as amended)

t to do with the accused. If prima facie evidence in support of the allegation against the suspect may be unavailable but there is hope that as the detention continues, reliable evidence might be possible[36].

In order to avoid actions for unlawful detention[37], or false imprisonment[38], they rush the accused to the court of law. The court is usually the magistrate court which the police know very well that it lacked jurisdiction to hear the matter. The intention of the police usually is to detain the suspect by the order of the magistrate for as long as investigation into the case last including the outcome of the D.P.P's advice and until there is final decision whether or not to take the case to a competent court[39].

As rightly pointed out by Faga H.P.[40], the fallacy of this form of holding charge is that the accused person is only purported to be arraigned, while in true fact, there is no proper arraignment. The Procedure for a valid arraignment must be in conformity with section 215 of the C.P.A, and as stated in *Lufadeju V. Johonson*[41], wherein the Supreme Court outlined the requirement for a valid arraignment to be:

a. The accused must be placed before the court unfiltered unless the court shall see cause otherwise to order.
b. The charge or information must be read over and explained to the satisfaction of the court by the registrar or other officer of the court.
c. It must be read and explained to him in the language he understands.

36 G.O.S. Amadi Op. cit p. 198
37 Under section 35(6) of the constitution
38 False imprisonment is any detention, bodily restraint, denial of personal liberty of freedom of movement of a person in any place and in any form without lawful justification. See Ese M. Law of Tort, (Lagos, Princeton Publishing Co, 2008) p. 132
39 Dr. Okpara Okpara Op.cit p. 155
40 Op.cit p. 171
41 Supra p. 555

entitled by law to service a copy of the information and the court is satisfied that he has in fact not been duly served therewith.

The court went further to say that the above stated requirements of the law are mandatory and must therefore be strictly complied in all criminal trials. As they have been specifically provided to guarantee the fair trial of an accused person and to safeguard his interest at such a trial, failure to satisfy any of them will render the whole trial defective, null and void[42].

Therefore, since there is no taking of plea in the remand procedures, it is not a proper arraignment. The Magistrate court only takes cognizance of the offence which it has no

jurisdiction to try. In *Omoteloye V. State*[43], the Court of Appeal per Salami J.C.A held that, a criminal trial commences with the proper arraignment of the accused before the court. Where there is no arraignment but a mere cognizance of an offence, it is really doubtful that the provisions of Section 35(4) (5) of the 1999 CFRN is complied with. In such a case, the accused person cannot be said to be properly brought before any court of competent jurisdiction as required by the Constitution[44].

The problem with holding charge is not only that the court which the accused is brought lack jurisdiction, the court in addition to the want of jurisdiction makes orders in respect to such offences which it has no jurisdiction for the remand of the accused person pending the time the accused will be brought before a competent Court. This practice is

42. See also Asakitikpi v. The State (1993) 5 NWLR (pt. 296) 641, where is was held that a criminal trial commence with the arraignment of the accused person and arraignment in turn consist of the charging of the accused or reading over the charge to the accused person and taking his plea therein.
43 Omoteloye V. State (1989) 1 C.L.R.N. 150
44. Section 35(4) (5) of the 1999 CFRN

2.6 Question of justification

It is trite that two equally important Model Criminal Processes compete for primacy in every criminal adjudication system to wit; Due Process Model and the Crime Control Model. But the Due Process Model is Supreme over the Crime Control Model[45]. This is because the crime control model operates within the ambit of thelaw; that is Due Process Model although the aim of the latter is to achieve the former [46]. Thus, no matter how involved the procedure, no matter how slow the process; no matter how inconvenient the outcome, a court to be truly such, must insist on protecting a citizen unless and until such an accused is brought within the legally defined scope of a sanction[47].

In a Nutshell, crime control model of criminal justice administration emphasize the repression of crime and protection of the victim's right. It maintains that the accused should be presumed guilty while the law enforcement agents be empowered to investigate, arrest, search, seize and prosecute with less legal technicalities. The proponent contends that certain individual rights must be sacrificed for the common good. On the other hand, proponents of due process model insist on informed consideration and respect for individual rights and fundamental fairness under the law.

From the above, it goes without saying that holding charge originated from the crime control model. But it should be noted that Crime Control Model of criminal justice administration suffices a reason for remand order. To them, capital offences are heinous crimes, and from the vantage point of public order and safety, court acts passionately to protect the society from the grievous harms of individuals with presumed high criminal propensity-the recidivists.Therefore, the accused is remanded for his safety and deterrence, as a deterrent to others and for the safety of the society at large.

Thus, according to D. Peter[48], it was in the face of the increasing number of persons suspected of having committed heinous and capital offence, and the trial of whom might not commence within a reasonable time, that the Lagos State government in 1979 promulgated the Administration of Justice (miscellaneous) provisions Edict[49]. This Edict amended Section 236 of the Criminal Procedure Law[50] of Lagos State by adding a subsection 3 to that section. The amendment which was incorporated into the 1994 Laws of Lagos State[51] provides in its sub section (3)[52]that if any person arrested for any indictable offence is brought before magistrate to remand, such magistrate shall remand

45. see C.A Igwe Op. cit p. 277
46 Ibid
47 R.A.C. E; Achara, Justice According to law and Due Process: A Glance at Two of Justice Akpabio's Decisions. Unizik Law Journal vol. 4 No. 1, p. 276

such person in custody or where applicable, grant him bail pending the arraignment of such person before the appropriate court for trial.

According to Fora Arthur-Worrey, former Director of Public Prosecution in Lagos State[53], the amendment became inevitable in view of the length of time it takes for the police to complete investigation into the crime and more often than not, the trial delays which the frequent transfer of investigation Police Officer across the country cause. Thus, it became imperative to find a legally justifiable basis for the detention of suspect, especially when the detention is beyond the limit permitted by the Constitution.

48 Op. Cit P. 263
49 No 401 1979.
50 Cap. 32 laws of Lagos State
51 Criminal Procedure Law vol. 2 Laws of Lagos State, 1994(Now Criminal Justice Administration, Lagos State, 2011.C.J.A).
52 Section 264(1) of the C.J.A Lagos State.
53 D. Peter. Op.cit. P. 264.

the Multi-tudinal problems[54], confront the Nigerian Police and thwarts its efforts to quick and successful crime investigation and prosecution. These diverse problems range from lack of personnel or adequately trained personnel, poor remuneration and lack of requisite equipment and infrastructure to engender motivation, commitment and efficiency. The combination of all these result in a situation of nonchalance, and lackadaisical attitude on the part of the police to crime investigation. Hence, the resort to filing of the "holding charge" in a court lacking jurisdiction and the resultant gross violation of human rights of the person concerned[55].

Even when the case file is eventually sent to the appropriate department of the Ministry of Justice for legal advice, it sometimes merely marks another phase of delayed justice for the accused person. The cause of delay here is not uncommonly associated with the

fact that some ministries of justice are not just under-staffedbut are also cash strapped. Thus, apart from inadequate personnel, mundane things required to keep an office functioning such as files etc are sometimes not available.

This eventually results in unnecessary delay in the issuance of legal advice by the professional staff of the ministries. And when a decision is finally taken to prosecute, the actual filing of information in the High Court or at the appropriate tribunal may yet take a much longer period. In all cases, it is the accused whose rights are violently abused that suffers. From the above analysis, can it be said that holding charge practice is justifiable?

54 Akinyede, G.B.A., "The Bar, The Police and The Judiciary" (1958) Nigerian Law, Journal, vol. 1 No. 1. Johnson Adeyemi, "Nigerian Police. The Limit of Oppression" The Legal Practitioners Review vol. 1, No. 2, and see also O. Ohonbamu .The Dilemma of Police Organization Under a Federal System: The Nigerian Example (1972) Nigerian Law Journal vol. 6
55. D. Peter Op. Cit. 257

accepted as a reason for the express breach of the provisions of the Constitution. Thus, holding charge is unconstitutional, and it is preposterous to argue that the remand of an accused presumed to be innocent will deter others at large[57]

55 D. peter Op. cit. 257.
56 Section 36 of the 1999 Constitution (as amended)

However, the holding charge perfidy, leaves some ouster clauses in our laws, may be described as a "beneficial wrongdoing"[58] it is in the class of crime control model of the administration of criminal justice.

2.7 Question of legality

The 1999 Constitution contains copious provisions guaranteeing the rights of an accused person before, during and after trial in a court of law. Section 36(1) of the Constitution of the Federal Republic of Nigeria (as amended) provides as follows:

> *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 a manner as to secure its independence and impartiality.*

According to the Constitution also, every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. In the same vein, every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in details the nature of the offence, be given adequate time and facilities for the preparation of his defence, and to defend himself in person or by legal practitioner of her own choice[59].

Also, the same Constitution guarantees the right to personal liberty[60], with certain limitations thus by virtue of Section 35(4) (a-b)[61], any person arrested or detained of any criminal offence, may be released conditionally or unconditionally, to avail him the opportunity of appearance to stand trial at a time and place specified.

However, it is unfortunate to observe that notwithstanding these glittering provisions of the Constitution on the fair and speedy administration of criminal justice in Nigeria, the reality is that the law is honoured more in breach than in the observance.

Suffices to say that the process whereby the accused person is denied speedy trial for a criminal allegation leveled erson within a reasonable time is more germane considering the fact that the accused person is still presumed innocent until the contrary is proved[62].

More so, a practice where the accused person is brought before an incompetent court on a charge sheet which is read to him without his plea nor bail granted to him (even though

56. Section 36 of the 1999 Constitution (as amended)
57 C.A. Igwe Op cit P. 293
58 M.C. Okany "The Continuation of Ouster Clause in Nigerian Law after 1999: A Beneficial Wrong Doing" in Chief M.A. Ajanwachuku & H.P. Faga (eds). Contemporary Legal Thoughts: Essay in Honour of Chief Jossy C. Eze Corps Legal Aid Scheme Abakaliki, 2008. pp. 337-338

59 Section 36 (6) (a) (b) (c) of the 1999 Constitution FRN (as amended)
60 Section35 of the Constitution
61. of the 1999 Constitution FRN (as amended)
62. Adegbite V. C.O.P (2006)51 WRN PP. 196 and 187

the offence may be bailable) but remanded in prison or police custody cannot by any stretch of imagination be regarded as an arraignment but a holding charge which offends the personal liberty of the accused person as guarantees by the constitution. Thus, the court in plethora of cases had decided that holding charge is illegal and unknown to our criminal jurisprudence. For instance, in *Shagari V. C.O.P*[63], it was held that holding charge is unknown to Nigerian law and any person or an accused person detained thereunder is entitled to say that a holding charge has no place in Nigerian judicial system and persons detained under an "illegal", "unlawful", and "unconstitutional" document tagged "holding charge" must un-hesitantly be released on bail. In the instant case, the appellants were arraigned before a Chief magistrate's Court, which certainly lacked jurisdiction in homicide cases/offences and there was no formal charge framed against them accompanied by proof of evidence as at the time the High Court heard their motion for bail. The above amounted to special circumstance for the High Court to admit them on bail, but by continuing to detain them on a "holding charge" was not a judicious and judicial exercise of discretion, said the Court.

Also in *Ahmed V. C.O.P Bauchi State*[64], the appellant was arrested alongside other accused persons on allegation of having committed criminal conspiracy, mischief, causing grievous hurt and culpable homicide punishable with death. The appellant and his co-accused were arraigned before the Chief Magistrate Court I, Bauchi vide first information reports in terms of the criminal allegations. The Chief Magistrate ordered the appellant to be remanded in prison custody. The appellant then filed an application at the High Court for bail pending arraignment before a court of competent jurisdiction. The

63. (2007)5 NWLR Pt. 1027 P. 272
64. (2012)9 NWLR Pt. 13041 P. 104., Enwere Vs. C.O.P (1993)6 NWLR Pt. 279 P. 333, Oshinaya Vs. C.O.P (2004)17 NWLR Pt. 901 P. 1, Chinemelu Vs. C.O.P (1995)4 NWLR Pt. 390 P. 467

High Court refused the application, and the appellant appealed to the Court of Appeal. Allowing the appeal, the court held *inter alia*: A holding charge is unknown to Nigerian law, it is illegal and unconstitutional. An accused person detained there under, is entitled to be released on bail within a reasonable time before trial. In the case, per Oredola J.C.A at pages 128-129 stated that it is both a notorious fact and an established law, that allegation of culpable homicide shall be triable in the High of the state concerned. In this regard, where jurisdiction to try alleged offenders is vested by law in the High Court, the taking to or arraignment of an alleged offender before a Chief Magistrate Court is tantamount to "holding charge" which has been strongly and soundly condemned and described as illegal and unconstitutional…in the instant case, the chief magistrate had no jurisdiction to try the case, the Chief Magistrate had no jurisdiction to try the case of culpable homicide punishable with death. Additionally, no such charge has been place or filed before the High Court at the time the application for bail was made, considered and refused by the lower court.

From the above cases, the illegality of holding charge has been exposed and therefore an accused person ought to be released on bail within a reasonable time before trial[65].

It should be stated at this juncture that much as the enormous task of crime prevention, detention and investigation must be appreciated, the researcher is of the view that, that is enough reason to be used as a cover to give legal validity to undue detention of a citizen pending police investigation. Therefore, we should not sacrifice the fundamental right to personal liberty of presumably innocent citizens on the altar of crime prevention and detention. These rights are age long and inalienable. Nnamani, J.S.C[66]emphasized this

65. Ani v. The state (2002) 11 WRN 53; Jimoh v. C.O. P (2005) ALL FWLR (pt. 243) p.648
66 Op. cit P. 8

point when he observed thatno citizen of this country ought to be detained in any cell (without being taken to a court of law) for more than 24 hours. We ought also to finally turn our backs on the colonial argument which saw every suspect as a criminal who must be detained.

Earlier in *Ogbuawunmi V. Federal A.G & Ors*[67], Adefarasin, CJ stated that much the requirement that:

> *"persons suspected of crime should not be detained for more than 24 hours may hamper investigations, it must be rigidly observed… I have taken trouble to discuss here the powers of the police with regard to custody of suspected offenders because the practice to detain them for longer period than is prescribed by law is widespread."*

These statements, though made over decades ago, are still very much relevant today as the police still persist in detaining suspects for a period longer than stipulated by our laws under the cover of a holding charge. For this reason Nnamani, J.S.C advised:

> *"We have to develop a practice of encouraging the police to take these persons to Magistrate's court on holding charges for either bail or lawful remand. I also call on the Inspector-General to effectively halt this phenomenon by instituting a scheme that enables senior police officers to maintain constant supervision of personnel in the outlying commands"*[68].

However, it is unfortunate to note that section 264 of the C.J.A is meant to empower any magistrate court in Lagos to remand even where it lacks the jurisdiction to try the offence[69]. Subsection (1) provides as follows:

> *"Any person arrested for any triableon information offence 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 reasons for the arrests exhibited in the request form filed by the police and if satisfied that there is probable cause to remand such*

67 (1973) CCHCH. 52
68 Op cit P. 9, also reported in G.O.S Amadi Op. cit p. 200
69 Criminal Justice Administration (Lagos State) 2011

person pending legal advice of the Director of Public Prosecution or arraignment of such personbefore the appropriate court or tribunal."

According to subsection (10) of section 264, unless the context otherwise requires "offences triable on information means an offence:

a. Which on conviction shall be punished by a term of imprisonment exceeding two (2) years.
b. Which on conviction shall be punished by imposition of a fine exceeding fifty thousand (N50,000.00) naira, or
c. Which on conviction shall be punished by death.

The above provision approves that where a suspect is brought before a magistrate on a murder charge, the court can remand the suspect when such court lacks the jurisdiction to even try the offence. So also is the provision of section 293-299 of the new Administration of Criminal Justice Act 2015 which gives an open cheque to magistrates to order the remand without trial of any person who is subject of criminal investigation.

In any case, the researcher's concern with the above provision is its tendency of luring the police into sleeping over a proceeding that can keep a person charged with an offence in custody indefinitely on the ground of further investigation or inquiries before arraignment in the appropriate court or tribunal. What the researcher rather consider awful is the cheap opportunities statutory provision like these and their likes can provide for the police or lawyers prosecutors to buy time while the accused person languishes in prison custody. More worrisome is the fact that the police hardly conclude investigation and when concluded may not have prima facie evidence in support of the allegation,

hence rushing to court to secure remand order is the only perceived lawful means of playing for time. This practice is also sometimes employed by the police to punish the accused person where they have interest in the matter or case. The researcher is particularly concerned not with what these laws intend to achieve with provisions of these nature, but with what the police would want to achieve with them.

It is submitted that the laws should be repealed[70]. It is unconstitutional and violates SS. 35 and 36 of the Constitution. The Constitution is the fundamental and Supreme Law of Nigeria. It is the highest law in Nigeria and it is the foundation law on which every other law in Nigeria rest. The Constitution is the embodiment of rule of law and the foundation of rule of law, because it establishes the rule of law. The Constitution is Supreme and its provisions bind all authorities and persons in Nigeria. The action of any authority or persons which contravenes the Constitution is unconstitutional, null and void and of no effect whatsoever, and such act is liable to be set aside by court[71]. Section 1(3) of the Constitution provides that if any law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void[72]. The laws that provide for holding charge by allowing magistrates to remand on indictable offence is against the right to personal liberty of the suspect that guarantees fair trial within a reasonable time.

It follows therefore, that the usual orders by the magistrate that the accused person should be remanded in prison custody without his plea and bail is wrong.

The National assembly of the federation or the state have no power to enact laws to curtail abridge or whittle down the much cherished rights, freedom and liberty duly

70 T. Adedamola, , Nigerian Bar Journal, vol. I No 3, 2003. p. 299.
)9 (as
71 E. Malemi, the Nigeria Constitutional law (Lagos,Princeton Publishing Co.,2010) p.125
72See A.G Abia State v. A.G Federation (2002) 6 NWLR (Pt. 763) 391; INEC v. Balarabe (2003) 3 NWLR (pt. 806) P. 72 Sc; A.G Bendel State v. A.G Fed. & 22 Ors (1982) All NLR 85 SC; Doherty v. Balewa (1961) All NLR 604 SC; /Marbury

According to Obande F. Ogbuinya[73], a court devoid of jurisdiction over a matter is willy-nilly bound to make an order in respect thereof. This burden duty of court affects civil and criminal matters. Thus, jurisdiction is very important and indispensable in the determination of justice. It is the hub of all judicial processes so much that the validityor otherwise of anyproceeding turn on its existence or non existence. Bairaman, L.J. in the celebrated case of *Madukolu V. NKemdilim*[74]did not brake at marshaling the vital ingredients of jurisdiction. His Lordship summed them up by proffering the sore aftermath of defects in jurisdiction when he held that any defect in competence is fatal, for the proceedings are a nullity, however, well conducted and decided: the defect is extrinsic to adjudication[75].

Justice Kayode Eso pointed out that the substratum of a court is no doubt itsjurisdiction. Without it, the 'labourers' therein, that is both litigants and counsel on the one hand, and the judgeon the other hand, labour in vain[76]

In like manner, in *Utih V. Onoyivwe*[77] Justice Bellow states that jurisdiction is blood that gives life to the survival of an action in a court of law and without jurisdiction; the action will be like an animal that has been drained of its blood.

73 Understanding the Concept of Jurisdiction in the Nigerian Legal System (Enugu, Snaap Press Ltd, 2008) p. 414
74 (1961) NSCC (Vol. 2) 374@380.
75 See also NNPC v. Tijani (2006) 17 NWLR (pt.1007)29. Ononye v. Odota (2008) 10NWLR (Pt.1096)483; Action Congress v. Kaigama (2008) 8 NWLR (pt. 1088) 165; Njikonye v. MTN Nigeria Communication Limited (2008) 9 NWLR (Pt. 1092)339,FCE, Pankshin v. Pusmut (2008) 12 NWLR (Pt. 1101) 405:Apadi v. Banuso (2008)14 NWLR (pt.1103) 204; Edet v. State/ (2008) 14 NWLR (pt. 1106)52; EFCC v. Ekeocha (2008)14NWLR(pt. 1106) 161
76 See Attorney General of Lagos State v. Dosunmu (1989) 6. S.C.N..J. (pt.11) 134 at 179.
77 (1991) 1. N.W.L.R (pt. 166) 166 at 206.

Of equal significance is the pronouncement of Justice Akpata held inter alia that a court with jurisdiction builds on a solid foundation because jurisdiction is the bedrock on which court proceedings are based, but when a court lacks jurisdiction and continues to hear and determine judicial proceedings, it builds on quick and all proceeding and steps takenin it will not stand.[78]

From the foregoing, it is trite law that once a court observed that it has no jurisdiction to entertain a matter the proper order to make is to strike out the matter and not to remand the suspect because any subsequent proceeding or order made by the court is a nullity and consequently void[79]it follows therefore that the CJA of Lagos state and other states laws which provide for the remand of an accused person notwithstanding that the court lacks jurisdiction to try the substantive offence is against the tenet of fair administration of criminal justice in Nigeria. It is unfortunate to observe however, that the practice of holding charge has been upheld by the apex court, thereby validating states law that provide for remand order.

In *Mrs. E. ALufadeju & Anor V. Evangelist Bayo Johnson*[80] the respondent was arrested on 12th January, 1997 for conspiracy to commit reason and the commission of reasonable felony. He was taken along with eleven (11) others before the 1st appellant. Mrs. E. A Lufadeju, Chief magistrate Grade 1 on 12thMarch, 1997. The charge was read but the plea of the accused was not taken. The 1st appellant refused oral application for the bail of the respondent on the ground that she lacked the power to entertain and consider a bail application in respect of a capital offence as treason. However, the 1st appellant ordered that the respondent among others be remanded in custody at the Force (CID), Alagbon.

78. State v. Onagoruwa (1992) C.S.C.D. 17, at 19
79 Matari v. Dangaldima (1993) 3 NWLR (Pt. 281) 265.
80 Supra

Consequently, the respondent filed an application at the High Court for his bail, damages and a declaration that his detention on the remand order of the magistrate was unconstitutional. The application was dismissed. The High Court rather declared the remand order as valid, being remand proceedings under Section 236(3) of the Criminal Procedure Law, Cap 33, Vol. 2, Laws of Lagos State 1994 which provides: if any person arrested for an indictable offence is brought before any magistrate for remand. Such magistrate shall remand such person in custody or where applicable grant bail to him pending the arraignment of such person before the appropriate court or tribunal.

The respondent was dissatisfied with the decision of the High Court and he appealed to the High Court of Appeal which allowed the appeal. The Court of Appeal specifically held as follows:

a. *That the learned judge was not right to have upheld the remand order of the learned magistrate;*
b. *That there was an obvious jurisdictional error on the face of the record of proceedings;*
c. *That the learned magistrate had no jurisdiction over treason as rightly admitted;*
d. *That the learned magistrate unlawfully used the mechanism of the holding charge to remand the appellant*[81].

Surprisingly, the Supreme Court on further appeal reversed the decision of the Court of Appeal. The apex court held that remand proceeding is known to law and therefore lawful. The court was swayed into judicial sentiment, with respect because the leaned

81 Supra at P. 550 paragraphs D-F

magistrate was joined to be condemned into damages in her personal capacity[82]. The pronouncement of Niki Tobi J.S.C and Onnoghen, J.S.C are relevant in this regard. According to Justice Niki TobiJ.S.C[83]:

> *"...should the slip result in condemning the 1st appellant to damages, I ask? Should a slip of a magistrate not be corrected by the system of appeal, I ask again? When did it become the law that when a magistrate commits an error in procedure, the remedy available to the aggrieved party is to sue for damages? I must express my discomfort when a magistrate is sued for damages in the performance of judicial duties. I see in this appeal such a situation. The 1st appellant performed her duties as a magistrate in the administration of criminal justice and I feel bad that she was sued in the person. While I agree or concede that there are instances where a magistrate could be sued. I do not see any abuse of judicial power on the part of the 1st appellant. A magistrate could be wrong in the interpretation of the enabling laws but that should not give rise to an action in damages. The proper step to take is appeal against the decisionof the magistrate and not to file an action in damages."*

Per Onnoghen J.S.C[84] on his own part stated thus:

> *"...if it was not enough for him to sue the Hon. Attorney General of Lagos State, learned counsel for the respondent could have joined the Chief Registrar in the action not to proceed against the 1st appellant personally. If what has been done by learned counsel for the respondent is intended to intimidate or embarrass the bench, I believe he has field in the mission as the bench can neither be intimidated nor embarrassed in the discharge of its responsibilities under the Constitution of this nation. If anything I hold the view that it is rather the learned counsel for the respondent that should be embarrassed by personalizing what is in reality not personal.*

Notwithstanding the obvious sentiments in the above decision, they are valid and must be obeyed until set aside[85] by virtue of the doctrine of*stare decisis*and or judicial precedent. Thus, in *U.B.A Trustees Ltd V. Niger Ceramic Ltd*[86] Nnaemeka Agu J.S.C (as he then

81 Supra at P. 550 paragraphs D-F
82 C.A Igwe Op. Cit. P. 283
83. At page 564, Paras D-G it is unfortunate to observe that Niki Tobi who had in a good number of cases maintained at the court of appeal that holding charge was illegal: could not stand for justice in this case.
83 Supra at p. 550 paragraphs D-F.
84 C.A. Igwe Op.cit p. 283.
85 At page 564, paras. D-G. It is unfortunate to observe that Niki Tobi who had in a good number of Cases maintained at the Court of Appeal that holding charge was illegal; could not stand for justice in this case.

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what the Supreme Court said it is, once they have decided a point of law, their decision as by the doctrine of *stare decisis* is binding on all other courts in the country. The farthest to which any court can go is to criticize but apply it.

But it may be queried thus: what becomes of the ideas contained in the decision of the Supreme Court in *Rossek V. A.C.B*[87]where it was stated thatcertainty ought not be maintained on the alter of erroneous construction clearly at variance with the express words and intentions of the provision construed. A docile adherence to the rule of binding precedent even where the decision is found to be erroneous is more productive of injustice.

It is on this premise that the researcher maintain that holding charge procedure is illegal and all orders proceeding therefrom are nullities. This view is supported by the recent decision of the Appeal Court in the case of *Agundi V. C.O.P*[88] where it held that it is unconstitutional for a magistrate court to take cognizance of an offence, remand a suspect into prison custody and make binding orders when the court lacks the requisite jurisdiction to entertain such matters.

However, it is submitted that when the opportunity presents itself, the Supreme Court should seize same to affirm the unconstitutionality of holding charge[89]. And also that any law that sanctions holding charge should be interpreted narrowly, strictly and restrictively 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 constitutional rights upon reliance on the

86. U.B.A Trustees Ltd. V. Niger Ceramic Ltd. (1987) 3 NWLR (pt. 62) 623.
87 (1993) 10 S.C. N.J 20 at 116.
88 (2013) All FWLR (pt. 660) 1243.See also Ahmed v. C.O.P Bauchi State (2012) 9 NWLR (pt. 1304) 104.
89 See C.A Igwe. Op.cit P. 283

adversely affects the rights of citizen is to construe the statute fortissine contra preferetes to avoid injustice and advance the protection of the rights of the citizens[91]

2.8 Conclusion

Having dealt with preliminaries of holding charge and the reasons behind its adoption and the question of legality, one can say with a fair degree of certainty that notwithstanding the absence of any Constitutional or Statutory definition of the concept, the practice exists and portends grave danger to the criminal justice system necessitating the current study.

90 Ibid .
91. Chief Great Ovadje Ogboru V. Chief James Onanere Ibori and 27 Ors (2005)13 NWLR Pt. 942 P. 310 at P. 393 Paras A-C; Garba V. Federal Civil Service Commission (1988)1 NWLR Pt. 449; Fyouzughur V A.G Benue State (2005)5 NWLR Pt. 918 P.226 at 248

CHAPTER THREE
EMERGING ISSUES ON HOLDING CHARGE AND THE RIGHTS OF SUSPECTS

3.1 Introduction

The previous chapter is all about the concept of criminal justice on holding charge phenomenon. The current chapter bothers on emerging issues in so far as it has to do with the rights of suspects. Human rights, as we know them today, assumed formidable dimensions in the Post-World War era, catalyzed by the desire of peoples and nations to redefine, reassert and restore the intrinsic worth and dignity of man after the bitter ravages and savagery of that war. This desire found expression in concrete terms on December, 10, 1948 when the General Assembly of the United Nations Organization (UNO) adopted the Universal Declaration of Human Rights.

However, the philosophical foundations of human rights are traceable to the Natural Law Theories of the early times[1]. In their view, Nature endowed man with certain rights which protect and preserve the sacredness of the human person as inviolable, equal to his fellow man, free and independent. The Natural Law Theory emphasizes the universal nature of the rights of man. As Niall McDermott puts it that Human Rights are part of the common heritage of all mankind without discrimination on grounds of race, sex, religious or other differences. These rights, common to all mankind, have a long history many of them finding their origin in religious teachings. But now, in our lifetime, they have been formulated more fully than ever before and agreed to by all peoples from all parts of the world[2].

1. Osita Eze: Human Rights in Africa: Some Selected Problems. (Nigerian Institute of International Affairs, Lagos, in co-operation with Macmillan Nigeria Publishers Limited, 1984). Ashild Samnoy: Human Rights as International Consensus: The Making of the Universal Declaration of Human Rights. (Thesis for the Candidate of Philosophy, Department of History university of Bergen; May, 1990).
2 Naill Macdermolt: Opening Address to the International Conference on Human Rights Education in Rural Environments, Lagos, Nigeria, 1985. P. 10. For other contributions along this line, see Chukwudifu Oputa: Human Rights in the Political and Legal Culture of Nigeria, at the Second Idigbe Memorial Lectures, 1986, P. 45. Chukwuweike Idigbe: Fundamental Rights Provisions of the Constitution, at the all Nigerian Judges Conference

Nigeria's fundamental human rights provisions[3] are essentially civil and political in nature apparently on the recommendation of the Willink Commission on Minorities[4]. The other categories of rights are represented under the Fundamental Objectives and Directive Principles of State Policy[5] which are however non justiciable[6].

Unfortunately, the menace of holding charge has devastating consequences on the fundamental human rights of suspects. The consequences have corresponding effects on Nigeria's criminal justice system and therefore make the call for far-reaching reforms, an absolute necessity. Thus, this chapter will analyze the affront of holding charge to the accused rights to personal liberty, fair trial within a reasonable time and presumption of innocence etc.

3.2 Meaning of Human Rights

The concept of human rights, like most juristic concepts, evades an apt definition. According to Prof. Nwazuoke[7], one point of major agreement is that , the addition of the adjective 'human' to rights indicate that the rights in question belong solely to human beings, and all that is needed to have them in human nature. It is on this basis that they have been described as inalienable[8].

In 1945, the nations of the world realize and expressed in the Chapter of the United Nations[9], that the future peace of the world depended on the guaranteeing to every man, woman and child of certain fundamental human rights and freedoms. In a succession of Declarations and Charters since then, on almost every continent upon the globe, those

3 Chapter IV of the 1999 Constitution (as amended) (herein after referred to as the constitution)
4 Ojo, A.,/Fundamental Human Rights in Nigeria; The 1963 and 1979 Constitutional Provisions, Nigerian Journal of Contemporary Law (1977-1980); p. 118.
5 Chapter 11 of the Constitution.
6 By virtue of Section 6(6) (c) of the Constitution
7 A.N. Nwazuoke /Introduction to Human Rights Law/ (Abakaliki, Copycraft In't Ltd, 2006) P.7.
8 Ibid.
9 The League of Nations was the Precursor of the United Nations Organization.

rights and freedoms have been enshrined as among the most precious aspirations of the people.

Human rights include (but are not limited to) those civil and political rights, which are recognized and protected in the domestic (constitutional) jurisprudence of most modern nations[10]. Civil and political rights are essentially conceptualized as checks on the abuse on the state power, and include the rights to privacy, free movement, personal liberty, free association, equality before the law etc.

Human rights have been described by the Naturalist School of jurisprudence as inalienable and proceeding from the law of nature and not as a gift of any civil authority[11]. The philosophical foundations of human rights are traceable to the Natural Law Theories of the early times. In their view, nature endowed man with certain rights that protect and preserve the sacredness of the human person as inviolable, equal to his fellow man, free and independent. The Natural Law Theory emphasizes the universal nature of the rights of man. As Niall McDermott puts it:

> *Human Rights are part of the common heritage of all mankind without discrimination on grounds of race, sex, religious or other differences. These rights, common to all mankind, have a long history many of them finding their origin in religious teachings. But now, in our lifetime, they have been formulated more fully than ever before and agreed to by all peoples from all parts of the world*[12].

It follows from the above, that human rights are the creation of nature, there are right that every individual irrespective of race, religion, ethnic group, sex or disability have been endowed by nature. It is a gift of nature and protected by the Constitution. Chapter II and

10 See Chapter 1V of the Constitution.
11. Thomas Jefferson Cited in Henry J. Steiner and Philip Alston (2000) International Human Rights in Context 2nd Edition, Oxford, P. 325
12. Niell MacDermott: Opening address to the International Conference on Human Rights Education in Rural environments, Lagos Nigeria, 1985 P.10

demands or claims which individuals or groups make on society, some of which are protected by law and have become part of the lex leta, while others remain aspiration to be attained in the future[14].

The apex court had also defined human right in the celebrated case of *Ransome Kuti V. A.G. Federation*[15] where Kayode Eso J.S.C (as he then was) held that human right is a right which stands above the ordinary laws of the land and which is in fact antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution since independent is to have these rights enshrined in the constitution so that the right could be immutable to the extent of the non-immutable to the extent of the non-immutability of the constitution itself.

Fundamental Rights are rights derived from natural or fundamental law. In *Igwe Vs Ezeanochie*[16], it was held to be universal in the sense that all people have and should enjoy them and to be independent in the sense that the exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country. The moral doctrine of fundamental rights aims at identifying the fundamental prerequisites for each human being leading a minimally good life. The fundamental rights law in Nigeria is contained, *inter alia*, in two major documents. These are, the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the African Harter on Human and Peoples' Rights (Ratification and Enforcement) Act.[17]

13. Though Chapter II of the 1999 Constitution FRCn (as amended) is non justiciable.
14. Osita Eze, Human Right in Africa: Selected Problems (Lagos: Macmillan, 1984) P. 5.
15 (1985) 2 NWLR (pt. 6) 211 at 230.
16 (2010) 7 NWLR (Pt. 1192) 61
17 Cap. A 9 L.F.N-2004

The statute books gave protection to those rights written in there and also provide for their due enforcement. Thus, if any person fells that his or her rights have been breached or contravened by any person or authority, such person is allowed to apply in the High Court of the State for redress[18].

3.3 The Rights of Personal Liberty

Right of personal liberty is perhaps one of the most cherished of all rights, probable next in importance to the right to life. Professor Stone has well written that one of the hallmarks of a free society is the ability of its citizen to go about their business without the need to explain to anyone in authority what they are doing, and without the fear that they may be subject to arbitrary challenge or arrest.[19]

According to Dr. Okpara[20], every person no matter his or her condition in life views his liberty or physical freedom as a priceless attribute as a human being created in the image of God himself with rational possibilities. Lord Denning in a general sense, defined right to personal liberty as the freedom of every law-abiding citizen to think what he will, to say what he will on his lawful occasions without let or hindrance from any other persons."[21]

The above statement must not be seen as entirely descriptive of personal liberty as it appears not to recognize the limitations on individual rights to personal liberty. The following commends of Justice Pius Aderemi[22] attempts to achieve the balance required in formulating an acceptable definition of the right to personal liberty:

18 See S. 46(1) & (2) of the Constitution FRN 1999 (as amended)
19 Prof. Richard Stone, Textbook on Civil Liberties, Blackstone Press Ltd, London, 1994, P. 29.
20 Dr Okpara Okpara Op.cit P. 139.
21 Lord Denning, Freedom Under The Law (1949) P. 5.
22 Eyu V. State (1988) 2 NWLR (Pt. 78) 602 at 626, paragraphs G-H.

> *"Freedom is no doubt the greatest gift or heritage of man. Omnipotence created man and accorded him with divine freedom. Man are born free with liberty to think what he will, to say what he will and go where he likes, all in a lawful manner without let or hindrance from any other person, private or governmental authorities. It therefore follows that generally, detention of a man by a fellow man is a violation of the law of God and man. I am not oblivious of the fact that they are checks and balances o the series of freedom given to man. To the extent to which a man must not do his things in a way calculated to injure or adversely affect the exercise of the freedom of another man, his own freedom is limited."*

From the above therefore, right to personal liberty, is the right not to be subjected to imprisonment, arrest and any other physical coercion in any manner that does not admit of legal justification.[23]

The right to personal liberty is prescribed under section 35(1) of the 1999 Constitution of the Federal Republic of Nigeria (as altered) viz:

1. Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law:
   a. In execution of the sentence or order of a court in respect of a criminaloffence or which he has been found guilt;
   b. By reason of his failure to comply with the order of a court in order to secure the fulfillment of any obligation imposed upon him by law;
   c. For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminaloffence, or such extent as may be reasonably necessary to prevent his committing a criminal offence.

23 E.C.S. Wade, Law of the Constitution, 10th ed.; chapter 5, pp. 207-208.

d. In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their case or treatment or the protection of the community.

e. For the purpose of preventing the unlawful entry of any person into Nigeria or of affecting the expulsion, extradition or other lawful removal fromNigeria of any person or the taking of proceedings relating thereto.

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence. Similarly, Article 6 of the African Charter on Human and People's Rights[24] provides that every individual shall have the right to liberty and to the security of his person. No one may be deprived his freedom except for reasons and conditions previously lay down by law. In particular, no one may be arbitrarily arrested or detained.

Subsumed in the personal liberty provision are other rights of a custodial detainee. These include the right not to be in custody awaiting trial for a period longer than the maximum period of imprisonment prescribed for the offence[25], right to silence[26], right to be arraigned within a reasonable tim.[27] The deprivation of personal liberty is unlawful except in the specified cases, and even in the specified cases, it is still unlawful except law specifically authorizes it. With the sanction of law enacted by the legislature, five

24. (Ratification and Enforcement) Act, Cap. A 9 L.F.N 2004. The African Chapter is part of the laws of Nigeria and therefore should be accorded equal weight with it, regard being had to international obligations Nigeria has assumed under the Chapter. See Ogugu V State (1994)9 NWLR Pt 366: AbachaV Fawehinmi (1996) NWLR Pt. 475 P. 710 at 745
25. This is perhaps the most observable lapse in the holding charge phenomenon. Suspects are kept awaiting trial for periods much longer than they would have remained in prison custody if they were convicted for the alleged offences
26. this is the presumption against self incrimination that is constitutionally recognized under Section 36(1) of the Constitution
27. Section 36(4) of the Constitution prescribes two months for persons under custodial arrest and three months for other cases. In other words the person shall be I n detention without arraignment for longer than three months

with a court order, detention in connection with the commission of a criminal offence,

24 (Ratification and Enforcement) Act, Cap. A 9 L.F . N 2004. The African Charter is part of the laws of Nigeria and therefore should be accorded equal weight with it, regard being had to international obligations Nigeria has assumed under the Charter. See Ogugu v. State (1994) 9NWLR (pt. 366) ; Abacha v. Fawehinmi (1996) 9 NWLR (Pt. 475) 710 at 745.
25 This is perhaps the most observable lapse in the holding charge Phenomenon. Suspects are kept awaiting trial for periods much longer than they would have remained in prison custody if they were convicted for the alleged offences.
26 This is the presumption against self-incrimination that is constitutionally recognized under Section 36(1) the Constitution.
27 Section 36(4) of the Constitution, prescribes two months for persons under custodial arrest and three months for other cases. In other words,

preventive detention pursuant to conviction and sentence by a court for a criminal offence[28].

Thus, detention is constitutionally permitted when the law in the case of a person reasonably suspected of having committed a criminal offence, authorizes it. But a person so detained must be brought before a court of law[29] within a reasonable time[30]. It has been argued that persons detained under holding charges are held for the purpose of being brought in courts in execution of an order of court but the decision in *Shola Abu and 349 Ors V. Commissioner of Police, Lagos State and Ors*[31] has however punctuated this argument.

According to Justice Olokooba[32]Such orders by magistrates' courts have been held unconstitutional above being ultra vires the magistrate…In other words the applicants have been held not to have been detained in accordance with a procedure permitted by law. They were ordered to be remanded pursuant to a void order. Where this is the case, the order the court ought to make is an order releasing the suspect.

Justice Olokooba's clear distinction between detention pursuant to a valid order of court and that following an invalid order is instructive in view of the persistent resort to section 35 of the constitution to justify detention under holding charges. Interestingly, the *Shola Abu's* case also considered propriety of detention for the purpose of being brought before

28 Nwabueze, B.O. The Presidential Constitution of Nigeria United Kingdom, C. Hurst & Co. (1982).
29 Court of law must be interpreted to mean a court having jurisdiction to try the offence for which the accused person was arraigned before it.
30 Reasonable time is defined in section 36(4) of the constitution
31 Unreported Suit no. IKD/M/18/2003, a decision of the Ikorodu High Court delivered on the 28th of July 2004.
32 Ibid, P. 26 of the ruling.

the purpose of being brought before a court upon reasonable suspicion of their having

committed criminal offences. The emphasis here is on "reasonable suspicion" it also necessary to show that, that is the real purpose for which the applicants are being detained. Arresting a citizen, charging him before a court of incompetent jurisdiction in the indeterminate future would not appear to me to demonstrate the reasonableness of the suspicion pursuant to which he has been deprived of his liberty.

The Judge further maintained that[34] to demonstrate that a citizen is detained pending being brought before a court of law upon reasonable suspicion of a criminal offence, those who claimed to have reasonably suspected him of the offence and apprehend him for the reason must demonstrate the reasonableness of their suspicion by arraigning him before a court of competent jurisdiction, where the reasonableness therefore will tested within a reasonable time.

This research cannot agree more with the learned judge. It remains to add that Section 35(1) of the Constitution and Article 6 of the African Charter on Human and Peoples' Rights guarantee the right to liberty and disclose exceptions but do not contemplate the power of magistrates to make remand orders as contained in Section 264 of the CJA of Lagos State[35]. As a matter of fact, Article 6 affirms that…no one may be arbitrarily arrested and detained. Consequently, a conflict exists between Section 264 of CJA and S. 35(1) of the Constitution of the Federal Republic of Nigeria (as amended). Under the

33 Ibid,P. 27 of the ruling
34. Ibid.
35. And other States Laws that have similar provisions.

conflict or inconsistent with the provisions of the Constitution whether directly or indirectly void[36]. By and large, it should be noted that the liberty of the individual person

36 And other States Laws that has similar provisions.
37 See Ibidokun v. Adaralode (2001) 12 NWLR (pt. 727) 268 at 312.

is central to all the advantages of a civilized society. To therefore deprive an individual of his personal liberty on whatever guise without just cause is a grave step in the process of administration of justice.

3.4 The Right to Fair Trial within Reasonable Time

Notwithstanding the glittering provisions of Nigerian Law on the speedy administration of criminal justice in Nigeria, the reality is that the law is honoured more in the breach than in the observance. The chorus 'justice delayed is justice denied' has become a senseless nuisance to most of the persons and institution which are intimately connected with the administration of justice in our country and a saddening reminder to those directly affected, of a totally bankrupt system of administration of justice. This is of course extremely sad, since that chorus is absolutely true[37].

Section 36 (4) of the Constitution provides: whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal, provided that:

a. A court or such a tribunal may exclude from its proceeding persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice.

36. Ibidokun Vs. Adaralode (2001)12 NWLR Pt. 727 P. 268 at 312

37. T.A. Aguda, "The Challenge for Nigerian Law and the Nigerian Lawyer in the 21st Century", a Nigerian National Merit Award winners Lecturer, Presented on September 14, 1988, at 3-4.

b. If any proceedings before a court or such tribunal, a minister of the government of the federation or a commissioner of the government of a state satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matte rot be heard in the private and shall take such other actions as may be necessary or expedient to prevent the disclosure of the matter.

Similarly Article 7(1) (d) of the African Charter provides that:

> Every individual shall have the right to have his case heard. This comprises (d) the right to be tried within a reasonable time by an impartial court or tribunal.

The above provisions as well as Article 10 of the United Nations Universal Declaration on Human Rights[38] (UDHR) guarantee fair hearing. Article 10 of the UDHR provides:

> *Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

The right to fair trial within reasonable time[39] embodies two important components namely, the right to fair hearing and the right to speedy trial. It is imperative to note that

38 (1948) General Assembly Resolution 2174 (111).

39 Reasonable Time is the Shortest time a cause or matter ought to be heard and determined having regard to the dictates of the law and the requirement of fair hearing. Beyond the said period, inordinate delay, which vitiates fair hearing sets in. See Obaseki A.O. (Justice). "Defeating Delay-Case Flow Management; A keynote Address Delivered at a Seminar for Legal Practitioners Organized by continuing Legal Education Association of Nigeria (CLEAN) in Lagos, Nigeria on March 16, 2012 at P. 3.

the court or tribunal; fair hearing entails merely from arrangement to the putting of the case for the defence[40].

What emerged from the brief analysis above is that suspects held under the holding charge are not properly arraigned considering that a critical ingredient of the arraignment process is always missing namely, the plea. However, when examined thoroughly, the right to fair hearing gives rise to the following components rights, a few of which become relevant to the current discourse– right to presumption of innocence[41]; right to the informed promptly and in detail the nature of the offence charged in the language which the suspect understands[42] right to be given adequate time and faculties for the preparation of his defence[43]; right to defend himself in prison or by counsel of his choice[44], right to examine in person or by his legal practitioner witnesses called by the prosecution or by the defence[45].

The purpose of bringing a suspect before a court of competent jurisdiction is to enable the court decide the plausibility of releasing the suspect. Trial within reasonable time is constitutionally stipulated because delay impairs the ability of an accused person to defend himself in view of the fact that a vital witness may have died in the interval or the reelection of the facts by other witnesses may have become blurred.

40 Adeyemi, A.A., Criminal Justice Administration in Nigeria in the Context of the African Charter on Human and peoples' Rights: in Kalu, A. and Osinbajo, Y. (eds.) (1992) Perspectives on Human Rights. PP. 121-141 at 129.
41 Section 36(5) of the constitution. This right is discussed latter in this work.
42 Ibid, Section 36(6) (a)
43 Ibid, Section 36(6) (b)
44 Ibid, Section 36(6) (c)
45 Ibid, Section 36(6) (d)

A rebuttable presumption of law refers to the inference drawn from specific facts, which are conclusive until disproved by evidence to the contrary[46]. The concept of presumption of innocence is a rebuttable presumption of law. Presumption of innocence is exemplified

in Section 36(5) of the constitution provides every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.

Article 7(1) (b) of the African Charter similarly provides every individual shall have the right to have his cause heard. This comprises: (b) the right to be presumed innocent until proved guilty by a competent court or tribunal.

The International Covenant on Civil and Political Rights (ICCPR)[47] and UDHR equally has provisions recognizing the presumption of innocence in favour of persons charged with criminal offences. Accordingly, Article 14 of ICCPR provides:

> *"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."*

Article 11 of the UDHR also provides:

> *"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in public trial at which he has had all the guarantees necessary for his defence."*

The import of the above provisions is that there is general presumption of innocence in favour of an accused person unless the contrary is proved in a court of competent jurisdiction. Section 145 (2) of the Evidence Act[48] states that whenever it is directed by this Act that the court shall presume a fact, it shall regard such as proved facts as proved

46 Bones (ed.) et al Osborn's concise Law dictionary 9th edition London. Sweet and Maxwell, 2001 p. 297.
47.The ICCPR entered into force on 23rd march 1976.
48 Evidence Act 2011 (amended)

The burden of proving the guilt of an accused person rests on the prosecution and the standard of proof is beyond reasonable doubt[49]. In the case of *Goni V. Bornu Native Authority*[50] the court held that "it is not the duty of the accused to prove his innocence, it

is the duty of the accuser (prosecution) to prove his guilt." This is coterminous with the case of *Bhai Chaggan Bhai V. State of Gujurat*[51] where the Indian Supreme Court held *inter alia* that it is a fundamental principle of criminal jurisprudence that an accused is presumed innocent. Therefore, the burden lies on the prosecution to prove the guilt of an accused beyond reasonable doubt. This general burden never shifts and it always rests on the prosecution.

In Nigeria, there are many instances in which accused persons are incarcerated in some prisons for very long periods of time without trial. Where an accused person is detained for about two years without trial, would that contravene the presumption of innocence?

In the case of *Musa and 7ors V. C.O.P*[52], the appellants were arraigned before the Upper Area Court, Kabong, Jos, upon allegations in a First Information Report of commission of several offences including culpable homicide punishable with death. The appellants were detained for about 22 months. The Upper Area Court refused their application for bail on the grounds that it lacked the jurisdiction to do so. The High Court also dismissed their application for bail. On appeal, the Court of Appeal held *inter alia* that the continued detention of the appellants in prison custody for 22 months is "contrary and

49Ibid. section 135(1(. See also Musa and Anor v. COP (204) 9 NWLR (Pt. 879) 483 at P. 502; Fayemi v. Oni (2009) ALL FWLR (Pt. 493) 1254.
50 (1957) NWLR 40 at 42.
51. (1964) SC 1563
52. (Supra) Pp. 498-499 Para H-F and P. 505 Para A-B Ratio 2

> *"…it is now settled, that it is better for one hundred accused persons to go scot free, than for one innocent person to be punished for an offence he did not commit or had no hand in its complicity. That is why the provision in section 36(5) of the 1999 constitution that every person who is charged with an offence shall be presumed innocent until he is proved*

guilty and this will be, beyond reasonable doubt. Happily, sentiment, have no place in our courts."

Thus, on the authority of *Musa V. C.O.P*[54], it was held that the detention of an accused person for two years, without trial, is a gross violation of the presumption of innocence[55].

It should be noted that the right to bail is essential to the realization of the principle of presumption of innocence provided by the Nigerian Constitution and the African Charter on Human and Peoples' Right. Where the right of an accused person to bail is arbitrarily refused by the court, the provision of presumption of innocence under Nigeria Law would be rendered otiose[56]. Thus, in the case of *Obekpa V. C.O.P*[57], the court observed that it is a constitutional privilege which an accused person is entitled to under the Constitution, unless the right to bail or freedom before conviction is preserved, protected and allowed, the presumption of innocence constitutionally guaranteed to every individual accused or a criminal offence would loose its meaning and force.

It follows from the above that the provision of presumption of innocence under Nigerian Law can only be efficacious if accused persons awaiting trial are admitted to bail. In the case of *Saidu V The State*[58] Obaseki, J.S.C (as he then was) held as follows:

53 (1964) SC 1563
54Supra, Pp. 498-499 Para H-F and P. 505 Para A-B Ratio 2.
55 Ibid P. 502
56 Supra.
57See also Nwankwo & Ors v. The Queen (1959) 2 S.C.N.L.R. 675. (The accused persons or at least some of them, were charged to court a year after their arrest and detention by the police).
58 Paul A.E. The Legal Effect of the Principle of Presumption of Innocence under Nigerian Law: "The Rights of an Accused Person in Perspective". Human Rights Review: An International Human rights Journal 2010. vol. 1, No 1 P. 319.

women.

It is apposite to note that the days when courts are inclined not to grant bail to accused persons charged with serious criminal offence, such as capital offences, are over in contemporary Nigeria. In the relatively recent case of *Adamu Suleiman and Ors V. C.O P*

59 (1980) INNLR 113.
60 (1982) 4 SC 41
61 (2008) 8 NWLR (Pt. 1089) P. 298 at PP. 324-327. para A-A.
62 Ibid P. 322 paras D-G.

Plateau State[59], the Supreme Court held *inter alia*, that "the court can, in appropriate case, grant bail to a person accused of murder."

The court per Niki Tobi[60] J.S.C., held that the right of bail, a constitutional right, is contractual in nature. The effect of granting bail is not to set the accused free for all times in the criminal process but to release him from the custody of the law and to entrust him to appear at his trial at a specific time and place. The object of bail pending trial is to grant pretrial freedom to an accused…

According to Paul Adole Ejembi,[61] where an accused person is tried In a court of competent jurisdiction and is discharged and acquitted, the right to presumption of innocence become irrebutable, subject to appeal and ought to be given full legal effect. Little Wonder the Supreme Court in the case of *Onasanya Vs. The state*[62]statedthat:

> *"…where there is absolutely no evidence against an accused person at the end of the prosecution's case, the court is under a legal obligation to discharge him at that stage. To do otherwise would be tantamount to placing upon the prisoner the onus of establishing his innocence. This is a contravention of the presumption of innocence enshrined in the constitution"*

It may be deduced in the light of the foregoing, that presumption of innocence presupposes that a person accused of an offence no matter the gravity of the offence, is an innocent as a dove, until the contrary is proved, and such an accused person ought to be treated as an innocent person by all and sundry.

Also, suffice to say here is the fact that the right to presumption of innocence begins at the time of suspicion for crime, and runs through out arrest, preferment of charges, and trial. Therefore, Section 264 of the C.J.A of Lagos State[63] violates the presumption of

innocence by permitting prolonged detention prior to charge when the case against the suspect has not been settled. The pretrial process must be premised on the goals of fairness and minimal error. The principles of due process require that a judicial determination in the form of bail hearing should precede the deprivation of liberty at the pretrial stage. The presumption of innocence should guide the fact finder in that determination and prevent inferences of guilt flowing from the mere fact of arrest.

3.6 The Right to Dignity of Human Person

The dignity to the human person is rated very high in comparison with other rights. Dignity is perhaps the most fundamental attribute of an individual's personality and this makes it necessary that it should be protected in all circumstances.

Section 34(1) of the constitution provides:

> *Every individual is entitled to respect for the dignity of his person and accordingly.*
>
> a. No person shall be subjected to torture or inhuman or degrading treatment;
>
> b. No person shall be held in slavery or servitude;
>
> c. No person shall be required to perform forced or compulsory labour

Similarly, Article 5of the African Charter on Human and Peoples' Rights provides that:

> *Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition to his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.*

63 Paul A.E. Op.cit. P. 321.

The wordings of these provisions are clear and unambiguous and the law is that they should be construed and given their literal interpretation[64]. Unfortunately, the above right is respected more in breach than in adherence, when viewed in terms of the deplorable living conditions in our prison, and the manner the law enforcement agencies treat suspects. For instance, in the case of *Mr. Kingsley Ikonna V. Commissioner of Police, Lagos State and 4 ors*[65] the applicant was arrested by some policemen who allegedly raided a hotel to arrest a robbery suspect. In a bid to obtain a confessional statement, the applicant was then taken to a detention facility and subjected to physical abuse and torture by the policemen. The court held *inter alia*: The fundamental rights of citizens are constitutionally guaranteed in Chapter IV of the 1999 constitution, the court has a duty to protect these constitutionally guaranteed rights. In the instant case, the applicant was incarcerated and subjected to severe torture. There is also evidence that applicant was unlawfully arrested and no attempt has been made by the respondents to prove the lawfulness of the arrest and detention. Therefore, the arrest and detention of the applicants as well as his torture and shooting while in detention and his continued illegal and unlawful.

64 And other similar States Laws that permits remand orders by Magistrate on Indictable Offences.
65. (2010)12NMLR Pt. 1 P. 365

Also, in the case of *Mogaji V. Board of Customs and Exercise*[66], Adafarasin C.J held that it is a violation of the constitutional prohibition of inhuman or degrading treatment to organize a raid with use of guns, horse whips, tear-gas, and strike or otherwise injure custodians of such goods. In *Alaboh V. Boyles and Anor*[67], the beating, pushing and

subversion with the applicant's head in a pool of water by the first respondent was held to constitute inhuman and degrading treatment.

A prisoner, as a result of being in prison, is particularly vulnerable to arbitrary and unlawful action. Those who are responsible for his imprisonment should be subject to the scrutiny and control of, and in particular, the ordinary courts of the land[68].

Judge Tumin's postulation is more appropriate for Nigeria considering the prejudice that follows imprisonment. The prisoner, having been neglected by society and the prison system must find some solace in the law and the courts. Accordingly, an International Legal Instrument[69] provides that all persons under any form of detention or imprisonment shall be treated in a human manner and with respect for the inherent dignity of the human person.

It should be noted that respect for human dignity is a critical issue in most Nigerian prisons. This is because the fact of imprisonment appears to offer some incentive to

66 (1982) 2 NCLR 552 Pp. 561-562.
67 (1984) 3 NCLR 830.
68 His Honour Judge Stephen Tumin, Prison Disturbances April 1990: Report of an Enquiry (CM 1456, 1991) part 2. 14-294.
69. United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 1-United Nations Document A/43/49 (1988). Principle 6 further declares that "Cruel, inhuman or degrading treatment should be interpreted so as to extent the widest possible protection against abuses, whether physical or mental, including the holding of a determined or imprisoned person in conditions which deprive him, temporarily or permanently of the use of any of his natural services, such as sight or hearing, or his awareness of place and the passing of time".

Rule 8 of the United Nations Standard Minimum Rules for the Treatment of Prisoners[70] to which Nigeria is a signatory provides as follows:

> *"The different categories of prisoners shall be kept in separate institutions taking into account of their sex, age, criminal record, the legal reasons for the detention and the necessities of their treatment*"[71]

However, in Nigeria, segregation of prisoners is observed more in breach despite the express provisions of Section 2(4) of the Prisons Act[72] to that effect. Thus, the Former Director of the Nigerian Prison Service, Mr. Lily Ojo, admitted that there is a problem when he said that the problem of overcrowding has not only imposed strains on prison management but has rendered the concept of classification meaningless in our prisons[73]

According to D. U. Ekumankama[74] the direct consequence of overcrowding and or congestion of prison is that, even good managers are rendered helpless as there is nothing they can do on their own to solve the problem. The position as reported by the Nigeria Law Reform Commission in 1983[75] is that offenders are locked up under inhuman conditions often with one hundred inmates occupying a cell that was meant for at most 20 persons. The prison cells are overcrowded and without good ventilation, and the building erected during the colonial era has no room for extension.

It is humbly submitted that being a prison inmate, does not confer a status of "awaiting death" on the prisoner. Therefore, it is absolutely wrong to bastardly treat inmates'anathematic ally. Consequently the practice of holding charge is incompatible with and therefore significantly impairs suspect's right to dignity of the human person.

3.7 Conclusion

This chapter captured emerging issues on holding charge, the concept of human rights, the right to fair trial within reasonable time, the right to presumption of innocence, the right to dignity of human person and the procedures permitting it. Consequently, the

70 Adopted by the First United Nation Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955 and approved by the Economic and Social Council by its Regulations 663 (XXIV) of 31st July 1957 and 2076 (LXII) of 13th May 1977.
71 In adopting the above international regulation, the Prisons Regulations made pursuant to the Prisons Act has in its Sections 15,16 and 17 made similar provisions.
72 Prisons Act Cap. P.29 L.F.N 2004.
73 See Lily Ojo, "The State of the Nigerian Prisons" being a paper delivered at the National Seminar on Prison Reform June 18-20, 1990. P.7.
74 Dennis Ude Ekumankama Op citP. 228.
75 Quoted in "Behind The Wall" Published by Civil Liberties Organization in August, 1996. P.1

practice of holding charge is incompatible with relevant laws and therefore significantly impairs the right of suspect, the cornerstone of this endeavour.

CHAPTER FOUR

THE EFFECT OF HOLDING CHARGE PRACTICE

4.1 INTRODUCTION

The previous chapter discussed the emerging issues on holding charge and the rights of suspect. The present chapter revolves around the effect of holding charge phenomenon within the framework of criminal system; the Nigeria scenario.

4.2 Effect on Speedy Administration of Criminal Justice

Holding charge practice is one of the chief reasons why criminal trial in Nigeria is largely regarded as unfair. Even though much has been said about the illegality and unconstitutionality of the practice in Nigeria's criminal justice system[1], the practice still persists, maybe on the strength of the Supreme Court decision in *Johnson V. Lufadeju.*[2]

The right to fair hearing within a reasonable time is guaranteed by section 36 of the constitution of Nigeria (as amended). By Section 36(4) of the constitution, whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. Additionally Article 6(d) of the African Charter on Human and Peoples' Rights makes provision for the right of an accused person to be tried "within a reasonable time". Although, the term "reasonable" is nebulous[3], in section 35(5)(a) and (b) of the same Constitution the expression a "reasonable time" is defined as period of one (1) day in the case of arrest or detention in any place where there is a court of competent jurisdiction

1. Olawoye v. COP (Supra), Ahmed v. C.O.P (Supra), Shagari v. COP (Supra), Agundi v. COP (Supra), Enwere v. COP (Supra), Oshinaya v. COP (Supra), Chinemelu v. C.O.P (Supra), Onagoruwa v. State (Supra), Anakwe v. C.O.P (Supra), Adegbite v. C.O.P. (Supra).
2. Supra.
3. Nnajiofor Vs. Ukonu (1989)2 NWLR Pt. 9 P. 686 at 695; Unongo Vs Aku (1983)2 SCNLR 332

within a radius of forty (40) Kilometers, and in any other cases a period of two (2) days or such longer period as, in the circumstances may be considered by the court to be reasonable. Also what amount to reasonable time has been well settled by the Supreme Court in the case of *Ariori V. Elemo*[4]. The Court held per Obaseki, J.S.C that reasonable time must mean the period of time which in search for justice, does not wear out parties and their witnesses and which is required to ensure that justice is not only done but appears to reasonable persons to be done."[5]

Whatever period the court may in any circumstance consider reasonable, it is my humble opinion that the quality of justice the court will at any time administer will depend greatly on the time. And it should be borne in mind that criminal justice is such that requires speedy administration, because of its punitive nature. The common slogan, "justice delayed is justice denied" could be given credence when the courts allow the unwholesome practice called "holding charge" to be a bump or even a barricade in the quest to administer criminal justice.

Although every case has to be examined and determined on its own peculiar facts and circumstances, the American Court laid down some guiding factors to be considered in construing the delay in prosecuting an accused person. In *Baker V. Wingo*[6], the court observed that Some of the factors which court assess in determining whether a particular defendant has been deprived of his rights. Though, some might express them in different ways, we identify for such factors length of delays, the reason for the delay, the defendants assertion of his rights and prejudice to the defendants.

4. (1983)1 SCNLR 1 at 24-28 and 15-16
5. Isiaku Mohammed Vs. Kano native Authority (1968)1 All NLR 424; Obiaso Vs Okoye (1989)5 NWLR Pt. 119 P. 80
6 407 US 1514, 530 (1972).

From the above, it is the researcher's opinion that any delay, particularly a deliberate one for advantage in any guise should weigh heavily against the prosecution. It takes longer time to complete investigation into a case by the police. Sometimes, this is deliberate, while in some cases it could be due to lack of personnel and facilities to conduct proper investigation. Also, legal advice from the office of the Director of Public Prosecution takes longer time to obtain whether or not the police should prosecute the suspect.[7]

The police however, knowing fully that these are hardly enough reasons for not charging the suspect to court within a reasonable time as provided by the constitution, resort to the amorphous practice called "holding charge" in a bid to pull out of this legal dilemma. Hence, the suspect is hastily arraigned before a magistrate court which the police know lacks jurisdiction to try the offence alleged in order to obtain an order of remand. By this order, the suspect will be remanded in police or prison custody pending whenever the police are done with their investigation into the allegation and probably come up with the proper charge before the proper court or pending when the D.P.P will issue his advice. Until this is done, the suspect is left to languish in police or prison custody indefinitely. This is against the interest of criminal justice, particularly when the life of the suspect is at stake.

The Supreme Court in *Garuba V. State*[8], strongly condemned the inordinate period of two years and two months, which the appellant spent in custody before his trial. It should be emphasis that the expression "within a reasonable time" as used in the constitution was conceived in order to facilitate speedy trial of cases in our courts. The courts

7. Odogu v. Attorney-General of the Federation, (2002)2 HRLRA P.84
8. (1972) 4 S.C. 118.

therefore should rise to this occasion by striking out cases before them when they find out they lack jurisdiction to entertain the matter[9].

Also in the case of *Dantata* V *Mohammed*[10], the Supreme Court cautioned that care must be taken to ensure that what is supposed to be a machinery of justice should not grind so slowly that persons who stand to benefit by the delay will succeed in converting the machinery of justice to that of the injustice.

It is the researcher's reasoning that the right to speedy trial with minimum delay is synonymous with fair trial, as a prerequisite for dispensation of criminal justice under the law. Therefore, it approximates to grave injustice and flagrant violation of human rights to subject an accused to a long and interminable trial.

4.3 Effect on the Defence of the Accused person

The judicial antiquity that it is better for 99 criminals to go scot free than one innocent person punished is one of the most human reasoning on record.[11] In this light, the 1999 Constitution (as amended) in order for an accused person to have adequate facilities for his defense provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty[12]. Also by virtue of section 36(6) of the Constitution, every person who is charged with a criminal offence shall be entitled to:

a. Be informed promptly in a language that he understands and in details of the nature of the offence;

b. Be given adequate time and facilities for the preparation of his defence;

c. Defend himself in person or by his legal practitioner of his own choice;

9 Fasakin Foods (Nig/) /Ltd v. Martins Babatunde Shosanya (2006) MJ.S.CN vol. 7. P. 48 at 52. Per Ogbuagu, J.S.C; see also Lakanmi v. Adona and 3 Ors (2003) 4 SCNJ, 348 at 355. Per Kalgo J.S.C.
10 (2005) SCNJ. P. 17 at 25.
11 Ukwunnenyi and another v. The State (1989) 3 N.S.C.C. 42 at 45. Per Oputa J.S.C.

d. Examine in person or by his legal practitioner, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carryout the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution, and

e. Have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

The above fundamental constitutional provisions are targeted towards ensuring that a suspect or an accused person is accorded every deserved opportunity to defend himself and prove his innocence before any court or tribunal in this country. Unfortunately, these provisions have been honoured more in breach through the practice of holding charge.

Among the above paragraphs of section 36(6), paragraph (b) is the most abused or violated. This is because a situation where the accused person is brought before a court lacking jurisdiction on a charge sheet which will be read to him without his plea nor bail granted him, butrather remanded in prison custody cannot be any imagination grant that person adequate time and facilities for the preparation of his defence at the appropriate court during his trial.

The corollary of this subjection is eventual plea of guilt or poor defence, if any, by or on behalf of the accused person. And this might end in his undeserved conviction. Furthermore, the right of an accused person to examine in person or by a legal practitioner of his choice, the witnesses called by the prosecution before any court or

tribunal and also to obtain the attendance and carryout the examination of witnesses to testy on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution, envisages an opportunity for the accused to collect evidence both documentary, real and oral as well as to identify his witness(es) for attendance. But it is obvious that an accused person who is remanded in prison custody under a dehumanizing conditions has no time to look for witness(es), let alone choosing a lawyer that will properly defend or assist him. The end product of the above scenario is the eventual conviction and sentence of the accused. Little wonder Samuel Dash[13] articulated that without the assistance of counsel, the defendant is practically powerless to challenge the prosecution. It is the lesson of human experience that even in the case of the most well intentioned prosecutors, the absence of such a challenge can result in carelessness and failure to review the evidence and properly prepare the case, which makes it easier to convict the innocent[14]."

The important of the assistance of counsel to an accused person was also underscored by David Fellman where he statesthat without the assistance of counsel, most persons accused of crimes are not likely to have an adequate defence. A defendant needs a lawyer as urgently as a sick man needs a doctor and in many instances, more urgently, for while nature often heals the sick without outside aid it seems to have little concern for the plight of the accused[15]. "

Earlier, Justice Kayode Eso, J.S.C., also stated on the role of the courts that it is the function of Judges to keep the law alive in motion and to make it progressive for the purpose of arriving at the end of justice without being inhibited by technicalities to find

13. Dash., S. "The Emerging Role and Function of the criminal Defence Lawyer". North Carolina Review, 47 April 1969.
14. Josiah v. State (1985). I .N.W.L.R (Pt. 1) P 131 at P. 140. See also, Oko duwa v. State (1988); 2 NWLR (Pt. 76). Nse Udo Nita v. State/ (1993) NWLR (Pt. 283) P. 512.
15. Fellman D.; The Defendants Rights Today. (The University of Wisconsin Press, 1976) P. 208.

every conceivable and acceptable way of avoiding narrowness that would spell injustice. Short of a judge being a legislator, a judge must possess an aggressive stance in interpreting the law[16].

4.4 The Effect on Nigeria Prison

The prison inmates consist of both those awaiting trial and those convicted of their various offences. However, in most cases, the awaiting trial inmates in prisons use to outnumber those already convicted. It is also worthy of note that the presumption of innocence inures in favour of those awaiting trial until their guilt is established by a court of competent jurisdiction.

According to Showunmi[17], an awaiting trial person (ATP) is someone remanded by an order of court or tribunal in prison custody in order to ensure his availability before the detaining authority in due course for the hearing of his case to prove or establish his innocence or guilt. Awaiting trial persons constitute a significant percentage of the Nigerian prison population. And many factors are responsible for it, among which is the police practice of holding charge.

Holding charge is one of the causes of the large number of awaiting trial inmates in Nigeria prisons and as such a major source of congestion of prisons. Over congestion of prisons in Nigeria is extremely acute. Both convicted prisoners and those awaiting trial are all dumped together in the same cells. The greater proportions of prisoners in Nigeria prisons are those awaiting trial, those remanded by the orders of courts[18]. Those remanded by the orders of the courts accounted for about sixty-seven percent of prison

16 Trans Bridge Co. Ltd. V. Survey International Ltd (1986) NWLR (Pt. 37) P. 576 at 596.
17. Showunmi L.A.; "Reform of Criminal Justice System and Congestion of Prisons by Awaiting Trial Persons Are there Alternative? Paper presented at the Summit of Stakeholders on the Administration of Justice in Lagos on 17th June, 2004.

population. Due to mainly administrative reasons such as lack of transportation to take the prisoners to court, absence of counsel, unwillingness of magistrates to go on with case because of lack of jurisdiction, many of these remand prisoners remain in prison for prolonged period of time without trial[19].Consequently, the prisoners are incarcerated indefinitely under harsh and inhuman conditions even where they have not been found guilty[20].

The Civil Liberties Organization has described the condition of Nigerian Prisons as being behind the wall of practically every prison in Nigeria is a slum where men and women too literally live on top of each other. From prison to prison the housing conditions consistently reveal themselves to be wretched and inhuman.[21]"

In line with the above observation, Hon. Justice Alhassan Idoko of the Blessed Memory had in 1981 said[22] they reveal a complete picture of dehumanizing conditions. Convicts and even those awaiting trial are caged and cramped together in cells meant for either only one person or fewer persons than are hoarded there.

18. T.O. Ifaturoti (Mrs.), "Nigerian Prisoners and the Human Rights Campaigns: Some Challenges". Nigerian Current Law Review 1994, P. 87.
19. Civil Liberties Organization Annual Report in Nigeria 1999, at P. 200.
20. Taofik Adedamola, Op. cit at P. 289.
21. Behind The Wall, A report on Prison Conditions in Nigerian and Nigerian Prison System. CLO. 1996 edition p. 13.
22. Behind The Wall, Ibid, and Quoted in Ignatius A. Ayua, "Towards a more Appropriate Sentencing Policy in Nigerian" in Nigerian Law Reform Journal No. 3, January, 1983 P. 22.

> *The state of sanitation and hygiene in the prisons was quite appalling. Water shortage was acute. Inmates were usually unable to take their baths for several days and had even less access to water for washing clothes. Toiletries were a luxury. Bed bugs, cockroaches, rats and mosquitoes bred freely. Ventilation was poor because most cells either had no window at all or their windows were sealed in an attempt to prevent prison escapes.*[23]

Suffice to note at this juncture that different actors fuel the holding charge phenomenon in the criminal justice system in Nigeria notably, the police, the judiciary and the prisons. The police have the statutory function of affecting arrest of suspects, initiating prosecution, conducting investigation and arraigning suspects in appropriate courts of law. Admittedly, the police force is handicapped by numerous logistic constraints such as inadequacy of trained, dedicated and well motivated officers. The inadequacy of office accommodation, stationary, transport and communication facilities further limits their efficiency. Transfer of officers handling a case and the lack of transportation facilities to bring prisoners to court constitute additional constraints. The ministries of justice are similarly faced with the problems of acute shortage of dedicated, honest and well-trained state counsel thus necessitating calls for adjournment of cases. The courts have to grapple with inadequacy of judges and magistrates, logistic constraints such as few secretarial staff, manual recording of court proceedings and insufficient library resources for research, corruptive tendencies and poor conditions of service. However, frequent resort to imprisonment as sentencing option even for the most minor offences, under-utilization of the powers of prerogative of mercy and bail are often cited as additional reasons for delays in conclusion of cases by the courts. The overall implication is to prolong the stay of detainees in prison awaiting trial.

Prison congestion is partly responsible for the seemingly insufficient infrastructural amenities in Nigerian prisons. Prison facilities are stretched to the limits by the unchecked population explosion[24]. Furthermore, congestion in the prisons results to failure on the part of the authorities to attempt classification of prisoners as required by

23. CLO's Report Human Rights in Retreat, 1993, P. 120.

local and international rules[25]. Thus, the former director of the Nigeria Prison Service Mr. Lily Ojo admitted that there is a problem when he said the problem of overcrowding has not only imposed strains on prison management but has rendered the concept of classification meaningless in our prisons[26]."

Perhaps, one obvious cause of prison and police cell congestion is arbitrary arrests and detention on ground of holding charge under discussion. Recently, it has been shown that out of the total of 45,000 inmates in the Nigerian prison, about 30,000 are awaiting trial which has made the prisons to be congested[27]. For instance, the Ikoyi prisons was designed to accommodate 400 inmates but as at today there are about 1,600 inmates in the prison, while some have spent up to 10 years without trial and others have spent 5 – 10 years on trial[28]. Also, Makurdi prison have been rated to have the total number of 583 inmates, with awaiting trial persons of 413, which is a 70%[29] awaiting trial inmate. Finally, the writer's personal visit to Makurdi prison on 10th November, 2016, showed that only 147 prisoners were convicted while 436 are awaiting trial persons, notwithstanding that the maximum capacity of the prison is 350.

As regard congestion in police cells, there is no gain saying the fact that police lack adequate cells to detain suspects. While prisons congestion is an issue that constantly attracts attention in Nigeria criminal justice discourse, little or no attention is paid to the congestion of police cells and the ways and manners in which the police deal with the congestion.

24. Odinkalu A.C and Ehonwa L. Behind the Wall- A report on prison conditions in Nigeria and the Nigerian Prison system (1991) CLO, Lagos P. 208-209
25. Section 8 of the United Nations Standard Minimum Rule for the Treatment of Prisoners and Sections 15,16 and 17 of the Prisons Regulations, made pursuant to the Nigeria Prison Act Cap. P. 29 LFN 2004.
26 Lily Ojo, "The State of the Nigerian Prisons" being a paper delivered at the National Seminar on Prison Reform, June 18-20, 1990 P. 7
27Ikemafuna Patrick, "The administration of Nigerian Criminal Justice and Reform of the Penal Code" a paper presented at the Conference on Prison Reform Organized by the metropolitan Grand Knights of Saint Mulumba, Lagos. See Vanguard newspaper, May 30, 2013 P. 5
28. Ibid.
29. Agomo Uju, "The Prisons Tomorrow Civil Society Perspective". A paper Presented at the Reform of Criminal Justice System III, Organized by the Lagos State Ministry of Justice on June 16, 2004.

Thus, Jiti Ogunye[30] observed that owing to poor crime intelligence gathering, police officers usually commence their investigation after affecting arrest, and this accounts for congestion in police cells. He went further to state that arrest are not made when investigation is at an advanced stage, rather, arrests are made at the beginning of investigation by the police and advised that pre-arrest intelligence can help in limiting the number of days in which criminal suspects are kept in police custody.

4.5 The Effect of Holding Charge on Fundamental Human Rights

It is worthy of note that, Nigerian Law[31] is replete with provisions guaranteeing the rights of an accused person before, during and after trial in a court of law. For instance, the constitution provides that a person 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

30.Jiti Ogunye, Criminal Justice System in Nigeria: The Imperative of Plea Bargaining Lawyers League for Human Rights, August 2005, P. 29.
31. Particularly chapter iv of the 1999 Constitution (as amended).

charged with a criminal offence shall be entitled to be informed in the language that he understands and in detail the nature of the offence, be given adequate time and facilities for the preparation of his defence and to defend himself in person or by legal practitioner of his own choice[34].

The importance of the rights of an accused person has also been universally recognized and subsequently incorporated into our laws[35]. The efficacy and applicability of the

32 Section 36(1) /Ibid.
33 Section 36(5) Ibid.
34 Section 36(6) (a) (b) (c) Ibid.
35 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. Cap. A 10, L.F.N. 2004.
36. Osheyire V British Caledonian Airways Ltd. (1990)7 NWLR Pt 163 507., Ogugu V State (1994)9 NWLR Pt 366 P. 1; Abacha V Fawehimi (1996)9 NWLR Pt 475 P. 710 at 745
37. Cap C41 LFN 2004 applicable in the 17 states found in the southern part of Nigeria

African Charter on Human and Peoples' Rights have been acknowledged by our courts in several cases[36]. Thus, Article 7 of the African Charter provides:

1. *Every individual shall have the right to have his case heard. This comprises:*
    a. *The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;*
    b. *The right to be presumed innocent until proved guilty by a competent court or tribunal;*
    c. *The right to defence, including the right to be defended by counsel of his choice;*
    d. *The right to be tried within a reasonable time by an impartial court or tribunal.*

From the foregoing, it goes without saying the fact that a detainee is not rendered "rightness" by reason only of an allegation of a crime against him. This is because suspects are not convicts, they are neither to be viewed nor treated as such. Thus, the Nigerian Criminal Procedure Act[37] provides that any person who is arrested shall be taken with all reasonable dispatch to a police station or other place for the reception of arrested persons, and shall without delay be informed of the charge against him. Any such person while in custody shall be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangements for his defence or release[38]. In the Northern States of Nigeria, the state of affairs under the criminal procedure code[39] is similar but clearer. According to section 129(1) of the code, wherever it appear that an investigation… cannot be completed within 24 hours of the arrival of an accused or suspected person at the police station, the officer in charge of the police station, shall release or discharge or send him as soon as practicable to the nearest court competent to take cognizance of the offence.

36 Osheyire v. British Caledonian Airways Ltd. (1990) 7 N.W.L.R (Pt. 163) 507. Ogugu v. State (1994) 9 NWLR (Pt. 366) 1; Abacha v. Fawehinmi (1996) 9 NWLR (Pt. 475) 710 at 745.
37. Cap. C 41 L.F.N 2004 applicable in the 17 States found in the Southern part of Nigeria.
38. Section 9. Ibid.
39. AP 30 Laws of Northern Nigeria 1963

The sum total of this and preceding prescriptions is the proper treatment of detainee. From the language of law, any delay occasioned by the inability of the state to bring the detainee to trial within a reasonable time may, depending on the circumstances, cause his release[40].

It is unfortunate to observe that notwithstanding the glittering provisions of Nigerian law on the speedy administration of criminal justice in Nigeria, the reality is that the law is honoured more in breach than in observance. Numerous cases abound on delays:

a. From the arrest of a suspect to the institution of criminal proceedings against him/her[41].
b. From the institution of criminal proceedings to the commencement hearing of evidence of witnesses[42].
c. From the commencement of hearing to the conclusion of final addresses to the commencement[43].
d. From final addresses to the delivery of judgment[44]; and
e. From the delivery of judgment by the trial court to the determination of an appeal against the decision[45].

It will suffice to say that the process whereby the accused person is denied a speedy trial for a criminal allegation leveled against him is a breach of the constitutional provision that provides for the accused person fair trial within a reasonable time. The trial within a reasonable time is more germane considering the fact that the accused person is still presumed innocent until the contrary is proved[46].

38. Section 9 Ibid
39. AP. 30 Laws of Northern Nigeria 1963
40. S. 35 (4) (a) (b) of the Constitution
41. Nwankwo and Ors. V. The Queen/ (1959) 2 S. C.N.L.R. 675 (The accused persons, or at least some of them, Were charged to court a year after their arrest and detention by the police). A study has shown that only 11.5% of accused persons responded that they were taken to court within 24 hours of their arrest: M.A. Ajomo and I.E. Okagbue (eds). Human Rights and the Administration of Criminal Justice in Nigeria 117- 8(1991).
42. Asakitikpi v. The State (1993) 5 NWLR (Pt. 296) 641 (Time lag of 14 months between the date the accused person was charged to court and the date when the trial commenced): Garba v. The State (1992) 4 S. C 118.

The provision of presumption of innocence under Nigerian Law can only be efficacious if accused persons awaiting trial are admitted to bail. In the case of *Saidu V. State*[47], Obaseki J.S.C (as he then was) held as follows:

> *It does not give the court any joy to see offenders escape the penalty they richly deserve but until they are proved under appropriate law in our law court, they are entitled to walk about in our streets and tread the Nigerian soil and breath the Nigerian air as free and innocent men and women.*

In the case of *Chief Pat Enwerem V. Commissioner of Police*[48], the court of appeal (Port-Harcourt Division) condemned the practice of holding charge syndrome and stated that it is unknown to Nigerian Law and an accused person detained there under is entitled to be released on bail within a reasonable time before trial more so in non-capital offence.

In the above case, the appellant on allegation of murder and unlawful killing of a member of Abia State House of Assembly, on application under the Fundamental Rights (Enforcement Procedure Rules), the appellant was released on bail by the High Court of Cross River State. Later, the police re-arrested the appellant and arraigned him before Isuikwuato Magistrate Court on a charge of murder. The learned magistrate declined jurisdiction yet remanded the accused person/appellant at Ishikwuato police station. An application to the High Court for bail was refused. On appeal to the Court of Appeal, the Court held:

> *Happily, by our constitution and government, this country cannot operate a 'police state'…Want of jurisdiction on the part of the magistrate…does not justify appellant's prolonged incarceration…in a free country like ours the action of the law enforcement agencies concerned with this matter was barbaric, a contravention of Section 31(1) (a), 32 and 6(6) of the constitution*[49].

43 Ozuluonye & Ors v. The State (1983) 4 N.C.L.R. 204 (A period of about 4 years); /Sambo v. The State (1989) I.C.L.R.N 77.
44 Shehu v. The State (1982) 1 NCR I.
45 Asakitikpi v. The State (Supra).
46 Adegbite v. C.O.P. (Supra); Musa & 7 ors v. C.O.P (Supra); Obekpa v. C.O.P (Supra).
47 (1982) 4 S.C. 41
48 (1993) 6 NWLR (Pt. 299) 333; See also Ukatu v. C.O.P (2001) FWLR (Pt. 66) 758.

Also, in *Mohammed & Ors V. C.O.P*[50], the appellants were arraigned before a chief Magistrate's court in Zaria on a first information report in which they were alleged to have committed culpable homicide punishable with death contrary to section 221 of the Penal Code. Upon a motion for bail on behalf of the appellants, they were released. After about seven months, the magistrate revoked the bail and remanded appellants in prison custody. The appellants' subsequently filed an*ex parte* motion in the high court seeking *inter alia* the enforcement of their fundamental rights. The application was refused. On appeal, the Court of Appeal held that an accused was entitled to protection of his personal liberty if he was in prison custody and detention following the accusation of the commission of an offence invoking section 32 of the 1979 constitution a replica of section 35 of the 1999 constitution of the Federal Republic of Nigeria.

The facts in *Emezue V. Okolo & Ors*[51] suggest that detention even for a limited period may be unlawful. The appellant claimed against the respondents the sum of N2,000 as damages for unlawful detention in the police station at Umuahia. The respondents who were all police officers applied to the court for an order dismissing appellant's claims on the ground that it disclosed no cause of action. The application was granted. On appeal to the Supreme Court, it was held *inter alia* that the appellant having alleged that he was detained for about 48 hours, his statement of claim disclosed a cause of action for wrongful detention with respect to excess. It is submitted that these pronouncements favours constitutionalism and the enforcement of rights.

Therefore, any protracted prosecutions and undue remand orders even where there are sufficient grounds to grant the accused bail is nothing but a disguised holding charge

49. Ibid, at PP. 342-343.
50. (1987) 4 NWLR (Pt. 65) 420

strategy targeted at victimizing suspects especially those that refused to grease the palms of unscrupulous officers. This is a serious affront on the suspects constitutionally guaranteed right to personal liberty, fair hearing, presumption of innocence, fair trial etc.

The terrible effects of pre-trial incarceration have been eloquently stated in the case of *Hartage V. Hendric*[52] as follows:

> *The imprisonment of an accused prior to determination of guilt is a rather awesome thing. It cost the tax payers tremendous sums of money; it deprives the affected individual of his most precious freedom and liberty; it deprives him of his ability to support himself and his family; it quite possible cost him his job; it restricts his ability to participate in his*

51. (1978) NSCC 312.
52. 439 PA, 584 at 601

It has been held that once a court observed that it has no jurisdiction to entertain a matter, the proper order to make is to strike out the case or charge and not to remand the suspect because any subsequent proceeding or order made by the court is a nullity and consequently void[53].

It is axiomatic that the degree of liberty obtained in any society depends ultimately on the attitude of the court. Therefore, the court should interpret any law sanctioning holding charge narrowly, strictly and restrictively 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 constitutional right upon reliance on the state statute[54].

According to *Glanvile Williams*, the manner of administration of criminal justice depends, "too much on the decision of the police and other prosecutors taken in private and without effective control"[55].The police often "over charge, perhaps because they are

not sure of the facts and wish to preserve all their options.[56]" This is true of most of the police prosecutors. The only purpose is to halt expeditious prosecution of criminal cases. In view of this, court needs to be less willing to exercise its powers in favour of the prosecution in such circumstances. Rather, the court should courageously strike out such cases for want of jurisdiction[57].

No doubts, capital offences are vile and punishment for such offences is of necessity the mark of society's revulsion. Yet only the guilty should be punished. The slightest punishment of presumed innocent citizen under the guise of a Holding charge is of greater severity than the death sentence of a murderer. It is submitted that the least toleration of improper police practice is worse evil than the occasional escape of a criminal. The view is that the court cannot aid the police to adopt unconstitutional means to discharge its statutory duties.

4.6 Conclusion

This chapter critically examined the effect of holding charge practice on speedy administration of criminal justice system coupled with its effect on the defence of the accused person and the Nigeria Prison.

CHAPTER FIVE

CONCLUSION

5.1 SUMMARY

This work is on examination of the challenges facing the Nigeria criminal justice sector. In particular, the work had focused on the holding charge practice. The work was segmented into five chapters. In the preceding chapters, chapter one is generally introductory therein the aim and objectives of the work were highlighted; significantly, the available literature on the subject matter was reviewed.

Chapter two discussed the conceptual clarification and preliminaries on holding charge, reasons for adopting holding charge, the procedures that enabled it and justification or otherwise of the practice.

Chapter three bothers on emerging issues on the rights of suspects while chapter four dealt with the effect of holding charge on the speedy administration of criminal justice and the defence of the accused person linking us with the present chapter which considers the summary, conclusion and recommendations all in a bid for the entire criminal justice system to be overhauled to meet with the 21st century reality.

5.2 Observation

In this research, the researcher hascarried out examination of the challenges facing the criminal justice sector in Nigeria with specific reference to the holding charge phenomenon. The flimsy reasons adopted to justify the practice, its illegality and how the

practice has greatly affected the constitutional rights of suspects charged with criminal offences.

The research went on to consider the constitutional rights of suspect or accused persons. And also some of the factors that militate against the Nigerian police force in discharging their statutory duties, especially as regard the area of prompt investigation and prosecution of cases.

The syndrome of holding charge which contributes greatly in the failing standard in the Administration of Criminal Justice in Nigeria is an illegal charge, unknown to the constitution. Therefore the sentimental judgment of the Nigerian Supreme Court in Lufadeju's case should be revisited. Although the law lacks the precision and exactness of science, yet its scientific development is one exercise from precedent to precedent. It is the researcher's humble submission that the approval of remand proceeding or holding charge by the apex court is unconstitutional.

It is therefore hoped that the suggestions proffered in this research work if utilized by stakeholders of the criminal justice system, will in no small measure assist and improve the administration of criminal justice in Nigeria and the menace of the holding charge syndrome as presently experienced will be a tale of the past.

5.3 Recommendations

Amongst the challenges facing the criminal justice system in Nigeria, The holding charge practice represents the single most critical challenge for criminal justice reforms in Nigeria. The importance of criminal justice to the smooth running of any society can not

be over emphasized. In deed an effective criminal justice system is regarded by many as fundamental to the maintenance of law and order. However, the Nigerian criminal justice system is not only dysfunctional, it is also outdated and absolutely not fit for purposes.

This much was highlighted by Prof. Yemi Osibanjo San when addressing the challenges of the criminal justice system in Nigeria by asserting that many of the provisions of the CPC, CPA are outdated and in some cases anachronistic beside the loopholes in the law and procedure have become so obvious that lawyers especially defence lawyers have become masters in dilatory tactics.

It has thus increasingly difficult to reach closure of any kind in many cases. Convicts and acquittals have become exceedingly rare since a call by eminent jurists for fundamental reform to the Nigerian Criminal Justice System.

Criminal legislation is the most important component of the criminal justice system because it defines rights, duties, obligations and relationship with other components. The basic law dealing with crime in Nigeria is the Criminal Code, which is applicable in southern states and the Penal Code which operates in the Northern states. These pieces of legislation were originally enacted in 1902 and 1960 respectively and are more reflective of British colonial interest than current Nigerian social needs. They are not products of public policy processes targeted by the Nigerian government at defined social problems within Nigeria's current social milieu. . It is therefore imperative for any government desirous of lasting change to tackle the problem. Accordingly, I hereby recommend the

following reform initiatives to eliminate the menace of holding charge from Nigeria's criminal justice system.

Continuous changes in the social interactions and configuration demands a progressive review of criminal legislations. Basing a criminal system on an outdated criminal code that has limited alternatives to imprisonment, in an age of non-custodian sentencing, indeterminate sentencing systems and community supervision is certainly one of the reasons for Nigeria's dysfunctional criminal justice system.

Prison is also used to keep offenders from further "infecting and inflecting" other members of the society. Critics and advocates of prisons agree that the prisons are an ineffective and inefficient means of treating and rehabilitating offenders. Although prison should be a humane, efficient conveyor belt, the appalling condition of inmates in the Nigerian prison inmates have led to increasing public outcry for reform. The issue of non-custodial measures deserves proper consideration. This has necessitated this paper and recommendations made herein for greater use of fines, restitution, mediation and the adoption of probation and community service as alternatives to incarceration.

The Nigerian Constitution provides that a person arrested on suspicion of having committed a crime is presumed innocent until otherwise proved guilty by a court of competent jurisdiction. It therefore follows that holding a person awaiting trial beyond the legally allowed time or even longer than such a suspect under investigation would have spent had the suspect been sentenced for the offence allegedly committed is an

infringement of the suspect's fundamental rights guaranteed under Section 35 of the 1999 constitution (as amended).

Justice should be made available to the accused, the society and to the victim. Presently, the Criminal justice system in Nigeria does not recognize the right of the victim. For a criminal justice to be effective, victim of criminal act should be placed in high esteem and should always be catered for. The persistent issue of the holding charge where the police charge suspect to courts that are not statutorily empowered to handle their case poses serious myriad to the administration of criminal justice system in Nigeria.

Nigerian criminal dispensation is an integral part of the wholesome received English law. The English law which we copied has been reviewed severally to meet the ever expanding challenges of the modern time. While our own criminal justice law remains the same with no recent review for it to fit to the present situation of the country.

Also to be reformed is the new Administration of Criminal Justice Act 2015 by its sections 293-299 which gives an open cheque to magistrates to order the remand without trial of any person who is subject of investigation.

ACJA, 2015 was never enacted to curtail, abridge, whittle down the rights and liberty duly guaranteed the citizen by the constitution of the Federal Republic of Nigeria 1999 as altered. The National Assembly has no fiat or power to abrogate or diminish constitutionally donated rights of any citizen under the guise of making law for the peace, order and good government of the Federation as such laws must be unconstitutional. The National Assembly of the Federation shall not make law that is inconsistent with the

constitution as such laws become automatically void to the extent of their inconsistency, sections 4(8) and 35(1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) read together shows that the constitution forbids such practice as the rights and liberty of an accused person is sacrosanct.

1. State Legislatures:

States' legislative houses in Nigeria should endeavour to initiate the process of reform of their respective state pretrial detention laws. Of recent, the Administration of Criminal Justice Act (ACJA), 2015 is unmistakably the hottest law in Nigeria presently and it is without doubt due to its wide applicability and revolutionary nature. The law comes in hand for both lawyers and non-lawyers. The Act which was signed into law in May 2015, has a 495 section law divided into 49 parts, providing for the administration of criminal justice and for related matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria. With the ACJA, Nigeria now has a unique and unified law applicable in all federal courts and with respect to offences contained in Federal Legislations. The ACJA, by merging the major provisions of the two principal criminal justice legislations in Nigeria, that is CPA and CPC, preserves the existing criminal procedures while introducing new provisions that will enhance the efficiency of the justice system and help fill the gaps observed in these laws over the course of several decades. The law has been described as the much awaited revolution in the criminal justice arena as the criminal justice system existing before the coming into force of this law has lost its capacity to respond quickly to the needs of the society, check the rising waves of crime, speedily bring criminals to book and protect the victims of crime.

Section 1 of the ACJA is overtly apt in explaining the purpose of the Act thus: The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection f the rights and interests of the suspect, the defendant, and the victim.

One essential feature of the ACJA is its paradigm shift from punishment as the main goal of the criminal justice to restorative justice which pays serious attention to the needs of the society, the victims, vulnerable persons and human dignity generally. The general tone of the Act puts human dignity in the fore, from the adoption of the word defendant instead of accused, to its provision for humane treatment during arrest to its numerous provisions for speedy trial. A further incursion into the Act will reveal that the act has 495 Section through which its tentacles spread across every major aspect of criminal justice system. In fact, the Act regulates more than just Criminal Procedure; it covers, in most part, the entire criminal justice process from arrest, investigation, trial, custodial matters and sentencing guidelines. It is about all things criminal, from the cradle to the grave*but to the researcher's surprise and concentrating concern, none of the 495 sections of the Act abrogate the holding charge syndrome, the challenges facing the criminal justice system in Nigeria instead the Act by its sections 293-299give an open cheque to magistrates to order the remand without trial of any person who is subject of investigation hence the researcher's call on Nigeria parliament to do the needful by revisiting the ACJA, 2015 and in a bid to discardthe holding charge syndrome from the criminal justice system in Nigeria.*

On the focus of this study, the Borno State experience is worthy of emulation, where the former Chief Judge Hon. Justice K. M Kolo, worked with the committee on Administration of Justice to discard the holding charge from the state's criminal justice system. Accordingly, magistrate courts in Borno State are no longer used as remanding centre for persons accused of capital offences. All capital offences are nowfiled before the High Court as court of original jurisdiction or court of first instance.

Also, recently the Chief Justice of Ebonyi State, Justice Alloy Nwakwo declared 8th of November, 2013 the abolition of holding charge practice in Ebonyi State Legal System. This was made during the marking of the 2013/2014 legal year in Ebonyi State. Henceforth in Ebonyi State, no Awaiting Trial Person shall stay more than 120 days in detention. The researcher do recommends that otherstates government should emulate this good gesture, to enhance fair criminal justice administration.

The researcher did not close its eyes on the crime regarding violence against women as one of the problems facing the criminal justice sector in Nigeria. Section 55 (1) of the Penal Code which allows beating up of wife in the name of correction is without much ado obnoxious, barbaric and uncivilized and should be repealed. Instead of beating up a wife or a bed friend for the purpose of correction, resort should be had to negotiation, mediation, conciliation and arbitration as this will foster unity in the family than chastising the wife like as animal.

Equally relevant is the provisions of section 282 of the Penal Code and its equivalent provision of section 357 of the Criminal Code which provides that forceful carnal

knowledge of a woman by a man will not amount to rape if the woman is the rapist wife. The principle is old fashioned since it tends to treat women as mere object of men's sexual desire. Rape of any sort should be criminalized including when a man takes his wife to bed without her consent.

Corruption and financial crimeseems to be amongst the 21st century challenges facing the Nigerian criminal justice sector. It is the researcher's view thatthe relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Evidence ActCap E14 LFN, 2011 in so far as it has to do with burden of proof in criminal cases be revisited. The 1999 Constitution and the Evidence Act which placed on the prosecution the burden of proof should be altered by placing the burden of proof on the accused person. In essence, in corruption and financial crime cases, once a person is accused of living above his legitimate means, the burden is on such accused person(s) to prove that he acquired the wealth through legitimate means and this should be made to apply in all financial crime cases.

2. Government:

The government is expected to play a leading and perhaps dominant role in curbing holding charge syndrome. It is humbly submitted that the prosperity of any nation is not measured in monetary terms alone. At the global level, the observance and protection of international Human Rights norms are fast becoming the parameter for accepting a nation as a member of comity of nations. Therefore, since the members of the police force are more involved in crime investigation and detection, the state should consider seriously, the imperativeness of reactivating and equipping the force. The police authorities have

been blamed for a large number of awaiting trial men in the nation's prisons in that they often fail to complete investigations on time, in the absence of the requisite tools of trade for the police and improved condition of service, the 'holding charge' may tarry in Nigeria for long. To perform effectively therefore, the government should, as a matter of urgency attend to the diverse problems confronting the police being stakeholders in the system.

Also, the Federal Government should pay greater attention to the prisons and prisoners. Prisons must be made to rehabilitate and reform inmates. Basic recreational and vocational facilities should be provided in all prison improvement in the quality and quantity of food provided for prisoners is necessary just as improvement in prison infrastructure and facilities.

Finally, the Federal government should revitalize, re-organize and re-invigorate the Legal Aid Scheme to provide free legal representation to indigent citizens with a view to reducing incidences of long-term incarceration on account of absence of legal representation.

3. The Bar and Bench

The Bar and Bench, as partners in progress in the administration, must re-dedicate themselves to promoting justice and fairness. Accordingly, magistrates must refrain from either entertaining matters over which they lack jurisdiction or indeed making consequential orders thereon. The Bar, for its part, must take more proactive steps in the direction of probative cases, and public interest litigation. Interestingly, the 2009

Fundamental Human Rights (Enforcement Procedure) Rules have relaxed the issue of *locus standi* in fundamental rights cases.

Also, Chief Judges of the respective states should intensify jail delivery exercises in all the states. This will ensure that the prisons are rid off of inmates without plausible grounds of incarceration and guarantee some sanity in the prison system. Thus, the jail delivery exercise embarked upon by Benue State Chief Judge, Justice Nwande on 24th – 25thNovember, 2016 to Makurdi Prisons which led to the release of fifty five (55) inmates is commendableand other states are advised to do more.

4. Ministries of Justice:

The office of the Director of Public Prosecutions (DPP) should be made independent of the civil service bureaucracy to enhance efficiency. The researcher suggests the reinforcement of the professional staff of the office of the DPP. This, it is hoped will engender timely rendering of legal advice on case files referred to them by the police for advice. It is worth emphasizing however, that the government must be prepared to offer better incentives to encourage lawyers to work in the ministries of justice.

5. The Police:

The police force should intensify efforts at human rights education for officers and men. Police officers must also stick to their traditional functions with a bias in favour of timely investigation and prosecution where desirable.

The provisions of Section 106 of the Administration of Criminal Justice Act, (ACJA) 2015, which makes the prosecution of cases the exclusive preserve of lawyers should be

implemented and enforced by all stake holders in the criminal justice system. In effect, police personnel who are not lawyers have lost the right to prosecute as the provision of section 106 of the Act has by implication suspends Section 23 of the Police Act which empowers police officers to prosecute matters in court. The Act also by extension overrules the Supreme Court decision in FRN VS Osahon (2006)5 NWLR Pt. 973where the Supreme Court affirmed the right of police officers to prosecute in courts of law in Nigeria. Other states outside Federal Capital Territory are advised to replicate or domesticate the Act.

As a corollary to the above, the researcher humbly recommends thatMagistrates' Court should be clothed with jurisdiction to entertain capital offences so that they can have power both to remand and to grant bail when necessary.

It must be emphasize that to observe the constitutionally guaranteed right to personal liberty and other human rights, the magistrate must not hesitate in releasing accused persons when they have been held beyond the constitutionally stipulated time frame.

6. The police should be encouraged to speed up investigation of cases and consequently more personnel should be employed in these directions for the smooth administration of justice. There is need for well trained investigation personnel.

7. Periodic legal training of personnel involved in prosecution of cases in their employment should be undertaken regularly.

8. There should be periodic review of cases handled by magistrate and those found wanting in abusing their powers can be sanctioned. Sanctions can involve reprimand, suspension, removal and dismissal depending on the gravity of the offences. This periodic exercise should also apply to men of the police force who often always has the duty of investigating and starting the locomotive wheel of the criminal justice system.

9. There is need for workshops, seminars, conferences to be held for the three cardinal institutions in the administration of criminal justice system in Nigeria, viz: the Police, Court, and Prison to enable them avail themselves and update their knowledge of current trends in the administration of criminal justice especially when it involves the fundamental human rights of suspect or accused person.

10. **Civil Society Organizations**: Civil society organizations have very crucial roles to play in the fight against the menace of holding charges. The key role is basic human enlightenment. Majority of our people do not have access to basic human rights education and are therefore unable to appreciate the intricate connection between respect for rights and good governance. It is therefore for civil society groups to take the initiative to provide quality human rights education to citizens.

Another possibility exists in the area of litigation to test the effectiveness of legislative and executive actions aimed at eliminating the scourge of holding charge. Civil society groups could assist with getting the cases to courts to facilitate the process.

It is the researcher's expectation that the recommendations in this work will be adhered to strictly, so that the concept of 'remand proceeding and holding charge' shall be discouraged. This is because history beckons on the present generation of leaders at all levels in the country to decongest the prisons, offer a ray of hope to an otherwise hopeless generations of prisoners, improve the machinery of criminal justice and bequeath an enduring legacy of humane prison and criminal justice system to the next generation.

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