

## REMAND ORDER PROCEEDINGS IN NIGERIA: A TOOL FOR LEGITIMATE INVESTIGATIONS OR UNCHECKED DISCRETION?

Caroline Omochavwe Oba<sup>1</sup>  
Josephine Nkeonye Egemonu<sup>2</sup>  
Ileola Ibironke Adesina<sup>3</sup>  
Abdulrahman Muhammad Jumah<sup>4</sup>

---

### Abstract

Proceedings related to remand orders in Nigeria were implemented to tackle concerns regarding extended pretrial detention based on "holding charges." This study explores the discourse surrounding whether the remand order proceedings function as a legitimate mechanism for investigations or provides unbridled discretion, potentially encroaching upon individual rights. Employing the doctrinal approach, the study finds that its implementation raises concerns regarding potential human rights abuse by the prosecuting agencies. The study concludes that Remand orders represent a "necessary evil" in ensuring the efficient administration of criminal justice while recommending measures such as putting a defendant on notice, purposive interpretation and amendment of relevant provisions of the laws to stem potential abuses.

**Keywords:** Remand Order; Human rights abuses; Custody; Defendant; Unchecked Discretion.

### Introduction

Remand is a pretrial detention or provisional detention. The concept of remand proceedings at the national level is statutorily enabled by Section 293 of the Administration of Criminal Justice Act 2015, and section 66(1) of the Terrorism (Prevention and Prohibition) Act 2022. In the jurisdiction where the authors practice, it is stipulated in section 266 of the Administration of Criminal Justice Law of Bayelsa State 2019. The above-mentioned laws have been criticized as granting legitimacy to the practice of 'holding charge' which by judicial decisions<sup>5</sup> have been declared illegal and unknown to Nigerian law before the enactment of these laws.

The primary aim of remand proceedings introduced by the Administration of Criminal Justice Laws in Nigeria, as part of its innovative approach to criminal justice reform, is to ensure that individuals accused of crimes appear for their

---

<sup>1</sup>Phd, Deputy Director General and Head of Nigerian Law School Yenagoa Campus, email: xslinao@yahoo.com

<sup>2</sup>LLM, ACI Arb (Nig.), Deputy Director (Academics) and Head of Criminal Litigation Dept, Nigerian Law School, Yenagoa Campus, Bayelsa State.

<sup>3</sup>LL.M, Senior Lecturer, Nigerian Law School, Yenagoa Campus, Bayelsa State.

<sup>4</sup>LLM, Lecturer II, Nigerian Law School, Yenagoa Campus, Bayelsa State.  
amjumahnl@gmail.com

<sup>5</sup>*Enwere v. C.O.P* (1993) 6 NWLR (Pt. 229) 333 at 341

trials and to prevent them from committing further offences while awaiting trial. The proceeding also aids criminal investigations by ensuring that individuals accused of crimes are detained during the investigation phase. This prevents them from fleeing or tampering with evidence which could impede the investigation process. However, it is crucial to balance these investigative needs with the rights of the defendant and to ensure that remand proceedings are conducted fairly and transparently.

This paper examines discussions surrounding whether Remand Order Proceedings serve as a legitimate tool for investigations or grants prosecuting agencies with unchecked discretion, potentially leading to infringements on individual rights. While the purpose of remand order proceedings is to enhance effective investigations, its implementation raises concerns regarding potential abuse by the prosecuting agencies. The paper is structured into five segments. Section One focus on conceptual clarification by elucidating the key concepts relevant to remand order proceedings, providing a foundational understanding of the subject matter. Section Two examines the legal framework for remand order proceedings, statutory and judicial provisions governing remand orders, analysing their procedural and substantive aspects in depth. Section Three discusses the dual nature of remand orders explores the dichotomy of remand orders, emphasizing its dual role as a vital tool for effective criminal investigations and a mechanism with the potential for arbitrary deprivation of fundamental human rights. Section Four examines the recommendations such as critical appraisal of the existing legal framework to safeguards human rights; propose reforms aimed at striking a balance between investigative efficiency and the protection of individual liberties. Finally, section five conclude by harmonizes the key findings of the study, emphasizing the necessity for a robust legal framework that mitigates the risks of abuse while preserving the integrity of the justice system in Nigeria.

## **2. 1 Conceptual Clarification**

### **2.2 Holding Charge**

A holding charge is a criminal charge of some minor offence filed to keep the accused in custody while the prosecution takes time to build a bigger case and prepare more serious charges.<sup>6</sup> Holding charge arises when the police present a suspect before a Magistrate or Area Court for a criminal charge over which the judicial officer has no jurisdiction, and the police obtain from that judicial officer, the authority to remand the suspect even though there was no arraignment.<sup>7</sup>

Holding charge was so popular before the enactment of the Administration of Criminal Justice Act, (ACJA), 2015 that, hardly any charge be filed in the High Court without first taking the defendant to a Magistrate Court and remanded on

---

<sup>6</sup> Bryan A. Garner, *Black's Law Dictionary* (11<sup>th</sup> ed., Thomson Reuters, 2019)

<sup>7</sup> Ifeoluwa Olubiyi and Hilary Okoeguale, 'The Nigerian Criminal Justice System: Prospects and Challenges of the Administration of Criminal Justice Act 2015' available at <<https://www.researchgate.net/publication/317901881>> accessed on 3rd May 2024.

Holding Charge.<sup>8</sup>The view expressed here differs slightly from that of J.A. Agaba,<sup>9</sup> who maintained that holding charge was usually in the States of the former Northern Region. Conversely, the practice was so rampant in the entire federation<sup>10</sup>. The earliest decisions on this subject emanated from the South,<sup>11</sup> where the court later declared the procedure as unknown to the Nigerian legal system and unconstitutional and cases that followed.

This practice evolved as a result of the prosecuting authority especially the police not running afoul of the law<sup>12</sup> that provides for a time within which a defendant could be brought before a court of law. So, when the police effect arrest in respect of offences which are capital in nature and the investigation cannot be concluded timeously or the case file is sent to the office of the Director of Public Prosecutions (DPP) for advice and while the advice is awaited, they fear that if the suspect is kept beyond the constitutional period of 48 hours maximum<sup>13</sup> they may run afoul of the law and be held liable<sup>14</sup>

### 2.3 Remand Order Proceedings

'Remand' is the act or an instance of sending something (such as a case, claim or person) back for further action<sup>15</sup>. Per Tobi J.C.A (as he then was) defined remand to mean '... to send to prison or send back to prison from a Court of law to be tried later after further inquiries have been made, often in the phrase "remanded in custody".<sup>16</sup>Remand also known as pre-trial detention, preventive detention or provisional detention, it is the process of detaining a person until his trial.<sup>17</sup> It has been stated earlier that the concept of remand order proceedings is statutorily enabled.<sup>18</sup> It is submitted that these legislations merely created statutory recognition and backing for holding charge which before the enactment of the Act was not part of our jurisprudence.

---

<sup>8</sup> Aliyu Aliyu Imam and Idris Baba Mohammed, 'Legal Issues in Remand Proceedings Under The Administration of Criminal Justice In Nigeria' *ABUAD Law Journal (ALJ)* (2023) (11)(1) 78-96 <https://doi.org/10.53982/alj.2023.1101.04-j> accessed on 3rd May 2024.

<sup>9</sup> James Atta Agaba, *Practical Approach to Criminal Litigation in Nigeria* (4<sup>th</sup>edn, Renaissance Law Publishers 2022)

<sup>10</sup> *Jimoh v. Cop* (2004) LPELR-11262(CA) (Pp. 10 paras. E); *Enwere v. C.O.P* (1993) 6 NWLR (Pt. 229) 333 at 341 etc.

<sup>11</sup> Example of this can be seen in the *locus classicus* case of *Enwere v. C.O.P* (1993) 6 NWLR (Pt. 229) 333 at 341.

<sup>12</sup> Section 35 CFRN 1999 (as amended).

<sup>13</sup> Section 35(4) of CFRN 1999 (as amended).

<sup>14</sup> n.9.

<sup>15</sup> n.2 at p 1547.

<sup>16</sup> *Lufadeju v Johnson* Suit No. S.C 247/2001; (2007) 8 NWLR (Pt. 1037) 535 at 562.

<sup>17</sup> Cletus Ojumu and EmejeAruwa and Balami Deborah "The jurisprudence of remand proceedings in Nigeria: A pre and post administration of criminal justice act 2015' *International Journal of Law* (2022) (8) (5) 136-143 available at <nigerianjournalonline.com> accessed on 4<sup>th</sup> May 2024.

<sup>18</sup> Section 293 Administration of Criminal Justice Act 2015, Section 266 Administration of Criminal Justice Law of Bayelsa State 2019, Terrorism (Prevention & Prohibition ) Act 2022.

## 2.4 Legitimate Investigation

Legitimate is an adjective which means complying with the law; lawful.<sup>19</sup> It also means genuine; and valid.<sup>20</sup> While investigation is the activity of trying to find out the truth about something, such as a crime, accident, or historical issue; especially, either an authoritative inquiry into certain facts, as by a legislative committee, or a systematic examination of some intellectual problem or empirical question.<sup>21</sup> The Legal and Commercial Dictionary<sup>22</sup> defines "investigation" on page 479 as careful search, study, close inquiry, scrutiny, detail examination, collection of facts, inquiry, exhaustive study, and systematic search. Legitimate investigation is the lawful or genuine inquiry or examination of crime or surrounding circumstance of a crime.

## 2.5 Unchecked Discretion

Discretion has been defined as wise conduct and management exercised without constraint; the ability coupled with the tendency to act with prudence and propriety.<sup>23</sup> It is freedom in the exercise of judgment and; the power of free decision making.<sup>24</sup> It also means the equitable decision of what is just and proper under the circumstance or a liberty or privilege to decide and act by what is fair and equitable under peculiar case guided by the principles of law.<sup>25</sup>

Discretion in the judicial and legal context means an equitable decision of what is just and proper under the facts and circumstances of a particular case guided by the principles of law.<sup>26</sup> Judicial discretion is defined by the Black's Law<sup>27</sup> as the exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not to act when a litigant is not entitled to demand the act as a matter of right.

Unchecked discretion in the context of this write-up is the unhindered exercise of power to apply for and grant of remand order by the authorities' concern (the security agencies and the courts).

## 3.1 Legal Framework for Remand Order Proceedings

Nigeria's legal framework for remand order proceedings is primarily governed by a combination of constitutional mandates, statutory provisions and judicial interpretations aimed at guaranteeing fair legal procedures and safeguarding individual rights. At the national level, the primary legislation includes the Constitution of the Federal Republic of Nigeria 1999 (as amended), the

---

<sup>19</sup> n.2.

<sup>20</sup> Ibid.

<sup>21</sup> n.2.

<sup>22</sup> Tapash Gan Choudhury, *Legal and Commercial Dictionary* (6<sup>th</sup> ed.,) p.149.

<sup>23</sup> n.2 at p 585.

<sup>24</sup> Ibid.

<sup>25</sup> See *Ejiamike v Ejiamike* (1972) ECLSR Vol. II (Pt 1)11

<sup>26</sup> See *Artra Industries Nigeria Ltd v Nigerian Bank for Commerce and Industries* (1998) 4 NWLR (Pt 546)357 at 381.

<sup>27</sup> n.1 at p 585.

Administration of Criminal Justice Act (ACJA) 2015, and the Terrorism (Prevention and Prohibition) Act, 2022. While in Bayelsa State, the Administration of Criminal Justice Law of Bayelsa State, (ACJLB) 2019 stipulates similar provisions to that of the ACJA 2015.

The core components include section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides the fundamental legal framework ensuring the right to personal liberty, stating that no person shall be deprived of such liberty except by the law. It also outlines conditions under which a person may be lawfully detained and requires that anyone who is arrested or detained be promptly brought before a court within a reasonable time<sup>28</sup>.

Section 293 of ACJA, 2015 allows a police officer to apply to a magistrate for a remand order if there is probable cause that a suspect has committed an offence, and it is necessary to continue the investigation. Section 296 of ACJA limits the initial period for which a suspect can be remanded to 14 days, which can be extended for another 14 days if the investigation is not concluded. Section 298 of ACJA is to the effect that a suspect shall not be remanded in custody for a period exceeding a total of 56 days from the date of the first remand order without being charged to court. Section 299 of ACJA emphasizes the duty of the court to review the remand order periodically and to release such suspects if it is no longer necessary to keep them in custody. The ACJA's provisions on remand proceedings have been both praised and criticized. Critics<sup>29</sup> argue that these provisions essentially legislate the condemned "holding charge" practice, potentially violating rights to personal liberty and fair hearing, as remand orders can be issued ex parte.

Sections 266-269 of the Administration of Criminal Justice Law of Bayelsa State, (ACJLB) 2019 generally align with the ACJA provisions mentioned above.

### **3.2 Courts with Jurisdiction**

By the combined effect of sections 66(1) and 99 of the Terrorism (Prevention and Prohibition) Act 2022, it is the Federal High Court that has the requisite jurisdiction to grant a remand order. While section 293(1) of ACJA 2015, and section 266(1) of ACJB 2019 designate a magistrate court to have jurisdiction for remanding a suspect even though the court does not have jurisdiction to try the suspect is alleged to have committed.

Regarding the jurisdiction of the Federal High Court to grant remand orders, it is unquestionable that the Federal High Court possesses broad jurisdiction,

---

<sup>28</sup> Reasonable time means; a period of one day (i.e. 24hours) where there is a court of competent jurisdiction within forty-kilometre radius from the place of arrest or detention, or a period of two days (i.e. 48 hours) or such longer time as the circumstances may determine where there is no court within forty kilometre radius from the place of arrest or detention or in any other case. This however does not apply to a person who is alleged or suspected reasonably of having committed a capital offence.

<sup>29</sup> See (n 9).

subject to the provisions of the Constitution.<sup>30</sup> The problem of jurisdiction however may arise in respect of section 293(1) of ACJA, 2015 and section 266(1) of ACJLB 2019 in respect of the offences which a magistrate court has no jurisdiction to try. Cletus argued that the same is outrightly unconstitutional.<sup>31</sup> It is submitted here that section 293 has received judicial blessing and the constitutionality of same has been laid to rest in EFCC Chairman .v Osunde.<sup>32</sup> The Court of Appeal observed thus:

A defendant can be remanded in prison on a remand order issued by a Magistrate particularly where the offence alleged is outside the competence or jurisdiction of the Magistrate to try such a case. A remand order maintains a balance between the two duties of Court by doing away with the tendency of an arbitrary near indefinite police detention of suspects without order of Court...

### 3.3 Application for Remand

Closely related to jurisdiction is the procedure for application which is done ex parte, in the prescribed Form 8 known as 'Report and Request for Remand Form. The application must be verified on oath and contain reasons for the remand. Section 266(1) of the ACJLB 2019 does not contain a provision for verification on oath, which is considered a setback. This is because the requirement for verification on oath would ensure that the application is not made lightly as there are consequences for lying on oath.

A Court before whom a remand proceeding is filed may exercise its discretion by granting the order for the remand of the defendant if satisfied that there is probable cause to remand the defendant pending the receipt of the Legal Advice from the Attorney General or proper arraignment of the defendant in a court of competent jurisdiction.<sup>33</sup> Probable cause in this sense includes the consideration of the nature and seriousness of the alleged offences, reasonable grounds for believing that the suspect may abscond or commit further offences where he is not committed to custody, including any other circumstances of the case that justifies the request for remand.<sup>34</sup>

It is noteworthy to promptly acknowledge that the aforementioned implies that granting an application for an order of remand of the defendant is not automatic; the prosecution is obligated to demonstrate and convince the court of the mentioned factors to qualify for the favourable discretion of the court. The consistent utilisation of the term 'may' in the provisions relating to remand order under ACJA, ACJLB and the Terrorism (Prevention and Prohibition Act) 2022 initially suggested that the issue is subject to the court's discretion. This assertion is further strengthened by the accompanying prerequisite of presenting the case before the court to meet the criteria for such a grant. It is

---

<sup>30</sup> Section 251 of the CFRN 1999 (as amended).

<sup>31</sup> Cletus Ojumu (n.13).

<sup>32</sup> (2022) LPELR-57259(CA) (Pp. 13-16 paras. F).

<sup>33</sup> Section 294 of ACJA, 2015.

<sup>34</sup> S. 294 (2) of ACJA, 2015.

trite that the term 'may' is considered a "permissive" or "enabling expression". This position is adopted in respect of this section because an examination of the whole section depicted a scenario of permissibility for the court in granting the application for remand proceedings provided 'probable cause' is shown. The failure of the court to also grant such application by the provision of the law may not be objectionable because the law neither imposes obligation nor does it provide any legal consequence for failure to comply with same<sup>35</sup>

Flowing from all the above, it becomes imperative for the court to be guided by the best practice in the administration of justice of exercising discretion judicially and judiciously, according to the applicable laws and depending on the facts and circumstances placed before the court.

### **3.4 Power to Grant Bail**

The court may, in considering an application for remand brought under section 293 ACJA grant bail to a suspect brought before it, taking into consideration the provisions of Sections 158 to 188 of ACJA.<sup>36</sup> The use of the word 'may' by the drafter of the law also suggests permissiveness and discretion, that is, the person who has to carry out the act may choose among the available options.<sup>37</sup> It is commendable that the drafters of ACJLB with regards to the power of the Magistrate to grant bail in remand proceedings where they used the word shall, denoting mandatory grant of bail in appropriate cases.

### **3.5 Time and Protocol for Remand**

The time frame of the order of remand for a suspect is 14 days initially, with the case to be heard within this time frame. The court may extend the remand period up to another 14 days if good cause is presented in writing. If the suspect remains in custody after the initial remand period, bail may be granted upon application following relevant sections of the laws under discussion. After the expiration of the remand order, a hearing notice is issued to the relevant prosecuting authorities and the case is adjourned for review within 14 days, giving a chance for release if good cause is not shown.<sup>38</sup>

If good cause is shown, the suspect's remand can be extended for 14 days for trial, with the case returnable within that period. If no good cause is shown for continued remand, the suspect should be discharged and released from custody immediately, with no further application for remand allowed.<sup>39</sup>

An order of remand under section 266(6) of ACJLB, 2019 shall not exceed 30 days initially. After this period, the Magistrate must release the person unless good cause is shown for another remand up to 14 days.

---

<sup>35</sup> See the dictum of Katibi-Whyte JSC (as he then was) on the effect of 'may' in a statute in *Adesola V Abidoye* (1999) 14 NWLR (Pt. 637) 28 at page 56 Paragraph C-E,

<sup>36</sup> S. 295 of ACJA, 2015

<sup>37</sup>*Obong & Ors v Government of Akwa Ibom State & Anor* (2014) LPELR-24259(CA) (Pp. 29-30 paras. A-A).

<sup>38</sup> S. 296 of ACJA, 2015

<sup>39</sup> Ibid.

The remand order under the Terrorism Act is for a maximum duration of 60 days, with the possibility of extension for an equivalent period, until the finalisation of the inquiry and legal proceedings on the incident that prompted the apprehension and imprisonment, on the condition that for any extensions, the pertinent agency must engage the Attorney-General of the Federation.<sup>40</sup>

#### 4.1 The Duality of Remand Order

The remand order is regarded by the scholars of this article as a double-edged sword that could be effectively utilized to achieve some of the key purposes and objectives of the Administration of Criminal Justice Act, 2015, as well as the Administration of Criminal Justice Laws of various states with similar provisions. These objectives include, inter alia, ensuring the efficiency of the criminal justice system in Nigeria, the effective management of criminal justice institutions, the expeditious dispensation of justice, and the protection of society from crime.<sup>41</sup> The other edge could be negatively used as an instrument of human rights abuses of suspects which also negates the purpose of the Act.<sup>42</sup> To this end, this segment of the paper discusses remand order proceeding as an instrument for effective investigation and the potential for arbitrary deprivation of human rights.

#### 4.2 Remand Orders as Instrument for Effective Investigations

Remand orders play a crucial role in facilitating the effective investigation of crimes. They achieve this in the following ways:

##### It Facilitate Investigations

It is the constitutional and statutory duty of the police to investigate, prevent and detect crime.<sup>43</sup> In developing countries like Nigeria, effective administration of criminal justice is majorly hampered by the detection and investigation of crime and criminals especially because of the poor level of technological advancement.<sup>44</sup>

The sad reality is that the Nigerian Police is ill-equipped to carry out its duty of investigation thereby resulting in the delay in investigating a crime. Oluwagbenga<sup>45</sup> observed that, on average, the Nigerian Police Force spends six (6) months on investigation regardless of the nature of the offence a person is alleged to have committed. Remand orders grant authorities time to gather evidence and complete investigations. This can be crucial in complex cases or

---

<sup>40</sup> S.66 (1) of the Terrorism (Prevention and Prohibition) Act 2022.

<sup>41</sup> Section 1 of Administration of Criminal Justice Act, 2015.

<sup>42</sup> Ibid.

<sup>43</sup> See section 31 of the Nigeria Police Act, 2020; *Ibrahim v. COP, Kwara State* (2021) LPELR-53989(CA) (Pp. 19-20 paras. E).

<sup>44</sup> AM Adebayo, *Role of Police Officers in the Administration of Criminal Justice in Nigeria* (Princeton Publishers Co., 2012) 1.

<sup>45</sup> A. M. Oluwagbenga, 'Do the Police Really Protect and Serve the Public? Police Deviance and Public Cynicism Towards the Law in Nigeria' *Criminology and Criminal Justice* (2017) (17) 159.

those requiring witness testimony or forensic analysis. Without remand, suspects might tamper with evidence or intimidate witnesses, hindering a proper investigation.

#### **It Maintain Public Safety**

In cases involving serious crimes such as terrorism<sup>46</sup>, remand orders can keep potentially dangerous individuals off the streets while investigations proceed. This protects the public from potential harm that may be occasioned if the suspect is released on bail. With that, members of the public are protected and given the assurance that they are protected.

#### **It Prevent Witness Tampering**

Remanding a suspect can prevent them from contacting or intimidating witnesses who might provide crucial evidence. This is especially important in cases involving threats or violence, political and corruption cases.

#### **It Curb Corruption**

Remand orders can help reduce the possibility of suspects influencing investigations through bribery or corruption. Keeping them detained minimises their ability to tamper with the process.

#### **It Complement Bail System**

Remand orders are not meant to replace bail entirely. They are used in specific situations where bail might not be appropriate due to the severity of the crime or potential risks posed by the suspect.

### **4.3 Potential for Arbitrary Deprivation of Fundamental Human Rights**

Human rights are rights that all human beings have by virtue of their humanity, such as the right to life, dignity of the human person, personal liberty, fair hearing and freedom of thought, conscience and religion.<sup>47</sup> They provide a common standard of behaviour among the international community. The Constitution of the Federal Republic of Nigeria (as amended) confers these rights on its citizens in Chapter IV. The prominent among these rights which academics<sup>48</sup> have identified as being, or likely to be violated by the provision of

---

<sup>46</sup> See section 66(1) of the Terrorism (Prevention and Prohibition) 2022.

<sup>47</sup> See the Universal Declaration of Human Rights, G.A.Res. 217A, pmb., U.N. GAOR, 3d Sess., 1<sup>st</sup> Plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) [hereinafter Universal Declaration of Human Rights]; U.N. Charter pmb. The preambles of both the UDHR and the U.N. Charter recognize human rights as inherent in man. Paragraph 2 of the U.N. Charter, for instance, "reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."

<sup>48</sup> Cletus Ojumu (n.13); Adeyanju and Oluwafunmilayo Folasade, 'Safeguarding the Legal Provisions of the Presumption of Innocence of Pre-trial Detainees' *Redeemer's University Nigeria, Journal of Jurisprudence & International Law (RUNJIL)* (2023) (3) (1); Ugochukwu Ugochukwu Charles Kanu and Don OnuoraOkanyi and Leonard Ibekwe Ugwu, 'Scrutinizing the Constitutionality of Remand Order Proceedings under the

remand order proceedings are the right to presumption of innocence, fair hearing, liberty, dignity of human person among others.

### **Right to Presumption of Innocence**

The law<sup>49</sup> stipulates that, irrespective of the severity or gravity of the offense allegedly committed by the defendant, any accusation or charge brought against them in a court of law remains merely an allegation until it is proven beyond reasonable doubt<sup>50</sup>.

Cletus Ojumu et al<sup>51</sup> contended that the Remand Order Proceeding essentially provided statutory acknowledgement and support for the concept of holding charges, which was not part of our legal system prior to the Act's implementation. The provisions grant the Security Agencies in Nigeria the legal discretion to apprehend suspects without any shred of evidence, subsequently seeking a remand order from Magistrates' Courts, resulting in the detention of the suspect in prison custody while awaiting evidence for prosecution.<sup>52</sup>

Referring to a ruling by the Court of Appeal,<sup>53</sup> it was further posited that detaining a suspect through remand procedures at Magistrates' courts before investigating amounts to prematurely acting based solely on allegations, without any supporting evidence.

### **Right to Fair Hearing**

The right to a fair hearing<sup>54</sup> is a fundamental human right founded on the twin pillars of justice expressed in the Latin maxim *Audi alteram partem* and *Nemo iudex in causa sua*<sup>55</sup>. The entitlement to a just and fair hearing necessitates that an individual must not face repercussions from a ruling that impacts their rights or reasonable expectations without receiving advance notification of the allegations, a reasonable chance to address them, and the ability to present their own argument. Moreover, it mandates that the adjudicator must be an impartial individual devoid of any potential bias.<sup>56</sup>

---

Administration of Criminal Justice Legislations in Nigeria: A Comparative Analysis' *Beijing Law Review* (2022) (13) 1030-1050 Available at <https://www.scirp.org/journal/blr> accessed on 5th May 2024

<sup>49</sup> Section 36(5) of CFRN 1999 (as amended); Article 7 of the African Charter on Human and Peoples' Rights; Article 14(2) of the International Covenant on Civil and Political Rights; Article 11(1) of Universal Declaration of Human Rights.

<sup>50</sup> Adeyanju and Oluwafunmilayo Folasade, 'Safeguarding the Legal Provisions of the Presumption of Innocence of Pre-trial Detainees' Redeemer's University Nigeria, *Journal of Jurisprudence & International Law (RUNJIL)* (2023) (3) (1).

<sup>51</sup> Cletus Ojumu (n.13).

<sup>52</sup> Ibid.

<sup>53</sup> *Duruaku v Nwoke* (2015) 15 NWLR (pt. 1483); (2016) All FWLR (pt 815) 351 p. 395, paras. E-F.

<sup>54</sup> Guaranteed under section 36 of the CFRN 1999 (as amended).

<sup>55</sup> Meaning "listen to the other side", or "let the other side be heard as well" and no one may be a judge in his own cause.

<sup>56</sup> Fabian Ajogwu, *Fair Hearing* (Second Edition, CLDS Publishing 2020) 5.

It is against this background that the study agreed with Cletus et al<sup>57</sup> where he submitted that the procedure of obtaining a remand order under the Administration of Criminal Justice Act 2015<sup>58</sup> which is done ex-parte, the suspect who has been brought before the Magistrate by the Police or law enforcement agency is not heard, thereby shutting him out in a proceeding that seeks to curtail his personal liberty. This negates the dictates of fair hearing.

Conversely to this argument, Kanu et al<sup>59</sup> observed that the rights are not absolute and can be restricted in certain cases. In addition, it was further observed that criminal trial commences with arraignment, wherein the Defendant takes a plea as against remand proceedings, where the suspect is not arraigned and there is no hearing or requirement for proof before the Court could act, rather, what the court requires to act are whether the report and request for remand and the verifying affidavit disclosed a probable cause that the police or any other relevant authority acted on reasonable ground that a crime was committed.<sup>60</sup>

This research respectfully disagrees with Kanu et al., a suspect brought before a court on an allegation of the commission of an offence should be given his right to a fair hearing and deprivation of it at any stage of the administration of justice is unlawful and unconstitutional.<sup>61</sup> The right to a fair hearing is one which every person is entitled to. Once a person is arrested, he is presumed innocent until proven otherwise.<sup>62</sup> Hence, he should be allowed to defend himself either personally or by counsel even in the course of remand proceedings. Since however, remand proceedings are made ex-parte the suspect is shut out.

The proceeding is a one-party affair denying the suspect the opportunity or the right to fair hearing. There is no inconvenience or miscarriage of justice created if the application is made on notice or if the suspect is put on notice.<sup>63</sup> Where this is the case, it gives the suspect the latitude to state his/her position to the application for remand. At any material time a suspect is brought to any court for a remand proceeding, the suspect should be given an opportunity to be heard instead of the proceeding being ex-parte.<sup>64</sup>

Flowing from the arguments and counter-arguments of the above-learned scholars, it is submitted that the provisions<sup>65</sup> on remand proceedings that stipulates that same should be conducted ex-parte, contradicts Section 36 of the

---

<sup>57</sup> Cletus Ojumu (n.17).

<sup>58</sup> Section 293(2) of ACJA, 2015.

<sup>59</sup> Ugochukwu Ugochukwu Charles Kanu and Don OnuoraOkanyi and Leonard Ibekwe Ugwu, 'Scrutinizing the Constitutionality of Remand Order Proceedings under the Administration of Criminal Justice Legislations in Nigeria: A Comparative Analysis' *Beijing Law Review* (2022) (13) 1030-1050 <<https://www.scirp.org/journal/blr>> accessed on 5th May 2024.

<sup>60</sup> *ibid*

<sup>61</sup> *Adio v State* (1986)3 NWLR (Pt.714).

<sup>62</sup> See (n.35).

<sup>63</sup> Cletus Ojumu (n.13).

<sup>64</sup> *Ibid*.

<sup>65</sup> Section 293(3) of ACJA, 2015.

Constitution of the Federal Republic of Nigeria 1999 (as amended). It is equally the view of this paper that, in remand proceedings the exceptions allowed in our legal jurisprudence in the rules against ex-parte proceeding is not present. There is no urgency (as obtainable in interim orders where time is of essence and the interest of the defendant is certainly affected (as in application for substituted service of court processes). The only exception to the rule against ex-parte procedure that is present in remand proceedings is that a law provided for it. It is the submission of this study that this provision of the law derogates from the constitutionally guaranteed provision for fair hearing as it is inconsistent with it. And where such inconsistencies exist, same should be resolved in favour of the constitution.<sup>66</sup>

### **Right to Liberty**

The entitlement to the right to liberty of an individual is both assured and safeguarded by various international<sup>67</sup> and domestic<sup>68</sup> frameworks. These provisions explicitly forbid unjustified apprehension and confinement. Defendants must not be stripped of their liberties and subjected to prolonged confinement prior to the resolution of charges against them. Every individual confronted with a criminal accusation possesses the inherent entitlement to personal freedom and fair treatment. The act of detaining individuals before being proven guilty constitutes a significant violation of their liberty.

Available statistics from the Nigerian Correctional Service as of 6<sup>th</sup> May 2024 shows that, out of the total inmate population of 80,511, the total number of convicted prisoners is 25,083 (31%) while those awaiting trial is 55, 428 (69%).<sup>69</sup> It is the view of the study that is this alarming number of detainees might have been exacerbated by cases of pre-trial detention arising from remand order proceedings.

As discussed above in the case of fair hearing, Kanu et al<sup>70</sup> observed that the right to personal liberty is not absolute and that there is a need to strike a balance between the right and the need to ensure that offenders do not escape justice by being at large. Some of the cases where suspects have been in castrated through remand proceedings have turned out to be mere trump up charges. An instance is in the case of Omoyele Sowore, he was ordered to be detained for 45 days under a trumped charge of treason.<sup>71</sup> The charge was later discontinued by the Attorney-General of the Federation after the court had threatened to strike out the charge over lack of diligent prosecution.<sup>72</sup> This case highlights the potential for abuse in remand proceedings and underscores the critical importance of maintaining checks and balances within the legal system.

---

<sup>66</sup> See section 1(3) of CFRN 1999 (as amended); also see the dictum of Niki Tobi JSC (as he then was) in the case of *Tanko v State* (2009) 4 NWLR (Pt.1131) 430.

<sup>67</sup> Article 9 of the International Covenant on Civil and Political Rights (ICCPR) of 1966.

<sup>68</sup> Section 35(1) 1999 Constitution of Nigeria (as amended).

<sup>69</sup> Nigerian correctional service statistics summary <[www.corrections.gov.ng](http://www.corrections.gov.ng)> accessed on 8<sup>th</sup> May 2024

<sup>70</sup> See Ugochukwu (n.45)

<sup>71</sup> <https://www.premiumtimesng.com/news/headlines/345969-sowore-appeals-court-order-keeping-him-in-detention.html?tztc=1>

<sup>72</sup> <https://www.thecable.ng/just-in-fg-terminates-treason-charge-against-sowore/>

The argument the study seek to advance is that the restriction of the right to liberty is not always justified or legally defensible, as demonstrated by the case under review.

### 5.1 Recommendations

Remand orders are "necessary evil" for effective criminal justice administration; it is however paramount to address some of the shortcomings to ensure effective implementation. These include inter alia:

#### Putting a Defendant on Notice

In addressing deficiencies stemming from the procedural method utilised in the submission of a remand application through ex parte means, it is recommended that a more appropriate approach should involve notifying the defendant beforehand. This procedural adjustment would allow the defendant to present their perspective, thus upholding the fundamental right to a fair hearing.

In addition, Section 266(1) of the Administration of Criminal Justice Law of Bayelsa 2019 should be modified to incorporate requirements for a Sworn Verification of any assertions put forth by the prosecuting authority. Such an amendment would function as a mechanism for oversight aimed at restricting the potential overreach of prosecuting agencies. Similarly, it would empower the court to exercise its discretion judicially and judiciously.

#### ii. Purposive Interpretation of Bail Provisions

By section 295 of the Administration of Criminal Justice Act (ACJA) 2015, the legislators utilised the term 'may' to indicate permissiveness, in contrast to 'shall' which signifies obligation; consequently, it is recommended that the judiciary adopts a broad interpretation of this provision to allow for the release of defendants on bail in suitable circumstances. Such an approach would serve to mitigate the prevalent issue of excessive pre-trial detention, which currently account for 69% of individuals held in Nigerian correctional facilities as of the 6th of May, 2024 as earlier cited.

#### iii. Shortening Time Limit for Remand

The reduction of the time limit for remand is a topic that requires the attention of the Legislature, for possible amendment of the relevant provisions concerning the duration of remand proceedings, particularly focusing on section 66(1) of the Terrorism (Prevention and Prohibition) Act 2022. Furthermore, it was established by the court in the case *Fani Kayode v EFCC*<sup>73</sup> that the purpose of remand proceedings should not be misinterpreted as a means for law enforcement agencies to arbitrarily secure court orders to detain suspects indefinitely while in search of evidence for prosecution. The practice of arresting individuals before conducting investigations is a longstanding issue within law enforcement agencies. The apex court had frowned at this practice in

---

<sup>73</sup> Unreported FCT/HC/CV 1767/16

2002 in the case of *Fawehinmi v. IGP*,<sup>74</sup> where the Court deemed it inappropriate for the police to detain a suspect for the sole purpose of gathering evidence for future prosecution.

### **Conclusion**

Having investigated the debates over whether remand order proceedings are a legitimate investigative tool or allow prosecuting agencies unfettered authority, potentially leading to violations of individual rights. It is argued that remand order proceedings are designed to facilitate effective investigations; however, their implementation raises significant concerns regarding potential abuse by prosecuting agencies. These concerns necessitate legislative reform to address identified deficiencies in the law and ensure alignment with contemporary realities and evolving societal needs.

---

<sup>74</sup> (2002) LPELR-1258(SC)