

Decongestion of Nigerian prisons: An examination of the role of the Nigerian police in the application of the holding-charge procedure in relation to pre-trial detainees

*Aliyu Ibrahim**

Lecturer, Department of Public and Private Law, Faculty of Law, Umaru Musa Yar'adua University, Katsina, Nigeria
<https://orcid.org/0000-0002-9088-0552>

Summary

The Nigerian Correctional Service is known to be grappling with a congestion of inmates in its facilities around the country. However, its major challenge is that more than two-thirds of these inmates are awaiting-trial detainees that ultimately stay in correctional centres for long periods of time without their status being determined. There is a growing body of research into ways to reduce the high incidence of prolonged detention of pre-trial inmates in the country. This article analyses the effect of the holding-charge procedure, whereby the Nigerian police arraign individuals before lower courts that do not have jurisdiction to try the alleged crimes, for the purpose of remanding individuals in prison custody pending the time of completion of an investigation into their matters by the police, which could take years. In the course of the study, the relevant literature on international and national human rights legal jurisprudence, including the Administration of Criminal Justice Act (2015), which has as one of its objectives the reduction in the prolonged periods of detention of pre-trial detainees, was analysed with a view to highlighting the implications of the holding-charge procedure for the criminal justice system of Nigeria. Consequently, it was observed that the practice of holding charge contributes largely to the high number of pre-trial-detainees. There is a need for urgent reforms in the criminal justice system of Nigeria to reduce the arbitrary detention of individuals.

* LLB (ABU) LLM (ABU) PhD (UKZN); aliyu.ibrahim@umyu.edu.ng

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1 Introduction

Prison congestion is a challenge faced by many countries globally. The Nigerian Correctional Service (NCS) also is not insulated from this problem, as it has a capacity of housing only 50 153 inmates.¹ However, as at 7 October 2019 it accommodated 73 818 inmates.² In addition, the majority of persons in custody are held without bail or having been convicted by a court of law. These categories of inmates are referred to as pre-trial detainees (PTDs).³ They constitute 69 per cent of the total prison population, as 50 968 out of the total prison inmates of 73 818 are PTDs, while 22 850 have been convicted and are serving prison terms.⁴ This situation has been described as a 'national scandal'.⁵ Various suggestions for solving the problem of prison congestion have been proffered. Olokooba and Adebayo are of the opinion that the adoption of plea-bargain, where an accused person pleads guilty to the commission of a lesser offence in exchange for a lighter sentence, will accelerate the administration of justice, hence reducing the pressure on the correctional facilities.⁶ Simon-Peter suggests the establishment of privately-owned and managed prisons, although he is of the view that 'caution' should be exercised by the government as they are profit-oriented.⁷ Also, it was observed that the introduction of non-custodial sentencing for convicts and ordering them to engage in community service instead of imprisonment decreases the number of inmates in prisons.⁸

This article seeks to examine the role of the Nigerian Police Force (NPF), which has the task of investigating of the commission of criminal offences, as it pertains to its contribution to the congestion in Nigerian prisons. The NPF at the initial stage takes individuals into its detention facilities, and what it does thereafter largely determines whether the cases will be disposed of speedily.⁹ 'Poor or shoddy

1 'World Prison Brief Data', www.prisonstudies.org/country/nigeria (accessed 28 August 2018).

2 'Summary of inmate population by convict and awaiting trial persons as at 7 October 2019', www.prisons.gov.ng/statistics (accessed 10 October 2019).

3 AB Garner et al (eds) *Black's law dictionary* (2009) 514.

4 Summary of inmate population (n 2).

5 W Isiaka 'Buhari: Prison congestion a national scandal' 7 October 2017 <https://dailytrust.com.ng/buhari-prison-congestion-a-national-scandal.html> (accessed 12 February 2018).

6 SM Olokooba & MK Adebayo 'Plea bargaining: A panacea towards prison congestion in Nigeria' (2014) 4 *International Journal of Juridical Sciences* 146.

7 S Ayooluwa 'Service work as an antidote to prison problems in Nigeria' (2016) 1 *International Journal of Juridical Science* 34.

8 Ayooluwa (n 7) 37.

9 A Babalola 'Power of police to prosecute criminal cases: Nigeria and international perspectives' (2014) 2 *European Journal of Business and Social Sciences* 131.

investigation' methods tend to prolong the incarceration of individuals.¹⁰ Also, there are allegations of their failure to submit case files timeously to the authorities concerned for legal advice (the office of the Director of Public Prosecution) to decide whether to prosecute or dismiss the charges against the suspects, which further contributes significantly to the growing number of PTDs.¹¹ Consequently, the article discusses the legislation that protects the right to liberty of individuals in Nigeria, the functions of the NPF and an analysis of the application of the holding charge in Nigeria.

2 Safeguards against pre-trial detention

The right to liberty of individuals is guaranteed and protected at the international level by article 9 of the International Covenant on Civil and Political Rights (ICCPR) of 1966. This Covenant prohibits the arbitrary arrest and detention of individuals.¹² The Human Rights Committee (HRC), which has the responsibility of overseeing the implementation of the provisions of ICCPR¹³ to which Nigeria is a party, describes arbitrary detention as 'an arrest or detention which may be authorised by domestic law and nonetheless be arbitrary' as it may be as a result of 'inappropriateness, injustice, lack of predictability and due process of law'.¹⁴ Although the HRC recognises the right of an individual to liberty as provided in article 9(1), it acknowledges that it is not absolute, as anyone may be justifiably detained, but the detention must be within the ambit of the law.¹⁵ The most common forms of detention as identified by the HRC are police custody and pre-trial detention.¹⁶

The Nigerian Constitution, as does ICCPR, also guarantees each individual's right to liberty. However, the Constitution acknowledges that the right is not absolute and can be curtailed in accordance with the law.¹⁷ ICCPR for its part provides that anyone arrested or detained on a criminal charge shall be arraigned 'promptly' before a competent court of law.¹⁸ The treaty does not explain the time frame that would satisfy the prompt requirement in arraigning a detainee before a court. However, the HRC has explained that a detainee should be

10 'Police cause of congestion in Nigerian prisons: Dambazau', thenewsnigeria.com/2016/03/police-cause-of-congestion-in-nigerian-prisons-dambazau/ (accessed 1 July 2018).

11 'Controller of Prisons laments prisons congestion in Delta' *Leadership* 10 July 2018 12.

12 General Assembly Resolution 2200A (XXI).

13 General Assembly Resolution (n 12) art 28.

14 General Comment 35: Article 9 (Right to liberty and security of persons) adopted by the HRC at its 112th session 16 December, 2014 UN DOC NO CCPR/C/GC/ 35 para 12.

15 General Comment 35 (n 14) para 10.

16 General Comment 35 para 5.

17 Constitution of the Federal Republic of Nigeria 1999 (as amended) sec 35(1).

18 ICCPR (n 12) art 9(3).

brought before a judge within 48 hours of his detention and in the case of juveniles within 24 hours. These timelines are given to minimise the chances of the detainees being ill-treated while they are in the custody of the police.¹⁹ The HRC's interpretation of 'promptness' to be 48 hours is commended as it is seen to have 'taken global realities into account'.²⁰ Equally, it has been pointed out that 'prompt custody hearing' gives a detainee the opportunity to put his case before a judge, so that the legality of his detention can be determined.²¹ Nigerian legislation contains more onerous provisions regarding detention periods in police custodial centres, as it provides that an individual shall not exceed the period of (i) 24 hours (a day) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of 40 kilometres and, (ii) in any other case, 48 hours (two days) or any longer period which, given the circumstances of the case, the court may consider reasonable.²²

However, under (ii), the Court of Appeal asserted that where there is a court of competent jurisdiction within a radius of 40 kilometres, the failure to arraign a person alleged to have committed a criminal offence in a period of one day as provided by section 35(5)(a) is an infringement of the constitutionally-guaranteed right to liberty of every citizen of Nigeria.²³ Pre-trial detention that results in prolonged incarceration is also discouraged by the HRC as it enjoins states to resort to it only out of necessity, as it is prone to abuse by state authorities, which has resulted in the PTDs outnumbering prison convicts.²⁴ As indicated earlier, Nigeria falls under the category of those states that have a high number of PTDs in its correctional centres. The Constitution has set a time limit of 48 hours for keeping persons in the custody of the NPF.²⁵ The Nigerian Constitution further provides that any individual that has been detained and has not been tried within two months shall be released unconditionally or on bail.²⁶ The Nigerian Supreme Court further elaborated on the constitutional right to bail of individuals as follows:²⁷

19 General Comment 35 (n 14) para 33.

20 LG Neuman 'Arbitrary detention and the Human Rights Committee's General Comment No 35' 17 September 2016, <http://ssrn.com/abstract=2840254> (accessed 21 April 2017).

21 L Medina 'Indefinite detention, deadly conditions: How Brazil's notorious criminal justice system violates the International Covenant on Civil and Political Rights' (2016) 31 *American University International Law Review* 613.

22 Nigerian Constitution (n 18) sec 35(5).

23 *Danfulani v EFCC* (2016) 1 Nigerian Weekly Law Reports (Pt 1493) 223 247 paras F-H.

24 S Nagy 'Use and abuse of pre-trial detention in Council of Europe: A path to reform' (2016) 13 *Loyola University Chicago International Law Review* 160.

25 Sec 35(5) Nigerian Constitution.

26 Sec 35(4) Nigerian Constitution.

27 *Suleman v Commissioner of Police* (2008) 162 Law Reports of Courts of Nigeria 179-180 paras JJ-A.

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 freedom is temporary in the sense that it lasts only for the period of the trial.

In addition the Court of Appeal in *Ahmed v Commissioner of Police Bauchi State*²⁸ held:²⁹

Section 35(4) of the Nigerian Constitution provides that a person arrested or detained upon reasonable suspicion of his having committed a criminal offence, should be brought before a competent court of law within a reasonable time, and if such a person is not tried within a period of two months from the date of his arrest and detention, and in the case of a person who is in custody or is not entitled to bail, such an accused person shall/is entitled to be released either unconditionally or upon conditions that are reasonably necessary to ensure his appearance for trial at a later date.

The Court further asserted that 'it does not lie in the mouth of the prosecution' to object to the release of detainees when it failed timeously to arraign them before a court of competent jurisdiction for trial.³⁰ Also, section 35 of the Nigerian Constitution is aimed at protecting Nigerian citizens against arbitrary arrest and detention by the state and its agencies.³¹ Furthermore, section 36 of the Constitution guarantees every individual's right to a fair hearing, that is, the presumption of innocence is in favour of a person charged with a criminal offence,³² who should also be given adequate time and facilities to enable the person prepare his own defence.³³ In addition, the Nigerian Constitution is the supreme law of the land. Hence, it is the responsibility of the state, including the courts, to ensure that the right to liberty of individuals is protected in accordance with the law.³⁴

However, despite the legal protection outlined above there continues to be a high incidence of arbitrary arrest leading to pre-trial detention, which ultimately culminates in the overcrowding of the correctional centres. As a result, there is a high incidence of attempted jailbreaks and riots in the correctional centres which, in the authorities' efforts to suppress these, resulted in loss of life among inmates due to the alleged use of excessive force by security agencies.³⁵ As mentioned earlier, various factors contribute to the

28 (2012) 9 Nigerian Weekly Law Reports (Pt 1304) 909.

29 *Ahmed* (n 28) 125-126 paras G-A.

30 *Ahmed* 129-130 paras H-B.

31 *Danfulani v Economic and Financial Crimes Commission* (2016) 1 Nigerian Weekly Law Reports (Pt 1556) 247 para H.

32 Sec 36(5) Nigerian Constitution.

33 Sec 36(5)(b) Nigerian Constitution.

34 *Okafor v Lagos State Government* (2017) 4 Nigerian Weekly Law Reports (Pt 1556) 433 paras C-D.

35 'Chaos in Nigerian prisons: Two weeks, two riots' *Daily Trust Saturday* 3 September 2016 48.

overcrowding of Nigerian prisons. This article examines the role of the NPF in the high incidence of pre-trial detention in Nigeria.

3 Functions of the Nigerian police force

The NPF is established by the Nigerian Constitution,³⁶ and its powers and duties are outlined in the Police Act.³⁷ The Act provides that the police have the responsibilities of the prevention and detection of crime; the apprehension of offenders; the preservation of law and order; the protection of life and property and the enforcement of all laws and regulations as it may be assigned.³⁸ Furthermore, the Act equally empowers the personnel of the NPF to prosecute cases before any court in Nigeria.³⁹ The NPF's efforts to carry out its functions and discharge its constitutional mandate have not escaped criticism. They are described as 'the most troublesome in sub-Saharan Africa'.⁴⁰ Reports of their engagement in extra-judicial killings, arbitrary arrests and detention are abundant in the media.⁴¹ Also, it is observed that in the majority of NPF investigations the period extends up to six months irrespective of the offence a person is alleged to have committed, which contributes to individuals languishing in detention for months or even years.⁴² Furthermore, the failure to complete investigations within a reasonable time results in the case file being misplaced and,⁴³ as a result, the file is not forwarded to the Director of Public Prosecutions (DPP) who is saddled with the responsibility of issuing legal advice and where necessary arraigning and prosecuting individuals before competent courts.⁴⁴ It has been observed that family members of individuals suspected of having committed a crime sometimes are arrested and detained by the NPF if they are unable to arrest the alleged suspect.⁴⁵ However, this practice is now prohibited by the Administration of Criminal Justice Act (ACJA) of 2015.⁴⁶ The procedure to which the NPF resorts is to have individuals remanded in prison custody pending the time they complete their 'investigations'. Consequently, what contributes to prison overcrowding is the 'holding charge', which is the focus of this article.

36 Sec 214 para U Nigerian Constitution.

37 Ch P19, Laws of the Federation of Nigeria 2004.

38 Sec 4 Police Act.

39 Sec 23 Police Act.

40 AM Oluwagbenga 'Do the police really protect and serve the public? Police deviance and public cynicism towards the law in Nigeria' (2017) 17 *Criminology and Criminal Justice* 159.

41 Oluwagbenga (n 40) 162.

42 F Agbedo *Rights of suspects and accused persons under the Nigerian criminal law* (2009) 215.

43 As above.

44 Agbedo (n 42) 217.

45 Ayooluwa (n 7) 34.

46 Sec 7 Administration of Criminal Justice Act 2015.

4 Position of the holding charge under the Nigerian administration of criminal justice system

Nigeria is a federation consisting of 36 states.⁴⁷ Nigeria has two laws that regulate its criminal proceedings, namely, the Criminal Procedure Act (CPA)⁴⁸ and the Criminal Procedure Code (CPC).⁴⁹ These laws regulate the criminal proceedings in Nigeria, the CPA being applicable in the territories of the 17 southern states of Nigeria, while the CPC is applied by the 19 northern states of the federation.⁵⁰

Under the CPA, the NPF is mandated to submit a report to the nearest magistrate's court of persons in its custody who were arrested without a warrant. The report must indicate whether they are on court bail or not.⁵¹ The law also provides that the NPF arraigns persons in its custody within 24 hours of their arrest before a magistrate's court that has jurisdiction to determine the charges against the accused persons and, where their arraignment is not possible within a short period, admit them to bail if the allegations do not relate to offences that upon conviction are punishable with death.⁵² The CPC, for its part, emphasises that the NPF shall not detain a person in its custody for more than 24 hours. However, on the application of the NPF a court may authorise the detention of a person for a period that is not to exceed 15 days.⁵³ The CPC makes provision for the NPF where there are reasonable grounds to believe that an offence has been committed to record the grounds of these suspicions on a form known as the First Information Report (FIR).⁵⁴ The FIR and those individuals suspected of having committed the alleged offences are arraigned before a magistrate's court, where the NPF prosecutor is given the opportunity to present *prima facie* evidence that the allegations contained in the FIR are true.⁵⁵ If the magistrate, after having conducted the initial inquiry, is satisfied that the allegations in the FIR have not been substantiated, the suspects must be discharged.⁵⁶ However, where the prosecution provides evidence that leads the court to believe that the accused persons have a case to answer, charges are framed by the magistrate and the accused person will take a plea and if they plead guilty, they will be given an opportunity to enter a defence against the charges against them.⁵⁷

47 First schedule Nigerian Constitution.

48 CAP C41 Laws of the Federation of Nigeria 2004.

49 Criminal Procedure Code 27 of 1963.

50 AO Onadeko *The Nigerian criminal trial procedure* (1998) xxii.

51 Sec 20 CPA (n 48).

52 Sec 17 CPA.

53 Sec 129 CPC.

54 Sec 117(2) CPC.

55 Sec 126 CPC.

56 Sec 159 CPC.

57 Sec 160 CPC.

Despite the provision of these laws regulating criminal proceedings, the NPF resorts to a procedure known as the holding charge whereby the NPF arraigns a person suspected of having committed an offence before a magistrate's court under a 'phony or miniature charge' in order for the court to remand the accused person in prison pending the conclusion of their investigation into the matter. After the conclusion of the investigation the individual is formally arraigned under a proper charge before a court of competent jurisdiction and with the fake charge is withdrawn.⁵⁸ The holding charge is used by the NPF also in cases where individuals are suspected of having committed capital offences, where they arraign the individuals on a FIR, which is described by the Supreme Court of Nigeria as 'just a report that an offence has been committed'.⁵⁹ However, the NPF arraign suspects on FIRs before magistrate's courts that do not have the jurisdiction to determine the alleged offences, with the sole aim of securing a remand order, a practice unknown to any law or practice.⁶⁰ An example of the injustice occasioned by the holding-charge procedure is the case of *COP v Usman Abashe & 4 Others*, where the NPF arraigned five individuals before a magistrate's court on FIR,⁶¹ in which they are alleged to have committed criminal conspiracy; armed robbery; the abetment of armed robbery and belonging to a gang of thieves.⁶² As the magistrate's court had no jurisdiction to try the offences, it remanded all the accused persons in prison until such time as the NPF had concluded their investigation. However, the facts contained in the FIR disclosed that two of the individuals were suspected by the NPF only of having stolen sheep and goats, but nevertheless they were remanded in prison and were released only after six months in custody.⁶³ This practice has led to some PTDs remaining in prison for more than seven years without trial.⁶⁴

Also, in some cases the failure of PTDs to provide gratification to the police in order for them to hasten with the completion of their investigations and recommend the termination of the FIR or properly arraign the accused persons before a court of competent jurisdiction has contributed to the congestion in Nigerian prisons.⁶⁵ The NPF engage in the practice of the holding charge to shield themselves from being held accountable if they exceed the time limit provided in the Nigerian Constitution of holding individuals in custody.⁶⁶ The

58 YDU Hambali *Practice and procedure of criminal litigation in Nigeria* (2013) 540.

59 *Suleman* (n 27) 179-180 paras JJ-A.

60 Hambali (n 58) 540.

61 Court Trial KT/CMC1/641x/12.

62 As above.

63 As above.

64 *Olokooba & Adebayo* (n 6) 143.

65 AM Araromi & A Oke 'Breach of human rights by Nigerian police in the performance of its functions: Need for reform' (2013) 10 *US-China Law Review* 483.

66 Hambali (n 58) 540.

holding charge is alien to the Nigerian jurisprudence and it is alleged that it emanates from the NPF.⁶⁷

Nigerian courts have handed down conflicting judgments with regard to the legality of the holding charge. The Nigerian Supreme Court in the case of *Onagoruwa v The State*⁶⁸ held:⁶⁹

In a good number of cases the police in this country rush to court on what they generally refer to as *holding charge* even 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 to search for evidence to prosecute when it is not there.

In another case the Supreme Court criticised the application of the holding-charge procedure as it held that before an accused is brought before any court it should be assumed that the case is ripe for hearing and not for further investigation. The individual must not be there on mere suspicion, which cannot be regarded as reasonable suspicion under the Constitution of the Federal Republic of Nigeria. Where there is no sensible *prima facie* inference that may be drawn that an offence has been committed, the accused cannot be deprived of his liberty, even for a second.⁷⁰ There cannot be a 'holding charge' hanging like a sword of Damocles over an accused in court pending the completion of the investigation into the case against him.⁷¹

However, the Supreme Court has changed its position on the holding charge. In the case of *Lupadeju v Johnson*⁷² it ruled that a magistrate's court has the power to remand a person suspected of having committed an offence on the presentation of a charge signed by a police officer, notwithstanding the fact that the magistrate's court lacks the jurisdiction to try the allegations contained in the charge.⁷³ The uncertainty regarding the application of the holding charge has given the NPF the opportunity to continue using it as an excuse to keep individuals in detention for more than five years on the premise that they have not completed their investigations into the alleged crimes committed by the PTDs.⁷⁴ Hence, the practice contributes to the delays in the determination of criminal cases, which leads to those in custody being unable to enjoy the protection provided by the Nigerian laws.⁷⁵ This factor ultimately may lead to the wrongful conviction of PTDs because of their inability to secure

67 S Akinbiyi *Criminal law and procedure in Nigeria* (2009) 431.

68 (1993)7 Nigerian Weekly Law Reports (Pt 303) 49.

69 *Onagoruwa* (n 68) 107 paras E-F.

70 *Ogor v Kolawale* (1985) 6 Nigerian Constitutional Law Reports 539 paras 3-4.

71 *Ogor v Kolawale* (n 70) 539 paras 2-3.

72 (2007) 29 Nigerian Supreme Court Quarterly Law Reports (part II) 1511.

73 *Lupadeju v Johnson* (n 72) 1549 paras F-H.

74 A John & A Musa 'Delay in the administration of criminal justice in Nigeria: Issues from a Nigerian view point' (2014) 26 *Journal of Law and Globalisation* 136.

75 John & Musa (n 74) 131.

the assistance of a lawyer to defend them during their trial or apply for bail on their behalf.⁷⁶

5 Reforming the holding charge: Administration of Criminal Justice Act to the rescue?

As pointed out earlier, one of the reasons advanced for the congestion of Nigerian prisons is the delay in the administration of the Nigerian criminal justice system. For instance, the failure by the NPF to complete investigations on time, the fact that legal advice is not issued timeously and the delay in the trial of defendants/suspects due to congestion in the courts ultimately result in the congestion of the correctional services. Adebayo is of the opinion that both the CPA and the CPC are relics of colonial legislation, do not conform to present realities and need to be reviewed.⁷⁷ Akinseye-George also observes that the provisions of both laws focus more on the protection of the accused person than on the objective of 'restorative justice and the protection of the larger society'.⁷⁸

Due to these shortcomings in the criminal justice system, the Administration of Criminal Justice Act (ACJA) was established,⁷⁹ to replace both the CPA and the CPC, with the objectives to ensure –

- the speedy dispensation of justice;
- the efficient management of criminal justice institutions;
- the protection of the society from crime; and
- the protection of the rights and interests of defendants, suspects and victims.⁸⁰

The ACJA introduces some innovations into the Nigerian criminal justice system. For instance, it outlaws the arrest of any person in place of a suspect,⁸¹ provides that any individual deprived of his liberty must be treated humanely⁸² and provides that magistrates are mandated to visit police stations or other places of detention at least once a month for the purpose of inspecting records of arrests and, where necessary, give orders regarding the arraignment of suspects.⁸³ Equally, detention time limits have been set by the Act,⁸⁴ and the concept of plea bargain was introduced into the Nigerian criminal justice system by the Act in order to promote the speedy dispensation

76 K Rohrer 'Why has the Bail Reform Act not been adopted by the state systems' (2017) 95 *Oregon Law Review* 522.

77 AM Adebayo *Administration of Justice Act 2015: Annotated with cases and comprehensive notes* (2016) 2.

78 Y Akinseye-George *Administration of Criminal Justice Act (ACJA) 2015 with explanatory notes and cases* (2017) *Centre for Socio-Legal Studies* 3.

79 ACJA (n 46).

80 Sec 1(1) ACJA.

81 Sec 7 ACJA.

82 Sec 8 ACJA.

83 Sec 34 ACJA.

84 Secs 293-299 ACJA.

of justice.⁸⁵ The establishment of the ACJA is widely viewed as timely by the stakeholders in the administration of justice and if applied by all states of Nigeria, it will reform the administration of criminal justice, especially reducing the period of prolonged pre-trial detention.⁸⁶

However, it must be observed that the ACJA is applicable in federal courts, which are established by the federal government. The law will be applicable in state courts only once the Act has been enacted into state laws by the various state legislatures.⁸⁷ So far 24 states and Abuja (the capital city of Nigeria) out of a total of 36 states have adopted the ACJA as part of their local laws, which resulted in the deletion of the CPA and CPC from the laws of the respective states.⁸⁸ The remaining states that are yet to enact the ACJA as part of their laws continue to apply those legislations as the case may be. The holding charge was included in the provisions of the ACJA as it empowers magistrate's courts to remand individuals alleged to have committed criminal offences over which they have no jurisdiction.⁸⁹ However, it introduced time limits in the law, as persons on remand are not to be detained for a period exceeding 14 days at the first instance, after which they will be returned before the court.⁹⁰ After the expiration of the 14 days the court may extend the remand order for another period of 14 days and the police are required to show justifiable cause for the extension of the remand order.⁹¹ After the expiration of 28 days without the individual being arraigned for trial, hearing notices will be issued to the Inspector-General of Police or Commissioner of Police of a state, as the case may be, on whose application the individual was remanded in custody. The hearing of the case may be fixed for a period not exceeding 14 days, where the representative of the NPF will show cause why the detainees may not be released unconditionally.⁹² After the said hearing, if the court is satisfied with the reasons advanced by the NPF, the individual may be remanded for a final period not exceeding 14 days after which he will be arraigned before the appropriate court.⁹³ The ACJA has precluded courts from granting further remand orders after the expiration of this period, and further provides that the court will order the release of the

85 Secs 270-277 ACJA.

86 'Stakeholders call for swift implementation of ACJ Law in Akwa Ibom State' 16 January, 2017, www.nba-acj.org.ng/index.php?option=com_content&View=article&id=462&catid=68&itemid=176 (accessed 12 February 2018).

87 AR Emma 'An appraisal of the ACJA, 2015', <http://ssrn.com/abstract=2665611> (accessed 21 July 2018).

88 Anambra, Lagos, Ekiti, Ondo, Rivers, Oyo, Enugu, Akwa Ibom, Cross River, Kaduna, Delta, Kogi, Edo, Ogun, Plateau, Osun, Kwara, Adamawa, Bayelsa, Kano, Nassarawa, Benue, Jigawa, Katsina and Abuja, <https://www.partnersnigeria.org/acjl-tracker/> (accessed 9 October 2019).

89 Sec 293 ACJA.

90 Sec 296(1) ACJA.

91 Sec 296(2) ACJA.

92 Sec 296(4) ACJA.

93 Sec 296(5)(a) ACJA.

individual from custody and that it will entertain no further application for remand.⁹⁴

Despite the introduction of time limits in the ACJA to prevent the excessive detention of individuals on the holding charge, Emma is of the opinion that the introduction of the holding charge in the ACJA has taken the legislation 'backward' as it confers jurisdiction on magistrate's courts which ordinarily they lack. Therefore, legitimising the holding charge has defeated the entire objective of the reform of the ACJA relating to arbitrary detention which it was established to remedy.⁹⁵ Okolo also is of the view that giving legal teeth to the holding charge 'is a setback to the criminal justice system and an antithesis to equity and the rule of law'.⁹⁶ In countering these arguments, Akinseye-George argues that ACJA seeks to cure the pre-ACJA remand proceedings where magistrates had no control over the detention orders issued by them. He further asserts that the a magistrate can issue remand orders only on the condition that the court is satisfied that there is a probable cause to detain the individual brought before it.⁹⁷ Also, the failure by of a magistrate to ensure that the time lines for the detention of individuals as provided by ACJA are not complied with is a serious violation of his obligation under the ACJA.⁹⁸

Four years after the establishment of the ACJA it appears that the number of PTDs in the cells of NCS continues to escalate. As pointed out earlier, 69 per cent of its inmates belong to this category⁹⁹ which a year ago stood at 68 per cent.¹⁰⁰ It is submitted that the ACJA has failed to stem the inflow of PTDs. For instance, Lagos State, which is the first state in Nigeria to enact ACJA as part of its laws,¹⁰¹ has the largest population of prison inmates in the country: The Ikoyi prison, which in 2018 had a total capacity of 800, had 3 138 inmates, 2 664 of inmates in the institution being PTDs.¹⁰² Consequently, the introduction of time limits for the holding charge in the ACJA appears not to have succeeded, as the number of PTDs has not decreased.

94 Secs 296(6) & (7) ACJA.

95 Emma (n 87).

96 E Okolo 'Issues in the Administration of Criminal Justice Act 2015 – Opinion' 21 October 2016, <https://investadvocate.com.ng/2016/10/21/issues-administration-criminal-justice-act-2015-opinion/> (accessed 21 February 2018).

97 Akinseye-George (n 78) 360.

98 Akinseye-George 362.

99 'Summary of inmate population by convict and awaiting trial persons as at 16 July 2018', www.prisons.gov.ng/statistics (accessed 28 August 2019).

100 As above.

101 T Soniyi 'Onnoghen asks states to adopt ACJ Act' 16 February 2017, <https://www.thisdaylive.com/index.php/2017/02/16/onnoghen-asks-states-to-adopt-acj-act/> (accessed 5 March 2018).

102 'Lagos CJ frees seven inmates from Ikoyi prison' 7 December 2018, pmnews.nigeria.com/2018/12/07/lagos-cj-frees-7-inmates-from-ikoyi-prison/ (accessed 11 October 2019).

6 Conclusion

The overwhelming number of PTDs in Nigerian prisons continues to defy solution despite legal safeguards by which with the NPF is mandated to arraign a person before a court within 24 hours and the Nigerian Constitution limits the maximum period of pre-trial detention to two months. Also, the application of the holding-charge procedure by the NPF, where individuals are remanded in prison custody without a valid charge by magistrates who in most cases do not have jurisdiction to determine the alleged offences or admit the alleged offender to bail, has contributed to the increase of PTDs in prison custody. It is observed that conflicting judgments delivered by the Supreme Court on the legality of the holding-charge procedure increases the confusion on the legality of the procedure in the Nigerian legal system.

The ACJA was established with the sole aim of reforming the criminal justice system of Nigeria; 24 states so far have enacted the Act as part of their local laws. Also, in the ACJA the holding-charge procedure was given 'legal teeth' as it empowers magistrates to remand individuals in prison custody if they are satisfied that there is probable cause to do so, provided that the period of detention does not exceed 58 days. Despite this provision, the number of PTDs in prison custody continues to escalate in states that have adopted the ACJA. Consequently, it is recommended that there is a need for magistrates to be trained in relation to their obligation to enforce the detention limits set by the ACJA. The chief justices of Nigerian states also should ensure that the monthly inspection of detention centres by magistrates is done, with a mandatory report of what transpires during the inspections being prepared and submitted to the chief justice concerned immediately after the inspection has been completed. In addition, the members of the NPF are poorly motivated and ill-trained. The Nigerian government needs to provide more funds for their training and also provide them with more attractive welfare packages that will discourage them from engaging in practices that further increase the delay in the administration of criminal justice in Nigeria. The implementation of the Nigerian Correctional Service Act, 2019 by the Nigerian government will significantly reduce the number of PTDs as it contains provisions that seek to address the problem. For instance, where a custodial centre is congested, it is mandated to notify the heads of the judiciary, law enforcement and prosecuting bodies and other relevant bodies and institutions so that measures are taken to reduce the number of those in custody, more specifically PTDs.¹⁰³ Should these concerns fail to address the congestion, the state controller of NCS is mandated to give instructions to those in charge of custodial centres to refuse to accept PTDs into

103 Sec 18(1).

the facilities they control.¹⁰⁴ The implementation of these measures will stem the flow of PTDs held in custody.

104 Sec 18(2).