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**REMAND ORDER PROTOCOL UNDER
THE ADMINISTRATION OF CRIMINAL
JUSTICE ACT 2015**



About the Project On Implementation Of ACJA, 2015

The Project on the Implementation of the Administration of Criminal Justice Act 2015 (ACJA) aims through workshops, review bulletins and digests to deepen understanding of the Act, and improve the management of criminal proceedings, including the prosecution of anti-corruption cases. The ACJA has the potential to significantly boost anti-corruption efforts through more effective investigations and prosecutions. Implementation of the ACJA can help to modernise the justice system, close loopholes and provide a common legal framework. By increasing knowledge and providing practical tools for stakeholders, the project enhances nationwide familiarity with the ACJA, improves expediency in the handling of anti-corruption cases by reducing opportunities for delays in proceedings and promoting accountability.

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REMAND ORDER PROTOCOL UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015

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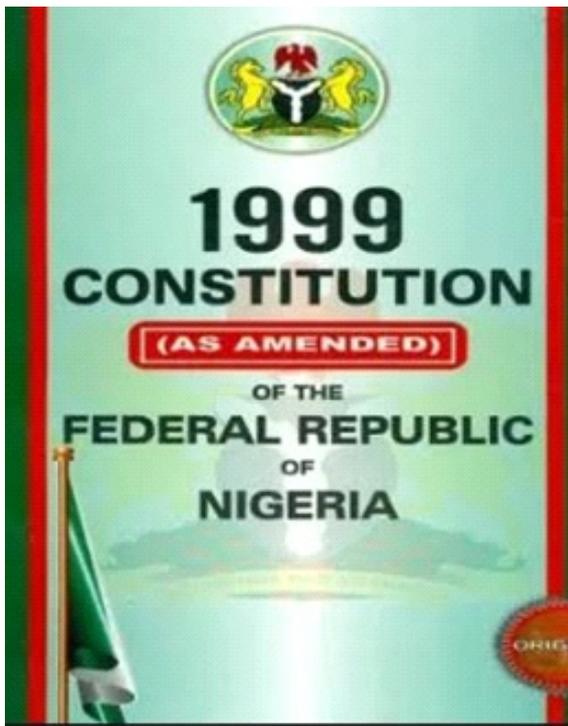
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1.0 Background

The right to personal liberty is a fundamental right that is nationally and internationally recognised. There are however justifiable and lawful instances where the right to personal liberty may be derogated from. The justifications include the protection of national security, public order, or for the protection of the rights and freedoms of others.¹ Similarly where a person is charged with or convicted of a criminal offence, arrest and detention do not constitute violations. This is on the condition that the suspect is not detained longer than the period allowed under the Constitution of the Federal Republic of Nigeria, as amended (CFRN) i.e. 24 or 48 hours as the case may be, within which the suspect should be charged to a court of competent jurisdiction for trial.²



There are many instances however where a suspect is detained but the process of commencing trial has not been completed. Where this is the case and in order not to offend the lawful period of detention, an application is made to the Magistrate Court requesting that the suspect be remanded in custody pending the completion of the investigation and arraignment.

To remand is to commit a suspect into custody upon the establishment of a probable cause and the linking of the suspect to the offence being committed.

This means that the Magistrate can refuse the application requesting for remand if probable cause is not established, in which case, the Magistrate can order the release of the suspect.

Under the ACJA the order for remand is made for a limited period of time and is renewable.³ The aim is to give the police and the prosecution time for further investigation into the offence for which the suspect is arrested, and for the Attorney-General to advise on what if any charges the facts disclose and the appropriate trial court.

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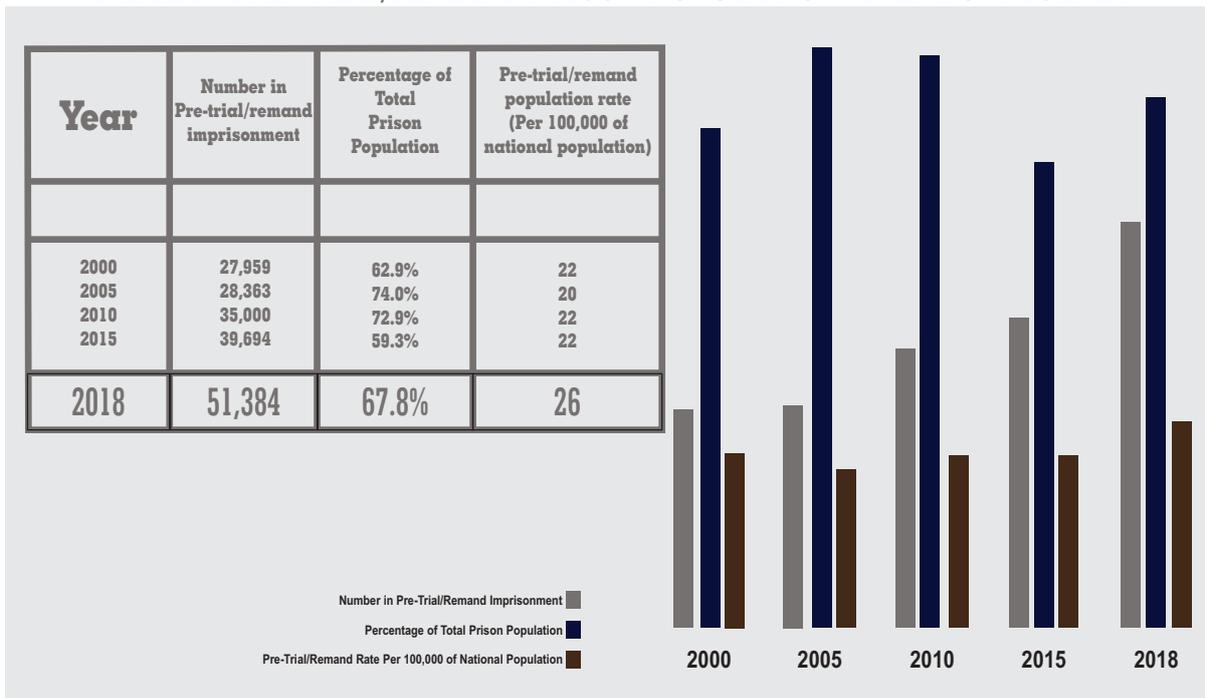
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The provisions in the ACJA on remand order protocol are some of the innovative provisions of the Act. Remand orders under the ACJA should be distinguished from the practice of holding charge which was employed in the past to keep suspects in

The table below (See Table A) gives an indication of the comparative increase in the pre-trial/remand prison population. The final row shows the latest figures available. It consists of the number of pre-trial/remand prisoners in the prison population on a single date in the year (or the annual average) and the percentage of the total prison population that pre-trial/remand prisoners constituted on that day. The final column shows the pre-trial/remand population rate per 100,000 of the national population.

The practice of holding charge was declared unconstitutional and unknown to the Nigerian law in **E. A Lufadeju & Anor v Evangelist Bayo (2007)**.⁴

TABLE A -PRE-TRIAL/REMAND PRISON POPULATION: TRENDS - NIGERIA



(SOURCE: WORLD PRISON BRIEF: NIGERIA <http://www.prisonstudies.org/country/nigeria> accessed 2, February 2019

It should be noted that the number of pre-trial/remand prisoners fluctuates from day to day, month to month and year to year. Consequently, the above figures give an indication of the trend but the picture is inevitably incomplete.

This Bulletin discusses the importance of the Remand Order Protocol under the ACJA. It analyses the provisions of the ACJA relating to remand order protocol⁵ and identifies the gaps in the provisions.

2.0 The ACJA and Remand Orders

The primary aims of the ACJA, 2015 include to ensure the administration of criminal justice which will promote the speedy dispensation of justice, protect the rights and interest of the suspect, the defendant and victims in Nigeria.⁶ Where a suspect is detained beyond constitutional limits, in respect of a non-capital offence, section 32 of the ACJA provides that a court having jurisdiction with respect to the offence can be notified by application on behalf of the suspect to inquire into the detention and where necessary, will admit the suspect to bail.

In line with the foregoing, the ACJA specifically requires under section 293 (1) that a suspect should not be detained beyond a 'reasonable time.'⁷Section 494 of ACJA interprets 'reasonable time' to mean "as defined in section 35 (5) of the Constitution, which is one (1) 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.⁸ The section provides that the application shall be made, *ex parte* to a magistrate for the remand of the suspect.

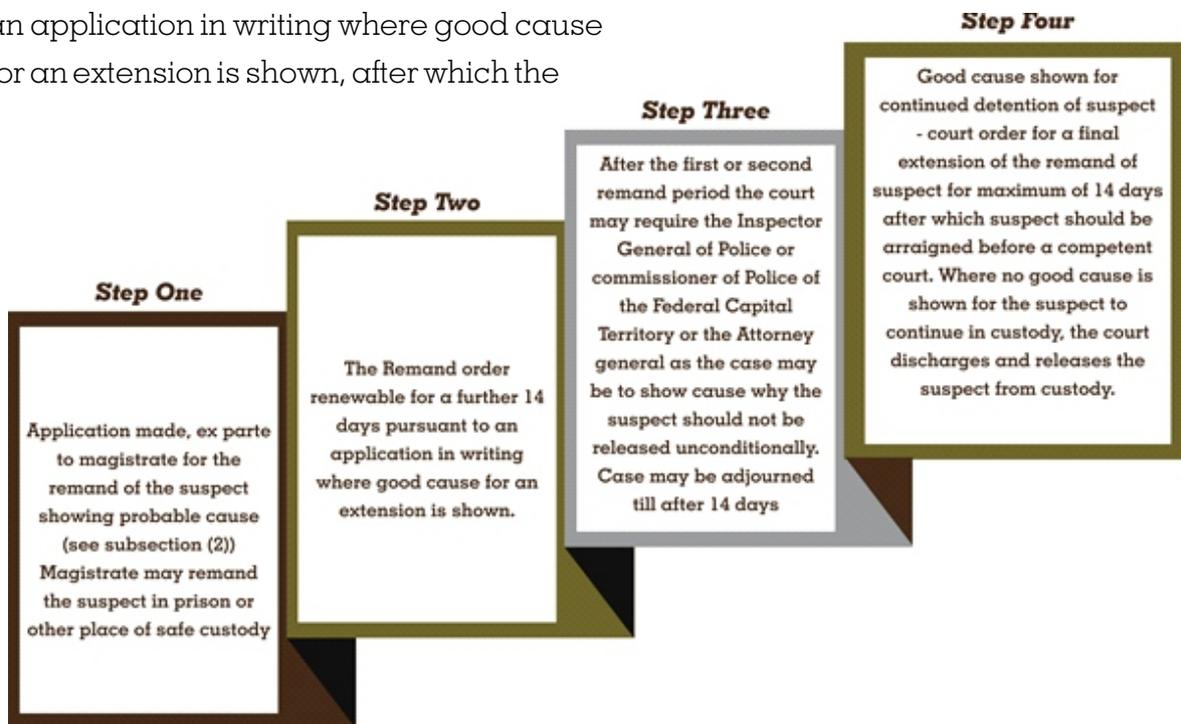
The application will also contain the reasons for the arrest. The court, upon consideration and satisfaction that there is a probable cause, may remand the suspect in prison or other place of safe custody⁹ pending the receipt of the legal advice from the Attorney General of the Federation and the arraignment of the suspect before an appropriate court. Remand orders and protocol are generally covered under Part XXX of the ACJA, 2015.

To determine if probable cause has been established under the ACJA, section 294 (2) (a-d) provides that the court must among other things consider the nature and seriousness of the

offence, whether there are reasonable grounds to believe that the suspect is involved in the commission of the offence or that the suspect will likely abscond or commit further offences if he is not remanded.

Accordingly, under section 296 of the Act, the court may order a suspect to be remanded in custody for not more than 14 days pending legal advice from the Attorney General. The Remand order is renewable for a further 14 days pursuant to an application in writing where good cause for an extension is shown, after which the

Upon the issuance of a hearing notice, the matter is adjourned for another 14 days to enable the Police or other relevant authority show good cause why the suspect should remain in custody. Where good cause is shown that the suspect should not be released, the court may make a final extension of the remand of the suspect for a period not exceeding 14 days for the suspect to be arraigned before a competent court.



court will require the Inspector General of Police or Commissioner of Police of the Federal Capital Territory as the case may be to show cause why the suspect should not be released unconditionally. Furthermore, section 296 (4) (a-c) of the ACJA provides that where upon the expiration of the second remand period, trial has not commenced against the suspect at an appropriate court, the court (if it has jurisdiction) shall issue a hearing notice to the relevant authority in whose custody the suspect is or at whose instance the suspect is remanded.

If, on the other hand, no good cause is shown for the suspect to continue in custody, subsection (6) states that the court shall forthwith discharge and release the suspect from custody. The discharge and release at this point will forestall further consideration of the application for remand on the same issue by any court.

This time protocol cannot exceed 56 days in total.

The court shall also release the suspect immediately if the legal advice of the Attorney-General of the Federation shows that the suspect has no case to answer. This is provided for under s. 297 (3) of the ACJA. By section 297 (1) of the Act, the court can exercise the power to remand *suo motu* or on the application of the suspect. Also, the court can exercise such powers whether the suspect is present or not. In considering the application for a detention beyond reasonable time contrary to the provisions on remand orders, the gamut of facts as contained in the affidavit deposed on behalf of the parties are irrelevant as courts will not always dwell on them.¹⁰

This is the thrust of the provision under section 296 (1 - 2) of the ACJA. The court may at the expiration of either the first or the second 14-days remand period grant bail on the application of the suspect, but in accordance with the provisions of the ACJA on bail. The supervisory powers of the court under the ACJA over pre-trial detention is a positive development.

In the case of **COP V Luke Eneriene**,¹¹ an application under section 239 of the ACJA was granted and the defendant was ordered to be kept in prison custody for two weeks. Either in the first instance or subsequently, in each period granted, there is an order that the case or proceedings be returnable within the period of 14 days respectively.

2.1 Rights of a suspect on remand

A suspect on remand enjoys some rights under the Act. Section 296 (3) provides that at the expiration of the 28 days' remand period, the suspect can apply for bail and the court may grant same in accordance with the provisions in sections 158 – 188 of the ACJA. Furthermore, section 298 provides that during the remand period, the court may make orders when necessary for the transfer of a suspect to a hospital, asylum or any other suitable place for the care or treatment of the suspect.

3.0 Judicial Pronouncements on Remand Orders

The courts seek strict adherence to the provisions of the ACJA on remand orders as well as other provisions. In **Joshua Idokoiji v Nigeria Police Force & 7 Ors**¹² the applicant was arrested and detained for 5 days. The court stated that steps to keep a suspect further in custody pending investigation must of necessity be done in strict compliance with the provisions of sections 293 and 294 of the ACJA by approaching the court within one day of the suspects' arrest, for leave to keep him in custody as regulated by the Act; and that any other contrary act must be viewed as and declared a breach of the suspects fundamental right to personal liberty. The court held the detention of the suspect was illegal, unlawful and a violation of the right to personal liberty guaranteed under section 35 of the Constitution.

Furthermore, the court expressly stated in **Paul Okpala v COP FCT & Anor**¹³ that a party cannot be faulted for suspecting another for committing a criminal offence but then, where the other has been arrested and detained upon such suspicion, the law provides that such an arrest and detention cannot be at large or indefinite. Here, the applicant was detained for over one month and upon application, the court held the detention as unjustifiable, illegal and unlawful, and a violation of the applicant's fundamental right to personal liberty.

The applicant's action was however denied in **Chief Femi Kayode v EFCC**¹⁴ because an order for remand was duly obtained within one day of his arrest for extension of detention pursuant to the provisions of the ACJA. Condemning the practice of holding charge, the court in **Chief Fani Kayode v EFCC** (supra) said that remand provisions in sections 293 – 299 of the ACJA were not designed to give law enforcement agencies a blanket leave to obtain Court orders in order to keep suspects on indefinite detention while fishing for evidence to prosecute them. The Supreme Court had as far back as 2002 frowned at this practice of arrest before investigation which was the hallmark of the Nigerian law enforcement agencies. Thus the court held in **Fawehinmi v. I.G.P**¹⁵ that it is an improper investigation procedure for the law enforcement agency to keep a suspect in detention whilst fishing for evidence to charge him to Court.

The practice of keeping suspects in deplorable conditions while in custody pending their trial is a glaring misinterpretation of the Constitution. It is akin to running a Gestapo-a concentration camp. The applicants are entitled to decent accommodation and environment while in custody pending the hearing and determination of their case - *Fasehun v. A-G Federation, 2006*) 6 NWLR (Pt. 975) 141.atp. 151

4.0 Gaps in the Remand Order Protocol

The ACJA has brought concrete improvements to the administration of criminal justice system in Nigeria, one of which is the Remand Order Protocol considering the old practice of holding charge. Nevertheless, a few loopholes are highlighted in the Protocol under the Act.

One of the aims of the Act is to ensure a speedy administration of criminal justice system and ultimately to decongest the prisons which have recently been described as a national embarrassment by the Chief Justice of Nigeria.¹⁶

The fact is that with the passage of time, the current practice will give rise to the problem which it set out to solve - prison congestion which has raised questions and issues on human rights. It will equally lead to delays in the dispensation of criminal justice.

International standards for various justice system now postulate that custodial orders especially at the pre-trial stage of last resort.¹⁷

An effective criminal justice system should therefore provide a range of non-custodial measures as alternatives to pre-trial detention, taking into consideration factors such as the nature and gravity of the alleged offence, the personality and background of the suspect and the protection of the society. This implies that in considering the option for detention, alternatives such as confiscation of travel documents, disqualification, reporting to the Police or any other authorities as the case may be, and submitting to house arrest should, as a matter of course, be considered as measures to provide a range of non-custodial alternatives and to avoid unnecessary pre-trial detentions.

Unfortunately, detention system under the Act is not risk-based as courts are left with their instincts or by following a scheduled setting bail terms or amounts for specific crimes. Some of the factors to be considered in making non-custodial or bail orders include the accused having been convicted of serious crime(s) in the past or jumping bail in the past.

On the other hand, monetary bail should also not be the sole alternative to detention. This will result in discrimination based on financial status as there is evidence that many pre-trial detainees often lack financial means.¹⁸ The implication of this is that many poor suspects are detained, while the high risk suspects who will most likely pose threats to the society, get released because they are rich and can meet the bail conditions.

The courts have in several cases condemned the practice of arrest and detention before investigation. This anomaly has not been remedied at all by the provisions of the ACJA dealing with remand orders by the court. The practice will give room for law enforcement agencies to detain suspects even without concrete evidence to proceed against them.

An effective data-driven system as available in jurisdictions such as the UK is important to guide the court in deciding which suspect should be remanded while awaiting trial and which suspect should be released, regard being had to other important factors.

There is no system of ascertaining the gravity of offences in order to determine which case would merit a remand and which would not. Detaining and remanding for "further investigation" and to "await legal advice of the Attorney-General of the Federation are not enough grounds to warrant orders for remand as that will not contribute to decongesting the already congested prisons.

It does not also mirror a true compliance with the provision that a person is deemed innocent until proven guilty by a court of competent jurisdiction as provided for under the Constitution. In the Ghanaian case of **Kpebu v Attorney General**,¹⁹ the Supreme Court stated that if the principle of presumption of innocence is pursued to its logical conclusions, it has the tendency of reducing the huge number of remand prisoners under the criminal justice system and will remove the blot in the criminal justice system of just remanding accused persons who have no chance of being prosecuted because of lack of evidence.

5.0 Recommendations and Conclusion

The provisions of the ACJA, 2015 on Remand Order Protocol appears to be one of the most important innovations of the Nigerian criminal justice system. It has brought an end to the long-time practice of holding charge which has caused hardship to many. It will, to a large extent, give the law enforcement agencies the motivation to improve upon their arbitrary use of powers of investigation and detention, as the courts are always there to declare their detention unlawful.

However, as laudable as the ACJA and its provisions on remand order are, much still needs to be done to bring the Nigerian administration of criminal justice system in terms with modern realities and in line with international best practices. The prison system already requires urgent attention and continuous remand orders in most cases cannot address this challenge.

Pretrial detentions are the major cause of prison congestion and it is the same even when it is under the control of the court. It is imperative that special remand courts be established, which should look into the veracity of numerous remand cases with a view to effectively addressing the national problem of prison congestion. In addition, there should be a system of screening based on an effective data system to determine the gravity of cases which will warrant a remand order and the minor ones which do not.

Accordingly, the law enforcement agencies should make efforts to conclude investigations swiftly so that arraignment and trial of cases will no longer be unnecessarily delayed.

Reports from the many inmates awaiting trial and the suspected offences reveal a readiness on the part of the court to remand rather than considering other alternatives as mentioned above. This proclivity by the courts requires an urgent re-orientation - otherwise, it will be difficult to give effect to the objectives of the Administration of Criminal Justice Act, 2015.

END NOTES

1 Constitution of the Federal Republic of Nigeria, 1999 (as amended) [“the Constitution”], section 35(1); Universal Declaration of Human Rights, 1948 (“UDHR”), Art 3 <https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed on 7 December, 2018; and International Covenant on Civil and Political Rights [“ICCPR”], Article 9(1) # <<https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>> accessed 7 December 2018

2 Constitution, section 35(4) and (5)

3 Part 30, ACJA 2015.

4 8 NWLR (Pt 1037) 535.

5 Sections 293 to 299, ACJA.

6 Section 1 of the Administration of Criminal Justice Act, 2015.

7 This provision is related to the provisions of section 35 (5) of the 1999 Constitution of Nigeria.

8 (Paul Okpala v COP FCT & 1 or FCT/HC/HC/CV/2017/16); Chief Femi Kayode v EFCC (FCT/HC/CV/1767/16)

9 Section 299 of the ACJA, 2015

10 Chief Femi Kayode v EFCC (FCT/HC/CV/1767/16).

11 FCT/HC/CR/21/16,

12 FCT/HC/M/2167/16.

13 FCT/HC/HC/CV/2017/16.

14 FCT/HC/CV/1767/16.

15 (2002) 7 NWLR (Pt. 767) 606

16 'CJN warns judges against issuance of 'reckless remand orders' The Nation, November 27, 2018 <<http://thenationonlineng.net/cjn-warns-judges-issuance-reckless-remand-orders/>> accessed on 10 December 2018.

17 Hausler, K & McCorquodale, 'Pre-trial Detention and Human Rights in the Commonwealth: Any Lesson from Civil Law Systems?' (2014) 2 (1) Journal of Human Rights in the Commonwealth 8-33. This is provided for under Rule 6 of the United Nations Standard Minimum Rules for Non-Custodian Measures (The Tokyo Rules 1990).

18 Hausler, K & McCorquodale, *ibid*, 15. Non-Custodial measures find effective alternatives to imprisonment for offenders and enable the authorities to adjust sanctions to the needs of the suspect or offender in a manner proportionate to the offence. OHCHR *The Use of Non-Custodial Measures in the Administration of Justice Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*. On the other hand, detentions result in problems such as formal sector unemployment and denial of social benefits. These have significant impacts on the society. Moreover, it is not every allegation or suspicion that nails the suspect to the crime at the end. Dobbie, W et al 'The effects of pre-trial Detention on conviction, future Crime, and Employment: Evidence from Randomly Assigned Judges', p 3, <<https://www.princeton.edu/~wdobbie/files/bail.pdf>> accessed 02 December 2018.

19 (1/13/2015) GHASC 15

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This Policy Brief is one of the outputs under a Project that aims to facilitate implementation of the Administration of Criminal Justice Act 2015 by increasing understanding and awareness about the Law. The project is supported by the John D and Catherine T. MacArthur Foundation.

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