



## RECENT HUMAN RIGHTS EFFORTS OF THE RIVERS STATE JUDICIARY THROUGH SUBSIDIARY LEGISLATION: AN APPRAISAL\*\*

### Abstract

This article seeks to evaluate the recent human rights effort of the Rivers State Judiciary through subsidiary legislation. The research methodology adopted is the doctrinal and none doctrinal research approach. Reliance were placed on primary and secondary sources of law like the Constitution of the Federal Republic of Nigeria 1999 (as amended), Rivers State Administration of Criminal Justice Law, No. 7 of 2015, Magistrates' Courts of Rivers State of Nigeria Practice Directions No. 1 of 2022, Criminal Trial Practice Direction No. 1 of 2023 and judicial authorities, to mention but a few. It was found amongst other things that no Chief Judge of Rivers State in the history of the Rivers Judiciary has made a bold and far reaching impact as to the proactive realisation of citizens' rights in relation to human right to personal liberty, through the instrumentality of subsidiary legislation like the Rules of Court and/or Practice Directions, as the incumbent Chief Judge Simeon Chibuzor Amadi has done in his less than three years in office. The recommendation of this article includes that directives g, h and i of the Magistrates' Courts of Rivers State of Nigeria Practice Directions No. 1 of 2022 should be deleted or amended by the Chief Judge of Rivers State to lay to rest the possibility of a holding charge in the Rivers State Judiciary, as same impacts greatly on right to personal liberty and fair hearing. No nation who undermines the human rights of its citizen, especially in relation to impermissible neglect of human right to personal liberty can lay claim to civilization in the 21<sup>st</sup> century.

**Keywords:** Right to Personal Liberty, Human Rights, Rivers State, Judiciary, Practice Direction

### 1. Introduction

In countries like Nigeria, the struggle has not to a very large extent moved beyond the entrenchment of third generation of human rights, but is still within the circumference of realisation of the first and second generation of same. Therefore, every effort put in place in Nigeria, whether by way of subsidiary legislation or otherwise to ensure that human rights as basic as the first generation of human rights are realized and expressed, must not be taken lightly. These first generation of human rights comprises of the civil and political rights as contained in the United Nations Declaration of Rights 1948 (UDHR 1948) and specified in the United Nations Charter on Civil and Political Rights 1966 (UNCCPR 1966) and other regional instrument like the African Charter on Human and Peoples Rights 1983, and subsequent domestication in the Constitution of states under international law, like in the Constitution of the Federal Republic of Nigeria, 1999, as amended (CFRN 1999).<sup>1</sup>

Conversely, prior to this time, the problem of holding charge which many thought had been addressed by the enactment of the Rivers State Administration of Criminal Justice Law 2015 (RSACJL 2015) had remained unabated in Rivers State as the Police continued to charge suspects before the Magistrate Court over offences where the Magistrate Court lacks jurisdiction, leading to a situation where most Magistrates, except a few, decline jurisdiction to adjudicate on the offences and also to grant bail, remand the suspect in prison custody, and sometimes refer the case to the Director of Public Prosecution (DPP) for advise which in most cases do not arrive promptly.

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<sup>1</sup>CFRN 1999, Chap IV.



The resultant effect of this is the protracted trial of criminal cases in Magistrates' Courts, congestion of criminal cases in Magistrates Courts and congestion of correctional canters (prison) in Rivers State.

The scope of this article in terms of period covers the period of January, 1970 to April, 2023. In terms of the geographical area covered the whole of Rivers State; although, this article made references to the Constitution of the Federal Republic of Nigeria 1999, as amended, as well as the regional and international human rights legal frameworks like the UDHR, UNCCPR 1966 and judicial precedent. The subject matter covered is human rights to personal liberty and fair hearing and trial within a reasonable time.

## 2. Conceptual Framework

Conceptual framework deals with the common concepts or languages that are used to describe the subject area of this article and the presumed connection among them.<sup>2</sup> These common concepts are not only limited to the definitional elements of this article but extends to other concepts used often in the body of the article.<sup>3</sup> The definition and clarification of common terminology and their use in relation to the article in this part becomes most necessary. These concepts include Legal, Appraisal, Human Rights and Subsidiary Legislation.

### 2.1. Legal

Legal means what is related to law; falling within the confines of the law; law based.<sup>4</sup> Therefore, when the word 'legal' is used to qualify a discussion, study or analysis, it presupposes that the study, discussion or analysis is law related, anchored on law or falling within the ascertainable province of law or legal studies.

### 2.2. Appraisal

Appraisal is the determination or evaluation of what constitutes a fair valuation or estimation of worth of a thing.<sup>5</sup> To evaluate means to determine the value, significance, worth or quality of a thing usually by careful appraisal and study of that thing.<sup>6</sup> It means to form an idea or judgment about the worth of something with a view to proffering solutions.<sup>7</sup> An appraisal is the act of examining someone or something in order to judge their qualities, success, or needs.<sup>8</sup> The implication of the above is that an appraisal could mean an evaluation, valuation and estimation and the purpose is not just to judge but to proffer solutions going forward.

### 2.3. Human Rights

Momodu regards human rights as fundamental moral guarantees that exist above and beyond the regular laws of a specific community and are drawn from nature or fundamental laws, which are intended to be enjoyed by all individuals.<sup>9</sup> Stone sees rights as more of a description of a

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<sup>2</sup>MB Miles and AM Huberman, *Qualitative Data Analysis: A Methods Sourcebook* (Sage 1994) 18.

<sup>3</sup>(n2).

<sup>4</sup>BA Garner (ed), *Black's Law Dictionary* (9edn, Thomson Reuters 2009) 962.

<sup>5</sup>Ibid, 117.

<sup>6</sup>*Webster's All-In-One Dictionary and Thesaurus* (2008 Federal Street Press) 220.

<sup>7</sup>*Chambers 21<sup>st</sup> Century Dictionary* (Chambers Harrap Publishers Limited 1997) 432

<sup>8</sup><[www.dictionary.cambridge.org](http://www.dictionary.cambridge.org)>accessed 4 June 2022.

<sup>9</sup>B Momodu, *Encyclopedia of Nigerian Case Law Principles and Authorities* (Momodu Basil Law Publishing 2018) 424-425; *Hassan v E.F.C.C.* [2014] 1 NWLR (Pt 1389) 607; *Igwe v Ezeanochie*[2010] 7 NWLR (Pt 1192) 61.



relationship between two individuals, or a human animate and choose in action.<sup>10</sup> Human rights stands above the ordinary laws of the land, it is inured in man as homo-sapiens and is antecedent to the political society, it is a primary prequalification for a civilized existence.<sup>11</sup> Put aptly, a right presupposes an entitled claim that is backed up by law.<sup>12</sup>

#### 2.4. Subsidiary Legislation

Subsidiary legislations are laws made by the executive or judicial arm of government with the express or implied consent authority or permission of the legislature.<sup>13</sup> Legislation can be broken down into two categories: primary legislation, or laws passed by parliament; and subsidiary or subordinate legislation, or laws made by entities or people with authority granted to them by parliament. They are able to enact such legislation due to these powers.<sup>14</sup>

Accordingly, Rules of Court or Practice Direction are not mere Rules but they partake of the nature of Subsidiary Legislations by virtue of *section* 18 (1) of the Interpretation Act and as a result have the force of Law.<sup>15</sup> That is why Rules of Court must be obeyed; when there is non-compliance with the Rules of Court or Practice Direction, the Court should not remain passive and helpless; there must be sanction; otherwise the purpose of enacting the Rules will be defeated.<sup>16</sup> Rules of Court are not meant only to be obeyed, they are also binding on all parties before the Court; it is the duty of the Court to ensure that it is bound by the Rules made under the law of the Land, such Rules can never be ignored, if it does, the attainment of justice may be left to the whims and fancies of powerful individuals and this would not be in the interest of justice.<sup>17</sup>

Parties who appear before Nigerian courts must study their Rules carefully and approach the Courts according to laid down rules in order to avoid chaos in the judicial process; it has been held that where a court insist that its Rules must be obeyed, it should not be equated with technicality.<sup>18</sup> Practice Directions like the Magistrates' Courts of Rivers State (Practice Direction) No 1 of 2022 and the Criminal Trial Practice Direction No. 1 of 2023 are part of the Rules of court and constitute subsidiary legislations, thus having the force of law.

### 3. Legal and Institutional Framework

Legal and institutional frameworks are the existing statutory provisions on substantive law, procedural law and the body established for the regulation and enforcement of these statutory provisions. This part examines the legal and institutional frameworks in relation to the subject matter of this article.

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<sup>10</sup> R Stone, *Textbook on Civil Liberties & Human Rights* (Oxford University Press 2008) 5.

<sup>11</sup> *RansomeKuti v AG Federation* [1985] 2 NWLR (Pt 6) 211.

<sup>12</sup> T Osipitan, 'Public Law Perspective of Rights of Women in Nigeria' in U Kalu (ed), *Hon Justice K.O. Anyah: A Tetan at Eighty* (Law Research and Development Forum Limited 2005) 62.

<sup>13</sup> Edo University, 'Delegated or Subsidiary Legislation' <<https://www.edouniversity.edu.ng>> accessed 15 August 2022.

<sup>14</sup> Zimlilii, 'Delegated or Subsidiary Legislation' <<https://old.zimlilii.org/content/delegated-or-subsiidary-legislation>> accessed 16 August 2022

<sup>15</sup> *Adeniran v Olusokun II* [2019] 8 NWLR (Pt 1673) 98 Ratio 13, 114 Paras A-G, Per Mary Peter-Odili JSC.

<sup>16</sup> *Ibid*; *Owners of MV Arabella v N.A.I.C.* [2008] 11 NWLR (Pt 1097) 182; *Agip (Nig.) Ltd, v. Agip Petroli Int.* [2010] 5 NWLR (Pt 1187) 348; *NNPC v Famfa Oil Ltd.* [2012] 17 NWLR (Pt. 1328) 148; *Popoola v Babatunde* [2012] 7 NWLR (Pt 1299) 302.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*



### 3.1. Legal Framework

The legal frameworks examined are the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), as amended, the Rivers State Administration of Criminal Justice Law No 7 of 2015 (RSACJL 2015), Rivers State (Administration of Criminal Justice) Rules 2020 (RSACJR 2020), Magistrates' Courts of Rivers State of Nigeria Practice Directions No. 1 of 2022 (MCRSPD 2022) and Criminal Trial Practice Direction No. 1 of 2023 (CTPD 2023).

#### 3.1.1. The Constitution of the Federal Republic of Nigeria 1999 (as amended)

According to the CFRN 1999, every person shall be entitled to his personal liberty and no person shall be deprived of such liberty except in the following cases and in accordance with a procedure permitted by law, that is, in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;<sup>19</sup> by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;<sup>20</sup> for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;<sup>21</sup> in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;<sup>22</sup> in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community;<sup>23</sup> or for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto;<sup>24</sup> provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.<sup>25</sup>

Furthermore, whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.<sup>26</sup> Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty: provided that nothing in *section 36* shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.<sup>27</sup>

Every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence;<sup>28</sup> be given adequate time and facilities for the preparation of his defence;<sup>29</sup> defend himself in person or by a legal practitioners of his own choice;<sup>30</sup> examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same

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<sup>19</sup> (n1), s 35 (1) (a).

<sup>20</sup> *Ibid*, s 35 (1) (b).

<sup>21</sup> *Ibid*, s 35 (1) (c).

<sup>22</sup> *Ibid*, s 35 (1) (d).

<sup>23</sup> *Ibid*, s 35 (1) (e).

<sup>24</sup> *Ibid*, s 35 (1) (f).

<sup>25</sup> *Ibid*, s 35 (1) (f) proviso.

<sup>26</sup> *Ibid*, s 36 (4).

<sup>27</sup> (n1), s 36 (5).

<sup>28</sup> *Ibid*, s 36 (6) (a).

<sup>29</sup> *Ibid*, s 36 (6) (b).

<sup>30</sup> *Ibid*, s 36 (6) (c).



conditions as those applying to the witnesses called by the prosecution;<sup>31</sup> and have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.<sup>32</sup>

Furthermore, no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.<sup>33</sup> Subject as otherwise provided by the Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in subsection 12 of section 36, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.<sup>34</sup> The Attorney General has the power to take over and discontinue criminal proceedings.<sup>35</sup>

### 3.1.2. The Rivers State Administration of Criminal Justice Law No 7 of 2015

The Rivers State Administration of Criminal Justice Law<sup>36</sup> (RSACJL) empowers the Chief Judge of the State to issue Practice Directions in relation to the success and management of criminal cases,<sup>37</sup> a specific case or court or group of cases or courts and jurisdiction.<sup>38</sup> The purpose of this power vested on the Chief Judge of the state is to ensure the fairness, accessibility and efficiency of the criminal justice system,<sup>39</sup> unambiguous expression,<sup>40</sup> expeditious and efficient dispensation of criminal cases by all stakeholders in the justice sector, especially, the court, the prosecutor, the defendant and his counsel;<sup>41</sup> and to ensure diligent prosecution and defence of criminal cases as regards the real issues in dispute on the date of hearing.<sup>42</sup> The said practice direction must be published in the state Gazette<sup>43</sup> and come into force not on the date of the publication but on the date indicated by the Chief Judge.<sup>44</sup>

Where a Magistrate Court lacks jurisdiction to trial an offence, the only jurisdiction that a Magistrate shall exercise is the jurisdiction to entertain a remand application, not jurisdiction to hear the reading of the charge which the Magistrate lacks jurisdiction to trial the offence or offences contained therein in the first place, application of which must be brought within 48 hours of the person's arrest.<sup>45</sup> The remand application if successful only entitles the investigating authority to continue to keep the suspect in their custody within the time specified in the order for remand, not in prison custody. On no occasion should the Magistrate grant a remand order where no time is specified in the application for remand. All charges within the jurisdiction of the Magistrate must

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<sup>31</sup>Ibid, s 36 (6) (d).

<sup>32</sup>Ibid, s 36 (6) (e).

<sup>33</sup>Ibid, s 36 (8).

<sup>34</sup>Ibid, s 36 (12).

<sup>35</sup>Ibid, s 174; 211.

<sup>36</sup>No 7 of 2015

<sup>37</sup>RSACJL 2015, s 500 (3).

<sup>38</sup>Ibid, s 500 (4).

<sup>39</sup>Ibid, s 500 (5) (a).

<sup>40</sup>Ibid, s 500 (5) (b).

<sup>41</sup>Ibid, s 500 (5) (c).

<sup>42</sup>(n37), s 500 (5) (d).

<sup>43</sup>Ibid, s 500 (6) (a).

<sup>44</sup>Ibid, s 500 (6) (b).

<sup>45</sup>Ibid, s 300 (1).



be accompanied with list of witnesses and their statements, exhibits and reports or materials that the prosecution intends to use.<sup>46</sup>

Accordingly, where a person is charged before a particular Court and it is obvious or appears that the offence ought to be properly or conveniently inquired into, or tried by another Court, the said Court where the charge was brought shall send the case and, all processes contained in the file of the prosecutor within seven days to the head of court for reassignment to the appropriate court, and depending on the circumstance of the case, either release the suspect on conditional bail for the purpose of securing his attendance before the appropriate Court when the need arises or remand the suspect in custody.<sup>47</sup> It is only the opinion of the court that is of utmost consideration on whether the suspect brought before the court lacking requisite jurisdiction shall by warrant be remanded in prison custody.<sup>48</sup> It is submitted that the jurisdiction intended under *section* 100 of RSACJL 2015 is territorial jurisdiction and not subject matter jurisdiction, as wrongly applied by many Courts to substantiate remands for Director of Public Prosecution's advice.

The law also provides that preliminary objection may be raised at any stage of hearing in criminal matters, provided that same shall be determined at the time of delivering the final judgment.<sup>49</sup> A suspect detained or brought before a Court is generally entitled to be granted bail in terms that should not be excessive,<sup>50</sup> subject to conditions prescribed by law,<sup>51</sup> except for capital offences wherein only a High Court can grant bail.<sup>52</sup>

### 3.1.3. Rivers State Administration of Criminal Justice Rules 2020

The Rivers State Administration of Criminal Justice Rules 2020 (RSACJR 2020), which commenced on 9<sup>th</sup> November, 2020, was made by the 8<sup>th</sup> Chief Judge of Rivers State, Hon Justice *AdamaIyeIyayi-Lamikanra*, to be applicable to all Courts with Criminal Jurisdiction in Rivers State.<sup>53</sup> It provides that a suspect arrested for an offence which a Magistrate Court has no jurisdiction to try, shall within a reasonable time be brought before a Magistrate Court for recognizance and remand.<sup>54</sup> An application for remand shall be made *ex-parte* and in writing with a written verification on oath in conformity with *Form* 8 in the First *Schedule* of the RSACJL 2015.<sup>55</sup>

### 3.1.4. Magistrates Courts of Rivers State Practice Directions No. 1 of 2022

The Magistrates' Courts of Rivers State Practice Directions No. 1 of 2022(MCRSPD 2022) was made by the 9<sup>th</sup> Chief Judge of Rivers State, Simeon Chibuzor Amadi, on the 28<sup>th</sup> day of February, 2022; but commenced on the 10<sup>th</sup> day of March, 2022,<sup>56</sup> and it is to be applicable in all Magisterial Districts in Rivers State.<sup>57</sup>The objectives and guiding principles of the MCRSPD 2022 are to eliminate delay in criminal cases, curb the issue of congestion of criminal cases in Magistrates'

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<sup>46</sup>Ibid, s 304 (7).

<sup>47</sup>Ibid, s 98.

<sup>48</sup>Ibid, s 100.

<sup>49</sup>Ibid, s 403 (2).

<sup>50</sup>Ibid, ss 165 (1), 170, 172 (1).

<sup>51</sup>Ibid, s 165 (2).

<sup>52</sup>Ibid, s 168 (1).

<sup>53</sup> RSACJR 2020, or 2 (2).

<sup>54</sup> Ibid, or 6 (1) (2) (i).

<sup>55</sup>(n53).

<sup>56</sup> MCRSPD 2022, d 4.

<sup>57</sup>Ibid, d 1.



Courts and congestion of correctional centres in the State, ensure accurate return of criminal cases and give practical effect to the RSACJL 2015.<sup>58</sup>

Accordingly, it provided that “no Charge containing offences beyond the Criminal Jurisdiction of Magistrate Courts shall be accepted for filing, registration and assignment;”<sup>59</sup> it would rather be brought by way of remand proceedings using “Form 8” in the First Schedule to the RSACJL 2015 and accompanied with the original case file.<sup>60</sup> A charge, offence of which is within the jurisdiction of Magistrate Courts, before it will be accepted for filing, registration and assignment, shall be signed by the officer, along with the name of the said officer and accompanied with list of witnesses, list of exhibits, statement of witnesses and defendant(s), investigation report and any other document prosecution intends to rely on.<sup>61</sup>

Furthermore, an application for remand proceedings brought by way of “Form 8” shall be verified on oath and given a designated number format at the Registry, same is subject to the power of the Magistrate to peruse in order to be satisfied that the alleged offences are not unfounded before granting the application for remand;<sup>62</sup> provided that the Magistrate has the power to order the prosecutor or applicant to comply with the applicable directives in the MCRSPD 2022 before taking any step in respect to any charge or remand application in default.<sup>63</sup>

Conversely, the MCRSPD 2022 also directed that where a charge contains an offence(s) outside the Criminal Jurisdiction of a Magistrate, the Magistrate shall, after being satisfied that the offence(s) is/are supported by facts contained in the case file, remand the defendant at the first instance and refer the case file to DPP for legal advice, following the timeline providing for remand proceedings and where there is no legal advice after the time line has elapsed, the Magistrate shall advise the defendant to apply to the High Court for bail.<sup>64</sup>

Suffice to state that where the defendant intends to object to the admissibility of his confessional statement during trial on the ground that the said statement was not made voluntarily, he shall not later than 7 days before commencement of trial or at such later date the court may permit, file notice as in “FORM A” annexed to the MCRSPD 2022, to that effect and serve on the prosecution.<sup>65</sup> During trial, if the defendant raises the objection and the prosecution intends to disprove the defendant, the Magistrate shall order that trial- within- trial shall be part of the main proceedings.

The prosecution shall as part of his case, proceed to call witnesses who shall adduce evidence to prove that the statement was made voluntarily.<sup>66</sup> The defendant shall during his defence and as part of his defence, call witnesses and adduce evidence in proof of the fact that he did not make the statement voluntarily.<sup>67</sup> At the conclusion of trial, the defendant and the prosecution shall in their final address in the case, also proffer legal arguments on the admissibility or otherwise of the confessional statement. The Magistrate in his final judgment shall first rule on the confessional statement, admitting or rejecting same before proceeding with his judgment.<sup>68</sup> The Magistrate shall

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<sup>58</sup>Ibid, d 2 (a) (b) (c) (d) (e).

<sup>59</sup>Ibid, d 3 (a).

<sup>60</sup>Ibid, d 3 (b).

<sup>61</sup>Ibid, d 3 (c) (d).

<sup>62</sup>Ibid, d 3 (e) (f) cf *Lufadeju v Johnson* [2007] 8 NWLR (Pt 1037) 562, paras F-G.

<sup>63</sup> (n56), d 3 (g).

<sup>64</sup>Ibid, d 3 (h) (i).

<sup>65</sup>Ibid, d 3 (j).

<sup>66</sup>Ibid, d 3 (j) (i).

<sup>67</sup>Ibid, d 3 (j) (ii).

<sup>68</sup>Ibid, d 3 (j) (iii).



conduct case management meetings to streamline issues in contention between parties in Criminal Cases. Such Meetings shall be scheduled for not more than two times.<sup>69</sup>

### 3.1.5. Criminal Trial Practice Direction No. 1 of 2023

Notwithstanding the above efforts, the incumbent Chief Judge once again issued the Criminal Trial Practice Direction No. 1 of 2023, which came into effect on the 3rd day of April, 2023. The purpose of the instant Practice Direction is to eliminate unnecessary delay in criminal trials and proceedings, occasioned by the filling of improper applications, fast tracking the hearing and determination of criminal cases, including offences of corruption, money laundering, all types of financial crimes, rape, kidnapping, human trafficking, murder, interlocutory applications and incidental matters; to take all steps in the expeditious disposal and determination of criminal cases to reduce the delay occasioned by interlocutory applications and all other incidental matters aimed at clogging the speedy dispensation of criminal cases; ensure that the conduct of criminal cases is not stalled by unpreparedness of counsel or the parties; ensure timely determination of all criminal cases. It suffices to state that by virtue of the instant Practice Direction, information or charge to be accepted for filing and unfit for prima facie striking out, must be accompanied with an affidavit stating that investigation has been concluded and that in the opinion of the prosecutor, a *prima facie* case exists against the defendant and that all the witnesses are ready and available to testify, an opening statement containing issues for trial, list of witnesses and exhibits, written statement on oath of witnesses and a plea form. An opening statement containing issues for defence, list of witnesses and exhibits, written statement on oath of witnesses, plea form and notice of objection to confessional statement shall also be filed by the defendant on receipt of the information or charge.

By this Practice Direction, the Court where it is of the opinion that the case lacks merit, shall within 15 days of receipt of the case file, invite parties to address it as to why such case should not be struck out, and the matter may be struck out where the court is not satisfied with the reason given.

### 3.2. Institutional Framework

The institutional frameworks examined is the Judiciary and Rivers State Judiciary, Hon. Justice Simeon Chibuzor Amadi (Chief Judge of Rivers State), the Nigeria Police and the Office of the Attorney General and Department of Public Prosecution under the Rivers State Ministry of Justice.

#### 3.2.1. The Judiciary and Rivers State Judiciary

A reference to the judiciary in Nigeria is basically not a reference to the Bar nor the staff of the judiciary but a reference to the Bench, which consists of Justices of the Supreme Court (SC) and Court of Appeal (CA), Judges of the Federal High Court (FHC), National Industrial Court (NIC), High Court of the State (SHC) and Federal Capital Territory (FCT), Abuja; Customary Court of Appeal (CCA) of the State and Federal Capital Territory (FCT), Abuja, Kadis of Sharia Court of Appeal of the State and Federal Capital Territory (FCT), Abuja; Magistrates, Members of the Customary Court and Kadis of the Sharia Court.<sup>70</sup> In the strict sense, it does not ordinarily include members of administrative Tribunals and Panels involved in adjudication except tribunals like the Code of Conduct Tribunal (CCT). To fall within the definition of judiciary, the tribunal or panel must be under the supervision and discipline of NJC or State Judicial Service Commission (JSC)

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<sup>69</sup>Ibid, d 3 (k).

<sup>70</sup> (n1) s 6 (5) (a)-(k); s 318.



and the Federal Judicial Service Commission (FJSC). Thus, the NJC referred ‘the petition written against the Chairman of the CCT to the FJSC for investigation and to make appropriate report to NJC.’<sup>71</sup> Although, members of the judiciary like Magistrates adjudicating in courts not courts expressly created by the Constitution are not judicial officers within the contemplation of the Constitution,<sup>72</sup> they are nonetheless part of the judiciary and any argument to the contrary will not suffice. This is because it is a Court created to exercise jurisdiction on first instance in respect of matters which the National Assembly can make law for the FCT and the House of Assembly can make Laws for the State.<sup>73</sup> Although, for the purpose of the applications of the Code of Conduct for Judicial Officers, the *explanatory notes* of the Revised Code of Conduct for Judicial Officials of the Federal Republic of Nigeria 2016 (RCCJO 2016) includes Magistrates and other members of inferior courts as judicial officers by the following words:

...and every holder of similar office in any office and tribunal where the duties involves adjudication of any dispute or disagreement between person and person (natural or legal) or person and Government at Federal, State and Local Government levels including the agents and privies of any such person.<sup>74</sup>

Conversely, staff of the judiciary and lawyers are often thought to be part of the judiciary, this may obviously a misconception. While lawyers and judicial staff are key players in the wheel of adjudication and resolution of disputes, they are not in the strict sense part of the judiciary. The principal law regulating the judiciary in Nigeria is the CFRN 1999, which expressly states thus, the judicial powers of the federation shall be vested in the courts to which this section relates, being courts established for the federation.<sup>75</sup> It went on to elucidate that the judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.<sup>76</sup> It is germane to stress that section 6 of the CFRN 1999 deals on judicial powers of the federation.<sup>77</sup>

Accordingly, the courts which section 6 relates to are the only superior courts of record in Nigeria and they are the Supreme Court, the Court of Appeal, the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, Abuja; the State High Court, the Sharia Court of Appeal of the FCT; the Sharia Court of Appeal of a State; the Customary Court of Appeal of the FCT and a Customary Court of Appeal of a State.<sup>78</sup> Others are, such other courts created pursuant to section 6 subsection (4) paragraph (a) of the CFRN 1999 as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which the National Assembly or State House of Assembly, respectively, may make laws. It is germane to observe that creation of courts which can exercise jurisdiction on appeals is exclusive to the State House of Assembly. Some of these courts include the CCA for the respective state, Election

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<sup>71</sup> Ibid, 3<sup>rd</sup> schpt 1, para f, on the powers of FJSC to recommend suitable persons to NJC for appointment and removal of federal judicial officers which includes the Chairman and members of the Code of Conduct.

<sup>72</sup> Ibid, s 318.

<sup>73</sup> (n1), s 6 (5) (j) (k).

<sup>74</sup> RCCJO 2016, explanatory notes.

<sup>75</sup> (n1), s 6 (1).

<sup>76</sup> Ibid, s 6 (2).

<sup>77</sup> Ibid.

<sup>78</sup> Ibid, s 6 (5) (a)-(i).



Tribunals as designated, Magistrate courts, Customary Courts and Sharia Courts of the state and FCT.<sup>79</sup>

Furthermore, chapter VII of the Constitution which consists of section 230 to section 296 provides for the establishment, appointment of judicial officers and jurisdiction of the aforementioned superior courts; While the inferior courts are mainly regulated by the enabling statute as enacted by the National Assembly for the Federal Capital Territory (FCT), Abuja or the State House of Assembly for the State as applicable. For instance, the Rivers State Magistrates Court Law 2004 (RSMCL).<sup>80</sup> It is germane to observe that further to the CFRN 1999 provisions which is the principal regulatory framework of the judiciary in Rivers State. The Rivers state judiciary which is in focus is empowered by the Rivers State High Court Law 2011<sup>81</sup> (RSHCL 2011).

The Judicial arm of the Rivers State government is vested with the responsibility of interpretation of laws and formulation of case laws in line with the realist school of law. It comprises of the High Court and the Customary Court of Appeal as superior courts of record, the Magistrates' Courts, Customary Courts; Juveniles Courts; Revenue Courts, sanitation Courts, Mobile Courts, and Ports Related Offences Courts. The Customary Court of Appeal is headed by the President of the Customary Court of Appeal, while the State Judiciary is headed by the Chief Judge. The High Court of Rivers State comprises of 10 Judicial Divisions, including, Port Harcourt, Ahoada, Degema, Nchia, Bori, Omoku, Isiokpo, Okrika, Okehi and Oyigbo. In addition to the Chief Judge, there are currently about 34 serving Judges of the Rivers State High Court; and five serving Judges of the Customary Court of Appeal, in addition to the President.

### 3.2.2. Nigeria Police Force

The Nigeria Police Act 2020 (NPA 2020) reaffirms the creation of a more effective Nigeria Police Force,<sup>82</sup> that is guided by the principles of transparency and accountability in the performance of its duties.<sup>83</sup> The Nigerian Police Force's responsibilities include detecting and preventing crimes, protecting rights, lives, and property, maintaining public safety, law and order; and enforcing laws and regulations, collaborating with agencies to assist persons in distress, victims of road accidents, fire disasters, earthquakes, and floods, facilitating free passage and movement on public highways, roads, and streets, and adopting community joint efforts;<sup>84</sup> and to protect the fundamental rights of suspects in its custody.<sup>85</sup>

### 3.2.3. Office of the Attorney General and Department of Public Prosecution under the Rivers State Ministry of Justice

The government of Rivers State's ministry in charge of addressing and coordinating issues pertaining to judicial administration is the Rivers State Ministry of Justice. The State Secretariat in Port Harcourt serves as the ministry's headquarters. The office of the Attorney General of Rivers State is a constitutionally established position.<sup>86</sup> The Department of Public Prosecution (DPP) is the division under the ministry of justice and the office of the Attorney General responsible for

<sup>79</sup> (n1)s 6 (5) (j) (k); s 285.

<sup>80</sup> RSMCL 2004, Cap 13 Vol 2 LRSN 1999-2007, s 2.

<sup>81</sup> RSHCL 2011, Cap 13 Vol 1 LRSN 1999-2007.

<sup>82</sup> NPA 2020, s 3 (1); (n1), s 214 (1).

<sup>83</sup> *ibid*, s 1 (1) (a).

<sup>84</sup> *Ibid*, s 4 (a)- (i).

<sup>85</sup> *Ibid*, s 5 (1).

<sup>86</sup> CFRN 1999, s 211.



giving legal opinion in relation to criminal investigation and/or cases and undertakes prosecution of criminal cases in court.

#### **4. Evaluation of Recent Human Rights Efforts of the Rivers State Judiciary Through Subsidiary Legislation**

We are going to appraise the recent human rights efforts of the Rivers State Judiciary through subsidiary legislation, within the circumference human rights to Personal Liberty and fair hearing and trial within a reasonable time.

##### **4.1. Efforts on Preventing the abuse of Human Right to Personal Liberty**

Recall that before the MCRSPD 2022 came into the effect and before the enactment of the RSACJL 2015, the case of *Lufadeju v Johnson*<sup>87</sup> was the case that most Magistrates relied on to continue the indirect abuse of human rights to personal liberty by way of “holding charge. “In the said case, the Respondent (Johnson) who was arrested for conspiracy to commit treasonable felony and the perpetration of treasonable felony with eleven others were taken before the 1<sup>st</sup> Appellant (Chief Magistrate Grade 1, E. A. Lufadeju) on the 12<sup>th</sup> day of March, 1997, about two months after his arrest on the 12<sup>th</sup> of January, 1997. The charge was read but no plea was taken. There was no evidence of application for remand by the prosecution. An oral application for bail was immediately made and same was refused on the ground that the 1<sup>st</sup> Appellant lacks jurisdiction to grant bail in respect of a capital offence such as treason. Thereupon, Johnson along with the eleven others were reminded in custody at the Force CID, Alagbon, not at the Prisons or Correctional Center. Consequent upon the refusal of bail and the remand in custody, Johnson filed a fundamental rights application at the High Court asking the court to quash the order of his detention on ground of unconstitutionality and asked for the sum of Five Million Naira as damages. The application of Johnson was dismissed by the High Court on the ground that the proceeding before the 1<sup>st</sup> Appellant on the said date was a remand proceedings pursuant to section 236 (3) of the Criminal Procedure Law, Cap. 33, Volume 2, Laws of Lagos State, 1994.

The appeal to the court of appeal by Johnson was allowed on the ground that section 236 (3) of the Criminal Procedure Law, Cap. 33, Volume 2, Laws of Lagos State, 1994, was in conflict with the Constitution of the Federal Republic of Nigeria 1979. Therefore, both the order and the decision of the High Court were set aside. Dissatisfied, the Appellants appealed to the Supreme Court on the ground that the proceeding before the 1<sup>st</sup> Appellant was a remand proceedings not an arraignment. The Respondent countered that it was an arraignment and/or holding charge and not a remand proceeding. The Supreme Court allowed the appeal and held *inter alia* that once a plea has not been taken by the defendant, arraignment has not crystallised, hence the said proceedings was a remand proceeding.

The implication of the above is that the Supreme Court had condoned or approved holding charge or remand proceedings to be so called even when there was no such intention by the prosecution, in view of the absence of any written or oral application for remand. Although, on the *Lufadeju v Johnson* case, Johnson was remanded in police custody; however, because of the unrestricted endorsement by the apex court, suspects brought to the court on charges beyond the criminal jurisdiction of the Magistrate were often reminded in prison custody thus congesting the prison, which of course is more like the institutionalisation of holding charge, which negatively impacts on human right to personal liberty. With profound respect to the apex court, a proper

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<sup>87</sup> [2007] 8 NWLR (Pt 1037) 535.



remand proceedings ought not to have been commenced by a charge whether same was pleaded to or not, more so, that there was no application to that effect.

However, the above concerns have been addressed by the Rivers State Judiciary under the leadership of Hon. Justice Simenon Chibuzor Amadi (Chief Judge of Rivers State). It is imperative to stress at this point that directives 'a' 'b' 'c' 'd' 'e' 'f' 'g' 'h' and 'i' of the MCRPD 2022 is the most potent effort via subsidiary legislation, by any chief judge of Rivers State since the creation of the state to prevent the gross violation of human rights by law enforcement by way of holding charge wherein suspects or defendants are brought before a court that lacks jurisdiction in the charge against them, with the intention that the court will decline jurisdiction and remand the defendant in prison custody. This practice as supported by the afore-stated case of *Lufadeju v Johnson* has been on at the Magistrate Court level of the Rivers State judiciary despite the enactment of the RSACJL 2015 and the RSACJR 2020.

This bold direction of the Rivers State Judiciary by the hand of the incumbent Hon. Chief Judge has not only helped in prison decongestion since those brought for remand under the MCRPD 2022 are usually remanded in the police custody for a specific time in order to ensure the conclusion of investigation (this is also the practice in the United Kingdom and most civilised nations), it has also helped to decongest the cause list of the court that were often filed with matters for DPP advice which sometimes never comes and matters slated for avoidable bail application in the High Court, and has also helped citizens from the oppression of wicked law enforcement officers who sometimes connive with the nominal complainant to charge the defendant before a Magistrate Court with unfounded capital offence with a view of dumping the defendant in prison custody upon the decline of jurisdiction by the Magistrate Court. The MCRPD 2022 has also empowered the Magistrate to look into the case file in remand proceedings and in cases where the charge above their jurisdiction inadvertently comes before them as to ascertain whether the *prima facie* evidence supports the charge, in order to direct the prosecutor to comply with the directives and ensure that the defendant is granted bail notwithstanding that the offence in the charge is beyond the jurisdiction of the Magistrate.

Accordingly, what else can be a more proactive elimination of abuse of human right to personal liberty by a judicial arm of government than the said efforts of the incumbent chief judge in less than three years in office? Although, there are still room for improvements, it is now a thing of the past in Rivers State Judiciary for the prosecution to file a charge before the Magistrate Court when the Magistrate Court lacks jurisdiction with a view of making nonsense of the right to personal liberty of the suspect by dumping the suspect in prison or correctional center custody. This has clouded the possibility of holding charge in the Rivers State Judiciary, as the charge may not be accepted for filing.

In a certain case in cause of this research, the office of the Chief Registrar of the High Court of Rivers State responsible for assigning criminal cases in the Magistrate Court refused to register a charge brought by the Police on the ground that the charges are not within the jurisdiction of the Magistrate Court. The Investigating Police Officer (IPO) was asked to either drop the charges outside the jurisdiction of the Magistrates Court or proceed with the ones within the jurisdiction of the Court or to come by way of remand application. The IPO dropped the charge beyond the jurisdiction of the Magistrate Court and proceeded with the ones within the jurisdiction before the charge was registered and the defendant was arraigned. Upon application for bail, the learned Chief Magistrate O. Amadi-Nna had no difficulty admitting the defendant to bail since the offences were within his jurisdiction. The situation would have been different, thus impacting on the defendant right to personal liberty, had it been the MCRPD 2022 did not empower the relevant court Registry officials to do as they did in the case under review.



Furthermore, in cases of remand proceedings, there must be an express application to that effect, which must be supported by the case file and other evidence; the implication of which is that the said application for remand is not granted as of course, it may be refused and the suspect granted bail if same is spurious; that is why the MCRPD 2022 provides that the case file must accompany the remand application. All these are efforts to ensure that as much as possible the human rights to personal liberty of citizens are not breached except as justified by law.

Notwithstanding foregoing, it is submitted that Directives “h” and “i” of the MCRPD 2022 should be amended to only be applicable in line with section 98 of RSACJL 2015, that is, in circumstances where the offence(s) contained in the charge is outside the territorial jurisdiction of the court, in which case, except in critical capital offences like murder and arm robbery (where proof of evidence discloses fire arms and machete), and/or which the proof evidence contains *prima facie* evidence against the suspect, the suspect should be entitled to bail, same being anchored on the constitutional right of presumption of innocence until proven otherwise, which is a fundamental right that all courts are enjoined to promote in exercise of judicial power.

#### 4.1.1. Efforts on Fair Hearing and Trial Within a Reasonable Time

The practice of trial within trial in criminal litigation in Nigeria arises whenever an objection is raised by the defendant at the point the prosecution is to tender a confessional statement, the objection is raised to the effect that same was not obtained voluntarily. This of course leads to immense delay in the criminal justice system because apart from the extra time it takes, thus impacting on right to fair trial within a reasonable time, any decision in this respect may be subject to appeal which may lead to further delay.

However, directives ‘j (i) (ii) (iii)’ and ‘k’ contained in the MCRPD 2022 is a great effort towards ensuring the speedy trial of criminal cases which of course will ensure fair hearing and trial within a reasonable time.<sup>88</sup> In addition, the resultant effect of this is the positive impact on the right to personal liberty. Take for instance, the negative impact of delay in trial on the personal liberty of a defendant who could not meet his bail condition and is in prison custody during trial, and after two years of trial, the defendant is found not guilty as charged. That would be a wasted two years of restriction of personal liberty, howbeit lawfully; which of course would have been prevented by way of speedy trial. There are many cases where a defendant granted bail is unable to meet his bail condition and remains in custody during his trial in the magistrate court, ensuring speedy trial as provided in MCRPD 2022 and CTPD No. 1 of 2023 will no doubt address this problem.

### 5. Summary of Findings, Conclusion and Recommendations

Indeed, the efforts of the Rivers State Judiciary through Hon Justice S.C. Amadi (Chief Judge of Rivers State) in addressing the abuse of human rights to personal liberty and fair hearing within a reasonable time in the Magistrates’ Courts where it is prevalent, and in general criminal trials in his less three years in office, through the instrumentality of subsidiary legislation by way of Practice Directions, cannot be over emphasised.

It was found *inter alia* that until the MCRPD 2022 came into effect, the decision in the case of *Lufadeju v Johnson*<sup>89</sup> helped to entrench the practice of abuse of human rights to personal liberty by way of “holding charge” and/or allowance for remand application malpractice (that is remand not in accordance with proper procedure); and that the institution responsible to implement

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<sup>88</sup> See generally CTPD 2023.

<sup>89</sup> (n87).



the MCRPD 2022 with few exceptions has been effective in doing so. In addition, it was found that no Chief Judge of Rivers State in the history of the Rivers Judiciary has made a bold and far reaching impact in relation to the proactive realisation of citizens' rights to personal liberty and fair hearing within a reasonable time, through the instrumentality of subsidiary legislation like the Rules of Court and/or Practice Directions, as the incumbent Chief Judge, Hon. Justice Simeon Chibuzor Amadi, has done in less than three years in office.

It is recommended that directives 'g, 'h' and i' of the MCRPD 2022 should be deleted or amended by the Chief Judge of Rivers State to lay to rest any possibility of a holding charge in the Rivers State Judiciary, as same impacts greatly on right to personal liberty and fair hearing. No nation who undermines the human rights of its citizen, especially in relation to impermissible neglect of human right to personal liberty can lay claim to civilization in the 21<sup>st</sup> century. There is should also be quarterly training of stakeholders responsible for the implantation of the MCRPD 2022, especially, those in the office of the Chief Registrar of the High Court in charge of registration of charge and assigning of criminal cases, as well as the Magistrates. If you stop learning you will forget what you already know.