

TWENTY FOUR HOUR RULE AND THE RIGHT TO PERSONAL LIBERTY IN NIGERIA: HOW FAR HAS
RELEVANT EXTANT JUDICIAL PROCEDURES HELPED US ON THE PATH TO LIBERTY? **

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ABSTRACT

The right to personal liberty is guaranteed under the Nigerian Constitution. This right is not absolute and may be curtailed in a number of instances some of which are, in the main, related to the commission or suspicion of commission of a criminal offence. Once the right is curtailed, the Constitution makes provision for release or charge of the person detained or arrested to court within twenty four hours especially if there is a court of law within forty kilometers radius of the place of where the person was arrested or detained. However, practice has shown that some state agents like Nigeria Police do not observe this “twenty four hour rule” which help to ensure the liberty of person living in Nigeria. The enforcement of this Constitutional right in court is facilitated by two extant judicial procedures. However, a close examination of these two procedures shows that their provisions contain a germ which can be exploited by those who do not want to observe the constitutional twenty four hour rule. We therefore suggested ways these provisions can be amended or strengthened to enable them assist the Procedures in propping the twenty four hour rule and invariably safeguarding the liberty of person living in Nigeria.

1.0 Introduction

The constitutional right to personal liberty in Nigeria has some limitations. One of such limitations is the empowerment of state agents¹ and private individuals² to deprive a person of his liberty for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of having committed a criminal offence, or to such extent as may be

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¹ Policemen, Magistrates, Justices of the Peace, Military personnel and persons empowered to arrest under bodies created by statutes. The power to curtail the liberty of individuals granted to these sets of people, though implied in the Constitution, is expressly stated in the provisions of most of the legislations empowering them.

² This set of people are generally permitted to curtail the liberty of any person who commits an offence in his presence or who he reasonably suspects of having committed an offence which the police is entitled to arrest without a warrant.

reasonably necessary to prevent his committing a criminal offence³. A person detained in this line is to be brought to court within a reasonable time. “Reasonable time” in this respect means bringing the person to court within a period of one day, that is twenty four hours, where there is a court of competent jurisdiction within a radius of forty kilometers. The second privilege conferred on a person who restrained the liberty of another specifically for any of the three purposes stated is that of detaining the person for a period longer than twenty four hours⁴. The validity of this detention for more than twenty four hours apparently being hinged on what the court may⁵ approve as reasonable in the circumstance⁶. This should be considered as exception⁷ to the rule of bringing a person whose liberty is restrained in order to bring him before a court in execution of the order of a court or upon reasonable suspicion of having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence to court within twenty four hours. This is because in the first place, it is rare in most parts of Nigeria to find places where there is no court of competent jurisdiction within a radius of forty kilometers of any place of arrest⁸. Secondly, the context and the general language of the section suggests that subsection (a) containing the twenty four hour rule should be the first recourse of a person detaining any one on the stated grounds.

Despite this provision on twenty four hour rule, studies show that it is rarely observed by state agents like the Nigeria Police⁹. The non-observance of the twenty four hour rule may be based on interpretations of the section that prop, sometimes deliberately, the second arm of subsection (b) to nullify the liberty-friendly mien of the entire section. This however is not our concern in this paper. Our major aim in this discuss is to

³ Section 35 (1) (c) of the 1999 Constitution of Nigeria.

⁴ Section 35 (5) (b) of the 1999 Constitution of Nigeria

⁵ The phrase “or such longer period as in the circumstance may be considered by the court to be reasonable” suggests that it lies exclusively within the power of the court to determine when a curtailment of right to liberty which has exceeded forty eight hours is reasonable.

⁶ The peculiar facts of each case.

⁷ Rather than the rule.

⁸ Courts are sited in almost all the towns hosting Local Government headquarters in Nigeria and it is rare to find any town or village within the Local Government that may be more than forty kilometers away from the Local Government

⁹ Isabella Okagbue, *Bail Reforms in Nigeria* (Caltop Publications (Nigeria) Limited and NIALS, 1996) 63.

examine how far two extant judicial procedures¹⁰ on enforcement of right to liberty has assisted us in strengthening the twenty four rule in other ensure the liberty of persons living in Nigeria. The two judicial procedures considered are the Fundamental Rights (Enforcement Procedure) Rules 2009 which was made by the then Chief Justice of Nigeria pursuant to the powers conferred on him under section 46 (3) of the Constitution of the Federal Republic of Nigeria 1999 and the provisions for the writ of *habeas corpus* imbedded the laws of the various states in Nigeria. In our examination, we made some key assumptions one of which is that any detention done in other to bring a person before a court made on the basis of subsection 1 (c) which goes beyond twenty four hours is unlawful¹¹. The second assumption is that subsection 1 (b) is intended to cover very rare cases which do not fall under twenty four hour rule but which does not in any way obviate the intended effect of the twenty four hour rule as being the paramount aim of section 35(5) of the Constitution.

B. TWENTY FOUR HOURS RULE AND OTHER RELEVANT STATUTORY PROVISIONS IN NIGERIA

1. African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act:

This law though a treaty for the African region have been domesticated by Nigeria and formed part of the laws of Nigeria since 1983¹². Article 6 of this law simply provides that,

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained

¹⁰ Indeed without these judicial procedures, substantive rights like right to personal liberty will largely remain unenforceable.

¹¹ It must be quickly pointed out at this point that section 35 (7) (a) of the Constitution apparently excludes section 4 from applying to persons suspected of committing a capital offence which in effect excludes suspected capital offenders from this section.

¹² Nigeria ratified this law on 22 June 1983

There is nothing in this terse provision that impedes or would be read to impede the application of the twenty four hour rule. Instead, the twenty four hour rule should be read into it to bring it line with the Constitution.

2. Police Act

Section 24 of this Act empowers a police officer and anybody whom he may call to assist him, to arrest, without warrant, any person who:

- (a) he finds committing any felony, misdemeanor or simple offence or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanor or breach of the peace;
- (b) any other person charges with having committed a felony or misdemeanor;
- (c) Any person whom any other person-
 - (i) Suspects of having committed a felony or misdemeanor; or
 - (ii) Charges with having committed a simple offence, if such other person is willing to accompany the police officer to the police station and enter into a recognizance to prosecute such charge.

This provision does not apply in cases where the law creating the offence provides that an offender may not be arrested without warrant¹³. Based on this, the Police are under a duty to take the suspect, *as soon as practicable*¹⁴, before a magistrate who has jurisdiction with respect to the offence with which he is charged or is empowered to deal with under section 484 of the Criminal Code Act¹⁵. In the interim¹⁶, the police officer for the time being in charge of a police station may inquire into the case and:

- (a) except when the case appears to such officer to be of a serious nature, may release such person upon his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a magistrate at that day, time and place mentioned in the recognizance¹⁷; or

¹³ Section 24 (2) of the Police Act (Cap. P19) Laws of the Federation of Nigeria 2010.

¹⁴ Emphasis supplied

¹⁵ Section 27 of the Police Act (Cap. P19) Laws of the Federation of Nigeria 2010.

¹⁶ Before charging the suspects before a magistrate.

¹⁷ Proviso (a) to section 27 of the Police Act (Cap. P19) Laws of the Federation of Nigeria 2010.

- (b) if it appears to such officers that such inquiry cannot be completed forthwith, may release such person on his entering into recognizance, with or without sureties for a reasonable amount, to appear at such police station and at such times as are named in the recognizance, unless he previously receives notice in writing from the superior police officer in charge of that police station that his attendance is not required, and any such bond may be enforced as if it were a recognizance conditional for the appearance of the said person before a magistrate¹⁸.

We suggest that in view of the provisions of section 1 (1) and 1 (3) of the Constitution which makes the Constitution supreme above all laws in Nigeria and which respectively forbids any law or part of law that is inconsistent with the Constitution, the phrase *as soon as practicable*¹⁹ in section 27 of this Act should be modified to read twenty four hours²⁰.

3. Administration of Criminal Justice Act 2015

This Act is the successor to the Criminal Procedure Act provides thus in section 30,

1. Where a suspect has been taken into custody without warrant for an offence, other than an offence punishable with death, an officer in charge of a police station shall inquire into the case and release the suspect arrested on bail subject to subsection (2) of this section, *and if it will not be practicable to bring the suspect before a court having jurisdiction with respect to the offence alleged, within twenty four hours after arrest*²¹

From this provision, it is clear that the constitutional twenty four hour rule on release on failure to charge a person detained for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of having committed a

¹⁸ Proviso (b) to Section 27 of the Police Act (Cap. P19) Laws of the Federation of Nigeria 2010.

¹⁹ Emphasis supplied

²⁰ The phrase "as soon as practicable" set as the time limit for the detaining police officer to bring a suspect to court appear to be peculiar to the Police Act as we shall see the Administration of Criminal Justice Act 2015 provided for the twenty four hours rule.

²¹ Emphasis supplied

criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence is recognized by this Act²².

C. SOME JUDICIAL AND JURISTIC RESPONSES TO THE MEANING OF THE TWENTY FOUR HOUR RULE

There have been different responses to the meaning of the twenty four hour rule by the courts and jurists. Some decisions of the courts reflect a refreshing elaboration of the twenty four hour rule. For instance, in **Augustine Eda v. The Commissioner of Police, Bendel State**²³, the appellant, Augustine Eda, was arrested and detained by the police on suspicion that he was involved in stealing some property belonging to Dumez International Social Club Organisation, Benin City of which he was the General Secretary. The appellant was detained by the police from Friday, August 22, 1980 to Tuesday, August 26, 1981 when he taken on bail by one Etim Okon Okpor.

After his release from police detention, the appellant sued the police claiming compensation for unlawful detention and public apology from the respondent for breach of his constitutional right under section 32 (1)(c), (4) and 5 (a) of the 1979 Constitution²⁴.

The learned trial judge, after taking evidence, on the request of counsel to both parties raised a number of questions which were referred to the Court of Appeal under section 259 (2) of the 1979 Constitution²⁵. One of the questions was whether or not if a person arrested and detained by the police is able to procure a surety to take him on bail it is a breach of section 32 (5) of the 1979 Constitution and therefore unconstitutional to retain him in custody in any event without bringing him before a court of competent

²² Section 17 of the Criminal Procedure Act pegged the time limit of charging the person deprived of his liberty by police officers to "as soon as practicable". The section places an obligation on an officer in charge of a police station to only **investigate** a non-capital offence where the suspect cannot be brought to court within twenty four hours. However once he commenced investigation he is only obligated to charge the person to court "as soon as practicable". Nwadialo is of the view that this section of the Criminal Procedure Act applied to cases where the officer in charge of the police station has gone into the case and decided that the offender can be charged to court without further investigation or inquiry. (Fidelis Nwadialo, *The Criminal Procedure of the Southern States of Nigeria*, CSS Press,1973, 59)

²³ (1982) 3 N.C.L.R 219 (CA)

²⁴ Same with sections 35 (1)(c), (4) and 5 (a) of the 1999 Constitution.

²⁵ Now section 295 (2) of the 1999 Constitution.

jurisdiction within the period stated in section 32 (5) of the 1979 Constitution²⁶. In his leading judgment, Omo-Eboh JCA, answered this question thus,

I must add... that the police are obliged to take a person arrested or detained to a court of competent jurisdiction within a radius of 40 kilometers as in this case, Benin City, from the place where he was arrested within one day and what is more important, that the police can only bring any person in custody before a Court of Law during normal sitting hours on working days of the week²⁷

The honourable justice then went on,

Whenever the police have arrested or detained a person in connection with an allegation or reasonable suspicion of a crime, and are actively pursuing investigation of the matter, their duty now is to offer bail to the suspect and/or bring him to a court of law within 1 day or 2 days as the case may be no matter under whatever sections of the Criminal Procedure Act (Cap. 43) or Police Act 1967 (Cap. 154) they may purport to be acting. I must add that whether the police grant a person under arrest or detention bail or not, it is their duty to bring any person in their custody before a court within 1 days or 2 days as the case may be in compliance with the relevant constitutional provisions²⁸

We learn a number of interesting points from this decision. First is that the suspect can only be charged to court, where there is a court within 40 kilometers radius, not only within twenty four hours (one day) but also during normal sitting hour on working days of the week²⁹. This “clarification”, however leaves us wondering what happens to persons arrested on Friday evenings³⁰? Are they to remain in custody until Monday morning? Obviously it may argued that the phrase “such longer period as in the circumstances may be considered by the court to be reasonable” in section 35 (5) (b) of the Constitution will adequately cover this situation, but this has sadly become a cover

²⁶ (1982) 3 N.C.L.R 219 .

²⁷ *Ibid* at 222

²⁸ *Ibid* at 227- 228.

²⁹ Normal sitting hours for most public sector services in Nigeria are between 8am to 4pm.

³⁰ Mostly after 4pm

for the Police to most times maliciously detain and extort money from many “suspects” on the believe that there is no apparent legal reprieve for them during the weekend. We have however proffered, elsewhere³¹, some possible solutions to this problem. Secondly, it is suggested in this decision that even if bail is granted, the suspected offender should still be charged to court within twenty four hours³².

In **Emezue v. Okolo and another**³³, the Supreme Court, apparently basing its decision on the provisions of the Criminal Procedure Act³⁴, readily acceded that suspects accused of misdemeanors may be brought to court within twenty four hours. In this case, Sunday Emezue sued E.E. Okolo, C.N. Nedum and Anthonisus, all police officers were all charged to court for unlawful detention. Emezue, the appellant, a professional driver and a leader of a drivers’ union, alleged that he was arrested following a scuffle between him and one Mr. Udokwu of a rival drivers’ union. After his arrest, he was taken to Umuahia Police Station and detained from 9am on October 5, 1972 to about 7am on October 7, 1972 when he was released.

Following his release, he filed this suit at High Court, Umuahia claiming ₦ 200, 000 for unlawful detention. The trial court dismissed his suit as being frivolous on the ground that,

Having conceded participation in a scuffle in a public place, the plaintiff³⁵ was entitled to be apprehended and detained by the police for conduct likely to cause a breach of the peace³⁶

³¹ C.N. Uwaezuoke ‘Legal Framework for the Prevention And Control of Pre- Trial Bail of Suspect by Nigeria Police: A Critique’ in Uwem Udok & Isaac Essien (eds) *Essays in Honour of Professor Enefiok Essien* (Department of Private Law, University of Uyo) 214-216.

³² The words “arrested” or “detained” suggests that the decision on this issue may not be correct.
³³ (1978) 1 LRN 236 (SC)

³⁴ Section 17 of the Criminal Procedure Act had used the term “serious offence” to define certain offences for which the officer in charge of a police station is empowered not to release on bail but to charge to court “as soon as practicable”.

³⁵ The appellant

³⁶ *Ibid*, p. 239.

Aggrieved by this decision, the appellant appealed to the Supreme Court. The Supreme Court upheld the appeal and ordered for retrial. In giving the reasons for this, Fatai – William JSC, who read the Court’s judgment noted,

It is also provided in s. 9 of the Act³⁷, that any person who is arrested, whether with or without warrant, shall be taken with all reasonable dispatch to a police station and while in custody shall be given reasonable facilities for taking steps to furnish bail. It is common ground in the case in hand that the offence for which the plaintiff was arrested is that of taking part in affray. It is a minor offence, a misdemeanour and carries a maximum penalty of imprisonment for one year under s. 83 of the Criminal Code. That being the case, the plaintiff, in our view could not be detained in Umuahia Police Station for more than 24 hours³⁸

In view of the constitutional provisions on this issue, it is in doubt Supreme Court will want, in any subsequent decision, to maintain the “serious offence” and “minor offence” dichotomy created by the Criminal Procedure Act and affirmed by the Court in this decision in respect of this issue³⁹.

Scholars and jurists have also attempted to interpret the equivalent of section 35 (5)⁴⁰. For Nwabueze,

Detention is constitutionally permitted or authorised by law in the case of a person reasonably suspected of having committed a criminal offence. But a person detained must be brought to court within a reasonable time (s. 32 [4]), which is defined as period of one day where there is a court of competent jurisdiction within a radius of 40 kilometres of the place of detention- or, where there is no such court within that radius, a period of two days or ‘such longer period as in the circumstances may be considered by the court to be reasonable’ (s. 32[5]⁴¹). The latter situation presupposes that

³⁷ Criminal Procedure Act.

³⁸ (1978) 1 L.R.N 236 at 241 (SC)

³⁹ A close examination of section 35 will reveal constitutional emphasis is “capital” and “non-capital” offences in relation to decisions to charge to court or release on bail. In relation to the former, the court are not under obligation to observe the provisions of section 35 (4) and (5) of the Constitution.

⁴⁰ Section 32 (5) of the 1979 Constitution.

⁴¹ 1979 Constitution which is equivalent of section 35 (5) of the 1999 Constitution.

detention will have been suffered for longer than two days before its reasonableness or otherwise shall be determined by the court. If the court decides that the person detained ought to have been brought it within two days, then the period spent in detention in excess of two days is unlawful⁴²

Okagbue was however more restricting in her “concession of grounds” to the detainer. For her, once a suspected offender is arrested, he *must*⁴³ be brought before a court of law within 24 (or 48) hours⁴⁴.

D. EXTANT JUDICIAL PROCEDURES TO UPHOLD RIGHT TO LIBERTY AND PROJECT THE TWENTY FOUR HOUR RULE.

The thrust of the twenty four hour rule is to get the arrested suspected offender to be charged to court within twenty four hours. This is also in line with the Constitutional provision that presumes such persons as innocent until the contrary is established before the court⁴⁵. There are two main rules of court that may facilitate this. The first is the Fundamental Rights (Enforcement Procedure) Rules 2009 which was made by the then Chief Justice of Nigeria pursuant to the powers conferred on him under section 46 (3) of the Constitution of the Federal Republic of Nigeria 1999 and the provisions for the writ of *habeas corpus* imbedded the laws of the various states in Nigeria

1. The Fundamental Rights (Enforcement Procedure) Rules 2009

As earlier noted, these Rules were made by the then Chief Justice of Nigeria⁴⁶ pursuant to the powers conferred on him under section 46 (3) of the 1999 Constitution. The Rules which commenced on 1st December 2009, confers any person who alleges that any of the Fundamental Rights⁴⁷ provided for in the 1999 Constitution or African Charter on Human and Peoples Rights (Ratification and Enforcement) Act to which he is entitled,

⁴² B.O. Nwabueze, *The Presidential Constitution of Nigeria*, (C. Hurst & Co.(Publishers) Ltd, 1982) 425

⁴³ Emphasis supplied.

⁴⁴ Isabella Okagbue, *Bail Reforms in Nigeria* (n 8) p. 26.

⁴⁵ Section 36 (5) of the 1999 Constitution.

⁴⁶ Honourable Justice Idris Legbo Kutigi

⁴⁷ Including the right to personal liberty in section 35 of the Constution.

has been, is being or is likely to be infringed, the right to apply to the Court⁴⁸ in the State where the infringement occurs or is likely to occur to apply for redress⁴⁹. The application was to take the form of any originating process accepted by the Court and which does not need leave of Court to file⁵⁰. This application is to be supported by a Statement⁵¹ and supported by an affidavit setting out the facts upon which the application is made⁵². The affidavit in support of the application is, since the applicant is in custody, be made by a person who has personal knowledge of the facts of the detention or by or by a person informed of the facts by the applicants⁵³. The court may, if satisfied that exceptional hardship may be caused to the applicant before service of the application especially when the life and liberty of the applicant is involved, hear the application *ex parte* upon such interim reliefs as the justice of the application may demand⁵⁴. This application is required to be supported by affidavit which shall state sufficient grounds why delay in hearing the application would cause exceptional hardship⁵⁵. The courts are empowered, among others, on hearing the matter *ex parte*, to grant bail or release the applicant from detention pending the determination of the application⁵⁶, order the production of the applicant on the date the matter is fixed for hearing if the applicant alleges wrongful or unlawful detention⁵⁷ and any other order as the court may deem fit to make as the justice of the case may demand⁵⁸.

2. Procedure under the writ of *Habeas Corpus*

⁴⁸ Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja.

⁴⁹ Order II Rule 1.

⁵⁰ Order II Rule 2. This is a clear departure from the previous Fundamental Rights (Enforcement) Rules of which required leave of Court to before the complaint can lie. Indeed the previous position was that most people seeking to enforce their fundamental rights had their bid truncated by the Courts at the stage of granting leave.

⁵¹ This Statement is to contain the name and description of the applicant, the relief sought and the grounds upon which the reliefs are sought.

⁵² Order II Rule 3

⁵³ Order II Rule 4

⁵⁴ Order III Rule 3

⁵⁵ Order III Rule 4 (a)

⁵⁶ Order III Rule 4 (c)(i)

⁵⁷ Order III Rule 4 (c) (iii)

⁵⁸ Order III Rule 4 (c) (v)

The procedure under the writ of habeas corpus is anchored in antiquity and originated from England⁵⁹. The writ and procedure for enforcing it is now very much part of Nigerian legal system. Many states now have provisions in their laws related to issuance of the writ and the procedure for its enforcement⁶⁰. For instance, similar provision is contained in the Administrative Law⁶¹ of Enugu State. Under this procedure, a person is to apply to court⁶² or a judge of the court for this writ if alleges that his personal liberty under the Constitution is being unlawfully restrained⁶³. The application shall be accompanied by an affidavit deposed to by the applicant⁶⁴ and shall specify the person detained or restrained, the nature of the detention or restraint, the person by whom or on whose order the detention or restraint is effected and, where possible, the place where the prisoner is being physically detained or restrained⁶⁵. Upon hearing the application, the court or Judge may issue a writ commanding the person who restrained the applicant or who authorised him to be detained to produce the prisoner before the court or Judge and show cause why the prisoner should not be released to have his liberty⁶⁶.

We contend that these two procedures do not provide an antidote that will ensure that detained persons suspected of committing non-capital offences are charged to court within twenty four hours. This may be, in part, because even where the suspects or their relations decide to use any of these procedures, the process of getting the court to

⁵⁹ See for instance, Zechariah Chafee Jr., *Documents on Fundamental Human Rights: An Anglo- American Tradition Compiled* (Vol. 1), Altheneum, 1963), 8-11.

⁶⁰ This practice pre-dated the creation of states in Nigeria. The old Western Region had the Habeas Corpus Law (Cap. 40) Laws of Western Region 1959. Other regions had an elaborate means of enforcing the writ in their High Court Law. See for instance section 93, High Court Law of Northern Nigeria (Cap. 49) Laws of Northern Nigeria 1963, section 61, High Court Law of Eastern Nigeria (Cap. 61) Laws of Eastern Nigeria 1963.

⁶¹ Cap.6, Laws of Enugu State 2004

⁶² High Court.

⁶³ Section 89 (1) & (2) of Administrative Law (Cap. 6) Laws of Enugu State 2004.

⁶⁴ The application of writ is to be made by the detainee or with the concurrence of the detainee. In the later case, if the detainee is held incommunicado another person may take out the writ on his behalf. See Section 90 (2) of Administrative Law of Enugu State.

⁶⁵ Section 90 (2)

⁶⁶ Section 89 (2)

hear such matters may take days⁶⁷. In matters of this nature, speed is of utmost importance otherwise the twenty four hour rule will be left worthless.

E. CONCLUSION:

The two extant judicial procedures that assist in enforcing the right to personal liberty and invariably the twenty four hour rule do not appear to have strengthened the application of this rule. Although there are provisions in these procedures for the court to mandate release, this realistically can only take place at the least seventy two hours after detention thereby making these provisions of not much effect in ensuring that suspected offenders are either charged⁶⁸ to court within twenty four hours.

F. RECOMMENDATIONS:

As we noted the reason for the inability of extant relevant judicial procedures to meet the requirement of ensuring the twenty four hour rule is held sacrosanct with regard to either charging a suspected offender to court or releasing him is because of our reckoning as to the time it may take to process applications before a Judge can get to possibly order for the release of the suspected offender⁶⁹ or production of the detainee as the case may be⁷⁰. A possible solution may be to amend⁷¹ these judicial procedures to make them applicable to Magistrate courts⁷². Although Magistrates courts are

⁶⁷ On the average it takes not less than three days for a matter to be processed for hearing before a judge. This is well over the twenty four hour deadline required in this instance.

⁶⁸ Assuming they have not been released before then. As we noted the Court of Appeal in *Eda v. Commissioner of Police* (1982) 3 N.C.L.R 219 (CA) the Court of Appeal had suggested in this case that the rule still applied irrespective of whether the person was in detention or not.

⁶⁹ Order IV Rule 4 (c)(i) of the Fundamental Rights (Enforcement Procedure) Rules 2009

⁷⁰ Order IV Rule 4 (c)(iii) of the Fundamental Rights (Enforcement Procedure) Rules 2009 and for instance section 89 (2) of Administrative Law (Cap. 6) Laws of Enugu State 2004.

⁷¹ Amending the Interpretation part of the Fundamental Rights (Enforcement Procedure) Rules 2009 to expand the scope of the term "Court" to include Magistrates courts and also for instance, the definition of court in section 88 of Administrative Law (Cap. 6) Laws of Enugu State 2004 to include Magistrate court.

⁷² This will also entail the amendment of section 46 of the 1999 Constitution from where the Chief Justice of Nigeria derived his power. This section specifically listed the "High Court" as the court to hear and determine such issues. Amending a written Constitution such as the one in Nigeria is a complex task. While this is pursued it will be easier for the State Houses of Assembly to amend the Habeas Corpus procedure in their laws to reflect our suggested changes.

generally regarded as inferior court of record⁷³ but their increasing sophistication⁷⁴ in Nigeria makes such claim illusory. The advantage of Magistrates court in this regard is the speed, relative to High Courts, with which matters are processed for hearing. It is also suggested that a complement to this will be a provision in these judicial procedures that will ensure that judges are empowered to release a person that has been in detention for more than twenty four hours any day of the week⁷⁵ and any where such petition is presented before him⁷⁶ within the jurisdiction of the detention. Along this line, it is recommended that presentation of an affidavit by the detainee or any person acting on his behalf to the judge or magistrate through any means⁷⁷ should suffice to move him to act⁷⁸. All he will need to do is to be satisfied, through the affidavit, that a person has been detained by a specified person or agency of government for more than twenty four hours⁷⁹ in respect of a non-capital offence.

⁷³ “Courts which have jurisdictional limits with respect to the type and value of the subject matter” (Obilade, *The Nigerian Legal System* (Spectrum Books Limited, 2005) 169

⁷⁴ The jurisdiction of these courts in respect of the value of the subject matter has increased significantly in many states. Also although the rules of pleadings do not apply in these courts, they still handle relative vast majority of matters that are filled in courts across Nigeria. Further, the Rules that govern procedure in these courts are relatively well developed.

⁷⁵ Including weekends and public holidays which are usually not sitting days for the courts in Nigeria.

⁷⁶ We suggest, by this, that the judge or magistrate, as the case may be, will not need to have a normal sitting before exercising the power to release persons detained for more than twenty four hours.

⁷⁷ Including emailing the affidavit to the judge or magistrate.

⁷⁸ There may not be need for a motion paper containing the prayer in this instance, the prayer for release should be crafted into the affidavit.

⁷⁹ And that there is a court of competent jurisdiction within forty kilometers radius of where the person was detained.