CLARIFYING THE LAW RELATING TO DETENTION OF SUSPECTS IN POLICE CUSTODY - WHAT EVERYONE NEEDS TO KNOW

By Alimamy Sultan Koroma Esq.

1. INTRODUCTION

In my years of practice within the criminal justice system, one of the most pervasive forms of human rights violations I have observed is the arbitrary arrest and detention of suspects by police officers. This arbitrary detention of suspects for even minor offenses has become so engrained and commonplace that most people have come to accept it as the norm. According to a recent study, more than half of all suspects invited to the police station end up being detained. But what does the law say regarding the detention of suspects? Do Police Officers have a carte blanche authority to lock up suspects? What are the effects of arbitrarily depriving a suspect of his liberty?

2. MY PERSONAL EXPERIENCE

Few months ago, I was instructed to represent a client who had been detained at a Police Station in Eastern Freetown on suspicion of receiving stolen goods. Prior to my involvement, she had already been kept in custody for four days. On my arrival at the Police Station, I spoke to the investigator and quickly established that the evidence against my client was very weak and bogus. I requested that my client be admitted to bail pending the investigations, and presented two responsible sureties who were willing to enter into her recognizance. The investigator then referred me to the Crime Officer who he claimed had the final authority to determine the issue of bail. After waiting for over an hour the Crime Officer finally arrived, shouting on his phone and ignoring my presence. Eventually I got the opportunity to speak to him and politely made the case for bail to be granted to my client. "Mr. Koroma, I am sorry but I do not feel inclined to give bail. I need to seek the consent of the Complainant first after which I would see what I can do.", he told me.

I was stunned. He did not make reference to any justifiable basis for refusing bail such as fear of interference with witnesses, flight risk or unreliable sureties. His chief concern was seeking the consent of the Complainant! I sought to explain the law especially section 17 of the Constitution of Sierra Leone Act No. 6 1991 that guarantees protection from arbitrary arrest and detention, but he was not interested. Following a brief altercation which warranted the intervention of the Local Unit Commander, my client was finally put on bail. It turned out that the investigations were eventually discontinued for insufficient evidence. My client was however not compensated for all the pain and suffering she endured during her incarceration although section 17 (4) of the Constitution of Sierra Leone guarantees compensation for unlawful detention.
3. **THE LAW**

Section 17 of the Constitution of Sierra Leone 1991 and section 80 of the Criminal Procedure Act, 1965 are the extant legal provisions dealing with detention of suspects in police custody. Both acts clearly frown at unnecessary and unreasonable detention of suspects. The said acts recommend detention of suspects at police station only as a last resort and in exceptional cases such as for felonies. This is the same approach of international legal treatises to which Sierra Leone is a signatory as evidenced in article 6 of the African Charter on Human and Peoples Rights and article 9 of the Universal Declaration of Human Rights.

Of course the law also recognizes that in certain situations, Police Officers while investigating a crime, may need to keep the suspects in custody. An example would be where there is likelihood that the suspect would escape or may interfere with prosecution witnesses. This power to detain is however subject to strict conditions including constitutional limits on the period of detention-3 days for misdemeanors and 10 days for capital offenses. At the expiration of this period the police MUST either charge the matter to court or release the suspect on bail. In practice however, police officers often lock up suspects longer than the constitutional limit and by so doing, violate the rights and dignity of these suspects.

4. **RECOMMENDATIONS**

What happened to my client is not an isolated incident. It is part of a worrying culture by some rogue police officers who abuse the power of detention as a tool for extortion, punishment or securing forced confessions. In its discussion paper entitled Justice Sector and the Rule of Law, published in January 2014, OSIWA notes that “Frequent reports of physical abuse, illegally assessed fees and unlawful detention continue to undermine the SLP’s credibility.”

In order to tackle this menace and strengthen respect for protection from arbitrary arrest and detention as laid down by the law, the following recommendations should be adopted:

Firstly, government and non-governmental organizations must as a matter of urgency intensify trainings for police investigators on human rights law, especially the principles relating to pretrial detention. A number of non-governmental organizations working on access to justice including OSIWA, ADVOCIAD and LEWAF to name but a few might be quite willing to help in this direction.

Secondly, the Criminal Procedure Act 1965 must be reviewed to reflect international human rights best practices. For example, subject to few exceptions bail must be made
mandatory for all minor offences such as assault, public disorder and insulting conduct. The new act must spell out clearly that bail can only be refused for minor offences in exceptional circumstances and that order must come from the Inspector General of Police under a certificate issued in his name.

Furthermore, the Sierra Leone Police should have a police officer with a legal background at each police station who should determine the issue of bail. Every decision to deny bail must be in writing and subject to review after every 24 hours.

And finally, civil society organizations and the general public should be encouraged to speak out against arbitrary arrest and detention. Members of the public must also utilize the disciplinary mechanism within the police namely the Complaint Discipline and Internal Investigation Department (CDIID) and the Independent Police Complaint Board so as to end impunity. The Police Discipline Regulations of 2001 presents a glorious opportunity to promote accountability and discipline within the police force and the public must make use of same to ensure dignity of suspects.

End.

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