

Making the Case to Rethink Constitutional Limit on Police Custody in Liberia.

Dr. Ambrues Monboe Nebo Sr, and D. Blamo Kofa

African Methodist Episcopal University and University of Liberia

Abstract: Consistent with the rudiments of a research paper, this article makes the case that could motivate the Ministry of Justice to rethink the statutory provision about police custody time limits. As its theoretical framework, the study was guided by the core concept of “Due Process” with the main emphasis on procedural due process and substantive due process. Using the qualitative method with emphasis on literature review and interviews, the paper argues that the cases of the writ of habeas corpus cataloged against the Liberia National Police constitute a violation of the accused fundamental rights and a complete embarrassment to the LNP as protector or observer of the due process of law. It also argues that the principle of “expediency” often cited as the justification for extending police custody beyond the constitutional time limit lacks justification in the statutes and is tantamount to the violation of substantive due process. It recommends that the Ministry of Justice see reasons to ignite the debate to initiate the amendment of Article 12(f) of the 1986 Liberian Constitution.

Keywords: Constitutional time limit on police custody, Liberia National Police, Police custody time limit, Writ of habeas corpus,

I. INTRODUCTION

The 1986 Constitution of Liberia entitles everyone living in Liberia to protect their human rights. Chapter III, the chapter on Fundamental Rights, which could arguably be referred to as the heart of the Constitution, guarantees basic human rights to all. It pledges that the State will safeguard human rights and protect citizens from undue invasions of their liberty, security, and privacy. Through the Liberia National Police (LNP), the State protects its citizens' fundamental rights, including those coming into conflict with the law.

One of the fundamental rights the LNP is under a legal obligation to uphold, especially during a criminal investigation, is the time limit in police custody. This right is guaranteed by the Constitution of Liberia. Precisely, Article 21 (f) states “*Every person arrested or detained shall be formally charged and presented before a court of competent jurisdiction within forty-eight hours. Should the court determine the existence of a prima facie case against the accused, it shall issue a formal writ of arrest setting out the charge or charges and shall provide for a speedy trial. There shall be no preventive detention*”.

Unfortunately, many a time, while discharging their duty, the unintentional actions of the police conflict with this human rights provision. This is simply because police officers are pressured to get quick results, often with unofficial guarantees

that they may use any means possible to accomplish the task at hand. Consequently, the LNP is often subjected to Article 21 (g) focusing on the right to the writ of habeas corpus demanding the LNP to produce the living body of the accused or a crime suspect before a competent court of jurisdiction and to show cause for the custody of the accused beyond the statutory time limit or period. For example, on 26 May 2022, a writ of habeas corpus was filed against Justice Minister, Cllr. Frank Musa Dean, Police Inspector General Patrick Toe Sudue, the Commander, crime Services Department and all other agents acting upon the authority of the City of Monrovia commanding them to produce the living body of Abraham A. Benjamin detained at the Monrovia City Hall (LNP, Court Liaison office, 2021).

Similarly, in 2021, Lawyers Representing four Liberians who were arrested on December 5 at their place of worship by the Liberia National Police filed a Writ of Habeas Corpus against Police Inspector General Patrick Toe Sudue and Justice Minister, and Attorney General, Cllr. Frank Musa Dean, their deputies, and all units of the LNP and Justice Ministry for what petitioners termed as their illegal detention. The writ was filed at the First Judicial Circuit Court of Montserrado County by the Atty (Tokpah, 2021).

Regardless of the legal maxim “for expediency” or for “the common good of the society” which has often been the justification for detaining a suspect beyond the constitutional time limit, these examples including subsequent cases technically violate the fundamental rights of those accused of a crime. By analysis, it is a contradiction on part of the LNP considered the protector of the rule of law that essentially incorporates human rights standards. This assertion does not in any way seem to support those accused of a crime because of their hazardous actions toward society but seeks to help the LNP tackle this embarrassment. In short, the inclination of this paper is driven by finding a solution to a perennial problem.

Against this backdrop, this paper, in a more careful way, presents the case or argument to ignite the debate about the need to rethink the constitutional limit on police custody or police custody time limits in Liberia, precisely Article 21 (f) previously mentioned.

Structurally, this paper is divided into five segments. The first segment lay outs the theoretical framework of the paper. It examines the two models of due process and their nexus to

Liberia's jurisprudence. Thereafter, it explains or defines constitutional limits on police custody or police custody time limits from a general perspective but with a reference to international human rights instruments. It puts Liberia into context with specific reference to Article 21 (f) of the 1986 Liberia Constitution. It tries as much as possible to look into the minds of the framers of this provision/the constitution. Also, it links Liberia to international human rights instruments to which it is a signatory as evidenced in Article 6 of the African Charter on Human and Peoples Rights, Article 9 of the Universal Declaration of Human Rights, and Article 9 of the International Covenant on Civil and Political Rights. The second segment highlights Article 21(g) as the remedial action against the LNP. It also catalogs some noticeable cases of the Writ of Habeas Corpus filed against the LNP and explains the implications thereof. The third segment reviews the jurisprudence of other countries as it relates to the constitutional limit on police custody. The main essence is to set the tone or pace for the fourth segment viewed as the crux of the paper. The final segment draws a logical conclusion coupled with a relevant or practical recommendation.

II. METHODOLOGY

As a form of qualitative method, the research commenced with a literature review, which sought to better understand the legal framework in Liberia as it relates to police custody time limits and to examine the practical challenges associated with full adherence to the legal provision. On the principle of confidentiality or anonymity, strategic discussions surrounding the subject matter were also held with some key Stakeholders or Practitioners within Liberia's Criminal Justice System. The research also reviews the legal framework on police custody time limits in other countries. Specifically, it features Nigeria, Sierra Leone, Ivory Coast, the United States of America, etc.

Theoretical Framework

Considered as the guide for this study, this paper examines the core concept of "Due Process" with the main emphasis on procedural due process and substantive due process. From a legal perspective, Kenton (2021) posits that due process is a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly. In legal systems, legal matters are both civil and criminal. In criminal matters or proceedings which is an implied focus of this paper, the concept means that laws must be applied fairly and equally to all, especially to a citizen accused of a crime (Diaz, 2021). Diaz (2021) further opined that due process embodies all the rights that protect criminal defendants or persons formally accused of a crime. The Liberian Supreme Court in the case *Wolo v. Wolo* (5 LLR 423 -1937, as cited in Williams and Barbu, 2009) opined that due process is a law that hears before it condemns.

These rights cover the entire criminal proceedings that for expediency start with the police as the first component and gatekeeper of the Criminal Justice System. For example, the

right to be informed about arrest, the right to remain silent when arrested by the police and have access to legal counsel, the right not to be detained arbitrarily, the right to be presumed innocent until his guilt is proven, etc. When any of these rights is missing during a criminal investigation, the fairness of the proceedings is compromised, and material evidence gathered is quashed under the exclusionary rule of evidence or the fruit of the poisonous tree doctrine. A suspect or defendant whose rights have been violated can challenge the prosecution as a way of redress that is also recognized by due process.

The theory of due process originated from the English Common Law and dated far back to "The Magna Carta" (i.e., Great Charter) as it was called and became one of the fundamental documents which make up the English constitution. In clause 39 of the Magna Carta 1215, was enshrined the principle that "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by THE LAW OF THE LAND"(National Archives and Records Administration, n.d.). By executing this Charter and inserting therein this provision, these early Englishmen were seeking to put some restraints on the powers of the King and eliminate absolutism of power and arbitrariness.

Over time, the phrase "law of the land" has changed to 'due process of law' in modern democracies with developed legal systems. It is now constitutional protection. For example, the U.S. due process is first embraced in the Fifth Amendment to the U.S. Constitution, which provides that no person shall "be deprived of life, liberty, or property, without due process of law." (The Fourteenth Amendment provides the same protection as to actions by the states). Other amendments in the Bill of Rights address specific elements of due process, most importantly the Sixth Amendment, which affords criminal defendants seven (7) specific rights, all of which are essential to protecting rights and freedom.

In Ghana, even though the 1992 Constitution does not specifically use the phrase "due process of law", the entire package of legal entitlements which constitute due process as applied in the US is enshrined in the Constitution of 1992. Articles 14 and 19 of the Constitution are just two examples of the many provisions which expressly enact in the Constitution very extensive guarantees of due process including the right to be presumed innocent until proven guilty, the privilege against self-incrimination, the rule against double jeopardy, and the right to counsel all of which are subsumed under the general right to a fair trial. What is even more interesting is that guarantee of due process entitlements is not peculiar to the 1992 Constitution; both the 1969 and 1979 Constitutions also contained provisions in very similar terms to what we have in the 1992 Constitution (Modern Ghana, 2009).

Similarly, the Constitution of Sierra Leone does not specifically use the phrase “due process of law”. However, sec 23 of the Constitution implicitly guarantees due process. It provides that the power to detain 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 (see section 17 of the Constitution of Sierra Leone 1991 and section 80 of the Criminal Procedure Act, 1965).

Liberia jurisprudence which is closely patterned on U.S. laws and institutions, and in the absence of specific statutory provisions, relies on U.S. or UK common law, also recognizes due process (Liberian, Registry, n.d.). Article 20(a) of Liberia’s 1986 constitution emphatically references the concept of due process. It states, “No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and accordance with **due process of law**. Justice shall be done without sale, denial or delay; and in all cases not arising in courts not of record, under courts-martial and upon impeachment, the parties shall have the right to trial by jury”.

In summation, the concept of due process is designed to protect citizens from arbitrary actions taken by the state, precisely its arm of law enforcement or the Criminal Justice System. To put it differently, the police is the arm of the government that is legally saddled with the responsibility of upholding due process of law. By this, it suggests that the constitutional limit of suspects in police custody cannot be aloof from the concept of due process of law. This is simply because it has to do with the right to liberty of the accused.

Procedural Due Process

Traditionally, procedural due process is one of the types of due process that predominantly resonates with the legal systems across modern democracies.

Procedural due process denotes the idea that government must follow certain fair and generally accepted legal procedures in its actions against individuals (Modern Gnana, 2009). It lay down the process used to try and convict defendants accused of crimes (Arora, 2022). In this process, governments precisely the police may limit or restrict the rights and liberties of individuals in some ways and under certain circumstances, but in doing so they must follow certain laid down procedures and generally accepted standards of fairness (Mitnick, 2009).

To put it differently and perhaps more positively, procedural due process refers to the standard of treatment an individual is entitled to and which he must as a requirement of law, be accorded in the process of a government action to restrict or limit one or more of his fundamental human rights (Grossi, 2017). So, what are these standards of treatment? And who is responsible to protect and uphold them? In the context of criminal matters or proceedings, these treatments which are

the embodiment of fundamental rights include the right to be informed about arrest, the right to remain silent when arrested by the police and have access to legal counsel, the right not to be detained arbitrarily, the right to be presumed innocent until guilt is proven, the right to be represented by counsel at every stage, etc. These rights must be always protected by the national police during criminal investigations. In Liberia’s jurisprudence, the violation of any of these rights will operate in favor of the accused or criminal defendant. Therefore, the Liberia National Police and other investigative institutions like the Liberia Immigration Service, and Liberia Drug Enforcement Agency, it is incumbent upon them to respect and apply these standards in the course of their constitutional duties to prevent the possible embarrassment of being criticized as a violator of the procedural due process, and sometimes affecting the admissibility of evidence gathered on grounds of their disregard for procedural due process.

In summation, due process requires that the procedures by which laws are applied must be impartial so that individuals are not subjected to the arbitrary exercise of police power. In short, procedural due process, asks whether the government has followed the proper procedures when it takes away life, liberty, or property. This in other words implies that the government, precisely the police taking an accused into custody must be done within the confines of the law, especially the criminal procedure law.

Substantive Due Process

In the opinion of Williams (2010), substantive due process is a principle allowing courts to protect certain fundamental rights from government interference. For his part, Arora (2022) opined that substantive due process is a principle allowing courts to prevent government interference with fundamental rights.

In other words, unlike procedural due process ascertain whether the government has followed the proper procedures when it takes away the life, liberty, or property of the accused, substantive due process examines whether there is a sufficient substantive justification, a good enough reason for a State to take actions against the fundamental rights of the accused or a criminal defendant.

Based upon the above, it could mean that in some jurisdictions where the law provides for an extension beyond the police custody time limits, the court looks at the justification or reasons from a substantive perspective before it makes an informed decision by either granting or denying the petition.

Supporters of the theory (substantive due process) argue that it is the best safeguard of human rights, arguing that without it state governments would be free to violate citizens’ rights so long as those rights are not among the few specifically enumerated in the Constitution (Arora, 2022).

In the case of Liberia, the Writ of Habeas Corpus which is one of the remedial actions is implicitly expressed in the 1986

Constitution. It prevents the Liberia National Police from infringing upon the rights of a criminal defendant or accused.

Conceptual Underpinning

To have a better understanding and appreciation of the issues in this paper, a proper understanding of the underlying concept of the study is necessary. Constitutional limit on police custody or police custody time limits is the main concept in this study.

Constitutional limits on police custody

As a legal concept, constitutional limits on police custody or police custody time limits could be conceptualized as the statutory length of time or time limits a suspect or those formally accused of a given crime are allowed to be in custody awaiting court trial. According to the Luanda Guidelines on the Conditions of Arrest, Police Custody, and Pre-Trial Detention in Africa, police custody time limits which is referred to as the “Detention Continuum”, start from the moment the police stop (detain) someone and continue through the action of arresting someone, transportation of the person to a place of custody, the condition of being in a prison cell to the condition of being held in custody while awaiting trial.

The concept is a fundamental human right entitled to all persons accused of criminal offenses or criminal defendants. Associated with the elements of due process, this right is embraced by the organic law (constitution) that varies across jurisdictions but on average is within the timeframe of 24 hours and 48 hours. For example, in Ghana, the accused has a right to be brought before a court within 48 hours of her/his arrest unless you are sooner released (see 14 (3) of the Constitution of Ghana (1992)). In Sierra Leone, the power to detain 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 (see section 17 of the Constitution of Sierra Leone 1991 and section 80 of the Criminal Procedure Act, 1965). Under Guinean law, an individual may spend a maximum of 48 hours in police custody before being presented to judicial authorities to be charged (See Guinean Code of Penal Procedure, 1998, Article 60.) According to Cote d’Ivoire Judicial System, the police may keep a crime suspect in custody according to proof of culpability, but no more than 48 hours. The Public prosecutor may authorize the police to extend the custody for 48 hours more (British Embassy Abidjan, 2020). Or the law allows the state to detain a suspect for up to 48 hours without charge, subject to renewal only once for an additional 48 hours. The law specifies a maximum of 18 months of pretrial detention for misdemeanor charges, subject to judicial review every six months, and 24 months for felony charges, subject to judicial review every eight months (Bureau of Democracy, Human Rights, and Labor, 2021).

In the United States of America, it varies among states but is protected by the Fifth, and Sixth amendments, or other amendments in the Bill of Rights Amendment to the U.S. Constitution. For example, in the Minnesota Rules of Criminal Procedure, the 48-hour rule states that someone cannot be held in custody for longer than 48 hours from the time of arrest unless the judge has signed a complaint, making an initial determination that there is probable cause for the charge, or unless the judge finds there is probable cause to detain the person for a longer period. If neither of these events occurs, the person must be released after 48 hours (BK Law Group, 2019).

Unlike other states that have 72-hour time limits, the state of California subscribes to the 48-hour rule outlined in the penal code. That is to say, a person that is arrested for any reason must be brought before a judge within 48 hours of arrest at the very latest (V. James DESIMONE Law, 2020), (Martens, 2016).

International Human Rights Instruments

Not only national law defines and guarantees police custody time limits. Even international human rights instruments also do the same and mandate member states to comply. Below are some provisions.

Article 9 of the Universal Declaration of Human Rights succinctly and plainly states “No one shall be subjected to arbitrary arrest, detention, or exile”. Similarly, Article 6 of the African Charter on Human and Peoples Rights complements Article 9 of the Universal Declaration of Human Rights. It clearly states inter alia that “Every individual shall have the right to liberty and 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”.

The entire Article 9 of the International Covenant on Civil and Political Rights embodies the concept of time limits in police custody. Precisely, section 4 of Article 9 states “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in so that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”.

Although police custody time limits are not explicitly written in these instruments or treaties, however, the concept is implicit. Here is the explanation. When a criminal suspect exceeds the constitutional time limits in police custody, it technically suggests that his/her detention is arbitrary and violates the fundamental right to liberty of the suspect or accused. Interestingly, these international provisions resonate with the concept of due process, especially in criminal matters.

III. LIBERIA CONTEXT

In Liberian legal system, Article 21 (f) of the 1986 Constitution clearly defines police custody time limits. In

verbatim, it states “Every person arrested or detained shall be formally charged and presented before a court of competent jurisdiction within forty-eight hours. Should the court determine the existence of a prima facie case against the accused, it shall issue a formal writ of arrest setting out the charge or charges and shall provide for a speedy trial. There shall be no preventive detention”. To simplify this provision, the LNP cannot keep a crime suspect in its cells or custody for more than 48 hours. It must be able to gather the relevant or necessary evidence within the statutory time limit to forward the suspect to the appropriate court for prosecution.

By interpretation, or in other words, this provision suggests that the 1986 Constitution of Liberia frowns upon arbitrary detention. Interestingly, this provision embodies one of the fundamental rights accorded to all persons formally accused of a given crime. Unlike other jurisprudences, Article 21 (f) applies to all the classes of crime (misdemeanor and felony) and did not take cognizance or provide for an extension of the forty-eight hours.

Arguably, it can be assumed that in the minds of the framers of Article 21 (f), before a suspect is formally charged, the police must have done everything within the confines of the law to establish the evidence.

Liberia is a signatory or party to the three international human rights instruments cited above. Here is the proof. Liberia signed the International Covenant on Civil and Political Rights on 18 April 1976 and ratified the same on 22 September 2004 (United Nations Treaty Collection, n.d.). Liberia is among the 192 States that ratified the Universal Declaration of Human Rights (Danish Institute of Human Rights, n.d.) Liberia has also ratified the African Charter on Human and Peoples’ Rights in 1992 (African Commission on Human and Peoples’ Rights, n.d.) Being party to these international human rights instruments obligates Liberia to adhere. Failure to do so may subject Liberia to international condemnation or criticism.

LNP Approach to Extension of police Custody time limits

Before examining the LNP approach to the extension of the constitutional limit on police custody or police custody time limits, it is important to briefly look at the jurisprudence of Nigeria, Cote d’Ivoire within the sub region of West Africa, and perhaps other legal systems outside the continent of Africa.

Like Liberia, Nigeria’s constitution also provides for forty-eight hours of detention. Precisely, Section 35 of the Constitution of the Federal Republic of Nigeria provides that a person may be detained for no longer than forty-eight (48) hours. One may be detained for a longer period, but such detention must be under an order of a court of competent jurisdiction. This simply means the law provides for an extension of the statutory time limit for a suspect in police custody (Nwabueze, 2021). In detail, the 1999 Constitution provides that a Police officer can detain suspects for a maximum of 24 hours. After that, they must charge and send

the suspect to court. If it is not possible to bring the suspect or accused to court within 24 hours because the court is close by or the following day is a weekend, the police must take the suspect to the court within a maximum of 48 hours. After the 24- or 48-hour limit, only a court can order that a suspect be detained further. The Police cannot detain you further on their own (See Section 35(4) of the Constitution) (Nwabueze, 2021).

According to Cote d’Ivoire Judicial System, the police may keep a crime suspect in custody according to proof of culpability, but no more than 48 hours. The Public prosecutor may authorize the police to extend the custody for 48 hours more (British Embassy Abidjan, 2020).

In the United States of America, it varies among states. For example, in the Minnesota Rules of Criminal Procedure, the 48-hour rule states that someone cannot be held in custody for longer than 48 hours from the time of arrest unless the judge has signed a complaint, making an initial determination that there is probable cause for the charge, or unless the judge finds there is probable cause to detain the person for a longer period. If neither of these events occurs, the suspect must be released after 48 hours (BK Law Group, 2019).

In the UK, it also varies based on the magnitude of the crime. The police can hold a suspect for up to 24 hours before they have to charge the accused with a crime or release the him/her. Also, they can apply to hold a suspect for up to 36 or 96 hours for serious crimes, e.g., murder. In the case of a terrorist act, the police can hold a suspect without charge for up to 14 days under the Terrorism Act (GOV.UK, n.d.)

Under Japanese law, if the police decide, within these 48 hours, that there is enough evidence to justify detaining a suspect, they must present the evidence to a public prosecutor. If the prosecutor agrees with the police, he/she has up to 24 hours to ask for an initial 10-day detention order from a judge so that the police can continue their investigation. The prosecutor can request a second 10-day detention period to continue the investigation, if necessary. If there is not enough evidence, the case may be dropped (Government of Canada, 2021).

Unlike Nigeria, Cote d’Ivoire, UK, the US, and Japan in which the law provides for an extension beyond the statutory time limit in police custody, there is no statutory provision that allows for an extension beyond the forty-eight hours’ time limit in Liberia. On the principle of confidentiality, law enforcement practitioners, especially criminal investigators from LNP disclosed that the de facto practice has been going to the Magistrate or the City Court’s judge praying for an extension that it needs additional time to gather more evidence considering the magnitude of the crime. Practitioners argued that though it is not backed by law, for “expediency” which is believed to be in the best interest of the society or the “common good” Based upon the principle of expediency, and the facts and circumstances of the case, the Judge uses discretionary judgment guided by the best interest of the

general society to approves the extension with a caution that the accused while in custody must not in any form or manner be ill-treated as in torture, abused or coerced to confess. Guided substantive due process, the defense lawyer as usual may want to challenge the decision of the judge on grounds of no constitutional provision. The only escape route for the judge is the interpretation of the statute in the best interest of the public. For example, in a murder case, the police cannot take the accused to the court in absence of the autopsy report. While awaiting the report and the time limits lapses, the judge upon request for an extension can act on the principle of expediency to grant the extension even though it is de facto. Arguably, the risk involved is the possibility for the judge to be compromised by the defense lawyer that files the writ of habeas corpus against the police.

IV. REMEDIAL ACTION

In line with Liberia's jurisprudence, this segment of the paper reviews the remedial action for arbitrary detention as it relates to the constitutional time limits of police custody and provides the reasons for the LNP actions.

In legal studies, the Law Dictionary Featuring Black's Law Dictionary, 2nd Ed. defined remedial action in the following ways:

1. Affording a remedy; giving the means of obtaining redress.
2. Of the nature of a remedy, intended to remedy wrongs or abuses, abate faults, or supply defects.
3. About to or affecting the remedy, as distinguished from that which affects or modifies the right

To a large extent, it is worth the argument that remedial action is a right available for the affected person to seek redress through court action. It holds the violator or an institution responsible for wrongful, abusive, or illegal actions.

The right to remedial action when rights are violated is itself a right expressly guaranteed by most international human rights instruments. The international guarantee of a remedial action implies that a state that has violated a human right has the primary duty to afford an effective remedy to the victim. The absence of remedial action has the proclivity to create a culture of impunity, particularly when states intentionally and constantly deny remedies. One of the remedial actions for detaining a criminal suspect beyond the statutory time limit is the right to "Habeas Corpus", meaning "you have the body," which applies to several writs, or commands, to produce the body of the individual in question. In its classic form, the habeas corpus process is initiated by the person deprived of his or her liberty, or someone acting on his or her behalf, petitioning a court to review the lawfulness of his or her detention (Wilkes, 2002). Wilkes (2002) further argued that the petition must demonstrate, on its face, cause to believe that the detention is unlawful, or it will be dismissed by the court. If the petition meets this standard, the court issues a judicial decree (known as a "writ of habeas corpus") ordering the custodian to bring the petitioner physically before the

court and to explain the lawfulness of his or her detention. If the court determines that the petitioner is not lawfully held, the court can order his or her release (Wilkes,2002).

Importantly also under the Liberian legal system, to file for Habeas Corpus before a judge, you do not have to be a lawyer. Simply put, a non-lawyer can make an application for habeas corpus before a judge. This is the only application for a writ to the court that does not require any legal form or structure.

Habeas Corpus is guaranteed under international and regional human rights instruments. Below are some of the provisions.

Article 8 of the Universal Declaration of Human Rights provides:

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".

Article 9(4) of the International Covenant on Civil and Political Rights provides:

"Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, so that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". Even though Article 9 (4) is not explicit on remedial action. However, carefully note that it allows "anyone" deprived of his or her liberty to seek the remedy outlined in the paragraph. The text imposes no restrictions regarding the status of the individual aside from the fact that he or she has suffered deprivation of liberty by arrest or detention

As for the African Charter on Human and Peoples' Rights, it does not contain an express distinct guarantee of habeas corpus as a remedial action. However, it guarantees both the right to personal liberty in Article 6 and a general right to recourse in Article 7 and the African Commission on Human and Peoples' Rights has noted that a detained person should have recourse to national courts.

In Liberia's legal system, the 1986 constitution guarantees remedial action as the course to redress. Relative to the constitutional time limits of a criminal suspect in police custody, the law is very crystal clear regarding the violation of the statutory time limit in police custody. Precisely Article 21 (g) provides remedial action. This action is called "Writ Of Habeas Corpus" It states, "The right to the writ of habeas corpus, being essential to the protection of human rights, shall be guaranteed at all times, and any person arrested or detained and not presented to the court within the period specified may in consequence exercise this right". This provision implies that the custody of a person beyond forty-eight hours constitutes a violation of his/her fundamental right. As a party, Liberia is also under a legal obligation to adhere to both Article 8 of the Universal Declaration of Human Rights, Article 9(4) of the International Covenant on Civil and

Political Rights, and Articles 6 and 7 of the African Charter on Human and Peoples' Rights.

In short, as a remedial action, Habeas Corpus is a fundamental right in the constitution that protects against unlawful and indefinite detention of suspect in a police cell or custody. Arguably, habeas corpus fits into the parameters of substantive due process simply because it examines the reasons for infringing upon the accused right to freedom of movement.

Catalog of Cases of Remedial Action (Writ of Habeas Corpus)

Below is a catalog of some cases of remedial actions filed against the LNP.

In 2002, lawyers representing Hassan Bility, journalist and editor with The Analyst newspaper arrested on 24 June 2002, and Sheikh K. M. Sackor, Executive Director of Humanist Watch, a Liberian human rights NGO arrested on 25 July 2002 filed several writs of habeas corpus against the LNP that were disrespected with impunity (U.S. Department of State Archive, 2002), (Amnesty International, 2002)

On 22 July 2021, Cllr. Finley Y. Karngar and Atty. Alphonsus W. Wolwor representing Rose Wreh, Felecia Wreh, and Christiane Toe through Criminal Court 'C' filed a writ of Habeas Corpus against Justice Minister Cllr. Frank Musa Dean, Liberia National Police (LNP) Inspector General Col. Patrick Toe Sudue, and Monrovia City Mayor Jefferson T. Koijee ordered them to produce the living bodies of the detainees before the court on Friday, 23 July 2021 at 9:00 a.m. along with the cause of their detention so that presiding Judge A. Blamo Dixon can make a judgment concerning the detention (The Free Library, 2021), (The News, 2021)

In 2021, Lawyers Representing four Liberians, who were arrested on December 5 at their place of worship by the Liberia National Police filed a Writ of Habeas Corpus against Police Inspector General Patrick Toe Sudue and Justice Minister, Frank Musa Dean or their deputies and all units of the LNP and Justice Ministry for what petitioners termed as their illegal detention. The writ was filed at the First Judicial Circuit Court of Montserrado County by the defense attorney (Tokpah, 2021).

On 19 Jan 2022, Monrovia Criminal Court "C" Judge T. Ciapha Carey the writ of summons ordered the appearance of Inspector General Sudue, Special Assistant to the Inspector General of Police, County Attorney, and others to appear before him on Thursday, January 20, 2022, at 10 A.M. to show tangible cause why they cannot be held in Criminal Contempt for their refusal to honor the writ of Habeas Corpus served by the court. The remedial action filed by Cllr. Momodu Kandakai ordered them to release Joe Young beyond the constitutional deadline (48hrs) (Wea, 2022).

On 26 May 2022, a writ of habeas corpus was filed against Justice Minister, Frank Musa Dean, Police Inspector General Patrick Toe Sudue, the Commander, crime Services

Department, and all other agents acting upon the authority of the City of Monrovia commanding them to produce the living body of Abraham A. Benjamin detained at the Monrovia City Hall (LNP, Court Liaison office, 2022).

Reasons for detaining suspects beyond the statutory time limit

Again, on the principle of confidentiality, law enforcement practitioners especially criminal investigators from LNP remarked that detaining suspects beyond the forty-eight hours' time limit or statutory time limit has never been intentional because it violates the right of the accused. However, they identified a good number of factors responsible for the unwarranted actions. Amongst the reasons provided are:

Logistical/Resource Challenges

To charge a criminal suspect within the forty-eight hours' time frame hinges on the quantum of evidence that depends on the complexity and magnitude of the crime tied to logistical or resource challenges. For example, sometimes a vehicle is not available to visit the crime scene, if available, the absence of fuel or gasoline is another challenge that conspicuously slows or delays the time. Sometimes, it takes the whole day to find a remedy to this challenge. Meanwhile, this delay is part of the forty-eight hours being observed.

Bureaucratic Bottlenecks for obtaining call logs

Sometimes the procedure to obtain a call log believed to be evidence-based is another challenge that often interfered with the forty-eight hours. The procedures require:

1. Application to the County Attorney who makes an application to the relevant court to request a call log for a person of interest over a specific period.
2. The Court will subpoena duces tecum to the GSM Company to produce the call log.
3. Upon receipt, the court sends the call log to the County Attorney or designated person. In most instances, the call log comes electronically which will require the officer to print it at his own expense.

According to the investigators, at most, the application for a call log takes at least two weeks. And time is of the essence in this case. By calculation, the two weeks or even a week is technically beyond the forty-eight hours that could be interpreted as a maximum of 2 days.

Going after witness (es)

Investigators also disclosed the difficulties often or sometimes encountered to get relevant witness (es) runs into the forty-eight hours' time limit. Difficulties include but are not limited to witness protection, a distance that requires mobility.

Implications for the Writ of Habeas Corpus

Of course, Article 21 (f) also implies 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 a 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 forty-eight hours. At the expiration of this period, the police MUST either charge the matter to court or release the suspect on bail through the court.

In practice, however, police officers often detained suspects longer than the constitutional limit and by so doing, violate the rights and dignity of these suspects. In this case, the enforcer of the law is seen as a violator of the same law. Internationally, it subjects the LNP to negative criticism often evidenced by the U.S. Bureau of Democracy, Human Rights, and Labor on Country Reports on Human Rights Practices accusing the LNP of frequently violating the constitutional right of criminal suspects in its custody.

Making the Case

As the crux of this piece, or article, this segment presents the argument making the case to rethink the constitutional time limit on police custody or police custody time limit.

To begin with, all the cases of habeas corpus cataloged in this paper coupled with the implications explained are substantive justifications making the case to amend Article 21 (f). However, there is still a need to explain further.

Considering the challenges the police continue to encounter as it relates to adherence to the statutory time limit of suspects in custody, it is important to take serious cognizance thereof. While it is true that the judge is acting under the principle of expediency and the exigency of the circumstance to grant extension outside the confines of the organic law, the same is also true that under substantive due process, it is a gross infringement of the defendant's right. What needs to awaken the faculty of the prosecutor, precisely the Ministry of Justice to start acting in terms of remedy is the U.S. Department of State Country Reports on Human Rights Practices on Liberia that annually with empirical evidence on the writ of habeas corpus accused the LNP of violating the right of defendants (see 2021 Country Reports on Human Rights Practices: Liberia) Interestingly, the reports care less about the principle of expediency often cited as the justification for the de facto action. Probably the reason could stem from the lack of statutory provision. If the principle of "expediency" is important as the escape route, the U.S. Department of State Report would have flagged it as the justification. Instead, what the report continues to see is a technical violation of the due process rights of suspects/ defendant.

Another way of making the case is premised on the reception statute which provides that in the absence of specific statutory provisions to resolve a dispute before the court either due to novelty of the matter or a lacuna in the law, the court relies on U.S. or UK common law, it is a contradiction of our legal system to extend police custody of the time limit based upon expediency when it is not practiced in the U.S. or UK jurisprudence. As mentioned in this article, in both the U.S. and UK legal systems, the laws or statute provides for an extension. As a reminder, in the Minnesota Rules of Criminal

Procedure, the 48-hour rule states that someone cannot be held in custody for longer than 48 hours from the time of arrest unless the judge has signed a complaint, making an initial determination that there is probable cause for the charge, or unless the judge finds there is probable cause to detain the person for a longer period. If neither of these events occurs, the person must be released after 48 hours (BK Law Group, 2019). Even in the UK, the law provides that the police can apply to hold a suspect for up to 36 or 96 hours for serious crimes, e.g., murder. In the case of a terrorist act, the police can hold a suspect without charge for up to 14 days under the Terrorism Act (GOV.UK, n.d.) Arguably, these extensions of police custody time limits are not based on the principle of "expediency" but the statute or law.

Moreover, the case can also be advanced and justified by the example of Nigeria, Sierra Leone, and Cote d'Ivoire cited in this paper. Their legal systems provide for an extension beyond the statutory time limits of a criminal suspect in police custody. Though mentioned in this paper, however, let's forget about Japan which is in Asia. Why Liberia is not attempting to study Nigeria, Sierra Leone, and Cote d'Ivoire legal system?

Finally, making the case would also stem from the grounds that Article 21(f) cannot resonate with the contemporary law enforcement challenges. Arguably, this provision has been existing since 1972 during which time the population of Liberia was estimated at 1,474,567 people, which represents an increase of 37,827 people compared to 1971 (Countryeconomic.com, n.d.). Furthermore, it can also be argued that the complexity, modus operandi, trend, and nature of crimes during those times did not require the kind of criminal investigation that is far more advanced currently needed. Even though, this paper did not historicize the writ of habeas corpus from the 1970s to support this argument. However, the progression or advancement in the commission of crimes may necessitate the amendment of certain laws in human society. For example, the prevalence of rape in post-conflict Liberia in which the law was perceived to be the fundamental problem for which it was amended in terms of rigidity may also support the claim or argument.

V. CONCLUSION

Within its academic ability, this article has presented the argument making the case to rethink Article 21 (f) of the 1986 Liberia Constitution dealing with police custody time limit of criminal suspects or defendants. From the details provided so far in this paper, the conclusion is that despite the principle of "expediency" cited as the justification for keeping suspects in police custody beyond the statutory time limit or period, it will never erase or cover up the fact that it violates the rights and dignity of criminal suspects as far as concept due process is concerned.

The paper, therefore, calls upon the Ministry of Justice often faced with the embarrassment of the writ of habeas corpus to ponder on the possibility of igniting the debate to amend

Article 21 (f) taking cognizance of the magnitude or gravity of crimes in Liberia. When this is done, it will change part of the U.S. Department of States Country Report on Human Rights Practices narratives of accusing the LNP of violating the rights and dignity of criminal suspects in custody.

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ABOUT THE AUTHORS

Ambrues Monboe Nebo Sr.



Ambrues Monboe Nebo Sr. is an adjunct faculty member in the Department of Political Science, University of Liberia. Department of Sociology, African Methodist Episcopal University, Criminal Justice Department, Adventist University of West Africa. He is also reviewer for the International

Journal of Research and Innovation in Social Science (IJRISS).

He has excelled in academics with a wealth of experience.

Doctorate of Sociology (D.Sc.s.) with major in Sociology from Atlantic International University (AIU), Hawaii, USA.

MSc in the top 5 % of the graduating Class in Peace and Conflict Studies with emphasis in Humanitarian and Refugee Studies from the prestigious University of Ibadan, Federal Republic of Nigeria.

Post Graduate Certificate with distinction in Public Administration from Ghana Institute of Management and Public Administration Ghana.

Bachelor of Arts (Magna Cum Laude) in Sociology from African Methodist Episcopal Zion University College in Liberia,

A graduate of Liberia National Police Academy and Training School formerly National Police Training Academy and obtained various Certificates in peacekeeping operations from the Kofi Anna

International Peacekeeping Training Centre in Ghana.

Professionally, he is a senior police officer of the Liberia National Police with 18 years of experience in Training and Administration.

He has authored four books namely:

1. The Politicization of the Criminal Justice System: A Liberian Perspective" available at <https://www.amazon.com/Politicization-Criminal-JusticeSystem-Socio-Political/dp/6139445337> and Morebooks shop.
2. The Wave of Protests Leading to Regimes Change in Africa: A Sociological Perspective available at <https://www.amazon.co.uk/dp/9975153461>
3. Introduction to Liberia Criminal Justice System: A Concise Edition available at <https://www.morebooks.de/store/us/book/introduction-to-liberia-criminal-justice-system/isbn/978-620-3-04123-1>

4. Liberian Society in Focus: An Introduction to Sociology available at: <https://www.amazon.fr/LIBERIAN-SOCIETY-FOCUS-INTRODUCTION-SOCIOLOGY/dp/1639024425><https://libroterra.com/shop/social-science/liberian-society-in-focus-an-introduction-to-sociology/>

He has authored a dozen of articles dealing with contemporary issues in Africa and Liberia that can be accessed online at <https://neboambrues.academia.edu> and ResearchGate.

D. Blamo Kofa, Esq.



D. Blamo Kofa is a lawyer and a member of the Liberia National Bar Association (LNBA). A part-time lecturer at the African Methodist Episcopal University in the Department of Criminal Justice and Forensic Science.

Master of Arts (Cum Laude) in Anti-Corruption Studies from the International Anti-Corruption Academy in Vienna, Austria.

Bachelor of Law (Cum Laude) from the prestigious and historic Louis Arthur Grimes School of Law, University of Liberia.

Bachelor of Arts (Magna cum Laude) in Criminal Justice Administration from the African Methodist Episcopal Zion University, Monrovia, Liberia.

He is an Anti-Corruption expert with range of practical experience and expertise in building and maintaining MNCs compliance and integrity programs, developing and implementing National Anti-Corruption Strategies (NACS), etc. A specialist in the investigation corruption and other financial crimes and prosecution strategy.