

The Constitutional Right to Bail in South Sudan.

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Myths on Bail or Bond:

- *“Communities think when an accused person is arrested and already in police custody or on remand in prison, before his/her trial, on no account such a person should be released and mingle with others”.*
- *The common saying is that so and so has already bribed the police or the court officials to secure his/her release.*
- *They also say that the case of the person released has already died.*
- *These perceptions are wrong. The truth is that an arrested accused person/perpetrator has constitutional rights, one of them being “an accused person is innocent until proven guilty” under Article 19(1) of the Transitional Constitution. Connected to this constitutional right is the right to bail and bond.*

What is Bail?

- **Bail** is a conditional release of the accused with the promise to appear in court when required.
- In other words, it is the temporary release of an accused person while the court process continues.
- Bail is not a fine.
- It is not supposed to be used as punishment.
- In simple terms, bail is the release of an accused person from detention pending trial or until Court takes a decision on his/her case.
- When a person is arrested and detained or remanded, court is supposed to inform him or her of his/her right to apply to be released pending trial.
- In order for the accused person to be granted bail he/she must fulfill certain legal requirements and conditions which guarantee that he or she will appear in court for trial to answer charges against him or her.

Purpose of granting bail:

- The purpose of bail is simply to ensure that defendants/perpetrators will appear for trial and all pretrial (before) hearings for which they must be present.
- Pre-trial detention is the holding of an accused person on criminal charges in custody (whether in prison or police) before trial and decision of court.

- The principal use of bail in modern legal systems is to secure the freedom of the accused pending trial in a criminal case not a civil case.
- If a defendant is granted bail, it means they are allowed back into the society while they await trial or further police investigations continue, instead of being remanded in custody.
- A person can be released on bail at any point from the moment they have been arrested.
- Bail ensures preventive detention (that detention of arrested people is prevented/avoided) if they fulfill certain conditions.

What's the difference between bail and bond?

- Bail is the payment in cash to court by a defendant who is under detention in order to get out of jail.
- A bond is posted on a defendant's behalf, usually by a third party to secure his or her release from police detention.

Is Bail a Human Right?

- Under Article 19(2) of the transitional constitution of South Sudan, if you are arrested, you have the right to: be told in a language you understand why you have been arrested and what charges you face and be taken to court promptly.
- According to Section 83 Code of Criminal Procedure Act, 2008-CPCA, A Person arrested must be brought before the Public Prosecution Attorney (PPA), Magistrate or Court Without Delay, in any event, within 24 hours after his or her arrest.

Offences which are bailable;

- **Section 123 of the Code of Criminal Procedure Act-CCPA, 2008**, Any person who has been arrested for a minor offence may be released by a PPA and in his or her absence, a Magistrate or Court may release the person from custody upon the arrested person giving security/payment.
- An arrested person is entitled to a release after payment only if that release will not;
 - i) compromise public safety and
 - ii) there is reasonable assurance that the person if released will not disappear.
- **Section 125 of CCPA, offences that are bailable**-Any person arrested for an offence punishable with a fine only, shall be released on bail or when appropriate after executing a bond without securities.
- **Section 126 CCPA**, When any person accused of an offence punishable with imprisonment for a term not exceeding ten years is arrested and brought before a PPA and in his or her absence, a Magistrate or Court, such person shall be released on bail;
- unless the PPA, Magistrate or Court, for reasons to be recorded considers that by reason of granting of bail, the proper investigation of the offence would be prejudiced or a serious risk of the accused escaping from justice be occasioned, may instead of taking bail from such person, discharge the accused person, upon the execution of a bond without sureties for his or her appearance as hereinafter provided.

Offences which are not bailable:

- **Section 127 (1)** A person accused of an offence punishable with death shall not be released on bail.
- (2) A person accused of an offence punishable with imprisonment for a term exceeding ten years shall not ordinarily be released on bail.

Conditions for releasing a person on bail:

- **Section 124 of the Code of Criminal Procedure Act (CCPA), 2008,**
- (1) Release on bail of an arrested person shall be allowed as follows—
- (a) by the arrested person personally executing a bond or making a promise to appear, with or without down payment or sureties;
- (b) by another person executing a bail, to bring the arrested person, with or without down payment; or
- (c) by paying a deposit coupled with bond, or bail. (2)
- Upon the fulfillment of the requirement of the bail, an arrested person shall be released from custody.

Considerations in Setting, Reducing or Denying Bail;

- **Section 128 of CCPA-Considerations in Setting, Reducing or Denying Bail.**
- (1) In setting, reducing or denying bail, the PPA, and in his or her absence, the Magistrate or the Court shall take into consideration;
- the protection of the public,
- the seriousness of the offence charged,
- the previous criminal record of the accused,
- and the probability of his or her appearing at inquiry or trial of the case.
- The public safety shall be the primary consideration. (2) In considering the seriousness of the offence charged, the PPA, Magistrate or Court shall include
- consideration of the alleged injury to the victim,
- and alleged threats to the victim or a witness to the offence charged,
- the use of a firearm or any other deadly weapon, in the commission of the offence charged.

Power to Arrest a Person Released on Bail;

- **Section 129 of CCPA-Power to Arrest a Person Released on Bail.** A Public Prosecution Attorney, Magistrate or Court, may at any subsequent stage of any proceedings cause any person who has been released on bail to be re-arrested and may commit him or her to custody.

Bond required from a Minor.;

- **Section 134 of CCPA-Bond required from a Minor.** When the person required to execute a bond is a minor, the bond shall be executed by a surety or sureties.
- If, through a mistake, fraud or otherwise, insufficient sureties have been accepted or if the sureties **afterwards become insufficient**, the PPA, and in his or her absence, a Magistrate or Court may issue a warrant for the arrest of the person on whose behalf the sureties executed the bond and,
- when such person appears, the PPA, Magistrate or Court, may order him or her to find sufficient sureties and on his or her failing to do so may make such order as in the circumstances is just and proper.

Is bail money returned if the accused is found guilty?

- The court holds bail money until the case is resolved.
- So long as the arrested defendant appears in court at the designated required dates, bail money will be provided back to the person who paid for it.
- In some cases where the defendant/perpetrator is convicted, bail money can be used to pay court fees/fines.
- Whether you are guilty or not guilty, if you fail to appear, the court will keep the money. However, if you show up and are found not guilty, the money will be immediately returned to you through the court.

THE END.