

ACCESS TO JUSTICE IN GHANA PARTICULARLY TO THE INDIGENT ARRESTED PERSON THE PERSPECTIVE OF THE POLICE

Access to Justice in Ghana particularly to the Indigent arrested persons is a big challenge. The seriousness of this can be clearly understood and appreciated when a person is involved in a criminal case.

I will look at the fundamental human rights as enshrined in the 1992 Constitution of Ghana, the major Regional Human Rights Instruments especially that of the African Human Rights Treaty, the International Human Rights Law, the perception of abuse of these rights by the Police in Ghana especially against arrested persons and the way forward.

The Ethical Dimension of Human Rights

The very specificity of the concept of “human rights” is that they belong to the individual in her or her quality as a human being, who cannot be deprived of their substance in any circumstances; these rights are intrinsic to the human condition. To confirm the importance of human rights, all states give expression to this fundamental ethical basis in their constitution. Consequently, human rights are owed by states to all individuals within their jurisdiction and in some situations also to groups of individuals. The principle of ***universal and inalienable rights of all human beings*** is thus solidly anchored in international human rights law.

Human beings cannot be deprived of the substance of the rights; only the exercise of some of these rights can be limited in certain circumstances.

All human beings have the right to enjoy respect for their liberty and security. It is axiomatic that, without an efficient guarantee of the liberty and security of the human person, the protection of other individual rights becomes increasingly vulnerable and often illusory.

Access to justice in Ghana is enshrined in various provisions of the 1992 Constitution. Article 12 demands from ***all absolute respect to uphold*** the fundamental human rights and freedoms as enshrined in the supreme law of the land.

The personal liberty of the individual is protected in Article 14(1) of the Constitution. ***“Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in accordance with the procedure permitted by law.”***

Article 9(1) of the International Covenant on Civil and Public Rights provides that;

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest and detention. No one shall be deprived of his

personal liberty except on grounds and in accordance with such procedure as are established by law

Article 6 of the African Charter on Human Rights and People's Rights provides;

“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 laid down by law. In Particular, no one may be arbitrarily arrested and detained.”

Ghana's Constitution and the two major human rights treaties referred to above stipulate, albeit in somewhat differing terms, ***that a deprivation of liberty must in all cases be carried out in accordance with the law.(principle of legality). Furthermore, deprivations of liberty must not be arbitrary.***

Police in the performance of their statutory function sometimes infringe on the liberty and security of persons during the process of arrest, search, detention and trial of arrested person.

By their treaty obligations, all states including Ghana are bound by International Law to respect and ensure everybody's right to liberty and security of the person. This is (Universal Legal Responsibility). Every state is therefore under legal obligations to take reasonable and appropriate measures to protect liberty and security of persons in their jurisdiction.

As to the principle of legality it has been held that **“it is violated if an individual is arrested or detained on grounds which are not established in domestic legislation”** in other words **the grounds for arrest and detention must be “established by law.”**

EXAMPLE

Where the police arrest and detain a person on complain of indebtedness to the complainant, it is unlawful because it is not established in the criminal code or any other lawmu. Where an indigent is arrested due to his/her financial position and if he/she is ignorant of the law the cell would be his home for some time, because the conduct of the unprofessional police officer.

With regard to “arbitrariness” it is not equated with against the law but must be ***interpreted more broadly to include elements of “inappropriateness in justice, lack of predictability and due process of the law”.***

THE RIGHT TO BE PROMPTLY INFORMED OF REASONS FOR ARREST AND DETENTION AND OF ANY CHARGES AGAINST ONESELF

Article 14(2) of the Constitution of Ghana provides that **“A person who is arrested, restricted or detained shall be informed immediately; in a language that he**

understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice.”

The International Covenant on Civil and Political Rights provides that **“anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”**.

And person arrested ***must be told in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest so as to be able, if he sees fit to apply to a court to challenge it lawfulness.*** Whilst this information must be conveyed “promptly” it need not be related to its entirety by the arresting officer at the very moment of the arrest.

One of the most important reasons **for the requirement of “prompt” information on a criminal charge is to enable the arrested and detained person to request a prompt decision on the lawfulness of his arrest and detention by a competent judicial authority.**

International law outlaws unacknowledged arrested and detentions. All states are accountable for all persons in their custody, **in particular, the date, time and location of all detentions must be available to families, lawyers and all competent judicial authorities at all time, in official registers, the accuracy of which should not be open to doubt.**

REMAND IN CUSTODY

Remand in to custody pursuant to lawful arrest must not only be lawful but reasonable in the circumstance. Remand into custody must further be necessary in all the circumstances, for example

- To prevent flight,
- Interference with evidence or
- Recurrence of the commission of crime.
- In the “interest” of the suspect. Example destroying a village only source of drinking water

In other words, remand in custody pursuant to lawful arrest must not only be lawful, but also reasonable and necessary in all circumstances for the aforementioned purposes. It is for the Police or the judiciary to show that these factors are present in a particular case. In a situation where a victim had been in detention for more than it is allowed by the constitution or law with the view to forcing him to disclose his accomplices or accept responsibility or to show him or her where ‘Power lies” or demand some considerations, it is considered that that person had been subjected to arbitrary arrest and detention.

THE RIGHT TO BE PROMPTLY BROUGHT BEFORE A JUDGE OR JUDICIAL OFFICER

This is intended to bring the detention of a person charged with a criminal offence under judicial control. In the absence of a justification for a delay, not bringing a suspect or an accused to a judicial authority violates the notion of promptness.

Reasons such as lack of judges, unavailability of the prosecutor, investigator distance from the court, vehicle to transport suspects to court does not justify detentions lasting for a few days. A person arrested or detained on a criminal charge must be promptly brought before a judge who is independent and impartial and who has the power to make a binding order for release; **the term promptly must be interpreted strictly and cannot be deprived of its essence even in crisis.**

In addition to the requirement of “promptness” it is provided that everyone detained shall be entitled to trial within reasonable time or to release pending trial.

This is the logical protection in view both of the fact that everyone charged with crime has the right to be presumed innocent until proven guilty and of the fact that deprivation of liberty must be an exceptional measure.

Many Police officers especially investigators and prosecutors are not lawyers and in addition do not have adequate training in what constitute Human Rights abuses and for that matter do not see the urgency in complying with this rule or law. If they do, the distance to the court, administrative lapses coupled with ignorance of some victims have contributed to those breaches.

A person detained on a criminal charge has the right to trial within a reasonable time or to release pending trial. The reasonableness of pre-trial detention is assessed in the light of all circumstances of the particular case such as;

The gravity of the offence,

The risk of absconding,

The risk of influencing witnesses and of collusion with accomplices,

The complexity of the investigation

Whenever feasible, release should be granted pending trial, if necessary by ordering guarantees that the accused person will appear at his or her trial. Throughout detention the right to presumption of innocence must be guaranteed.

THE RIGHT OF ACCESS TO AND ASSISTANCE OF A LAWYER OF CHOICE

A detained person has the right to consult with, and be assisted by a lawyer in connection with the proceedings taken to test the legality of his or her detention.

In most cases access to lawyers and/or relatives are difficult. Financial and geographic inaccessibility to lawyers of choice are limitation to the right of access to a lawyer by indigent arrested person. Having a prompt access to a lawyer at an early stage of police investigations may be essential in order to avoid lasting prejudice with regard to the rights of defence. How many lawyers practice in the rural areas and are they prepared to work “pro bono” i.e. for free?

TORTURE AND OTHER FORMS OF ILL-TREATMENT

Torture and other forms of ill-treatment are prohibited at all times, including during criminal investigation. They can never be justified; they must be prevented, investigated and punished. (Overcrowding in Police cells, lack of toilets and other facilities amount to mental torture)

SELF INCRIMINATING

A suspect must at no time, and in no circumstances, be compelled to incriminate himself or herself or to confess guilt. A suspect has the right to remain silent at all times.

EQUALITY BEFORE THE LAW

Every country and all parties to human rights treaties including Ghana have undertaken to ensure the enjoyment of rights and fundamental freedoms without distinction on such grounds as race, colour, sex, language and social status, religion and political and other opinion.

I have provided an account of the basic fundamental rights and the basic international legal rules that regulate Police power to arrest and detentions and the legal guarantees that exist aimed at preventing unlawful and arbitrary deprivations of liberty that must be guaranteed during pre-trial investigation into criminal activities. Adherence to these rules is sine qua non in a democratic society governed by the rule of law, and at the individual level, compliance therewith is an indispensable condition without any discrimination whatsoever for ensuring respect for the rights and freedoms of the individual human being including in particular, the respect for his or her physical and mental integrity.

In order for these rights to be effectively realised, government, all legal professions, i.e. judges, prosecutors and lawyers alike have essential roles to play. The police have a professional duty under the Constitution and International law to protect these rights. Judges must at all times be alert to any sign that such important rights as the

right to freedom and torture, the right to effective access to legal counsel, the right not to be compelled to testify against oneself and the right to prepare an effective defence have not been respected, add to these rights, the basic rights to equality before the law and to presumption of innocence.

Finally, the government should intensify public education on Human Rights in addition to equipping the agencies under the Criminal Justice Administration.