

UNITED NATIONS UNIVERSAL PERIODIC REVIEW OF GHANA

Joint Report on Right to Life and Access to Justice

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Introduction

This report considers Right to Life and Access to Justice (excessive use of force by the police, prison overcrowding, inadequate legal aid, mob injustice, abuse of persons with mental health disorders and death penalty). This report was drafted in consultation with the UN UPR CSO Platform, convened by the POS Foundation.

Ghana has ratified the International Covenant on Civil and Political Rights (ICCPR), Second Optional Protocol to the International Covenant on Civil and Political Rights, the Convention against Torture (CAT), Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Ghana's domestic legal foundation is provided by the 1992 Constitution. Chapter 5 of the Constitution promotes and ensures the protection of the human rights of the citizenry. Subsequent Acts and legislation derived from the Constitution have been enacted by Parliament of Ghana under the 4th Republic, which include, but are not limited to, the Children's Act and the Juvenile Justice Act, the Court Act, recently passed Narcotic Control Commission Act 2020 and the Plea bargain.

Clusters

i. Excessive Use of Force by the Police

Ghana had some recommendations pertaining to excessive use of force by the police during the UPR 3rd cycle; 146.38 which was to establish an independent mechanism to carry out investigations of alleged misconduct by police officers.' Article 13 of Ghana's Constitution, which guarantees the right to life also provides for much wider grounds for the use of lethal force than is permissible under international standards. While the use of force and firearms may sometimes be permissible when making an arrest or preventing a person from escaping, the provisions of Article 13 of Ghana's Constitution are impermissibly broad and do not require the existence of an imminent or grave threat of death or serious injury and have a more lenient standard of necessity than that which is required by international standards. The Police in Ghana have used excessive force in their attempt to control and manage demonstrations and protest which have often resulted to different abuse including grave assault and unwarranted arrest of civilians in their bid to demonstrate their democratic rights.

The arbitrary arrest and detention with violence against LGBTQ+ persons in Ghana by the police. People perceive to be committers of crime are constantly arrested, mishandled and detained for no reason¹.

¹ <https://police.gov.gh/en/index.php/police-professional-standard-bureau/>

Recommendation

The State Party should;

*Establish an independent Complaint/investigative Commission as to the current work of the Police Professional Standard Bureau.

* Promote community policing and Invest in crisis intervention teams

* Increase the number of mental health professionals in law enforcement agencies and involve psychologists in multidisciplinary teams to implement police reforms

* The police should be trained to understand LGBTQ issues to deal with assault and not assault them while include SOGIESC issues in to their training manual.

ii. **Mob Injustice (Instant Injustice)**

Article 19 of the 1992 Constitution provides “a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty.” Mob injustice denies this constitutional guarantee. This form of justice is based on perceptions and accusations rather than investigation and gathered evidence. It is also delivered at the hands of community members rather than the government systems and institutions put in place to safeguard alleged offenders’ rights. The police have noted a resurgence.

Recommendation 147.19 urge the state to rectify the Kampala amendment to the Roma statute on the crime of aggression. This stigmatisation and violence are evidenced in mob injustice. However, legislative protection from mob injustice should be expanded to include those suspected of witchcraft and general individuals suspected of committing an offence.

A current issue is the focus of police and security officials on detaining the victim of mob injustice rather than protecting their rights from mob participants. The participants rarely face any recourse for their actions².

Recommendation

The State Party should:

² 1.1992 Constitution of Ghana, art 19(2)(c)

2/ News Release-Instant Justice 16 February 2017 Retrieved from Ghana Police Service-Facebook page:

<https://www.facebook.com/GhPoliceService/photos/a.525666520962055/574756326053074/?type=3> (01 July 2022).

<https://www.graphic.com.gh/news/general-news/instant-justice-cases-increase-in-bono-region.html>

https://m.facebook.com/login.php?next=https%3A%2F%2Fm.facebook.com%2FGhPoliceService%2Fphotos%2Fa.525666520962055%2F574756326053074%2F%3Ftype%3D3&refsrc=deprecated&_rdr

Ali, B. M. 'Instant justice cases increase in Bono Region' 22 May 2022 <https://www.graphic.com.gh/news/general-news/instant-justice-cases-increase-in-bono-region.html> (accessed 01 July 2022)

<https://citinewsroom.com/2018/02/15-of-ghanaians-support-mob-justice-afrobarometer-survey/>

I. Require continuous training for security officers and police on human rights and constitutional guarantee and proactively enforce legislation that protects alleged offenders and discourage participation in mob injustice.

II. The NCCE should intensify the sensitisation of the public on the need to refrain from mob injustice;

iii. **Prison Conditions and Congestion**

Recommendation 146.86 by the United State, indicated that the state should enact criminal justice sector reforms to protect the rights of the accused, in particular the right to trial within a reasonable time and to legal assistance.

Prison conditions are generally harsh and sometimes life-threatening due to overcrowding, inadequate sanitary conditions, lack of medical care, physical abuse, and food shortages.

According to the Director-General of the Prisons Services, as of 24 June 2022, the total prison population was 13,200, despite an authorized capacity of 9,945. Food given to prison inmates is inadequate due to the insufficient feeding grant of GHC1.80 (US\$0.30) a day per inmate.

Opportunities to decongest prisons lie in justice sector reform. The laws should be amended to include alternative and non-custodial measures for sentencing. These include Alternative Dispute Resolution (ADR), community service sentencing for minor offences, and the possibility of parole. The state has recently passed the Criminal and Other Offences (Procedure) (Amendment) Bill, 2021 to provide for plea bargaining in the administration of criminal justice.

Another problem faced is the non-adhering to judicial guarantees. Mechanisms and systems need to be employed to increase access to legal counsel, which can quicken processes, increase the number of detainees seeking bail, and decrease the overall number of those held in custody. It is also important that the 48-hour holding maximum is respected. If the time limit is to be exceeded, the police need to seek a court order. Non-adherence to the time limit increases the number of detainees. The state and civil society partnership on the Justice For All program for Remand / pretrial Prisoners as measures to decongest prisons overcrowding have seen significant achievement by reducing the pre-trial population from 33% in 2007 to 9.7% as at January 2022.

Recommendation

The State Party should:

I. Reform the criminal justice sector to expand the use of ADR; pass the Community Service Sentencing Bill; and consider the passage of draft regulation/CI for parole;

II. Decriminalize and declassify petty and other offences.

III. Full implementation of the Criminal and Other Offences Act

iv. **Inadequacy of Legal Aid**

Recommendation 146.86 urged Ghana to enact criminal justice sector reforms to protect the rights of the accused to include access to legal assistance. The Legal Aid Commission (LAC) was established in fulfilment of Article 294 of the 1992 Constitution, which grants all persons the right to legal aid for the enforcement of their rights or any provision under the 1992 Constitution. Following the passage of the Legal Aid Commission Act, 2018, the LAC, which used to be known as the Legal Aid Board, became an independent commission with a three-prong mandate to be a public defender (provide free legal services for those in need of it).

Access to legal counsel can also aid in reducing the violations of judicial guarantees³. Legal aid board have their mandate extended to Legal Aid Commission nevertheless they are heavily under resource and have less than 34 lawyers nationwide serving over 30 million Ghanaians. The LAC lacks resources and adequate employees. Due to low pay and difficult access to Legal Aid offices, there is often a shortage of experienced lawyers working for the scheme. The program, which already lacks the mechanisms and resources to assure adequate legal counsel for the impoverished, has been overwhelmed by the sheer number of suspects and accused people who need legal aid.

However, as at November, 2021 only 34 lawyers have been engaged so far across the country to work on all cases including criminal and civil proceedings and this is preventing many from accessing justice in the country, thereby defeating the Sustainable Development Goal (SDG) 16 which mandates states to ensure peace, justice and strong institutions⁴

Recommendation

³ <https://www.amnesty.org/en/location/africa/west-and-central-africa/ghana/report-ghana/>
<https://www.modernghana.com/news/1154396/prison-conditions-in-ghana-harsh-sometimes-life.html>

<https://www.modernghana.com/news/1157211/prison-conditions-in-ghana-harden-criminals-lawy.html>

⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<https://www.graphic.com.gh/news/general-news/legal-aid-challenges-to-be-resolved-a-g.html>

<https://www.graphic.com.gh/news/general-news/ghana-news-legal-aid-commission-needs-more->

The State Party should:

I. Increase the budget and fully resource the Legal Aid Commission and introduce paralegal regulatory framework and hire more lawyers in order to adequately represent the populations;

II. Allocate at least ten LAC lawyers to each region of the country to improve access to legal aid.

v. **Death Penalty**

Ghana is an abolitionist of the death penalty in practice and as recommended in 2012 during the UPR process from recommendations 126.1 to 126.15, and as also recommended in 2017 during the UPR process from recommendations 146.1 to 146.8.0, it has not executed anyone since 1993. The number of death-eligible crimes has also decreased in recent years. For example, robbery offences are no longer punishable by death. In 2014, president John Mahama commuted 21 death sentences to life imprisonment in commemoration of Ghana's 54th republic day anniversary. However, courts continue to pronounce death sentences. By August 2015, 129 people were under sentence of death but it increased to 168 as of 6th June 2022⁵.

The constitution review commissions (CRC) December 2011 report recommends the replacement of the death penalty with life imprisonment without parole, which is a stiffer punishment than the current practice. In 2014, the government rejected the recommendation of the constitutional review implementation committee to abolish the death penalty, or adopt a formal interim moratorium on executions, or ratify the ICCPR-op2.

The government agreed, however, to put to a referendum all the recommendations of the CRC requiring amendment of the constitution, including death penalty abolition, which is an entrenched provision in the constitution and requires a referendum. However, although the CRC submitted a draft bill for the required constitutional amendments. The bill was not approved by the cabinet, parliament, or council of state, as required before a referendum could be held.

In addition, Ghana abstained from voting under 69/186 (universal abolition of death penalty/moratorium on executions) in 2014. UNHRC concluded that Ghana had violated its obligations under the ICCPR through the mandatory imposition of

⁵ Article 13 of the 1992 constitution of Ghana guarantees the right to life. However, the same article allows for the death penalty

the death penalty (Johnson v. Ghana)⁶.

Obligations:

Ghana is obligated to respect its right to life obligations under article 6 of the international covenant on civil and political rights; optional protocol to the international covenant on civil and political rights, second optional protocol to the international covenant on civil and political rights, the convention against torture (CAT), optional protocol to the convention against torture and other cruel, inhuman or degrading treatment or punishment.

Recommendation

The State party should:

- i. Continue to abide by the moratorium on executions of persons convicted of murder;
 - ii. Commute all death sentences to life imprisonment by December 2023.
 - iii. Repeal the mandatory death sentence provision in Ghana's constitution by fast-tracking the process of passing the Private Member Bill currently before the parliament of Ghana to abolish the death penalty in the Criminal Offences Act 29 and Ghana Armed Forces Act 105.
- IV. Ratify, without reservation, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

⁶ <https://www.Amnesty.Org/en/countries/africa/ghana/report-ghana/> 30 <http://www.Deathpenaltyworldwide.Org/country-search-post.Cfm?Country=ghana> 31 *ibid* 32 <https://www.Deathpenaltyproject.Org/news/1911/dexter-johnson-v-the-republic-of-ghana/> 33 <https://www.Amnesty.Org/en/countries/africa/ghana/report-ghana/> 34 <http://www.Deathpenaltyworldwide.Org/country-search-post.Cfm?Country=ghana>