



COMMISSION ON
HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE
(CHRAJ)

Our Ref: BE 43/128/20

27th September 2023

**THE INSPECTOR GENERAL OF POLICE
GHANA POLICE SERVICE
POLICE HEAD-QUARTERS
ACCRA**

Dear Sir,

**ADVISORY ON REALISATION OF THE FREEDOM OF ASSEMBLY,
PROCESSIONS AND DEMONSTRATIONS BY CITIZENS UNDER THE
CONSTITUTION 1992**

1.0 INTRODUCTION

On the 21 September, 2023 it was widely reported in the media that protestors who had gathered around 37 Bus station to exercise their constitutional right to demonstrate were arrested, manhandled and subsequently detained at various police stations within Accra by the Police. It was also reported that protestors at some point were denied access to their lawyers. The reason for the Police response was that court processes to place an injunction on the protest had been served on lawyers of the leadership of protestors and therefore deemed such assembly as unlawful.

Freedom of assembly (otherwise known as right to protest or right to demonstrate) is a basic right vital to an individual's personal development and political consciousness and enhances participation in the conduct of public affairs in his country. The right by its nature also provides citizens with the tool to express their concerns and demand accountability from government. The right enables individuals to express themselves collectively and to participate in shaping their societies. The right is of keen historic significance and this was duly recognised by Amua-Sekyi JSC in **New Patriotic Party v. Inspector General of Police [1993-94] 2 GLR 459-509** when he contended as follows:

“if in nineteenth century England the opponents of child labour had been prevented from stating their case, would its evil consequences have ever been recognised?”

The above recognition by the respected jurist underscores the critical importance of freedom of assembly in shaping public affairs.

2.0 LEGAL FRAMEWORKS

The freedom of assembly is guaranteed under chapter 5 specifically by article 21(1) (d) of the 1992 Constitution of the Republic of Ghana. For the purpose of emphasis article 21(1)(d) of the 1992 Constitution stipulates:

21. (1) *All person shall have the right to –*

(d) freedom of assembly including freedom to take part in procession and demonstration.”

The International Covenant on Civil and Political Rights (ICCPR) which Ghana ratified also provides for the right to peaceful assembly under article 21. It stipulates: “*the right of peaceful assembly shall be recognised*”. Additionally, article 11 of the African Charter on Human and People’s Rights similarly indicates that “*every individual shall have the right to freely assemble with others.....*”

3.0 EXPLANATORY NOTES

The Commission learns that the leadership of the protestors had given notice to the Police several days back to facilitate discussions on the date, possible routes to use in order to ensure a problem-free protest. The basis for the Police action as the Commission understands was that it had served some court process on the lawyers of the leadership of the protestors and therefore considered any attempt to undertake the protests as unlawful hence giving rise to arrests and detention of protestors.

The Commission sadly notes that Police response over the years against protestors have been disproportionate and leaves much to be desired. It is in this context that the Commission deems it appropriate as the National Human Rights Institution (NHRI) with the mandate to promote and protect human rights under the Constitution and CHRAJ Act, 1993 (Act 456) and its obligations under the Paris Principles to issue an advisory to relevant state actors on matters of human right concern.

Whilst the right to demonstrate is recognised by the state as constitutionally guaranteed, the contention is in relation to how the right should be exercised

against other competing legitimate interests such as public safety, national security, public health, the running of essential services often cited by law enforcement officials to justify restriction of the right. It is important to indicate that the right in issue is a human and constitutional right and therefore any limitation placed on the right must satisfy the threshold stipulated under human rights law.

In the celebrated case of **New Patriotic Party v. Inspector General of Police [1993-94] 2 GLR 459-509**, the Supreme Court defended the constitutional right to peaceful assembly by criticising the unfettered power of the Minister for the Interior to grant or withdraw permit at will in relation to the constitutional right to demonstrate. The apex court further held “that proposition clearly violated the enshrined provision of article 21(1)(d) because by investing the Minister or other authority with unfettered discretion to refuse his consent or permit, section 7 of NRCD 68 placed the assertion by the citizen of his constitutional rights of assembly, procession and demonstration at the mercy of the authorities. The court thus declared the practice as inconsistent with the letter and spirit of article 21(1)(d) of the 1992 Constitution.”

While the NRCD 68 is no longer part of the existing law, the manner in which the Public Order Act, 1994 (Act 471) has been interpreted and enforced by the Police and other relevant law enforcement agencies give cause for grave concern. For instance, under section 1(1) of Act 471 a notification requirement appears to have increasingly been misconstrued as a requirement for protestors to achieve some consensus with law enforcement officers before they get the green light to assemble and demonstrate. Failure by protestors to achieve this consensus with the Police have often compelled the Police to approach the court through ex-parte applications or applications on notice for injunction to restrain demonstrators.

In the context of the recent happenings, the Commission understands that the approach adopted by the Police was hugely informed by lack of consensus between the Police and demonstrators. Granted that was the reason, that did not permit the Police to weaponise the Public Order Act on the eve of the demonstration to restrict demonstrators from exercising their constitutional right. When that approach failed the Police resorted to the arrest and detention of protestors. These developments, in the considered view of the Commission are disturbing considering the nature of obligations imposed on the state in relation to the right as well as the importance of the right to the democratic order.

It is not in dispute that the freedom of peaceful assembly just like any non-derogable right is not absolute. It is subject to limitations necessary in a free and democratic society for the purposes of ensuring public safety, public health,

defence, running of essential services and other legitimate considerations. But these limitations have to be carefully considered or weighed against the protected right. In the Ghanaian context, the Commission observes that misinterpretation and misapplication of the Public Order Act, 1994 (Act 471) and other justifications have had a chilling effect on the protected right to demonstrate. That is problematic.

The **Human Rights Committee (Committee)**, the treaty body with the oversight mandate of the ICCPR through its **General Comment No.37 (2020)** provides some useful insights for consideration by law enforcement officials in relation to the right under discussion. The Committee stipulates that when restrictions become necessary, the onus is on state authorities to justify the restriction bearing in mind the requirement of legality, necessity and proportionality under human rights law. The Committee also stipulates that the imposition of any restriction must be guided by the objective of facilitating the right as opposed to placing unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in peaceful assemblies, or undermining the purpose of the right. The Committee also contended that any restriction imposed on this right must be necessary and proportionate in the context of a society based on democracy, rule of law, political pluralism and human rights as opposed to merely being reasonable and expedient.

It is clear from the Committee's position that circumstances may call for a restriction on the freedom of assembly but those considerations must not place disproportionate or undue burden on the exercise of the right by individuals. Doing otherwise would constitute a violation of the freedom of assembly.

4.0 CONCLUSION

The freedom to assembly is a right recognised under the 1992 Constitution and plethora of international human rights instruments to which Ghana is a state party. The right imposes a serious obligation on the Ghanaian state to respect and ensure its realisation without unjustifiable restrictions. In light of the historical and political significance of this right to citizens, it therefore places a very high burden on the state actors namely law enforcement officials to ensure its manifestation, of course, with restrictions as circumstances may demand and extremely necessary in a democratic society.

It is the hope of the Commission that this advisory would provide some useful guidance to relevant state actors on their obligations relative to this protected right whilst executing their constitutional and statutory duties.

5.0 RECOMMENDATION

In light of the above analysis, the Commission strongly recommends attention to the following in order to forestall future occurrences:

- The Ministry of Interior, Inspector General of Police and National Security must be mindful of Ghana's human rights obligations towards its citizens. The appreciation of this obligation will inform decisions in striking a good balance between all legitimate competing interests.
- Developing guidelines (where none exist) for managing protests which incorporates human rights standards for the use by law enforcement officials particularly the Police.
- Refresher courses on human rights law and other relevant UN & AU standards governing the operations of law enforcement agencies.
- In situations of deadlock between law enforcement and protestors, the decision to resort to the court to injunct the exercise of the right must be done in a manner which affords protestors the opportunity to challenge the decision in the court of law.
- **Police and other law enforcement officials must endeavour to build rapport between them and protesters as citizens and not as troublemakers to achieve an incident free protest.**
- Law enforcement agencies in all their considerations must facilitate the realisation of the freedom of assembly and other protected rights unless restrictions are reasonably necessary in a democratic society.

**DATED THIS DAY 27TH SEPTEMBER 2023 AT THE OLD
PARLIAMENT HOUSE, ACCRA**



JOSEPH WHITTAL
COMMISSIONER