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WRITE-UPS

**INSANITY OF AN ACCUSED PERSON: A
LOOK AT MENTAL HEALTH ISSUES IN
GHANAIAN CRIMINAL PROCEEDINGS**

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INTRODUCTION

An accused person in any criminal proceeding must be informed immediately in a language he understands and in detail, of the nature of the offence he has been charged¹. This constitutional right is at the apex of criminal proceedings without which a trial or a preliminary proceeding cannot proceed. What happens then when an accused person is unable to understand the nature of the offence he has been charged with and by extension, is unable to make a defence by reason of mental illness? This writeup seeks to expand on the laws governing mental health issues of accused persons in criminal proceedings. In consideration will be the existence or otherwise of legislative safeguards in situations where an accused person is faced with mental health issues pre, post and during trial. Existing and potential challenges will be discussed and possible solutions to them will be proffered.

THE LAW GOVERNING CRIMINAL PROCEEDINGS WHERE THE MENTAL HEALTH OF THE ACCUSED IS INVOLVED

The mental health of an accused person has a direct bearing on how the criminal proceedings will advance. Different instances relating to the mental health of an accused person exist. For example, there can be instances where:

- the accused person was mentally ill at the time of the commission of the offence but is capable of understanding the criminal proceedings,
- the accused person was mentally ill at the time of the commission of the offence and is unable to understand the proceedings by reason of his mental illness and
- the accused person was not mentally ill at the time of the commission of the offence but subsequently became mentally ill and as a result, is unable to understand the proceedings.

The Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides rules to follow where any of the above instances present themselves.

Section 133 of Act 30 provides that where at trial or at the preliminary proceedings (also known as the committal trial), a court has reason to believe that an accused is of unsound mind and is consequently incapable of making a defence, it shall enquire into the facts of such unsoundness. This is known in criminal proceedings as a lunacy enquiry. A lunacy enquiry is a finding of fact made into the sanity of an accused person by a court. The court conducts this enquiry by causing the accused person to be medically examined (usually by a psychiatrist). After the examination, the court takes medical or other available evidence regarding the state of mind of the accused person². Evidence such as previous medical records of the accused person showing his state of mind and the testimonies of persons who can speak to his state of mind (such as relatives, friends, neighbours and even the investigating officer) may be considered by the court.

After the taking of the evidence, the court makes a determination as to the accused persons state of mind. Notice must be taken that it is only a court, , which can declare an accused person as insane³. Where in the opinion of the court, the accused person is incapable of making

1 Article 19(2)(d) of the 1992 Constitution of Ghana

2 Section 133(1) of Act 30

3 Collins alias Derby vrs The Republic [1987-88] 1 GLR 521

a defence by reason of his mental illness, the court shall record its findings to that effect and postpone the trial or the committal trial⁴. The accused person may be granted bail and be put in the charge of a person who can take proper care of him and guarantee that he will not cause further injury to people among other things⁵.

In the event that the accused person is unable to secure bail or is not granted bail by the court, the court shall detain him in safe custody in a place and manner it may determine and transmit the court record or a certified copy of the record to the Minister of Justice through the Judicial Secretary⁶.

The Minister of Justice upon receipt of the certified court record, may by a warrant order the court to confine the accused person as a criminal lunatic in a lunatic asylum or any other suitable place⁷.

The fact that an accused is incapable of making a defence by reason of insanity does not truncate the trial or pretrial proceeding. An accused person who is kept in a lunatic asylum will be periodically accessed by the medical officer in charge as is custom. Where in the officer's opinion, the accused person is capable of making a defence, he shall inform the Attorney-General of same⁸. The Attorney-General shall accordingly decide whether it intends to continue with the proceedings of the accused person or otherwise⁹. Where the Attorney-General intends to continue with the preliminary proceeding or trial, the trial may proceed or begin de novo as the court considers proper¹⁰. Where on the other hand the Attorney-General does not intend to continue with the trial, the court may discharge the accused person where the medical officer certifies that he may be unconditionally discharged and where the accused cannot be unconditionally discharged, be kept as a criminal lunatic.¹¹

Another aspect of criminal procedure involving the mental health of an accused person is the defence of lunacy. The defence of lunacy is available to an accused person who contends that at the time of the commission of the crime for which he has been charged, he was by reason of unsound mind incapable of knowing the nature of his wrongdoing¹². An accused person may raise this defence if he was prevented, by reason of idiocy, imbecility, or a mental derangement or disease affecting the mind, from knowing the nature or consequences of the act in respect of which he is accused¹³; or he did the act in respect of which he is accused under the influence of an insane delusion of a nature that renders him, in the opinion of the jury or of the Court, an unfit subject for punishment in respect of that act¹⁴.

The defence of insanity is a legal concept and not a clinical/medical one. This means that just suffering from a mental disorder is not sufficient to prove insanity. In a criminal trial, the accused person bears the burden of proving his insanity. However unlike the prosecution, the

4 Section 133(2) of Act 30

5 Section 133(3) of Act 30

6 Section 133(4)(a) of Act 30

7 Section 133(5)

8 Section 134(1) of Act 30

9 Section 134(3) of Act 30

10 Section 135(1) of Act 30

11 Section 134(5) of Act 30

12 Williams vrs The Republic [1984-86] 1 GLR 565

13 Section 27(a) of Act 29

14 Section 27(b) of Act 29

standard of proving same is lower and “not beyond reasonable doubt.” The party claiming that a person including that party is or was insane or of unsound mind has the burden of persuasion on the issue unless it is shifted¹⁵. The accused person can prove the defence of insanity by showing evidence of history, contemporaneous act, behaviour and conduct immediately before and after the crime¹⁶.

Where at a preliminary proceeding an accused person raises the defense of lunacy, the court shall commit the accused person for trial if the prosecution is able to establish that the accused person has a case to answer¹⁷. His defense may be recorded as part of his statutory statement which may be used as evidence during the trial at the High Court¹⁸. At trial, where the accused person raises the defense of lunacy and it is established that he was insane at the time when the crime was committed, the court or the jury shall return a verdict of “guilty but insane.” This means that the accused person is guilty of the offence charged but was insane at the time it was done¹⁹. A certified record of the court’s proceedings will subsequently be sent to the Minister of Justice by the trial court and the accused person shall be kept in custody as a criminal lunatic in a place and in a manner directed by the Court till the president’s pleasure is known²⁰.

CHALLENGES

While the Ghanaian Criminal procedure laws provide for steps to be taken where an accused person appears to be of unsound mind at a trial or preliminary proceeding or was of unsound mind at the time of the commission of the offence, in the practical application of these procedures, parties connected to the trial still face a number of challenges.

For instance, typically, a lunacy enquiry is made only to determine the ability of the accused person to understand proceedings and make a defense. Depending on the outcome of the enquiry as discussed above, the accused may either be granted bail or kept in safe custody. The said “safe place of custody” mentioned in Act 30 in actuality is nonexistent. Most if not all asylums in Ghana are by reason of logistical challenges, unable to admit accused persons with mental illness. Apart from having logistical challenges, they are unable to keep accused persons with mental illness mainly owing to the security threats they pose to other patients and the staff at the hospital. For instance, some Psychiatric Hospitals in Accra used to have wings for admitting accused persons and convicts with mental illness, however, owing to logistical challenges and the lack of security among others, they have had to close them down. The courts in some instances are thus forced to grant such accused persons bail which may not be ideal as there is a high likelihood of them posing as a danger to themselves, their families and the community they live in.

The police are thus burdened with finding an appropriate place to keep the accused persons bearing in mind their peculiar needs. Due to the mental illness such accused persons suffer, the general prisons are not an ideal place for them to be kept. However, there have been instances where accused persons suffering from mental illness have had to be kept fettered in prison

15 Section 15(c) of the Evidence Act NRC 323

16 *Williams v The Republic* (1984-86) 1 GLR 565 CA

17 Section 136 of Act 30

18 Section 187 of Act 30

19 Section 137(1) of Act 30

20 Section 137(2) of Act 30

custody due to their mental condition. Though this is not an ideal situation, they are kept in such a manner as they can pose as a threat to themselves, other inmates and officials. Other times accused persons suffering from mental illness are kept in police cells which most of the time poses as a risk to their cellmates when they experience episodes of lunacy. In the end, there is a strong likelihood that the human rights of these accused persons may be violated as they are kept in inhumane and degrading conditions devoid of specialised care by reason of their mental illness.

RECOMMENDED SOLUTIONS

Stakeholders in the criminal justice system ought to come out with a framework which will give more meaning to the operationalisation of sections 133 and 136. The Office of the Attorney-General together with stakeholder agencies such as the police, prisons and health services ought to streamline among other things, the manner in which mentally ill accused persons and suspects are kept. Existing psychiatric hospitals can be better equipped to have a dedicated wing for the criminally insane. Also, the putting up of a standalone facility may be considered. Such a facility will focus on not only keeping accused persons and suspects with mental illness in custody, but also focus on their treatment in order to eventually allow them to stand trial.

Furthermore, the attachment of a clinical psychologist to the Judicial Service of Ghana would be most welcoming. Their expertise of a psychiatrist can be used in monitoring cases of accused persons who suffer from mental illnesses and are before the courts. Just as a social welfare officer is present at the trial of a juvenile, so should a court mandated psychiatrist be present to ensure that an accused person who is standing trial understands what is happening at every material point. Then again, the inadequate number of psychiatrists in Ghana would make the realization of this suggestion difficult but hopefully not impossible in the future.

Again, the bail conditions set by the court for an accused person suffering from mental illness must as a matter of necessity include a condition that the accused person must visit the psychiatrist periodically for treatment. The stability of his mental health should be closely monitored so that he does not become a danger to himself, persons around him and the community at large.

It is important for the courts to ensure that an accused person with a mental illness is adequately represented by counsel at all stages of the proceedings especially during pretrial proceedings. This is to ensure that he has an advocate at all times to plead his case and protect his rights as he may not fully appreciate the legal proceedings. Just as it has become custom for the courts to insist on legal representation for accused persons charged with offences such as murder, the courts ought to also insist on legal representation for accused persons with mental illness be it from the Public Defender's office or private law practitioners.

CONCLUSION

The laws relating to mental health issues in criminal proceedings are helpful in ensuring that the rights of an accused person are not abused by reason of mental illness. The courts must also be commended for protecting the rights of all accused persons irrespective of their mental health. These notwithstanding, there are teething problems which ought to be addressed to

prevent the poor management of accused persons who suffer from mental illness. In the end, justice must be said to be done to all manner of persons irrespective of their health be it physical or mental. Other stakeholders may also have varied opinions in this matter to those proffered above and I believe that this writeup will hopefully serve as a precursor to the conversation on mental illness in the criminal law sector in Ghana.