

A TALE OF GOLDEN SILENCE: PRIVILEGE AGAINST SELF-INCRIMINATION

In my practice as an advocate in Uganda, I have many times encountered clients who raise a lot of concern on issues of self-incrimination during investigations or during criminal trials. Questions such as; *do I have to answer every question during interrogation at Police? Can I be forced to give evidence against myself in a court of law?*; often come

up during our interactions.

**I REFUSE TO
ANSWER ON THE
GROUND THAT THIS
MIGHT BE
INCRIMINATING.**

I have also discovered that some clients have an idea about the subject or have heard about the rule against self-incrimination either from movies or from scanty internet information. They are always quick to raise the, “*fifth amendment right*” whenever faced with a challenge with a possibility of self-incrimination. Though they are quick to state the words “*fifth amendment right*” most of them do not in reality understand what it is all about. In this article I try to shed some light on the rule against self-incrimination in the simplest terms and its application in the Ugandan justice system.

In general terms the “*Fifth Amendment Right*” is a right under the Constitution of the United States of America (USA). This is an amendment to the United States of America Constitution ratified in 1971 as part of the Bill of Rights. The Fifth Amendment has many principles which among others include;

- i) The right to be tried upon an indictment and to be tried by a grand jury in case of being charged with a felony.
- ii) The right to be tried once for the same offence.
- iii) **The right against self-incrimination**

The Fifth Amendment has a detailed self-incrimination clause that provides various protections against incriminating oneself and guaranteeing a person’s right not to be compelled to give evidence against themselves.

In Uganda the principle against self-incrimination is reflected in **Article 28 (11) of the Constitution of the Republic of Uganda, 1995**. The article provides that;

“Where a person is being tried for a criminal offence, neither that person nor the spouse of that person shall be compelled to give evidence against that person”

The effect of this article is that an accused person cannot be forced to give evidence against themselves. This privilege also extends to their spouses. This principle is meant to protect against abuse of power by the state.

The right of non-self-incrimination is hinged on the constitutional provision under **Article 28 (3) (a)** that presumes every person innocent until proven guilty or until one voluntarily pleads guilty. The process of proving a person guilty has elaborate requirements which among others include the obligation of the state to prove its case beyond reasonable doubt. In all this, the accused person has no obligation to prove their innocent and they can only be convicted on the strength of the prosecution (state) evidence and not the weakness of their defense.

Whereas the constitution obligates the state to afford an accused person adequate time and facilities to prepare for their defense under **Article 28**, the accused person enjoys a right to remain silent when required to defend oneself.

Most controversies surround the right to non-self-incrimination upon arrest and during the course of investigations. Allegations have often arisen pointing to security personnel using underhand means to coerce suspects into implicating themselves most times through

recorded confessions.



Just like an accused person cannot be compelled to give evidence that implicates themselves in court, a suspect has a right to keep quiet and not to answer questions about the charge upon being arrested. This is to avoid a situation where he or she will give statements that may incriminate him or her. The use of torture and intimidation to extract confessional statements from suspects is illegal and unconstitutional. **Article 24 of the Constitution** provides that no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or

punishment. In fact the Parliament of Uganda enacted the **Prevention and Prohibition of Torture Act, 2012** which gives Ugandans a right to commence criminal proceedings for torture against any security personnel that may inflict physical or mental torture on a suspect during the course of investigations.



When a person is arrested or

summoned to appear at the Police station, procedure demands that a statement of that person is taken voluntarily detailing his side of the story or information she or he may know about the particular subject matter under investigation. Where a person feels uncomfortable answering any questions or recording any statement, he has right to stay silent.

Before recording a statement, a police officer is required to first charge the arrested person with the offence, or inform him or her of the nature of the charge which is likely to be brought against him or her or the matter which the police officer is investigating. A caution must be administered, such as, *“You need not say anything unless you wish, but whatever you say will be taken down in writing and may be given in as evidence.”* Where a statement is taken by a police officer, it should be read back to the accused for him or her to confirm what has been taken down before he or she signs. Care must be taken during statement taking, to ensure that no force or torture is used to extract information from the suspect.

The other principles applicable in Uganda similar to the ones in the 5th amendment (double jeopardy, fair hearing/due process) will be discussed in the subsequent articles. s

Know your rights.

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