



HUMAN RIGHTS IN GHANA

Report of a Mission

by

PROFESSOR CEES FLINTERMAN

for the

INTERNATIONAL COMMISSION OF JURISTS

and

NETHERLANDS COMMITTEE FOR HUMAN RIGHTS

SIM • UTRECHT

International Commission
of Jurists (ICJ)
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Introduction

Introduction to Ghana

Throughout the world Ghana is well-known for the fact that it was the first country in black Africa to be free from colonial domination. In 1957 Ghana gained its independence. The name of its first leader, Dr. Kwame Nkrumah, will forever be linked with this great historical event which set into motion the decolonization and emancipation of many other, unfortunately not all, countries in Africa.

Less known may be the political and constitutional history of Ghana since 1957. It is of relevance to highlight the main developments in this history. Lack of knowledge thereof may easily lead to a misappreciation of the present-day situation in Ghana.

On the 6th of March 1957 Ghana gained its independence and adopted as its motto "Freedom and Justice". Its constitution was patterned upon the Westminster Model, *id est* parliamentary democracy. Dissatisfaction with this model became apparent almost immediately afterwards: in 1958 the Preventive Detention Act was passed. This act was meant to be an instrument to silence the opposition and was in fact so used. The courts, relying on strict rules of interpretation, refused to grant writs of habeas corpus or to entertain appeals applied for or lodged by people detained under this Act.

In 1960 Ghana became a Republic, later to be referred to as the First Republic. The 1960 Constitution provided for a mixed presidential-parliamentary model. The President, Dr. Kwame Nkrumah, acquired considerable powers. Among these was the President's power to remove at any time, for reasons which appeared to him sufficient, a judge of the Supreme Court or High Court. In a period of less than two years the President removed the Chief Justice and almost all of the senior judges

of the Supreme Court and the High Court. No reasons were given and, indeed, needed to be given. It was current knowledge at the time, that the President was disgruntled about some of the decisions the judiciary had rendered against the government, despite the fact that the Supreme Court during this period had given a judgment in which it declined to review the Preventive Detention Act of 1958 under the new constitution, the *Re Akoto* case (1962). The suppression of free speech and of the freedom of the individual could, therefore, continue in an unhampered way.

It was during the First Republic that Ghana made great strides in the advancement of social justice. Free education in primary and secondary schools was introduced, a large number of scholarships to the secondary schools were established for children of farmers, and free medical attention at government hospitals was made available. Economically, however, Ghana remained dependent upon one crop for its lifeblood of foreign inputs which was and to the present day still is cocoa. The price of cocoa is dictated by the fluctuations of the world market. In the early sixties it reached a very low level. A radical restructuring of the economy, especially by rapidly increasing its public sector initiated by the Nkrumah government, largely failed because it did not take sufficient account of Ghana's almost exclusive dependency on cocoa, and, therefore, limited possibilities.

The First Republic came to an end in 1966 and was replaced by Ghana's first military government, the National Liberation Council (NLC). This government saw itself, essentially, as a caretaker. By 1969 it had returned Ghana again to constitutional rule. The preamble to the 1969 Constitution is revealing of the events of the pre-1966 period. It read (in part):

"We the chief and people of Ghana having experienced a regime of tyranny.

Remembering with gratitude the heroic struggle against oppression.

Having solemnly resolved never again to be subjected to like regime.

Determined to secure for all of us a Constitution which shall establish the sovereignty of the people and the rule of law as the foundation of our society and which shall guarantee

freedom of thought, expression and religion;

justice, social, economic and political;

respect for the dignity of the individual and equality of opportunity.”

The Second Republic was not given much time to mature. In 1972 the civilian government, headed by Prime-Minister Kofi Busia, was toppled by the army. The new military government, the National Redemption Council, later to be renamed the Supreme Military Council, was led by Colonel Acheampong. Institutionalised rampant corruption and incompetency are the main characteristics of this government. Growing public opposition spearheaded by the professional bodies led to a successful coup in 1978: the Supreme Military Council II (SMC II) under General Akuffo was formed.

The SMC II made preparations for a return to civilian rule. A new constitution was drawn up. Elections were held. Before the promulgation of the new constitution yet another coup, this time by junior officers, overthrew the SMC II in June 1979. The new military government, the Armed Forces Revolutionary Council under the leadership of Flight-Lieutenant Jerry Rawlings, did not, however, postpone Ghana's return to civilian rule. In September 1979 it handed over power to the elected civilian regime. In the few months of its existence it had devoted itself to a “clean up exercise”. Many military officers, former officials and wealthy businessmen were tried by special military courts, the special AFRC-courts, during this short period. Eight government officials, among whom were former Heads of State, were actually executed.

Ghana's Third Republic was based on a constitution containing an elaborate chapter on fundamental rights and freedoms and provisions for their enforcement in the High Court. Its President was Dr. Limann, the leader of the People's National Party (PNP). Under the new constitution, the government was not empowered to quash the sentences of the special AFRC courts. Some decisions of these courts were, however, quashed by the High Court. A special tribunal under Justice I.K. Abban, was set up to supervise the continuation of the ‘house-cleaning’ exercise started under the AFRC regime. This tribunal passed a few sentences and dropped some other cases prepared under the AFRC, allegedly for lack of evidence.

The Third Republic of Ghana came to an end on 31 December 1981. On that day the Limann government was overthrown in a military coup again led by Flight-Lieutenant Jerry Rawlings. A new military government, the Provisional National Defence Council (PNDC) was established under a Proclamation. In the preamble to this Proclamation it was said

that the Government that assumed office upon the coming into force of the 1979 Constitution had betrayed the trust reposed in it by the people of Ghana, and that it thus became necessary for the PNDC to assume the reins of government of the Republic of Ghana in the interest of the sovereign people of Ghana. The preamble further stated that it "is necessary that machinery should be established for the proper administration of Ghana and for the due establishment of true democracy". In this respect the Proclamation itself provided for the establishment of Public Tribunals, independent of the regular courts, for the trial and punishment of offences specified by law. The regular courts were to continue to function with the same powers and duties as before the revolution, subject to any laws decreed by the PNDC.

The 1979 Constitution was suspended by the Proclamation and by a later Amendment Law (PNDC Law 42, 1982) retroactively abrogated. In this Amendment Law the PNDC also set out the directive principles of state policy. Special attention may be drawn to the first two principles, which read:

"All organs of Government, persons and authorities exercising legislative, executive, administrative or judicial power, shall be guided in the performance of their functions by the following Directive Principles of State Policy which provide the basic framework for the exercise of all powers of Government:

(a)

a basis of social justice and equality of opportunities is to be established, particular attention being paid to the deprived sections of the community, and to the reconstruction of the society in a revolutionary process directed against the previous structures of injustice and exploitation;

(b)

respect for fundamental human rights and for the dignity of the human person are to be cultivated among all sections of the society as part of the basis of social justice; ..."

It seems that these two principles are a relevant summary of the fundamental question each country, in particular each developing country, faces: can social justice be mated with individual rights and freedoms?

Ghana's history of independence, which is only very briefly and therefore inadequately set out above, shows a continuing search for a proper balance between social justice and individual rights. In this

search various governments, of both a civilian and military character, the judiciary, and private individuals and organisations have played a more or less conspicuous role. This report of an outside observer must limit itself to the present-day enforcement of the Rule of Law in Ghana.

Background to the ICJ Mission

The International Commission of Jurists has for more than 30 years sought to promote the rule of law and the legal protection of human rights in all parts of the world. As early as 1959, it proclaimed the dynamic concept of the Rule of Law according to which lawyers should seek not only to safeguard and advance people's civil and political rights, but also to establish social, economic, educational and cultural conditions under which their legitimate aspirations and dignity may be realized.

More recently it has sponsored a series of regional seminars in the third world dealing with matters of concern to lawyers and others within the different regions. Among these have been the Dar-er-Salaam seminar in 1976 on Human Rights in a One-Party State, and the 1978 Dakar seminar on Development and Human Rights.

As a result of this series of seminars, the International Commission of Jurists has become increasingly concerned with the relationship between human rights and development, and has participated actively in the promotion of the concept of the right to development as a human right.

It was from this perspective that the International Commission was extremely interested in sending a representative to Ghana who would be able to inform it not only about the administration and safeguards to ensure fair trials and defence rights, but also more generally about the situation concerning human rights in the light of the right to development.

A request for permission for such a mission was sent to the Head of State of Ghana, Flight-Lieutenant Jerry Rawlings, in June 1982. For various reasons the mission was able to take place only in June-July 1984.

Purpose and scope of Mission; Sources of information

The author of the present report was in Ghana from June 23 to July 8, 1984, a period of two weeks. During his mission he interviewed the Head of State of Ghana, various government officials, lawyers, magistrates, members of Public Tribunals, professors, student leaders, trade

union leaders, church leaders, journalists, businessmen, members of the newly established Workers Defence Committees and members of human rights organizations.

The Ministries of Foreign Affairs and Justice were informed about the ICJ Mission. The Attorney-General was particularly helpful in arranging interviews with various high government officials. The author is also grateful to the University of Ghana (Legon). This University provided him with accommodation and with a car. Petrol, which is a scarce and expensive commodity these days in Ghana, was generously provided for by the Government of Ghana.

The main themes in these interviews were the present-day administration of justice in Ghana, especially in the light of the existence of Public Tribunals alongside the regular courts, and more generally the human rights situations in the light of the right to development. The observer attended several sessions of the Public Tribunals. He was also allowed to visit a medium-security prison where he spoke with a number of detainees. Due to his restricted stay the observer had to limit himself to enquiries within the capital, Accra, and its immediate surroundings.

All individuals interviewed including those in opposition to the government, freely expressed their opinions. Anonymity was guaranteed. Government officials were very courteous in giving information. In addition to information obtained from interviews, the author also received extensive written materials in the form of speeches, declarations and so forth. Ghana's newspapers, radio and television are strictly controlled by the government. Papers critical of the government's position have not been formally banned but their printing has been made impossible by more circuitous means. An exception is found in the bi-weekly papers of the Christian Council of Churches and the Roman Catholic Church.

The purpose and scope of the ICJ mission to Ghana encompassed the whole range of human rights. The author is well aware that a two weeks stay in Ghana is far too limited to grasp the significance of all problems relating to the promotion and protection of human rights in a developing country like Ghana. It is in this perspective that he submits his findings in the present report. The report is based on observations and interviews of the undersigned while in Ghana, on written material obtained in Ghana and on press and other reports occurring since his visit.

The Administration of Justice in Ghana

Historical background

From 1957, the year of independence, to 1966 Ghana knew a dual system of courts, inherited from colonial times. Under this system the Chief Justice administered all courts except the local courts presided over by local magistrates. The local courts were at various times administered by the Minister of Justice or the Minister of Local Government.

In 1966, a single system of courts under the Chief Justice was introduced in Ghana by the Courts Decree, 1966. This Decree was suspended by the 1969 Constitution which vested the judicial power of the State in the judiciary with jurisdiction in all matters civil and criminal. The present structure of the courts is still founded on this Constitution despite the various military coups; the proclamations establishing the various military regimes invariably made all courts continue until provision was otherwise made by law. Thus the PNDC Proclamation 1981 provides that "notwithstanding the suspension of the 1979 Constitution an until provision is otherwise made by law – (a) all courts in existence immediately before the 31st day of December, 1981, shall continue in existence with the same powers, duties and functions under the existing law subject to this Proclamation and Laws issued thereunder..."

The judiciary now consists of the superior courts of record called the Superior Court of Judicature, comprised of the Supreme Court, the Court of Appeal and the High Court of Appeals, and also such inferior and traditional courts as the Parliament or the body exercising its functions, may by law establish. The inferior courts recognized are the Circuit Courts, District Courts Grades I and II, and Juvenile courts. No attempt will be made here to describe the various jurisdictions of these courts. It suffices to say that there is a statutory right of appeal in all

cases. In some instances where the penalty is either the death penalty or imprisonment for life, the trial must by law be by jury of seven lay men and women. The District Courts, Circuit Courts and Juvenile Courts are in general one-judge courts. In trials upon indictment undertaken by the Circuit Court, the judge is, however, aided by three assessors; in these cases the judge determines the question of guilt, but after ascertaining the opinions of the assessors which are intended to assist him in arriving at his own conclusion. All courts are manned by judges who are highly trained and qualified in law.

As said before, the judicial power in Ghana is vested in the judiciary, later on also referred to as the regular courts, with jurisdiction in all matters civil and criminal. During its history of independence, Ghana has also occasionally known special tribunals exercising criminal jurisdiction. During the First Republic a Special Court was established to deal with state security. During the NLC regime military tribunals were set up which, despite the name, have exercised a substantial jurisdiction over ordinary civilians. These tribunals were set up under the Subversion Decree, 1972, to try a number of offences specified by that Decree. Some of the offences could be subsumed under the heading of treason which was already made punishable by the Criminal Code, 1960; others were purely economic crimes. The supervisory jurisdiction of the regular courts was almost completely ousted by the Subversion Decree; moreover there was no statutory right of appeal. A final example of special courts exercising criminal jurisdiction may be found in the Special Courts during the AFRC regime.

With the coming to power of the PNDC regime on 31 December 1981 the judiciary came under severe criticism. The PNDC already announced in its Proclamation the establishment of Public Tribunals, independently of the regular courts, for the trial and punishment of offences specified by law. The criticism of the regular courts will be discussed in the following section.

The Public Tribunals

Introduction

Very soon after the PNDC regime took power, a system of Public Tribunals was set up by the Public Tribunals Law (PNDCL 24, 1982, recently replaced by PNDCL 78, 1984). These Public Tribunals were

established to try criminal offences referred to it by the PNDC, certain offences under the Criminal Code 1960 (Act 29), and offences listed under the above-mentioned Public Tribunals Law, 1982. The tribunals have attracted a great deal of attention and criticism, both inside and outside Ghana. It is of relevance to state first the reasons that led the PNDC government to establish the tribunals and to survey their personnel, jurisdiction, and procedures. In a final section an appraisal of these tribunals will be presented.

The main reason for the establishment of the Public Tribunals seems to be that the PNDC regime was extremely dissatisfied with the existing legal system. In its opinion the legal system of Ghana did not achieve the aims and objectives which legal systems are required to achieve; rather it has created social indiscipline and lawlessness; it benefited only the rich. This general criticism of the existing legal system is founded on the following more detailed arguments.

The judiciary, in the opinion of the present-day rulers of Ghana, has created two different standards of justice, one for the poor and one for the rich. Lawyers did not play their role as officers of the court and did not use their skills to let justice prevail; they rather used their skills to obtain tricky victories, thereby creating doubt and suspicion in the minds of people about the integrity of lawyers. Neither did lawyers work to achieve the role expected of them by using the law as an instrument of social change and to avoid protracted litigation; they rather sought adjournment upon adjournment in the courts which resulted in cases, sometimes affecting the very foundation of the economy, dragging on for years.

Another argument put forward by the government is that the legal system inherited from the British is full of legal technicalities and rigid rules. This is especially so in the field of the law of evidence. These rules of evidence are rigidly interpreted by the judiciary and have consequently made the attainment of justice impossible. The regular courts are unable, because of this, to achieve revolutionary legality. The regular courts over-protect the rights of the accused, especially where they are able to afford a (team of) lawyer(s), and under-protect the rights of the injured party and especially of the state.

The argument that the courts have created one set of rules for the rich and one set of rules for the poor seems to be the main objection. It is argued that instant justice has always been given to the poor, whereas cases concerning rich persons have been deliberately made to drag on as the first step of stage managing injustice. Thereafter con-

tinued adjournments tend to frustrate witnesses and complainants.

The government finally alleges that lawyers have been notorious tax-evaders. In 1982 it published a long list of names of lawyers alleged to have evaded taxes. Lawyers' offices and lawyers themselves were harassed but only a handful of cases were actually enquired into.

It was in this atmosphere of mistrust of the legal profession as a whole that the government established the Public Tribunals. They were meant to be a beginning of major changes in the legal profession and in the administration of justice.

Personnel

The Public Tribunals Law provides for the establishment of a Board of Public Tribunals, to be appointed by the PNDC. This Board consists of 15 members, at least one of whom shall be a lawyer. The Board is responsible for the administration of justice of all Public Tribunals. It selects the panels to constitute the various tribunals. The members of the Board are also eligible to sit on the tribunals in addition to members of the public appointed by the PNDC to sit on the tribunals. It is from these persons that the Board selects panels to sit on tribunals from time to time and at places the PNDC may direct. A tribunal is composed of at least three but not more than five persons.

The recently enacted new Public Tribunals Law (PNDCL 78, 1984) now provides for a three tier system of Public Tribunals: one National Tribunal, Regional Tribunals and District and Community Public Tribunals. As this Law had not yet come into force during the visit of the author of this report, reference will be made to it only where appropriate. Here it is of interest to note that according to this new Law, whereas the PNDC appoints the National Tribunal and the Regional Tribunals, the District and Community Public Tribunals are appointed by the Board of Public Tribunals. The Chairman of the Board of Public Tribunals is a lawyer; this was also the case with the tribunals the author attended. The PNDC government has tried to find experienced senior lawyers for these functions, but in light of the negative attitude of the legal profession vis-à-vis the Public Tribunals, which will be discussed in more detail below, the PNDC had to fall back on lawyers who could not pride themselves upon a long and outstanding career.

Members of Public Tribunals can be removed if it is proved that they are corrupt or incompetent. The new Public Tribunals Law (PNDCL 78

1984) explicitly provides that the Board may remove at any time a member of a Public Tribunal on grounds of proven misconduct, counterrevolutionary activity, or inefficiency or inadequacy in the performance of his functions as a member of a Tribunal.

Jurisdiction

The jurisdiction of the tribunals comprises certain offences under the Ghana Criminal Code, 1962 (Act 29), any offence under any act referred to it by the PNDC, any offence relating to price control, rent control, exchange control, revenue (whether central or local) or imports or exports. The Public Tribunals Law also creates certain offences which fall under the exclusive jurisdiction of the tribunals. These offences are specified in article 3 (2):

- a) any person or group of persons who, while holding high office of State or any public office in Ghana, corruptly or dishonestly abuses or abused the office for private benefit or benefit of any person or group of persons who, not being holders of such office, act or acted in collaboration with any person or group of persons holding such office in respect of any acts specified under this paragraph;
- b) any person or group of persons who act or acted in breach of the mandatory provisions of any Constitution or Proclamation under which Ghana has been governed or is being governed while that Constitution or Proclamation was or is in force;
- c) any person or group of persons who acted or omitted to act, in breach of statutes or other laws of Ghana whereby financial loss was caused to the State, or the security of the State was endangered or damage was caused to the welfare of the sovereign people of Ghana;
- d) any person who intentionally did or does any other act or omission which is shown to be detrimental to the economy of Ghana or to the welfare of the sovereign people of Ghana.

This list of offences to be tried by Public Tribunals is even further widened by article 4 of the said Law, which among others lists as offences sabotage of the economy of Ghana, the overthrow of the Government, the alteration of the revolutionary path of the people of Ghana,

and the expression of hostility to the Government of Ghana. Finally the Tribunals have power to try criminal offences arising out of findings by Committees of Enquiry.

The new Public Tribunals Law (PNDCL 78, 1984) by and large maintains this wide jurisdiction for the National Public Tribunal. The jurisdiction of the Regional Tribunal is somewhat more restricted. The jurisdiction of the District and Community Public Tribunals is even more limited. This new law also provides for an appeal system; this right of appeal, which was lacking hitherto, shall be discussed below.

It is also noteworthy that under the new law the jurisdiction of the Tribunals is limited to criminal matters. Civil matters are still under the exclusive jurisdiction of the regular courts. Attention should also be drawn to the open-ended character of the offences created by the Public Tribunals Law.

Penalties

Until recently all Tribunals could impose the death penalty for such offences as were specified in writing by the PNDC and in respect of cases where the Tribunal was satisfied that very grave circumstances meriting such a penalty had been revealed. "In practice, the death penalty has been regularly imposed. Until recently there was no right of appeal. A person sentenced to death could, however, petition the Head of State, i.e. the Chairman of the PNDC, to review the sentence and grant him clemency. Clemency was rarely granted and the offender was almost invariably executed. Under the new Law, the District and Community Tribunals no longer have the power to impose the death penalty."

A person convicted by a Tribunal of any offence is liable to a *minimum* term of imprisonment of *not less* than three years or to pay such fine as the tribunal may determine, or to both such imprisonment and fine. The tribunal has, however, discretion to impose a lesser term, if the minimum term, in light of the special circumstances relating to the offence or the offender, would be too harsh.

Communal or manual labour may also be imposed in addition to or in lieu of the sentence. The general practice of the tribunals has been to impose severe penalties.

Mode of trial

The Law states as the central rule relating to the mode of trial that the tribunal will be guided by the rules of natural justice. These rules, dating back to times immemorial, mean that every person must be given an opportunity to defend himself in the face of accusation and that the opportunity must be fair. Secondly, it means that the accusers must not be judges in the same cause, to avoid bias or likelihood of bias.

The tribunals are not bound by the Evidence Decree of 1975, which is the relevant law in Ghana relating to criminal evidence. The tribunals try to be flexible and simple as far as possible. This entails, among other things, that a tribunal will only reject evidence if it is in the interest of justice to do so. The standard of proof required by the tribunal is that the prosecution has to prove to the "satisfaction of the tribunal" that the accused committed the offence. This means that a tribunal has to be sure to its satisfaction that the accused has done what he is said to have done.

The general rule is, thus, that in every trial before the tribunal, it is for the prosecution to prove that the accused has committed the offence; if the prosecution fails the accused shall be acquitted. There is, however, one important exception to this rule: where any accused is charged before the tribunal with an offence found by a Committee of Enquiry, then all the prosecution has to do is to show the tribunal a copy of the preliminary findings made against the accused; it shall then be for the accused to show that he should not be punished for the offence.

The Law explicitly provides that a person tried by a tribunal is entitled to be represented by counsel of his own choice. The Bar officially boycotts the tribunals (see below); some lawyers are, however, appearing before the tribunals.

Criticisms of the Public Tribunals

The Board of Public Tribunals had its inaugural sitting on 15 September 1982. One week later the Ghana Bar Association met in Kumasi and resolved that lawyers in private practice should not appear before the tribunals. This boycott is still in effect today, despite its non-observance by some lawyers.

The reasons put forward by the Bar were:

1. the tribunals represented a misguided attempt to supplant the ordinary criminal courts;
2. the lack of a right to appeal;
3. the lack of a right to invoke the supervisory jurisdiction of the High Court of Justice to protect accused persons from breaches of natural justice;
4. the jurisdiction which has been given to the tribunals, extending all the way to power of life and death is already vested in the ordinary courts; and
5. it is prejudicial for the tribunals to decide in advance that technicalities will not be tolerated.

The background of this firm stand of the Bar Association may be found in article 2 of its Constitution which states as one of its objects and aims, *that the Association is committed to the protection of human rights and fundamental freedoms as defined under the United Nations Universal Declaration of Human Rights.*

The Bar still maintains its position, despite the introduction of a right of appeal in the new Public Tribunals Law (PNDCL 78, 1984). This Law introduces a right of appeal from decisions of the Regional Tribunal to the National Tribunal and from decisions of the Community and District Tribunals to the Regional Tribunals. No appeal shall, however, lie against the decision of a Regional Public Tribunal in the exercise of its jurisdiction, except with leave of either that Regional Public Tribunal or the National Public Tribunal. The decision of a Regional Public Tribunal or the National Public Tribunal to refuse leave to appeal shall be final and shall not be subject to appeal.

The new Law, however, still ousts the supervisory jurisdiction of the regular courts in very clear words: "No court or other tribunal shall have jurisdiction to entertain any action or proceedings whatever for the purpose of questioning any decision, finding, ruling, order or proceeding of a Public Tribunal set up under this Law;..." (art. 27(1) PNDCL 1984).

It is clear that also under the new Law the ordinary courts are still standing on the side-line. No right of appeal lies to the ordinary courts

and the supervisory jurisdiction of these courts is completely ousted. It is highly likely that the Bar will lift its boycott only when the Law provides for these mechanisms of control. Those lawyers who break the boycott are considered by their colleagues to be the renegades of the profession.

The boycott does not mean that the the Bar or the members of the regular courts do not share some of the criticisms which led the PNDC to the establishment of a dual system of courts, but they insist that other solutions should be found for these points of criticism. They point in particular to the lack of facilities for the regular courts, e.g. modern office equipment (much is still being done in long-hand writing) and the inadequate number of judges. Some even do not object to the existence of special tribunals as such (as mentioned earlier, such tribunals have previously existed in Ghana), provided that a right of appeal lies to the ordinary courts and that their supervisory jurisdiction is left intact. The criticism that the legal system has created separate standards for the poor and for the rich is rejected by both lawyers and judges. They underscore, however, that Ghana is badly in need of a full-fledged system of legal aid; at present, legal aid is only provided for in certain narrowly described cases.

Personal observations

During his stay in Ghana, the author of this report attended several sessions of the Public Tribunal in Accra. The cases tried concerned among others nine persons accused of sabotaging the economy of Ghana. Five lawyers were present to defend the accused. After the charges were read, the first witness was called and sworn in. After replying to the questions of the prosecutor the witness was cross-examined by counsel. The tribunal was chaired by a legally qualified person in a flexible, but diligent way. There was an impression of an apparent search for the truth, which also characterized the other sessions of the Public Tribunal the observer attended.

Such attendance does not provide a legitimate basis for any positive or negative judgment about the public tribunals system in Ghana. It befits an outsider to refrain from any definitive judgment. He may, however, make some general comments in the light of Ghana's commitment to universally agreed principles of the administration of justice, taking into account the relevant aspects of Ghana's history. Before

embarking upon such an appraisal of the Public Tribunals, some remarks will, however, be made on the present role of the regular courts and on prison conditions in Ghana. The last section of this chapter will be devoted to some general comments on the present-day administration of justice in Ghana.

The regular courts

The regular courts have been severely criticized by the PNDC, as was explained in the previous section. The establishment of the Public Tribunals by the PNDC gave rise to the fear that it was the ultimate aim of the PNDC to dismantle the system of regular courts in Ghana and to replace it by a hierarchical system of Public Tribunals. This fear has been allayed by various government statements. On 12 January 1984 the Chairman of the PNDC, Flight-Lieutenant J.J. Rawlings, sent a message to the Annual Conference of the Ghana Bar Association in which he stated that the aim of the Public Tribunals is "to deal with certain areas of social misconduct as an *alternative judicial system* (author's emphasis) for the prompt and effective assessment and adjudication of specified matters". The recent passage of the new Public Tribunals Law (PNDCL 1984) also seems to underline this limited aim.

The regular courts are, thus, allowed to fulfil their traditional functions. In the criminal law field, however, the line of division between the jurisdiction of the regular courts and the Public Tribunals is not drawn in an unequivocal and precise way. Some criminal cases are referred to the regular courts, whereas others are referred to the Public Tribunals. Criminal cases arising out of reports of Committees of Enquiry are invariably referred to the Public Tribunals, but in most other instances it is not clear which criteria are being used.

For the accused, this lack of clarity regarding the exact competences of the Public Tribunals and the regular courts, and regarding the reference of cases to them, is disturbing for various reasons. The punishments imposed by tribunals are often heavier than those imposed by the regular courts; moreover, the standard of proof required by the regular courts is stricter than that required by the tribunals. Also relevant in this respect is that till very recently there was no right of appeal from convictions by tribunals, whereas such a possibility of appeal exists as of right from decisions of the regular courts.

The proper functioning of the regular courts has been made very

difficult during the first years of the PNDC regime. Most noticeable was the murder of three High Court judges and a retired army officer in June 1982. These murders are considered to be one of the darkest pages in Ghana's history of independence.

A Special Investigation Board was set up to enquire into the murders. After having published an Interim Report it issued a final report in March 1983, and five people, including a former member of the PNDC, were subsequently tried and sentenced to death by a Public Tribunal (four, including a PNDC member, were actually executed). Nevertheless, this affair has caused a great deal of anxiety among the members of the Bench in Ghana. Several judges who had temporarily fled the country after the murder decided not to return and accepted posts elsewhere. In general there still is the feeling in Ghana that the whole truth of this matter, especially the implication in the murder of other members of the PNDC or its close advisers has not yet been revealed.

Another event causing anxiety among the judiciary was the occupation of the Supreme Court building in June 1983 by Workers Defence Committees of Accra and Tema (Accra's harbour township). It was made virtually impossible for the judges and for lawyers to enter the building. The claim was made by people speaking on behalf of these Workers Defence Committees that the time had come to abolish the old judicial system and to replace it by what they called "a more dynamic and egalitarian people's judicial system". They also called for the dissolution of the Judicial Council and for the abolition of the post of Chief Justice. A few days later the Attorney-General announced, however, on behalf of the PNDC that F.K. Apaloo would remain Chief Justice and that his post would not be abolished.

Members of the Bench frequently pointed out to the author of this report, that the judiciary lacks adequate facilities. They mentioned in this regard the inadequate office facilities and the permanent shortage of even basic materials, such as stationery. They also referred to the inadequate number of judges and qualified court personnel. In contrast, they underlined that the Public Tribunals receive ample personnel and office equipment. At various times the urgent need for a legal aid system was mentioned. Such a legal aid system was already suggested by a Bench-Bar-Faculty Conference in 1975, but so far no official action has been taken; the Bar Association is now taking a private initiative to set up a modest legal aid system.

The judiciary prides itself on its independence vis-à-vis the government. It was emphatically denied that there was any government inter-

ference with the functioning of the courts. Doubts were, however, expressed about the independence of the Public Tribunals from the government. Various instances were cited of direct or indirect government interference with their functioning.

Prison conditions

During his time in Ghana, the author was allowed to visit the Nsawam medium-security prison, 20 miles from Accra. He moreover had the occasion to interview the Minister for the Interior, the Acting Director of Prisons, and the Director of the Nsawam prison. At this prison he was given a guided tour, he visited the deathrow and he was allowed to interview, in the presence of the Director of the prison, some prisoners. These interviews will be mentioned in more detail in the following chapter.

In this section some impression will be given about the prison reform policies of the present PNDC regime. It was not denied that the conditions in the Ghana prisons had been bad, particularly during the period of famine in 1983. During that time many prisoners died of malnutrition. It was this lamentable state of affairs that led the government to undertake a programme of prison reforms. Relaxation of visiting hours and weekend paroles are among others being considered. The need for a change in philosophy towards convicted persons is stressed. In various prison institutions efforts are being made to engage the prisoners in industrial activities, such as carpentry, basket-, door-mat- and shoe-making and bakery. The serious economic difficulties Ghana is facing often hamper these efforts, but it was argued that the government is at least making a humble beginning and is trying to get things moving.

These efforts were exemplified during the author's visit to the Nsawam prison. It is a widely laid out prison, built in the early sixties. There are various workshops, but due to the lack of spare parts or inadequate funding, not all of them were fully operational. It is, nevertheless, the author's impression that the present Ghana government is making a serious effort to improve prison conditions within its restricted financial possibilities, and to prepare the prisoners for their return to society.

Appraisal

In the previous sections the author has tried to present an objective analysis of the emergence of a dual courts system in Ghana, the regular courts and the Public Tribunals. In this section he will make an effort to appraise the role of the Public Tribunals in light of the universally agreed principles of the administration of justice to which also Ghana has committed itself.

Article 10 of the Universal Declaration of Human Rights provides that "(e)veryone is entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". In article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which Ghana regrettably is not a party, the word "competent" (in section 5) is added before Tribunal; this article also provides that "(e)veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". The Universal Declaration further provides, in article 11, that "(e)veryone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence". Section 2 of this same article further states that "(n)o one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed".

The main question is whether Ghana's Public Tribunals meet these universal criteria. As was made clear earlier on, the tribunals were established because of criticisms of the regular courts system. The main aim of the tribunals would seem to be to provide for a speedy form of criminal justice. It seems that no objection can be put forward against the establishment of special tribunals, such as Public Tribunals, provided that all necessary guarantees are created for their impartiality and independence, for the fairness of their procedures and for a right of appeal against the imposed sentence. Otherwise, the Public Tribunals may just be an instrument of gloom and terror, as was aptly pointed out in one of the author's interviews.

Are the Public Tribunals truly impartial and independent from the Ghana government? A definitive answer to this question can not, of course, be given after a two-weeks stay in Ghana. But this does not

mean, that some matters of concern should not be raised. There are first the various instances mentioned in Ghana about the direct or indirect interference of the government with the functioning of the tribunals. The tribunals are generally regarded as an organ of the executive. Moreover, the members of the Board of Public Tribunals and of the tribunals themselves are appointed by the PNDC; previously the Law did not provide for any specified term. The new Public Tribunals Law (PNDC 78, 1984) provides that members of the District and Community Public Tribunals shall be appointed by the Board of Public Tribunals for a term not exceeding two years and shall be eligible for re-appointment. The Law does not state any specific criteria for the selection of the members. It contains, however, a provision for the removal of a member of a Tribunal by the Board on grounds of proven misconduct, counter-revolutionary activity, or inefficiency or inadequacy in the performance of his functions as a member of the Tribunal. No provisions are, however, made for the procedure to be followed in such removals. Neither the very limited term of service, nor the vaguely defined grounds for removal, appear to create the necessary guarantees for the impartiality and independence of the tribunals.

It is striking that the Public Tribunals Law of 1984 specifies neither the terms of service of members of the National or Regional Tribunals nor the grounds of their possible removal. It just mentions that the members of these tribunals are composed of members of the Board of Public Tribunals, which are appointed by the PNDC, and such other persons the PNDC may appoint. The Law, again, does not specify the qualifications for membership for the Board or for that matter of the Tribunals. This may also militate against an impartial and independent attitude of the members of these Tribunals.

Another concern which may be raised in this respect is that the Law does not provide for any specific criteria as to which cases should be brought before the Public Tribunals and which cases before the regular courts. This decision seems to rest entirely in the hands of the investigating authorities and easily lends itself to abuse. This aspect is particularly worrying in light of the fact that the sentencing policies of the regular courts and the tribunals vary widely. The regular courts are bound by the Criminal Code which specifies maximum sentences for offences described in the legislation creating them as first or second degree felony, misdemeanour, etc.; and the courts are free to impose a lesser sentence. The Public Tribunals have, however, both under the former and the present Public Tribunals Law, a wide discretion. The

present Law provides, as did the former Law, for a minimum term of three years imprisonment except where the Tribunal deems this too harsh.

A final concern to be raised with regard to the impartiality and independence of the Tribunals is the lack of legal training of its members. It must be pointed out here that it was very difficult for the government to attract qualified lawyers to serve on the tribunals because of its earlier policies of victimization of the legal profession and because of the Bar Association's boycott of the Tribunals. Moreover, the former Public Tribunals Law provides that at least one lawyer of not less than five years' standing shall be a member of the Board. The new Law contains a similar provision but has dropped the five years' standing requirement. However, neither the former nor the new Law provide explicitly that the chairman of any tribunal shall be a lawyer. In practice, however, a qualified lawyer now presides over each Tribunal.

The fact that members of the Tribunals lack any legal training is particularly worrying in light of the decision-making process of the tribunal. The Law provides that the decision of a Public Tribunal shall either be unanimous or by a majority, except that a decision to impose the death penalty for an offence shall be unanimous (and shall be subject to confirmation by the PNDC). It is noteworthy that the new Public Tribunals Law states that District and Community Tribunals do not have the power to impose the death penalty. Lack of legal training may in this kind of decision-making process indeed be an impediment to an impartial and independent attitude.

At present, the mode of trial of the Public Tribunals seems in general to be fair. A criminal defendant is presumed innocent until proved guilty. In cases arising out of findings of a Committee of Enquiry, there is a shift of the burden of proof. In such cases the accused has to show that he should not be punished for the offence. If the evidence on which the adverse findings of the Committee of Enquiry are based were led in the presence of the person accused and he was given an opportunity of freely testing that evidence by cross-examination, the author would not hold that accepting the adverse findings of a Committee of Enquiry as *prima facie* evidence of guilt, if the facts establish guilt, was violative of any just or fair procedure or as offensive of notions of justice.

Accused persons appearing before the tribunal are by Law entitled to counsel of their own choosing. In the session of the Accra Public Tribunal the author attended, the defendants were in fact all represented by

counsel. It is of the utmost importance that the Ghana Government, given the wide jurisdiction and sentencing powers of the tribunals, ensures that all defendants will be afforded such legal representation. This may, however, *only* be possible if the Government of Ghana tries to reach an understanding with the legal profession which still maintains its boycott of proceedings of the Public Tribunals.

The standard of proof applied by the Public Tribunals gives rise to concern. It is not clear whether the standard used at present, namely "satisfaction of the tribunal", is synonymous with the standard of "beyond a reasonable doubt" applied by the regular courts in Ghana. It is highly desirable and indeed necessary, that the standard of proof be further clarified.

The most critical feature of the system of Public Tribunals until recently was the lack of a right of appeal. No policy reason was ever articulated for the avowed denial of a right of appeal to persons convicted by Public Tribunals. The only conceivable reason must have been that conferring such a right would be productive of delay. With the passage of the new Public Tribunals Law of 1984, the Government of Ghana has corrected this lacuna. A hierarchical system of Public Tribunals has been set up, as was shown above, and a right of appeal has been introduced. It is highly questionable, however, whether the appeals system, now provided for is sufficient in the light of the concerns expressed about the impartiality and independence of the tribunals in general, and the National and Regional Public Tribunals in particular.

As long as the independence and impartiality of the Tribunals are not adequately guaranteed, it would seem that a genuine right of appeal should lie only to the regular courts of Ghana. As one of the informants of the author put it: The introduction of the right of appeal makes very little difference to the human rights situation because the qualifications of the appeal panel remain the same; recently in one such appeal tribunal the Chairman was also the Chairman of the tribunal from which the appeals were coming. Moreover, the ordinary supervisory jurisdiction of the regular courts of Ghana over the Public Tribunals should be restored; this supervisory jurisdiction would empower the regular courts to review the Public Tribunals' decisions if they are made without jurisdiction or in breach of the rules of natural justice, or if they exhibit an error of law on the face of the record.

In concluding this section, the author would like to make some general remarks. The criticism made of the regular courts of Ghana is not a matter peculiar to Ghana. Similar criticisms are heard in other countries.

Some of those criticisms are fair and genuine. They may lead to an improvement of the existing system of administration of justice.

An important criticism made in Ghana concerned the matter of delays in the regular courts. It is important to emphasize in this respect that delay in the field of criminal justice is not per se objectionable, but only excessive delay. It is true, that the public interest demands that justice must be administered with dispatch. But it is also true that justice will rarely result if the criminal process is too hasty. It is important to bear in mind that trial, especially in criminal matters, is a meticulous process and that slowness, if not delay, is unavoidable.

In Ghana, the Public Tribunals are already facing delays in the handling of their workload. It is undeniable that such delays will occur more often with the introduction of the right of appeal. Acknowledging the need for a speedy trial by special Public Tribunals for certain specific widespread crimes and misdemeanours in present-day Ghana, provided they do not depart in their procedures from universally agreed upon principles, one may wonder why the Government of the Republic of Ghana has not opted for a further strengthening of the regular courts. This could have been done, for example, by increasing court personnel and court facilities, by providing incentives for hard-working and devoted officers to be attracted to judicial work and by reforming and reviewing procedural rules. In that manner the regular courts would have been in a position to deal in an efficient but prudent way with possible appeals from Public Tribunals and to exercise, equally efficiently and prudently, their supervisory jurisdiction, provided that the Law made this possible.

The Ghana Government has instead opted for another solution by establishing a hierarchical system of Public Tribunals which, as has been indicated above, has given rise to concern about their impartiality and independence. In having established in this way a dual system of courts in the field of criminal law, the Government of the Republic of Ghana has created serious doubts about its attachment to the Rule of Law, as formulated inter alia in the Universal Declaration of Human Rights, in relation to the promotion and protection of the rights of the accused persons.

International Commission
of Jurists (ICJ)
Geneva, Switzerland

Human Rights in Ghana

General situation

“Human rights are being violated (in Ghana)”: this was the headline of the June 1984 issue of the Christian Messenger, which appeared during the author’s visit to Ghana. The paper referred to the poor record on human rights of the PNDC regime since it took over the reins of government on 31 December 1981, by listing the most glaring examples of violations of human rights.

The Christian Messenger’s opinion was corroborated by numerous informants. It was especially during the first two years of the regime that, as it is alleged, grave violations of human rights took place. At the same time, there was a general feeling that this situation has abated during 1984, although not drastically.

It is not possible within this context to give a detailed account of all events since the PNDC took over power. In this section the author will seek merely to give a general overview of the human rights record of the PNDC. In the following sections he will comment upon certain particular human rights, including the right to development.

It cannot be gainsaid that many Ghanaians welcomed the change of Government that took place on 31 December 1981. Many, however, have become disillusioned by the occurrences that have followed the takeover. Most notorious was the wanton destruction of human lives. Reference has already been made to the brutal murder of three judges and a retired army officer in 1982; this was the climax of the numerous kidnappings and killings that had taken place earlier on. In July 1982 the Association of Recognised Professional Bodies published a long list of names of people murdered during the first months of the PNDC regime.

The violence that Ghana experienced during the first two years essentially took three forms. First, there was the violence by supporters of the regime, quite often the newly established Workers Defence Committees and People's Defence Committees, which were given only vaguely defined powers. These supporters were often organised into gangs of thugs to attack opponents or critics of the government. It is only recently that these Defence Committees have been brought under some government control. Secondly, there was violence emanating directly from the government or coming from within the government itself. And finally, there were several cases of individuals taking the law into their own hands to settle personal scores. There was a general situation of lawlessness within Ghana during 1982 and a great deal of 1983. It is only since the second half of 1983 that the PNDC has been making an effort to restore law and order. But many informants stressed that Ghana is still a country where people cannot live free. Although the government is reducing the scale of atrocities, there is still wide-spread fear of "the knock on the door".

Some examples may further clarify the kind of violence Ghana has recently experienced. First reference should be made to the violent seizure and occupation of masonic lodge temples constituting a serious threat to the right of association. Another example in point are the numerous road checks and often degrading body searches which affront human dignity. There have been, moreover, many instances of beatings and harassing of pastors and disruption of congregational worship, which threaten the right of freedom of worship. Not only pastors have been harassed but also lawyers and other professionals who have been described as parasites and hunted like animals. Often phrases appeared, such as "enemies of the people", "reactionaries" and "counter-revolutionaries", to characterise and stigmatise such professionals.

After the takeover by the PNDC, numerous people were detained without any charges being preferred against them. Most of them have been released, but there are still many people detained at the present time who have not been formally charged. Some arrests have been made in secret and the detainees remain in prison, hidden. The issue of detainees will be discussed in more detail in the following section.

It was during this deepening crisis in the first two years of the PNDC regime, aggravated by various abortive coup attempts, that the Association of Recognised Professional Bodies, the Bar Association, the Christian Council of Churches, the Roman Catholic Bishops' Conference and the National Union of Ghana Students (NUGS) separately asked

the PNDC in 1982 and 1983 to resign and to hand over power to a representative government. The position of the students' union is particularly interesting, since they initially supported the coming into power of the PNDC. This initial support was based on the revulsion felt by students at the systematic and organized plunder of Ghana by the government of the Third Republic and the flagrant violation of the provisions of the 1969 Constitution. Students also based their support on the worsening of the living conditions during the Third Republic forcing many young people to flee to neighbouring states, notably Nigeria, to avoid committing economic suicide. In the early months of the PNDC regime students actively participated in Task Forces set up to secure the harvest of cocoa in early 1982.

After less than four months, however, there were the first signs of student opposition. This had grown out of the experiences of brutality in the Task Forces and out of a general feeling of disillusionment about the derailment and betrayal of the ideals and aims of the PNDC revolution as exemplified in the then emerging system of injustice, opportunism, and brutal oppression and repression. Students staged various demonstrations in 1982 and 1983, which were ruthlessly suppressed by the government. In May 1983 the campus of the University of Ghana was invaded by militant workers who occupied for some months one of the halls of residence, dispensing justice in their own way by beating up students and some of the lecturers.

As a result of the opposition of students the government decided to close down the three universities in Ghana, in May 1983. The then Chairman of the NUGS and various other student leaders sought exile in neighbouring countries. It was only in March 1984 that the universities were reopened. The former Chairman of the NUGS was allowed back to the country, but has to report every day to a police station. From March-June 1984 students were not engaged in political activities; they had come back to prepare themselves for their examinations. They experience, as do all other Ghanaians, the serious economic difficulties Ghana is still going through. Students live on very restricted food rations and they have to pay high fees. Further, there are regular electric power and water-cuts. And finally, they are studying at universities where about 60 per cent of the lecturers have left the country for economic or political reasons.

Some reference has already been made to the poor economic situation of Ghana. When the PNDC took over power at the end of 1981, the country was in an economic mess due to the mismanagement and

other factors which had occurred during the Third Republic and before. In the first year and a half of its existence the PNDC did not create any new economic programmes for the country. Instead, it often used brutal force to impose price control and to ensure the flow of goods. Consequently, the economy that was generally regarded to be bad in December 1981 has since become worse. For most Ghanaians, it became difficult if not impossible throughout 1982 and 1983 to survive. Shortages of most food items, even those locally produced, were the order of the day; there were also shortages of basic drugs. This bad economic situation was further aggravated by a very serious drought in 1983 causing a famine in Ghana. It was only in the second half of 1983 that the government finally, after lengthy negotiations with the IMF, the World bank, the African Development Bank and a number of Western countries, started a programme of economic recovery. Food aid was given by various countries so as to alleviate the worst of Ghana's problems. The present situation will be discussed in a later section.

With hindsight it can be said that 1982 and 1983 were very dark years for Ghana. No mention has yet been made of the curfew which was imposed on 31 December 1981. This became part of daily life in Ghana. The curfew hours shifted from 6 p.m. to 6 a.m. at first to 10 p.m. till 5 a.m. in the last days of the curfew. The curfew, which enhanced the feeling of insecurity many Ghanaians had, was finally lifted in June 1984. The closure of the borders was at the time motivated by the Government's need to check currency trafficking and smuggling. It is not known whether this closure, which made Ghanaians prisoners within their own country, has served the desired purpose.

Now, in 1984, it is generally agreed in Ghana that the situation has improved in comparison with 1982 and 1983. The PNDC seems at present to be more in control of the country and especially of the People's and Workers' Defence Committees. Police brutality and arbitrary killings and disappearances have abated. The universities have reopened. The economic prospects have improved due to the agreement between the Ghana government and the IMF and to bilateral aid from individual countries. Moreover, the rains were profuse during 1984; this will make Ghana less dependent on foreign food aid and imports of foreign food items, at least during this year.

This does not mean that the present situation in Ghana is altogether a rosy one. People critical of the PNDC say that the present government is only trying to give the revolution a human face to please the IMF and

western donor countries. Others argue that the PNDC is finally following the right path, but is perhaps doing far too little and far too late. In the following sections the author will consider some specific human rights, including the right to development.

Civil and Political Rights

Freedom of expression and of the press

The Universal Declaration of Human Rights provides in article 19 that "(e)veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". The role of the press in championing the freedoms of the individual is a sine qua non in any democratic structure. A free press cannot itself guarantee the liberty of the individual. Nevertheless, a free press ensures free exchange of ideas and thereby provides a kind of mirror portraying the activities of both the government and the governed. The importance to be attached to freedom of expression is also embodied in some famous sayings of the Akans of Ghana, as was pointed out to the author. These sayings are: "The one man making a path can never be sure whether the path behind him is crooked or not" and "One head does not go counsel". They reflect the traditional Ghanaian belief that no one person can be right.

In Ghana, individual freedom of expression is strictly limited. Some will argue that there is no freedom of expression at all, except to praise; there is only freedom of expression for those who support the government. Others put it more cynically: there is freedom of expression provided that you say the right things. There is at present some room for criticism of the methods of those who hold governmental power; criticism of persons within the government may, however, be met by sharp retaliation. Government officials to whom the author put the question of the existence and scope of the freedom of expression in present-day Ghana pointed to the Annual Budget Seminars and to the various symposia the government organises in order to solicit the views of the people of Ghana on the Economic Recovery Programme. The general impression of the author was, however, that people fear to speak their minds on political issues; this was also the case on the University campus which throughout Ghana's history has been a free haven for

exchange of ideas and opinions. It is only very occasionally that during public meetings of private organizations a debate on public issues takes place. A recent example in point was a symposium organized by the Ghana section of Amnesty International on the theme of Human Rights in a Changing Environment; during this symposium various speakers voiced sharp criticism of the human rights policies of the PNDC regime. It is only by way of private organisations, such as the Bar Association, the Association of Recognised Professional Bodies, the Churches and the National Union of Ghana Students, that the voice of certain segments of the people is still heard in Ghana.

This leads to the question of freedom of the press. Ghana's press system consists of two parts — the state owned media (including radio and television) and the privately owned media. Successive governments in Ghana have in one way or another tried to control the state-owned press, radio and television. The present PNDC exercises the strictest control possible: opposing views are not tolerated. The public is denied information about what is really going on in the country. A small, but nevertheless significant example of this occurred during the author's visit to Ghana. The state-owned press refused to announce a memorial service on July 3, 1984 for the three slain judges who were killed two years before; no reasons for this refusal were given.

The once flourishing private press of Ghana has been silenced in various ways. The private papers were never formally banned, as some government officials stressed. Their publication has been made impossible, however, by threatening the printers of these papers with withdrawal of government orders, with non-renewal of licences or non-issuance of licences for importing newsprints, paper, ink, etc., by harassing the editors and in one case by imprisoning the editor of a paper, called ironically the Free Press, after he had published an article critical of the government. In questioning the editors of one such private paper (which is not published any more for the above reasons) whether it would be feasible to resume publication, the answer was unequivocal that this would be highly unsafe under the present conditions in Ghana. Notable exceptions to these "informal" bannings of private papers are the Catholic Standard and the Christian Messenger. These papers, published by the Catholic Bishops' Conference and the Christian Council are, due to the ever present shortages, published irregularly and distributed only on a limited scale. They provide, however, a platform for public debate on national policy issues and for objective information on Ghana's state of affairs.

The author also raised the matter of the virtual killing of the freedom of the press with various government officials. It was argued by them that an unrestricted freedom of the press would not be possible in the light of the fragile nature of the ongoing revolution. It would lead to serious problems by antagonizing the various social classes. In the still explosive atmosphere, press freedom could easily be exploited to disrupt the social order. It was again emphasized that the government never formally banned a newspaper.

It is not appropriate here to discuss the possible scope of the freedom of the press in a country like Ghana. It is granted that the scope of this fundamental freedom may vary from one country to another depending upon social, economic and other factors. A drastic curtailment of this right is, however, only justified in times of public emergency threatening the life of the nation and the existence of which is officially proclaimed; such curtailment should take place only to the extent strictly required by the situation (article 4(1)ICCPR). Ghana does not have any officially proclaimed emergency. The strict government control of the state-owned press (including radio and television), and the "informal" banning of private papers can only lead to the conclusion that freedom of the press in Ghana is at present at its lowest ebb.

Political prisoners

Immediately after the coup, many people, mostly former officials of the government of the Third Republic of Ghana, members of the then ruling party and other government supporters, were detained. Their detention was legalized by the Preventive Custody Law (PNDCL 4, 1982), which was passed on 2 March 1982 and given retroactive effect to 2 January 1982. This Law empowers the PNDC to authorise by executive instrument the arrest and detention of any person in respect of whom the PNDC is satisfied that it is in the interest of national security or in the interest of the safety of the person. Any person detained under this law may be held in such place and for such period and subject to such conditions as the PNDC may direct.

Most persons taken into preventive custody immediately after 31 December 1981 have since been released. Three of them, however, still remain in prison; these are two former ministers of the government of the Third Republic and a former member of parliament. They have now

been in prison for more than 34 months; no charges have, so far, been preferred against them. One of these prisoners is in ill-health and remains in a hospital. He has repeatedly requested the Head of State of Ghana for release from custody on medical grounds, but so far in vain.

The PNDC has repeatedly used its powers under the Preventive Custody Law to take persons into preventive custody. Many of them stayed in jail for periods of up to 17 months without charges being preferred against them. During the author's stay in Ghana, it was mentioned to him that habeas corpus proceedings were envisaged on behalf of persons in detention, including service personnel and the above-mentioned detainees. Early in August 1984 a habeas corpus application was actually filed in the Accra High Court by the Bar Association on behalf of 35 persons. On 15 August 1984 the Director of Public Prosecutions produced an unnumbered and unpublished PNDC Law to the Court, prohibiting the Court from enquiring into the grounds by which detention under the Preventive Custody Law is authorised by the PNDC. The Director, therefore, raised a preliminary objection to further consideration of the application.

Counsel for the applicants attacked the so-called PNDC Law stating that it could not be considered a valid enactment, because it was neither numbered nor published. The Director of Public Prosecutions countered this by pointing to Section 4(6) of the PNDC Proclamation which makes the PNDC's enactments effective on the day they are made. On 20 August 1984, the Judge announced his ruling: he dismissed the application because of the contents of the PNDC Law produced by the Director of Public Prosecutions and because of Section 4(6) of the PNDC Proclamation. The PNDC Law has since been numbered 91 and published in the Gazette.

The application for habeas corpus by the Bar Association on behalf of the 35 detainees was certainly a deed of courage and fully in accordance with article 9 of the Universal Declaration of Human Rights, which states that "(no) one shall be subjected to arbitrary arrest, detention or exile". The swift action of the PNDC to deprive the judiciary of the power to enquire into the grounds for taking a person into preventive custody, must occasion strong disapproval. The new Habeas Corpus (Amendment) Law (PNDC 91, 1984) gives the PNDC virtually unlimited powers to detain any person whom they consider a threat to national security.

When the question of persons detained under the Preventive Custody Law was raised with government officials, it was alleged that investiga-

tions against these persons were under way. Due to the nature of the crimes involved and the inadequate equipment of the investigative branch, these investigations sometimes take a long time. However, in the opinion of the author, these arguments do not justify the violation of the basic rights of the individual, that he shall be informed of any charges against him and that he shall be entitled to trial within a reasonable time or to release.

During his visit to a medium-security prison (supra) the author met with two prisoners detained under the Preventive Custody Law. Their detention was authorised by an Executive Instrument passed only on 15 June 1984; their detention, however, began in June 1983. The two had been detained after they had criticised the PNDC in articles in the Free Press, a private paper which disappeared with the incarceration of the journalists. The owner of the Free Press had also been detained, but was released, on medical grounds, just before the author's arrival in Ghana. The two journalists were released two days after the author's departure. It was sad to receive the news that one of them died in August 1984; some are of the opinion that the cause of his death might be associated with his detention.

Many of those with whom the author spoke argued that, apart from the persons taken into preventive custody, there are also many people detained by the police and by the military. When the matter of those detained by the police was raised with the Minister of Interior, he acknowledged that the police sometimes illegally detain persons in order to take bribes. He was planning to mount an exercise in which every cell would be checked. All illegally detained persons would be released and responsible officers would be either disciplined or prosecuted.

In summing up, the author would like to emphasize that most people detained under the Preventive Custody Law have been released. Those who still remain in prison under this Law are, of course, still a cause for great concern, which is enhanced by the now formally outlawed possibility of testing the grounds for their detention by way of a habeas corpus application. All these persons should either be forthwith brought to trial or released. The matter of the alleged illegal detentions by the police and military is also a cause for great concern. It is hoped that the envisaged action with regard to police detention will take place simultaneously with similar action with regard to military detention.

The right to vote

In article 21 of the Universal Declaration of Human Rights it is provided in Section 1, that "(e)veryone has the right to take part in the government of his country, directly or through freely chosen representatives". Section 3 of this article states further that "(t)he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".

With the suspension and later abrogation of the Constitution of the Third Republic by the PNDC regime, these rights were equally abrogated. The Proclamation by which the PNDC established itself provided, however, for two new institutions which are relevant to the above-mentioned rights: the National Defence Committee and the National Commission of Democracy. Both these institutions merit further attention.

The Proclamation provided for a National Defence Committee which shall advise the PNDC in the exercise of its functions. Also Regional and District Defence Committees were envisaged. In the Amendment Law to the Proclamation (PNDCL 42, 1982) the powers of the National Defence Committee were set out in detail. The most important are that the Committee shall be responsible for developing, promoting and executing through the People's Defence Committees a programme of national education on the objectives of the Revolution in pursuance of the Directive Principles of State Policy and the political programme of the PNDC for the revolutionary transformation of Ghana, and for coordinating and administering the activities of People's Defence Committees.

The People's Defence Committees (hereafter referred to as PDCs) were, thus, given a primordial role in the revolutionary process Ghana was embarking upon. They were seen as the foundation of the Revolution. Their aim is to guarantee the democratic participation of the people, especially the farmers, fishermen and other working people, in the decision-making process of Ghana, and in running the affairs of their villages, towns and cities, their offices, factories and workplaces, and of the nation generally. Another objective of the PDCs is to help expose the internal enemies of the people, both in business and in the bureaucratic state machinery.

Two types of PDCs were set up: PDCs at the community level and

PDCs at the workplace level. The latter are called Workers' Defence Committees (hereafter WDCs). Membership of the PDCs and WDCs is open to all persons who are prepared to uphold and defend the basic objectives of the ongoing revolutionary process and who have a proven record of patriotism, integrity and democratic practice. Continuation of membership depends upon continued revolutionary discipline and hard work.

The author is not qualified, after his limited stay in Ghana, to evaluate the practice of the PDCs. He will simply refer to some comments on the PDCs he heard while he was in Ghana. It is generally acknowledged that the PDCs in the first days after their establishment often took the law into their own hands; sometimes the PDCs even created their own courts by which enemies of the people were tried. Others referred to the arbitrariness of the PDCs in the exercise of their functions, such as food rationing. The PDCs and WDCs also often harassed people considered to be enemies of the revolution, such as managers. On the other hand, it is stressed that various PDCs have undertaken relevant community and work-place projects and that they have provided for the first time a mechanism by which the man in the street can take a meaningful part in the political process.

It is granted that the PDCs, if properly used, may provide a platform for Ghanaian citizens to participate meaningfully in the development and political processes of the country. In the light of the limited membership of the PDCs and the lack of any rules with regard to the election of the PDCs and the National Defence Committee — this latter Committee is actually appointed by the PNDC and presided over by its Chairman — the structure of People's Defence Committees does not meet the criteria of article 21 Universal Declaration of Human Rights, as set out above.

The second relevant institution in this respect is the National Commission for Democracy. This Commission exercises the functions of the Electoral Commission under the suspended 1979 Constitution. In addition it is responsible (under article 32 of PNDCCL 42, 1982) for the formulation, for the consideration of government, of a programme for a more effective realization of a true democracy in Ghana, and for the winding-up of political parties that were in operation before 31 December 1981.

The PNDC is at present considering a programme for decentralization. It is true that governmental powers have throughout Ghana's history been centralized with the national government. Various earlier

proposals for decentralization have not materialized. The programme the PNDC is now considering provides for devolution of central administrative (not political, it is added) authority to the regional, district and local level in order to ensure popular grassroots participation in the administration of the various areas concerned from the standpoints of the planning, implementation and monitoring of those services which go to improve the living conditions of the people and the orderly, fair and balanced development of the whole country.

A new three-tier system is envisaged. The basic units are the Area-Town-Village councils, administered in cooperation with the local PDCs. The next level is formed by the District and Regional Councils, which will coordinate the activities of the Area, Village and Town Committees. The third level will be formed by the People's Assembly. In this way the PNDC envisages doing justice to its motto Power to the People.

This programme is not yet law, although the hope was expressed that the various local committees could be established by the end of 1984. It is, thus, not yet clear what kind of elective processes will be used. Government officials made it very clear, however, that the envisaged new democratic structures will not provide for political parties. The author would like to express his hope that the PNDC will soon enact its programme of decentralization and will meet, thereby, the standards set in the Universal Declaration of Human Rights.

The author would finally refer to the various instances in which the PNDC was requested by various organizations to organise a referendum. The PNDC has so far turned a deaf ear to this request. Many people stressed to the author the importance of their having a referendum on the government's policies, and moreover of their fundamental right to choose their own leaders. It is hoped that the PNDC will heed this strongly felt, fundamental right in devising a new democratic structure for Ghana.

Economic, Social, and Cultural Rights

In the earlier paragraphs, there have been various references to the poor economic situation in Ghana. In the Economic Recovery Programme 1984-1986 (Accra, October 1983), the reasons for this situation are frankly set out; they include:

the maintenance of a fixed and highly overvalued exchange rate that discouraged exports and produced huge profits for traders of imported goods;

large deficits in the government's budgets which resulted in inflationary pressures which further distorted the effective exchange rate;

the imposition of price controls at the manufacturing stage which discouraged production, while giving excessive profits to the unregulated small-scale trading sector; and

misallocation and use of import licenses which created further inefficiencies and denied critical inputs and equipment to high priority areas.

The situation was further aggravated by adverse weather conditions in 1978-1979 and 1982-1983, which seriously reduced agricultural outputs and created major food shortages. Reference must also be made to the rapid growth of the population, the sharp increase in petroleum prices and the expulsion in 1983 of over one million Ghanaians from Nigeria.

These heterogeneous factors interacted to produce a major decline in the economy. No attempt will be made here to describe the implications for the various sectors of the economy of Ghana. It is relevant here to underline that in the course of 1983 the PNDC embarked upon a programme of economic recovery, encompassing all relevant aspects of the economy. A first step was formed by a sharp devaluation of the highly overvalued local currency, the Cedi. Periodic adjustments are envisaged so that the real purchasing power of the exchange rate in terms of the currencies of Ghana's major trading partners is maintained. Important reforms and adjustments in other policy fields, such as fiscal, investment, prices and income, promotion of manufacturing industries, agricultural and transport, are envisaged.

The programme of economic recovery has attracted the support of the IMF, the World Bank and the African Development Bank. It was also favourably received by the Consultative Group for Ghana (composed of various western countries) which met in Paris in November 1983.

As a result of this, foreign aid and loans are again flowing to Ghana so as to alleviate the extreme hardship the Ghana population was experiencing, and to assist the government in its programme of rehabilitation

and restructuring of the economy, which eventually will lead to improved living conditions for all Ghanaian citizens.

Although there is wide support in Ghana for the steps the PNDC has taken to restructure the economy, the PNDC is well aware that its agreement with the IMF and the World Bank is also criticized, especially by various active supporters of the government. The latter tend to see the agreement as a betrayal of the revolutionary ideals of the PNDC. The government is, however, determined to pursue its policy of economic recovery by following a clearly outlined path and by trying to engage the active support of the PDCs and WDCs. Its ultimate aim thereby is to establish, as one government official put it, a social democracy in a Western-European sense. In that respect, it was alleged that the economy of Ghana hitherto could be characterized as an excessive sort of 19th century capitalism.

It should be noted that the economic policies of the PNDC are fully supported by the trade unions, which are organized in the Ghana Trade Unions Congress (hereafter TUC). In an interview with leading TUC officials this was repeatedly stressed. It was acknowledged that in the period immediately following the take-over of the government of the Third Republic by the PNDC, there had been serious difficulties and misunderstandings between the Workers' Defence Committees and the trade unions. The demarcation line of competences and responsibilities is at present clearly drawn. Trade union rights, including the right to negotiate on wages, have been restored.

The economic recovery programme 1984-1986 has provided a framework for the gradual realization of social, economic and cultural rights for the population of Ghana. This does not mean, of course, that the present situation has all of a sudden drastically improved. Life is still very hard in Ghana, especially for the ordinary Ghanaian citizen. The minimum wage on which most Ghanaians live is hardly sufficient to survive. There are still rampant shortages of even essential commodities. Educational and health facilities have broken down. This is also true for other sectors of day-to-day life. Although there seems to be a fairly general feeling in Ghana that the PNDC is taking the right and necessary steps in the economic field in order to secure social justice for all, there are also many people who feel that these measures can succeed only if the PNDC also restores other rights, especially in the fields of the administration of justice and civil and political rights.

The promotion of social, economic and cultural rights is a primary task of the government. It should, however, be supplemented by private

organizations and individuals. In this respect reference should be made to the important activities of the churches in Ghana. Another example in point is the Centre for the Development of People in Accra which is a private, interdisciplinary team engaged in social analysis, theological reflections, public education and social action on issues of justice and human development. This team, composed of young people, is actively engaged in various meaningful projects in Accra, in particular in one of its most heavily populated suburbs (Nima). The Centre is undertaking a project which is aimed at the improvement of health conditions in that area in close collaboration with the local population. Other projects are undertaken or envisaged. Conditions should be created by the government which would enhance the possibility of success of relevant projects of this kind.

Appraisal

Ghana has gone through very difficult times since the PNDC regime came to power on December 31, 1981. In the latter part of 1983 and in 1984 the situation changed. There is now food and the social tensions associated with hunger have lessened. The government is seriously engaged in a programme of economic recovery, which might in the long term lead to an improvement in the living conditions of all Ghanaians.

In the light of the grave economic situation Ghana is still facing, it is understandable that the PNDC is giving high priority to the economic recovery of the country, and to the promotion of social, economic and cultural rights. It must, however, be emphasized, that social, economic and cultural rights on the one hand and civil and political rights on the other hand are equally important. Thus the preamble to the United Nations Covenants on Human Rights states, "that in accordance with the Universal Declaration of Human Rights the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his social, economic and cultural rights, as well as his civil and political rights". In the Proclamation of Teheran and in other important resolutions such as General Assembly resolution 32/130, the concept of the indivisibility and interdependence of all human rights was reaffirmed.

In a United Nations study on the International Dimensions of the Right to Development (UN Doc E/CN/4/1434), it was said that "the relationship between the right to development and other human rights,

is a fundamental one. The key to its understanding lies in not losing sight of the end through a preoccupation with the means. A development strategy based on political oppression and the denial of human rights could perhaps appear to succeed in terms of specific overall economic objectives, but full and genuine development would never be achieved".

It is seriously hoped by the author that the government of Ghana will give heed to the above quotations. The sincere efforts of the government of Ghana to promote social, economic and cultural rights should be sustained by equally sincere endeavours to restore civil and political rights. Freedom of expression and of the press, freedom from fear, and the right to participate in the decision-making process of one's country, are indispensable elements of the right to development. It is in this latter field especially that the government does not meet the international standards set out above. The present situation, which has improved so much in comparison with the first period of the PNDC regime, should now lead on to the restoration of civil and political rights. These measures should in any case include the release or the trial of all those who have been detained without any charges being preferred against them.

Final Remarks and Recommendations

The recent history of Ghana has been marked by a high degree of political instability and a steady deterioration of the economy. The various civilian regimes of the First, Second and Third Republics of Ghana were overthrown in military coups. The military regimes that took over power legitimized their action, especially with regard to the Second and Third Republic, by referring to the widespread corruption existing during the civilian governments and to the urgent need for this to be eradicated. This point was also quite often underlined by the Western press. In various of the author's interviews, it was stressed that this kind of comment induces the military to seize power. During military regimes there is no forum for expressing opinions whereby corrupt practices can be exposed. In these interviews bitter complaints were voiced about the inadequate support, especially of Western nations, for the evolving fragile democratic structures of civilian governments of developing countries, such as Ghana. With reference to European and American history it was argued that corrupt practices do not justify a military take-over and indeed, that there can be no justification at all for the overthrow of an elected government. The only way to change an elected government is by the ballot-box. Military governments are almost always linked with suppression of fundamental rights and freedoms.

In evaluating the present human rights situation in Ghana and in formulating recommendations, it is important to bear in mind these strongly held views, expressive as they are of universal notions of justice. When the present military PNDC regime came to power, the country was in the midst of a deepening economic crisis. It has already been related that during the first 18 months or so of its existence the government did not take any meaningful steps in the field of economic

recovery. The country was plagued by a widespread feeling of insecurity (heightened by various attempted coups) and lawlessness. It is only since the second half of 1983, as has been said before, that the government is earnestly and actively engaged in a process of economic recovery and development.

As a result of this, tensions between the various social classes have abated, but have not altogether faded away. Smouldering beneath the surface is a conflict between various ethnic groups in Ghana. The present PNDC regime is in the opinion of many people in Ghana associated with one particular ethnical group. The brutalities which have often occurred during the PNDC regime, especially during the first two years of its existence, are now ascribed to this ethnic group as a whole. Many fear that this smouldering conflict might erupt one day, unless the PNDC actively engages the whole population in its present endeavours to stimulate the process of development.

What role ought human rights to play in this development process? This raises the further question of the significance of the emerging right to development. It is acknowledged that this right has as yet not been fully clarified by the world community. Authoritative guidance may, however, be found in a Report of the Working Group (of the UN Commission on Human Rights) of Governmental Experts on the Right to Development (Doc AE/CN.4/1984.13). Development in this report is tentatively defined as a comprehensive economic, social, cultural and political process which aims at the constant improvement of the well-being of people and individuals. In an Annex to the above-mentioned report, containing a Draft Universal Declaration on the Right to Development, this right is defined in article 1 (1) as "an inalienable human right of every person, individually or in entities established pursuant to the right of association, and of other groups, including peoples. Equality of opportunity is a prerogative of nations and of individuals within nations". In section 2 of the same article it is said that "(b)y virtue of the right to development, every person, individually or collectively, has the right to participate in, contribute to, and enjoy a peaceful international and national political, social and economic order, in which *all* [author's emphasis] universally recognized human rights and fundamental freedoms can be fully realized".

In this context no detailed survey of the possible ramifications and scope of the right to development can be given. Two aspects should, however, be underlined. First, that the radical restructuring of the existing international economic order is an essential element for the

effective promotion and the full enjoyment of human rights and freedom for all. A second aspect is that States have the right and primary responsibility to ensure development both within their territory and internationally taking into account their responsibilities to human beings and to the international community.

It is from this perspective of the right to development, that the author of this report, respectfully and in full awareness of the grave problems Ghana is facing, submits the following recommendations in the field of the promotion and protection of human rights:

1. The government of Ghana is at present seriously engaged in the implementation of a programme of economic recovery aimed at the improvement of the well-being of all Ghanaians; these efforts, for which the government should be commended, should be seriously continued. The world community of nations and its appropriate organs should assist the government of Ghana in these endeavours.
2. This afore-mentioned programme of economic recovery can succeed only if all Ghanaian citizens are entitled to participate freely in its implementation. The government of Ghana should make it possible for all citizens to participate in the activities of People's and Workers' Defence Committees. It should further devise a democratic structure, which enables everyone to take part in the government of Ghana, directly or through freely chosen representatives in periodic and genuine elections. A first step in this direction might be a referendum, in which people can freely express themselves about the government's policies. Finally in this respect the government is requested to support activities of private groups that are engaged in meaningful community projects.
3. With regard to the system of administration of justice the government should reconsider the establishment of a hierarchical system of Public Tribunals parallel to the regular courts. It is urged to introduce a right of appeal from the Public Tribunals to the regular courts and to restore the supervisory jurisdiction of the regular courts over the Public Tribunals. In the alternative the government is asked to consider the establishment of a Public Tribunal of Appeals, whose members should be elected by the Chief Justice from members of the Bench.

4. With regard to the operation of the Public Tribunals, the government is asked to clarify the standard of proof to be applied by Public Tribunals and to review the sentencing powers of these tribunals. The division of competence between the Public Tribunals and the regular courts should be made clear by the government. Alternatively, the criteria to be used in sending a particular case to either a Public Tribunal or to the regular courts should be stated publicly. Provision should be made by law with regard to the qualifications required for members of Public Tribunals, for a fair procedure in cases of removal of members of such tribunals, and for a legally qualified person to chair a Public Tribunal. Finally, the government should seek an arrangement with the Bar Association so as to provide all accused persons appearing before a Public Tribunal with counsel of their own choosing.
5. The government should restore freedom of expression and of the press. These rights are indispensable for a meaningful participation of the people in the development process.
6. The government should release all those persons who are still in prison without charges being preferred against them or bring them forthwith to trial. The government is further asked to enquire into alleged illegal police and military detentions. The basic right to apply for a writ of habeas corpus should be restored, so that the grounds of any detention can be enquired into by the courts. The government's policy to improve prison conditions is to be commended.
7. It is the author's impression that up to very recently a mood of deep pessimism was all pervasive in Ghana. With the somewhat improved economic situation and the government's sincere efforts in this field, there seems to be a first glimmering of hope and optimism. These feelings of hope and optimism may be reinforced if the government of Ghana will meet its responsibilities under the international law of human rights and the Rule of Law, as laid down in the Universal Declaration of Human Rights. In such efforts the government of Ghana is entitled to the full support of the world community of nations.

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