CHAPTER TWO

THE LEGAL PROFESSION (INCLUDING THE JUDICIARY)

2.0 INTRODUCTION

2.0.1 Lawyers in the Gold Coast were in the forefront of the struggle for Independence, and dominated the first political party that initiated the movement for Independence. Consequently, members of the profession, either as Judges, or Lawyers, continued to play significant roles in national development after Independence was attained. Did these roles have a positive impact on the development of a culture of respect for human rights, or did they make a negative contribution? Did individual members of the Bench and Bar suffer any personal consequences for playing their part in national development? Could they have done more with the opportunities they were presented with during the mandate period? It was to respond to these pertinent issues that the Commission, in fulfilment of its mandate, investigated the role the Bench and the Bar may have played, either in the perpetration of human rights violations, the development of a culture of lack of respect for human rights, or in the development of a culture of resistance to violations of human rights.

2.0.2 This Chapter also documents the contribution that the introduction of a new system of adjudication, as well as new investigative bodies made to the enjoyment or otherwise of human rights by the citizenry. Since these bodies operated outside the generally-accepted norms of judicial and quasi-judicial inquiry, the issue of whether these well-established norms serve a purpose, is brought into focus. This Chapter also recounts some violations and abuses that members of the two groups of the Legal Profession suffered, either individually or collectively, in the course of pursuing their profession. It also sheds some light on Bench-Bar relations and what impact this has made on the nation's post-Independence history.

2.0.3 The events discussed herein, are set down in chronological order and under the political periods during which they took place. Part I is on the Judiciary, and Part II on the Legal Profession as represented by lawyers in general, and the Ghana Bar Association (GBA) in particular.

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PART I: THE JUDICIARY

6TH MARCH, 1957 -- 23RD FEBRUARY, 1966: CONVENTION PEOPLE'S PARTY (CPP) GOVERNMENT

2.0 THE PREVENTIVE DETENTION ACT (PDA) OF 1958

2.1 On Monday 14th July, 1958, the Prime Minister, Dr. Kwame Nkrumah, moved the motion for the Second Reading of the Preventive Detention Bill whose First Reading had taken place that same morning. This Bill sought to empower the Government to detain any person for five years, without a right of appeal to the courts, for conduct prejudicial to the defence and security of Ghana and its foreign relations.

2.2 The need for the Bill was presented to Parliament as follows:

> 1. Ghana had acquired the reputation of being in the forefront of the movement for the independence of the African continent, and there were many forces in the world who would like to see her fail, and could resort to subversion to re-colonise the country;[1]
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> 2. Ghana could not afford to ignore events around her, as there were real security threats in a newly-independent country, which threats were beginning to materialise in Ghana; [2] and
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> 3. The concern of the government about the gangsterism, brigandage, and hooliganism that had become rampant in the country.

2.3 The Bill

2.3.1 The Bill made provision for detention up to five years. In addition, the detainee was to be given the grounds of detention in detail within five days of detention. Opportunity was given to the detainee to appeal against the Detention Order, however, the forum for such appeal was the Cabinet, and not the Courts.

[1] *Parliamentary Debates*, Vol. II No. 10 14th July National Assembly Official Report, Government Printing Department, Accra p 409.

[2] There was an allegation of a coup plot in 1958 involving two members of Parliament, RR Amponsah and Modesto Apaloo and Major Awhaitey, an Army Officer. Subsequently Major Awhaitey was court-martialled for his role in the affair, and dismissed from the Army. All three of them were detained until February, 1966.

2.3.2 Essentially, the PDA gave the Prime Minister the power to order the detention of any citizen of Ghana, if satisfied that the order is necessary to prevent him or her from acting in a manner prejudicial to the defence of Ghana or the relations of Ghana with other countries or the security of the state.[3] It provided that within five days of a person's detention, he or she must be informed of the grounds on which he or she is being detained and given an opportunity of making representation in writing to the President.[4]

2.3.3 The provisions dealing with the period of detention may be summarised as follows:

a. the order may specify a period of detention not exceeding five years,
b. if the person in question evades arrest and fails to comply with a notice requiring him to report to the Police, his period of detention would be doubled,
c. the prisoner may be released before his period of detention has expired, subject to recall if he does not obey stipulated conditions as to the notification of his movements,
d. the Prime Minister may at any time revoke the order or vary the specified period of detention, and
e. except as provided for in (b) above, the prisoner cannot be detained for more than five years, and for this purpose released, subject to recall. After final release no further preventive detention order can be made against the same person except on grounds of activities carried on after the previous order was made.[5]

2.3.4 It is worth noting that the Act expressly provided for its expiration after five years that is 18th July, 1963. Provision was however made for it to be extended for a further three years by a resolution of the National Assembly. All existing detentions however lapsed with all persons so detained entitled to their immediate release when the Act expired.[6]

2.3.5 Therefore, PDA was legislation that:

a. deprived all its victims of their freedom for up to five years in the first instance;
b. gave the government wide discretionary and arbitrary powers;
c. deprived its victims of their rights to seek the protection of the courts against arbitrary Executive action;
d. gave the government the power to target political opponents (as previously noted);
e. created the opportunity for officials of all categories to cause the imprisonment of their personal adversaries;

[3] F.A.R.Bennion, *The Constitutional Law of Ghana*, Bulterworth, London ,1962 p 221.
[4] Preventive Detention Act, 1958 (No. 17), Sec.2.
[5] Ibid, Sections. 3, 4 and Bennion, supra, p. 221.
[6] Preventive Detention Act, 1958 (No 17), Sec. 5.

f. thus, the Cabinet became, at one and the same time, judge and accuser and usurped the judicial power.

Originally, the Bill was aimed at political crimes only.[7]

2.4 Reaction To The Bill In Parliament

2.4.1 The Opposition put up a gallant fight in Parliament against the passage of the Bill. The United Party (UP) Member for Gonja East, J. A. Braimah, argued that while he was in no way against punishing a person for committing a crime, the Bill was unnecessary, because there was already adequate provision made for the situations envisaged by the Bill in the existing Criminal Code. Besides, the Bill departed from the normal practice in English Law, in that under the Preventive Detention Bill "it will no longer be the obligation of the prosecution to prove that crime has actually been committed by the person accused."[8] Further, the Bill would give full rein to the malicious persons who loved to fabricate stories in order to get their enemies into trouble, whilst denying every citizen the freedom of expression. In prophetic tones, he stated that members of the government were

> … suffering from a fear-mania and it is this malady that has caused them to come to this House to ask for such arbitrary, powers. .. The Bill is going to make slaves of all of us in the land of our birth. It is a threat to the liberties of all citizens of this country, including even the ministers and party members of the Convention People's Party…. With these powers in the hands of the Prime Minister, he holds everyone in this country to ransom. The Bill denies to every citizen, I repeat every citizen, of Ghana the freedom of expression. It seeks to deny the people of Ghana the right to criticize the Government; it will deny the people of this country the freedom to meet even at street corners to discuss the events of the day; it will deny the people the right to complain when they are hurt; we are being denied the right to remonstrate publicly against the abuses of power in the strongest terms. And above all, it seeks to deny to this country the freedom of the press.[9]

2.4.2 The UP Member for Sekyere West, R. R. Amponsah, in his contribution to the debate warned that the government was "misusing parliamentary institutions in order to set up a one-party dictatorship in this country."[10]

2.4.3 On his part the CPP Member for Sefwi Wiawso, W.K. Aduhene, spoke in favour of the Bill. He was effusive in his support of the Bill and no one was left in doubt that the

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[7] Geoffrey Bing, *Reap The Whirlwind An Account of Kwame Nkrumah's Ghana from 1950-1966* MACGIBBON & KEE, London, 1968, pp.244-248.

[8] *Parliamentary Debates,* vol. 11, No. 10, National Assembly Official Report, Government Printing Department, Accra, pp.415.

[9] Ibid. p 417-423.

[10] Ibid. p.425.

Majority believed that the Bill was being enacted to deal with the Opposition. He uttered the following ominous words:

> If I were the Prime Minister, I would order people who plan violence to be lined up for the Government Police to shoot them. The Prime Minister is very lenient and the Opposition must be grateful to such a man. If I were the Prime Minister, I would order that such people be killed. The Opposition Members who are wicked but come here and pretend to be innocent men … This Bill … is not enough for the Opposition Members. What I would have the Minister do is to train special warders to handle these wicked prisoners. They must not be treated as political prisoners. They are wicked men and they should be treated as such. I am therefore appealing to the Minister to train special warders to keep such prisoners. These people should not be given special diet. … I want to appeal to the Minister not to deal leniently with those who will be arrested. I have been warned by the people of my constituency that I should not come back to Sefwi Wiawso if I did not support this Bill.[11]

2.4.4 Despite the gallant fight and wise counsel of the Members of Opposition who urged the Majority to look beyond their enemies and to see the threat that the Bill posed to the liberty of every Ghanaian, the Bill successfully went through Parliament and received the assent of the Governor-General on 18th July, 1958. Thus it was that one of the most momentous pieces of legislation affecting the human rights of the citizenry took four days from its First Reading to its receipt of the Governor-General's assent. Its enactment began a long tale of sad events.

2.5 Implementation

2.5.1 In November, 1958, 43 persons, most of whom were members of the UP and originally of the *Ga Shifimo Kpee,* were arrested and detained.[12] In December of the same year, R. R. Amponsah and M. K. Apaloo, the UP Member of Parliament for Anlo South, were detained on grounds of complicity in the alleged "army plot" to overthrow the Government. The arrest and detention of opposition elements continued, and by the middle of 1960, the ranks of the Opposition Members had been decimated. Of the 32 Members, 3 were in detention, 1 had gone into exile, 12 had crossed over to the Government side and only 16 were left.[13]

2.5.2 1960 saw a large number of detentions. It is said that between July and December, 1960 alone, 174 persons were detained.[14] Other estimates put the figure as 255 persons[15].

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[11] *Parliamentary Debates,* vol. 11 National Assembly Official Report, Government Printing Department, Accra pp448-450,

[12] The *Ga Shifimo Kpee* was a movement which protested against the poor housing conditions in Accra and the influx of non-Gas into Accra.

[13] Albert Adu Boahen, *Ghana: Evolution and Change in the nineteenth and twentieth centuries,* Sankofa Educational Publishers, Accra, 2000 p.195

[14] Ibid., p.212.

2.5.3 On 3rd October, 1961, some 50 persons, mostly of the Railway Workers' Union and their supporters as well as leading opponents of Nkrumah, such as Joe Appiah, Deputy

Leader of the Opposition, and Dr J. B. Danquah, the doyen of Ghana politics, were detained. The number included the market women who had provided food free of charge to the striking workers.

2.5.4 On 23rd December, 1961, 118 persons were detained.

2.5.5 The prediction made by the Opposition during the passage of the PDA Bill began to come true when in August, 1962, two Cabinet Ministers, Ebenezer Ako Adjei, one-time confidant of Nkrumah and Minister of Foreign Affairs, and Tawiah Adamafio, the second most powerful person in the country at the time, were arrested and detained in connection with the assassination attempt on the President at Kulungungu.

2.5.6 It is said that the official records of those actually admitted into prisons up to 1963, indicate that about 318 persons were detained between 1958 and 1960;[16] 311 in 1961; 254 in 1962; and 586 in 1963.[17] These figures do not include those held in police cells, detention camps and other places. Some people estimate that at the time of the coup d'etat of 1966, there were some 3000 detainees.[18] Supporters of the CPP dispute these figures and Geoffrey Bing, one-time Attorney-General and Nkrumah's special advisor, claims that there were 788 at the time of the coup d'état in 1966.[19] Indeed Bing maintained that the government of National Liberation Council (NLC) added some detained criminals to the numbers in order to swell them for purposes of political mischief. Although there is no possibility of independent confirmation of the figures, all these persons were citizens who had been detained without trial. Indeed, the absence of accurate records is itself indicative of the haphazard manner in which the detentions were done.

2.6 Application Of The Law

2.6.1 The manner of application of the law was definitely arbitrary. Several people were detained without any proper documentation on them, so that at the time of the coup of 1966, it was not even known precisely who was in detention. There are cases of families having to draw the attention of the Government of the NLC by petition to the fact that a citizen was in detention. A case in point is Ebow Fynn of Cape Coast, who was held in preventive detention for some time without any documentation, and was released only because Mrs. Margaret Pobee, his sister, took a chance and petitioned the Government.

[15] Bing, op. cit. supra, p. 271.
[16] Bing, supra, pp.271-272.
[17] Boahen, op. cit supra, p.212.
[18] John S Pobee, *Kwame Nkrumah and the Church in Ghana 1949-1966,* Asempa Publishers, Accra, 1988.
[19] Bing, pp. 271-272; *Annual Report on the Treatment of Offenders* 1962 Accra (1965) p.15.

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2.6.2 Although the Act was aimed at political crimes, it was soon extended to cover gangsterism, brigandage and hooliganism, and both groups (political opponents and people engaged in acts of social vices) were in equal danger of detention under the Act. In a late rationalisation, Dr. Nkrumah broadcast to the nation on 15th September, 1960, on the subject in these words:

> Gangsterism, brigandage, and hooliganism are now becoming quite commonplace among some of our young people. Although our courts of justice are quite capable of dealing with all manner of criminals, I consider that this new crime wave is of such gravity that it calls for some very stern measures to be taken to crush and stamp it out.[20]

In consequence of its wide reach, the PDA made it possible to detain an assortment of strange bedfellows: common criminals (brigands and hooligans); avowed opposition party members like Dr J B Danquah, E Obetsebi-Lamptey, S G Antor (MP for Kpando North), Joe Appiah (MP for Atwima Amansie), Victor Owusu (MP for Agona-Kwabere), J Kwesi Lamptey, a teacher at Fijai Secondary School and a part-time politician; P K K Quaidoo, himself a member of CPP, who had earned the displeasure of the Government by his bold stand against the shrine of President Ntrumah;[21]as well as the pro-CPP ringleaders of the 1961 strike at Sekondi-Takoradi.

2.6.3 Clearly, a law which was so extensive and placed arbitrary and autocratic powers in the hands of state officials without the opportunity for judicial review was a dangerous piece of legislation. No wonder it was eventually misused and abused.. "Power corrupts; but absolute power corrupts absolutely," and so the operation of this law also silenced the opposition. As Members of Parliament representing the opposition were detained, multiparty democracy died in the country as no one dared espouse views other than those approved of by the CPP.

2.6.4 Dr Danquah represented many of those detainees as legal counsel and made applications for habeas corpus at the Courts. However these efforts came to nothing. It was said the court had no right to hear the cases. There was a definite feeling that the detentions were carried out as a show of strength and in a spirit of vindictiveness, rather than with intent to preserve law and order. In the end, Dr Danquah himself suffered the same fate as those whose rights he sought to defend.

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[20] See *Evening News,* 16th September, 1960. p.1.

[21] In a move to deify Dr. Kwame Nkrumah his birthplace was turned into a shrine. This was done with State funds, and after a debate in Parliament on a Private Member's Motion on 24th May, 1961, by J.A. Kinnah , the CPP Member of Parliament for Eastern Nzimah. There were some protests from within the CPP. A classical example was from the CPP Member of Parliament for Amenfi Aowin, P.K.K Quaidoo. He advised caution during the debate, insisting that such an honour should be left till after the death of President Nkrumah. "Why do we not give posterity the chance to give him greater honour than we are doing today?" he queried. In fact, as a result of his opposition to various issues, he acknowledged that he had already been labelled by some CPP members as a "Catholic slave and hypocrite". See Debate of 24th May, 1961, in *Parliamentary Debates,* First Series, 18th May - 23rd June, 1961 (vol. 23) National Assembly Official Report, Government Printing Department, Accra, 1961 pp.877-891.

2.6.5 In the prisons, political detainees were subjected to severe ill-treatment and torture. Though the prisoners blamed their ill-treatment on the Government, as it seemed as if the warders (prison officers) had been given special instructions to ill-treat them, some of the mistreatment was from the zeal and initiative of prison officers themselves. Some detainees were not sent to prisons, but were in police cells, where they went for months

without a bath. As a result of these hardships, many died in prison and many came out of prison in poor health, and never recovered their good health. For instance, E Obetsebi-Lamptey died in prison on 29th January, 1963, and Dr. J B Danquah died on 4th February 1965, in prison, after thirteen months of a second term of preventive detention, whilst Prof. J. C. de Graft Johnson, upon release, was weak and infirm.[22]

2.7 PDA Re-enacted

2.7.1 In June, 1962, and November, 1963, the Act of 1958 was amended to empower the continued detention for a further five years.[23] For many of the detainees, it was traumatic for them to be informed, a few days before their expected date of release, that their detention had been renewed for a further period of five years. Many were heart-broken, and the feeling that they would never leave the prison alive contributed to their giving up hope, and going to an early grave. The Preventive Detention Act, as amended, was later re-enacted in 1964.[24] The International Commission of Jurists commented on the law thus,

> It is impossible to see respect for human rights and the rule of law when a man may be detained for ten years without ever being accused of any crime, let alone being tried and convicted.[25]

3.0 Conclusion Drawn From Decisions Involving The PDA

3.1 The implementation of the PDA resulted in a number of habeas corpus applications before the courts. One discernible thread that run through the position that the judiciary adopted in considering the habeas corpus applications of the time was the unwillingness of the Courts to hold the Executive accountable. It appeared that the judges were unwilling to question the propriety or otherwise of the decision by the Prime Minister to detain a person. According to the courts, the power of the Head of State to detain a person "*if satisfied that he or she is acting in a manner prejudicial to the defence of Ghana or the relations of Ghana with other countries or the security of the state*" was

[22] *Report of the Commission Appointed To Enquire Into The Conditions Prevailing In The Ghana Prisons Services* "J.B Danquah : Detention and Death in Nsawam Prisons", Extract from Evidence of witnesses at the Commission of Enquiry, Government of Ghana, Accra (1967); E. Obetsebi-Lamptey: Detention and Death in Nsawam Prisons, Extract from Evidence of witnesses at the Commission of Enquiry into Ghana Prisons, Accra (1967).

[23] Preventive Detention (Amendment) Act, 1962 (Act 132); Preventive Detention (Amendment) Act, 1963 (Act 199).

[24] Preventive Detention Act, 1964 (Act 240).

[25] See Bulleten of ICJ No. 18, March, 1964, p.10;See Pobee, supra, p.158.

one they could not scrutinise. In the words of the court in *Re Akoto*[26], the court could only question the legality of the Order, not the truth of the facts therein contained. It thus meant that, in the eyes of the court, if the statutory requirements were adhered to, then the court was not interested in whether the facts alleged by the Prime Minister were true or not.

3.2 The courts appeared to have come out with conflicting views on specific issues. For instance, on whether the Habeas Corpus Act of 1816 was a statute of general application, the court had divergent views. While the court in *Re Akoto* held that it was, the court in *Re Dumoga*[27] held that it was not. This difference of opinion had significant importance for the applicants as it determined whether or not the court could enquire into the truth of the allegations upon which a particular detention order was based. Whilst the Court in *Re Akoto* held that, under the Habeas Corpus Act of 1816, the court was required to inquire into the truth of the grounds stated upon which the Governor-General had become satisfied that the order was necessary to prevent the appellants from acting in a manner that was prejudicial to the security of the state, the court in *Re Dumoga* held a contrary view. It stated that the Habeas Corpus Act, 1816 did not apply in Ghana and therefore the applicants were not entitled to the truth about the charges or grounds of their arrest and detention as stated in the detention order. Further, that it was not the duty of the Court to question the exercise of a discretionary power vested in an executive officer to arrest and detain persons, provided the officer had acted in good faith. The point therefore was that the right to a formal trial before imprisonment, which was a right derived from the Magna Carta and applicable to all former British subjects, as well as the Universal Declaration of Human Rights of 1948, were held not to be available to accused persons in independent Ghana.

3.3 The view of the judges in these habeas corpus cases that they had no power to examine executive actions diminished the role of the judiciary in the protection of the rights of the individual. The courts are expected to be the bastion of the individual's rights and liberties. It must be the place where a citizen who alleges his rights have been violated would run to, to have them restored, if what he alleges is true. The judiciary appeared to have been intimidated into giving up their role.

3.4 There is clear evidence that judges such as Chief Justice Arku Korsah, Justices Akiwumi, Simpson and van Lare, did little to discourage the Executive from violating the human rights of the citizens.

3.5 The detainees had this to say in a letter to the Prime Minister of Great Britain

> …The Supreme Court of Ghana has bound us hand and foot and gagged us and then delivered us and the people of Ghana to the tender mercies of Kwame Nkrumah and his associates… This is so, because the Ghana Preventive Detention Act empowers the President solely in his discretion, to deprive any subject of his or [her] liberty virtually for life;

[26] [1961] GLR (Part II) 523.
[27] [1961] 1 GLR 44.

> the Ghana Courts have held that the discretion is absolute; the President in the exercise of this
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> discretion is not answerable to Parliament, or any court or tribunal; the person detained is denied the elementary, natural justice of facing his accusers or putting his case; there is no provision or protection
>
> whatsoever against the indiscriminate abuse of the powers conferred by the Act.[28]

3.6 In a Report by the International Commission of Jurist (ICJ), the ICJ made the following observations:

> If the *Akoto* and *Vanderpuye* [two of the detainees] cases are typically illustrative, the specific details filed on the ground of detention appear inadequate. Because of the narrow subjective interpretation of the words "if satisfied", the courts have precluded themselves from investigating the ground of the President's satisfaction. Judicial review, therefore, does not seem to have provided in Ghana a strong safeguard for the liberty of the subject.[29]

4.0 Executive Domination Of The Judiciary

4.1 The Chief Justice As Acting Governor-General

4.1.1. Sir Arku Korsah, the first Ghanaian to occupy the position of Chief Justice of Ghana, was appointed in 1950. Between May and November, 1957,[30] while he was Chief Justice, he acted as Governor-General of Ghana. In this capacity he signed the Preventive Detention Act (PDA). As Acting Governor-General, it lay in his power theoretically, to refuse to assent to the Bill, however, how practical this option was, is open to question. He could have refused "in Her Majesty's name".[31] In fact, as it was rumoured that the Governor-General, Lord Listowell himself had timed his absence from the country to avoid having to sign the Bill into law.[32]

4.1.2 The above illustration was not the only act of inconsistency that he committed as Governor-General. As Governor-General, he also signed the Instrument that made Krobo Edusei a Minister, even though he had chaired a Commission of Inquiry that had made findings to the effect that Krobo Edusei was unworthy of public office.[33] These acts of inconsistency fuelled a wide public perception that he was a supporter of the ruling CPP,

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[28] Letter to Rt Hon Harold Wilson, 20th February, 1965.
[29] ICJ Report cited in Pobee, supra.
[30] T.O. Elias, *The British Commonwealth The development of its laws and Constitution. Ghana and Sierra Leone*, George W. Keeton, (ed) Stevens and Sons, London, 1962, p.49.
[31] Bennion, supra.
[32] T. Peter Omari, *KWAME NKRUMAH The Anatomy of an African Dictatorship* Sankofa Educational Publishers, Accra, 2000, p.73.
[33] Bennion, supra, p.28.

contrary to the dictates of the high office of Governor-General and as representative of Her Majesty the Queen of England. This, no doubt, created the impression that the Judiciary was *"in league"* with the Executive, since he was the head of the Judiciary as Chief Justice, and also Head of State whenever he acted as Governor-General.

4.2 The President's Power To Dismiss Judges

4.2.1 An amendment to the original Republican Constitution of 1960, bestowed the power to dismiss the Chief Justice on the President. This was a major step on the road to uncontrolled use of executive power as it gave the Executive the power and opportunity to interfere in, and even control, the work of the judiciary.

4.2.2 After his fall from power, President Nkrumah was criticised for the high-handed manner in which, and the reason for which the power was exercised in 1963. However, the real problem was not so much the use of the power, as the granting of that power in the first place. The President must take some of the blame for this unfortunate provision, as it is clear that he desired, and worked for that amendment. Indeed, as far back as 1960 when the Republican Constitution was being drafted, the wide powers granted to the would-be President became a subject for concern, but criticism of the over-concentration of power in the hands of one person was swiftly squashed. Tawia Adamafio, then an insider, maintains that the ideas captured in the Republican Constitution, and even the wording of some of its provisions, were those of Dr. Nkrumah, as he went over each draft provision meticulously.[34]

4.2.3 These facts notwithstanding, Parliament must also take its share of the blame for providing the opportunity for high-handed executive behaviour towards the Judiciary. It is true that a CPP Member of Parliament had been detained under the PDA for opposing a Motion in Parliament, but it is also certain that the President could not have detained the entire Parliament if they had been more mindful of their responsibility to the public and to the State, and not approved such an amendment that made the Chief Justice susceptible to executive manipulation.

4.3 Judges' Privileges Attacked

4.3.1 On or about the 1st of July, 1960, when some judges were taking their oath of office under the new Constitution, they were instructed by the Executive to do this without their wigs. This had always been part of the attire of judges in Commonwealth countries, and the fact that the judges had to comply already indicated the power of an overbearing executive.

[34] Tawia Adamafio, *By Nkrumah's Side. The Labour and the Wounds*_ West Coast Publishing House, Accra, in association with Rex Collings, London, 1982 p.47.

4.3.2 The traditional title of "Honourable" accorded to judges was also dropped. The title was felt to be the preserve of Members of Parliament and therefore its use by the judiciary was perceived to be an encroachment on the territory of politicians. Indeed Mr. Justice Sarkodee Adoo is on record as saying, "we have been dishonoured", as the judges

felt that the taking away of the title by the Executive, was a symbolic shearing away of their honour. [35]

4.3.3 The domination by the Executive was further demonstrated by the use of financial controls to whittle down the privileges that members of the Bench enjoyed. The judiciary became a "tolerated poor relation" of the Executive.[36]

5.0 Executive Interference In The Work Of The Judiciary

The Executive interfered in the work of the Judiciary by various means. From using executive power to subvert the implementation of courts' decisions, through using the power to annul decisions, to dismissing and retiring judges.

5.1 Use Of Executive Power To Thwart Court Decisions

5.1.1 Soon after Independence, the government began to issue deportation orders against persons alleged to be aliens on grounds that their presence was "not conducive to public good". The deportees challenged the deportation orders in an action against the then Prime Minister, the Commissioner of Police, and the Attorney-General (Geoffrey Bing). The High Court presided over by Mr. Justice Smith, granted an interim injunction to restrain the Government from carrying out the deportations, pending the establishment of their dual nationality as alleged by them. The two deportees were represented by Christopher Shawcross, of Nottingham. Shawcross had been brought into the country in connection with contempt proceedings brought against Ian Colvin, then correspondent for the *Daily Telegraph* of London.[37]

5.1.2 During an adjournment of the deportation case, Shawcross took a holiday outside Ghana. While he was away, the then Minister of the Interior, Krobo Edusei, denied him a re-entry permit. The reason he gave was that Shawcross was meddling in the political affairs of Ghana because of statements he had made in court. The Minister of the Interior also questioned the propriety of a foreign lawyer who had been given permission to appear before a Ghanaian court for a particular case, making himself available to be consulted in another case altogether.

5.1.3 Not only was Shawcross prevented from coming into the country to do the deportation case, but even before the case was concluded, they forcibly deported the subject of the proceedings from the country on 20th October, 1957, a day before notice of

[35] Memorandum to the National Reconciliation Commission.
[36] Supra.
[37] This account is based essentially on Pobee, *Kwame Nkrumah and the Church in Ghana 1949-1966.* supra.

the proceedings was to be served on them. The reason given by Bing for the pre-emptory act of deportation was the need to avoid more violence.[38]

5.1.4 Consequent upon this pre-emptory deportation, the Minister of the Interior and the Commissioner of Police were found to be in contempt of the Court. However, the government, in a bid to free the two officials from the legal consequences of their actions,

caused to be placed before Parliament, a Bill of Indemnity. The Parliament, dominated by the CPP, also convened in an emergency session and passed into law, the Act of Indemnity covering the conduct of the two officials on 24th December, 1957. Thus, when the Court resumed the hearing after an adjournment, Mr. Justice Smith of the Supreme Court commented thus:

> Whatever excuse they may have had for their action, they were found in law, to be in contempt. The Courts derive their powers from the Constitution and we are under oath to administer these powers according to law. Parliament in this country has not passed any law providing that the Minister or a civil servant cannot be in contempt for any act done. No one stands above the law.[39]

5.1.5 These acts, not only demonstrated the government's lack of respect, and Parliament's contempt, for the courts, but also undermined the authority of the courts. They also demonstrated the inability of the courts to offer protection to the citizenry in the face of executive high-handedness.

5.1.6 There were a number of other cases on deportations that went before the courts.[40] The courts appeared to have interpreted the law to the letter without taking into consideration the spirit of the laws. The results of such interpretation were unfortunate, since the content of the legislation left a lot to be desired in the light of human rights principles. For instance, under the provisions of the Deportation Act, it was possible for an alien to be deported with his dependents. This was obviously unfair, especially when these dependents were above the age of majority. This power to deport was so wide as to be open to abuse. Such strict interpretation therefore enabled the Government to deport people who were its political opponents on grounds that they were aliens, although they insisted that they were Ghanaians.[41] Indeed Bennion states that some of the deportees

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[38] Pobee , supra, p.162.

[39] *The Times,* 24th December 1957.

[40] See cases such as Balogun & Ors v. Minister of Interior [1959] GLR 452; Ogwunwumi v. The State [1965] GLR 400.

[41] Almost all the governments that pre-date the Fourth Republican Constitution, engaged in a number of deportations. Most of the deportations were carried out under The Aliens Act, 1963 (Act 160). Other statutes were: Aliens Ordinance, No. 20 as amended, Cap 49, 2 *Laws of the Gold Coast* 223 (1951), Immigrant British Subjects Deportation Ordinance, No. 26 of 1945, as amended, Cap 50, 2 *Laws of the Gold Coast* 227 (1951); The Deportation Act, 1957, No. 14 of 1957; The Deportation (Indemnity) Act, 1958, No. 47 of 1958; Aliens Act, 1963 (Act 160); Ghana Nationality Decree, 1967 (NLCD 191); Ghana Nationality Act, 1971 (Act 361); Ghana Nationality (Amendment) Decree, 1972 (NRCD 134);

were, in fact, Ghanaian.[42] The courts were also consistent in the views they held about their powerlessness in the face of executive high-handedness.

5.2 The Dismissal And Subsequent Retirement Of Chief Justice Sir Arku Korsah And His Panel

5.2.1 In 1963, there was a treason trial involving Robert B. Otchere Tawia Adamafio, Ako Adjei and Horatius H. Cofie-Crabbe and others for plotting to assassinate the President, thereby overthrowing the government. The Supreme Court, presided over by Sir Arku Korsah, acquitted the accused persons.

5.2.2 The reactions to the verdict caused some alarm. On the political front, the Attorney-General, Batholomew Kwaw Swanzy, exhibited the displeasure of the Executive by holding a press conference at which he attacked the Judges for the decision. This was an unusual step to take as by this act, the Attorney-General, the titular head of the Bar, had moved the case from the courts to the bar of public opinion. Not surprisingly, there was a protest march to the Supreme Court Buildings by members of the public made up largely of "members of Workers Brigade, Market Women's Organizations, Young Pioneers, Cooperative[sic] Societies, the Trades Union Congress and high-ranking CPP officials."[43]

5.2.3 Newspapers also took the matter up, and launched a blistering attack on the panel of judges that tried the case, accusing them of bias because they had links with the opposition, and further ridiculing the Chief Justice for having sold his honour for "foreign tributes and knighthoods".[44]

5.2.4 Two days after the decision was handed down, i.e. on 11th December, 1963, President Nkrumah dismissed Sir Arku Korsah as Chief Justice and declared the decision of the Supreme Court null and void. As the procedure for the removal of a Supreme Court Judge from office was much more complex,[45] he was technically still a Supreme Court Judge, but his position had become untenable, and he left the Bench.[46]

5.2.5 The President issued an Executive Instrument, the Special Criminal Division Instrument, 1963 (E.I. 161) to declare the decision of the court null and void.

P.N.D.C.(Establishment) Proclamation (Supplementary and Consequential Provisions) Law, 1982 (PNDCL 42).

[42] Bennion supra, p. 203.

[43] Omari, supra, p.98.

[44] Ibid., p. 99.

[45] Bennion , *The Constitutional Law of Ghana,* supra, p.174.

[46] supra p. 27.

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5.2.6 Mr Justice van Lare who was about to be seconded to the East African Common Services as President of the Court of Appeal for East Africa, had his secondment withdrawn by the government, and he was refused permission to leave the country and take up his appointment. Mr. Justice Akufo-Addo also "retired" from the Bench.[47]

5.2.7 It must be emphasised that the act of dismissing the Chief Justice by the President was not in any way illegal, as the President had power under the Constitution, to dismiss the Chief Justice.[48] However, it was also disappointing that the judge who was appointed

as Chief Justice in place of the dismissed, Mr. Justice Julius Sarkodee Adoo, found nothing wrong with accepting the appointment under those circumstances.

5.2.8 Sir Arku Korsah's own forced retirement also amounted to a violation of his human rights. The rights of the Judiciary as an institution were also violated, as this act attacked the integrity of the institution and also undermined the sense of security of tenure that judges should have in order to discharge their duties without fear or favour.

5.3 The Special Criminal Court

5.3.1 The reaction to the verdict did not end with the dismissal of the Chief Justice and the nullification of the decision. The Criminal Procedure Code was amended and provision made for the establishment of a Special Criminal Court that re-tried the case.[49]This Special Criminal Court was to be composed of the Chief Justice or a Judge of the Superior Court appointed by the Chief Justice in consultation with the President, and a twelve-member jury.[50]

5.3.2 This reaction violated not only the rule against 'Double Jeopardy', but also constituted 'forum-shopping' of the worst kind. The result of these moves by the Executive was to prejudice the rights of the accused persons to a fair trial. As could be expected, the Special Criminal Court found the accused persons guilty of treason on 8th February, 1965.

5.4 Conclusion

This chain of events demonstrated the point that the Judiciary either was unwilling or unable to protect itself. The criticism has often been made of Mr. Justice Sarkodee Adoo that being fully aware of the reason why his predecessor was dismissed he should have declined to accept this appointment, since it would be impossible to be faithful to the judicial oath to administer justice "without fear or favour". Such a public stand would also have affirmed the principle that the Judiciary was unwilling to entertain any interference by the Executive in its work.

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[47] Omari, supra, p.98.
[48] See Article 44 (3) of the Constitution of Ghana, 1960.
[49] Criminal Procedure (Amendment) Act, 1964 (Act 238).
[50] Act 238, section 1(2).

24TH FEBRUARY, 1966 – 30TH SEPTEMBER, 1969: NATIONAL LIBERATION COUNCIL (NLC)

6.0 Judgment Nullified By Decree

6.1 The NLC promptly passed a decree declaring the decision of the Special Criminal Court in the *Otchere* case null and void.[51]

6.2 Judges And Commissions Of Enquiry

6.2.1 Upon the overthrow of the CPP government, judicial Commissions of Enquiry were established to probe the functionaries of that administration. The findings of these Commissions led to the confiscation of properties of functionaries against whom adverse findings had been made. Although these Commissions were judicial Enquiries, the political atmosphere in which they were held accounted for the severity of some of the recommendations pertaining to confiscations.

7.0 Dismissal Of Judges

7.1 After the 1966 coup d' état, a number of High Court and Circuit Court Judges as well as Magistrates who were regarded by the NLC as political appointees of the CPP, or who were perceived to be corrupt, were dismissed without recourse to due process.[52] This was done with the full support of the Bar.

8.0 Attempts To Restore Dignity Of The Judiciary

8.1 A new Chief Justice, Mr. Justice Edward Akufo-Addo, was appointed by the NLC. At the time of his appointment, there was an urgent need to restore the morale of the Judiciary, restore respect for judges and improve public confidence in the administration of justice. He succeeded in a large measure in doing this by jealously protecting the independence of the Judiciary. Chief Justice Akufo-Addo would boldly confront the government whenever the independence of the Judiciary was in issue, and prevail.

8.2 The Chief Justice sought to enforce discipline in the legal profession and gave directives to Judges to enforce the rules regarding legal practice. He was sued by members of the Bar, but he stood firm and won the day.[53] Although the directive was never really enforced, his ability to remain steadfast in this confrontation with the Bar over the judges' authority in the courtroom, improved the morale of judges and the prestige of the Bench.

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[51] Criminal Procedure (Special Criminal Division) (Abolition) Decree, 1966 (NLCD 43).

[52] Kenneth Agyemang Attafuah, *Public Tribunals in Rawlings Ghana (1982-1992): ASstudy in the Political Economy of Revolutionary Ghana* (unpublished) Ph.D. Thesis.

[53] Akufo-Addo v. Quashie Idun [1968] GLR 667.

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1ST OCTOBER, 1969 – 12TH JANUARY, 1972: THE SECOND REPUBLIC PROGRESS PARTY (PP) GOVERNMENT

9.0 The *Sallah* Case And Executive Reaction

9.1 In 1970, 568 senior public servants were dismissed by the government of the Progress Party (PP) led by Dr. Kofi Abrefa Busia. This was done based upon the government's interpretation of the Transitional Provisions to the 1969 Constitution. The

PP government accused the affected persons of lacking foresight, being corrupt and inefficient, but no systems were put in place to establish their guilt or otherwise before effecting the dismissals.

9.2 E.K. Sallah, one of the affected senior public servants, challenged his dismissal in the High Court, [54]claiming that on the true interpretation of section 9(1) of the Transitional Provisions, his office was not included in those prescribed by the said provisions. He won the case against the government.

9.3 Disappointed by this decision, the Prime Minister, Dr. Busia, addressed the nation that evening after the judgment. Essentially his speech sought to re-argue parts of the case, which had been argued in court without success. Thus, whilst in one breath he affirmed his government's and Party's commitment to an independent judiciary, he appeared to be unwilling to see the Judiciary's stand in the light of an independent and bold judiciary, but rather as evidence of the Judiciary "playing politics" and declared himself ready to take them on. The Prime Minister stated expressly that he did not have any problem with a citizen aggrieved by its decisions not to re-appoint him or her seeking redress before the courts, but that they would achieve nothing by such recourse to the courts because,

> No court can enforce any decision that seeks to compel the government to employ or re-employ anyone. That would be a futile exercise. I wish to make that perfectly clear…. I cannot be tempted to dismiss any judge. I shall neither honour nor deify anyone with martyrdom, but I will say this, that the judiciary is not going to hold or exercise any supervisory powers not given to it by the Constitution.

9.4 The angry response of the government evoked images of the past when the CPP government exhibited intolerance towards the courts. The government's aggressive posture surprised many who regarded the PP government as one that respected the

[54] S.O. Gyandoh & P. Griffiths, *A Sourcebook of Constitutional Law*, vol. 2 Mimeograph, Faculty of Law, University of Ghana, Legon p. 487.

independence of the judiciary and the rule of law, and the arrogance inherent in this "No court" pronouncement severely dented the image of the government.

13TH JANUARY, 1972 – 3RD JUNE, 1979: NATIONAL REDEMPTION COUNCIL (NRC)/ SUPREME MILITARY COUNCIL (SMC) I & II

10.0 Dismissal Of Judges

10.1 With the overthrow of the PP government, a new military government, National Redemption Council (NRC) was established under the chairmanship of then Colonel

Ignatius K. Acheampong. the Supreme Court was abolished. Three judges, Chief Justice Edmund Lanquaye Bannerman, Justices Koi Larbi and J.B. Siriboe were dismissed and deprived of all their terminal employment benefits. The case of Justice Siriboe was pathetic, as he had been on the Bench for a considerable number of years.

10.2 A new Chief Justice, Mr. Justice Samuel Azu Crabbe, was appointed. However, he was removed by the Supreme Military Council government by the Judicial Service (Amendment) Decree, 1977 (SMCD 101), following agitation by the Bar and the passing of a vote of 'No Confidence' in his administration. The next most senior Superior Court Judge, Mr. Justice Fred K. Apaloo, was appointed to the office of Chief Justice.

10.3 The abrogation of the 1969 Constitution affected the operation of the Human Rights provisions enshrined in Article 15. In 1975, the SMC enacted an amendment to the Criminal Procedure Code, 1960, which had the effect of rendering admissible in a trial, a statement which had been obtained in breach of the right of an accused person to consult a lawyer of his choice.[55] This curtailment of the rights of an accused person was challenged in *Tinieye* v. *Republic*[56] at the High Court, Bolgatanga. Of the courts' role in the protection of human rights, Mr. Justice J.N.K. Taylor, echoing views reminiscent of the *Re Akoto* days of the First Republic, stated the following:

> If a legislative body is engaged in oppressive legislation it is of no concern of the courts. Any judge who finds it abhorrent to give effect to legislation which he considers obnoxious had his remedy by resigning. The remedy of the people is to change the legislative body; but as long as the body is the institution in which the legislative powers of the state have come to rest, then its Decrees Acts or enactments are entitled to be given full legal force by the courts.[57]

[55] Criminal Procedure Code (Amendment) Decree, 1975 (SMCD 3).
[56] [1980] G.L.R. 565.
[57] Ibid, p.583.

10.4 These views had the effect of shifting the forum for the protection of human rights from the courts to the people themselves, as a basis for the exercise of their powers of sovereignty. This was somewhat disingenuous, since judges knew fully well that in theory and practice, a coup d'état has the effect of suspending the power of the people to control their rulers. In thus pushing these matters from the judicial arena to the political arena, the judges showed clearly that they did not see their institution as the bastion for the protection of the rights of the citizenry, as the tradition of the common law prescribed. Instead, they merely stood aside when called upon to intervene between the citizen and the state because it was "no concern of the courts". This attitude had ramifications for the citizenry at large, and eventually the judiciary itself, as those who stood up for the rights of the citizenry cut the image of opponents of the government, with serious consequences a few years later.

11.0 The Military Tribunal

11.1 The NRC passed a decree that established Military Tribunals to try certain offences denoted as 'Subversion'. Under the Subversion Decree, 1972 (NRCD 90), the specified offences were triable by the Military Tribunal. This Military Tribunal had power not only to try civilians, but also to impose death sentences. There was no right of appeal. However, the Military Tribunal was subject to the supervisory jurisdiction of the High Court. Consequently, when some nine persons were convicted by the Military Tribunal, for conspiring to commit subversion, two of them challenged the jurisdiction of the Military Tribunal and invoked the supervisory jurisdiction of the courts. The High Court ruled against the applicants, and so they filed an appeal against the decision on 23rd July, 1973. On 24th July, 1973, the NRC passed the Subversion (Amendment) (No.2) Decree, 1973 (NRCD 191), amending the original Decree. This amendment ousted the jurisdiction of the courts to exercise supervision over the Military Tribunal.[58]

4TH JUNE, 1979 – 23RD SEPTEMBER, 1979: ARMED FORCES REVOLUTIONARY COUNCIL (AFRC)

12.0 The People's Courts

12.1 During the AFRC regime, tribunals named People's Courts were established to deal with crimes such as hoarding, profiteering, trade malpractices and economic sabotage. These People's Courts sat in secret with "judges" behind screens. There was no legal right of representation and no right of appeal. There were no formal procedures and they had authority to sentence an accused person to any form of penalty or any length of imprisonment. The trials were conducted under torture, and often lasted a few minutes only.

[58] *Republic v. Military Tribunal* *Ex parte Ofosu-Amaah* [1976] 2 GLR 5, CA.

12.2 Some persons were not tried at all, or were given what was described as "a purported trial" and yet they were sentenced to long terms of imprisonment without the possibility of judicial review.

24TH SEPTEMBER, 1979 – 1981: THIRD REPUBLIC PEOPLE'S NATIONAL PARTY (PNP) GOVERNMENT[59]

13.1 Under the Third Republican Constitution of 1979, the Supreme Court was restored.

13.2 The government of Dr. Hilla Limann of the People's National Party (PNP), sought to remove the sitting Chief Justice, Mr. Justice Fred K. Apaloo, from the office of Chief

Justice. This was not surprising as it had become the pattern for every government since 1963 to appoint its own preferred candidate to that office. A constitutional challenge was successfully mounted by a citizen, Tuffour, against the government. The Supreme Court ruled that the government had no power to remove the sitting Chief Justice, and the government accepted the decision.

13.2 Establishment Of The AFRC Special Court

13.2.1 Before the AFRC handed over power to the Limann administration, arrangements were made to continue the work of delivering "revolutionary justice". The Special Tribunal (also referred to as the AFRC Special Court) under the chairmanship of Mr. Justice Isaac K Abban a High Court Judge, was established to review the decisions of the People's Courts and to enforce those that had not been enforced.

13.2.2 This Special Tribunal sat at the State House in Accra, and received petitions from affected persons. It was composed of a three-member panel made up of Justice Abban, William Adumoah-Bossman, former President of the Ghana Bar Association and Sqn Ldr Frank Darko-Kumi of the Ghana Air Force.

13.2.3 Cases before it were presented by a Special Prosecutor, J E K Appiah, of the Attorney-General's Department. Subsequently he was accused of accepting bribes for the purpose of influencing the panel and affecting the outcome of petitions before the Special Tribunal. He was convicted and sentenced to a term of imprisonment.

13.2.4 This scandal rocked the Special Tribunal, and undermined its moral authority. Not long thereafter, it its activities, and ceased to exist.

13.3 AFRC Convicts And The Courts

[59] "Government" is used for consistency in this Report. However, the Third Republic was an Executive Presidency on the American model, and so the technically accurate expression is "Limann Administration".

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13.3.1 Soon after the return to Constitutional rule, many of those convicted by the 'People's Courts' petitioned the High Court and challenged the bases of their conviction. In October, 1979, three of these persons alleged that they were arrested and detained by soldiers and later transferred to the Nsawam Medium Security Prison and were never tried. They further alleged that it was on the radio that they first heard that they had been sentenced to various terms of imprisonment. During the hearing of these cases the State raised an objection that the Court (by virtue of AFRCD 23) had no jurisdiction to hear the matter since AFRCD 23 had ousted the jurisdiction of the courts. The Judge, Mr Justice K.E Amua-Sekyi, citing the fact that there was no evidence that the applicants had ever been tried, overruled this objection and granted the applicants bail.

13.3.2 News that an Accra High Court had granted bail to some of those who were convicted by the People's Court of the AFRC, received mixed reaction. While those who

had some reservations about the legality of the decisions arrived at by the People's courts hailed the development, those who supported the decisions of the People's Courts expressed some reservations, and even considered the effort to review wrong in law, in

the light of the Transitional Provisions of the 1979 Constitution. This was the first time the regular courts had been called upon to examine the decisions or purported decisions, of the People's Courts.

13.3.3 Some leftist organisations that had sprung up just before the return to constitutional rule to "protect the gains of the revolution", organised a demonstration to the Castle to protest the re-opening of the AFRC cases by the regular courts.

13.3.4 The Attorney-General, Joe Reindorf, held a press conference condemning the decision of the High Court. The state filed an appeal against the decision and within a short space of time, the Court of Appeal had been convened and the appeals heard.[60] On 21st November, 1979, the Court of Appeal made up of Mrs Justice Annie Jiagge, Mr. Justice E.N.P Sowah and Mr. Justice P.E.N.K. Archer upheld the appeal and revoked the bail on the grounds that the matters pertaining to the AFRC courts involved the interpretation of the 1979 Constitution, and therefore should have been remitted to the Supreme Court for interpretation. In an unusual manner, the Court of Appeal stated that the order to revoke bail applied to two other appeals (No. 169 and No. 170) then pending before it, as well. The applicants were therefore remanded in custody, but by this time, they had fled the country.

13.3.5 Applications for habeas corpus continued to be filed by the 'AFRC Convicts' and the courts continued to handle them even though the State continued to re-state its objection. The judges were in a dilemma as the cases involved the gross violation of the human rights of the applicants. For instance, in the case of *The Republic v. Director of*

[60] *The Republic v. Director of* Prisons, Ex parte Nti [1980] GLR 527.

Prisons and Another; Ex parte Shackleford[61], Mrs. Justice Cecilia Koranteng-Addow granted another habeas corpus application involving a conviction by the "AFRC Special Court".

13.3.6 *The Republic v. Director of Prisons and Another; Ex parte Shackleford* was one of the cases that best exemplified the dilemma of the judges. The facts were as follows: on 8th June, 1979, (four days after the 4th June coup d'état) the applicant, a businessman, heard on the radio that he was to report to the Air Force Station, Burma Camp, Accra. He was detained for about two months. During the hearing of a habeas corpus application, the State sought to justify the detention on the grounds that the applicant had been received into prison custody by virtue of a warrant of commitment, numbered AFRC 83 and dated 8th June, 1979, issued by the dissolved Special Courts; further, that the applicant had been tried, convicted and sentenced to a three-year term of imprisonment for the offence of selling above control price. By an affidavit deposed on behalf of the applicant, the applicant alleged that he had never been tried, and that the warrant of

commitment dated the 8th of June was forged because the Special Court was not in existence before the 8th of June. The applicant further deposed that it was on the 23rd of October, 1979, that he was informed by the record officer at the Ussher Fort prison that he had been convicted to a three-year term of imprisonment.

13.3.7 During the proceedings, the evidence disclosed that the warrant of commitment was signed by a person whose real name could not be identified. However, the State raised objections to the effect that not only could the court not look beyond the warrant of commitment to determine its genuineness, but that it had no jurisdiction to even entertain the application. The court overruled the objection, stating that the Constitution had been promulgated for the good governance of the State and for the assurance of the fundamental human rights of the citizens. Consequently, this same Constitution, could not rob the citizens of those very rights. Mrs Justice Koranteng-Addow stated that, "the matter in debate is a question involving the liberty of a subject of this country, the right to personal freedom of a citizen of this country".[62] The court also ruled that the genuineness of the warrant of commitment was important in determining whether the writ of habeas corpus would issue, as the court could not question the rightness or wrongness of the conviction by virtue of AFRCD 3 and section 15(2) of the Transitional Provisions of the Constitution. However where there was a dispute about the authenticity of the warrant and the applicant gave credible evidence that it was practically impossible for him to have been tried, there was no justification for a detention and the writ could issue.

13.3.8 It is clear that the Judge was actually seeking to enforce the letter and spirit of the Transitional Provisions, but in the view of some, the doors of the courts were not to be opened at all, when AFRC convicts came knocking. This was untenable in a democracy, and the burden of resolving the contradiction that came to rest on the Judiciary became

[61] *The Republic v. Director of Prisons and Another; Ex parte Shackleford* [1980] GLR 554.
[62] Ibid, at p.565.

the reason for the enmity, which the judges who sought to properly examine the issues involved, incurred.

31ST DECEMBER, 1982 – 6TH JANUARY, 1993
PROVISIONAL NATIONAL DEFENCE COUNCIL (PNDC)

14.0 Attacks On The Judiciary

14.1 The Third Republic was overthrown in a coup d'état on 31st December, 1981, and the PNDC was established as the government of the country. One of the first institutions to be attacked by the government-controlled press was the Judicial System.

14.2 At various public fora, the courts were accused of being corrupt, lazy and biased in favour of the rich. Slogans such as "One law for the rich and one law for the poor", "Justice delayed is Justice denied", became the common catch-phrases. The courts were

perceived as the enemy of the common man as they perverted justice by being hard on poor people and being soft on the rich. The slow processes of the courts also came in for criticism as being the cause of delays in doing justice to the poor. The courts were further criticised as being "reactionary" and addicted to foreign forms of procedure.

14.3 An atmosphere of hostility to the courts was engendered with the tacit approval of the government and government functionaries, by the persistent negative publicity in the public media.

15.0 The Murder Of The Three High Court Judges And Retired Military Officer

15.1 One event that shook the foundations of the judiciary was the murder of the three High Court Judges and Retired Military Officer. On 1st July, 1982, Ghanaians received the news that three sitting High Court judges and a retired Army Officer, Mr. Justice Fred Poku Sarkordie; Mrs. Justice Cecilia Koranteng-Addow; Mr. Justice Kwadwo Agyei Agyepong and Major Sam Acquah (Rtd.), had been abducted from their homes on the night of 30th June, 1982. This was in an official statement issued by the PNDC government. The statement further warned the kidnappers to free their victims immediately or face the full rigours of the law. The whole nation waited in anxiety to know what had befallen these eminent citizens.

15.2 On Saturday, 3rd July, 1982, Chief Justice Apaloo led a delegation to the Chairman of the PNDC to request that action be taken to locate the missing judges. The Chairman promised to do his best in this regard. The Judiciary was worried because this was an unexpected development even though the institution had been subjected to a great deal of verbal attacks since the new regime seized power. It represented a novel challenge to the Judiciary as judges had never been attacked in their person for unpopular decisions.

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15.3 On Sunday, the 4th July, 1982, the Chairman of the PNDC, Flt Lt Rawlings, in a special nation-wide broadcast on radio and television, announced that he had been informed only the previous day, that four corpses had been discovered on the 'Accra Plains', and that investigations had revealed that these were the bodies of the missing persons. The Chairman declared, "We condemn these acts from the depths of our hearts". He gave the assurance that every effort was being made by a special high-powered investigation team to trace the criminals, whoever they were, and whatever their motives. The Chairman went on further to describe those who did the abduction as "enemies of the Revolution."[63]

15.4 The news of the murder of the four eminent citizens was received with shock. Unfolding events showed later that the bodies of the Judges and Army Officer, were, in

fact, found at the Bundase Military Range, and not anywhere else on the Accra Plains.[64] Suspicion immediately fell on the government.

15.5 There was widespread condemnation of the crime. The government came under pressure from both local and international sources, for an independent judicial inquiry into the murders. On 5th July, 1982, Staff of the Judicial Service held a peaceful demonstration in protest against the killings,[65]and the Law Students Union (LSU) of the University of Ghana also demanded an independent judicial inquiry into the murders. The African Bar Association (ABA) on 16th July, 1982, sent a delegation led by its Secretary-General, the Hon. Debo Akande, to meet with the Head of State on the issue. The Association requested the Government to institute an independent public judicial inquiry to track down the culprits and pay compensation to the families of the murdered judges and military officer.[66]

15.6 The Establishment Of The Special Investigation Board (SIB)

15.6.1 Consequent upon the pressure mounted on the government, the government set up a Committee, chaired by the Secretary for the Interior, Johnny Hansen, to investigate the killings. This committee was promptly rejected by the public since the government itself was under suspicion. Eventually the government set up the Special Investigation Board (SIB) to investigate the kidnapping and killing of the four eminent persons[67].

15.6.2 The SIB was under the chairmanship of Mr. Justice Samuel Azu Crabbe, a former Chief Justice, and had the following members:

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[63] Jacob Jabuni Yidana, *Who killed the Judges?* Bismi Enterprise (Printing and Publishing) Accra, 2002, p. 231.
[64] See post-mortem reports of SIB Report exhibits D, E, F and G. pp. 74-77.
[65] Yidana, supra p.232.
[66] Yidana, p.233.
[67] Special Investigation Board (Kidnapping and Killing of Specified Persons) Law, 1982 (PNDCL 15), section 3(1).

- Rt. Rev. Prof. N K Dzobo - representative of Christian Council and Catholic Secretariat;
- C E Quist - representative of Ghana Bar Association;
- J O Amui - representative of Attorney-General's Office and Secretary to the Board;
- T O Lindsay - PNDC nominee.

15.6.3 The Board produced, first an interim report, which was published at a press conference by the Attorney-General. The Final Report was presented to the Attorney-General on 30th March, 1983. After waiting for a while without any sign that the Final Report was going to be published, civil society groups began to complain and accuse the Attorney-General of a cover-up. The Ghana Bar Association insisted that the public was "entitled to know the whole of the findings of the Special Investigations Board as contained in both parts of the report in order to form a correct judgment, and not restricted by the Attorney-General to just a part as published in the Interim Report."[68]

15.7.0 Findings And Recommendations Of The SIB

15.7.1 The Final Report was a detailed report on the facts surrounding the murders. The team of police investigators did thorough detective work, thus leading to a successful investigation by the SIB. At the end of the investigations, the SIB recommended that the following persons be prosecuted for conspiracy to commit murder and murder.[69]

- Joachim Amartey Kwei – Member of the PNDC.
- L/Cpl S.K. Amedeka – Military Guard at Broadcasting House and the Liaison Officer between Military Personnel at Broadcasting House and Gondar Barracks, the Headquarters of the PNDC.
- L/Cpl Michael Komla Senyah - Field Engineers Regiment and Military Guard at Broadcasting House.
- Ransford Johnny Dzandu - ex-soldier of the Medium Mortar Regiment, Ho.
- Evans Hekli "Tonny" Tekpor - ex-soldier of 1BN of Infantry, Tema, and 2 Brigade, Kumasi.
- L/Cpl Mamah Nsurowuo – a soldier of the PNDC Information Centre.
- L/Cpl Victor Gomeleshio – a soldier of the PNDC Secretariat (Operations).
- L/Cpl Gordon Kwowu – a soldier at the PNDC Information Centre.
- Sgt Alolga Akata-Pore - Member of the PNDC.
- Capt Kojo Tsikata (Rtd) – PNDC Special Advisor and Head of National Security.

15.7.2 On the motive for killing these judges, the SIB had this to say,

> … one fact which is common in the case of the judges is that each of them, after the AFRC had handed over, had adjudicated in a case involving AFRC convicts. Notwithstanding the provisions of Article

[68] Ghana Bar Association, Statement on SIB Report, Accra, 22nd April, 1983.
[69] Comments on the Special Investigation Board Report issued by the Attorney- General G.E.K. Aikins (PNDC Secretary for Justice and Attorney-General), 17th May, 1983, para 17.

> 15(2) and (3) of the 1979 Constitution…, each judge after considering the legal issues raised on an application for an order of Habeas Corpus, had ordered the release of the applicant from custody.[70]…it ought to be mentioned that the kidnapping and murder took place a little over six months after the Court cases, and it had been argued that the release of the AFRC convicts had nothing to do with the murders.[71]… but the fact still remains that only the judges in Accra who had ordered the release of "AFRC convicts" were specially picked on and killed on 30th June,1982. That the release of the AFRC convicts was the prime motive for the Judges murder is plainly confirmed by Amartey Kwei's statement of the 23rd November 1982, which he repeated on oath before the Board[72]… even the way in which their houses were searched for by the kidnappers is evidence that that these were specifically selected to be executed…[73]

The SIB concluded that the

> …perpetration of these crimes must have been motivated by the dissatisfaction felt by some people at their judgments in which they freed persons convicted and sentenced to long terms of imprisonment by a tribunal specifically established by the Armed Forces Revolutionary Council (AFRC). The atrocities could have been committed only by fanatical supporters of the Armed Forces Revolutionary Council.[74]

16.0 Attorney-General's Comments on SIB Report

16.1 The Attorney-General, G. E. K. Aikins, published his Comments on the Report. He, in the exercise of his discretion to initiate prosecutions as Attorney-General decided that there was sufficient evidence to prosecute only the following:

- Joachim Amartey Kwei
- L/Cpl Michael Komla Senyah
- L/Cpl Samuel Kwaku Amedeka
- Ransford Johnny Dzandu
- Evans Hekli "Tonny" Tekpor.

He declined to initiate criminal prosecutions, citing insufficient evidence, against the following:

- L/Cpl Gordon Kwowu
- L/Cpl Nsurowuo
- L/Cpl.Gomeleshio
- Sgt Alolga Akata-Pore and

[70] Final Report of the Special Investigation Board (Kidnapping and Killing of Specified Persons) para. 313.
[71] Ibid, para. 314.
[72] Ibid para. 315.
[73] Ibid para. 316.
[74] *Ibid* para. 318.

- Capt Kojo Tsikata (Rtd)"[75]

16.2 The Attorney-General further decided that the forum for the trial should be the Public Tribunal instead of the High Court. Consequently, the case was referred to the Public Tribunal by the PNDC.

16.3 The import of the decision to try the suspects at the Public Tribunal was three-fold:

(1) they were denied a trial by jury;
(2) they were denied a right of appeal since there was no right of appeal at the Public Tribunals under the Public Tribunals Law, 1982 (PNDCL 24); and
(3) they could not obtain legal counsel for their defence since the Ghana Bar Association had announced a boycott of the Public Tribunals on account of its opposition to the lack of procedural fairness of the rules of the Public Tribunals.

Thus the accused persons were tried and convicted on a capital charge, without benefit of legal counsel and without a right of appeal.

17.0 Press Attacks On SIB During Sitting

17.1 Attacks On The Integrity Of SIB

17.1.1 During and after the sitting of the SIB, the Chairman, Mr. Justice Azu Crabbe, came under a sustained attack in the media – particularly in the *Ghanaian Times.* In a series of editorials titled *The Drag of Vested Interests,* published between 4th January, 1983 and 29th March, 1983, the newspaper mounted a vicious campaign against the SIB in general and its Chairman in particular. It alleged that selected materials from the SIB were circulating widely in the circles of Ghanaians in political exile and that enemies of the revolution in Togo, Britain and Holland were openly saying they would "use the Board by hook or by crook to topple the Government of the PNDC."[76] For these alleged activities of the *émigrés* community, the SIB was held blameable.

17.1.2 The SIB was also accused by the *Ghanaian Times* of setting up its own Technical Investigative Team, made up of persons who were active in persecuting Flt Lt Rawlings and his associates during the Limann regime, and that this new team was different from the one announced by the government under the chairmanship of the Secretary for the Interior, Johnny Hansen. This information to the public was incorrect, as the investigative team which worked with the SIB, was set up by the Criminal Investigations Department of the Police before the SIB itself began its work. It was also untrue that there were two teams investigating the event, since the one under the chairmanship of Johnny Hansen though announced, was never, in fact, set up.[77]

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[75] supra
[76] *Ghanaian Times*, vol. 7784 Friday 4th February, 1983, p.2
[77] SIB Report, paras 34-38.

17.1.3 The newspaper further alleged that the in camera proceedings of the SIB were circulating among the ranks of enemies of the revolution abroad, and therefore demanded that the proceedings be made available for publication in the local press to enable Ghanaians at home to read them too. The newspaper also expressed the belief "that an inquiry will reveal all the machinations, plots and manoeuvres that have taken place behind the scenes – that is, behind the public image of the Board."[78]By these allegations, the newspaper sought to cast doubt on the integrity of the members of the SIB whilst fixing on them a political agenda to assist the enemies of the government to unseat it.

17.1.4 The editorial also repeated an allegation made to the SIB by Capt Tsikata that at a meeting of the PNDC, Sgt Alolga Akata-Pore had complained that an unnamed judge had told him that attempts were being made to frame him up at the SIB, thus pitching him against his colleagues on the PNDC. Not only did such an allegation suggest that some judges were in league with the SIB, but that through those persons, information to potential witnesses was being leaked, for malicious purposes. Why any member of the judiciary would have an interest in causing disaffection within the PNDC was not

indicated, but it was clearly an attempt to create a perception that the judiciary was in league with the enemies of the government to cause mischief.

17.1.5 In another editorial in the series, the newspaper accused the SIB, first of changing its procedures midstream to allow for public confrontations between witnesses, and then of adopting a legally-indefensible procedure when it allowed L/Cpl Amedeka to be present during the time Capt Kojo Tsikata appeared before it to cross-examine Amartey-Kwei.[79]

17.1.6 In a further editorial in the series, the newspaper appeared to have joined the defence team of Capt Tsikata when it accused the SIB of arbitrariness in the "manner in which the board decided to bring out the allegations against the Special Adviser to the PNDC in public contrary to the procedure which it had followed up to that point".[80] It also raised issues pertaining to some evidence before the SIB that it did not consider credible. The newspaper also alleged that, unknown to some of the members of the SIB, copies of a document purporting to be the Draft Report were circulating among some Western Embassies and that the Political Officer of the Embassy of the United States of America had told some journalists that the report would soon be released. This editorial thus sought, not only to sow disaffection within the membership of the SIB but also to suggest that some members were in league with the Americans to discredit the government. As the newspaper put it, the

> Special Investigation Board must carefully, critically, and seriously look at its own processes and connections and consider how the selective

[78] Editorial of 4th January, 1983, supra.
[79] *Ghanaian Times* vol. 7,790, Wednesday, 12th January, 1983.
[80] *Ghanaian Times,* vol. 7,855 Tuesday, 29th March, 1983 p.2.

> leaks from it have occurred, especially when the interests of foreign powers are also brought in.[81]

17.1.7 Even more disturbing was a reproduction of a handwritten letter purporting to have emanated from one of the suspects in the murder investigations, Johnny Dzandu, in which he alleged that he and others had been offered safe sanctuary if he and others could escape from prison and make it to the American Embassy.[82]This letter was supposed to expose the agenda of "vested interests" in the work of the SIB and consequently why the SIB would become their willing tool. Coming on the same day as an announcement that the report had been presented to the Attorney-General,[83] it was difficult to resist the inference of mischief-making that underlay the persistent and consistent newspaper attacks.

17.1.8 The *Ghanaian Times* also reported the proceedings in a manner calculated to cast doubt on the eventual conclusions of the SIB. These hostile media reports as well as other acts of official harassment, led to an attempt by the Chairman of the SIB to resign on 4th

January, 1983. Although he was prevailed upon to rescind the decision, it was clear that the Chairman was unhappy about the war waged on him by the national media, then all state-owned.

17.1.9 The *Ghanaian Times* published the comments of the Attorney-General on the SIB Report before announcing its intention to publish the Report itself the next day, thereby giving primacy to the Comments rather than the Report.[84]

17.1.10 Indeed, soon after the Final Report was presented, Capt Tsikata and Mr. Justice Azu Crabbe engaged in exchanges in the media over his supposed connection with the American CIA. This constituted a big assault on the image of the Chairman as a former Chief Justice as well as his reputation, since his accuser was the chief of National Security himself.

17.2 Effect Of The Murders On The Entire Judiciary

17.3.1 The traumatic effects of the coordinated attacks and the singular tragedy of the murders on the judiciary will take a long time to be overcome. Many members of the Bench and Bar during interviews by this Commission were emphatic that:

(1) some judges who felt threatened as rumours persisted of the existence of a list of persons to be assassinated fled the country, and some of those already outside the country did not return;
(2) some cases were never heard because the judges feared for their lives;

[81] Ibid.
[82] Ibid., p.3.
[83] Ibid., p.1.
[84] *Ghanaian Times* vol. 7,909 Thursday, 2nd June 1983.

(3) cases pending before the murdered judges suffered delay as they had to be heard afresh;
(4) it generated fear among members of the Bench who remained;
(5) most judges were unwilling to make such far-reaching decisions as might endanger their lives; and
(6) the event is still a source of fear among members of the judiciary, even to those who were not then on the Bench.

17.3 The GBA's commemorative events of the murder were studiously avoided by most members of the judiciary, including the Chief Justices of the time, for fear of incurring the wrath of the government. On those commemoration days, courts sat as usual and lawyers who wished to attend the event assumed the risk of incurring costs for their absence in court.

18.0 Other Attacks On The Judiciary

18.1 Press Attacks On The Judiciary

18.1.1 The attacks on the judiciary did not end with the murders. On 14th March, 1983, the Chief Justice, Mr Justice F.K. Apaloo and Mr Justice J.N.K. Taylor of the Supreme Court attended the Law Week of the Law Students' Union at the Faculty of Law, and

gave presentations at which they expressed views that were critical of the PNDC. Mr Justice F.K. Apaloo, delivering the Keynote Address, expressed the view that the assumption of judicial powers by the PNDC was "dangerous and unprecedented" in the annals of Ghana's legal history. During a subsequent symposium, Mr. Justice Taylor criticised the human rights record of the AFRC and the victimisation of so-called *kalabule* people for the woes of the time. These views of the two Judges, were reported from the angle of comments made by Tsatsu Tsikata in his own presentation at the same symposium, which were critical of the judiciary in general, and the judges in question in particular. Under the headline "Self-contradictions of Judiciary Exposed", the newspaper presented their judicial history in an unflattering light, thereby presenting the Judges' criticisms as hypocritical and anti-PNDC.[85]

18.1.2 The views of Tsatsu Tsikata were re-echoed as the basis for another vitriolic editorial from the *Ghanaian Times* the next day titled "Judicial Politics". The editorial criticised the Keynote Address of the Chief Justice, for lacking appropriate criticisms of the judiciary and the "colonial" legal system, whilst failing to appreciate the need for a new judicial system which would be better understood by the ordinary citizen. Mr Justice Taylor's presentation elicited condemnation of judges as the ones who abused the rights of citizens by sitting as Judge-Advocates on Military Tribunals from which there was no right of appeal; who sat on Commissions of Enquiry that made adverse findings confiscating properties; and who adopted such a narrow view of law that they gave interpretations that were contrary to the aspirations of the people. Reference was made to

[85] *Ghanaian Times,* 7.845 Thursday, 17th March,1983 pp.1 &3.

views expressed by those same judges during the NLC and SMC periods respectively, which admitted the supremacy of military rulers over the judiciary and complained about their motives for their seemingly different views during the era of the PNDC. The newspaper concluded with the view that

> pronouncements of distinguished judges only show that they are out of step with the objectives of the people's revolution… that the PNDC should have power to set them right if they should be adopting such attitudes of opposition to the revolution in their judgments.[86]

If ever anything was calculated to dampen judicial criticism of developments on the legal scene, then this was a good example.

18.2.0 Attack On The Supreme Court Buildings

18.2.1 The attacks did not remain only verbal. On Tuesday, 21st June, 1983, a mob attacked the Supreme Court buildings after a workers' demonstration. The courtrooms and chambers of judges were locked up and the keys taken away by the Central WDC.[87] Judges had to flee for their lives and courts situated in the Supreme Court Buildings did

not function for a few days. The WDCs also declared the Chief Justice, who had expressed views critical of the Public Tribunals, dismissed from office.

18.2.2 There was no criticism of the workers' action from any official, except an announcement in the newspapers that the Chief Justice was still in office.[88]

19.0 Threats To Judicial Independence

19.1 Summary Dismissal Of Judges By PNDC

19.1.1 The PNDC Establishment Proclamation (Amendment) Law, 1982 (PNDCL 42) provided for the removal of judges as follows:

> any judge or judicial officer who was unable to perform the functions of his or her office by reason of infirmity of body or mind or who hampers the effective and efficient discharge of the functions of the Judiciary by his or her conduct, or who in any other way abuses his or her office, misbehaves or brings the judiciary function into disrepute shall be removed from office by the Council (PNDC)"[89]

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[86] *Ghanaian Times,* 7.846 Friday, 18th March, 1983 p.2.
[87] *Ghanaian Times* vol. 7,927 Thursday, 23rd June, 1983.
[88] See, Mike Oquaye, "Law, Justice and the Revolution" in *Ghana Under PNDC Rule* (E.Gyimah-Boadi, ed) CODESRIA BOOK SERIES, 1993 p.158; also Paul Nugent, *Big Men, Small Boys and Politics in Ghana. Power, Ideology and the Burden of History*, 1982-1984 Asempa Publishers, Christian Council of Ghana, Accra, 1996, p.120.
[89] PNDCL 42 section 22(1).

However, section 22(2) of PNDCL 42 stated expressly that

> No such removal from office shall be effected unless upon becoming aware of the judge, the Chief Justice has in consultation with the Judicial Council and the approval of the Council, instituted an inquiry composed of such persons not exceeding five, as are likely to arrive at an independent and objective conclusion, to investigate the matter and make appropriate recommendations to the Council.

Section 22 (3) further stated that "no removal of a judge from office may be effective without the person being given a fair hearing."

19.1.2 However, when in 1986, the PNDC sought to remove judges without respecting these procedures, the PNDC repealed these provisions[90] and summarily dismissed seventeen Judges and one Magistrate. At the same time it promoted other judges to the Superior Courts, thereby disabling the judiciary from complaining of victimisation and criticising the modalities adopted for the dismissals.

19.1.3 On Friday, 4th April, 1986, the *People's Daily Graphic* in its lead story, captioned, "Review in Judicial Service" stated that the PNDC in consultation with the Chief Justice

had undertaken a review of judicial appointments. Some judges had been promoted, new judges appointed and a significant number of serving judges had been dismissed.

19.1.4 It is also interesting to note that the *People's Daily Graphic* of 4th April, 1986, stated expressly that the PNDC took this decision in consultation with the Chief Justice. If indeed there was proper consultation, then the implication was that the Chief Justice, the highest judicial officer of the land, took part in perpetrating gross human rights violations against some of his own colleagues. Whatever the circumstance, there is no doubt that what took place was an attack on the judiciary by the Executive.

19.1.5 These 18 persons had their careers terminated without recourse to the laid down procedure as set out by the PNDC in its Establishment Proclamation as amended by PNDCL 42, for the removal of judges. The PNDC, in its decision, failed to honour the time-honoured principle of Natural Justice as these judges were denied a hearing. The government of the day took a unilateral decision and deprived these judges of their right to work and to earn income. In addition to this, the allegations of misconduct was so serious, that they should not have been removed from office without being given a chance to clear their names. They thus lost their careers as well as their reputations.

19.1.6 Some time after these dismissals had been effected, the old procedures were restored by a re-enactment of a new section 22 to replace the repealed provisions under

[90] Provisional National Defence Council (Establishment) Proclamation (Supplementary and Consequential Provisions) (Amendment) Law, 1986 (PNDC L. 145).

PNDCL 42.[91] This showed the Executive's lack of respect for law as well as the rule of law. Since laws are supposed to guarantee a measure of certainty and predictability as well as orderliness in the conduct of national affairs, shuffling law on the chessboard whenever it becomes inconvenient is wrong. Thus, where a government desiring a particular outcome that the existing law would not permit, could achieve it merely by removing the particular law, doing whatever it considered necessary to do and then re-enacting the law, the essence of law would have been undermined.

19.1.7 Effect Of The Dismissals On The Judiciary

As a result of these dismissals by the Executive, judges lost confidence in their security of tenure since the Judicial Council had been abolished. Things did not improve with the restoration of the Judicial Council, for the new provision provided that the PNDC could dismiss or remove from office, any Judge, or judicial officer, if it was satisfied that it was in the public interest so to do.[92] The import of the new provisions was regrettable, since it made the retention of a judicial appointment, subject to the whims and caprices of the Executive. In thus undermining the security of tenure of judges and magistrates, a necessary condition for the proper discharge of the judicial function, was undermined.

19.2.0 Inducement To The Judiciary

[91] Provisional National Defence Council (Establishment) Proclamation (Supplementary and Consequential Provisions) (Amendment) Law, 1988 (PNDC L. 228).

[92] Section 22(3) of PNDCL42 as amended by PNDCL228.

19.2.1 In 1986, the Chief Justice, Mr. Justice E.N.P. Sowah, reached the compulsory retiring age. In accordance with the traditions of the Judiciary, he should have retired and been replaced by the next most senior Judge. However, this did not happen. Instead, a Law was passed[93] giving members of the Judiciary who had reached the compulsory retiring age the opportunity to continue in service, with the written approval of the PNDC. The length of time one could continue in service was however to be determined by the PNDC. The making of this Law, obviously for the benefit of those of whom the PNDC approved, saw the PNDC extending the appointment of Mr. Justice Sowah and retaining him as Chief Justice. This move was severely criticised by both the Bench and Bar as it created the likelihood that other judges, who wished to be permitted to continue in service upon reaching the retiring age, would lose their ability to be independent.[94] The fears of the GBA were also shared by the African Bar Association and the International Commission of Jurists at an International Seminar on "The Independence of the Judiciary and Legal Profession."[95]

19.2.2 Another act that was seen as an attack on judicial independence was the recall of Mr. Justice Archer from retirement to become Chief Justice in 1991. This move was seen as an attempt to control the judiciary, as the new Chief Justice was unlikely to be able to perform his duties without recourse to the interests of the Executive that had done him the favour of recalling him from retirement to the high office of Chief Justice. The Bar protested against this and there were many in the legal profession who viewed these developments with great misgivings.

20.0 The Establishment Of New Judicial And Quasi-Judicial Investigative Bodies.

20.1.0 Among the first legislative acts of the PNDC were the promulgation of two laws: the Citizens Vetting Committee Law, 1982 (PNDCL 1), and the National Investigations Committee Law, 1982 (PNDCL 2). In addition, it established the Public Tribunals by enacting the Public Tribunals Law, 1982 (PNDCL 24), and later replacing it with the Public Tribunals Law, 1984 (PNDCL 78). These new bodies were supposed to clean up the corruption in public office, as well as other acts of malfeasance within the nation, which the existing judicial and investigative agencies had been unable to deal with on account of their own corruption and inefficiency.

20.1.1 The stated functions of the two investigative bodies indicated that their targets would be the well-to-do in society, and they made every effort to ensure that anyone who

[93] Judiciary (Retiring Ages) Law, 1986 (PNDCL. 161).
[94] Address of President of GBA, Peter Ala Adjetey to the Annual General Conference, Accra, 28th September, 1987.
[95] The Conference took place in Banjul, The Gambia, 6th-10th April, 1987.

appeared to be affluent would be called upon to account for the wealth, and also to prove that the appropriate taxes had been paid on the declared incomes. There were many complaints about their procedures and decisions as they imposed on persons who appeared before them, huge fines and tax penalties that were to be paid within very short periods of time. These bodies were therefore the main agencies responsible for many of the confiscations of property that occurred, and they helped in no small measure to make "citizens" feel harassed and hunted in their own country.

20.1.2 The essence of the Public Tribunals was captured by the *Ghanaian Times* on the first anniversary of their operations as follows:

> The old legal system … has been structured to protect corrupt politicians against being exposed and punished for taking advantage of their political positions to amass illegal wealth, oppress the mass of the people, or sell their nation to foreign exploiters and their local accomplices. The system has made it impossible for the mass of the people to have any real power to check bad government.
>
> But the revolution brought the Public Tribunal and this has made it possible to mete out judgment [sic] to even the class of people who before the normal courts would have been too powerful or too superior to be punished. Moreover, the tribunal has made it possible for the common people, too, to sit in judgment against high-placed crooks and criminals.[96]

20.2.0 The Citizens Vetting Committee (CVC)

20.2.1 The Citizens Vetting Committee Law, 1982 (PNDC Law 1), as amended by the Citizens Vetting Committee (Amendment) Law, 1982 (PNDC Law 18), set up a body to investigate persons whose "lifestyle and expenditures substantially exceed[ed] their known and declared incomes"[97], and who possessed credit balances in excess of certain specified sums at the banks.[98] This body could apply to the PNDC to order the detention of anyone it was investigating, or interrogating.[99] After investigations, it could order the confiscation of any property it was not satisfied had been acquired by the person's lawful income.

20.2.2 The CVC was not subject to the courts or to any other body, except the PNDC, in the performance of its duties. By an ouster clause, the PNDC ousted the jurisdiction of the courts as follows:

[96] *Ghanaian Times* , vol 8,048 Thursday, 11th November, 1983, editorial, p.2.
[97] Section 4(i) PNDC Law 1.
[98] Section 4(ii) PNDC Law 1.
[99] Section 6(1), PNDC Law 1.

> It shall not be lawful for any court to entertain any action or proceedings whatsoever for the purpose of questioning any decision, finding, order, or proceeding of the Committee…and for the removal of doubt it shall not be lawful for any court to entertain any application for an order or writ in the nature of habeas corpus, mandamus, prohibition or quo warranto and declaration in respect of any decision, finding, order or proceedings of the Committee.[100]

With such wide-ranging powers and no oversight of any other body, the CVCs were accountable to none but those who established them.

20.2.3 In 1982, the CVC began to investigate all owners of bank accounts that were in excess of fifty thousand cedis (c50,000.00). For this purpose the CVC was given access to all bank accounts in the country. Those persons who were summoned to appear before the CVC to explain the source of their wealth, found that the body had all the information on their private financial transactions already supplied by their respective banks. Those who appeared to owe on taxes, either because they had failed to pay their taxes at all, or had under-declared their incomes to the Department of Income Tax, were asked to pay whatever was assessed to be due, as well as penalties thereon, into PNDC Account No.48. In some instances, the persons were re-assessed and asked to pay the new tax-rate, even though they had already paid what was due. Such persons risked having their properties being confiscated if they defaulted in payment. The snag, however, was that the sums of money imposed were often huge, and the usual time-limit within which payment was to be made was forty-eight hours. The combination of size of the amount, as well as the unreasonable time schedules for payment, made it almost impossible for the persons concerned to honour the terms of the payment. For instance, evidence before the Commission, indicated that some persons were required to raise the equivalent of $2 million (two million dollars) within forty-eight hours, or risk having their properties confiscated. It was largely on account of these unreasonable conditions that many persons had their properties confiscated to the State.

20.2.4 In addition to the pecuniary penalties the CVC could impose, it could make other orders as well. It could

> (d) recommend to the appropriate authority for the dismissal, removal or retirement from the Public Service of a public officer investigated by it for any misconduct or negligence in the performance of his official functions;
>
> (e) recommend to the appropriate professional body to take disciplinary proceedings against any member of that professional body for any professional misconduct or negligence;[101]

[100] Section 11 PNDC Law 1.
[101] Citizens Vetting Committee (Amendment) Law, 1982 (PNDCL 18), amending Para 7 of Citizens Vetting Committee Law, 1982 (PNDCL 1).

With such wide powers and no possibility of review by any institution, except the PNDC, the CVC was a law unto itself, and in a position to end the professional career or source of livelihood of anyone against whom it believed such action was justified.

20.2.5 The CVC could also "vet in absentia" in specified circumstances, such as where a person was outside Ghana or had been given reasonable notice to appear before the Committee to be vetted, but had failed to respond, or had failed to return to continue vetting that had begun[102].

20.2.6 Some persons who appeared before the CVC in places outside Accra, complained of ill-treatment whilst undergoing interrogation. Evidence before the Commission, also established that even when these persons were found not to owe on taxes, they were forced to give up some of their money because they were "too rich" and the "government needed money". They were escorted at gun-pint to their banks and made to withdraw cash for making such payments. However, no receipts issued in these cases.

20.3 National Investigations Committee (NIC)

20.3.1 The NIC was established under National Investigations Committee Law, 1982 (PNDCL 2), to conduct investigations into the following:

(a) Allegations of corruption, dishonesty, or abuse of office for private profit against any person or group of persons who held high office of State or any public office in Ghana, or may be shown to have acted in collaboration with any such person holding high office of State or any public office in respect of any of the foregoing acts;
(b) Allegations of breaches by any group of persons of mandatory provisions of any of Ghana's Constitutions;
(c) allegations of breaches of statutes or laws whereby damage was caused to the national interest;
(d) Any person who may have willfully and corruptly acted in such a manner as to cause financial loss or damage to the State or who may have directly or indirectly acquired financial or material gain fraudulently or improperly or illegally to the detriment of the State;

(e) Any other acts or omissions which may be shown to be detrimental to the economy of Ghana or to the welfare of the sovereign people of Ghana or in any other way to the national interest.[103]

For the purpose of doing its work, the NIC could apply to the PNDC to order the detention of any person, or the freezing of the bank accounts of any person it considered

[102] Citizens Vetting Committee (Amendment) Law, 1982 (PNDCL 18), enacting a new para 9A of Citizens Vetting Committee Law, 1982 (PNDCL 1).
[103] Section 3 of PNDC Law 2.

necessary and the PNDC could act as it thought fit.[104] The NIC could refer a person it had interrogated to stand trial at the Public Tribunals.

20.3.2 The NIC had Regional branches which had interesting acronyms, such as ASHRIC (Ashanti) ERIC (Eastern) URIC (Upper Region), etc. It was usually chaired by a lawyer. As with the CVC, the NIC enjoyed wide powers as it was not subject to any control or supervision by the courts whose jurisdiction had been ousted, or by any other body, except the PNDC.

21.0 The Public Tribunals

21.1 The intention to establish public tribunals in Ghana by the PNDC was first publicly articulated by Flt. Lt. Rawlings in a national Television and Radio Broadcast on 5th January, 1982.[105] In his address, the Chairman of the PNDC declared that public tribunals would be established to try those who had committed crimes against the people, in a manner different from the regular courts. He explained that the Tribunals would conduct investigations and trials, and that the trials would be held in public, and would "not be fettered in their procedures by technical rules, which in the past have perverted the course of justice and enabled criminals to go free."[106]The Tribunals would co-exist with the regular courts, though they would remain parallel systems. He also gave the following caution:

> Let each respect the boundaries of the other, and there will be peaceful co-existence. But even though each will be acting within its own confines, we believe that ultimately it is for the people to decide the correctness or otherwise of the judgments of the two systems. This is one way in which the dispensation of justice itself will be democratized.[107]

21.3 The official justification for establishing the Public Tribunals system was that the regular courts were corrupt, and their work was characterized by undue delays. They were also accused of being prejudiced against the poor, because they sentenced the poor to prison for small infractions, while rich criminals escaped punishment because they could hire the best legal services available. In those days, "One law for the rich" and "One law for the poor" and "Justice delayed, is justice denied" were some of the most popular catch-phrases for the "revolutionaries". Its inaugural sitting was on 15th September, 1982, and initially it sat only in Accra.

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[104] Section 4(1) of PNDC Law 2.

[105] Attafuah , supra,.

[106] *Daily Graphic* vol. 9695 Wednesday 6th January, 1982 p.1

[107] Ibid.

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21.4 The jurisdiction of the Public Tribunals was limited to criminal matters only, and they were not obliged to observe the regular rules of Evidence and Criminal Procedure. The Tribunals were also discouraged from using "technical rules of procedure (or what was referred to pejoratively as "technicalities").[108]This caused the GBA to express the view that

> it is disturbingly prejudicial for Public Tribunals to decide in advance without any attempt at definition that technicalities will not be tolerated… an accused person is entitled to avail himself of any rule of law or procedure which operates to his benefit.[109]

21.5 The minimum sentence of imprisonment was three years, and they could be given jurisdiction over any matter that the PNDC determined. Their sentences were subject to approval by the PNDC. Soon after it began sitting in Accra, the PNDC exercised its power of review of sentences in fourteen cases. Although there were no particulars published of the cases involved, the sentences were either confirmed, reduced or increased, according to the pleasure of the PNDC.[110]

21.6 In the early days of the Public Tribunals, cases were swiftly dealt with, and the sentences severe in the extreme. The speed with which prominent persons were tried and imprisoned also gave the public the assurance that the law was, indeed no respecter of persons. This approach to criminal justice seemed to satisfy the public that no longer would criminals escape just punishment, and the system was hailed as a panacea to the deficiencies of the regular courts.

21.7 During the first two years of the life of the Public Tribunals, the Public Tribunals Law, 1982 (PNDCL 24), there was no right of appeal because there was no appellate body provided to perform that function. The absence of an appellate system constituted a gross violation of the rights of those who were tried and sentenced.

21.8 In the early years of the Public Tribunals there were strange practices that had implications for justice. In October, 1982, the public was informed that those who attended Tribunal sittings "can give suggestions, advice and any form of assistance they may have to help its proceedings".[111] This was given practical application when in December, 1982, members of the public present at the trial of a person convicted of gold smuggling were invited to prescribe a sentence which in their opinion would serve as a deterrent to other gold smugglers. Sixteen persons voted:

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[108] H.J.A.N. Mensa-Bonsu, "The Public Tribunal System And the Human Rights Regime" in *The Judicial System And The Protection Of Human Rights In Ghana* E.K.Quashigah, (ed) Human Rights Study Centre, Faculty of Law, University of Ghana, Legon and Konrad-Adenauer Foundation Of Germany, Accra, 1994.

[109]GBA Annual General Conference, Statement on Public Tribunals, 13th January, 1984.

[110] *Ghanaian Times* vol. 7712 Saturday, 9th October, 1982, p.1.

[111]*Ghanaian Times* vol. 7,721 Wednesday, 20th October, 1982.

five suggested he be given 10-15 years imprisonment; six suggested that he be fined heavily and his two cars

confiscated; and five suggested he be fined and freed. Significantly, the Tribunal did not act on any of these suggestions when it sentenced him to 17 years imprisonment.[112]

21.9 The Ghana Bar Association refused to appear before the Tribunals. Even though a group of lawyers decided to defy the ban of the GBA and practise law before the Tribunals, most accused persons could not secure the services of legal counsel for their defence.

21.10 The International Commission of Jurists (ICJ) sent a delegation to discuss the deficiencies in the system.[113] In 1984, a new law to govern the operations of the Public Tribunals, the Public Tribunals Law, 1984 (PNDCL78), was promulgated. This Law made provision for the setting up of an Appeals Board.

21.11 Originally, a petition appeal had to be lodged within thirty days of the making of the Order,[114] but as the case loads increased and the Public Tribunals were afflicted by delays, the law was amended to make the time limit "7 days from the date of receipt of a copy of the decision or order…"[115] This change notwithstanding, some persons never had the opportunity to file their appeals as the written judgment or order was either never produced, or could not be traced, by the Tribunal.

21.12 The Public Tribunals were allowed to try persons in absentia, provided they had tried to contact the accused person by putting information about the charges in the public domain through the media.[116] Evidence before the Commission suggested that occasions did arise when Prosecutors secured convictions, by misrepresenting facts about accused persons who were available to stand trial, but who had not been informed of charges pending against them. The result of such wrongdoing on the part of prosecutors, was that

some persons were sent to prison on the strength of sentences imposed in absentia, without an opportunity to defend themselves.

21.13 One of the abiding difficulties of the Public Tribunals System was the fact that it operated as a parallel system of justice for the trial of crimes. It thus had concurrent

[112] *Daily Graphic* vol 9977, Saturday, 4th December, 1982. The accused in the case, J. K Ampah collapsed and died when his pace-maker failed, in the course of testifying on this event in his petition before the Commission on 5th June 2003.
[113] C. Flinterman, "Human Rights in Ghana" *S.I.M.Special* No.4 International Commission of Jurists and Netherlands Commission on Human Rights, 1985
[114] PNDCL78, para 19(4).
[115] Public Tribunals (Amendment) Law, 1985 (PNDCL 108) re-enacting para 3 of PNDCL78.
[116] PNDCL 24, para10(1); PNDCL 78, para 14.

jurisdiction with the regular courts to try certain offences, but no regulations were developed to prescribe when a particular case could be put before the Tribunal, rather than before the courts. As it became clear that the quality of justice available at the Public Tribunals was not as fair to the accused as in the regular courts, potential accused persons

began to desire prosecution before the regular courts. This gap in the law soon became the source of corruption, as those who fell foul of the law had every incentive to attempt to influence the decision-making process so that they would be put before the regular courts, rather than the Public Tribunals for trial. The GBA called upon the government to bring the problem to an end as soon as possible.[117]

22.0 Political Interference In The Work Of The Public Tribunals

22.1 The Public Tribunals were subject to the control of the PNDC by the simple expedient of requiring their judgments to be subject to confirmation by the PNDC.[118] In addition to this, the PNDC could refer any matter not already specified to be tried by it. It was also a fact that the penalty for certain offences were to be prescribed by the PNDC, but since this would happen only after someone was to be tried for one of those particular offences, a fundamental principle of the rule of law in respect of justice in criminal trials was violated.

22.2 There were also credible allegations that pressure was sometimes brought to bear upon the Tribunals to produce convictions of particular persons, since panel members could be removed on grounds of "counter-revolutionary activity".[119] Executive manipulation was certainly prejudicial to the right of an accused to a fair trial.

22.3 In 1984, the independence of the Public Tribunals was put to the test when a young man, Nii Amu Addy, said to be the cousin of the Chairman of the PNDC, shot and killed a man. He was tried for murder at the Public Tribunals and was subsequently acquitted and discharged on the spurious ground that the shooting was accidental.[120] The Chairman of the PNDC, believed that the basis of his acquittal was absurd and so ordered his re-arrest.[121]The State subsequently appealed against the acquittal and Nii Amu Addy was consequently put before another panel and re-tried, in complete disregard of the rule against double jeopardy. Predictably a verdict of 'guilty of murder' was handed down and a sentence of 'death by firing squad' imposed on him. When passing sentence, the Chairman of the Tribunal stated that in view of the mitigating factors the PNDC could, when the verdict came before the Council for confirmation, commute the death sentence to life imprisonment.[122] The young man was later reported to have been executed by firing squad on, or about, 29th September, 1984.[123] One wonders why the "mitigating

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[117] Address of President of GBA (1987) supra.
[118] PNDCL 24, para 7(22).
[119] PNDC Law 78, Para. 10(5).
[120] *Ghanaian Times,* vol. 8,278 Saturday, 11th August, 1984, p.2.
[121] *Ghanaian Times,* vol. 8,279 Monday, 13th August, 1984, p.3.
[122] *Ghanaian Times,* Vol. 8,308 Friday, 14th September, 1984, pp.1&.3.
[123] *Ghanaian Times,* vol. 8,322 Monday, 1st October, 1984, p.1.

factors" were considered sufficient for mitigation of sentence by the Chairman, when it was not sufficient for reducing the offence from murder to manslaughter.

22.4 There was also another occasion involving reckless driving that caused a road accident and injury to a student, and was dealt with much too leniently in the opinion of the Chairman of the PNDC. The case was also ordered to be re-tried, and this was done. Although the outcome was not as serious for the driver involved as in the Addy case, both occasions constituted a gross violation of the rights of the accused persons, and did nothing but harm to the image of the Public Tribunals.[124]

23.0 End of Public Tribunals

23.1 In 1991, the Committee of Experts who made proposals for the drafting of the 1992 Constitution recommended that the Public Tribunals ought not to be retained because their very existence as a separate and parallel system of justice meant that citizens similarly placed were being subjected to different standards of justice.[125]

23.2 The 1992 Constitution abolished the Public Tribunals as they existed, and gave them six months within which to complete their part-heard cases. Appeals pending before them were transferred to the Court of Appeal.

24.0 Special Military Tribunal

24.1 In 1982, the PNDC passed a law establishing Special Military Tribunals to try service personnel who were molesting members of the public.[126]The Special Military Tribunal as provided for under the Law, was to be presided over by a panel of five or seven persons, made up of Officers and Other Ranks, and they could impose fines of up to two thousand cedis (the equivalent of about $800 at the time). However, in 1984, the law was amended to give it jurisdiction to try civilians and persons who had retired or deserted from the Armed Forces, as if they were service personnel or in active service respectively.[127]The offences triable by the Tribunal were also amended to cover any act that

(a) incites or assists or procures any person to invade Ghana with armed force or unlawfully subjects any part of Ghana to attack by land, sea or air or assist in the preparation of any such invasion or attack;
(b) prepares or endeavours in any manner to overthrow the Government or to usurp any powers of the Government;

[124] See "Damning Indictment" *West Africa magazine*, 30th March – 5th April, 1992.
[125] *Report of Committee of Experts on Proposals for a Draft Constitution of Ghana* Ghana Publishing Corporation, Tema, 1991, p.124, para. 266-267.
[126] Special Military Tribunals Law, 1982 (PNDCL.19).
[127] para 1(1) and para. 2.

(c) knows of the commission of any of the above acts but does not report it to the Provisional National Defence Council…"

The Special Military Tribunal could also conduct trials in absentia and in respect of the offences listed above, the trials could be held in camera.[128]There was no right of appeal.

24.2 The panel that could preside was also amended to make it possible for the Commander-in-Chief to prescribe a panel of three: the Unit Commander, one Officer and one Other Rank.[129] The penalties that could be awarded were also dramatically enhanced. From a tribunal whose highest penalty was dismissal with disgrace from the Armed Forces, the Special Military Tribunal was given power to impose death by firing squad.[130]

24.3 All these changes were to take retrospective effect from 21st July, 1982. These amendments to the original Law were obviously intended to legitimise acts that had been done prior to their enactment. This raises issues of justice when a law attempts to regularise acts done by a judicial body, after it has unlawfully imposed a sentence, extending even to the death penalty that has been carried out.

25.0 The Price Control Tribunal

25.1 The Price Control Tribunal was established to deal with traders who had been caught selling goods above control price. Task Forces were formed to enforce control prices. This body also sent some people to prison, and supervised the brutalisation of some traders. Its functions became redundant when the government's economic policies changed and price controls were abandoned.

[128] Para. 3A and para 4(7) of Special Military Tribunals Law,1982 (PNDCL 19), as amended by Special Military Tribunal (Amendment) Law, 1984 (PNDC L. 77).
[129] Para. 3(3) of Special Military Tribunals Law,1982 (PNDCL 19), as amended by Special Military Tribunal (Amendment) (No.2)Law, 1984 (PNDC L. 100).
[130] Para. 2(1) of Special Military Tribunals Law,1982 (PNDCL 19), as amended by Special Military Tribunal (Amendment) Law, 1984 (PNDC L 77).

VOLUME 4 CHAPTER 2

PART II: THE LEGAL PROFESSION

26.0 Introduction

26.1 The Legal Profession, has during its existence, found itself called upon to protect the fundamental human rights of the citizens, or, at least, to prevent state-sponsored human rights violations. This has been the norm, particularly during periods of non-constitutional governments, because:

(1) often it was lawyers who understood new legislation and the threats they posed to the enjoyment of fundamental human rights; and
(2) lawyers represented an influential group of persons who did not depend on the government for a living. They were therefore able to confront the government on pertinent issues without risk to their economic survival.

Through the medium of Press Statements and Resolutions adopted at the Annual Conferences of the GBA, lawyers brought their influence to bear upon issues of national governance, including the human rights of the citizenry.

26.2 The role lawyers were called upon to play was not without cost to the individual lawyers concerned. Many such lawyers bore the brunt of the displeasure of the Executive as they suffered detention for their activism.

26.3 Lawyers have also suffered ill-treatment whenever they have been associated with the causes that they defended.

26.4 Individual members of the legal profession have also been at the forefront in designing and implementing repressive measures against the citizenry. Consequently, they have also been responsible for some of the human rights violations that were perpetrated during the mandate period.

6TH MARCH, 1957 – 23RD FEBRUARY, 1966: CPP GOVERNMENT

27.0 The Bar On The Preventive Detention Act, 1958 (PDA)

27.1 In January, 1959, the GBA criticised the high-handed behaviour of the executive after subjecting certain events in the country to critical examination after the Minister for Information, Kofi Baako, was reported to have threatened that he would lock up any lawyer who misbehaved. The GBA issued a statement criticising the government for

doing acts that had brought the Judiciary into conflict with the Executive. The statement said,

> The Association solemnly and humbly declares that neither this threat nor any other threats will deter it from pursuing as a body, or encouraging its members to pursue as individuals, the duty to uphold law and defend the interest of any citizen insofar as those interests are not illegal.[131]

The statement went further to affirm that the courts of law exist as much to implement the acts of the Executive as to uphold the rights of the individual. The statement therefore concluded that "the upholding of rights cannot be subordinate to political expediency, for therein lies the rule of tyranny and not the rule of law."[132] By this statement, the GBA was, in fact, blaming the government acting in such a manner as to be brought into conflict with the Judiciary.

27.2 Soon after the first detentions under the PDA were effected, Dr. Joseph Boakye Danquah, a prominent lawyer and later, President of the GBA, began to fight through the courts for the PDA to be repealed because of its repressive nature. He took various habeas corpus applications to the courts, culminating in the decision in *Re Akoto* when the courts ruled that it was not the proper forum for the enforcement of the Declarations on Human Rights that the President of Ghana had been required to make before the National Assembly, under the Republican Constitution.

27.3 Eventually, Dr. Danquah had to make the supreme sacrifice in the course of his fight against oppression, dictatorship and the denial of fundamental human rights when he and Koi Larbi, another lawyer, most associated with the defence of detainees and deportees, were themselves detained. Their detention made it impossible for detainees to secure legal counsel.

27.4 During Dr. Danquah's spirited campaign against the PDA, other members of the Ghana Bar Association were ominously silent on these matters, although they put up a ferocious resistance to Nkrumah's attempt to divest lawyers of their wigs and gowns as relics of a colonial anachronism. Indeed, some members of the Legal Profession considered his persistent civil rights campaigns as quixotic and divorced from reality. Some thought that he was more of a philosopher than a lawyer.[133]

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[131] Omari, supra, p.57.
[132] Ibid.
[133] S.K.B. Asante,., *Reflections on the Constitution, Law and Development*, The J. B. Danquah Memorial Lectures, March 2002 Series 35, Ghana Academy of Arts and Sciences, Accra. 2002.

27.5 Between 1963 and1966, the government made efforts to get the GBA to elect officers more favourable to its cause. The response of the lawyers was to cease to hold formal meetings.[134]

24TH FEBRUARY, 1966 – 30TH SEPTEMBER, 1969: NLC

28.1 NLC Laws Against CPP Functionaries

28.1.1 Immediately after the overthrow of the CPP government, the NLC began to enact Decrees that were aimed solely at CPP government officials, CPP functionaries and activists on account of the widely held belief that they had amassed wealth at the expense of the state. These Decrees ranged from the re-institution of detention for CPP functionaries and members ostensibly for their own protection – "Protective Custody", through the banning of the CPP and its wings, such as the Ghana Young Pioneers (GYP) and the vesting of their properties in the State, to the institution of Commissions of Inquiry to investigate the assets of leading members of government and other office-holders of the CPP. The GBA, having itself faced near-extinction under the CPP government, did not protest these laws. Indeed the President of the GBA at the time, Victor Owusu, became the Attorney-General and had direct responsibility for the drafting of these laws.

28.2 In January, 1967, certain persons were accused of plotting to overthrow the NLC. They were made up of one young Army Officer, and three civilians. They were all tried by Military Tribunal and sentenced to various terms of imprisonment. This marked the first occasion when civilians were tried by a Military Tribunal. No one protested this fact, and it subsequently paved the way for the trial of other civilians by Military Tribunals later on.

28.3 There was an abortive coup on 17th April, 1967, in which Lt-Gen E.K. Kotoka was killed, Many persons from all over the country, numbering about 1,000, were arrested under ten Protective Custody Decrees enacted within a period of one month. They were detained for periods up to 18 months, for "jubilating" over the coup attempt.[135] The coup attempt was widely condemned, though no one condemned the detention of the hapless citizens, mostly former members of the banned CPP, whose offence was to have shown

[134] Robin Luckham, "Imperialism, Law and Structural Dependence The Ghana Legal Profession" in *Lawyers in the Third World: Comparative and Developmental Perspectives Studies of Law in Social Change and Development* 3, C.J. Dias, R. Luckham D.O. Lynch, J.C.N. Paul (eds) Scandinavian Institute of African Studies, Uppsala and International Center for Law in Development, New York, 1981 pp. 90 - 122, at p.115.

[135] National Liberation Council (Protective Custody) (Consolidated) (Amendment (No.7) Decree, 1967 (NLCD164); National Liberation Council (Protective Custody) (Consolidated) (Amendment (No.8) Decree, 1967 (NLCD167); National Liberation Council (Protective Custody) (Consolidated) (Amendment (No.9) Decree, 1967 (NLCD172); and National Liberation Council (Protective Custody) (Consolidated) (Amendment (No.10) Decree, 1967 (NLCD179).

feelings of approval when the event occurred, or who were merely suspected to harbour sympathies for the coup-makers, on account of their attachment to the CPP.

28.4 The 1969 Constitution, whose drafting was influenced largely by lawyers, carried the disqualification of CPP functionaries that had been legislated by the NLC, into the Constitution as its article 71. The Constitution also carried Transitional Provisions which

gave the government power to appoint persons into the Public Services or offices established by the NLC. It was these provisions that eventually produced the dismissal of 568 Civil and Public Servants by the PP Government, known as "Apollo 568".

1ST OCTOBER, 1969 – 12TH JANUARY, 1972: P P GOVERNMENT

29.0 Lawyers In the Second Republic

29.1 Lawyers were very prominent in the Progress Party, and supported the acts of the government. Their voices were not heard on the mode of implementation of the Aliens Compliance Order, nor on the "Apollo 568" case.

13TH JANUARY, 1972 – 3RD JUNE, 1979: NRC/SMC I & II

30.0 Resistance To Military Rule

30.1 The GBA also resisted the phenomenon of military rule in Ghana and insisted at all times that the military had no role to play in politics and consequently, that the overthrow of democratically-elected governments is illegitimate. It was inexcusable (in the opinion of the GBA), where there was a democratic Constitution which gave the citizens a right to change their government.

30.2 The GBA resisted attempts to introduce pseudo-democratic regimes in this country such as was attempted by Gen Acheampong in his proposals for a Union Government. It is said of members of the GBA that,

> They became strong critics of military rule and military justice, including the redefinition of several existing offences and designation of several new ones as 'subversion', the establishment of military tribunals to try them and the conferral of powers of arrest and search on military personnel. They were…virtually the only body of organized public opinion that was able to voice such criticisms in public.[136]

[136] Luckham, supra, p.98.

30.3 During 1977 to 1978, the GBA played a pivotal role in bringing into being the Association of Recognised Professional Bodies (ARPB) that did a lot to bring down the government of Gen Acheampong. For the resistance of the GBA to the political adventurism of Acheampong, many of its members were detained by the government.

4TH JUNE, 1979 – 23RD SEPTEMBER, 1979: AFRC

31.0 GBA And AFRC

31.1 The GBA was generally not in evidence, as many of its members were part of the class of citizen targeted by AFRC policies. This regime also saw the active participation of many lawyers in the AFRC and the drafting of draconian legislation. Indeed, W Adumoah-Bossman, then President of the GBA joined the AFRC and became associated with the abuses perpetrated by or under it. He also became a member of a panel of the AFRC Special Tribunal that was established to continue the "revolutionary justice" begun under the regime. It was largely on account of his participation in the AFRC, that he was voted out of office later that year.

24TH SEPTEMBER,1979 – 30TH DECEMBER, 1981: THIRD REPUBLIC

32.0 The GBA

32.1 At its Annual Conference at Cape Coast in 1981, the GBA criticized the government for harassing certain personalities by putting them under "aggressive surveillance" and urged the government to desist from such acts.[137]

31ST DECEMBER, 1981 – 6TH JANUARY, 1993: PNDC

33.0 The Relationship Between The PNDC And The GBA

33.1 The relationship between the government and the GBA was one of bitter contest. Beginning from January, 1982, when the GBA called upon the newly-established PNDC government to hand over power to a National Government,[138] the relationship remained

[137] Resolution of the GBA on the Liberty of Citizens of Ghana, 13th January, 1984. The Resolution of 1984 recalled the 1981 resolution and regretted that the persons who were the subject of that protest had themselves become a part of a state machinery that was perpetrating worse forms of the abuses and violations that they suffered.

[138] *Daily Graphic*, vol. 9707 Monday, 18th January, 1982, p.4.

adversarial right to the end of the PNDC rule. Every year, the GBA adopted resolutions at the Annual Conferences, which called upon the PNDC to make arrangements to hand over power to a democratically-elected government so that the citizenry could enjoy their civil and political rights.[139] The resolution also called upon the PNDC to either bring all political detainees to trial or release them, and end all arbitrary arrests and detentions. This period was notable for the massive pressure that was brought to bear upon lawyers in general, and the GBA in particular. The 1985 resolution also saw the GBA re-

affirming its attachment to the wig and gown, and insisting that lawyers should appear in court fully robed in order to recover their loss of self-esteem.

33.2 The General Resolutions of the Annual General Conference of the GBA in January, 1984, criticized the PNDC for its

> "continued official control of the press and other news media … which effectively prevents the free dissemination of information, views and opinion different from those of the Government should be removed forthwith to facilitate free expression of opinion, exchange of views and information between the citizens and the Government."[140]

The resolution also called upon the PNDC Government to lift the curfew that had been in place since 31st December, 1981.

33.3 In March, 1985, the GBA protested the starving of the judicial system of funds and material resources, and the consequent deterioration of facilities and services in the regular courts; the "abject squalor, degradation and dehumanizing conditions in most prisons, police cells and other places of confinement"; and the "inadequate clothing of many indigent prisoners and others in detention."[141] The resolution also announced the establishment of a Human Rights Fund to support the families of persons detained without trial.

34.0 The GBA And The Public Tribunals

34.1.1 The GBA announced its opposition to the setting up of the Public Tribunals by the Government of the PNDC. At its Annual Conference in September, 1982, members of the GBA adopted a resolution to boycott the Public Tribunals. The objection to the Tribunals was on account of both the form and substance of the new system. The tenor of the objections were as follows:

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[139] Resolutions passed at the 1984/85 Annual General Conference, 6th December, 1985.
[140] Resolution dated 13th January, 1984.
[141] Resolutions passed at the Continuation Meeting of the 1983/84 Annual General Conference, 15th March, 1985.

(1) As regards the form of the Tribunals, the GBA was of the view that the prescription of a panel made up of one lawyer and two or more lay persons with unrestricted powers had many pitfalls judging by the difficulties with the existing jury system.
(2) The GBA thought it inappropriate, that the votes of the lay and professionally-trained panel-members should have equal weight when decisions were to be taken on the fate of an accused. (This was because it was possible for the two or more lay members to reach a decision that was wrong in law, but that would be the determinant of the fate of the accused persons).

(3) In addition to this, the lawyers on the panels were mostly very junior, and it was unlikely that they had the requisite experience to handle the responsibility of running the system effectively.
(4) The Tribunals were not subject to the supervisory or appellate jurisdiction of the Superior Court
(5) There was no right of appeal.[142] The GBA thus declared itself unwilling to support this wrong procedure in law and was not prepared to condone such illegality by appearing before the Tribunals.

34.1.2 As a result of these objections, the members of the GBA refused to put their services at the disposal of people accused and charged before these tribunals. Defending the decision, J.K. Agyemang, then President of the GBA, stated to the Commission, that the grounds for the boycott were, and are still sound.[143]

34.2 The Effect Of The Boycott

34.2.1 The decision to boycott the Tribunals resulted in many accused persons being charged and tried without legal counsel. For instance, the accused persons in the case of the murder of the three High Court Judges and retired Army Officer were put before the Public Tribunal per a decision of the PNDC Government instead of the High Court. Under the Public Tribunals Law, 1982 (PNDC L 24), murder was not one of the offences triable by the Public Tribunal, and so a special authorisation was required to confer jurisdiction on it, to try the offence of murder. This special authorisation was duly obtained. According to the then Attorney-General, this special authorisation was signed by the Chairman of the PNDC on 8th June, 1983.

34.2.2 This decision made it impossible for the accused persons to secure the services of legal counsel, even though the accused persons appealed to the tribunal to assist them in contacting counsel of their choice. Eventually the Tribunal proceeded to try the accused persons without the benefit of legal counsel as the Tribunal maintained that it would not keep adjourning simply because the accused claimed they could not engage the services of a lawyer.

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[142] Resolution of GBA Annual Conference, Statement on Public Tribunals, 13th January, 1984
[143] Memorandum to the National Reconciliation Commission.

34.2.3 The trial for a capital offence without the benefit of counsel constituted a serious violation of the time-honoured principle that an accused person has a right to legal representation of his or her choice.[144] Arguably, the decision of the GBA to boycott the proceedings at the Tribunals contributed to the violation of the rights of these accused persons.

35.0 The Gepi-Atee Commission

35.1 The Government set up a Commission of Inquiry into Insurance Malpractices, under the chairmanship of Gepi-Atee.[145] This Gepi-Atee Commission found many malpractices in the Insurance industry, and a number of lawyers were consequently prosecuted convicted and imprisoned for insurance fraud.

36.0 Attacks On Lawyers And The Legal Profession

36.1 Following the announcement of the GBA's decision to boycott the Public Tribunals, placard-bearing demonstrators, some of whom were supposed to be secondary school students, protested the boycott as "anti-revolutionary". The Law Chambers of prominent lawyers were vandalised by these demonstrators, and the documents in them torn up or taken away.

36.2 Government functionaries criticized the GBA, and the press described lawyers with very unflattering epithets. Despite these attacks, the President of the GBA, Enoch D. Kom, defiantly declared "No one can shut us up."[146] Senior lawyers were put before the CVC and ridiculed in the newspapers for not having paid their taxes.

36.3 In 1983, the GBA called upon the government to hand over power to a civilian government. Lawyers were subjected to press attacks and their integrity called into question. They were even called "tax-dodgers" by the Force Commander of the Ghana Armed Forces. Soon after the Annual Conference of the GBA in 1985, lawyers were accused of not paying their taxes, and described as "the worst tax dodgers". Twenty-six Kumasi-based legal practitioners were invited to appear before the Office of Revenue Commissioners, to account for taxes they had paid for the preceding five years. Newspaper publications of the details of lawyers and their indebtedness to tax authorities appeared in the government-controlled press.[147]

[144] George Agyekum, *The Judges' Murder Trial of 1983*, Justice Trust Publications, Accra, 1999, p.23.
[145] *Ghanaian Times* vol. 7,701 Monday, 27th September, 1982 p.1.
[146] *Ghanaian Times* vol. 7,698 Thursday, 23rd September, 1982 p.4.
[147] *Ghanaian Times* vol. 8,634 Monday 7th October, 1985, pp.1&3.

36.4 Some lawyers, who had appeared as counsel for AFRC convicts before the courts, fled the country in 1982. Those already outside, did not return. Still others fled the country, when a systematic campaign of harassment was begun against lawyers. Some of those who remained were arrested, brutalized and detained in military guardrooms to be investigated. It was a very difficult period for lawyers.

34.5 Lawyers were attacked in the media for charging excessive fees, and at least one lawyer was prosecuted for dishonestly acquiring property, after an investigation by the

NIC, because he charged professional fees that were deemed to be "inordinately high." Even though the General Legal Council brought to the attention of the NIC, that such matters involved issues of professional discipline which was its statutory remit, the case was still treated as a criminal case for which he was imprisoned.

36.6 The GBA consistently criticized the detention law, Protective Custody Law, 1982 (PNDCL 4), and Habeas Corpus (Amendment) Law, 1985 (PNDCL 91), until they

ceased to exist upon the operation of the 1992 Constitution. These two laws were described as pernicious because PNDCL4 gave the government power to detain any person whenever the PNDC was satisfied that it was in the interest of national security so to do, and PNDCL91 prohibited the court from enquiring into the grounds for the detention respectively. At every opportunity, the GBA repeated its call for a repeal of those laws.

36.7 An attempt was made to dismember the GBA by attacking the monopoly that it had enjoyed as the sole body for the organization of lawyers in Ghana. Thomas Nuako Ward-Brew, a lawyer with leftist ideological political leanings and pro-government sympathies, successfully challenged, by legal action, the monopoly enjoyed by the GBA over the organization of lawyers into an association. He subsequently announced the formation of a rival association, the Bar Association of Ghana (BAG). It is uncertain whether the BAG actually took off, or whether it had any other members apart from the founder.

36.8 Another Association was formed, known as Ghana Association of Democratic Lawyers (GADL) with George Agyekum and Kwaku Gyan as Chairman and General Secretary respectively. These gentlemen were, incidentally, also officials of the Public Tribunals system. Although named as an association of lawyers, it also had a number of non-lawyers as members, and one of its objects was to dedicate itself to the promotion of human rights. Under the auspices of the GADL, a British Lawyer, Lord Guildford, came into the country to give a series of lectures, urging Ghanaian lawyers to free their minds

from slavery, and accept the Public Tribunals because that system was better than what the country had inherited from Britain.[148]

36.9 As a number of lawyers continued to defy the boycott resolution, the GBA sought to institute disciplinary action against them. It wrote to those lawyers threatening them with disciplinary action. The lawyers involved, challenged the standing of the GBA, to attempt to impose disciplinary action on its members who were merely obeying the laws of the land. This action generated great controversy within the GBA, and it came to be at its

most vulnerable at this time, as some of its own members were in open revolt, and were fighting the association through the newspapers.[149]

37.0 Murder Of The Three High Court Judges And Retired Military Officers

37.1. In 1982, the GBA was instrumental in the organisation of the burial arrangements of the murdered Judges and the Army Officer, as well as piling pressure on the government to institute a Judicial Inquiry into the event. Thereafter, the GBA Secretary, Robert Kocuvie Tay, complained of being threatened with arrest and detention from some highly-placed officials.

37.2 In 1986, the GBA decided to honour the memory of the three High Court Judges murdered in the line of duty. It decided to institute the 'Martyrs' Day' programme that was to consist of a memorial service and lectures.[150] In 1988, the first service was held in Accra, during which the events of 30th June, 1982, were recounted under the title, "Lest We Forget". This determination of the GBA not to let the event be forgotten, brought it into conflict with the government on a number of occasions.

37.3 In 1989, Peter Ala-Adjetey, Nutifafa Kuenyehia and Eugene Akoto-Bamfo, the President, Secretary and Treasurer respectively of the GBA, were arrested and detained a few days to the Martyrs' Day Lectures that were to be held under the theme, "Rule of Law". The Lectures had to be called off. The officers were detained for about two weeks, during which they were subjected to ill-treatment and then released without charge. There was also a public demonstration organised against the GBA.[151]

37.4 In the same year of 1989, the GBA suffered great embarrassment when the 6th Biennial Conference of the African Bar Association (ABA), of which it was the host, was banned by the PNDC, two days before the opening of the function. Under the theme, "Human Rights In Africa", the Conference was expecting delegates from all over Africa. By the time of the ban, some of the delegates had already arrived in Ghana. Despite the best efforts of the GBA, the government would not relent and the GBA incurred a lot of

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[148] *Ghanaian Times* vol. 7,975 Thursday, 18th August, 1983 p.1.
[149] *Daily Graphic* vol. 10668 Saturday, 2nd March, 1985 pp1&3.
[150] Address of Acting President F.K. Mensah to Annual General Conference of the GBA, in Kumasi on 9th January, 1990.
[151] Oquaye, supra, p.171.

cost in making arrangements to cancel the international meeting, two days before it was due to open.[152]

37.5 The GBA was subjected to heavy criticism in the media, with the accusation that it wanted to use the ABA Conference to destabilise the PNDC. Official denials to the media from the President, Peter Ala Adjetey, were never published. Perhaps, a discussion on human rights by the ABA, to whom an unfulfilled promise had been given in 1982 that the families of the murdered Judges would be compensated, made the government uneasy.

38.0 Lawyers' Protests Continue

38.1 In 1984, the GBA adopted a resolution calling upon the PNDC to lift the curfew, which had then been in place for two years, contending that it was an unjustified restriction on freedom of movement of persons in Ghana.[153]

38.2 The PNDC responded to the criticisms spear-headed by the GBA and amended the Public Tribunals' Law to provide for an appellate system, but this did not soften the stance of the GBA, as many of the problems it complained about earlier still persisted.

38.3 Some individual lawyers, such as Ray Kakrabah-Quarshie, offered free legal services to detainees and other persons suffering human rights abuses under the PNDC.

38.4 In 1987, the GBA initiated discussions on various human rights issues with the Attorney-General and Secretary for Justice on issues of the administration of Justice. It also held discussions with the Acting Secretary for the Interior and the Acting Director of Ghana Prisons Service. At these discussions, the GBA complained about the number of police checkpoints and barriers in the country, that affected the citizens' right to freely move about; the illegal activities of members of the Civil Defence Organisation (CDO) and the need to contain their revolutionary zeal; the appalling state of facilities in the country's prisons; and the need to set up a Parole Board.[154]

39.0 The GBA And The Return To Civilian Rule

39.1 In 1991, the GBA announced its decision to boycott the proceedings of the Consultative Assembly that had been established to debate proposals for a new Constitution in preparation for a return to constitutional rule. The GBA disapproved the proposed membership of the Assembly, because it was given only one representation on the body, whilst groups that could not be expected to know much about constitution-making, had an equal number, or even more representation. There was also an over-

[152] Address of Ag. President (1990), supra.
[153] Resolution of GBA adopted on 13th January, 1984, at Annual General Conference in Accra.
[154] Address of President of GBA, P.A.Adjetey, to the Annual Conference of GBA, Takoradi, 4th October, 1988.

representation of appointees of the government, and this, the GBA found to be unacceptable. The membership of 260, as announced, included representation from identifiable bodies, a sample of which is the following:

> Ghana Association of Writers 1; Butchers Association 1; Ghana Bar Association 1; Drinking Bar Operators Association 1; Inland Canoe Fishermen 1; Canoe Fishermen Association 1; Co-operative Distillers 1; Civil Servants Association 2; National House of Chiefs 10; Ghana Registered Nurses Association 1; Market Women 3; Committees for the Defence of the Revolution 10; Ghana Chamber of Commerce 1; National Council on Women and Development 10.

39.2 The GBA's position was represented as evidence of its scorn of the working classes, and it was denounced for its elitism. The Consultative Assembly, therefore, proceeded without the official participation of GBA, although many lawyers found their way to the Assembly as representatives of organisations that had representation.

39.3 In 1992, the GBA organised a Press Conference, addressed by its President, Anthony K. Mmieh, to protest the insertion of Immunity Provisions in the Transitional Provisions to the 1992 Constitution. According to the GBA, the PNDC regime was seeking to escape the standards of accountability which it purported to lay down for others. The GBA believed that the Provisions were tantamount to legislating impunity.

40.0 THE LEGAL PROFESSION AND MILITARY REGIMES

40.1 Military regimes have also benefited from the support of the GBA, especially, when they were believed to have ended a rule of tyranny. This support ended up making the Association and the particular lawyers complicit in the human rights violations that were perpetrated under that regime. For instance, in 1966, Victor Owusu, then President of the GBA was drafted into its fold by the NLC, and he became its Attorney-General. He thus became complicit in the human rights violations such as the enactment and implementation of the Protective Custody law; the banning of the CPP; the banning of CPP activists and functionaries from offices in the Public Service, the detention of those accused of jubilating upon the killing of Lt Gen E.K. Kotoka in 1967, etc. In 1972, E.N.Moore, then President of the GBA joined in with the NRC and became its Attorney-General and in 1979, W. Adumoah-Bossman, then President of the GBA joined the AFRC, as a legal advisor.

40.2 During military regimes, lawyers who shared the philosophy of the coup-makers, were always on hand to help draft legal instruments to legitimise the seizure of power. They also played a very major role in the formulation of "revolutionary" legislation. They analysed laws and advised the military governments on laws that could be enacted *ex post facto* to "legitimise" their otherwise illegal actions. It was lawyers who drafted the Proclamations and Decrees of the military regimes; the tightly-worded ouster clauses; the incapacitation of the courts from doing justice; as well as the indemnity clauses in the Constitutions of the Second, Third, and Fourth Republics.

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40.3 Some lawyers helped to install dictatorships by the powers that were conferred on the leader of the ruling body. For instance, provisions PNDC Proclamation such as the following, open the gate to the exercise of untrammelled power by one person:

> 23(1) The exercise of any function vested in the Council by any enactment may if not signified by all the members of the Council, be signified under the hand of the Chairman or any other member of the Council authorized in that behalf by the Council.
>
> 23(3) Any document purporting to be signed by all the members of the Council or by the Chairman of the Council in the exercise of any
>
> functions conferred on the Council by any enactment or purporting to be signed by a person in pursuance of any function conferred on him by virtue of this proclamation or under any enactment shall be prima-facie evidence of the due making thereof.[155]

To make matters worse, the following provision was made:

> Any document purporting to have been printed or published by the Government Printer and purporting to be a Law of the Council (including this Proclamation) duly made in accordance with the provisions of this Proclamation shall be prima facie evidence of the due making thereof.[156]

40.4 The net effect of these provisions was to create a situation in which action could be taken by the Chairman by himself in the name of the PNDC, and all the members would be deemed to have approved of it. It could also cover a situation in which a Law would emanate from the Government Printer and it would be deemed to have emanated from the PNDC, even if it did not. Clearly, the provision was not meant to benefit any unauthorized action by the Government Printer, but to eliminate the possibility of anyone, members of the PNDC inclusive, challenging the legitimacy of any Law published by the Government Printer, as a Law made by the PNDC. Being "prima facie evidence of the due making thereof", anyone challenging the legitimacy of the pedigree of the Law would then have the burden of leading evidence to establish that the Law was not made in accordance with the Proclamation. This was a recipe for the unilateral exercise of power, that could be designed only by persons who had a good appreciation of legal technicalities.

40.5 Others helped the military governments to perpetuate their rule, by designing legislation that criminalized criticism and deprived the citizenry of the possibility of redress in the courts.[157]Lawyers were responsible for drafting the draconian Decrees of the military governments, as none of those leaders had any training in law.

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[155] Provisional National Defence Council, (Establishment) Proclamation Law, 1981.

[156] Provisional National Defence Council, (Establishment) Proclamation Law, 1981, as amended by Provisional National Defence Council, (Establishment) (Amendment) Proclamation Law, 1984, para. 8. This amendment was made on 3rd April, 1984.

[157]The various decrees on Prohibition of rumours passed by the NLC, NRC and SMC are typical examples.

40.6 As a result of the strategic position that the Legal Profession occupied, attempts were made by the various governments to influence the Legal Profession through the GBA by sponsoring candidates whom it (government) believed would support its cause. However, as Peter Ala Adjetey, one time President of the GBA,[158] stated

> The Ghana Bar Association has fought fiercely to maintain its independence from party political control whether it be from the left, right, or centre. Whenever the members have felt that any attempt was being made by any government of this country to control the leadership
>
> of the Ghana Bar Association by sponsoring candidates for the national presidency of the Association, the members have risen to the challenge and successfully resisted any such attempt.

40.6 There are instances where some military regimes established quasi-judicial or other bodies that could exercise judicial power, without a right of appeal. The legislative purpose or intent of these bodies was to perpetrate human rights violations against perceived political opponents. Members of these bodies were in most cases, lawyers of considerable experience at the Bar. In spite of the knowledge that the members of the Legal Profession had about human rights principles and the need to uphold them at all times, they accepted these positions in the name of "service to the nation," thereby selling their conscience and services in order to help some self-seeking politicians and military adventurists to perpetuate human rights violations.[159]

41.0 CONCLUSION

41.1 The Bench in its decisions played a significant role in the development of a culture of human rights violations in the history of this country. Individual members of the Judiciary had their rights abused, and the Judiciary was unable to protect itself from Executive interference with its work. This was seen in the instances in which when some judges were dismissed for no tangible reason and without adherence to due process, other judges accepted new appointments with no hesitation, to replace the dismissed judges, In the case of the interpretation of human rights-related legislation such as the Preventive Detention Act, judges have consistently adopted a narrow positivist approach that supported the position of the Executive and deprived the citizenry of their human rights. This failure to hold the balance between the individual and the State, and undue deference to the Executive for reasons of self-preservation, resulted in widespread and unchecked violations of human rights of the citizenry, and produced some of the most terrible instances of the impact of an unrestrained use of Executive power, on the lives of ordinary people.

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[158] Adjetey Peter Ala, "The Role of the Ghana Bar Association in Ghana's Democratic Process" Speech delivered at the Annual General Conference of the GBA (1989).

[159] see NRCD 231.

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41.2 Some judges were also bold in their decisions thus upholding the principles of human rights. There was also overwhelming evidence that the Executive did interfere in the work of the Judiciary and this appears to have influenced the role played by the Judiciary in their inability to uphold the rights of the individual.

41.3 The GBA also played a significant role in upholding the human rights of the citizenry by speaking against violations. At the same time, individual members of the Bar accepted appointments by military regimes and assisted them to draft Decrees to support the usurpation of power. Some of these Decrees clearly violated the human rights of the citizenry, and others became the means by which human rights were denied to some citizens. Lawyers were the ones who ensured that the courts would be deprived of power to review the actions of military rulers that violated the rights of the citizenry.

41.4 Some lawyers were also martyred for the cause of the protection of the human rights of the citizenry. At great cost to themselves, some took on unpopular causes for indigent clients *pro bono,* and their contribution must be appropriately acknowledged.

41.5 The establishment of an alternative judicial system, the Public Tribunals and other investigative bodies, contributed significantly to the violations and abuses perpetrated in the name of the legal system.