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GHANA

REVOLUTIONARY INJUSTICE

ABUSE OF THE LEGAL SYSTEM UNDER THE PNDC GOVERNMENT

Introduction

Soon after it came to power, Ghana's ruling Provisional National Defence Council (PNDC) established a "revolutionary" court system. Consisting of Public Tribunals which operate within the country's judicial system, this parallel system for the administration of justice has shown a cavalier disregard for normal judicial procedures. Created to further the government's political interests, only a handful of verdicts handed down by these courts have run contrary to the government's wishes.

The Public Tribunals are the cornerstone of the government's institutionalized violation of human rights. The Tribunals operate under a veneer of legality that does not prevent widespread manipulation by the government, but which is often sufficient to make it difficult for Ghanaians to protest against their abuses.

The procedures followed under the Tribunal system contradict due process of law:

* The Tribunals do not permit the consideration of what are described as "legal technicalities." They do permit the conviction of accused persons on the sole testimony of one witness. This has enabled the state prosecution service, under the direction of the PNDC, to obtain convictions in cases which would otherwise have no chance of success.

* Under Law 24 the Tribunals regulate their own procedures. "Non-compliance" with the rules governing trials will not render a trial invalid unless a substantial miscarriage of justice has been occasioned. Provisions under other laws have been used to admit evidence which would otherwise be inadmissible, and to deny the defence the right to evidence that would have substantiated their case.

* Appeal procedures are seriously deficient. Given the use of the death penalty for minor criminal offences, and the low standards of rules of evidence applied in the Tribunals, it is probable that many innocent people may have been jailed or executed.

* Members of Tribunal panels often do not possess adequate legal training. However, the PNDC has been careful to appoint lawyers who are clearly supporters of government policies as chairmen of Tribunal panels.

* Sentencing, which in practice has been concentrated in the hands of a few chairmen, has at times been out of all proportion to the offences committed. The death sentence is passed for crimes which do not carry a capital sentence under Ghana's established Criminal Code.

Africa Watch is publishing this newsletter now to coincide with the debate in the Consultative Assembly on proposals for the reform of Ghana's legal system under the new constitution. This debate is scheduled to start in the last week of January 1992.

Background to the Establishment of the Tribunal System

After seizing power in 1981, the PNDC suspended the constitution, disbanded political parties, and detained 492 former political leaders from both the former governing party, the People's National Party (PNP) and the opposition.

In his first public speech following the December 31 coup, Flt.Lt. Jerry Rawlings declared to Ghanaians that:

> "In this society there is no justice, and as long as there is no justice I would say that there shall be no peace."

The common man, Rawlings went on to explain, had "toiled and suffered" for too long, while the wealthy had enriched themselves on the labour of the poor. This situation would henceforth no longer be tolerated. In conclusion, Rawlings demanded "nothing less than a revolution."

Flt.Lt. Rawlings declared that "justice in this country will from now on be the justice of the people." This statement heralded profound changes to the system of law and to judicial procedures in Ghana. With the promulgation of PNDC Law 24 in March 1982, the Public Tribunals were officially established. Initially referred to as "People's Courts" or "PDC[1] Courts," they were not apparently intended to replace the existing court system.

According to official pronouncements, the Public Tribunals were intended to "complement," and to function "alongside the normal courts." Specifically, they were to concern themselves with corruption cases. However, the act establishing the Tribunals contains ambiguities. Under Law 24, the Tribunals were empowered to try "cases disclosed or arising out of committees of enquiry reports *as well as* other criminal offences referred to in the law."

The PNDC's policy, as spelled out by Flt.Lt. Rawlings in an address to the nation on January 5, 1982, was that "the dispensation of justice [should] be democratised." Announcing the government's intention to introduce revolutionary judicial structures, he added that the Public

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[1] Peoples' Defence Committees (PDCs) and Workers' Defence Committees (WDCs), introduced immediately after the December 31, 1981 coup, were designed as the main vehicles for popular participation in the political process. In 1984 they were scrapped, and a new system of Committees for the Defence of the Revolution (CDRs) was introduced.

Tribunals would not need to "feel themselves fettered by legal technicalities." This, he explained, was because in the past, "technical rules" had "perverted the course of justice and enabled criminals to go free."

Under Section 7(11) of Law 24, the Public Tribunals were to operate on the basis of "the rules of natural justice." As a result, legal safeguards and procedural rules normally applied in ordinary jurisprudence were suspended.

All officials in the Tribunal system, including panel members, clerks and registrars, are appointed by the PNDC Secretariat, and serve "at the pleasure of the PNDC."

Under Section 7(14) of Law 24, in cases involving adverse findings by a committee:

> ...the findings shall be deemed to be *prima facie* evidence of the facts found, and the accused shall be called upon to show why he should not be sentenced according to law for the commission of the offence charged.

The presumption of guilt in cases involving committees was designed specifically to suit the workings of the bodies set up to investigate allegations of corruption by former high officials, politicians and businessmen under the People's National Party (PNP) government of l979-81, which had just been overthrown. In practice, it means that once a PNDC-created body like the National Investigations Committee, or the Citizens' Vetting Committee[2], has made adverse findings against any person, that person can be jailed unless they can prove their innocence. The Citizens Vetting Committee was also given powers to impose fines, without reference to the courts.

Section 7(14) enabled the government to control the entire process of investigations in corruption cases, from allegations to final sentence, through the office of the PNDC Co-ordinator of Investigations, Vetting and Tribunals. In effect, the fate of all perceived opponents of the government, particularly the overthrown PNP government and the other proscribed political parties, was placed in the hands of a single minister. Control of all corruption investigations was taken out of the hands of civil authorities, and a substantial part of the established courts' power of jurisdiction was abolished.

In September 1982, Ato Austin, then PNDC Secretary for Information, apparently in an attempt to defuse tension, assured Ghanaians that the Public Tribunals would not use "unorthodox" methods in bringing suspects to trial. He said that tribunals were intended to function in a way similar to that of the pre-colonial traditional courts in Ghana, "whereby a

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[2] Later renamed the Office of the Revenue Commissioners, the Citizens Vetting Committee was set up to "investigate persons whose life styles and expenditures substantially exceeded their known or declared incomes."

suspect had appeared before the Chief, the linguist[3] and the entire people."

In October 1982, two groups then closely identified with the PNDC government, the June Fourth Movement (JFM) and the Peoples' Revolutionary League of Ghana (PRLG)[4] showed themselves undiminished in their support for the Tribunals, when they issued a statement that:

> What the people want is simple, straightforward justice, not this "I-put-it-to-you" rubbish of the discredited courts of corruption, injustice and secret societies.[5]

Until August 1984, there were no provisions for a right of appeal against Tribunal verdicts, and the reforms subsequently introduced under Law 78 continue to fall short of internationally-accepted standards of due process.

Additionally, Law 19 provides for members of the armed forces to be tried before a Special Military Tribunal. These Tribunals have all the powers of a High Court, but few of the restrictions. According to this law:

> A Special Military Tribunal shall, in the course of its functions under this Law, not be bound by the decisions of any court or tribunal, but shall be guided by the rules of natural justice.

Under further amendments in April and November of 1984, the Special Military Tribunal may try any offence referred to it by the PNDC; its proceedings may be conducted in camera; and it may pass the death sentence.

The Prosecution of Party Politicians

On October 26, 1982, leaders of four former opposition political parties were ordered to appear before the Public Tribunal to answer for alleged breaches of the Political Parties Decree.

According to the Tribunal, a *prima facie* case had been established against the parties concerned, and the former Electoral Commissioner and Registrar of Political Parties, a former High Court judge, was ordered to furnish the prosecution with "lists of founding members of parties, as well as documents relating to the activities of parties concerned." These charges were

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[3] Linguist is the title traditionally given to a chief's official spokesman.

[4] The PRLG and the JFM merged during 1982 to form the United Front.

[5] On August 8, 1982, supporters of the government set fire to the Arks of the Freemasons in Accra in the belief that freemasonry exercised undue influence in the established legal system.

later dropped by the authorities, without official explanation, and apparently for lack of evidence. However in August 1986, the authorities detained Victor Owusu, the former leader of the proscribed opposition Popular Front Party, without charge or trial, for his involvement in a "subversive plot." He was released, but placed under restrictions in February 1987.

Any doubts that the Public Tribunal system would become an instrument for the victimisation of the PNDC's opponents were dispelled in September 1982, when three of the most senior party officials in the overthrown PNP - Nana Okutwer Bekoe III, Krobo Edusei, and Kwesi Armah - appeared before a Tribunal and were subsequently convicted of obtaining an illegal politcal loan on behalf of the party from a foreign source.

According to the testimony given during the trial, Nana Bekoe, Krobo Edusei and former President Dr. Hilla Limann had agreed to obtain a loan of 800,000 rand (then worth 435,000 pounds sterling, or approximately US$1 million) from Marino Chiavelli, an Italian businessman based in South Africa. The loan, which was made to the party in October 1979, after the PNP assumed office, was to be used to "resettle" soldiers who had been members of the AFRC junta.[6] In his testimony, Krobo Edusei named two AFRC members as recipients of funds drawn from the loan, but claimed not to know who else on the 13-man junta had benefited from these "resettlement" grants. The payments were widely interpreted as bribes to keep the retired soldiers quiet.

According to reports of the Tribunal hearing, the defendants were never pressed on which other AFRC members had received such monies, and the authorities carried out no further prosecutions in connection with the Chiavelli loan, although the Tribunal had clearly ruled that the PNP had committed a crime in arranging it. Nana Bekoe openly told the court that he had "acted on [President] Limann's behalf, and did not understand why he was charged instead of the PNP leader."[7]

This departure from normal criminal investigation procedures was so glaring that the Tribunal chairman, George K. Agyekum, ordered the Special Prosecutor "to see to it that Dr. Limann is brought before the Tribunal at the next sitting." The Special Prosecutor, J.C. Amonoo-Monney, replied that Dr. Limann had not been interrogated in connection with the case, although evidence had already been given that the Chiavelli loan had only been obtained after Dr. Limann had authorized it in writing.

Although the prosecution assured the Tribunal that the ex-President would be brought

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[6] The AFRC is the Armed Forces Revolutionary Council. Headed by Flt. Lt. Rawlings, it seized power on June 4, 1979 and handed power over to the elected government of PNP on September 24, 1979.

[7] *West Africa*, London, October 18, 1982, p.2742.

before the Tribunal to face the same charges, Dr. Limann has never been prosecuted for his part in this affair, in marked contrast to the treatment of his former colleagues. However, Dr. Limann was taken into custody on January 4, 1982, and held without charge or trial until September 19, 1983.

The trial, in addition, demonstrated the extent to which Public Tribunals operated without any regard for basic procedural rules. The defendants were brought from hospital to make their first appearance before the Tribunal. None of the three defendants had had a chance to prepare a defence. When they complained that they had been unsuccessful in obtaining legal counsel, because of the prevailing climate of fear among lawyers and the Bar Association's boycott of the Tribunal system, their complaints were summarily dismissed. Tribunal chairman Agyekum told the defendants:

> You must all try and get counsel. This should be very easy for you, because you were once popular and powerful. You moved among certain circles, so you can lay hands easily on any of the leading lawyers. We want to give you all the chance to get lawyers. But when we come here next time, the story will be different. There won't be any adjournment or delays. We will go ahead with or without your counsel.[8]

In October 1982, all three defendants were sentenced to jail terms, Kwesi Armah to seven years and his co-defendants to 11 years each. In addition, Nana Bekoe was sentenced separately to seven years in jail and fined 500,000 cedis (then worth approximately US$ 180,000) for attempting to smuggle foreign currency out of Ghana following the December 31 coup. The fine was later quashed by the PNDC, but the sentence was allowed to stand, including the provision that he should spend the first six months of the sentence doing conservancy work, i.e. carrying human excreta, in the Accra suburb where he lives.

Krobo Edusei was subsequently released from jail in 1983 on health grounds, and died shortly afterwards. Nana Bekoe was finally released in 1987 "on licence," after petitioning the government on grounds of ill health. Prisoners released on licence are confined to their home districts, and required to report weekly to the police. Kwesi Armah apparently served all seven years of his sentence without remission.

Significantly, on October 25, 1991, Nana Bekoe and Kwesi Armah were redetained, apparently in connection with an article in a local newspaper, the *Christian Chronicle*. The paper repeated the allegation that some members of the AFRC had benefitted from the proceeds of the Chiavelli loan which had been at the centre of the 1982 Public Tribunal hearing.

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[8] Ibid., p.2706.

Nana Bekoe was released after four days in the custody of the state security service, the Bureau of National Investigations (BNI), after petitioning the government, again on grounds of ill health. He suffers from diabetes, and is believed to have a heart complaint. However Kwesi Armah is still in detention without charge at the time of writing, as is the editor of the *Christian Chronicle*, George Naykene. According to the authorities, they are being investigated on charges of criminal libel. However, after more than two months in detention, they had still not been formally charged.

Criticisms of the Tribunal System

The workings of the Tribunals have been so arbitrary, and at times so chaotic, that in October 1982, Flt.Lt. Rawlings himself appeared to have developed doubts about the workings of the new system. Referring to the closure of some law courts, and the ransacking of lawyers' chambers, he reportedly expressed regret, adding:

> The Revolution is for the restoration of justice. Any acts which go contrary to this should be condemned outright.

Attacks on lawyers by supporters of the government, and the setting up of *ad hoc* Tribunals had by then become commonplace. By the end of 1982 at least five regular courts had been closed by members of PDCs or WDCs. PDCs at Ginger Barracks in Takoradi in the Western region; at Kibi in the Eastern region; and in the Accra suburb of Osu, had set up their own courts outside the tribunal system.[9]

In December 1982, the WDC within the judicial service itself was reported to have criticized the growth of Tribunals operating outside the framework of the law, and called for an end to the taking over of law courts. A statement issued after a meeting in Kumasi reminded PDC and WDC members that the PNDC had not abolished the existing courts.

In February 1983 the Chief Justice, F.K. Apaloo, declared PDC courts illegal, and stated his reasons:

> First of all no law has set up PDC courts. A court is legal only when it is created by law. Secondly, in a trial in the regular courts, a person knows the law he has infringed and the penalty he is likely to suffer. And he is given the opportunity to defend himself by counsel if he chooses to have one. None of these prerequisites exists in the PDC courts.

In August 1983, the chairman of the Board of Public Tribunals made clear the

[9] Amnesty International, The Public Tribunals in Ghana, London, July 1984, p.4.

government's position that PDCs and WDCs were not competent to hold trials, and by 1984 the government appeared to have ended the practice, as well as discouraging attacks against lawyers and judicial property.[10]

Meanwhile, three High Court judges and a retired army officer had been found brutally murdered after being abducted from their homes during curfew hours on the night of June 30, 1982.[11] There was widespread suspicion that senior figures in the government had been involved in the murders. The abductions had taken place at a time when only members of the government and the security forces were allowed to move about freely outside their homes.

The bodies of the murder victims, all of whom lived in Accra, had been found about forty miles out of town on an army shooting range. They had been shot at close range, and their bodies had been doused with petrol and set on fire.

Fortuitously, overnight rain prevented the total destruction of the bodies, and this allowed the investigating authorities to establish the manner in which the victims had died. After investigation, a former member of the PNDC, Joachim Amartey-Kwei, and four others were charged for their part in the judges' murders. Although the then Attorney-General, G.E.K. Aikins, announced in December 1982 that the trial would be held in the High Court, they eventually appeared before a Public Tribunal in August the following year. No official explanation has ever been given for this change. None of the five was represented by legal counsel. On August 15, 1983, they were sentenced to death by firing squad without the right of appeal. The executions were carried out the following day.

The Attorney-General's decision not to charge five other people, whose prosecution had been recommended in the final report of the Special Investigation Board set up to enquire into the judges' murders only intensified public suspicion of government involvement in the murders. Among the five who escaped criminal proceedings were Capt.(retd) Kojo Tsikata, then Special Advisor to the PNDC, and currently the PNDC member responsible for Security and Foreign Affairs. The Board's report had described him as the "mastermind" behind the plot.[12]

It was also widely recalled in Ghana that the three murdered judges had ruled on some of the most politically sensitive appeals against convictions by the Special Courts. In June 1981, for example, Mr. Justice Sarkodee had ruled "null and void" the ten-year jail sentence with hard

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[10] Ibid

[11] See *News from Africa Watch*, July 14, 1989; Lawyers Detained for Commemorating Judges' Murder.

[12] Final Report of the Special Investigation Board (Kidnapping and Killing of Specified Persons), March 1983, para.21, p.ix; para.292, p.61; para.337, p.69.

labour passed *in absentia* against a prominent businessman, Henry Kwadjo Djaba, accused of economic sabotage.

The judge also ruled that there was no evidence that any judicial action had ever been taken against the appellant by the AFRC. In the judge's opinion, the ten-year jail sentence announced in the state-owned media[13] in the final days of AFRC rule had been arbitrarily decreed, presumably for political reasons. In October 1981, Mr. Justice Agyepong ordered the release of Mr. Djaba, who had since returned to Ghana, and warned that anyone who subsequently tried to arrest him would be tried for contempt.

Similarly, Capt.(retd) Kojo Tsikata had failed in August 1981, in an application to the High Court, to restrain officers of the state security service, Military Intelligence, from "unlawful interference with his constitutional, civil and human rights to life, liberty and privacy." Capt. Tsikata alleged that he knew of plans by the Military Intelligence service to kill him. Ironically, it would be almost unthinkable to mount such a legal challenge in the courts in Ghana today, given the extensive judicial powers the PNDC, in which Capt. Tsikata plays a key role, has assumed.

Prompted by the widespread revulsion over the judges' murders, the Ghana Bar Association (GBA) announced the decision of lawyers in private practice to boycott the Tribunal system. The formal decision was taken at the GBA's annual meeting in September 1982.

The GBA described as "detestable" the absence of a right of appeal and described as "disturbingly prejudicial" the powers of the Tribunals to decide "in advance ... that legal technicalities will not be tolerated."

The GBA boycott was denounced in the state-owned media and by the chairman of the National Board of Tribunals as a political act by "reactionary forces hostile to the revolution." [14] However in practice, individual lawyers have been appearing before the Tribunals, either for financial reasons or when a trial is seen to have a political dimension.

In January 1984, Chief Justice Apaloo reiterated the objections of the judiciary to the establishment of a parallel system of law and urged the government to place the Tribunals under the supervision of the established courts. The same month, the PNDC attempted to meet these concerns on the part of the legal profession.

In a statement to the annual general conference of the GBA read by the Attorney-General

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[13] ***Ghanaian Times***, **Accra, September 20, 1979.**

[14] **In May 1991, the Accra High Court ruled that the lawyers' boycott was illegal. However this suit, filed by a member of the GBA against his fellow members, was clearly politically motivated.**

on his behalf on January 12, 1984, the PNDC Chairman stated that his government:

> does not see [the Tribunal] system as an attempt to dismantle institutions fundamental to a good legal system, or to introduce concepts which are at variance with cherished relevant and acceptable principles of law as an instrument of social ordering. It is not the intention of the PNDC to discredit the idea of positive law, or to hold law in contempt.

However, the workings of the Tribunals suggest the opposite. Although Chief Justice Apaloo's retirement in 1986 effectively marked the end of serious criticism of the Tribunal system by senior members of the judiciary.

The Introduction of Appeal Procedures.

In February 1984, the government announced its intention to introduce a system of appeal procedures for the Public Tribunals.[15] Under the new system, Public Tribunals were not to be placed under the supervisory jurisdiction of the existing Higher Courts of Ghana, because it was "known that the response to the revolution among senior members of the bench had been lukewarm."[16] Instead, separate "facilities for appeal" were to be provided.

Law 78, which repealed Law 24, finally came into effect in August 1984. It introduced appeals procedures against Tribunal decisions for the first time, and provided that all verdicts arrived at under Law 24 should be deemed to have been taken under Law 78. Commenting on the introduction of appeals procedures, Mr. Agyekum denied that the government's decision had been taken as a result of the criticisms of the Bar Association or international human rights groups. He argued that the need for an "appellate structure" had developed as a result of the "tremendous increase in the work of public tribunals." He also declared that "the need for an appellate structure is not so much over the question of guilt but over the length of sentences."

The envisaged appellate structure was to consist of "Community, District and Regional Tribunals." Appeals from the Community and District Tribunals would be heard at the Regional Tribunals, from which in turn the National Tribunal would hear appeals when it sat in its capacity as the National Appeals Tribunal.

According to Agyekum, the PNDC was opposed to placing the Tribunals under the supervisory jurisdiction of the Supreme Court because:

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[15] The government claims that the law governing such appeals had been drafted in July 1983. No explanation has been given of why the appeal system was not introduced until over a year later.

[16] George Kweku Agyekum, Chairman of the Board of Public Tribunals, interviewed in *West Africa*, London, February 27, 1984, p.434.

> There are committed opponents of the Public Tribunals in the senior levels of the Bench. When sitting on appeals, they would obviously reverse Public Tribunal decisions.

He also stated clearly that the PNDC had reversed the decision by the People's Defence Committees to abolish the regular courts, and that a "substantive committee" had been set up "to examine the whole judicial system." Whether such a committee was ever established, and what its recommendations were, has never been made public.

Executive Interventions in Tribunal Proceedings

Since the establishment of the Public Tribunals, Flt.Lt. Rawlings has frequently intervened in their proceedings, and has at times ordered the retrial of cases where he personally considered the sentences passed as "insufficient."

One of the most notable cases of executive intervention involved Salifu Amankwaah, who had been tried and sentenced to death for the murder of an old man, but was granted an amnesty by the government at the end of December 1988. Amankwaah, a Class Two Warrant Officer serving with the Ghana Armed Forces and attached to the Accra City Council Task Force, had appeared before a Public Tribunal in June 1987, charged with murdering Robert Quarshie, aged 70.

The victim was a retired public servant and former Principal Accountant of the Produce Buying Company of the Ghana Cocoa Board. It was widely believed that the decision to grant Amankwaah an amnesty was politically motivated.

Again, in December 1986, Flt.Lt. Rawlings ordered the re-arrest of a number of people who had been suspected of embezzlement of public funds. Joseph Kow Glinney, Kwesi Abakah Quansah, Emmanuel Crentsil and Armstrong Yaw Opoku had all been acquitted of the charges brought before them. Flt.Lt. Rawlings described their discharge as "a serious miscarriage of justice."

In 1990, the National Appeals Tribunal quashed the convictions of 19 farmers charged with illegal farming in the Brong-Ahafo region. The Appeals Tribunal ruled that the case had not been properly investigated, and that there had been serious breaches of the rules of due process. The accused had never appeared before the Tribunal, and their names had not even appeared on the charge sheet.

However, an article in the state-controlled *Ghanaian Times* newspaper described the quashing of the convictions as an "unmitigated disaster." This was followed by a demonstration against the Appeals Tribunal decision by a group of people described by the paper as "cadres," i.e. supporters of the government. The PNDC promptly ordered the Secretary for Justice to re-open the case.

These cases, merely the tip of an iceberg, demonstrate the alarming extent to which the distinction between executive and judicial powers has been eroded in Ghana.

So commonplace has government interference in the judicial process become that on December 14, 1990, the first accused in a fraud case before the National Public Tribunal was

"granted bail from the Castle" in a letter signed by Ato Dadzie, a PNDC Secretary.[17]

The Tribunal panel pointed out that nowhere in Law 78 is there provision for a PNDC Secretary to grant bail. The panel described the initiative as "a nullity, void, of no effect and illegal."[18] In its ruling of January 22, 1991, the Tribunal declined jurisdiction in the case. Given the long history of Tribunal verdicts delivered by panel members in favour of the government, and given the circumstances surrounding the case, this was a courageous decision on the part of the panel.

Three days after the Tribunal panel had made its ruling, Agyekum, the chairman of the National Public Tribunal and the presiding member of the panel hearing the fraud case, was suspended pending an investigation into his conduct by a committee of enquiry.

At the start of December 1991, it was reported that George Agyekum had been cleared of charges of improper legal practice in relation to the fraud case, and that a petition to the head of state by one of the accused had exaggerated and misrepresented the facts of the case. This explanation, that a petition from a member of the public had led to a committee of enquiry to investigate the most senior official in the Tribunal system is difficult to believe. On the contrary, it seems likely that the committee of enquiry was an attempt to punish Agyekum and his fellow Tribunal panel members for embarrassing the government. While the enquiry was underway, all three panel members hearing the fraud case continued to sit on Tribunal cases.

However, it is common to investigate, on the least suspicion, accusations of corruption by Tribunal officials. Chairmen and legal officers of the Tribunals attending a conference held in Sekondi in December 1987, pleaded with the government "to exercise care, tact and restraint in its reaction to reports of impropriety on the part of Tribunal chairmen and officials."[19]

In cases where its opponents, real or imaginary, are involved, a government tactic is to intervene in order to delay the judicial process for an extended period. In July 1991, an Appeals Tribunal chaired by Kweku Addo-Aikins ruled that it would be forced to give judgement on August 1, in a case involving a businessman suspected of involvement in an alleged anti-government conspiracy, if the state, the appellant, failed to present its closing address in the case.

The accused, Ernest Sampong Mireku, had originally been acquitted nearly four years earlier, in December 1987, by the National Public Tribunal, on charges of giving financial

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[17] National Public Tribunal Ruling, January 22, 1991: Case No. 75/90; The People versus Kwabena Afriyie and Jackson Obiri Yeboah, p.4.

[18] Ibid, p.6.

[19] *West Africa*, London, February 8, 1988, p.210.

support to Ghanaians living in neighbouring Togo who were allegedly preparing to overthrow the PNDC government. The chairman of the original Tribunal panel had ordered his "speedy release." However, until September 1991, Mireku was still awaiting the outcome of the state's appeal.

The delay in settling this case can only be explained by the political nature of the case, and the government's determination to have the accused convicted of an offence which warrants the death penalty. Mireku was finally acquitted for the second time on September 26, 1991. He and his counsel had made at least 20 appearances before the Appeals Tribunal, while the prosecution had failed even to attend the court.

Numerous officials of the Ghana Education Service charged with corruption offences have been waiting for over four years for their cases to be heard. This followed a crackdown on malpractices in schools, particularly by school accountants, and head teachers, and the introduction of radical reforms of Ghana's education system. Lawyers estimate that the cases of over 100 Education Service officials charged with embezzlement or falsification of records dating back to 1986-87 are still pending. Meanwhile the accused continue to make fruitless journeys to attend Tribunal hearings which either fail to take place, or are routinely adjourned.

The PNDC has also systematically used its powers under Law 42 to suppress the publication of the reports of committees of enquiry where it is likely that widespread corruption by government officials would become public knowledge, leading to public pressure for judicial action. Section 6(7) of Law 42 effectively empowers the PNDC to suppress the findings of any report which it finds unpalatable.

For example, following the appointment of a committee of enquiry in 1988 into malpractices in the timber industry, a number of officials of the Forest Products Inspection Bureau, including the Chief Executive, were suspended on suspicion of involvement in acts which would amount to economic sabotage under PNDC law.[20] But in 1991, the Chief Executive was reinstated without official explanation, while other former officials have been waiting for over three years, and continue to wait, to hear if they face legal action. According to one report, the Special Public Prosecutor's office has prepared no cases in connection with this enquiry, although the official investigations are complete.[21]

Another example involves the National Investigations Committee's enquiry into suspected corruption in the Ghana Statistical Service during the conduct of the 1984 census.[22]

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[20] William Keeling, "Forests pay as Ghana loses out"; *Financial Times*, London, February 8, 1989.

[21] *The Observer*, Accra, December 11-17, 1991, p.1, p.4.

[22] *The Ghanaian Chronicle*, Accra, December 23-29, 1991, p.4.

Although the enquiry is believed to be complete, there has been no official statement on the matter.

In contrast to the speed with which the PNDC has brought its opponents before the courts, the government has been notoriously slow in dealing with suspected corruption by its own officials, which was originally one of the main justifications for the introduction of the Public Tribunal system.

Admission of Past Abuses by Tribunal Officials

In December 1987, during an annual conference of the Chairmen and Legal Officers of the Public Tribunals, Tribunal officials openly acknowledged some past abuses of their judicial powers. They admitted that the absence of proper procedures had led, in numerous instances, to a guilty verdict when there was insufficient evidence to warrant such a verdict.

Many members of the Public Tribunals expressed their "regret" over having imposed harsh prison sentences of up to fifty or sixty years. One member, who wished to remain anonymous, confessed:

> I have regretted giving some accused persons harsh jail sentences of 50 years, 30 years, when in fact I should have jailed them for two years or so. I wish I had the opportunity to reverse those sentences and apologize to the victims.[23]

Other members admitted that they had often set high bail terms in the knowledge that it would be impossible for the defendants to fulfil them. They had thereby willfully abused one of the few legal provisions for the protection of civil rights which do exist under the Tribunal system.

Officials also admited that there had been frequent intervention by the government in Tribunal procedures. Participants at the conference alleged that in cases where the government took a direct political interest, it was "normal" for the government to tell the Tribunals what sentences to pass. One Tribunal Chairman argued that:

> Initially we were given the impression [by the PNDC] that as tribunal chairmen, we had to put the fear of the devil into the people, especially the wealthy, the old noisy politicians, the playboys and their high-time women. So we were mischieviously being vindictive, unnecessarily vindictive, as if the accused persons were our bonafide enemies

[23] *West Africa*, London, February 8, 1988, p.210.

who must be denied the chance to exist on earth.[24]

At the same conference, members of the Tribunals called on the government to exercise restraint and leniency in cases of reported misconduct on the part of Tribunal chairmen and other officers. The complaint was voiced that "many dedicated Tribunal chairmen have been arrested, suspended or dismissed because the government didn't exercise tact and patience upon the least suspicion of allegation."

The admission of widespread abuse of the system by Public Tribunal officials themselves indicates the urgent need to bring the Tribunals under the supervisory jurisdiction of the established courts.

As their own testimonies make abundantly clear, members of the Tribunals either do not have sufficient legal training, or are not sufficiently detached from the political processes in the country, to guarantee ordinary citizens a fair trial in accordance with internationally-accepted standards of judicial independence and impartiality. Ironically, the problems of misconduct and corruption, which were initially cited to justify the coup of December 31, 1981, have clearly resurfaced within the Public Tribunals themselves.

Unfortunately, despite these frank admissions of judicial arbitrariness within the Public Tribunals by the officials themselves, no action has been taken by the PNDC government to restore judicial independence. The current Chief Justice, P.E. Archer, said recently that he was in favour of the retention of the Public Tribunals under the new constitution, which is scheduled to be promulgated following a referendum scheduled for April 1992. However Chief Justice Archer also argued that appeals against Tribunal decisions should be heard by the Supreme Court.

The Death Penalty

All cases in which the death sentence has been imposed and then carried out under PNDC rule have been heard before the Public Tribunals. No sentence of death passed against persons tried before the established courts has been carried out in Ghana since 1976. Although under the Criminal Code of 1960, all cases in which the death sentence has been imposed are subject to a statutory right of appeal, that right has been rendered almost meaningless by the procedures which govern appeals against Tribunal verdicts.

Under the provisions of Laws 24 and 78, there has been extensive use of the death penalty for political offences, armed robbery and economic sabotage. However, capital sentences have also been passed in cases involving smuggling and armed robbery. Under Ghana's established

[24] Ibid.

Criminal Code none of these offences carries the death sentence.

Since the first sentence of death was passed by a Public Tribunal in 1983, at least 270 death sentences are known to have been passed in the Ghanaian courts, almost all of them by the Public Tribunals. Of these, 95 judicial executions are known to have been carried out.[25] However, in the absence of reliable figures for executions carried out during 1987, when sixty-one capital sentences were passed, and during 1989, when 11 capital sentences were passed, the true figure is almost certainly higher.

Twenty death sentences are known to have been passed during 1990, and nine more during 1991. A further 18 people are currently facing execution for criminal offences. Meanwhile, about 70 other detainees of whom Africa Watch is aware could all potentially face the death penalty upon conviction, given the government's description of them as "subversives."

The PNDC government justifies the death sentence on the grounds that it serves both retributive and deterrent purposes. But the introduction of the death penalty for criminal offences such as smuggling and fraud, has clearly failed as a deterrent. Crimes such as armed robbery have become more common under the PNDC, despite the potential risk involved.

The Payment of Reparations *in lieu* of Sentence

The Tribunal system has also laid itself open to abuse through the practice of accepting financial reparation *in lieu* of sentence. For example, in early 1991, after a series of negotiations involving the Special Prosecutor's Office, the National Public Tribunal accepted an offer worth approximately U.S. $15,000 in local and foreign currencies from Armen Kassardjian, a prominent businessman and hotel-owner who had pleaded guilty to two counts of economic sabotage. Under the Tribunal system, economic sabotage can carry the death sentence.

Provision for the payment of reparations *in lieu* of serving a sentence is contained in Section 8 of Law 2 of February 1982, under which anyone being investigated by the National Investigations Committee (NIC) can confess and offer financial recompense. The NIC was set up specifically to investigate alleged corruption, and has powers of detention, although this is legal only if the NIC can show adequate reason. The Special Prosecutor is responsible for prosecutions arising from NIC investigations.[26]

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[25] According to Amnesty International, at least 23 of these executions were carried out for political reasons. See the Amnesty International report Ghana: Political Imprisonment and the Death Penalty, London, Decmber 18, 1991, Appendix C, p.41.

[26] Donald I. Ray, "Ghana: Politics, Economics and Society," Frances Pinter, London, and Lynne Rienner, Boulder, 1986, pp.59-60.

Another body specifically created by the PNDC and linked to the Tribunal system is the Citizens' Vetting Committee (CVC) which later became the Office of the Revenue Commissioners. While these bodies have contributed to a substantial increase in tax revenues, their powers have also been abused to victimize government opponents, and those the government regards with suspicion, particularly commercial and market traders, the professional classes and the wealthy.[27]

Abuse of the Law of Economic Sabotage

On October 28, 1991, the National Public Tribunal acquitted Dr. Kwame Safo-Adu, his company Industrial Chemical Laboratories (ICL), and his co-accused Kwamena Bartels and Andrews K. Wontumi of 13 charges of misapplication of public property and committing acts with intent to sabotage the economy of Ghana. This case illustrates several aspects of the blatant violations of due process characteristic of the Public Tribunals.

Five days after the acquittal, Flt.Lt. Jerry Rawlings told a newspaper reporter:

The law, as some people say, can sometimes be an ass...[28]

Six days after that interview, the state filed an appeal against the verdict. The state's decision to appeal, and the closeness with which officials followed Flt.Lt. Rawlings' adverse comment on the outcome of trial turned what should have been a purely criminal case into a political trial. The acquittal initially served to mitigate the public image of the Public Tribunals as political courts. That decision has now become embroiled in a legal and political controversy and underlines the extent to which Public Tribunals have no place in an independent judicial system.

The accused had been acquitted on grounds of lack of evidence. The verdict was delivered two years after the ICL factory at Kwamo in the Ashanti Region had been closed down by a force of over 300 military and police personnel. The operation to seal off the factory had been led in person by Flt.Lt. Rawlings. The factory, which had started operating on October 1, 1989, was shut down five weeks later on November 3.

In December 1989, a month after the factory was closed down, Dr Safo-Adu, Mr Bartels and ICL appeared before a sub-committee of the NIC. Although ICL is a *private* company, one of the main arguments put forward by the prosecution during the trial was that the money allegedly

[27] Ibid., p.59.

[28] *People's Daily Graphic*, Accra, November 2, 1991.

misapplied by ICL was *public* property, in the form of two loans from the World Bank in 1985 and 1987, and a line of credit from the African Development Bank.

The Tribunal panel, chaired by Kweku Boakye-Danquah, ruled that these loans could not be regarded in law as public property. In respect of eight counts of misapplication of public property, the Tribunal ruled that the charges were misconceived and disclosed no crime. The charges arose out of purely civil contracts emanating from agreements between ICL and the state-owned National Investment Bank, in which all the parties had their rights clearly spelled out. The Tribunal ruling added that, even if the accused had been minded to misapply the loans, it would have been impossible to do so because of the structures put in place by the banks involved.

The NIC investigation, headed by a senior official of the Ministry of Trade, lasted until May 1990, but its findings were never published. However, in his opening address before the Tribunal on October 19, 1990, the Special Public Prosecutor made it clear that the charges were being brought as a result of adverse findings by the NIC sub-committee. Attempts by the defence to gain access to the report were turned down.

The authorities were able to rely on the legal provision which allows the government to suppress the report of any Commission of Enquiry which it deems unfavourable. But, under Ghanaian Criminal Law, it is also inadmissible to use as evidence testimony given to any Enquiry which is not recorded *verbatim*. It is believed by some lawyers that the government was unable to produce the NIC sub-committee's findings as evidence because the testimony was not correctly recorded for that purpose. However, it appears likely that the prosecution proceeded with the ICL case in the full knowledge that it had obtained insufficient evidence to secure a conviction, but in the belief that the Tribunal would not dare to rule against the state.

It is known that most of the people questioned during the NIC sub-committee enquiry also appeared for the prosecution before the Tribunal. The only pre-trial evidence to be published appeared in the state-controlled press.[29] The newspapers indicated that the NIC had in fact made a number of adverse findings against the accused. However, quoting from a release issued by the Office of the PNDC, the papers went on to list conclusions from the evidence of witnesses who had *not* been summoned officially to appear before the NIC sub-committee.

The five counts of economic sabotage brought against Dr Safo-Adu under Law 78 were also dismissed. Under count 12, the company was charged with failing to pay taxes which had not been assessed and were therefore not yet due. Under count 13, the company was accused of being overdue on loan repayments to the National Investment Bank which applied to the period *after* the factory had been closed down.

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[29] ***Daily Graphic*** **and** ***Ghanaian Times*****, Accra, July 7, 1990.**

The conduct of the authorities during the Tribunal hearing shows a number of disturbing irregularities. After the first hearing of the case on October 19, 1990, Dr Safo-Adu, who was then being represented by his co-director and lawyer, Kwamena Bartels, was remanded in custody for three weeks at James Fort prison in Accra.

Dr Safo-Adu was subsequently freed on bail of 50 million cedis (approximately US$ 130,000). But at a subsequent hearing on November 16, 1990, Mr Bartels, who in the intervening period had travelled to Britain to engage the services of a Queen's Counsel, was informed that the charge sheet had been amended, and that his name had been added to it. As a result, he was required to move directly from the Bar to the dock as the second accused. Mr Bartels was granted bail of 20 million cedis (US$44,000), but was remanded in custody over the weekend at James Fort prison. This was apparently because at the end of the day's proceedings, the Tribunal Chairman had taken home with him the book in which he had recorded the details of the bail bond.

During the trial the third prosecution witness, an official of the National Investment Bank, read in evidence from a document which he knew had been altered. The forgery was remarked upon by the Tribunal chairman, and even by the prosecution. The witness's statement that he did not know who had altered the document does not excuse his action in tendering an obvious forgery as evidence. According to eyewitnesses, the forgery attempt had been so clumsy that it had left a hole in the paper.

It is clear that the genuine original document would have been a vital piece of evidence in the case for the defence, since it authorised ICL to operate from premises in Accra pending the construction of the company's own factory. If produced, it would have defeated four of the thirteen charges brought by the prosecution, alleging that ICL had wrongfully diverted raw materials from the Kwamo factory to a different location. At the time of these alleged diversions, the factory at Kwamo had not yet been constructed, and ICL had applied for and been granted written permission to operate in Accra from the National Investment Bank.

Significantly, when the prosecution had finished presenting its case, none of the witnesses had even mentioned the name of the fifth accused, Frans K. Bruce, who was then Chairman of the Ghana Pharmacy Board. As a result, the Tribunal dismissed the charges against him.

After two years of investigation and trial, the nature of the Tribunal's final verdict of acquittal for lack of evidence leaves little room for doubt about the innocence of the accused. The state's decision to file a notice of appeal can only be based either on political grounds, or on the Tribunal's interpretation of the law, since under Ghanaian law, no new evidence can be introduced during the appeal hearing.

Dr Safo-Adu is a former agriculture minister in the Ghana government of 1969-72. Following the coup of January 13, 1972, he spent 18 months in detention. In 1978, after forming

the Front for the Prevention of Dictatorship, to oppose the plans of then Supreme Military Council (SMC) government to introduce a non-party system of government in Ghana, Dr Safo-Adu was detained for three months.

Dr Safo-Adu was also one of the few surviving senior members of the l969-72 government who had not been the subject of an adverse finding by a tribunal or committee of enquiry under the PNDC. Unlike some of his former colleagues in government, he had not been detained by the PNDC until he was brought to trial in 1990. And, unlike many other political colleagues, he had not been driven into exile.

Law 78 provides the death penalty for the offence of "doing acts with intent to sabotage the economy" when such acts are not defined or even specified in law. It is disturbingly prejudicial for defendants to face such a charge, while the prosecution seeks only to prove the vague notion of intent. Under the relevant provisions what constitutes the offence is not defined anywhere. The state is therefore at liberty to define *any* act whatsoever as an act committed with intent to sabotage the economy. The offence of "Throwing Rubbish in the Street and Other Nuisances" under Secion 296 of the Criminal Code of 1960 was specified by the PNDC in April 1991, as one of the "offences in respect of which death penalty may be imposed by the Public Tribunals." The PNDC's economic sabotage law also violates the internationally-accepted principle of jurisprusdence that the law must be clearly defined, settled, and known in advance.

The suspension under the Tribunal system of the internationally-recognised standard of proof - that an offence should be proved "beyond all reasonable doubt" - dates back to the early days of the Tribunal system, and stems from Section 7(19) of PNDC Law 24, which states simply that a Tribunal should convict "where it is satisfied that, all things considered, the offence was committed by the accused."[30]

In practice, anyone in Ghana charged with "doing acts with intent to sabotage the economy" faces a formidable presumption of guilt. Stiff sentences continue to be handed down in such cases. For example in January 1992, it was reported that a British businessman, Shawky Makarem, had been fined in absentia more than US$ 350,000 by an Accra Public Tribunal chaired by Kwesi Aggrey. The accused faces a jail sentence of 18 years if he fails to pay the fine.[31]

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[30] See also: Amnesty International, London; The Public Tribunals in Ghana, July 1984, p.9.

[31] *West Africa*, London, January 6-12, 1992, p.39.

From Manslaughter to Murder: **The Nii Amoo Addy Case**

In describing the law as an ass in the wake of the acquittal of ICL and its directors, Flt.Lt. Rawlings also referred to a Tribunal case whose verdict he described at the time as "absurd." In August 1984, Flt.Lt. Rawlings' nephew, Richard Nii Amoo Addy, was acquitted of manslaughter after shooting a man dead while policing a petrol queue.

According to a lawyer familiar with the case, Nii Amoo, though not a member of the armed forces, had obtained access to an automatic weapon. The victim, a mechanic in the Accra suburb of Labadi, had apparently sold a gallon of petrol for five times the government-controlled price. At that time, soldiers and armed members of the militia and other pro-government groups were deployed to keep order at filling stations because of frequent shortages of petrol.

As the killing had happened in broad daylight, and because the accused was related to the head of state, there was a public outcry that Nii Amoo had not been convicted of the more substantive charge of murder. The Tribunal reportedly ruled that the accused had not intended to murder his victim, but rather to enforce government price controls.

Reacting to the negative public reaction prompted by accusations of favoritism by the National Public Tribunal, Flt.Lt. Rawlings ordered the state to appeal. The Tribunal Panel, who found themselves in an embarrassing dilemma, this time found Nii Amoo guilty of murder rather than manslaughter and passed a death sentence, but recommended that the PNDC should pardon the accused. In order to avoid charges of nepotism (Flt.Lt. Rawlings signs all death warrants on behalf of the PNDC), the PNDC was thus presented with little choice but to confirm the sentence of death, and Nii Amoo was executed by firing squad.

It is unknown under international legal norms for an accused to be found guilty on appeal of a substantive offence like murder, having been previously found guilty of the lesser offence of manslaughter. Under established practice, a manslaughter verdict in such a case would only have been delivered because the state was unable to prove the substantive charge of murder. But under Ghana's Public Tribunal system, internationally-recognised practices have been, and continue to be, routinely violated.

Conclusion

Revolutionary or not, in practice the Public Tribunals in Ghana are a mockery of justice. Ostensibly established to facilitate the administration of justice, and to make it more accessible to ordinary people, they have in fact become an arm of the government. They have undermined respect for the judicial system as an impartial body that is capable of promoting justice and respect for the rule of law.

Recommendations

In the light of Ghana's obligations under the African Charter on Human and Peoples' Rights, which the PNDC ratified in January 1989, Africa Watch calls for the immediate abolition of the Public Tribunals, and recommends that justice in Ghana be administered by the established courts.

In addition, Africa Watch recommends that all serving members of all courts should be required by law to have the appropriate legal training; and that a mechanism should be provided under the forthcoming constitution for the judicial review of all contentious verdicts handed down by the Public Tribunals since August 26, 1982.

PREVIOUS AFRICA WATCH PUBLICATIONS ON GHANA

Newsletters:

Ghana: Government Denies Existence of Political Prisoners: Minister Says Detainees "Safer" in Custody, August 12, 1991

Ghana: Official Attacks on Religious Freedom, May 18, 1990

Ghana: Lawyers Detained for Commemorating Judge's Murder, July 14, 1989