

TUC

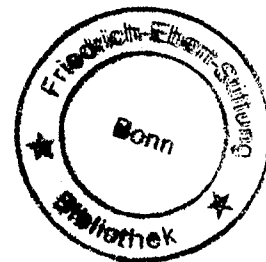
and

Human Rights

Edited by:
Dr. Peter Mayer and Dennis Vormawor

Accra, 1995

A 95 - 02100



CONTENTS

copyright Friedrich-Ebert-Foundation Ghana Office

ISBN-No. 9988-572-00-x

Printed by
Gold-type Limited, Accra, Ghana

Published by
Friedrich Ebert Foundation,
Ghana Office

Dennis K. Y. Vormawor *i*
Preface

Peter Mayer *iv*
Foreword

Kofi Kumado *1-20*
Fundamental Human Rights
in the 1992 Constitution

Dorothee Hammer *21-30*
Rapporteur's Report

Preface

Trade unions the world over cherish the observance of fundamental human rights, as by the very nature of the work that unions do, they are easy prey to regimes that violate human rights.

Evidence abound on the role that trade unions have played and continue to play in the restoration of democratic governance, particularly in Third World countries where totalitarian regimes are common.

In Ghana, the trade unions played a major role in the fight for independence from Britain. It is said that the general strike declared on 7th January 1950 by the TUC paved the way for the first President of Ghana, Dr. Kwame Nkrumah, to declare positive action for self government, the next day 8th January, 1950.

However, the post independence political life of the country has been fraught with military take overs, usurpation of the democratic rights of the people and human rights abuses. Between 1957 and 1993, the country has seen four civilian and therefore democratic regimes which had an aggregate tenure of 13 years while the military had ruled the country under different titles for 19 years. As a result of this instability, the country's economic development have suffered severe degradation.

Since the overthrow of the Third Republican Government in 1981, the TUC made persistent calls for a return to democratic civilian rule. To register its objection to any form of colouring for the

entrenchment of military rule, the 3rd Delegates Congress of the TUC held in 1987, rejected elections proposed to the District Assemblies based on the "Blue Book" which was introduced by the PNDC Government. That Congress renewed the call for a return to multi-party democracy within three years.

As a follow up to these resolutions taken by the TUC Congress, the Executive Board of the TUC made representations to the National Commission for Democracy (NCD) in which it outlined its views on a new Constitution for the country. The TUC emphasised respect of the fundamental human rights in the new Constitution and made proposals for the establishment of institutions to guarantee these rights. It is significant to recount here that out of the 10 representatives of the TUC in the 1991 Consultative Assembly that was established to draw up a constitution, 6 were elected to serve on the Select Committee on the Rights of the People. This included both the Secretary General and the Chairman of the TUC.

The 1992 Constitution of Ghana contains explicit provisions which guarantee human rights and also establish institutions that would monitor compliance of these provisions. The commission for Human Rights and Administrative Justice for instance has been given powers of enforcement that were unknown to the Ombudsman in the previous Constitution.

Documentary and institutional guarantees within a Constitution are good but they are meaningless if the people do not enforce them. Democracy is also sustained by an enlightened and well informed citizenry. For this reason, the TUC, in collaboration with the ICFTU/AFRO and the Friedrich Ebert

Foundation decided to organise two separate seminars on "The Role of Trade Unions in the Democratisation process for the top leadership and the second strata of leadership of the TUC.

These seminars discussed the role that trade unions and the civil society in general have to play to sustain the democratic process. Speakers were drawn from the established institutions charged with ensuring that the process is not again derailed; namely the Commission for Human Rights and Administrative Justice, the Media Commission and the National Commission for Civic Education.

The various speakers from these institutions threw light on the roles they are playing and the constraints facing them. There was also a lively presentation by a human rights activist on the role that pressure groups are expected to play in the democratic process.

The curtain raiser for the discussions during the seminars was Professor Kofi Kumado, a well known Ghanaian law professor, human rights defender and Chairman of the Media Commission.

His presentation discussed the fundamental human rights as stipulated in the 1992 Constitution. He made several observations on their practicability and enforceability.

The very lively discussions that followed the presentations brought to the fore the need to encourage as many people as possible to discuss the issues raised on democracy and human rights. It was therefore considered appropriate to publish the paper delivered by Professor Kumado in order that many more people will engage in the debate on the

sustenance of our fourth attempt at democratic civilian rule.

The paper is followed by a short rapporteur's report.

The Trades Union Congress is ever grateful to the Friedrich Ebert Foundation for the support it continues to receive in implementing its education projects.

This booklet, which represents our modest attempt in a continuous debate and preservation of democratic principles in Ghana is dedicated to the Foundation whose ideals encompass the sustenance of democracy and human rights.

Dennis K. Y. Vormawor
Deputy Secretary General
Trades Union Congress (Ghana)

Foreword

All over the world we can observe trade unions serving a multitude of goals. While they are responsible for negotiating the general conditions of work, wages and salaries for their members, they are as well important agents to make the workers voice heard in society. Trade unions try to influence economic policy making, and they comment on general policies of relevance to their members.

But trade unions' understanding as social actors in most countries is even wider. They see themselves as important part of the civil society by making a contribution towards the development of the country. They fight for the rights of workers, for the improvement of living conditions and for the acceptance of international guidelines and standards. They can therefore be described as important institutions which help in the promotion of human rights in their respective countries. In many countries their role as lobbyist for human rights issues went even beyond this task described above.

The Friedrich Ebert Foundation in Ghana, which is committed to support the Ghana Trades Union Congress in various important fields was pleased with supporting two workshops at the end of 1994 which dealt with the issue of "trade unions and human rights". The various contributions at both conferences were proofs of the importance of getting together the leadership of the TUC and representatives of institutions like the Commission for Human Rights and Administrative Justice and the Commission for Civic Education to mention just a few.

The Foundation readily agreed to sponsor the printing of this small booklet. Through this it is believed that a wider audience can have the benefit of the papers presented and the discussions which followed.

Dr. Peter Mayer
Resident Director
Friedrich Ebert Foundation
Ghana Office

**Fundamental Human Rights in the 1992
Constitution***
by: Prof. Kofi Kumado

Introduction

As is my custom, Mr. Chair, I would like, at the outset of my lecture, to thank the organisers of this workshop for their kind invitation. From my letter of invitation and from the programme, it is clear that this workshop will make contribution to our efforts at nation-building. In particular, it would ensure that contemporary society drink deep from the stream of constitutionalism and thereby advance the search for a stable, economically viable constitutional environment for the development of our country.

Just a year ago, the United Nations convened a World Conference on Human Rights in Vienna (Austria).¹ I would like to draw attention to two statements in the final document adopted by the conference in order to underline the importance and the essence of the subject I have been assigned to deal with at this workshop.

*Kofi Kumado, Faculty of Law, Legon. Lecture delivered at Hotel Eredec, Koforidua in the Eastern Region on 30 November 1994 as part of the ILO/GTUC/FEF workshop on the Role of Trade Unions in the Democratisation process. The text is reconstructed from the notes I used for the original lecture as well as from memory.

¹14-25 June 1993

In the second preambular sentence of the Final Document, the United Nations World Conference on Human Rights recognised and affirmed:

"that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realisation of these rights and freedoms."

Paragraph 5 of Part 2 of the Final Document also reads:

"Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promotion of democracy, development and respect for human rights and fundamental freedoms in the entire world."

Three basic conclusions emerge from the above quotations. First is the self-evident truth that human rights are universal, interdependent and indivisible. To admit this does not mean that we are losing sight of the significance of national and regional particularities

and the various historical, cultural and religious backgrounds of the different peoples of this world. Neither are we denying the different levels of economic and political performance attained by different nations today. Secondly, democracy, or better still constitutional democracy, describes the environment and governance system through which these universal values can be assured for us all. Thirdly, the establishment of constitutional democracy and the promotion and protection of human rights aim at qualitative improvement in the circumstances and lives of human beings, in addition to being ends in themselves.

Viewed from these perspectives, constitutional democracy and human rights are seen in their true lights; namely, they are labels by which we describe the processes and conditions through which we seek to assure for ourselves peace, security, prosperity and a life in relative dignity.

What we call "human rights" has no mystic about it. It is not a specialisation preserved for some professionals (eg. lawyers) or their associations (eg. the Ghana Bar Association). Human rights relate to us - human beings; organised labour included. The expression describes those values which define our humanity - values relating to the security of our person, our dignity and our development. Human rights issues therefore concern all of us.

Some times we talk of "human rights". Other times we refer to civil liberties. Some prefer "freedoms". With or without the adjective "fundamental", these various expressions are simply interchangeable labels for communicating these essential values of our humanity.

Structure of the 1992 Constitution

In order to understand the system of human rights established under the 1992 Constitution, we need to keep in mind the structure of the Constitution itself. So a few words on this will be appropriate.

The Constitution seeks to capture some of the fundamental values of our existence. The term 'constitution' is used by constitutional lawyers in two senses. First in a narrow sense to refer to a document so labelled (eg. the 1992 Constitution of Ghana). Secondly, more broadly speaking to describe the basic values or principles of a group of people. This second sense of the usage recognises that society is dynamic and words are but imperfect mediums for capturing a peoples aspirations in perpetuity. But the values embodied in the 'constitution' are considered fundamental or supreme in the sense of enduring. So the constitution provides for ways of assimilating and accommodating new values and understandings of old values as the social environment changes.

The point being made here and which would be useful to keep in mind is that the document entitled "the 1992 Constitution of Ghana" is only a framework of the major values we in Ghana cherish and that our conception of these values is not static. That is why whenever we cannot agree on what a particular principle entails or its implications, then we go to the Supreme Court for an interpretation which gives us a 'working tool'. Understanding the 1992 Constitution requires us to keep the broader usage of the term in mind. We must also always remember that words have shades and shadows. What meaning a particular word in the Constitution carries therefore depends on our aspirations, our history, our pains and tribulations of

the past and the intangible values we hold dear, some of which are to be found in the preamble.

The 1992 Constitution has established a Constitutional government. That is a system of government in which the power, the processes and the procedures available to the governor are limited. They are also conditioned by the active but voluntary participation of the citizenry. No process, no strategy, no programme, no result which is not consistent with the values and principles embodied in the Constitution can be validly pursued by the governors.

For example, it may be thought that the President needs a specially trained body of persons to guard him. It may be felt that this policy will free the police and the armed forces for other urgent national duties. Indeed, we may all agree that the establishment of this specialised Presidential Guard is both critical and an efficient utilisation of national resources. However, we have to ensure that the establishment of such a body conforms to clause 2 of Article 210 of the Constitution.² And so we will find that we cannot achieve this laudable end without the agreement of Parliament.

Before leaving this aspect of my lecture, the fundamental observation I wish to make is that human rights constitute the single most important block of values and principles by which the authority of those who wield power in Ghana today, whether in Parliament, the Executive, the Judiciary, Local government or public corporations, is limited.

²Clause 2 of Article 210 reads: "No person shall raise an armed force except by or under the authority of an Act of Parliament."

Human Rights under the 1992 Constitution

Before the 1992 Constitution came into force, our human rights were protected by the ordinary laws of the land. Here we are referring to:

- (a) the Statutes [(eg. Criminal Code, 1960, (Act 29)]
- (b) various principles and actions of the common law (eg. torts actions)
- (c) the doctrines of equality and
- (d) the various customary law systems to which we are subject. These principles of the ordinary laws are still relevant today. However, since January 1993, they have been reinforced and concretized by the Constitution. But in this lecture we shall concentrate on the provisions of the constitution itself.

As we proceed to discuss fundamental human rights under the 1992 Constitution, it will be helpful to clarify one matter. When we browse through the document, we find that one chapter - Chapter 5 - is entitled 'Fundamental Human Rights and Freedoms.' To fully understand the regime of human rights provided for by this Constitution, however, we need to read the whole document from the Preamble to the end of the Transitional Provisions. Further, we must keep in mind the provision of clause 5 of Article 33 which reads:

"The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter

shall not be regarded as excluding others not specifically mentioned which are considered to inherent in a democracy and intended to secure the freedom and dignity of man"

Some of these rights, and freedoms are to be found in international human rights instruments to which Ghana is a party such as several ILO Conventions, the African Charter on Human and Peoples Rights, the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women, to mention only a few.

To return to the Constitution itself, a good starting point would be the Preamble. As noted earlier, a constitution has a letter and spirit. So does our 1992 Constitution. The words constitute its letter. Its spirit relates to the images of Ghanaian society that come into our minds as we read these words. The Preamble contains some of those images. There we find a statement of principles radiating some images to which we as a people are committed and in furtherance of which we have adopted the Constitution. These are stated to be: the blessings of liberty, equality of opportunity and prosperity; freedom; justice, probity and accountability; sovereignty of the people; universal adult suffrage; the Rule of Law; the protection and preservation of fundamental human rights and freedoms, unity and stability. These principles reflect the society we want to build under the Constitution. All who wield power as parcelled out under the Constitution would therefore be judged by those yardsticks. These preambular statements set the tone.

In Chapter 5 and 6, the Constitution provides for substantive rights. Some of the provisions deal with

individual rights. Others deal with group rights. Civil and political rights are fully dealt with; so are economic, social and cultural rights and what the specialists now label 'solidarity or third generation rights'. Given the audience, an important provision to which attention may be drawn is Article 21(1)(e). This provision guarantees freedoms of association, which includes freedom to form or join trade unions or other association, national and international, for the protection of their interest. This provision may well change the shape and structure of the trade union movement in Ghana as we know it now; at least to owe their existence and privileges to national legislation rather to the will of their members.

Are the rights absolute?

Article 12 which opens Chapter 5 shows that the right guaranteed by the Constitution are fluid and dynamic and not absolute and static. This is important. In the human rights discourse, there is continuing debate about whether rights are absolute and illimitable. The debate is fiercer with some rights, for example the right to life. The framers of the 1992 Constitution seem to have made a choice. The debate for us will be not whether the rights can be limited. The arguments will be over the legitimacy of any limitation as well as its timorousness. Under the Constitution rights may be limited by the following³ major factors:

- (a) judicial intervention
- (b) national security
- (c) rights of others

³These are scattered throughout Chapter 5 especially

- (d) treatment or quarantine purposes
- (e) prevention of a crime
- (f) immigration or extradition needs
- (g) community interests
- (h) cultural or social exigencies
- (i) economic considerations
- (j) interests of defence, public safety, public order or public health
- (k) defence of the Constitution
- (l) state of emergency.

It must be noted that in the case of some of these factors, for example emergency situation, the Constitution itself provides additional safeguards to ensure that the restrictions are kept within minimum bounds.

Citizens and non-citizens dichotomy

Another issue that may be worth dealing with at this stage relates to the beneficiaries of these rights. Article 12 guarantees the fundamental human rights to every 'person in Ghana' whatever his race, place of origin, political opinion, colour, religion, creed or gender. And yet in many parts of the Constitution, non-citizens are denied certain rights. For example, non-citizens cannot join or form political parties; they cannot vote; they cannot be President or Member of Parliament; they cannot own land. Apart from questions of fairness, we need to address what appears to be an internal contradiction between Article 12 and some of the more specific human rights provisions. Lest someone consider this issue as merely exotic or academic, I would like to state that in the human rights discourse, both at the national and international levels, nationality as a basis for discriminating between two

persons under the jurisdiction of a state is increasingly being considered suspect and a violation of the right to equal protection of the laws.

Besides, the process of reconciling some of these contradictions will be quite complex. Let us take just one example, the issue of political parties. Our starting point will be Article 21 (1)(e) which guarantees to every person the right to freedom of association any type of association. The Article 21(3) gives to citizens the right specifically to form or join political parties and to participate in political activities. Article 55(1) guarantees the right to form political parties while Article 55(2) gives to every citizen of voting age the right to join a political party. Here we have a mixture of specific and general provisions on the same subject. If we mix this further with issues of fairness, no taxation without representation, the suspect nature of the nationality classification - what can we say are the implications of these provisions. Of course, I am aware of the fact that, at the domestic front, we can make a decision by employing rules such as the one which states that a specific reference derogates from or limits the reach of a general provision. However, we have to keep in mind the fact that we have international human rights obligations under various international treaties. How will an international tribunal interpret these provisions. Can we justify these differentiations on the grounds that they are necessary in a free and democratic society? Would these differentiations be caught by Article 17 of the Constitution itself? Well, these are some of the issues our High and Supreme Courts would have to grapple with at the appropriate time.

Innovations

The Constitution contains some provisions on rights which are innovations as far as Ghana is concerned.⁴ Of these, particular note may be made of the following:

1. Article 24 which guarantees to every person the right to work; gives every worker the right to form or join a union of his choice; assures for every worker rest, leisure, paid holidays and reasonable working hours.
2. Article 25(2) which guarantees the right to establish private educational facilities at all levels of the educational ladder i.e up to university.

Article 27 which requires special ante and post-natal care for mothers and, for those employed by others, paid maternity leave for a reasonable period before and after child-birth. This provision also requires that facilities be provided for children below school-going age to enable their mothers realise the full potential.

Does this provision require state and private employers to provide creches for their female workers nursing children?

4. Article 28(2) which protects every child from work that constitutes a threat to his health,

⁴See Article 26, 27, 28, 29, 30, 21(1), (d), 21(1)(f), 19

education or development - would this provision justify state action against children selling along the street of our towns?

5. Article 29, especially 29(6) which provides that 'as far as practicable, every place to which the public has access shall have appropriate facilities for disabled persons.' Who are disabled persons? What are the facilities contemplated here? Would this provision require some structural changes in our public buildings (or the provision of say, lifts) to make them accessible to these people?
6. Article 30 which prohibits the denial of medical treatment, education or other social or economic benefit to people who are ill on grounds of religion or belief. This provision will conflict with the religious practices of some belief systems or cultures and would also need reconciling with the provisions guaranteeing religious or cultural freedom.
7. Article 22 which seeks to provide for the regulation of property rights of married people. In the process, the article changes some of our customary principles, consolidates some changes effected therein before 7 January 1993 and transforms some family law issues into constitutional law.

An issue which some of these provisions as well as others we have touched on in this lecture should force us to constantly reflect on is the financial implication of the human rights provisions. Not only for the state but also for private individuals, such as employers. This brings out an important condition for the success

of any human rights policy or strategy-namely, commitment. We need total commitment for their realisation. Commitment from the people. Commitment from government. Commitment from administrators. Commitment from opinion leaders. And above all, be prepared to make the sacrifices and to provide the resources that are necessary to ensure success.

Traditional Rights

The Constitution is also full of the more traditional rights normally found in such documents. Some of these have had added to them novel and interesting features. We note just a few below:

1. Article 13 which guarantees the right to life and indicates the circumstances in which a person may be intentionally deprived of life. Our friends who belong to the international human rights group, Amnesty International, will obviously have difficulties with this article, committed as they are to the abolition of the death penalty.
2. Article 14 which guarantees the right to personal liberty;
 - requires that a person arrested should be told immediately in a language he understands of the reasons for the arrest and of his right to a lawyer of his choice;
 - restricts the period for which a person may be kept in pre-trial custody to 48

hours; guarantees bail for all offences as well as prohibiting unreasonable bail terms;

gives a constitutional right of compensation from the state as well as from any person who unlawfully arrests, restricts or detains another.

Does Article 14 requires us to re-think the training of our security agencies particularly the police? By giving them instruction in our indigenous languages for example, given that the large majority of our people do not speak English? How many languages? What level of proficiency?

3. Article 15, which prohibits torture or other cruel inhuman or degrading treatment or punishment or the subjection of people to conditions which detract from or are likely to detract from human dignity. It also decrees separation of convicts and non-convicted persons, and adult offenders from child offenders. Are the Conditions in which people are kept in police cells and prisons throughout the country consistent with this article? What are the financial implications?
4. Article 16 which prohibits forced labour, slavery or servitude. Are house-helpers or maids slaves?
5. Article 17 which guarantees equality before the law for all.

6. Article 18 which guarantees property rights. This article should be read together with Article 20 and Chapter 21 especially Article 266.
7. Article 21(1) (b), (c) and (g) which guarantee freedom of conscience, thought, belief, religion, assembly including participation in processions and demonstrations, movement as well as academic freedom. Already the Supreme Court has made the waves by holding that the right to peaceful assembly is incompatible with any law requiring a police permit to organise or participate in a public protest or demonstration. Parliament has since made a new law requiring advance notification of such an event to the police. But whether this will pass the constitutional test we do not as yet know.

Two provisions of an essentially traditional nature have also been included in the Constitution. But their treatment is so revolutionary and radical that they merit separate treatment. The first one relates to fair trial rules. These are to be found mainly in Article 19, though Article 14 and Chapter 11 are also very relevant. The provisions here are aimed at assuring unimpeded access to the courts and an independent and impartial judicial process. Thus Article 19 provides for the rule against self incrimination, jury trial, right to a lawyer of one's choice, legal aid, assistance of an interpreter, concern for the rights of disabled during trial, public trials, same conditions for defence's witnesses as the prosecution enjoys, adequate time and facilities for the preparation of one's defence, presumption of innocence, trial within a reasonable time. The article prohibits retroactive penal legislation

and double jeopardy - the principle that a person should not be tried twice for the same offence. The article also assures that trials will be based on predetermined and predictable rules by prohibiting trial for an offence which is not defined and the penalty for which is not prescribed in written law. Though there are some exceptions, the totality of these provisions provides a veritable fortress against unfair trial.

The second provision relates to freedom of expression and the media. The relevant parts of the Constitution are Articles 21(1) (a) & (b) & (f) as well as the whole of Chapter 12. Indeed to state that these provisions are revolutionary, radical and far-reaching as far as constitutional documents go, for the foreign observer may even be an understatement. These provisions seek to assure for us a plural political environment and transmission belts for ideas which are in many respects unprecedented. Already we are seeing the ripple effects of some of these provisions in the choices now available to us on our newsstands and in the looming battle over the airwaves and independent broadcasting especially radio.

A word of caution here. The very detailed nature of some of these provisions may in the long run be used to undermine the very objectives to be achieved. Here as elsewhere eternal vigilance by an informed and perceptive citizenry would prove the strongest protective weapon and promoting agency. But there is no doubt, in my mind, that even the mere existence of a National Media Commission together with the determination of a few people is creating space on our media scene in many ways unknown to our previous constitutional experiments.

Duties

Another area in which the 1992 Constitution has charted new grounds is in the inclusion in the document of provisions relating to duties. The emphasis on the correlation of rights with duties moves away from the traditional perception of rights as limitations on only state power. These are to be found mainly in Chapter 6. Article 35-39 deal with the duties of the state. Article 41 addresses the duties of the individual. It may be interesting to suggest to you that these provisions echo Articles 27-29 of the African Charter on Human and Peoples Rights to which, as earlier indicated, Ghana is a party.

Thus in Article 41 we have a duty, among others, to foster national unity; live in harmony with others, respect the rights, freedoms and legitimate interests of others; to protect and preserve public property; to expose and combat misuse and waste of public funds and property; to contribute to the well-being of the community in which we live; to protect and safeguard all our tax obligations and to defend, promote the prestige and good name of Ghana and respect for her symbols.

The one intriguing aspect of these individual duties is that they seem to be limited to citizens. Is this because the citizens have the largest measure of rights under the Constitution? I wonder.

Human Rights and the Transitional Provisions of the Constitution

By far the most complex issues which the human rights regime under the 1992 Constitution has to deal with are the provisions contained in the Transitional Provisions, especially Sections 34, 35 and 37 thereof. I have already examined these provisions and their implications closely in another lecture.⁵ So I shall confine myself to only one remark here apart from drawing attention to them generally. That remark is this that any interpretation of these provisions which seeks to leave pre-1993 violations of peoples' rights unremedied and unremediable will sow the seeds of long term instability in the Constitution as a whole and may lead to its eventual demise.

To say this does not mean that I am a prophet of doom. It is just a realism founded on the nature and scope of some of these violations. How to deal with these issues is one of the biggest and most complex challenge which our Supreme Court has to confront as the oracle of the Constitution.

Enforcement Machinery

The preceding analysis, I hope, has shown how modern our Constitution is in terms of its human rights provisions. The real test is in their implementation and

⁵See my inter-faculty lecture entitled "Forgive us our Trespasses" to be published by the University of Ghana Law Journal.

realisation in practice. Whether we enter the twenty-first century as a decent and civilised people depends on the extent to which we are able to translate these provisions into our daily lives.

The implementation strategy provided for human rights under our Constitution is two-fold: promotion and enforcement. In this connection, it is necessary to point out that though the rights are scattered throughout the document they have the same status. In particular, the fact that Chapter 6 is entitled 'Directive Principles of State Policy' and different phraseology is used in the opening articles [Articles 12(1) and (1)] does not detract from the enforceability of the provisions contained in Chapters 5 and 6.

The Constitution has established different institutional mechanisms for the promotion and enforcement of the rights. For promotion, we have three institutions, namely the National Commission for Civic Education, the Commission for Human Rights and Administrative Justice and the National Media Commission. The bodies responsible for enforcement (through litigation) are the National Media Commission (through its Complaints Settlement Committee), the Commission for Human Rights and Administrative Justice and the Judiciary with the High Court as the lead Court.

It may not be out of place to suggest that the Lands Commission has some, albeit limited, human rights role in so far as it relates to the protection of rights to lands and natural resources.

Concluding Remark

Chair, distinguished workshop participants, the late General Napoleon of France was reported to have once said that a tool is for the one who can use it. The Framers of the 1992 Constitution have tried to provide for us a comprehensive regime of human rights. The success of these arrangements depends on the extent to which we are prepared to defend our rights and to hold government accountable to us at all times and in all things. It is a duty which devolves on all sections of our society. In our largely unorganised society, I dare say organised labour carries an especial burden in this endeavour.

I hope you have enjoyed this lecture as much as I have had in preparing and delivering it. Thank you.

Rapporteur's Report by: Dorothee Hammer

In a short address Dr. Peter Mayer, the Resident Director of the Friedrich Ebert Foundation, emphasised the importance of the human rights issue in Ghana at this stage of her political development. He called on the TUC to continue to play its crucial role as a strong actor in civil society and political development. He also pointed out the importance of bringing together the TUC with the various commissions, formed within the provisions of the 1992 Constitution.

After Dr. Mayer's brief speech the chairman urged the participants to focus on three questions, namely:

- should the TUC have a close or friendly relationship with political parties?
- should the TUC have a close or friendly relationship with government?
- should the TUC have a close or friendly relationship with employers?

On the first question the majority of participants agreed on the need for a friendly but not too close relationship, since it is more responsible for the TUC to stand for issues rather than for political affiliations. It was also argued that a friendly productive alliance was preferred to being too closely identified with any political party.

On the question of party affiliations of the TUC in Germany Dr. Mayer explained that there was no point

for strong alliances with political parties but a naturally close relationship between the SPD and the social democratic cause as their origins came out from the labour movement. Despite this, a productive alliance had also been developed between other political parties and the German trade unions movement. Dr. Mayer advocated a productive and interactive relationship.

The Role of Various National Commissions on Human Rights

The National Media Commission

Speaking on behalf of the Media Commission, Mr. David Analgate, touched on the functions of the Media Commission and the duties and responsibilities of the mass media. The Media Commission, he noted, is formally under the Ministry of Information. Special provision in the constitution is made to remove the media from state control. He argued that the most important role of the media is to inform and educate the public. He briefly touched on a similar organisation to the Commission which existed from 1979 to 1981 but was dissolved after the coup. He said the Commission also has the duty to ensure the highest standard of journalism in the country. This, he noted, requires supervision and the development of suitable ethics towards the achievement of the set standard.

On Chapter 12 of the Constitution which provides for the freedom and independence of the media, he pointed out that there is no censorship except during a state of emergency. As an example, he cited the Northern conflict during which, he argued, censorship was imposed with the view to preventing the problem

from spreading. He called for a balance between morality, protection of personal privacy and preservation of the public right.

The Media Commission, he explained, is composed of 15 members from various organisations of the society like the Ghana Bar Association, the Ghana Journalists Association, Churches, etc. He noted that to deal with public complaints against editors, the Commission has set up a Complaints Committee. Finally, he called on the state media to move forward by being open to different opinions.

The Commission for Human Rights and Administrative Justice

Mrs. Christa Dadzie, speaking on behalf of the Commission for Human Rights and Administrative Justice, set up by Chapter 8 of the 1992 Constitution, which replaced the office of the Ombudsman, noted that the Commission wanted to deal with a major defect of previous institutions which could not enforce their recommendations. Under the Constitution, the Commission should establish offices in all the regions and districts but due to budgetary limitations it is today not represented in every region but in only 28 districts. The functions of the Commission, she outlined, are broader than those of the Ombudsman. It deals with issues such as injustice, corruption, complaints about public offices, labour-related complaints etc. Mediation, she stressed, is the major method to settle these complaints. If mediation fails or the recommendations are not implemented within a period of three months, the case is sent to court. She further argued that the Commission's educational role is

achieved largely through seminars to inform the public about human rights.

Questions and discussions centered around the role of the TUC in dealing with labour-related problems stressing that there should be no competition between the Commission for Human Rights and Administrative Justice and the TUC, but rather a good working relationship should exist between the two bodies to enable the TUC deal with labour related problems, instead of the commission.

The National Commission for Civic Education

Dr. J.E. Opong emphasised on the role of the Commission for Civic Education as one of the institutions enhancing democracy.

He outlined the functions of this Commission under chapter 19 of the Constitution as follows:

- to create and sustain within the society the awareness of the principles and objectives of the constitution;
- to educate and encourage the people to defend the constitution from abuses;
- to come out with programmes to realise the objectives of the Constitution;
- to formulate, implement and oversee programmes to raise the awareness of the public towards their civic responsibilities, their rights and their duties.

He stressed that for the achievement of the mentioned functions the development of confidence of the masses is essential. Thus external linkages with other bodies of the society, like churches are most important. To attain the stated objectives, he noted the need for the establishment of Civic Education Clubs and societies for the study of the Constitution.

Like previous speakers he dilated on the human rights issues provided in chapter 5 of the Constitution. He outlined the protection of life, the protection of personal liberty, the respect for human dignity, freedom of speech, freedom from slavery and forced labour.

Second Day

The day started with a discussion about the relationship between the TUC and the Government - whether this should be close or friendly. There was consensus that:

- there should be a good working relationship as government is the largest employer.
- there should be a friendly relationship to influence decisions.
- there should be a friendly relationship because the TUC is running a service that is important to all.
- since the TUC stands for issues which every government, and not the government of the day should deal with, there should be a friendly rather than a close relationship.

The Passage of Bills in Parliament, the Procedures and Stages

Mr. J.S.E. De-Graft Johnson, Clerk of Parliament discussed the various duties of Parliament. He defined parliament as a group of elected people, who form the legislative body.

He outlined the duties of Parliament as follows:

- . Legitimisation of Policy.
- . Representation of the interests of the population through representatives of the various constituencies.
- . Authorisation of taxation.
- . Provision of a channel where petitions can be redressed.
- . Passing of legislation.

Legislation, he noted, is often passed in the form of bills. He identified the various forms of bills as: Public, Private Members (introduced by members of Parliament, who are not Ministers of State), Private (which relates to personal affairs), Hybrid (neither wholly public nor wholly private), Money (two main categories, revenue and expenditure, e.g. taxation) and Urgent bills. Public bills, he noted, take the greatest percentage of parliamentary time. He specified the parts of a Bill as of Memorandum, Preamble, Long Title, Short Title, Main Body, Side Notes, Clauses, Schedules and Commencement Date.

On the passing of bills he noted that initially consultations are made and the public is requested to submit ideas to Parliament. After a period of 14 days, the bill will be read the first time and by this it is introduced formally to Parliament. Next it goes to the appropriate Committee which will come out with a report. The bill should not stay with the Committee for more than three months. He stressed that every Member of Parliament will receive the necessary papers within 48 hours in advance. The 2nd reading of the bill consists of the presentation of the Committee's report, the review of the clause by clause views of the Committee, and the opportunity for Members of Parliament to speak for or against the bill.

There will be a second consideration stage after the 2nd reading of the bill. A bill passes after the 3rd reading when all amendments have been incorporated. He also noted that a bill has to be reconsidered when the President considers parts of it as unacceptable.

He then elaborated on various types of parliamentary Committees, namely: Standing and Select. Standing Committees include those dealing with business, public accounts, finance etc. whilst the Select Committees cover food and agriculture, employment, social welfare or other issues.

Departments providing logistical support to parliamentary work, he enumerated as the Clerk's Department, the Monitoring and Research Department, the Library and the Speakers Department.

Answering a question on the treatment of "urgent" bills, he noted that such bills have to pass the same 3 stages but can be passed within 24 hours or less.

Responding to a request to elaborate on the consequences of a bill which has elapsed he explained that a bill elapses when it has not been passed within one session, except the private members bill which is not the priority of the government.

Pressure Groups and their Role in a Multi-Party Democracy

Mr. Kwesi Pratt first of all stressed the need for multi-party-democracy to provide a framework for frank political speech and action. Pressure groups he outlined are extra parliamentary groups such as human rights groups, religious formations, trade unions etc. He noted that a considerable number of them have their roots in the struggle against colonialism and neo-colonialism.

He advocated the, need for the presence of strong pressure groups during the present regime. He said that the structural adjustment programme adopted by the Government has negative effects on workers and the economy at large. Pressure groups should voice therefore out their criticism against the SAP.

He outlined some of the concerns of pressure groups as:

- . the guarantee and protection of basic rights;
- . the exposure and reporting of illegal actions;
- . the protection of the environment;
- . the integration of minorities etc.

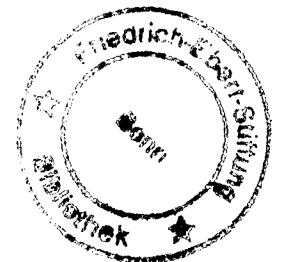
He called on the members of pressure groups not to hesitate to influence politics and to take the necessary steps of action to bring the government to order.

He recommended the following actions for pressure groups:

- . campaign against the SAP, which he noted undermines the nation's economic development;
- . the fight against the indemnity clause, in the constitution which protects criminals;
- . a systematic campaign against the criminal code, which gives the president the right to suppress the press.

The brief discussion on his topic centered mainly around the effects of SAP, the indemnity clause and the issue of the mass-media. Supporting the point of view of the speaker, some participants called for actions against the SAP. They stressed that the SAP has increased poverty for the majority of the population, limited access to health facilities and education. They also noted that retrenchment of labour has reduced the membership of TUC.

It was pointed out that part of the criminal code is contrary to the provisions which guarantee freedom and independence of the media.



Conclusion

The atmosphere within which the seminar was conducted can be said to be very lively. The participants showed great interest in the papers presented. This was evidenced not only by their active participation during the formal working hours but also by the conversations during leisure time.

With regard to the presentation of the various lectures it observed that the speakers met the needs of the participants and discussed issues from a very practical point of view. The seminar has been thus successful in educating the participants on basic democratic rights and obligations as well as on some basic provisions, made in the Constitution.