

THE IMPACT OF MILITARY RULE UPON FUNDAMENTAL
HUMAN RIGHTS IN AFRICA (GHANA AND NIGERIA)

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By

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A dissertation submitted to the University
of Zambia in partial fulfillment of the
requirements for the award of a Masters degree
in Law (LL.M.).

May 1975.



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ABSTRACT

Military coups in Africa have emerged on the continent only after the acquisition of political independence from colonial rulers. The following independent African countries have experienced a military coup and government and some on more than one occasion - Algeria, Burundi, Congo-Brazzaville, Gaire, Central African Republic, Dahomey, Gabon, Ghana, Lesotho, Libya, Mali, Nigeria, Sierra-Leone, Somalia, Sudan, Togo, Uganda, Upper Volta, Zanzibar and Ethiopia - altogether twenty in all and this figure it must be remembered is exclusive of abortive or attempted coups. Obviously judging from the list of countries that have experienced the coup, the military coup has overtaken almost the whole of the African continent.

With the success of a military coup, comes military government. To some people, military government means the erosion or abrogation of all democratic institutions. To others and notably so the soldiers who instigate military takeovers, military government is necessary in order that democracy, justice and fundamental human rights and freedoms may be restored in the countries where the military coup has taken

place. Coup instigators usually state after the success of the coup d'etat that they will be in power only for as long as it is necessary to clear and rectify the political "mess" that has been made by the deposed politicians. So with these two view points in mind Ghana and Nigeria were chosen to be the area of study for this dissertation, particularly because there is evidence that suggests that within these countries the military authorities have shown considerable respect for fundamental human rights and freedoms.

The dissertation begins with a discussion of the possible reasons why the military intervene in African politics. This was considered necessary because as noted above the list of countries that have experienced a military coup is quite extensive and so it could be said the incidence of military coups in Africa has reached alarming proportions and as such this problems merits consideration. Then there follows a discussion of the legal effects of a military coup upon a legal system and the nature of military rule.

After these preliminary matters comes a discussion of the crux of the matter - the impact of military rule upon

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fundamental human rights and freedoms in Ghana and Nigeria. The fundamental human rights and freedoms discussed comprise mainly those found in the fundamental human rights chapter of independence constitutions (i.e. the constitution handed down at the time of independence) of newly independent African countries. In particular the following rights and freedoms are discussed -

- (a) the right not to be intentionally deprived of life save in the execution of a sentence of a court in respect of a criminal offence of which a person has been found guilty,
- (b) the right not to be subjected to torture or inhuman or degrading punishment or other treatment,
- (c) the right not to be deprived of personal liberty except in a manner and in accordance with a procedure permitted by law,
- (d) the right to a fair hearing within a reasonable time by a court or tribunal established by law and constituted in such a manner as to secure its independence and impartiality,

- (e) freedom of expression, including freedom to hold opinions and to receive and impart ideas,
- (f) freedom to assemble freely and to associate with other persons,
- (g) the right not to have ones property compulsorily acquired without the payment of adequate compensation.

The discussion of the various fundamental rights and freedoms covered by the dissertation proceeded on the basis that even under civilian rule the rights and freedoms contained in formal bills of rights chapters are qualified or limited in the extent of their application i.e. the rights and freedoms can be derogated from under certain stipulated circumstances.

Legislation made by the military authorities in both Ghana and Nigeria that touches on rights and freedoms covered in the dissertation and its effect upon such rights and freedoms is discussed. However in some cases the extent to which legislation (Decrees) made by the military did or did not in practice affect fundamental rights and

ACKNOWLEDGMENTS

It is a pleasure for me to record my thanks for the generosity that many people showed me. In particular however I would like to thank my supervisor Professor E.O. Nwabueze, who by example and comment sought to ease my passage past some of the pitfalls inherent in writing a dissertation. I could not have had a more generous intellectual guide. After doing all of these things, he gave much of his time to a vigorous criticism of the entire first draft. His comments and suggestions have helped me improve this dissertation. However the conclusions drawn are entirely mine.

I would also like to thank Mrs Betty Masengu, formerly secretary to the Dean of the School of Law who fought hard to find time to type the first draft of this dissertation, despite all her domestic obligations.

Finally I would like to thank Mr Stanely Chezongo who agreed to take over from Mrs Masengu, who had been transferred to another department.

(1963) Congo-Brazzaville (June 1966 and November 1969)
Algeria (December 1967) Ghana (April 17 1967) Sierra-Leone
(March 1971) and the United Arab Republic (May 1971).

We shall see later (Chapter Four) that military regimes tend to be authoritarian and also they cannot claim to have been popularly chosen by the masses and in addition they enjoy supreme sovereignty and wide power. The question that follows then is - given these characteristics of military regimes, what has been the military's attitude towards individual liberties and freedom? To what extent, if any, have military regimes encroached upon individual civil liberties?

For present purposes reference will be made to the following rights and freedoms, as these are some of the most important rights and liberties which are normally protected by formal constitutional bills of rights, found in the constitutions of newly independent African States

- (a) the right not to be intentionally deprived of life save in the execution of a sentence of a court in respect of a criminal offence of which a person has been found guilty.

- (b) the right not to be subjected to torture or to inhuman or degrading punishment.
- (c) the right not to be deprived of personal liberty except in a manner and in accordance with a procedure permitted by law.
- (d) the right to a fair hearing within a reasonable time by a court or tribunal established by law and constituted in such a manner as to secure its independence and impartiality.
- (e) freedom of expression, including freedom to hold opinions and to receive and impart ideas.
- (f) freedom to assemble freely and to associate with other persons.
- (g) right of property.

The above list it should be pointed out is far from being exhaustive of all important fundamental rights and liberties.

In English speaking independent African countries, some countries have shortly before or after their independence

done away with constitutional bills of rights (Ghana and Malawi) some others however have retained constitutional bills of rights (e.g. Zambia, Kenya, Nigeria, Lesotho); Tanzania has never had one. Even in those countries where constitutional bills of rights have been abandoned it is not unusual for the preamble to the constitution to mention or spell out some of the rights and freedoms that have been cited above as objectives or principles which should be observed or aimed at. It should also be mentioned at this point that when fundamental rights and freedoms appear in a constitutional bills of rights chapter of a constitution, they are not made absolute rights i.e. the rights and freedoms enumerated are qualified or limited to some extent in their application. These rights can be derogated from under certain conditions or circumstances - for example Article 22 of the Constitution of Zambia (No. 27 of 1973) which deals with the protection of the freedom of expression provides:-

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health.

And except so far as the provision or as the case may be the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society".

All the sections or articles dealing with the protection of fundamental human rights stipulate the circumstances under which rights protected by the constitution can be derogated from. In addition the Zambian constitution like the 1963 Federal Republican Constitution of Nigeria has a section dealing with derogations from fundamental rights in general.

Article 26 of Act 27 of 1973 of Zambia provides:-

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Article 15, 18, 19, 21, 23, 24 or 25 to the extent that it is shown that the law in question authorises the taking during

any period when the Republic is at war or when a declaration under article 30 is in force of measures for the purpose of dealing with any situation existing or arising during that period and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions unless it is shown that the measures taken exceed anything which having due regard to the circumstances prevailing at the time could reasonably have been thought to be required for the purpose of dealing with the situation in question."

The 1963 Federal Republican Constitution of Nigeria has a similar provision to the one quoted above in section 29 of chapter three of that constitution.

This therefore means that in time of actual war or during a declared emergency or even a situation which if it is allowed to continue might lead to a state of public emergency, the rights to person liberty, protection from discrimination on the grounds of race,

colour etc., protection of freedom of assembly and association, protection of freedom of expression and conscience, can be derogated from e.g. in the interests of national security, if any conflict arises between national security and an individual's right. The important point to remember therefore is that even under civilian rule, whenever there is a constitutional bill of rights, the fundamental rights and freedoms that are protected by the constitution are not absolute - they can be derogated from e.g. in the interests of defence or public safety or in time of serious national emergency.

However before embarking upon the discussion of what has been the impact of military rule upon fundamental human rights and liberties, it is necessary to discuss other directly connected issues, namely, why the military intervene in politics in Africa, secondly the legal effects of a military coup upon a legal system and thirdly, the nature of military government.

CHAPTER II

WHY MILITARY INTERVENTION IN POLITICS?

An army's rightful place traditionally is the barracks. But now this seems no longer to be the true position in African countries. Military intervention in politics has become almost an accepted reality of political life. The question which may be posed is - What are the root causes of military intervention in politics in Africa?

The usual reasons given by those who assume power through the use of violence or the threat of it, in justifying their assumption of power are, corruption, economic waste, concentration of wealth in a few hands, widespread unemployment, electoral malpractices and other types of political perversion of the constitutional system. To quote from a recent editorial:-

"The stated reasons for coups by the soldiers and/or police involved vary from state to state but generally they include the denial of civil liberties and civil rights, the lack of neutralism in foreign affairs, machinations with foreign powers, insolvency, corruption or profligacy, the inability to keep order, the alienation of most political or tribal groups, demagoguery, the

subordination of the legislative or judiciary and the fixing of elections"¹

However on a serious probing of the real causes of military intervention in politics other compelling explanations emerge to the surface. First and foremost the men in uniform are not and should not be regarded as an isolated community, although for practical purposes they live in barracks as a separate community. They are in fact part and parcel of the larger community in which they live and serve. The fact that armies are kept within the confines of barracks should not be conclusively taken to mean that they cannot be affected by whatever goes on in the larger community of which they are an integral part. If therefore, there should exist within the larger community a mood of agitation for change, this mood will and usually does find its way into barracks. W.F. GUTTERIDGE has the following to say about the causes of military coups:-

"They take place it seems because of a combination of factors inside the army and outside in the general political life. In practice the officer corps are usually an integral part of the ruling elite and not remote from the political 'hurly-

burly' as they are supposed to be in Britain and America. This is not to say that they do not have scruples about political intervention but only to state that the circumstances involving their reappraisal are more likely to arise in recently independent countries. That the political behaviour of the armed forces is also influenced by more locally determined factors must be obvious. In countries with tribal or other kinds of powerful minority groupings the composition of the armed forces may well be decisive."²

A mood of discontent amongst the community whether caused by factors of corruption, economic waste, increasing unemployment, concentration of wealth in a few hands, denial of fundamental human rights, electoral malpractices or other types of political perversion may stir the army and police into assuming power. After all what the community in general desires is change but they lack the means of bringing it about. The armed forces on the other hand have the means of bringing about change - for they have arms, transport and other modes of communication - in

short they have the physical means of effecting change of government.

However the paramount cause of military intervention in politics is the tendency in Africa, for those wielding political power to hold such power for too long - in fact indefinitely. In independent Africa it has become almost an accepted "tradition" (whether consciously or unconsciously) that persons occupying high political office cling to it for as long as is practicable. As a result of this tendency the societies of independent African countries have become divided into the under privileged masses (the ruled) and a privileged class of rulers.

In order to sustain their grip on the political power wagon politicians resort to the practice of perverting the political and electoral systems. Any kind of organized political opposition is quickly and effectively stifled and banned. Most usually political opponents and their immediate supporters are thrown into detention or restriction under the guise of their "having acted in a manner prejudicial to national security." To quote from Professor B.O. Nwabueze's recent book:-

"To be once a president (i.e. an African President) is to undergo a complete personality transformation. An African president feels a kind of demi-god, occupying a pedestal high above and far removed from the rest of the community. He thinks of himself as indispensable, a Messiah, an incarnation of the state, he feels it inconceivable that he can thereafter be anything else but president. The power is so intoxicating, the adulation so flattering and the prestige and grandeur of office so incredibly dazzling as to be almost irreconcilable with a new life as an ordinary citizen"³

Not only is this quotation true of most African presidents but it applies also to cabinet ministers, ministers of state, and other high ranking political appointees. This tendency to personalise rule and to perpetuate it indefinitely is one distinguishing feature between politics in independent African states and those of the old western democracies especially those of Britain and America. In these established western democracies alternation of government at frequent intervals between rival political parties is an accepted notion of political life. It is

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highly doubtful that a political party in power would "fix" an election in order to perpetuate its term of office.

In the established western democracies generally one could safely say that there is a general acceptance in the general body politik that the talent for leadership is not the exclusive endowment of one individual or group of individuals. However practical experience shows unhappily that the very opposite is true of the African politician. In Africa the impression is given that the longer an individual occupies political office then the more experienced and wiser he becomes.

When therefore a government makes itself perpetual and permanent while at the same time it has resorted to the curtailment of fundamental human rights and freedoms of the individual and their economic well being, violence or the threat of it becomes the means of last resort in getting rid of it. This point is clearly illustrated by the words of Colonel AFRIFA in his book "THE GHANA COUP - 24TH FEBRUARY 1966" at page 31 where he states:-

"A coup d'etat is the last resort in the range of means whereby an unpopular government may be overthrown. But in our case where there was no constitutional means of offering a political opposition to the one party government the Armed forces were automatically made to become the official opposition of the government."

Later on in the same book he had this to say at page 85

"A coup in itself is not a good thing but it is one of the most effective methods of restoring the constitutional rights of the people when they have been deprived of the constitutional means for changing a corrupt and tyrannical government"

One could therefore come to the conclusion that indefinite holding of political office with no foreseeable change in future and the deprivation of individual rights and liberties, corruption, and the establishment of one party states is the prime cause of military coups in independent Africa.

Also of equal importance is the fact that in any given society there exists a number or class of persons who are

bound to harbour ambition for political power. This ambition for power is entertained by both civilians and the military and this can occur irrespective of whether or not the politicians in power have proved to be downright failures in their handling of the political power machine. The elite in newly independent African States have come to regard themselves as a privileged group with a definite right to determine how the political power boat should be directed. This elitist outlook on politics and government is entertained by military officers as well as by civilians. The military men especially the commissioned officers by virtue of their training and position qualify to be classified as an integral part of the elite. This desire for power amongst the elite class makes them believe that they have as much right as anybody else to take part in determining the destiny of their respective countries and that when politicians begin to misdirect matters they owe it to themselves and the country as a whole to intervene and put matters right again. Herein also lies another cause of military assumption of power - the ambition for power and as has already been pointed out the armed forces have the physical means of effecting change. In this type of situation one can easily see the civilian

elite corroborating with the military in order to oust those in power.

The military may also intervene not only to keep out politicians who allegedly have proved failures and instal themselves as the proper and ideal rulers but sometimes to keep out and replace one group or class of politicians or one elite group with another. An example in point is that of the second coup in Sierra-Leone on April 18, 1968. In an election that was held in 1967 the opposition party had been successful and this was the first time that an opposition party had won an election in independent black Africa against the party in power at the material time.⁴ Despite the fact that the party in power had lost the election, it was still not prepared to let the opposition which had been successful in the election to assume power and so keep out both parties (i.e. the ruling party which had lost the election and the opposition which had succeeded) from ruling. The opposition on its part induced the private soldiers in the Army and finally succeeded in getting them to overthrow their officers who by then were in control of the government and eventually handover power to the opposition party which had won the election in the

first place. In Togo also when the military (comprising mainly soldiers demobilised from the French Army following the disbandment of French African regiments) overthrew the Togolese government under President Olympio, the aim was not to take over government as such but as a reaction to the Togolese government's reluctance to bring them into the Togolese army and this was evidenced by the handing over after the coup of government to another person as president.

It must also be accepted that tribal motives do play a part in military coups in independent Africa. One tribe may have been entrenched in power by the constitution or the tribe in question may have manipulated the political and electoral processes to its own advantage in order to perpetuate its rule over the rest of the country for as long as possible. Such was the experience of Nigeria where by its predominant numerical size the northern sector of that country was assured of perpetual domination of the Nigerian Federation and the northern region leaders were determined not only to perpetuate this domination at any cost but also to tighten their grip on the Nigerian Federal power structure. The military in that country then took

steps (by assuming power) in order that the situation should be rectified.

As we noted earlier the military coup has reached almost continental proportions in Africa as is evidenced by the number of countries which have experienced the coup d'etat or at least an abortive attempt. It is both common and human for an individual to be inspired by the good deeds or achievements or even the failures of someone with whom he has shared life at one time or another. Precedent it has been argued should be regarded as a cause of military intervention in politics. An event in one country may provide a source of inspiration or encouragement for a similar event in neighbouring countries. An army's dormant elitist tendency to wield power may be kindled by the assumption of power by another army in a neighbouring country. It has been forcefully argued that it is possible to trace the beginning of seizures of power by the military in recently independent Africa directly to the Congo crisis of 1960 - 62.⁵ The part played by the Congolese army in the crisis it is said, and the manner in which they arbitrated between politicians, had a direct impact on the army contingents from neighbouring African countries who

took part in the United Nations operations in the then Congo (now Zaire). This experience it is suggested was bound to affect their feelings and attitudes to their own governments. When therefore shortly after the cessation of the crisis in the then Congo, the first military assumption of power took place in Togo in January 1963 it proved to be the first rumbling of an event that was to affect practically the whole of the African continent. Coupled with this is the fact that armies in French or English speaking independent African countries are related to one another through connections and associations formed during youthful days at school or training institutions in France or Britain. It is further argued that relationships formed during youthful days or in training institutions create long lasting brotherhoods which can exercise one of the strongest influences on a person's conduct or attitudes in certain life situations. This argument is strong and in fact realistic, for no persons in any given society live in a complete vacuum, it is only human to emulate what other similarly circumstanced persons have done successfully.

By way of conclusion of the issue of why the military intervenes in politics in independent Africa, one would

say military assumption of power may be prompted by a number of reasons or factors and amongst the most important are the following - the tendency to perpetuate rule by those holding high political office, ambition to wield power by the elite segment in society (both military and civilian) tribalism, corruption, nepotism, concentration of power in a few hands, economic waste, increasing unemployment, national bankruptcy, perversion of the constitutional system, the banning of organized political parties or opposition (i.e. the formation of single party systems) the curtailment of individual civil liberties and freedoms and precedent by way of occurrences in adjoining countries. However ultimately in any determination of what factors or reasons led the military to intervene in any particular country the local scene of that country has to be searched before one can come to any final conclusion as to what actually led the military to intervene.

CHAPTER III

THE LEGAL EFFECTS OF A MILITARY COUP UPON

A LEGAL SYSTEM

After the military and/or police have assumed power through the use of force or a threat of force, the question which may be posed is - what effect does this seizure of power have upon the existing legal system? If any change does take place in the legal system what is the precise nature of the change? Secondly, assuming that the change has the effect of overthrowing or annulling the constitution itself does it also inevitably destroy the entire body of laws based upon the constitution which has been overthrown? In other words does it do away with the entire legal set up i.e. the constitution and all laws enacted by or under its authority?

As a starting point to this discussion of the legal effects of a military coup upon a legal system we may begin by reciting what the legal philosopher HANS KELSEN said about the nature and effect of a revolution:-

"A revolution occurs wherever the legal order of a community is nullified and replaced by a

new order in an illegitimate way that is not prescribed by the first order itself. From a juristic point of view the decisive criterion of revolution is that the order in force is overthrown and replaced by a new order in a way which the former had not itself anticipated. No jurist would maintain that even after a successful revolution the old constitution and the laws based thereupon remain in force on the ground that they have not been nullified in a manner anticipated by the old order itself. Every jurist will presume that the old order to which no political reality any longer corresponds has ceased to be valid."¹

This same issue of what effect a revolution has on a legal system has not been tackled by theorists only but also by legal practitioners - both lawyers (counsel) and judges in real live situations in four countries namely - Ghana, Uganda, Nigeria and Pakistan. The issue came before the Court of Appeal of Ghana sitting as the Supreme Court in the case of *SALLA v. THE ATTORNEY-GENERAL*.² On the 24th

of February 1966 the Ghana Armed Forces ousted the late Dr. Kwame Nkrumah. The new rulers (a combination of army and police officers) issued a decree entitled "PROCLAMATION FOR THE CONSTITUTION OF A NATIONAL LIBERATION COUNCIL AND FOR OTHER MATTERS CONNECTED THEREWITH." In this proclamation a National Liberation Council (NLC) was established as the new sovereign authority for Ghana with power to make law by decrees which were to have the force of law.³

The dispute in the SALLAH case centred on the provision of paragraph 3(2) of the Proclamation which provides as follows:-

"Subject to any Decree made under the immediately preceeding subparagraph any enactment or rule of law in force in Ghana immediately before the 24th February 1966 shall continue in force and any such enactment or rule of law may by decree of the National Liberation Council be revoked, repealed or amended (whether by addition, omission, substitution) or otherwise suspended"

On the 29th of August 1969 three years later the Ghana Armed Forces terminated their rule and returned the

country to civilian rule under a new constitution (CONSTITUTION CONSEQUENTIAL AND TRANSITIONAL PROVISIONS DECREE) (NLCD No. 406). Among the transitional provisions in the new constitution was section 9(1) of the First schedule to the constitution part IV which provided as follows:-

"Subject to the provisions of this section and save as otherwise provided in this constitution every person who immediately before the coming into force of this constitution held or was acting in office established -

- (a) by or in pursuance of the proclamation for the constitution of a National Liberation Council for the Administration of Ghana or
- (b) in pursuance of a decree of the National Liberation Council or
- (c) by or under the authority of that Council, shall as far as consistent with the provisions of this constitution be deemed to have been appointed as from the coming into force of this constitution to hold

or to act in the equivalent office under the constitution for a period of nine months from the date of such commencement unless before or on the operation of that date any such person shall have been appointed by the appropriate appointing authority to hold or to act in that office or some other office."

The plaintiff SALLAH had been appointed manager of the Ghana National Trading Corporation which was established in 1961 by an executive instrument made under the Statutory Corporations Act 1961. He was dismissed by the new civilian government then headed by Dr. K. Busia under section 9(1) of the First schedule to the constitution whose provisions have been cited above. SALLAH then instituted proceedings challenging the validity of his dismissal. For the government the Attorney-General argued that what happened on the 24th of February 1966 - namely the coup d'etat abolished the old legal order and established a new one in its place; the effect of the coup the Attorney-General argued was to destroy the fundamental or basic law of the Ghanaian legal system

(i.e. the 1960 Republican Constitution) and with it all existing laws (ordinary laws other than the constitution) including the Statutory Corporations Act and the executive instrument made under it. The Attorney-General relied on KELEEN in support of his proposition on the effect of a revolution upon the legal set up of a state.

For the plaintiff SALLAH it was argued that the office of manager which he held in the Ghana National Trading Corporation was established neither by, the Proclamation for the constitution of a National Liberation Council dated the 26th of February 1966 nor indeed was it established by an order under the authority of the National Liberation Council.

The argument for the plaintiff was in effect that the event of the 24th of February 1966 - namely the coup was of no real practical legal significance - it had no effect at all on the laws that were in existence immediately before the coup. The majority of the judges in the Court of Appeal rejected the argument advanced by the Attorney-General who had relied upon KELEEN's theory on the grounds that there was often considerable divergence between theory and practice adding that

"the literature of jurisprudence is remote from the practical problems that confront judges called upon to interpret legislation or indeed to administer any law" (per APALOC. J).

This decision notwithstanding the question that may be asked at this stage is - if the coup in Ghana had no immediate legal effect on the constitutional institutions and organs of state and the laws generally why was it necessary for the military rulers who had assumed power to make a proclamation which contained the following provisions:

"Subject to any decree made under the immediately preceeding subparagraph any enactment or rule of law in force in Ghana immediately before the 24th of February 1966 shall continue in force and any such enactment or rule of law may by decree of the National Liberation Council be revoked, repealed or amended (whether by addition, omission or substitution) or otherwise suspended"⁴ and

"Subject to any decree that may be made by the National Liberation Council the public services

of Ghana as they existed immediately before the 24th of February 1966 shall continue in existence as they existed before that date and any person holding any office in any of those services immediately before the said date shall continue in office subject to any enactments in force after that date by virtue of this proclamation"⁵

If what happened in Ghana on the 24th of February 1966 had no effect upon the existing legal order, assuming that the existing laws, public offices and institutions remained with their legal authority or force in no way affected, then the provisions of the Proclamation referred to immediately above continuing them in force would be unnecessary and so be a mere waste of time and effort.

The legal effect of the event which occurred on the 24th of February 1966 in Ghana, it is submitted was in fact the destruction of the 1960 Republican constitution of Ghana and together with it all the laws and offices made or established under it replacing it with a new one. It cannot be reasonably contended that the armed forces of Ghana assumed sovereign authority under the provisions of

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the 1960 Republican Constitution (for that constitution did not provide for any circumstance under which the military could assume sovereign authority). What the army did was in fact to assume sovereign authority against and in opposition to the 1960 republican constitution. The new basic law of the new legal order which resulted was contained in the proclamation issued by the armed forces of Ghana, for this made provision as to how the country was to be administered and how and by whom law and order would be maintained.

Although KELSEN's theory on the effect of a revolution upon a legal order, which had been relied upon by the Attorney-General in the SALLAH case had been rejected by the Ghana Court of Appeal, it is important to note that the theory had been upheld earlier in a decision of the Pakistan Supreme Court in the case of the STATE v. DOSSO.⁶

A constitution which had been made for Pakistan was annulled in 1958 barely two years after its promulgation. Martial law was declared throughout the country, the National Assembly and Cabinet were dissolved by the President with the support of the army. The President made an order which empowered him and the martial law

administrator to make laws. Subject to any laws so made the existing laws other than the annulled constitution were continued in force. Those acts which were executed by the President were done outside the provisions of the constitution which in any case did not give the President power to annul it. The Pakistan Supreme Court accordingly held that the annulling of the constitution in a manner other than that provided for by it was a revolution. Chief Justice Muhammed Munir had the following important pronouncement to make:-

"A revolution is generally associated with public tumult, violence, and bloodshed but from a juristic point of view the method by which a revolution is brought about is wholly immaterial. The change may be attended by violence or it may be perfectly peaceful. It may take the form of a coup d'etat by a political adventurer or it may be effected by persons already in public positions. Equally irrelevant in law is the motive for a revolution in as much as a destruction of the constitutional structure may be prompted by a highly patriotic impulse

or by the most sordid of ends. For the purpose of the doctrine here explained a change is in law a revolution if it annuls the constitution and the annulment is effective. If the attempt to break the constitution fails those who sponsor or organise it are judged by the existing constitution as guilty of the crime of treason. But if the revolution is victorious in the sense that the persons assuming power under the change can successfully require the inhabitants of the country to conform to the new regime then the revolution becomes a law creating fact because thereafter its own legality is judged by reference not to the annulled constitution but by reference to its own success".⁷

The issue in the case of *THE STATE v. DOSOO* concerned the validity of a law - the Frontiers Crimes Regulations, enacted before the revolution (i.e. before the constitution was annulled by the Pakistant President contrary to the provisions of the constitution itself) under which certain persons had been charged and convicted

of certain offences. It was not disputed that the law in question being a law which discriminated against persons on racial grounds violated the fundamental rights provisions of the annulled constitution and was therefore void under article 4 thereof. Had its validity been challenged before the revolution in appropriate proceedings the court could have pronounced it unconstitutional and so void. The accused persons contended that the law remained tainted with its original invalidity. This contention was accepted by the High Court which accordingly set aside the convictions and sentences. The Supreme Court reversed this, holding that the accused persons could not after the revolution, challenge the validity of the law by reference to the annulled constitution on the ground that the criterion of validity of existing laws continued in force by the revolutionary government is the new legal order and that the fundamental rights provisions having disappeared with the old constitution, the law in question could not be impugned by reference to them.

It is important to note that in determining the effect of revolution upon a legal system the Pakistan Supreme

Court quoted and relied on KILBURN's theory and emphasised that what is destroyed is not just the constitution but the entire legal system, as well as public offices including indeed the courts themselves. Chief Justice Muhammed Hunir said:-

"The revolution having been successful satisfies the test of efficacy and becomes a law creating fact. On that assumption the Laws Continuance in Force Order however transitory or imperfect it may be is a new legal order"⁸

In Ghana for example the proclamation referred to already, in addition to making provisions for the saving of existing laws and continuance of public services also specifically made provisions for the continuance of the smooth functioning of the courts of law.

Paragraph 2(3) of the Proclamation provided:-

"Notwithstanding the suspension of the constitution of the Republic of Ghana and subject to any Decree that may be made by the National Liberation Council all courts in existence immediately before the 24th of February 1966 shall on and after that date continue in existence with the same powers as they

had immediately before the said date and also all judges and every other person holding any office, post, in the judicial service immediately before the 24th of February 1966 shall continue in that office or post upon the same terms and conditions as before that date and shall discharge the same functions as were prescribed in relation to that office or post under any enactment immediately before the said date."

It should be noted that the validity of a revolutionary constitution and government cannot be rested upon law since there is in fact no law anterior or prior to it to serve as the criterion of its validity. Effectiveness therefore is the criterion or the determining factor. What is meant by effectiveness is that the individuals whose behaviour the new order regulates actually behave in conformity with the new order.⁹ This can be achieved through the application of force or through the active or passive support of the people.

The judicial committee of the Privy Council accepted the decision of the Pakistan Supreme Court in the DOSTO case as correct in stating the effect of a revolution upon a

legal system in the Rhodesian case of *MADZIMBAMUTO v. LARDEN BURKE*¹⁰ quoting with approval the statement by Chief Justice Muhammed Munir to the effect that:-

"The essential condition to determine whether a constitution has been annulled is the efficacy of the change"

However the position would be entirely different if there had to be two rivals contending for power. If the legitimate or lawful government had been driven out but was trying to regain control it would be impossible to hold or assert that the one who usurped power unlawfully is the lawful ruler because that would mean that by striving to assert its lawful right the ousted legitimate government was opposing the lawful ruler.

It is important to bear in mind that the decision of the Pakistan Supreme Court in the *DOSSO* case has been received with approval in the Ugandan case of *UGANDA COMMISSIONER OF PRISONS, EX PARTE MATOVU*.¹¹

In the final analysis therefore one notices that the intrinsic effect of a revolution (whether brought about by violent or peaceful means such as the constituent

power of the people) upon the legal set up of a country, is that the constitution and all other ordinary laws made under the constitution are destroyed once the revolution takes effect or is successful in the sense that the people who have assumed power can demand and secure conformity with whatever they desire from the masses. A successful coup d'etat is a revolution and a revolution by its very nature is a sudden and abrupt change not envisaged by the constitution of a state. At the same time it must be remembered that the destruction of the existing laws however does not as a practical matter follow upon the success of a revolution. The normal practice is for the new revolutionary rulers to make provision for the saving of the existing ordinary laws by express enactment.

In Nigeria for example after the January 15 1966 assumption of power by the military from civilians a decree was made which provided as follows:-

"Subject to this and any other decree all existing law that is to say all law (other than the Constitution of the Federation or the Constitution of a Region) which whether being a rule of law or a provision of an Act of

Parliament or a law made by the legislature of a region or any other enactment or instrument whatsoever was in force immediately before the 16th of January 1966 or having been in force after that date, shall until that law is altered by an authority having power so to do have effect with such modifications (whether by way of addition, alteration or omission) as may be necessary to bring that law into conformity with the constitution as affected by this or any other decree or edict relating to the performance of any functions which were conferred by law on any person or authority"¹²

he question which may be put at this point is - what could be the position in law if through some oversight or other inadvertent omission on the part of the authorities concerned no express saving provision or re-enactment was done of the ordinary existing laws? Could the omission in reality or practice have the effect of the ordinary laws being a nullity or of no legal consequence?

In law the position seems to be that in the event of an omission occurring the new revolutionary government would be deemed to have tacitly or by necessary implication permitted the existing ordinary laws to continue in force. Necessity should dictate that the ordinary laws should continue in force until changed or repealed or modified by the new sovereign authority, for having been in existence before the state, society should not perish with the constitution. The Privy Council has laid it down that when, upon a change of sovereignty:-

"there was an existing system of law it has always been considered that there was absolute power in the new sovereign to alter the existing system of law though until such interference the laws remained as they were before"¹³

Nevertheless the most important point to bear in mind is that what has been discussed above does not nullify the cardinal principle that a revolution destroys as a matter of intrinsic consequence the pre-existing legal order and offices but it does mean however that the

destruction has more of a notional rather than a practical consequence. The implied saving of existing ordinary laws and non political offices does not however apply to the basic law of any given legal system i.e. the constitution. In determining the practical effect of a revolution it is the action of the revolutionary rulers that is conclusive. The revolutionary rulers may choose not to do away with the constitution completely, but merely to suspend it as in Ghana where the proclamation provided in paragraph 2 as follows:-

"With effect from the 24th of February 1966 and subject to any decree that the National Liberation Council may make the operation of the constitution of the Republic of Ghana which came into force on the 1st day of July 1960 (as subsequently amended) shall be suspended"

or to suspend only parts of the constitution leaving the rest still in force with necessary modifications to suit the changed situation as was the case in Nigeria after the January 15 1966 coup where the CONSTITUTION (SUSPENSION AND MODIFICATION) DECREE (No. 1 of 1966)

provided in section 1 as follows:-

"(1) The provisions of the Constitution of the Federation mentioned in Schedule 1 of this Decree are hereby suspended.

(2) Subject to this or any other decree the provisions of the Constitution of the Federation which are not suspended by subsection (1) above shall have effect subject to the modifications specified in Schedule 1 of this decree."

The question might be asked - what is the true legal implication of saving of the existing ordinary laws and non political offices? Does it mean in fact that those laws owe their validity to the new constitution of the new revolutionary regime - whether it takes the form of a proclamation or an entirely modified document based on the old constitution or do they become re-enacted by the new regime and do the existing offices become re-established? Precisely this was the issue in the Ghanaian case of *BAILEY v. ATTORNEY-GENERAL* referred to earlier on. For the new civilian government the Attorney-

General argued that the effect of the proclamation of February 24, 1966 made by the military authorities which continued in force all existing ordinary laws and offices in the public services¹⁴ was to re-enact those laws and to re-establish those offices and that consequently if the plaintiff's (SALLAH) office as manager of the Ghana National Trading Corporation which had been destroyed by the revolution was to be deemed to have been re-established, SALLAH came within the category of persons whose offices were established by or in pursuance of the proclamation within the meaning of the transitional provisions of the new constitution. The Attorney-General's proposition was rejected by the majority of the judges of the Ghana Court of Appeal. Nevertheless there are two important issues, which must be kept separate and these are:-

- (a) the continued application of existing laws
and
- (b) the continued validity of those existing laws

Since as we have seen a revolution nullifies existing laws their continued application is owed to the new legal order but the existing laws are continued upon the

condition or presumption that in fact they had been validly enacted according to the old constitution, for if a question should arise as to the constitutionality or otherwise of any such law whose application has been continued, the question would be determined by reference to the old constitution and the court would have to pronounce it void or unconstitutional for inconsistency with that constitution.

The true implication of saving existing laws by the new revolutionary rulers is that they were in force under the authority of the old constitution. In as far as those laws are concerned it would be true to say that they were saved from destruction, the position therefore becomes as if practically the revolution and the consequent destruction of the old legal order had not in fact taken place. However it is important to remember that the constitution introduced by the new revolutionary rulers has a great impact upon the continued validity of the continued existing laws, since their continued application is invariably made subject to law or decrees made by the new government. Paragraphs 3(2) and (3) of the proclamation for the Constitution of a

National Liberation Council for the Administration of Ghana and for other matters connected therewith might serve as an illustration of the point mentioned immediately above as these provide as follows:-

- (2) "Subject to any decree made under the immediately preceeding subparagraph any enactment or rule of law in force in Ghana immediately before the 24th of February 1966 shall continue in force and any such enactment or rule of law may by decree of the National Liberation Council be revoked, repealed, amended (whether by addition, omission, substitution) or otherwise suspended"
- (3) "where any enactment or rule of law in force immediately before the 24th of February 1966 is in conflict with any provisions of a decree made by the National Liberation Council, the said provision shall prevail over that enactment and to the extent to which the enactment conflicts with the provision of a decree that enactment shall be deemed to be amended by the decree."

Similarly in Nigeria Section 12(1) of the CONSTITUTION (SUSPENSION AND MODIFICATION) DECREE 1966 provides:-

"Subject to this and any other Decree all existing law that is to say all law (other than the constitution of the Federation or the constitution of a Region) which whether being a rule of law or a provision of an act of Parliament or of a law made by the legislature of a Region or of any other enactment or instrument whatsoever was in force immediately before the 16th of January 1966 or having been passed or made before that date came or comes into force on or after that date, shall until that law is altered by an authority having power to do so have effect with such modifications (whether by way of addition, alteration or omission) as may be necessary to bring that law into conformity with the constitution of the Federation and the Constitution of each Region as affected by this or any other decree and with the provisions of any decree or edict relating to the performance of any functions which are conferred by law on any person or authority."

By way of conclusion one can say that once a military coup has been successfully executed the old legal order is destroyed i.e. the old constitution and the entire system of ordinary laws made under it become a nullity. In practice however the existing ordinary laws based upon the old constitution are continued in force by the new revolutionary rulers. Although the old constitution is destroyed the continued validity of the existing laws that are continued in force depends upon the old constitution as well as upon the new.

CHAPTER IV

THE NATURE OF MILITARY GOVERNMENT

As a starting point the establishment of a military government does not come through the channels established or provided for by the constitution. No elections are conducted before the military assumes power. So that essentially military governments are not freely chosen or elected by a majority of the people in the respective countries where this event (the military coup) has taken place nor once the military has assumed power are elections held at regular intervals.

A military government can therefore qualify to be termed or classified as "unrepresentative" in character i.e. it cannot claim to represent the people because at no time have the people appointed, let alone elected the military as their agent or representative.

Authoritarianism is a usual tenet of military government. Military discipline is based upon hierarchical command. It should not be surprising that this authoritarian tendency is carried on into government. What happened in Ghana in 1967 and 1972 may serve as an illustration of what military authoritarianism can lead to (although

those incidents may have been isolated). Sometime in July 1967 more than one hundred and five civil servants at the Castle CSU the seat of government in Accra who turned up late for work were locked out the next day on the instructions of GENERAL ANKRAH, then Chairman of the National liberation Council. It is alleged that General Ankrah ordered the main gate to the Castle to be closed at 7.30 a.m. and that all workers who came in after that time should be asked to wait behind the gate. Later General Ankrah called all workers to a meeting where he warned them that in future disciplinary action would be taken against late comers adding:-

"No worker is indispensable"¹

In 1972 the "DAILY SPOTTER" in its 3rd February issue carried a report about "BIPARTISAN EXHIBITION OF SOLDIER POWER." In this incident a Lieutenant who felt aggrieved because a friend of his had been refused bail at Adabraka police station went there with armed soldiers and caused to be arrested at gun point six policemen on duty at the station, took them in an army truck to a military camp and subjected them to senseless drilling before releasing the unfortunate victims to find their own way back to the

police station²

Another important aspect of military rule is that the military authority enjoys supreme and absolute sovereignty. The government is not subject to limitations of a constitution as there are usually no formal constitutional enactments from which any limitations upon the powers of the military can be found. When the military assumes power the constitution that existed prior to the coup is either suspended in toto or only certain provisions are suspended while at the same time others are retained but with accompanying modifications. The former happened in Ghana whereas the latter happened in Nigeria. In Nigeria Section 1 of the 1963 constitution provided as follows:-

"This Constitution shall have the force of law throughout Nigeria and subject to the provisions of Section 4 of the Constitution, if any other law (including the Constitution of a Region) is inconsistent with the Constitution, this constitution shall prevail and the other law shall to the extent of the inconsistency be void."

After the military had assumed government the following modification was made to the above quoted section 1 of the 1963 Federal Constitution of Nigeria by the CONSTITUTION (SUSPENSION AND MODIFICATION) DECREE 1966 section 1 of schedule 2 of which provides:-

The words

"subject to the provisions of section 4 of this constitution" shall be omitted and at the end of the section there shall be inserted the following proviso -

"provided that this constitution shall not prevail over a decree and nothing in this constitution shall render any provision of a decree void to any extent whatsoever"

This modification emphasises the fact that although certain clauses of the constitution are saved i.e. they are left intact, their effect and the availability of their enforcement provisions are rendered almost ineffectual.

In Nigeria the attempt by the Supreme Court in the case of LAMINI v. ATTORNEY-GENERAL (1967)³ to imply a

limitation on the power of the Nigerian Federal Military Government from the doctrine of necessity not surprisingly provoked the government to an assertion of its absolutism and supremacy. On May 9 1970 two weeks after the decision in the Ikenne case was handed down, the military came out with a decree entitled Federal Military Government (Supremacy and Enforcement of Powers) Decree 1970; and it was declared in the recital (which according to section 1 was part of the decree).

"Whereas the military revolution which took place on January 15, 1966 and which was followed by another on July 29, 1966 effectively abrogated the whole pre-existing legal order in Nigeria except what has been preserved under the Constitution (Suspension and Modification) Decree 1966 (1966 No. 1).

"AND whereas each military revolution involved an abrupt political change which was not within the contemplation of the Constitution of the Federation of 1963.....

"AND whereas by the Constitution (Suspension and Modification) Decree (1966 No. 1) there was established a new government known as the "Federal Military Government" with absolute powers to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever and in exercise of the said powers, the said Federal Military Government permitted certain provisions of the said constitution of 1963 to remain in operation as supplementary to the said decree"

The military in Nigeria had therefore expressly stated that they had absolute powers to make laws for Nigeria.

Military governments however usually prescribe a procedure for legislation. The procedure for law making is not cumbersome. Paragraph 4 of the Proclamation in Ghana provided:-

"Any decree of the National Liberation Council shall be deemed to be duly made if it purports to be signed by the chairman (in the absence of the Chairman) the Vice-Chairman of the Council"

Similarly Section 4(1) of the CONSTITUTION (SUSPENSION AND MODIFICATION) DECREE 1966 provides:-

"The power of the Federal Military government to make laws shall be exercised by means of decrees signed by the Head of the Federal Military Government"

This prescription of a law making procedure only operates to control, though not to limit or exclude the sovereignty of the government and therefore to maintain the supremacy of the constitution. It will enable the courts to pronounce invalid any law enacted in violation of the prescribed procedure. Even this limited control by the constitution of the sovereignty of the government is not possible under a revolutionary military government, since invariably there is an express ouster of jurisdiction of the Courts to inquire into the validity of the enactments of the military government. Section 6 of the Nigerian CONSTITUTION (SUSPENSION AND MODIFICATION) DECREE 1966 provides:-

"No question as to the validity of this or any other decree or any edict shall be entertained by any court of law"

Interestingly the Proclamation in Ghana contained no provision similar to that cited above. However generally speaking judicial review of action taken under the authority of enactments or decrees of revolutionary military governments is usually absent due to express ouster of any judicial inquiry or determination by particular decrees or enactments.

Directly connected with the issue of absolute sovereignty is that of the safeguarding of fundamental human rights. Since the government as has been pointed out is "unrepresentative" in character, authoritarian and possessed of wide law making powers, how are individual human rights protected?

In Ghana, the proclamation did not make any special provision for what, if any, these fundamental human rights and liberties were to be or how they would be protected or enforced in the event of an infringement. In any case the 1960 Republican constitution of Ghana whose operation had been suspended by the military authorities did not contain a bill of rights, such as is found in the constitutions of other newly independent African countries. The 1960



Republican constitution only had the following provision:-

"Immediately after his assumption of office the President shall make the following solemn declaration before the people.

On accepting the CALL of the people to the High office of President of Ghana I
Solemnly declare my adherence to the following fundamental principles -

That the powers of government spring from the will of the people and should be exercised in accordance therewith

That freedom and justice should be honoured and maintained.

That no person should suffer discrimination on the grounds of sex, race, tribe, religious or political belief

That every citizen of Ghana should receive his fair share of the produce yielded by the development of the country

That subject to such restrictions as may be necessary for preserving public order, morality or health, no person should be deprived of

freedom of religion or speech, of the right to move and assemble without hinderance or of the right of access to the courts of law

That no person should be deprived of his property save where the public interest so requires and the law so provides"⁴

The effect of the above declaration which the president had to make on assuming office was decided upon by the Ghana Supreme Court on August 28, 1961 in the case of RE AKOTO AND SEVEN OTHERS.⁵ In this case the appellants had been arrested and placed in detention on the 10th 11th of November 1959 under an order made by the Governor-General and signed on his behalf by the Minister of Interior under section 2 of the Preventive Detention Act 1958 (No. 17 of 1958).

Their application to the High Court for writs of habeas corpus ad subjiciendum was refused. They appealed and counsel on their behalf argued that the Preventive Detention Act by virtue of which the appellants had been detained was in excess of the powers conferred upon Parliament by the constitution of the Republic of Ghana

with respect to the solemn declaration of fundamental principles made by the president on the assumption of office. The Supreme Court held that Article 13(1) of the constitution imposed only a moral obligation upon the president of Ghana. Throughout the declaration which was similar to the coronation oath of the Queen of England the word "should" was used not "shall". The declaration did not constitute a bill of rights and did not create legal obligations enforceable in a court of law. The Preventive Detention Act of 1958 was therefore not contrary to the constitution and parliament was competent to pass such an act even in peace time.

Ghana therefore had no formal bill of rights as it is usually understood, either under the 1960 republican constitution or under the proclamation made by the National Liberation Council. And even assuming that the declaration made by the president at the time of assuming the presidency, amounted to a formal bill of rights the destruction of a constitution by a revolution or even its suspension meant that no individual could enforce against the revolutionary government any fundamental rights guaranteed or protected in respect of him by the annulled

constitution.⁶

The position in Nigeria however is different. At the time of military coup - January 15, 1966 the 1963 Federal constitution of Nigeria had a formal constitutional bill of rights. After the coup the fundamental human rights (Chapter 3) was left intact - it was not suspended. However the efficacy and value of this is not much as the case of *LAKAMNI v. ATTORNEY-GENERAL (WEST)* shows. For since the Federal military government is supreme over the constitution any law which it makes in violation of a guaranteed right operates as an amendment of the constitution. The practice has been to suspend the bills of rights expressly for the purposes of specific enactments. The Nigerian STATE SECURITY (DETENTION OF PERSONS) DECREE 1966 for example provides:-

"Chapter III of the constitution of the Federation is hereby suspended for the purpose of this decree and

- (a) the question whether any provision thereof has been or is being or would be contravened by anything done or proposed to be done in

pursuance of this decree shall not be inquired into in any court of law and accordingly Sections 115 and 117(d) of that constitution shall not apply in relation to any such question.

- (b) an application for a writ of habeas corpus ad subjiciendum shall not lie at the instance of a person detained under this decree or on his behalf"

Nonetheless the preservation of the bill of rights has some value. It operates as a limitation upon executive action. Thus although in the case of Nigeria, a particular enactment may have expressly excluded the application of the human rights chapter, any executive action taken under the enactment is only legally justifiable if it complies strictly with its provisions⁷ otherwise it will be open to challenge, though again, the enactment itself may confer immunity upon executive actions otherwise unlawfully done under it. For example Section 5 of the STATE SECURITY DETENTION OF PERSONS) DECREE 1966 (No. 3/1966) of Nigeria provides:-

"No suit, prosecution or other legal proceedings shall lie against any person for anything done in good faith or intended to be done in pursuance of this decree."

Secondly the preservation of the bill of rights by the military government of Nigeria, limits the legislative powers of the state military governments whose powers are still subject to the constitution and to decrees of the Federal military government. It is also important to remember that the constitution of the Nigerian Federation (as modified by the CONSTITUTION (SUSPENSION AND MODIFICATION) DECREE 1966) still overrides the edicts of the state military governments, so that if a state military government makes an edict which is inconsistent with the provisions of chapter III of the constitution or a decree, such an edict could if challenged be declared null and void for being inconsistent with the provisions of the constitution or decree.

The question that has to be answered is - given the nature of the military rule as discussed above, to what extent if any have the military in Ghana and Nigeria encroached upon individual liberty and freedom.

CHAPTER V

FREEDOM OF ASSEMBLY AND ASSOCIATION

In both Nigeria and Ghana effective legislation was made to stop political campaigns or the operation of political parties. In Ghana the Convention Peoples Party - the only political party recognised by law was proscribed by the proclamation that established the National Liberation Council and parliament established under the 1960 republican constitution was dissolved. The National Liberation Council (Proclamation) (Amendment) Decree of 1966¹ provided that until such time as a new constitution was promulgated by the people of Ghana and a new government formed under such constitution the National Liberation Council would be the government of Ghana and would have and exercise the executive powers of the state.

In Nigeria a PUBLIC ORDER DECREE 1966² was made by the Federal Military Government. Under this Decree the Head of the Federal Military Government was empowered to designate any society or association of three or more persons which in his opinion had identical or similar objectives to that of a scheduled society,³ a scheduled society.

A "scheduled society" was defined to be:-

"Anybody corporate or unincorporate, Society or Association of three or more persons pursuing or united in pursuing a political cause or objective or having as its aim or one of its aims a political cause or objective (by whatever name such society or association may be called) and includes the political, tribal or cultural associations named in parts I and II of the schedule to this decree as from time to time designated under the provisions of this decree by the Head of the Federal Military Government by notice published in the Federal Gazettee."

In all a total of eight-one political societies and associations and twenty-six tribal and cultural associations were designated "scheduled societies."

This meant that all these political associations and cultural associations were forthwith dissolved and could therefore not function.⁵ By virtue of this decree no new association by whatever name or title called could be

ed - a new association being defined as "any new society
association of three or more persons having an identical
similar objective to that of a scheduled society"⁶. It
provided in Section II of the PUBLIC ORDER DECREE that
ion 2 of the same decree which provided for a
prohibition on the formation of new political associations
to have effect until the 17th of January 1969 unless
was sooner revoked or extended by notice in the
ral Gazette. To date however the prohibition is
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ies will continue indefinitely, although according
a recent government announcement the ban should have
lifted in October 1974. General Gowon is reported
having said his government had not abandoned the idea
a return to civilian rule but "our own assessment of
situation now is that it will be utterly irresponsible
leave the nation in the lurch by a precipitate with-
al which will certainly throw the nation back into
fusion." The General further said that the Federal

formed - a new association being defined as "any new society or association of three or more persons having an identical or similar objective to that of a scheduled society"⁶. It was provided in Section II of the PUBLIC ORDER DECREE that Section 2 of the same decree which provided for a prohibition on the formation of new political associations was to have effect until the 17th of January 1969 unless it was sooner revoked or extended by notice in the Federal Gazette. To date however the prohibition is still in force as the military have not relinquished power to the civilians nor have they allowed the formation and organization of political parties. According to General YAKUBU GOWON the ban on political parties will continue indefinitely, although according to a recent government announcement the ban should have been lifted in October 1974. General Gowon is reported as having said his government had not abandoned the idea of a return to civilian rule but "our own assessment of the situation now is that it will be utterly irresponsible to leave the nation in the lurch by a precipitate withdrawal which will certainly throw the nation back into confusion." The General further said that the Federal

government would appoint in due course "a panel to draw up a new draft constitution which, when approved by the government will be referred to the people for adoption in a manner to be determined".⁷

The PUBLIC ORDER DECREE 1966 however made certain exceptions in respect of bonafide unions and societies. SECTION 10 of the decree provides:-

- (1) "Subject to subsection (2) below nothing in this decree shall apply to any town development union (membership of which is open to all inhabitants of the town) or to any society or association of three or more persons formed for the purpose of sports or religious, cultural, charitable or co-operative purposes or under the Trade Unions Act or other similar society or association having a non political objective."
- (2) "The benefit of subsection (1) above shall not apply to any union, society or association mentioned in that subsection which engages in or carries on any activity

similar to that of a scheduled society or is used as a platform for engaging in or carrying on such activity."

The PUBLIC ORDER DECREE 1966 (Nigeria) also makes it an offence for anybody to take part in or encourage the management of scheduled societies i.e. whether old or new, for if any new association was formed after the commencement of this decree such association is to be deemed a scheduled society and designated as such.⁸ Public processions conducted by scheduled societies or associations or meetings of the same whether in private or public places are prohibited. The use of political slogans, symbols, flags or political nicknames is banned. The police are vested with wide powers of search and arrest. SECTION 44 of the PUBLIC ORDER DECREE 1966 provides:-

- (1) "Any police officer authorised in writing by the designated officer may enter with the assistance of such number of other police officers, constables or other persons as may be deemed necessary in any appropriate case, any house, building or any place whatsoever in which such

designated officer has reason to believe that a meeting of a scheduled society or of persons who were or are members of such society is being held.

(2) The police officer may:-

(a) arrest or cause to be arrested any person found in such house, building or place whom he has reasonable cause to believe is or was connected with the purposes of such society or meeting.

(b) seize or cause to be seized all insignia, banners, arms, books, papers, documents and other chattels of the society which he may have reasonable cause to believe belong to any such society or to be in any way connected with the purpose of the society or meeting."

It is further provided in Section 13 of the PUBLIC ORDER DECREE 1966 that this decree is to have effect notwithstanding anything to the contrary in the constitution of

the Federation or in any enactment or written law. This essentially meant that a person could not invoke the constitutional provisions relating to the freedom of assembly and association granted to him under the 1963 Federal Republican Constitution.

In Ghana similar legislation to that made in Nigeria relating to the prohibition of the formation and operation of political parties was made - namely the NATIONAL LIBERATION COUNCIL (PRESERVATION OF PUBLIC PEACE) DECREE⁹ and this decree unlike the Nigerian PUBLIC ORDER DECREE which mentioned a specific date in 1969 provided in paragraphs 1 and 2(1) as follows:-

- (1) "Until such time as the National Liberation Council may appoint the formation or operation by any person of any political party is prohibited and
- (2) "Until such time as may be appointed under paragraph (1) of this decree all activities whatsoever likely to assist in the formation or operation of a political party are hereby prohibited"

Included in the list of prohibited acts were:-

- (a) the summoning of persons to a meeting of a political organization and the attending of such meeting
- (b) the publication of a notice or advertisement relating to the meeting of a political organization
- (c) the organization of and participation in processions and propaganda campaigns of political organizations
- (d) the use of slogans and labels of political organizations
- (e) the invitation of persons to support a political organization
- (f) the making of contribution or loan to funds held or to be held by or for the benefit of a political organization or the acceptance of such contribution or loan
- (g) the giving of any guarantee in respect of such funds as aforesaid.

A penalty was provided for in the event of a contravention of any of the provisions of the decree - a term of imprisonment of up to three years or a fine not exceeding 3,000 new cedis or to both such imprisonment and fine.

Essentially therefore both the Nigerian PUBLIC ORDER DECREE 1966 and the Ghanaian PRESERVATION OF PUBLIC PEACE DECREE 1966 were the same in nature and purpose - they were made to prohibit the formation or operation of political parties. The immediate result in both countries was that political activity was arrested - no opposition parties for example could be formed, say to challenge the ruling military. Public meetings and processions were brought to a standstill, nor could three or more persons assemble peacefully - except of course for non-political business. The main difference between the Nigerian PUBLIC ORDER DECREE and the Ghanaian PRESERVATION OF PUBLIC PEACE DECREE is that the former specifically or expressly excluded from its application bona fide town development unions, membership of which was open to all inhabitants of the town or any society or association of three or more persons formed for purposes of sports or

religion, cultural, charitable or co-operative or under the Trade Union Act having a non-political objective. Also the powers of the Police in enforcing the PUBLIC ORDER DECREE of Nigeria are expressly stipulated. However it would be reasonable to suggest that even in Ghana, bona fide non-political associations and cultural, charitable or town development unions would be exempt from the application of the PRESERVATION OF PUBLIC PEACE DECREE 1966.

It is important to note that in the case of Ghana, the prohibition on the formation and organization of political parties was abandoned in 1969, although the Preservation of Public Peace decree had not in fact stipulated the date for lifting the ban on the operation of political societies and organizations. The ban was lifted to enable persons to form political parties and campaign for elections because the military were ready to restore civilian rule.

THE POLITICAL PARTIES DECREE 1969 provided in paragraph 1

"Subject to the following provisions of this decree, political parties may be formed in Ghana to further purposes which are not contrary

to the laws of Ghana."

The formation of political parties based on tribal or religious considerations or motives was specifically prohibited.¹⁰ The idea behind this prohibition seems to have been that only parties that were of a national outlook were to be tolerated and not sectional, tribal, regional or religious ones whose membership would be limited only to certain sections of the Ghanaian society. Paragraph 2(2) of the POLITICAL PARTIES DECREE 1969 provides:-

"For the purpose of the foregoing subparagraph a political party shall be deemed to be formed on tribal or religious basis if the membership is restricted to members of any particular community or religious faith or if its structure and mode of operation are not national in character."

Even though the POLITICAL PARTIES DECREE 1969 had allowed the formation of political parties it is interesting to observe that the same decree disqualified certain persons from holding office in or being a

founder member of any political party if:-

"He is a person who, on or after the 1st day of July 1960 has held any of the offices set in the schedule to this decree."

Two days after Gazettee notification of this decree an amendment was made to it as well as to the schedule.¹¹

As a result of this amendment no person could be eligible to hold office or be a founding member of any political party if such person had held any of the offices listed below on the eve of the 24th of February 1966 - the evening before the army assumed power.

- (a) member of the central committee of the dissolved Convention Peoples Party or General-Secretary of that party
- (b) minister of state in the government of that party
- (c) special advisor to former President Kwame Nkrumah
- (d) region commissioner in the government of the said Convention Peoples Party

- (e) District Commissioner
- (f) regional secretary of the said party
- (g) members of the national or regional executive committee of the dissolved Convention Peoples Party
- (h) member of the Presidential Detail Department other than a police officer or civil servant . . transferred or seconded to the department with the approval of his head of department or other person having in relation to him the power to approve such transfer or secondment.
- (i) Chairman of a City or Municipal Council
- (j) national or regional party propaganda secretary of the dissolved Convention Peoples Party.

Although the schedule to the decree had been reduced in size and the period of holding any of the offices mentioned in the schedule had been brought forward from the 1st of July 1960 to the eve of the 24th of February

1966 the list of persons precluded from either holding office or being founding members of any political party could not have been more exhaustive.

The preclusion apparently was primarily intended to apply to persons who held high political (government) or party positions during Nkrumah's reign. One reason for this may be that the military did not like the idea of the very people they had ousted from power earlier on to hold the reigns of government, probably on the grounds that there might be a repeat performance. It can be argued that the National Liberation Council in Ghana was very much interested in seeing "new blood" injected into the politics of the country and most likely people who could not or were unlikely at least to reverse overnight whatever policies the National Liberation Council had initiated during its three year reign.

This is a bit unfortunate in the sense that even persons who had served rather reluctantly under the Nkrumah regime and who could have effectively contributed to national development and progress, had they been allowed to form new political parties were thus effectively

precluded. One could say that in this way certain people had been discriminated against on grounds of past political beliefs or activities.

In Nigeria on the other hand there has been no break in military rule since 1966 presumably because the right time has not yet presented itself. To quote GENERAL YAKUBU GOWON:-

"I have promised the nation to hand over to a civilian government as soon as possible, it can be a matter of months because I want to go back to the Army but I do not want to hand over in such a situation that will give room for any repeat performance. No one can give a definite answer except God."¹²

The above quoted statement has been reiterated almost eight years after the military took power.¹³ With the clamp down on political activities comes the ban on parliamentary elections. In Nigeria Section 53 of the 1963 Federal Republican Constitution which dealt with elections was specifically suspended from operation by the CONSTITUTION (SUSPENSION AND MODIFICATION) DECREE

1966 (SECTION 1). In Ghana the whole of the 1960 Republican constitution was suspended and the National Liberation Council clearly stated that until such time that a new constitution was promulgated by the people of Ghana and a new government was formed under such constitution the National Liberation Council would be the government of Ghana.¹⁴

However even though elections are not held at regular intervals during military rule the right to vote is not regarded as a "fundamental" right and it is not usually mentioned in formal constitutional bills of rights. Nevertheless the ban on political activities does in fact constitute an abrogation of the freedom of assembly and association i.e. the right to freely assemble and associate with other persons for any lawful purpose and in particular to form associations for the protection of his interests. However it is important to note that this abrogation of freedom of assembly and association was restricted to POLITICAL MATTERS only. Meetings or associations which were of a non-political character could still be tolerated, although of course the military authorities could easily clamp down on these - what with the wide powers of search and arrest given to the army and police.

CHAPTER VI

FREEDOM OF SPEECH AND EXPRESSION

It will be apparent from what has been said above that organised opposition (whether political or otherwise) to the military is usually not tolerated. To quote from Professor B.O. Nwabueze:-

"As a regime of force, a military government does not admit of opposition. With the moratorium on political activities, organised opposition is of course out of question nor is individual opposition to the military very much tolerated. The ordinary man thinks of opposition to the military as a foolhardy undertaking. He tends to associate the military with the gun and shooting and he is likely to take the view that discretion is the better part of valour, better to hold ones peace than risk being shot"¹

The question which arises then is, what treatment in view of the above reaction to political activity by the military has been accorded to the freedom of expression i.e. the freedom to hold opinions and receive and impart ideas and information without interference bearing in

mind the fact that even under civilian rule the constitutional bills of rights usually provide for derogation from protected freedoms e.g. in the interests of defence, public safety, public order, public morality or for the purpose of protecting the rights, reputation and freedom of other persons or preventing the disclosure of information received in confidence.²

In Nigeria one of the very first acts of the Federal Military Government was to lift the ban imposed by politicians on the circulation of certain newspapers within certain areas.

On the 17th of January, 1966 the CIRCULATION OF NEWSPAPERS DECREE 1966 (Decree No. 2/1966) was made and this provided as follows:-

"Any provision made before the coming into force of this decree by a local government council, a city or town council or any other municipal authority which prohibits or restricts distribution or general sale of any newspaper in any part of Nigeria shall cease to have effect on the coming into force of this decree"³

The lift of the ban also extended to newspapers published by or under the authority of government.⁴

It was also made an offence for any person whether alone or with any other person to do anything calculated to prevent or restrict the distribution or general sale of any newspaper in any part of Nigeria. A penalty of five hundred pounds or imprisonment for a term not exceeding three years or both was provided for in the event of a conviction (section 1 (2) of Decree No. 2 1966).

In Ghana members of the National Liberation Council made public statements on their willingness to listen to pressure groups. General Ankrah speaking at the University of Ghana asked the Universities in Ghana to take the initiative on matters of interest to them and to send their "well considered advice" to the National Liberation Council.⁵ General AFRIFA requested Ghanaian intellectuals to be bold enough to criticise the National Liberation Council if they considered any of its actions wrong,⁶ and General Kotoka asked for criticism "that helps us to see alternative and better solutions."⁷

On the expression of views through mass media an equally tolerant attitude was expressed. General YAKUBU GOWON of Nigeria said:-

"As I always tell the press they are free to write anything they like but please do not misinterpret us"⁸

General Afrifa in Ghana asked the press to offer more . . . constructive criticism of the National Liberation Council and not to "sing his masters voice."⁹ He wrote to one daily paper complaining that its attitude to the National Liberation Council was not different from that to Nkrumah before the coup and asked that in the absence of an opposition the press should warn the National Liberation Council when it was going wrong¹⁰ but he had earlier on distinguished between "freedom of the press" and "harmful, biased, destructive criticism."¹¹ General Ankrah too suggested limits to freedom of expression, the press was free to express any political opinion "providing they do it constructively and responsibly."¹²

Even though General Ankrah had complained (May 1967) of

the press giving too much attention to the Middle East crisis and to "trivial events" when the many positive strides of the National Liberation Council should command attention¹³ the DAILY GRAPHIC asserted its independence by making the events in Nigeria its lead story in three of the subsequent four editions.¹⁴

After the coup in Ghana various newspapers and even individuals felt free to express opinions on various issues that affected the National Liberation Council. Censorship on out going cables which had been imposed by the Nkrumah regime in 1962 was abolished.¹⁵ In an issue of the EVENING NEWS a commentator complained that the government was "half-hearted" in ridding state corporations of corruption and nepotism, the reason the article said was that the National Liberation Council tended to leave details of administration to precisely those people who were responsible for the malpractices in the past. The commentator then asked the National Liberation Council to be "bold".¹⁶

A staff writer of the GHANAIAN TIMES complained that the decision of the Chieftaincy secretariat to ban all

petitions on Chieftaincy would "shock every lover of true democracy."¹⁷ The LEGON OBSERVER of Ghana echoing a fairly widespread opinion commented as follows:-

"The recent spate of releases from protective custody of ex C.P.P. functionaries will undoubtedly cause dismay and disappointment among many, principally because it is not easy to see how many of those now released could have passed the test, namely that releases would depend on whether criminal charges could be sustained against particular individuals or not. Some like EDUSEI and JAMES OWUSU would have had a hard time trying to convince any Ghanaian that they were "clean" or that they "carried out Nkrumah's policies under duress."

Within three months of the coup the DAILY GRAPHIC felt free to print a letter attacking General Ankrah's attitude to atheism and the same paper shortly afterwards published a letter criticising the National Liberation Council's practice of sending frequent congratulatory messages to foreign governments.¹⁸

The LEGON OBSERVER (run by a group of academics at the University of Ghana) was perhaps the most outspoken paper. One of its earliest editions criticised the practice of clearing roads of all traffic to enable the Head of state to pass,¹⁹ a letter in a later edition asked if it was not fair "to say at least something good of Kwame Nkrumah"²⁰ and the same paper published editorials criticising the PROHIBITION OF RUMOURS DECREE (NLCD 92 1966) which prohibited the publication of items which caused fear, alarm and despondency, disturbed peace or caused disaffection against the National Liberation Council and the CRIMINAL PROCEDURE (AMENDMENT) DECREE 1966 (NLCD 93) which provided for the detaining of persons arrested without warrant in custody for a period of up to twenty-eight days or such other period as the Attorney-General might authorise, provided there was the consent of the Attorney-General in writing, and further more no bail was to be allowed in respect of persons so detained.²¹

No restrictions however were imposed on the importation of books critical of the National Liberation Council and

both G. Bing's "REAP THE WHIRLWIND" and Kwame Nkrumah's "DARK DAYS IN GHANA" were readily available but no one living in Ghana felt it prudent to write anything as critical as these authors. However freedom of expression especially that of the press was not unlimited in Ghana. Political parties in both Ghana and Nigeria as we have already seen were prohibited. In Ghana the government continued to own two of the three main daily papers. The Protective Custody Decree (Ghana) and the State Security (Detention of Persons) Decree (Nigeria) could be used to deal with those whose words or action the government disliked. Other law possibly aimed at controlling the freedom of expression, especially that of the press was made in both Ghana and Nigeria. In Ghana the PROHIBITION OF RUMOURS DECREE²² stated expressly that any person who published or reproduced any statement, rumour or report which was likely to cause fear, alarm or dispondency to the public or to disturb the public peace or to cause disaffection against the National Liberation Council among the public or among members of the Armed Forces or of the Police Service would be guilty of an offence and upon conviction, would be liable

to a fine not exceeding 1,000 cedis or to a term of imprisonment not exceeding three years or to both such fine and term of imprisonment.²³

In Nigeria a NEWSPAPERS (PROHIBITION OF CIRCULATION) DECREE 1967²⁴ was enacted and this provides that if the Head of the Federal Military government is satisfied that the unrestricted circulation in Nigeria of a newspaper is or would be detrimental to the interest of the Federation or any state thereof he could by order published in the Gazette prohibit the circulation of such newspaper in the Federation or any state thereof. Unless any period is prescribed in the order the prohibition would continue in force for a period of twelve months. However the prohibition could be revoked sooner or extended.²⁵

Failure to comply with any prohibition order is made punishable on conviction by the imposition of a fine or a term of imprisonment.

In addition to the Newspapers (Prohibition of Circulation) Decree is the DEFAMATORY AND OFFENSIVE PUBLICATIONS DECREE 1966 (Nigeria).

This decree provides:-

"Any person who -

- (a) In any manner or form publishes or displays or offers to the public the pictorial representation of any person living or dead in a manner likely to provoke any section of the community

or

- (b) publishes or circulates, publications either in the form of newspapers or leaflets, periodicals, pamphlets or posters, if such publications are likely to provoke or to bring into disaffection any section of the community will be guilty of an offence."

It is provided that any person who commits an offence under this decree can be arrested without warrant by any police officer or member of the armed forces in uniform and upon conviction such person would be liable to pay a fine of fifty pounds or to imprisonment for a term of three months or to both.²⁶ This decree is to have effect notwithstanding any other penalty that may have

been prescribed for any offence of a similar nature in any criminal or penal code in force in Nigeria.

Coupled with such legislation that tends to oppress the press is the dislike of "harmful" "destructive" and "negative" criticism expressed by leading members of the ruling military authorities. In Ghana General Kotoka spoke of the National Liberation Council's resentment of criticism that made its work difficult and the need to understand policy before criticising it.²⁷ General YAKUBU GOWON told the press "not to mis-interpret us" although they were free to write on anything they wished.²⁸ General Ankrah once remarked "the one who pays the piper will have to call the tune."²⁹ Remarks such as the one quoted above must have served as a warning to the press and the general public. Nevertheless direct use of the law against journalists and writers in general was not widespread at the early stages of military governments.

In Ghana RANS VIGAN of the EVENING NEWS - (Ghana) was charged with breaking the Rumours Decree by reporting a theft of arms and ATTA MENSAN was imprisoned for three

years for writing "defamatory literature" condemning the National Liberation Council.³⁰ Editorial dismissals that attracted more attention were those that followed criticism of the ABBOT agreement in Ghana in 1967 which involved investment by an American firm in the state Pharmaceutical Corporation on terms regarded as highly favourable to the former. The National Liberation Council showed considerable patience in allowing the matter to be debated on television in November 1967 but when press criticism continued and raised the possibility of the American firm abrogating the agreement four editors were dismissed without the civilian commissioner being consulted.³¹ Still in Ghana on January 8, 1968 twenty-nine persons associated with the "LEGON OBSERVER" went on trial in the Accra High Court on charges stemming from criticism of the court for delays in hearing cases in the December issue of the LEGON OBSERVER. The Attorney-General argued that the article tended to bring the court into contempt and thus prejudiced the public against the government. On January 22, 1967 the defendants pleaded guilty and apologised. Once more in November 1968 the University of Ghana was closed for two

weeks during protests over the suspension of five students charged with writing "obscene" articles in the campus paper SIREN.³²

In Ghana to quote ROBERT PINKNEY:-

"Despite these limitations the contrast between pre and post coup periods is real enough. Mass media were no longer regarded as tools for helping to build a socialist state, required not merely to refrain from attacking the government but to heap praise on it. There was no longer the assumption that those who did not shout loudly that they were with the government were against it. In practice considerably greater criticism of the government occurred than under Nkrumah. Between 1960 and 1966 criticism of individual ministers had been made but never criticisms of the President or the government as a whole"³³

The above quoted statement was echoed by another author who stated that the press under the National Liberation Council was far more freer than under Nkrumah.³⁴

Nigeria like Ghana has also had its share of confrontation between the state and press from 1966 until quite recently. In 1966 the editor of the WEST AFRICAN PILOT Mr. STEVEN IVENYA who had been arrested on the 3rd of June 1966 for breaching the Public Order Decree of 1966 was subsequently detained under the State Security (Detention of Persons) Decree. The action was taken as a result of the publication of a cartoon entitled "Dawn of a New Day" in the WEST AFRICAN PILOT on June 2, 1966. The editor was alleged to have broken section 3 of the Public Order Decree which makes it an offence to display or advertise signs, symbols, slogans or flags of any of the dissolved political parties or tribal unions.³⁵

There is also evidence of expulsions of foreign newspaper correspondents from Nigeria. The Nigerian correspondent of the United Kingdom newspaper the SUNDAY TELEGRAPH, D.L.I. LOSHAK was deported from Nigeria on the 13th of June 1966 by the National Military Government for "publishing false stories" about Nigeria. A government announcement however said that Mr. Loshak's expulsion did not prevent the DAILY TELEGRAPH AND SUNDAY TELEGRAPH

from sending another correspondent to Nigeria, but warned that the newspaper must be sure that whoever they tended to send to replace him must be a "responsible person." The statement added that Nigeria would not tolerate "irresponsible local and foreign journalists striving in sensational and inaccurate journalism."³⁶ An extraordinary issue of the Government Gazette published by the National Military Government on the 22nd of June 1966 declared the representative in Nigeria of the London newspapers the OBSERVER and the GUARDIAN, WALTER SCHWART a prohibited immigrant and ordered that he should leave immediately.³⁷

In 1967 the Eastern Nigerian military government banned the circulation of POST and TIMES group of newspapers from the region until further notice.³⁸ A statement announcing the ban on January 18, 1967 stated that the action was taken to protect the people from the type of propaganda that heightens tension and creates further loss of confidence and mistrust. The statement noted that "in the past few days" both the DAILY TIMES and the MORNING POST groups of newspapers had published material which

had the effect of inciting the people of Eastern Nigeria contrary to the spirit of the Aburi meeting of military leaders.

In 1971 three news editors were arrested from the DAILY SKETCH and DAILY EXPRESS. Following the arrests the DAILY TIMES on the 18th of February 1971 discussed the freedom of the press and said that the disturbing question of the arrests was that the Police would not say why the men were held. The TIMES referred to the fact that Nigerian leaders often urged the press to expose evils in the society but wondered how a journalist would know that his attempt to expose anything evil would not be misconstrued. The DAILY TIMES went on to state that since there were elaborate provisions in the law for dealing with anybody who overstepped the bounds of legitimate criticism, it was important that governments should try fresh rationalization of their relationships with the press.³⁹ And as recently as late 1974 the acting editor of the NIGERIAN TRIBUNE was questioned by police in Ibadan about an article in his newspaper on corruption and press freedom. Mr. SIYAN OLAOYE was questioned for several hours and later released.⁴⁰

However it is interesting to note that despite the measures taken by the Federal Military government against the press, the press has consistently insisted on exercising its freedom. When the Inspector-General of Police and Federal Commissioner for Internal Affairs ALHAJI KAM SALEM spoke of misleading reports in newspapers in Nigeria and said that the government might be forced to take drastic and unpleasant measures to curb "the excesses of the Nigerian press"⁴¹ the NIGERIAN TRIBUNE challenged the Inspector General of Police to prosecute newspapers which he claimed had printed mischievous and misleading reports. The TRIBUNE called on Alhaji Kam Salem to justify charges he had made at a news conference that a section of the press had attempted to blackmail the Federal government, made accusations against people unable to seek legal remedy, misled the public, published articles capable of whipping up sectional sentiment and accused the Police of arbitrary arrest of journalists.⁴² Also when Police raided the offices of the government owned DAILY SKETCH in Ibadan and removed an editorial intended for the next day's issue the paper appeared the following morning with

a front page statement which said "Readers please pardon our slight errors. We had unexpected visitors just before going to press." According to a spokesman for the newspaper the report said Police had told the staff during the raid that the activities of the newspaper within the last three months had been embarrassing to the government.⁴³

Following GENERAL GOWON's warning that the press and judiciary should not allow themselves to be used to blackmail public officials the NEW NIGERIA in a comment noted that though "there is the danger of the two institutions (press and judiciary) being used to attack people holding public offices of ulterior motives, nevertheless it will be a dangerous development to even attempt to force the two institutions to deny access to people with genuine complaints against public officers who have abused public trust to enrich themselves illegally or to break the country's laws." Noting that the press and the courts cannot know in advance which matter or affidavit "is frivolous" it argued that both institutions are either free to perform their duty or

they are not, "there is no half-way house" it said. The newspaper added that "the best way out for all those holding positions of public trust lies in the path of probity. They should not only uphold the laws of the country and live within their legitimate income but should be seen to do so."⁴⁴

When a newspaper columnist and General Manager of the government owned DAILY SKETCH Mr. S.L. Bolaji had allegedly been reassigned to another post in the department of Health at his request by the State government, the state branch of the Nigerian Union of Journalists opposed his removal from the newspaper, because it seemed his reassignment had been prompted because Mr. Bolaji had written several articles condemning corrupt leaders.⁴⁵

From the above one notices that the military authorities in Nigeria were quite tolerant of the freedom of the press, although on certain occasions the authorities used strong arm measures.

In conclusion therefore one could safely state that as long as writers or other persons expressing views avoided certain "forbidden" or "sensitive" areas such as matters pertaining to the legitimacy of military rule, corruption within the military leadership or opinions suggesting the use of undue violence in the assumption of power or even after or advocating quick return to civilian rule, considerable freedom of expression existed in both Ghana and Nigeria.

CHAPTER VII

THE RIGHT TO PERSONAL LIBERTY AND FREEDOM OF MOVEMENT

The right to personal liberty and freedom of movement are very important rights. They are usually spelt out in constitutional bills of rights, preambles to constitutions or are referred to in "fundamental directive principles." Deprived of personal liberty and freedom of movement a person would find it difficult, if not impossible to exercise or enjoy other rights or freedoms accorded to him by the state.

However like any other right, the right to personal liberty and freedom of movement is qualified in the extent of its application. Conditions under which persons can be deprived of the right to personal liberty and freedom are provided for in bills of rights. For example a person could be deprived of personal liberty in the following circumstances:-

- (a) in the execution of a sentence in respect

of a criminal offence of which he has
been convicted or

- (b) in the execution of an order of a court of
record punishing him for contempt of that
court.
- (c) for the purpose of bringing him before a
court in execution of an order of that
court.
- (d) upon reasonable suspicion of his having
committed or being about to commit a criminal
offence
- (e) for the purpose of preventing the spreading
of infectious or contagious disease.

At the same time provision is made in the constitution
for a person detained or arrested to be informed as
soon as reasonably practicable in a language that he
understands of the reasons of his arrest or detention.
Persons arrested or detained for the purpose of having
them brought before a court in execution of a court
order or upon reasonable suspicion of their having

committed or being about to commit a criminal offence unless sooner released have to be brought before a court of law without undue delay.

In the event of a person being unlawfully arrested or detained, compensation has to be paid by the person who authorised or effected the detention or arrest.¹

Freedom of movement involves the right to move freely, reside in any part of the country, the right to enter such country in question and immunity from expulsion from such country. It is usual for bills of rights to provide that nothing contained in or done under the authority of any law shall be taken to constitute an unlawful encroachment upon the freedom of movement of a person if the law in question provides for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition of restrictions on the freedom of movement of any person who is not a citizen, or the imposition of restriction on the use by any person of land or other property or the restriction upon the movement or residence within

the country in question of public officers or for the removal of a person from the country in question to be tried outside that country for a criminal offence. Any restriction upon a person's freedom of movement that is involved in his lawful detention shall not be held to be a derogation from that person's freedom of movement.²

It is important to note however that in the event of a person being deprived of his personal liberty or freedom of movement by being detained or restricted under some law certain consequences follow. Under the 1963 Federal Republican Constitution of Nigeria - where any person is detained under the authority of an Act of Parliament derogating from the provisions of section 21 of that constitution (Section 21 deals with the right to personal liberty) or restricted lawfully in the interests of defence, public safety, public order, public morality or public health that person is entitled to require that his case should be referred within one month of the beginning of the

period of detention or restriction and thereafter during that period at intervals of not more than six months to a tribunal established by law and that the tribunal has to make recommendations concerning the necessity or expediency of continuing the detention or restriction to the authority that ordered it. However it is provided that unless a law so required the detaining authority is not obliged to act in accordance with any such recommendation.

In Zambia before an amendment to the constitution in 1969 the position was almost similar to that in Nigeria, although different treatment was accorded to restriction and detention cases before 1969. After the amendment the position of detainees and restrictees became the same. In the Zambian constitutional provision relating to what is to happen upon the detention or restriction of a person goes further than that of the Nigerian constitution of 1963. In Zambia when a person has been detained or restricted he must as soon as is reasonably practicable and in any case not more than fourteen days after the commencement of his detention

or restriction be furnished with a statement in writing in a language that he understands, specifying in detail the grounds upon which he is restricted or detained. Secondly not more than one month after the commencement of his restriction or detention a notification must be published in the government gazette stating that he has been restricted or detained . . and giving particulars of the provision of law under which his restriction or detention is authorised. Thirdly if a detained person requests at any time during the period of such restriction or detention not earlier than one year after the commencement of the detention or restriction, his case must be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice who is qualified to be a judge of the High Court. In this respect the detainee ought to be afforded reasonable facilities to consult a legal representative of his own choice, who must be permitted to make representations to the tribunal established for the review of the detainee's case and at the hearing

of his case by such tribunal the detainee must be permitted to appear in person or by his legal representative.³

Like Section 30 of the Nigerian Constitution of 1963, Article 26A of the Zambian Constitution provides that on the review of a case by a tribunal of the case of a detained person the tribunal, may make recommendations . . . to the authority which appointed it concerning the necessity or expediency of continuing his detention or restriction but unless it is otherwise provided by law the detaining authority is not obliged to act in accordance with any such recommendation.

The fact that the right to personal liberty and freedom of movement is or can be qualified in certain circumstances is not bad in itself, especially during war and other real emergencies, when the activities of certain persons might be inimical to the public welfare. But it is otherwise when people's right to personal liberty and freedom of movement is taken away capriciously under the guise of "public interest" or

"national security." The provisions of bills of rights relating to what is to follow upon the restriction or detention of a person are important safeguards i.e. they constitute some form of restraint upon whoever is likely to authorise the restriction or detention of persons. Publicity of detentions, legal representation and furnishing of grounds of detention in detail help in that an effective representation to the review tribunal against continued detention can be made and the general public is made aware of what is happening.

The question now is - How have the military treated this important right of personal liberty and freedom of movement? Have there been mass deprivations of the right to personal liberty and freedom of movement?

In Ghana shortly after the coup a PROTECTIVE CUSTODY DECREE 1966 (NLCD 2) was made because the National Liberation Council "is satisfied that the decree is necessary for the preservation of public peace and the protection of the persons described in the schedule to this decree."

As a result all ministers in the government of Kwame Nkrumah, all other members of parliament, all regional secretaries of the dissolved Convention Peoples Party, all regional education secretaries of the Convention Peoples Party, all district commissioners, all regional propaganda secretaries of the Convention People Party were placed in "protective custody." On the whole between 550 and 600 persons were arrested, however many of these were released after screening.⁴ Under these circumstances one could say there was still in existence an emergency which justified the deprivation of certain peoples' personal liberty and freedom of movement. However the most striking feature of this Protective Custody decree is that the period of deprivation of liberty was unspecified. Paragraph 1 of the decree provides:-

"The persons described in the schedule to this decree shall be taken into custody for such period as the National Liberation Council may determine."

What is more the decree made no provision for the review

of detained person's cases by an independent and impartial tribunal nor was provision made to see to it that detained persons were afforded a chance of making representations to the detaining authority whether oral or written. Essentially therefore when a person was detained or put in "protective custody" it was for an indefinite period and for that matter without trial. In this respect the Protective Custody Decree was not different from the Preventive Detention Act of 1958 which the National Liberation Council repealed on the 5th of April 1966.

The Protective Custody Decree had no provision relating to detained persons being informed as soon as practicable of the reasons for their detention. However some few months after the 24th February 1966 the powers under the Protective Custody Decree were sparingly used until an abortive coup took place on the 17th of April 1967 and the period following immediately after the abortive coup saw the detention of six hundred civilians and over five hundred soldiers.⁵

In justifying the detention of all these people General Ankrah is reported to have said that the people who had been put in "protective custody" were supporters of the April 17, 1967 attempted coup, who had to be protected from the wrath of the public. He said these people had rejoiced prematurely at the success of Lieutenant Arthur Yeboah's coup and had "incensed and angered thousands of individuals" who had then sought to attack and possibly kill them, the government acted quickly to place these people in protective custody until the fury of the people had subsided.⁶ However the real reason behind the detention of so many people seems to lie in the fact that the attempt had almost been successful, so that the National Liberation Council felt drastic action had to be taken to avoid a recurrence of a similar event.

As of December 1967 some 270 remained in custody.⁷ No doubt some people had been detained for a long period. Even though persons were being released steadily from "protective custody" an amendment to the Protective Custody Decree imposed limitations upon a released person's liberty and freedom. The Protective Custody

(Consolidation) (Amendment) (No. 5) Decree (NLCD 149) provided that every released person while he or she was in Ghana would have to report at such intervals as the Inspector-General of Police directed to the Police Officer-in-Charge of the police station nearest to the place the released person usually resided or at such other place as the Inspector-General of Police might direct.⁸

Furthermore every person released from "protective custody" who intended to travel outside Ghana had to notify the Commissioner of Police (C.I.D.) of his intention to depart from Ghana, seven days in advance. In his notification he would have to state the exact date of his departure from Ghana, the mode of travel i.e. whether by air, land or sea, his destination outside Ghana and such other matters as the Commissioner of Police (C.I.D.) might reasonably specify.⁹

In Nigeria the Federal Military government made a decree to deal with the detention of persons - a decree that inevitably runs counter to the right to personal liberty and freedom of movement - the State Security (Detention

of Persons) Decree 1966. This decree provides that if the Head of the Federal Military government is satisfied that the arrest and detention of certain persons would be in the interest of the security of Nigeria then such persons could be detained. However this decree is more elaborate in its provisions than the Ghanaian Protective Custody Decree. Persons detained under the State Security (Detention of Persons) Decree 1966 are entitled "as soon as may be" to make representations in writing to the detaining authority, in this case the Federal Military government but any information which is against "public interest" could not be disclosed at any time thereafter by anyone.¹⁰

It is also provided that if the Federal Military government thinks fit in its discretion, it could constitute tribunals for the purpose of advising it on any detention cases which that government might consider necessary to refer to a tribunal - and a tribunal for the purposes of this decree is to consist of two members, one of whom as the chairman must be a Barrister-at-law of not less than seven years standing, nominated by the

the Chief Justice of Nigeria, the other member is to be appointed by the Federal Military government. However persons to be appointed members of review tribunals under this decree must be "persons who appear to the Federal Military government such as will exercise an independent and impartial judgment."¹¹

A tribunal appointed to consider a case referred to it has to submit its report on the basis of material placed before it within four weeks from the date of the reference of the case to it. There is in addition an important proviso to this section:

"But nothing in this section shall entitle any person detained under this decree to attend in person or to be represented by any person during the consideration by the tribunal of the case as it affects such person."¹²

Section 5 of the same decree provides that no suit, prosecution or other legal proceeding will lie against any person for anything done in good faith or intended to be done in pursuance of this decree and Section 6

goes further and expressly suspends Chapter III of the Nigerian Federal Constitution which deals with fundamental human rights and freedoms, their protection and enforcement. The jurisdiction of the courts of law is expressly ousted.

Section 6 subsections (a) and (b) provides:-

- (a) "The question whether any provision thereof (i.e. Chapter 3) has been or is being or would be contravened by anything done or proposed to be done in pursuance of this decree shall not be inquired into in any court of law" and
- (b) "an application for a writ of habeas corpus ad subjiciendum shall not lie at the instance of a person detained under this decree or on his behalf."

Even though the Nigerian State Security (Detention of Persons) Decree is much more elaborate than the Ghanaian Protective Custody Decree its impact on individual liberty can hardly be less. First there is no requirement that the detaining authority should furnish the detainee

with the grounds of his detention. It is all right to provide that a person shall be entitled to make written representation to the detaining authority concerning his detention. But at once it becomes clear that when one is not furnished with specific grounds for his detention, then the task of making an effective representation to the detaining authority is made much more difficult, if not impossible. What is more the State Security (Detention of Persons) Decree provides that even when the tribunal reviewing a detainee's case is sitting the detained person is not entitled to appear

in person, let alone be represented by a lawyer.

protection of his rights. The right to make a written representation is considerably

it cannot be added to or varied after the

is an of right.

Firstly the Federal Military authority has to consider whether or not a detainee's case is fit for review by a tribunal. So that in the final analysis the review of any case depends on whether or not the Federal Military

government considers that a case ought to be reviewed. The decree is manifestly unjust because in its application the fundamental human rights chapter is suspended from operation and as such a person deprived of personal liberty or freedom of movement cannot ask or seek a remedy from the courts of law for the court's jurisdiction is expressly ousted and no habeas corpus application can be entertained by the courts. Legal suits in connection with detention under this decree are barred - so that persons who are unlawfully detained cannot sue for compensation, let alone seek their immediate release. Nevertheless it is important to note that whereas under the Ghanaian Protective Custody Decree detention was for an unspecified or indefinite period the Nigerian State Security (Detention of Persons) Decree restricted the detention period to six months.¹³

Thus the Nigerian decree is primarily intended to deal with persons who are considered to be "Security risks" and from evidence available between 1966 and 1968 it was sparingly used and the number of persons detained

between 1966 and 1968 was much less than that recorded in Ghana for the same period. However at the same time sight should not be lost of other decrees which had the effect of depriving a person of liberty and freedom of movement in Nigeria.

A Suppression of Disorder Decree¹⁴ made by the Federal Military government provides that if it appears to the . . . Head of the Federal Military government that widespread public disturbances are occurring in any part of Nigeria he may proclaim such area to be a military area for the purposes of this decree¹⁵ and section 18 of this decree provides that if the chairman of a military executive committee is satisfied that any person in a military area was or had recently been concerned in acts prejudicial to public order, or in the preparation or in the instigation of such acts and that by reason thereof it is necessary to exercise control over such person he may by order in writing direct that such person be detained in a civil prison or police station whether within "the military area or not" and it is to be the duty of the superintendent or other person in

charge to keep that person in custody until the order is revoked or the military area in question ceases to be a military area.

Section 21 of this Suppression of Disorder Decree provides that the question whether any provision of chapter three (i.e. the human rights chapter) of the 1963 Nigerian Federal Constitution, has been, is being or would be contravened by anything done or proposed to be done in pursuance of this decree shall not be inquired into in any court of law.

As such therefore persons detained under this decree have no recourse to courts of law. The period of their detention is indefinite - because it could continue until the order for their detention is revoked or the military area that has been established by the military authorities ceases to be one. No specific time limit is expressed.

The purpose of the Suppression of Disorder decree according to an explanatory note which does not form part of the decree itself is that the Federal Military

government was desirous that normal conditions of life should be restored to areas where disturbances had occurred and that in order to bring about these normal conditions as quickly as possible all persons who had been constrained to leave their homes by reason of actual violence or threats or fear of violence should now make their return and resume their customary lives and occupations. The Federal Military government was determined that no ill-affected person or persons, whether inspired by party faction, plain hooliganism or any other cause, should in any way interfere with this resumption of normal life and activity and to give proper force to its determination in this matter the Federal Military government had provided in the Suppression of Disorder decree that any person committing an offence against public order is to be liable on conviction to be sentenced either death or to imprisonment for up to twenty-one years.

However it was the intention of the Federal Military government that any person or persons charged with any such offence arising out of any isolated act of

terrorism should be tried by the civil courts. But if acts of public disturbances occurred in any part of the Federation in widespread form the Federal Military government would have power to proclaim the area affected to be a "military area" and deal with it according to military orders.

There is no direct evidence available to indicate the extent to which the military in Nigeria used or did not use their power for ordering the detention of "trouble makers."¹⁶ But it is important to note that persons could be detained under the Suppression of Disorder decree only when it appears to the Head of the Military government that widespread public disturbances are occurring in any part of Nigeria and he had proclaimed such area to be a "military area."¹⁷ Essentially therefore one could say the decree was intended to be used in times of actual emergency i.e. when there occurred any widespread public disturbances in any part of Nigeria. Such a power of detaining persons during a real emergency should not be objectionable as a State has a duty to maintain law and order and save the lives and property of citizens. But on the other hand when

the purpose of granting such power is not to deal with a real emergency but merely to allow the capricious detention of persons who are not liked by those in power, for instance on political grounds, then grant of such power becomes objectionable. History also shows that such powers are very easily abused especially when the detaining authority has no duty to give reasons or have the detainees brought before a court of law.

Nevertheless one can say that in both Ghana and Nigeria most of the persons whose personal liberty and freedom of movement were deprived were those who were considered to be "security risks" e.g. persons who advocated for the immediate restoration of political rights and quick return to civilian rule or those who were highly critical of military rule. In both Nigeria and Ghana persons were definitely detained but the numbers especially in Nigeria were quite low. But it should not be forgotten that a lot of secrecy surrounds what the military authorities do. It is not possible to put down the numbers of persons detained with any degree of certainty especially when there is no requirement in law that the names of persons detained should be published in the Official Gazette.

CHAPTER VIII

THE RIGHT TO LIFE AND PROTECTION FROM INHUMAN

TREATMENT

The right not to be deprived of one's life intentionally is one of the important rights spelt out in Constitutional bills of rights or preambles to Constitutions. Expectedly like other rights already discussed a persons life can be taken away from him in certain circumstances. As an example section 18 of the 1963 Federal Constitution of Nigeria provides as follows:-

- (1) No person shall be deprived intentionally of his life save in the execution of a sentence of a court in respect of a criminal offence of which he has been found guilty.
- (2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use to such an extent and in such manner as are permitted by law of such force as is reasonably justifiable -
 - (a) for the defence of any person from violence or for the defence of property

- (b) in order to effect an arrest or to prevent the escape of a person detained
- (c) for the purpose of suppressing a riot, insurrection or mutiny
- (d) in order to prevent the commission by that person of a criminal offence.

Zambia also has a provision similar to Section 18 of the 1963 Nigerian Federal Constitution in Article 14 of Chapter 111 of the Zambian Constitution. In both Nigeria and Zambia, if a person dies as a result of a lawful act of war, such loss of life will not be deemed to be in contravention of the provision relating to the right to life.

Essentially therefore what it means is that a person can be deprived of his life if a court of law found him guilty and sentenced him to death or a person trying to kill or cause grievous hurt to another can be killed in the process of trying to prevent him from actually killing his intended victim or hurting him. However the force used in preventing the commission of a crime or dispersing a riot or insurrection must be reasonable having regard to the circumstances of each particular case. That is to say the

force used should be proportionate to the situation sought to be averted. If the force used is disproportionate, then the person using such force might himself be committing an offence either of assault, murder or manslaughter, depending of course on the circumstances of each case.

What treatment has been accorded to the right not to be intentionally deprived of one's life except in accordance with law by the military?

In considering this matter two aspects should be kept apart - namely the period of assuming power by the military from the civilian rulers and secondly the period after the military has successfully assumed power and are in firm control. In Ghana to quote from E. LEFEVER -

"The coup was not bloodless but there was little loss of life. The insurgents showed deliberate restraint. COLONEL KOTOKA for example refused to use armoured car guns against Flagstaff House to avoid needless casualties. The National Liberation Council announced that the insurgents had lost seven men. The numbers and identity of the casualties among the defenders of Flagstaff House is clouded by rumours and conflicting testimony"¹

In Nigeria when the civilian rulers handed over power to the military there is evidence of a number of leading politicians having been executed by soldiers but there is no evidence of wholesale executions of civilians generally. However the important thing to remember is that military rule is based on force and secrecy and as such armed force or other extra legal methods can always be used when necessary to subdue resistance or non co-operation and this would inevitably lead to serious bloodshed. The ordinary citizen does accept military rule without question for he has no alternative. To stand up and oppose an armed man bare handed is a foolhardy undertaking. In the final analysis one finds that the less resistance or the more co-operation the military receives from the masses then the less blood is shed. In Nigeria it is true that a lot of innocent civilians lost their lives but this was because a civil war took place in that country and so it can be said that the loss of life was occasioned not because the military have basically no respect for human life but because in the heat of war bullets do not discriminate between soldier and civilian.

Although on the whole it would be true to state that in both Ghana and Nigeria the military have shown considerable

respect for individual life, there has however been the tendency to increase the number of offences carrying the death penalty and other harsh punishment like whipping.

In Nigeria for example the Federal Military government passed a decree known as the SUPPRESSION OF ROBBERY DECREE² which amended the Criminal Code in its application to all Federal territory in as far as the punishment for robbery was concerned. Prior to the making of this decree the punishment for robbery according to section 402 of the Criminal Code was fourteen years imprisonment and that for attempted robbery according to section 403 of the Criminal Code was imprisonment for seven years. After the amendment the punishment for both robbery and attempted robbery became imprisonment for life with or without whipping. One would tend to think that such punishment was severe enough. But apparently due to a sharp increase in the number of cases of armed or aggravated robbery the Federal Military government decided to make provision for death as punishment for armed robbery. In 1970 the military government passed the ROBBERY AND FIREARMS (SPECIAL PROVISIONS) DECREE³ which provides in section 1 that the punishment

for robbery is imprisonment for a term of not less than twenty-one years and where any firearm or offensive weapon is used the punishment is death.

Still in Nigeria the INDIAN HEMP DECREE of 1966⁴ provides in section 2 that any person who knowingly plants or cultivates any plant of the genus cannabis shall be guilty of an offence and be liable on conviction to be sentenced either to death or to imprisonment for a term of not less than twenty-one years. The unlawful importation or sale of Indian hemp also carries a possible death sentence or imprisonment for a term of not less than fifteen years.⁵ In the case of youthful offenders i.e. persons under the apparent age of nineteen years a court may order strokes not exceeding forty-nine,⁶ and if the court specifies more than twelve strokes, it has to direct that the sentence should be carried out on successive days by instalments each of which shall consist of seven strokes. As recently as June 1974 the death penalty has also been introduced for Counterfeiting and trafficking in local currency and also for possession of equipment or material which could be used to make forged Nigerian bank notes or coins.⁷

In Ghana also in 1972 the military government introduced the death penalty for armed robbery⁸ and a possible death penalty exists for persons convicted of subversion under The GHANA ARMS ACT., 1962 (AMMUNITION) DECREE of 1967.⁹ This tendency to increase the number of offences carrying the death penalty it is submitted is most unwelcome because it possesses a serious threat to the right of an individual to life especially when one takes into account the fact that the military in both Ghana and Nigeria have power to investigate, arrest and finally in certain cases try civilians. It is also important to note that no right of appeal exists from a decision of a military tribunal.

Directly connected with the right to life is the right not to be subjected to torture or inhuman and degrading treatment or punishment.¹⁰ At once it should become obvious that the right not be deprived of life intentionally without lawful authority would be easily eroded if people were subjected to torture or inhuman and degrading treatment or punishment. Although there is no overwhelming evidence to suggest that there was widespread torture or inhuman and degrading treatment having been inflicted upon individuals

by the military in Ghana and Nigeria, there is however some evidence to show that inhuman or degrading treatment and torture was meted out on certain occasions by the military especially in Ghana. P.A. ANSAH writing in the LEGION OBSERVER¹¹ had the following to say under the caption "INSTANT JUSTICE - ROUGH AND READY" -

"The previous government contented itself with the high echelons of the administration, so that the present system is quite a novel experience to us. Trained in a particular kind of way, the soldiers who have had to deal with civilians have not learnt to adjust their methods to the new situation of a civilian setting. One of their favourite methods of instituting discipline is drilling and other forms of physical correction. Since the present government came into power there have been numerous reports and complaints of soldiers subjecting civilians to drilling and other forms of harassment. Most of these complaints have been in hushed tones for fear of possible reprisals if one raised one's voice too loud. The newspapers have reported incidents occasionally illustrated with pictures of late comers being drilled, of workers being bullied into giving up their right to demand fair remuneration for their labour, of suspects

being drilled and shaved and sometimes with broken bottles, because as one responsible officer gleefully revealed in public, the army does not want lice in its guardrooms. There have been reports of soldiers having used power and position to settle scores either in their own or on behalf of friends or relatives. There was also the case of a former ambassador who had returned home as a Principal Secretary in the Ministry of Foreign Affairs. For one reason or another he was drilled publicly by an army officer in front of his Ministry. Not long after this humiliation the gentleman concerned was reappointed ambassador and has since left for his post. How does anyone expect this ambassador to be accorded the respect he deserves at his post when it is known that he has been toyed with so humiliatingly in his own country?

On Monday, January 28, the DAILY GRAPHIC reported an incident from the Upper region. Some young men who were suspected of being cattle rustlers were arrested and subjected to rigorous drilling lasting three hours after which they were paired to fight each other and then taken into custody. This horrifying spectacle of sadism was offered to the public gaze on television during the seventhy news bulletin. However it appears that wise

counsel prevailed shortly afterwards, so that, that particular item was suppressed in the late news bulletin two hours later. It would have been bad enough if such unfortunate acts were committed by ordinary soldiers misguided in their enthusiasm but the tragedy is that responsible officers not excluding commissioners in charge of ministries and regions are also guilty of this offence.

Perhaps the Adabraka Police station incident extensively reported in the WEEKLY SPECTATOR issue of the 3rd of February is the most dramatic incident to date, but it is by no means an isolated case in bizarre exhibition of "soldier power." In this incident a Lieutenant who felt aggrieved because a friend of his had been refused bail went there with armed soldiers and caused to be arrested at gun point the six policemen there, took them in an army truck to a military camp and subjected them to senseless drilling before releasing the unfortunate victims to find their own way back to the police station. It is even reported that some of these acts of the show of power have had fatal consequences but people are too terrified to speak out for fear of drawing upon themselves the wrath

of the soldiers. It is absolutely indispensable that individual soldiers should be allowed to feel that they are arbiters of what is socially, legally and even morally proper for the totality of Ghanaians. It would be tedious to recount other incidents as the list is almost inexhaustive. The authorities appear to be aware of this situation; even though it is doubtful whether they know the gruesome details of the excesses to which some soldiers have carried their warped interpretation of revolutionary discipline."

In Ghana there was also the reported case of one BOYE MOSES, one of the late Dr. Kwame Nkrumah's security officers on whom a reward was offered for his capture and was charged with "murder and conspiracy." On January 23, 1967 BOYE MOSES was brought to Accra and paraded through the streets in a cage after having been arrested according to some reports in Nigeria or Dahomey.¹²

In Nigeria there is the JIMMY case reported in the June issue of the HEADLINES NEWSPAPER, in 1974. According to the report in the HEADLINES NEWSPAPER on July 30, 1973 at about 2.00 p.m. Amakiri the Port Harcourt based chief correspondent of the NIGERIAN OBSERVER - a newspaper owned by the Mid-Western state government, went to meet the River

state permanent secretary in the Ministry of Information for some information. As Amakiri left the permanent secretary's office he was informed by some ministry officials that the ADC of the state governor was looking for him. Amakiri rushed home for lunch preparatory for another assignment. While Amakiri was eating the ADC (an assistant superintendent of police) arrived and told him that the state governor wanted to see him for an important discussion. When Amakiri and the ADC reached the Government House security gate, the ADC asked the driver to stop and Amakiri was then ushered into a two room apartment which in fact was a guardroom. The ADC then gave the order "shave this man, give him twenty-four strokes of the cane and lock him up. Nobody must be allowed to see him. It is an order from His Excellency." As the ADC drove off the soldiers set to carry out their master's orders. They shaved Amakiri's hair to the scalp, trimmed his beard, stripped him and ordered him to lie on the floor. Another soldier pulled out a whip and caned Amakiri leaving him, according to Amakiri himself "howling in excruciating pain" and his whole body "a mess of blood and bruises." Immediately afterwards Amakiri was marched into an unused toilet and locked and was not allowed to receive his wife who had come later in the night with

food to see him. At 7.00 p.m. the following day Amakiri was taken by three soldiers to the ADC's house where the latter told him "sorry Mr. Amakiri and forget everything - it is very unfortunate." Amakiri was then taken to his home. This story provoked an unprecedented press controversy. A report in the NIGERIAN OBSERVER of August 2, 1973 was surprisingly not refuted by the state government whose governor Commander Alfred Diete-Spiff was at the centre of the controversy. The reason why Amakiri was so treated was that a story that Amakiri had written in the OBSERVER newspaper had angered the governor.

Another aspect that has to be discussed in connection with the right not to be subjected to inhuman treatment or degrading punishment is the mode of executing sentences meted out especially by military tribunals. In Nigeria the ROBBERY AND FIREARMS (SPECIAL PROVISIONS) Decree of 1970 provides in Section 1 subsection 3 as follows -

"The sentence of death imposed under this section may be executed by hanging the offender by neck till he be dead or the offender may suffer death by firing squad as the military governor may direct".

In Ghana also a person convicted of the offence of subversion can be executed by firing squad, this is provided for in the Armed Forces Act 1962 (Amendment) Decree. Invariably, and notably in Nigeria after 1970 the practice has been to execute persons convicted of armed robbery in public. In 1971 in Nigeria an army firing squad executed eight robbers in front of crowds at the Bar Beach Victoria Island, Lagos on September 8. Seven of those executed had been involved in £10,000 payroll robbery in the Lagos City Suburb of Ikeja in March, 1971. One of them ISHOLA OYE-NUBI had confessed to his involvement in ten major robberies and murders over a period of six years. The execution brought to more than seventy the number of persons who had been shot in various parts of Nigeria from the time the military government ordered public execution for armed robbers soon after the end of the civil war in 1970. For the first time the robbers were not blindfolded and each of them was given four rounds of shot. At the end of the rounds all the sixteen soldiers directed their guns to OYENUSI and gave him two rounds each - in short a total of thirty six shots for one man! This was definitely barbaric. Surprisingly following the execution of the eight robbers the DAILY TIMES wrote "GOOD RIDDANCE" and added-

"While they lived, their lives hardly brought any comfort or good cheer to anybody except themselves. In their short but incredibly savage lives, they exhibited a barbaric pleasure in violence, living behind, as an aftermath of their activities, the woes and wailings of the families of their victims. By bringing the men successfully to death the government has once again demonstrated its determination to stamp out - and very ruthlessly too - the present wave of armed robberies in the country."¹³

Whereas capital punishment may be necessary in order that would be perpetrators of violent crimes which cause loss of life and property are deterred, it is doubtful whether the carrying out of the execution of the death sentence in public serves any useful purpose. Writing in the TIMES OF ZAMBIA, MICHAEL OJO in an article captioned "DEATH BY SHOOTING HAS CURBED NIGERIA'S ARMED ROBBERIES" stated however -

"the glamour has been taken out of the spectacle and the fiesta - like crowds that were a feature of the first public executions have diminished.

People are less interested in watching especially in places where a number of executions have already taken place. When in 1970 the Nigerian government decreed that armed robbers should be publicly executed by firing squads after what many people regarded as improper trials by Armed Robbery and Firearms Tribunals there was much criticism of the measure."¹⁴

In Zambia recently (from 1972 up to date) there have been numerous calls made on the government by forums and seminars of the United National Independence Party - the sole legal party and private citizens through the press to introduce public hanging or shooting of persons convicted of armed robbery.¹⁵ However it is gratifying to note that although equally strong arguments have been advanced both for and against public execution of persons convicted of robbery, the government has not taken measures to implement public executions. Perhaps the editorial of the TIMES OF ZAMBIA of 14th November 1972 summed it up very well when it stated -

"As long as there are armed robberies the controversy is likely to continue. The survey published in this paper yesterday shows that

there are many people for and many against it but they are all missing an elementary point. Robbers must first be caught, tried and convicted. In a T.V. interview last September Attorney-General Mr. Fitzpatrick Chuula said that only desperate governments execute their criminals cruelly in public. He claimed our minimum statutory sentence of fifteen years with hard labour for people convicted of aggravated robbery should be sufficient to deter offenders from repeating such crimes."

The TIMES OF ZAMBIA editorial concluded "what we are trying to say is that the sentences provided by the law are harsh enough."

It is submitted that the death sentence decreed in both Nigerian and Ghana by the military is already harsh enough - whether it be carried out away from the public gaze. The practice of executing convicted criminals in public should be abhorred and condemned categorically, because it is inhuman and barbaric, especially when the persons to be executed are not even blinded. The public executions become even more disgusting when one takes into account

the fact that the tribunal which convicts the accused is essentially a military one - although in Nigeria under the ROBBERY AND FIREARMS (SPECIAL PROVISIONS) DECREE of 1970 the tribunal consists of three officials - one of whom has to be appointed by the military governor from the Department of Justice - the other two are drawn from the Army and Police ranks. Until recently there was no right of appeal from a decision of a military tribunal in Nigeria. Now any person sentenced to death by a firing squad under the ROBBERY AND FIREARMS (SPECIAL PROVISIONS) DECREE 1970 can now appeal against sentence to the Supreme Court within thirty days.

As it can be seen from the reported incidents cited above military rulers or regimes are capable of engaging in acts that perpetuate inhuman or degrading treatment and torture. The likelihood of the right not to be subjected to inhuman and other degrading treatment and torture being eroded away is enhanced when there occurs a break in discipline within the army ranks. For our present purposes what is important to bear in mind is that the potential for maltreating civilians or using "strong arm" tactics is ever present. The military are not put in power by an electorate - their rule is imposed upon the masses and as such the military

do not have to account to anyone for whatever they do, whereas civilian rulers would fear to enrage the masses for fear of being voted out at the next election, this is not so with the military for they specifically make it clear that they will be in power until they consider the situation "ripe" for civilian power. However this should not be taken to mean that the military do not have an eye on the feelings of the community in general.

CHAPTER III

THE RIGHT TO PROPERTY

The right to property is an important right which touches the hearts of most people. Property whether movable or immovable does affect the well being of individuals in any society. As such the right to property has been recognised as worthy protecting from capricious or unjustifiable interference. Section 30(1) of the Federal Constitution of Nigeria of 1963 provides as follows:-

- "No property, movable or immovable shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that
- (a) requires the payment of adequate compensation therefor; and
 - (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria."

Naturally provision is always made for exceptions to the right affirmed. The same section 30 provides in subsection (3) as follows:-

"Nothing in this section shall be construed as affecting any general law -

- (a) for the imposition or enforcement of any tax, rate or due.
- (b) for the imposition of penalties or forfeitures for breach of any law, whether under civil process or after conviction of an offence.
- (c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contract
- (d) relating to the vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind, of deceased persons and of companies, other bodies corporate and unincorporate societies in the course of being wound up;
- (e) relating to the execution of judgments or orders of courts;

- (f) for providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
- (g) relating to enemy property;
- (h) relating to trusts and trustees;
- (i) relating to the limitation of actions
- (j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;
- (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or inquiry or
- (l) providing for the carrying out of work on land for the purpose of soil conservation"

All it means therefore is that the right not to have one's property compulsorily acquired without the payment of adequate compensation is not absolute - it is in fact highly qualified.

The republic of Ghana however, prior to the military coup did not have as extensive a provision as that cited above. Article 13(1) of the 1960 Ghanaian constitution merely states -

".....No person should be deprived of his property save where the public interest so requires and the law so provides"

Earlier on in Chapter 3 of this dissertation we noted that the effect of Article 13 of the republican constitution of Ghana (1960) was decided upon by the Ghana Supreme Court in the case *RA AKOTO AND SEVEN OTHERS*. The court stated that the article was of no legal significance - i.e. no person could rely on the oath made by the president at the time of assuming office as legally guaranteeing him any of the ideals contained in the oath, for the word used throughout is "should" and not "shall". Nevertheless it is important to note that although Ghana did not have a constitutional bill of rights as it is generally understood (i.e. one which is legally enforceable) an indication was at least given that the ideals set out in the oath were worth striving for and the right to property is one of those mentioned. We also saw that the 1963 Federal Constitution of Nigeria was retained after the coup in 1966 although with modifications to suit the new situation. But of more importance Chapter III which deals with fundamental human rights was retained as a whole. In Ghana however the 1960 republican constitution was suspended shortly after the coup by the Proclamation which

established the National Liberation Council.

The question now is - What has been the attitude of the military in Ghana and Nigeria towards the right to property? Has there been arbitrary or compulsory acquisition of people's property?

In Ghana shortly after the success of the military coup a PROHIBITION ON TRANSFER OF ASSETS DECREE¹ was made on the 23th of April, 1966. According to the provisions of this decree no sale, lease, transfer or other disposition of any asset specified in part I of the schedule to the decree being an asset owned whetaer wholly or partly by any person specified in part II of that schedule could be valid, without the prior approval of the National Liberation Council.² It was made an offence for any person whether by himself or through another peraon to sell, lease, transfer or otherwise dispose of any asset belonging to a person specified in the schedule to the decree without the approval of the National Liberation Council.³ The assets specified in part I of the schedule were

- (a) Building
- (b) Bond
- (c) Share in a company
- (d) Motor vehicle

Included on the list of persons whose assets were frozen were the late Dr. Kwame Nkrumah and his wife, and also persons and the wives of persons who immediately before the 24th of February 1966 held the posts of Minister in the government of Kwame Nkrumah, regional propaganda secretary of the Convention Peoples Party, regional commissioner, member of parliament, regional party secretary of the Convention Peoples Party, district commissioner and any district party chairman of the Convention Peoples Party. In Addition to the above three corporations NADECO, GHANA BOTTLING COMPANY, and GHANA EDUCATION TRUST and twenty-one named persons and their wives and four other persons could not validly sell, lease, transfer or dispose of their assets without the prior approval of the National Liberation Council. Subsequently the decree was amended from time to time by adding to the schedule the names of persons, corporations and other associations which could not transfer or dispose of their property without the approval of the military authorities.⁴

After the Prohibition of Transfer of Assets decree came the INVESTIGATION AND FORFEITURE OF ASSETS DECREE⁵ which was also amended several times, mainly in order to add to the schedule the names of persons, corporations, and other

associations whose assets were to be investigated and also possibly forfeited. Under this decree the National Liberation Council could cause to be served on any person specified in the first schedule to the decree a questionnaire in a prescribed form.⁶ In certain cases where it was not practicable to personally serve a person with a questionnaire service could be effected by publication of the same in the Gazette or in any newspaper published in Ghana or outside Ghana. It was the duty of any person upon whom a questionnaire was served to submit written answers to all questions contained in the questionnaire. It was made an offence for any person upon whom a questionnaire had been served to refuse to submit answers in respect of the questionnaire, to neglect without reasonable cause to submit answers, or to make any statement in any of the answers in respect of the questionnaire which he knew to be false or which he had no reason to believe were true.⁷ Any person found guilty would be liable upon conviction to a fine not exceeding 12,000 cedis or to a term of imprisonment not exceeding five years or to both. The punishment upon conviction was subsequently increased to 36,000 cedis or to a term of imprisonment not exceeding

The questionnaire specifically requested information on the following personal particulars

- (a) name, place and date of birth
- (b) Marital status and family particulars-
including names of children and their
ages
- (c) Educational career and/or experience
- (d) Employment and/or business particulars
- (e) Income/earnings since March 6, 1957
- (f) Interest in any company or partnership business and statement of income from other sources since March 6, 1957.
- (g) How income is normally disbursed.
- (h) Particulars of insurance and banking -
giving names of Banks, Building Societies,
and their addresses whether in Ghana or outside, and stating whether the accounts in question are current, deposit or savings.
- (i) Property holdings including land, farms, houses, flats and other buildings, motor vehicles, gems and jewels, wireless sets, television sets, refrigerators, investment certificates, shares held in business, share certificates, bonds and other forms of security. Also description of

property i.e. its location, date and manner of acquisition - value at time of acquisition. Cost of improvement since acquisition - if property disposed of, name and address of purchaser or beneficiary. Also required to be stated - list of property holdings abroad accompanied by full particulars and descriptions.

(j) Employment or occupation of other spouse and the property holding of such other spouse since March 6, 1957

(k) Visits abroad.

The questionnaire no doubt was very exhaustive. THE INVESTIGATION AND FORFEITURE OF ASSETS DECREE then provided in paragraph 2 that the National Liberation Council could appoint one or more commissions which would be charged with the investigation of the existence, nature, extent and method of acquisition of assets of persons described in the schedule to the decree as well as investigating such other matters relating to such assets as the National Liberation Council might consider fit.

A commission so appointed must consist of not less than two persons, the chairman of which must be a judge of the

High or Supreme Court of Ghana.⁹ It was the duty of a commission appointed under this decree to consider answers submitted in respect of questionnaires, sent out and returned under this decree and such commission could also receive evidence which might appear to it to be necessary for the purpose of enabling it to ascertain any matter the investigation of which the commission is charged with. The commission could also receive evidence in respect of the existence, nature, extent and the method of acquisition of any assets of a person specified in the schedule to the decree whether or not that person had submitted any answers to a questionnaire.

Paragraph 2 sub-paragraph 5 of the Investigation and Forfeiture of Assets decree provided -

"A commission shall in each case after consideration of all the evidence coming before the commission state -

- (a) what part if any, of the assets of a person specified in the first schedule to this decree could in the opinion of the commission have been lawfully acquired by him having regard to his income from all sources and to his reasonable expenses and also to all the

circumstances of the case and

- (b) What part if any of such assets could not in the opinion of the commission have been lawfully acquired by such person having regard to his income from all sources and his reasonable expenses and also to all the circumstances of the case."

The commission had to state reasons for any finding it made.¹⁰ After making any finding the commission would give notice of the same on persons in respect of whose assets the finding had been made and on any other person who might appear to the commission to be affected by the finding of the commission.¹¹

Further paragraph 3 of the Investigation and Forfeiture of Assets decree provided -

- (1) "All assets which are declared by a commission under subparagraph (5) of paragraph 2 of this decree such as could not have been lawfully acquired shall subject to the provisions of this decree and notwithstanding anything to the contrary be deemed to be forfeited to the state."

- (2) "Any judge of the High Court shall upon application by the Attorney-General make such order or orders as may be necessary for the purpose of giving full effect to any forfeiture of assets effected by subparagraph (1) of this paragraph and shall in particular but without prejudice to the generality of the foregoing, where necessary order any person to execute such - instrument as may be necessary for enabling any asset situated outside Ghana to be vested in the state."

Essentially therefore any person who was named in the schedule (as amended from time to time) to this decree and whom an investigation commission considered had improperly or unlawfully come into possession or ownership of any property of any kind would lose that property to the state. However it is important to note that any person aggrieved by any finding of a commission could within one month after the finding was made or within one month after the notice of finding was served on him, whichever was longer appeal to the Supreme Court of Ghana against the finding of the commission and the Supreme Court could confirm vary or set aside the finding of the commission or even

remit the finding of the commission to the commission for reconsideration.¹² It was also provided that any commission appointed under the Investigation and Forfeiture of Assets decree was to have all the powers of the High Court under any enactment or otherwise in relation to perjury, committed by any witness coming before the commission or to any contempt committed by any person in respect of the commission as if the commission were the High Court. Commissions appointed to investigate assets were to be vested with power to summon witnesses either on their own motion or on the application of any interested person, to attend and give evidence or produce any document.¹³

Like the Prohibition of Transfer of Assets decree the list of persons whose assets were to be investigated and possibly forfeited included former ministers, members of parliament, district commissioners, and any person who had held office in the proscribed Convention Peoples Party. However this time the net was cast wider to include -

- (a) any person who on or after the 6th day of March 1957 had held office as chairman or member of the board or other governing body of a statutory corporation or state enterprise or public co-operative or

collective enterprise or as an officer of such corporation, or state enterprise or public co-operative or collective enterprise.

- (b) any person who had on or after the 6th day of March 1957 held office as a public officer
- (c) any spouse or relative of any of the foregoing persons or any person in any way associated with any of the said persons and
- (d) any other person whom the National Liberation Council had reasonable cause to believe had assets which required investigation as to the method of acquisition.¹⁴

In order to prevent persons whom the military authorities in Ghana suspected had improperly obtained or owned property from dealing with property other than land, buildings, bonds, motor vehicles etc. which had been covered by the Prohibition of Transfer of Assets Decree,¹⁵ a decree was made that froze the cash assets of persons, corporations and other associations named in the decree. The idea behind the making of this decree apparently was to see to it that the liquid assets of persons or other entities

specified in the decree, as amended from time to time were not disposed before the method of the acquisition of all their assets had been investigated by commissions appointed for that purpose under the Investigation and Forfeiture of Assets decree.

The principal decree - the NATIONAL LIBERATION COUNCIL (BANK ACCOUNTS) Decree¹⁶ provided that any person, corporation or association whose name was specified in the schedule to the decree could only withdraw money from an account kept at any bank with the prior approval of the National Liberation Council. Furthermore no bank could pay money out of any account operated by a person, corporation or association specified in the schedule to the decree without the written permission of the National Liberation Council.¹⁷ The decree also stated that no person or organization specified in the schedule could obtain any security, document or any other thing deposited with any bank without the permission of the National Liberation Council, nor could any bank deliver to any person or organization or otherwise part with any security, document or thing without the prior written permission of the National Liberation Council.¹⁸ Under the Bank Accounts decree a banker was duty bound to give information in his or her

knowledge or possession concerning any account, security or document of a person or other organization specified in the schedule which might be requested by any person authorised in writing by the National Liberation Council.¹⁹

Any person who contravened any provision of the National Liberation Council (Bank Accounts) Decree would be guilty of an offence and be liable on conviction to a fine not exceeding 5,000 cedis or to a term of imprisonment not exceeding two years.

Initially and expectedly the following persons and organizations were specified in the schedule and hence could not deal with their cash assets without the prior written permission of the National Liberation Council -

- (a) Kwame Nkrumah and his wife
- (b) any person who was a minister in the government of Kwame Nkrumah immediately before the coup
- (c) any person who was a regional commissioner immediately before the coup
- (d) any person who was a member of parliament immediately before the coup
- (e) the Convention Peoples Party
- (f) the Ghana Farmers Co-operative

- (g) the Ghana Young Pioneers Movement
- (h) any person who immediately before the coup was a regional propaganda secretary of the Convention Peoples Party and the wife of such person
- (i) any person who immediately before the coup was a regional educational secretary of the Convention Peoples Party and the wife of such person
- (j) any person who immediately before the coup was a regional party secretary of the Convention Peoples Party and the wife of such person
- (k) any person who immediately before the coup was a district commissioner and the wife of such person.

together with seven other named persons and their wives.²⁰

However as time went on more persons and organizations - whether from government, parastatal or private sector were added to the schedule²¹ and so could not deal with their bank accounts without the written consent of the National Liberation Council.

in any account in the Ghana Commercial Bank and the Barclays Bank both on High Street Accra (less the sum of K £ 86,000 in the case of the current account of Kwame Nkrumah in the said Barclays Bank) are hereby vested in the Republic and shall be transferred into the consolidated fund."

(2) "All moneys standing in all the following accounts immediately before the commencement of this decree shall be vested in the Republic and shall be transferred into the consolidated fund -

(Four accounts in the names of Nkrumah's family including his mother were mentioned)"

In addition all title to bonds and stocks and all interest thereon standing in the names of Kwame Nkrumah and his family were vested in the republic of Ghana.²⁵

Then came the KWAME NKURUMAH PROPERTIES (No 2) Decree - of 1967.²⁶ Under this decree two persons AYER KUMI and W.M.Q. HALM were placed under a duty to transfer to Ghana for the benefit of the Ghanaian republic all sums standing in their names in the MIDLAND BANK of London and the SWISS BANK INCORPORATED in Zurich SWITZERLAND being sums held by them in their joint names in trust or on behalf of Kwame Nkrumah. Any such sums transferred to Ghana were to be

paid into the consolidated fund and so forfeited to the state.²⁷

The decree also stated that all title to land and buildings which according to the APPALCO Commission findings vested in Kwame Nkrumah were to vest in the republic of Ghana free from any incumbrances and the said lands could be disposed of in such manner as the government might consider fit. Interestingly even property in a gold paper knife which according to the APPALCO commission findings belonged to Kwame Nkrumah vested in the republic, as did property in certain cattle on a state farm in the Eastern Region of Ghana.

Nigeria like Ghana has had its share of decrees that provided for the investigation and possible forfeiture of assets owned by persons occupying or who had occupied public office at one time or another. Sometime in June 1966 a PUBLIC OFFICERS (INVESTIGATION OF ASSETS) DECREE²⁸ was made. According to an explanatory note annexed to the decree for information only, the main purpose of this decree was to enable the Head of the national military government to require public officers to declare their assets wherever the Head of the national military government was of the opinion that such requirement would be in

the public interest. The decree provided in section 2 for the verification and ascertainment of the assets declared by public officers by a qualified person directed by the appropriate military authority.

Section 3(1) of this decree provided -

"The appropriate authority may by instrument after considering the report (i.e. a report submitted by a qualified person containing his findings and conclusions and his reasons thereof) and if he is of the opinion that it is appropriate for him to do so, appoint a tribunal of inquiry consisting of such number of persons not being less than three (of whom the chairman shall be a judge or a former judge of a High Court or a person qualified to practice as a legal practitioner for not less than ten years) as he deems fit for the purpose of inquiry -

(a) whether or not the public officer has corruptly or improperly enriched himself or any person by virtue of his office or by any means in abuse of his office or otherwise howsoever whilst a public officer and

(b) as to the extent of such enrichment"

Where a report of the tribunal disclosed that an officer had corruptly or improperly enriched himself or some other person the Head of the national military government could order the forfeiture of the assets to the state. Section 4 of decree 51 of 1966 provided -

(1) "without prejudice to the provisions of section 1 of this decree the appropriate authority may -

(a) where an inquiry under this decree (or any other enactment or under any proceedings whatsoever) discloses that a public officer has acquired assets for himself or in the name of any other person in the manner aforesaid and

(b) he is of the opinion that reparation ought to be made

make an order forfeiting to the state all the assets or any part thereof acquired in the manner described in section 3 of this decree whether or not such assets are in his name."

Like the Ghanaian Investigation and Forfeiture of Assets decree the Public Officers (Investigation of Assets) decree

provided that where the Head of the national military government was of the opinion that it was in the public interest to do so, he could direct the issue of a notice to declare assets to be served on any public officer together with a form of declaration of assets and an officer so served was required to complete and return the declaration form within thirty days after receipt thereof.²⁹ Upon receipt of the declaration of assets the Head of the military government would then direct any qualified person to check any statement contained in a declaration submitted by a public officer to verify the accuracy of any statement of accounts contained therein.³⁰ The public officer served with a notice to declare assets had to indicate the following:-

1. Name and address
2. Office
3. Names in full of wife/wives/husband
4. Names in full of children
5. Amount held in own account
 - (i) Cash in hand
 - (ii) Cash at bank
6. Amount held on behalf or as trustee for any person other than wife/husband, stating name of bank and amount.

7. Loans and advances made
8. Loans and advances received
9. Amount held on behalf of or as trustee of wife/husband
 - Cash in hand
 - Cash at Bank
 - Stating name of bank and amount
10. Wife's/husband's/children's accounts
 - Cash in hand
 - Cash at Bank
11. Government Securities, including premium bonds and savings certificates, shares, debentures, bonds and other interests held in companies or partnerships, giving names of companies, firms and partners, held by
 - (a) person affected by notice
 - (b) by wife or husband
 - (c) by children
12. Property in Nigeria in which person affected by notice is or has been interested in any way since the year 1955 giving date when acquired or disposed of as

- (a) Land
 - (b) Building
 - (c) other property if any
13. Property outside Nigeria in which person affected by notice is or has been interested in any way since the year 1956 - whether land, building or other property if any
 14. Property in which wife/husband is or has been interested in any way since 1956 giving date when acquired or disposed of - whether land, building or other property if any.
 15. Property outside Nigeria in which wife/husband is or has been interested in any way since 1956 giving date when acquired or disposed of - whether land, building or any other property.
 16. Property in Nigeria in which any child is or has been interested in any way since 1956 giving date when acquired or disposed of - whether land, building or other property.
 17. Property outside Nigeria in which any child is or has been interested in any way since the year 1956 giving date when acquired or disposed of - whether land, building or any other property

18. Names of other dependant relatives
19. Property held by others - whether cash in hand, cash at bank, land, building or other property.

The definition of "public officer" was quite wide, covering any person who had held any office in the public services, in the armed forces, member of parliament, speaker or deputy of the House of representatives or House of chiefs, any member or employee or former employee of any public corporation or board, member of Nigerian Council of Police or any commission or Council established by any constitution in Nigeria, since October 1st 1960, and many more.³¹

Notably however unlike the Ghanaian Investigation and Forfeiture of Assets decree the Public Officers (Investigation of Assets) Decree provided in Section 7 subsection (2) -

"The validity of any direction, notice or order given or made, as the case may be, under this decree or the circumstances under which such direction, notice or order is given or made shall not be inquired into in any court of law, and

accordingly nothing in the provisions of chapter III of the constitution of the republic shall apply in relation to any matter arising out of this decree."

This decree was repealed and replaced in 1968 by the INVESTIGATION OF ASSETS (PUBLIC OFFICERS AND OTHER PERSONS) Decree.³² Although repealed the provisions quoted above remain intact in the new decree albeit they have assumed new section numbers.³³ The purpose of the repeal was to make further provisions to enable tribunals to conduct more thorough investigations and for effective reparatory provisions to be made. Under the 1968 decree section 5 provides as follows:-

"Notwithstanding the provisions of any other enactment or law conferring power to search,

by the chairman of the tribunal of inquiry to

decree, he may issue a warrant under his hand, authorising any police officer to enter, if necessary by force, the said building or other place and every part thereof and to search for seize and remove any such thing as aforesaid found therein."

It is further provided that where at any stage of an inquiry a tribunal is satisfied that a prima facie case has been made out against a person the chairman of the tribunal can make an order prohibiting any disposition of property whether movable or immovable by or on behalf of that person or by any other person on his behalf. Failure to comply with the requirements of an order made under this decree is an offence punishable on conviction by either a fine or a term of imprisonment.³⁴

To avoid artificial or fraudulent transactions or dispositions of property it is provided that where the appropriate authority or tribunal is satisfied that any transaction with respect to any disposition of property is artificial or fictitious or that effect has not in fact been given to the same after giving an opportunity to any interested third party to be heard, the appropriate

authority or tribunal could disregard any such transaction or disposition. Any transaction or disposition could be treated as artificial or fictitious if entered into or made or performed.

- (a) by reason of the unconscientious exercise or abuse of a power which one or more of the parties has or have either directly or indirectly over another or others of the parties; or
- (b) for the purpose of fulfilling an obligation prior to or with respect to which any party to the transaction or disposition had not the means.³⁵

Where a public officer or other person is found by a tribunal to have corruptly or improperly enriched himself or another and such person who has been so enriched does not for the time being own any or sufficient assets either by himself or through some other person which can be made the subject of an order of forfeiture and the appropriate authority is of the opinion that reparations ought to be made he may make an order adjudging the public officer or other person liable to make reparations in such amount as may be specified in the order.³⁶

An order so made could be filed in the most convenient High Court and when so filed the order would have effect as a judgment of that court in its civil jurisdiction.³⁷

It is an offence under the Investigation of Assets (Public Officers and Others) decree not to comply with a forfeiture order made under section 8. However like its predecessor the Investigation of Assets (Public Officers and Others) decree provides that the validity of any direction, notice or order given or made or any other thing whatever done under this decree, or the circumstances under which such direction, notice or order has been made or given shall not be inquired into in any court of law and accordingly nothing in the provisions of chapter III of the constitution of the Federation shall apply in relation to any matter arising out of this decree.³⁸

In the final analysis one notices that in both Ghana and Nigeria the decrees made to make provision for the investigation and forfeiture of assets were primarily intended to deal with the leading members of the deposed governments, high ranking government and parastatal employees and some other leading individual business men and their wives.

The reasons are not hard to seek - the military authorities looked, with great suspicion, at the wealth that leading citizens had acquired within a relatively short period of time. The military therefore felt that any property that had been improperly acquired either through corruption or bribery or other forms of abuse of public position, should be snatched back and forfeited to the state.

It should be pointed out that there is nothing wrong with measures that are taken to rid society of corruption and other forms of shady dealings and the forfeiture of property that has been improperly or unlawfully acquired. The temporary freezing of property to enable investigations to be made into the method of acquisition is all right. But when the forfeiture is made without a proper hearing being afforded to the person affected, the system becomes arbitrary and therefore objectionable. Perhaps the system devised in Ghana was much better in that any person aggrieved could appeal to the Supreme Court within one month from the making of a finding by a commission. But in Nigeria the appropriate decree expressly ousts the operation of chapter III of the constitution, which deals with fundamental human rights. So that judicial review

of the findings of an investigation tribunal is completely out of the question, and no appeal therefore lies from any finding of an investigating tribunal, to any court of law. Admittedly sometimes it is difficult to prove allegations of corruption or bribery, but the military could still have got around this difficulty by shifting the onus of proof of lack of wrong doing on the person concerned. It is submitted that routine and thorough investigations should have been made and those upon whom evidence was available should then have been prosecuted, after all the idea was to probe the assets of persons in the high echelons of society.

Although there may not have been thousands of people whose assets were "forcibly" forfeited, the approach taken by the military authorities in both Ghana and Nigeria indicates a sign of arbitrariness in whatever the military do.

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CHAPTER X

PROVISION TO SECURE PROTECTION OF LAW

Another important aspect to the issue of the protection and enforcement of fundamental human rights and freedoms is that of a person's right to be protected by law. The efficacy of most other rights and freedoms would be considerably reduced if no provision were made to ensure that these rights and freedoms are observed by other persons and the state. As such it is usual to find embodied in bills of rights a provision to "secure protection of law" or a section dealing with "determination of rights." The two quotations cited above provide for the same thing. Article 20(1) of the Constitution of Zambia provides as follows:-

"If any person is charged with a criminal offence then unless the charge is withdrawn the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

Section 22(1) of the 1963 Constitution of Nigeria provides:-

"In the determination of his civil rights and obligations a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality"

The important thing to bear in mind is that in both provisions cited immediately above mention is made of a "fair hearing within a reasonable time by a court or tribunal that is independent and impartial." In this respect acts of parliament are passed establishing courts of law to deal with the determination of rights and obligations between parties or alternatively the constitution does this itself. It is usual to find that there are established "inferior" or "subordinate" or "circuit" courts which are in fact lower courts, the equivalent of the English County Courts, a High Court or courts, then finally a Supreme Court at the top. The system is hierachical in nature. Matters whether civil or criminal initially begin from the lower courts and then proceed to the High Court either on appeal or

review or on the matter being referred thereto. However in certain cases the lower courts have no jurisdiction and so the matter has to begin from the High Court and then on to the Supreme Court, either on reference thereto or on appeal. The Supreme Court is normally the final appeal court.

Both Nigeria and Ghana had Supreme Courts during civilian rule. In Ghana the Supreme Court was established under the 1960 republican constitution which provided in article 42(1) that the Supreme Court was to be the final court of appeal with such appellate and other jurisdiction as may be provided for by law, Article 42(2) provided:-

"The Supreme Court shall have original jurisdiction in all matters where a question arises whether an enactment was made in excess of the power conferred upon parliament or under the constitution and if any such question arises in the High Court or an inferior court the hearing shall be adjourned and the question referred to the Supreme Court for decision" and

(3) "Subject to Article (2) of this Article the High Court shall have such original and appellate

jurisdiction as may be provided for by law"

The full jurisdiction of the Ghana Supreme Court was conferred by the Courts Act 1960 (C.A. 9). Section 8 subsection (1) of that Act provided that the jurisdiction of the Supreme Court was to consist of:-

- (a) the hearing of appeals from any judgment of the High Court in any civil case
- (b) the hearing of appeals from any decision of a High Court in a criminal matter exercised in accordance with the provisions of this Act or any other enactment
- (c) the hearing of appeals from any decision given by the High Court in any matter whatsoever

Section 14 of the Courts Act 1960 provided that any person convicted by the High Court or a circuit court or a person whose conviction by any other court is affirmed by such court could appeal to the Supreme Court -

- (i) against his conviction on any ground of appeal which involved a question of law alone.
- (ii) with leave of the Supreme Court or upon a

certificate of the judge who tried him that it was a fit case for appeal against his conviction on any question of mixed law and fact or any other ground which appears to the Supreme Court to be a sufficient ground of appeal.

- (iii) with the leave of the Supreme Court against sentence passed on his conviction unless the sentence is one fixed by law.

In addition the Courts Act 1960 provided in Section 29 that the High Court had original jurisdiction in all matters.

In Nigeria Section 144 of Chapter eight of the 1963 Federal Constitution provides:-

- (1) "The Supreme Court shall to the exclusion of any other Court have original jurisdiction in any dispute between the Federation and a Region or between Regions if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

- (2) In addition to the jurisdiction conferred upon it by subsection (1) of this Section the Supreme Court shall have such original jurisdiction as may be conferred upon it by an Act of parliament; provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.
- (3) "Provision may be made by an Act of Parliament for securing that, during any period of emergency within the meaning of Section 70 of this constitution the jurisdiction exercisable by the High Court by virtue of Section 32 of this constitution shall be exercisable either generally or in relation to particular matters by the Supreme Court to the exclusion of the Court aforesaid"

Furthermore the Supreme Court of Nigeria had jurisdiction to the exclusion of any other court of law to hear and determine appeals from the High Court of a territory. In the following cases an appeal would lie as of right

from a decision of a High Court to the Supreme Court
(see Section 117, 1963 constitution)

- (a) final decisions in any civil proceedings
before a High Court sitting at first
instance
- (b) where the ground of appeal involved
questions of law alone, decisions in any
criminal proceedings before the High Court
sitting at first instance;
- (c) decisions in any civil or criminal proceedings
on questions as to the interpretation of this
constitution or the constitution of a region.
- (d) decisions in any civil or criminal proceed-
ings on questions as to whether any of the
provisions of chapter III (the fundamental
human rights chapter) of the 1963
constitution had been contravened in
relation to any person
- (e) decisions in any criminal proceedings in
which any person had been sentenced to death
by the High Court or in which the High Court

had affirmed a sentence of death imposed by some other court; and

- (f) such other cases as may be prescribed by any law in force in the territory.

The constitution in addition stipulated in Section 118 that parliament could confer jurisdiction upon the Supreme Court to hear and determine appeals from any decision of any court of law or tribunal to be established by parliament.

In Ghana after the coup a Proclamation for the constitution of a National Liberation Council for the Administration of Ghana and other matters connected therewith provided as follows:-

"Notwithstanding the suspension of the constitution of the Republic of Ghana and subject to any decree that may be made by the National Liberation Council all courts in existence immediately before the 24th of February 1966 shall on and after that date continue in existence with the same power as they had immediately before the said date and also all judges and every other person holding any office

or post in the judicial service immediately before the 24th of February 1966 shall on and after the said date continue in that office or post upon the same terms and conditions as before that date and shall discharge the same functions as were prescribed in relation to that office or post under any enactment immediately before the said date"²

As such therefore in Ghana after the coup d'etat the Supreme Court, High Court and the circuit courts remained with their jurisdiction and powers conferred upon them by the 1960 republican constitution and the Courts Act although the constitution had been expressly suspended by the proclamation.

In Nigeria however the situation was slightly different in that the original and advisory jurisdictions of the Supreme Court were ousted by the Constitution (Suspension and Modification) Decree 1966. Nevertheless the Supreme Court, the High Courts and the lower courts are left to function as they had previously.

It is therefore true to say that in both Ghana and Nigeria after the military had taken over, the ordinary civil courts were in operation. However despite the fact that the ordinary civil courts were open, a new type of court to deal with civilians was created in both Ghana and Nigeria - the military tribunal.

In Ghana military tribunals could be established for the trial of civilians under the Armed Forces Act 1962 (Amendment) Decree 1967.³ Paragraph 2(1) of this decree provided that any persons who committed the offence of subversion could be tried by a military tribunal. The tribunal could be convened by the Commander-in-Chief of the Ghana Armed Forces. Such military tribunal was to consist of a president who must be a member of the armed forces not below the rank of Major. Further it was provided that a decision of a majority of the members of the tribunal was final and no appeal could lie from such a decision to another court of law or tribunal.⁴ The punishment upon conviction on a charge of subversion was execution by shooting or a term of imprisonment of not less than twenty-five years.

In this decree "Subversion" was defined as consisting of doing any of the following things or acts:

- (a) preparing or endeavouring to overthrow the government by unlawful means.
- (b) preparing or endeavouring to procure by force any alteration of the law or the policies of the government.
- (c) preparing or endeavouring to carry out by force any enterprise which usurps the executive power of the state in any matter of public or general nature.
- (d) Inciting or assisting or procuring any person to invade Ghana with armed force or unlawfully subjecting any party of Ghana to attack by land, sea or air or assisting in the preparation of such invasion or attack or
- (e) unlawfully importing into Ghana (the burden of proof being upon the accused person) any explosive, firearm or ammunition.

- (f) organising or inciting any other person to go on a general strike likely to cause the overthrow of the government or likely to cause hardship to the general public or
- (g) publishing any statement or report which the publisher knows to be false and which is likely to undermine the confidence of the people in the permanence of their newly won freedom.
- (h) killing or attempting to kill or conspiring with any other person to kill any member of the National Liberation Council or any other citizen of Ghana with a view to securing the overthrow of the government or with intent to cause any other citizen into opposing the National Liberation Council or otherwise into withdrawing or withholding his support from the National Liberation Council
- (i) knowing of the commission of any of the foregoing acts but not reporting forthwith to a member of the National Liberation Council

or to any police officer not below the rank of Inspector or to a member of the Armed Forces not below the rank of Sergeant in the Ghana Army or its equivalent in the Ghana Navy or in Ghana Air Force.

In Nigeria civilians could be tried by military tribunals under the Suppression of Disorder Decree⁵ and the Public Security Decree.⁶ Under the Suppression of Disorder Decree a military tribunal has to consist of a Major and either two, three or four other members each of whom must be an army officer in the armed forces who has held a commission for not less than three years. The president and the other members of a military tribunal are to be appointed by the military governor who constitutes the tribunal.⁷

Section 6 of the same decree provides as follows:-

"Subject to subsections (2) and (3) below a military tribunal constituted under section 5 of this decree for a military area:-

- (a) shall to the exclusion of all other courts of law in Nigeria have jurisdiction to try persons charged with having committed

within that military area any offence against public order under schedule 1 of this decree or any offence under schedule 2 of this decree but

- (b) shall have no jurisdiction in respect of any other offence whatsoever and in particular no jurisdiction in respect of such offence as is mentioned in paragraph (a) above which was committed before the area in question was proclaimed to be a military area."

If a person is brought before a military tribunal charged with an offence against public order under schedule 1 of the Suppression of Disorder Decree the tribunal could if it considered that the case before it was not one which ought to be tried by a military tribunal, direct fresh proceedings to be commenced against the accused in a civil court.⁸

The prosecution of any offence under schedule 1 or 2 of the Suppression of Disorder Decree before a military tribunal could be conducted either by a legal practitioner or by a police officer of above the rank of Inspector

who need not be a legal practitioner. In any proceedings before a military tribunal the accused person is entitled to defend himself in person or by a legal practitioner of his own choice.⁹ In this respect the Nigerian Suppression of Disorder Decree is different from the Ghanaian Armed Forces Act 1962 (Amendment) Decree 1967, for the former specifically provides that the accused person may be represented if he can afford it.

However in both cases the jurisdiction of a military tribunal is exclusive of all other courts of law and no appeal can lie therefrom.

Under the Suppression of Disorder Decree military tribunals to try civilian can only be constituted after a "military area" has been declared by the Head of the Federal Military government if he is satisfied that widespread public disturbances are occurring in any part of Nigeria.¹⁰ It is interesting to note the offences for which military tribunals could be constituted to try civilians in Nigeria. Schedule 1 of the Suppression of Disorder Decree stipulates the following offences as being offences against "public order" and if committed within

a declared "military area" any persons committing such offences could be tried by military tribunals -

- (a) intentionally killing or injuring any person -
- (b) intentionally destroying or damaging property;
- (c) intentionally discharging a firearm;
- (d) committing any act of intimidation; or
- (e) doing anything with intent to obstruct, prevent or defeat the course of justice.

The above offences one immediately notices are normally triable by the ordinary civil courts. Presumably the establishment of military tribunals in Nigeria was the result of widespread commission of the offences listed and so the military authorities decided deterrent treatment was necessary to curtail such activities.

In Nigeria military tribunals could also be established under the PUBLIC SECURITY DECREE of 1967.¹¹ Section 1 subsection (4) of this decree provides -

"There shall be for the purposes of this decree a military tribunal to consist of three officers of

the armed forces appointed for any particular trial or trials by the Commander-in-Chief and the proceedings before the tribunal shall be in camera."

A tribunal so appointed could hear such evidence as it thinks fit and an accused person appearing before such tribunal is entitled to conduct his own defence in person. It is also provided that in the application of this decree the onus of proving absence of guilty intent or that the accused had regard to the safety of other persons rested upon such accused person.¹²

This decree makes it an offence for an owner or landlord of property or premises not to report the presence thereon or therein of any ammunition, explosive, firearm or offensive weapon. On conviction the punishment provided for is execution by firing squad or imprisonment for a term of not less than twenty-one years.¹³

At this stage it is worthwhile bearing in mind that in both Nigeria and Ghana decrees were in existence which empowered members of armed forces to exercise powers and carry out duties normally done by the civil police. The

Nigerian Armed Forces and Police (Special Powers)

Decree 1967¹⁴ was apparently made to deal with emergency situations for the recital at the beginning of the decree reads:-

"Whereas a state of emergency exists in Nigeria and it is expedient to confer special powers during its continuance, anything to the contrary as respects punishment prescribed in the Criminal Procedure Code notwithstanding."

But the Ghanaian Law Enforcement (Powers of the Army) Decree 1966,¹⁵ however on the other hand did not even refer to any emergency at all nor is there evidence that there was any at the time when the decree was made - namely 20th November 1966. Paragraph 1 of the Ghanaian Law Enforcement (Powers of the Army) Decree provided:-

"Any member of the Ghana Army not below the rank of sergeant may unless the General Officer commanding the Ghana Armed Forces otherwise directs perform any functions conferred on a member of the Police Service by the Police Service Act 1965 (Act 248) or any other enactment in relation to the prevention and

detection of crime the apprehension of offenders, the maintenance of public order and the safety of persons and property."

Paragraph 2 of the same decree provided -

"Where for the purposes of any functions referred to in paragraph 1 of this decree a member of the Police Service has power to arrest any person, search any premises, conduct any investigation or take possession of any property, a member of the Army not below the rank of sergeant may also for such purpose exercise any such power subject to the same conditions and limitations to which the exercise of such power by a member of the Police Service would be subject."

The Nigerian Armed Forces and Police (Special Powers) Decree 1967 provides in Section 1 as follows:-

"Any police officer or member of the Armed Forces may during the continuance of the emergency and without warrant arrest -

- (a) any person who in his presence commits any offence or
- (b) any person whom he suspects upon reasonable grounds of having committed any offence.

Section 2(1) of the same decree provides -

"Any police officer of or above the rank of inspector or any member of the Armed Forces who by virtue of this decree has the powers of an Inspector of police, may during the continuance of the emergency and without warrant arrest at any time, enter and search any premises in which he has reasonable cause to believe that there is or is likely to be -

- (a) a person who has committed or is suspected of having committed any offence
- (b) any explosive, ammunition, firearm (or any component part thereof) owned, possessed or kept contrary to law or any offensive weapon.

And where any such person or thing is found, may arrest the person or seize the thing as the case may be."

In this section "premises" include a dwelling house, vehicle, shop or any place of any other description whatsoever. It is further provided that every member

of the Armed Forces of Nigeria is to have the powers and immunities of a police officer.¹⁶

As such therefore essentially in both Nigeria and Ghana civilians could be tried by military tribunals constituted by the military authorities and consisting entirely of Armed Forces personnel. Also in both countries the Army was allowed to do ordinary police duties, such as the maintenance of public order, investigation of crimes and ensuring that the public and peoples' private property was safe. In the final analysis one sees that the Army could therefore investigate crime, prosecute and at the same time constitute the tribunal to hear the case and definitely impartiality in certain cases was out of the question. In Nigeria the reason given for the establishment of military tribunals to try civilians was that the Federal military authorities were satisfied that there was a state of emergency in that country.¹⁷ In Ghana on the other hand, no emergency was mentioned in the introductory to the Armed Forces 1962 Act (Amendment) Decree, nor is there evidence to suggest that there was any at the material time when the decree was made, but

the reason behind the establishment of military tribunals to try civilians according to a government statement of January 14, 1967 was to -

"try civilians speedily for certain categories of subversive offences"

The statement alleged that a small minority of the banned Convention Peoples Party had "taken the new regimes humane attitude to them as a weakness" and had indulged in subversion and sabotage, held secret meetings to plan "confusion and assassination," encouraged strikes and disseminated reports calculated to undermine faith in the National Liberation Council.¹⁸

According to a report in "WEST AFRICA" No. 2597 of March 11, 1967 under the heading "LAWYERS CRITICISE NLC DECREES" the Ghana Bar Association criticised two decrees made by the National Liberation Council and one of the two was in fact the Armed Forces Act 1962 (Amendment) 1967 (NLCD 131) which provided for trial of civilians by military tribunals. The Ghana Bar Association criticised the two decrees on the ground that they violated principles of "the rule of law."

According to the report the Ghana Bar Association appealed in a memorandum to the National Liberation Council on March 3, 1967 for the repeal of the Armed Forces 1962 Act (Amendment) decree which provided for trial of civilians by military tribunals which could pass sentences of from twenty-five years imprisonment to death by shooting on civilians found guilty of subversion. The memorandum said most of the acts declared criminal were already included in Ghana's criminal code and added -

"We do not consider that there is any justification for subjecting civilians to trial by tribunals other than ordinary courts"

Even more objectionable the memorandum went on was that the decree "abrogates all right of appeal - a right which is one of the fundamental principles of the rule of law." While admitting the need for stern action against subversion the Ghana Bar Association said it was gravely concerned at indications that Ghana was once again showing disregard for the rule of law. The memorandum conceded that the National Liberation Council encountered

difficulties in dealing with subversion and punishing those who wrecked the economy under the old regime but it suggested -

"What needs to be done, can and must be done so far as possible in a manner compatible with the continued operation of the principle of the rule of law in Ghana."

This criticism is equally applicable to the Nigerian decrees which provided for the trial of civilians by military tribunals for offences which the ordinary civil courts have jurisdiction to try. The ordinary courts are continued in operation by the military, although their jurisdiction in certain matters such as in the operation of certain decrees is specifically ousted. Existing laws (i.e. laws other than the constitution which were in operation prior to the assumption of power by the army) relating to criminal or civil matters are saved and continued in operation and as such one would have thought anyone infringing these laws could be dealt with according to the laid down ordinary courts procedure. Since the military continued the court

system which they found in operation at the time of their assuming power one cannot but wonder why a new type of court was introduced to try civilians.

However this is not to say that in grave circumstances such as serious emergencies the state should not exercise sufficient power to preserve itself and society from destruction. In serious situations the principle "SALUS POPULI EST SUPREMA LEX" should apply, for the safety of citizens depends upon the existence of an orderly society. Therefore it can be said that national security is essential in the interests of both the state and the private citizen and measures which are taken to maintain security must come first and if need be the interests of the individual should be secondary when they clash with those of the state as a whole.

Caution should be taken however, to see that the argument just advanced is not taken too far. The state is entitled to take measures designed to preserve itself and the people from destruction, but then the measures taken should be proportionate to the evil or other emergency that is threatening the well being of the

state and the masses in general. The emergency sought to be avoided must be real, grave and immediate and not imaginary.

On this issue there is high authority from the United States of America Supreme Court in the case of *MOYER v. PEABODY*.¹⁹ The most obvious situation is war but other situations of civil commotion or disorder short of war could justify interference with individual rights and liberties but it must be such as amounts to or is comparable with a serious insurrection e.g. as where striking workers engage in acts defiant of the government or disruptive of public peace. The extent of justifiable interference would naturally differ with the gravity of the situation or circumstances. The American Supreme Court during the great civil war refused to sacrifice the individuals right not to be deprived of liberty or life in pursuance of a judgment of a military court. It rejected the argument that in time of war state necessity justified the assumption by a military commander of absolute power to suspend all civil rights.

In pursuance of this alleged power one Milligan had been tried, convicted and sentenced to death by a military commission for alleged conspiracy against the government in giving aid and comfort to rebels while in the state of Indiana. The court held unanimously that the trial, conviction, and sentence of civilians by a military court cannot be authorized whether by the president or Congress except when as a result of military operations the ordinary courts have ceased to function or cannot function any longer. But as long as they function, notwithstanding the existence of war the independent and impartial administration of the law by the ordinary courts cannot be suspended -

"Martial law cannot arise from a threatened invasion. The necessity must be actual and present, the invasion real, such as effectively closes the courts and deposes the civil administration. If in foreign invasion or civil war the courts are actually closed and it is impossible to administer criminal justice according to law then on the theatre of actual military operation, where war really

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prevails there is necessity to furnish a substitute for the civil authority thus overthrown to preserve the safety of the army and society and as no power is left but the military it is allowed to govern by martial rule until the laws have their free course. As necessity creates the rule so it limits its duration, for if this government is continued after the courts are reinstated it is a usurpation of power. Martial law can never exist where the courts are open and in proper and unobstructed exercise of their jurisdiction"²⁰

The "open court" rule of the majority was affirmed by the court again in 1945 in the case of DUNCAN v. KAHANAMOKU.²¹ After a surprise attack on Pearl Harbour by the Japanese the governor of Hawaii placed the territory under martial law and handed over the entire administration to the military authorities. The military government then closed down all the civil courts and established military tribunals in their place. The two appellants in this case were convicted

of embezzlement and assault by military tribunals seven months and two and half years respectively, after the attack on Pearl Harbour at a time when any threat of further attack or invasion had completely dissappeared. The court held that in view of the fact that the constitution had the same effect in Hawaii as in other parts of the United States, the provisions of the Act authorising the governor with approval of the President to declare martial law "in case of rebellion or invasion or imminent danger thereof when the public safety requires it" did not include a power to supplant civilian laws and courts by military orders and tribunals when conditions were not such as to prevent the enforcement of the laws by the courts, the provisions was only intended to authorise the military to act vigorously for the maintenance of an orderly civil government and for the defence of the territory against actual or threatened rebellion or invasion. The court stressed what it had stated in the earlier case of *EX PARTE MILLIGAN* that-

"Civil liberty and this kind of martial law cannot endure together, the antagonism is

irreconcilable and in the conflict one or the other must perish"

The trials were accordingly declared illegal, as constituting unjustifiable interference with the constitutional guarantee of a fair trial.

The importance of these American decisions lies in the fact that those decisions had been made during difficult times - during the great civil war and the second world war. One can therefore say that at the material times there was in fact a real state of emergency - war. Notwithstanding this the United States Supreme Court openly criticised the use of military tribunals for the trial of civilians for ordinary crimes when the conditions prevailing were such that ordinary civil courts could function.

The United States Supreme Court also stressed the fact that in considering or determining whether or not to abrogate individual rights and civil liberties in favour of state and society survival it must be borne in mind that the situation threatening state or national security

or the safety of the entire population must be grave, actual and immediate not imaginary or remote and in any case the measures taken should be appropriate to meet the threat or other grave circumstance and what is more the measures taken should be limited to the period of the emergency.

In Ghana we have seen that the official reason given for the establishment of military tribunals to try civilians was to provide a speed trial for civilians charged with certain categories of subversive offences²² and in Nigeria military tribunals could be established if the Head of the Federal Military government was satisfied that widespread public disturbances are occurring in any part of Nigeria.²³

Nevertheless it would be true to say that military regimes like colonial regimes, being regimes based upon force are always unduly apprehensive of any kind of challenge to their authority or legitimacy and are therefore disposed to subordinate the rights of individuals to "public security" whenever these two should conflict. This overzealous concern for "public security" underlies all

military security legislation. The official reason in Ghana for establishing military tribunals referred to above is not very compelling. At the material time when the Armed Forces Act 1962 (Amendment) Decree was made - 26th January 1967, the ordinary courts were functioning normally. There is no evidence of there having been a foreign invasion or domestic civil war. It is therefore difficult to see why the military authorities decided to establish military tribunals. The position is perhaps understandable in Nigeria, as there was in that country a civil war. However what is surprising is the fact that in both Ghana and Nigeria the offences which had to be dealt with by military tribunals were ordinary criminal offences which could have been adequately tried by the ordinary civil courts.

The only conclusion one can draw is that the military are always concerned and unduly disturbed by any sign of a threat to their authority. The trial of civilians by military tribunals is definitely objectionable when the ordinary courts are "open" and can easily and effectively handle the cases assigned to military tribunals. The military tribunal is another unwelcome feature of military rule.

CHAPTER XI

CONCLUSION

When the military have assumed power the following picture begins to unfold. To begin with the military assure the general public that, they will be in power only for as long as it is necessary to remedy the alleged shortcomings of the deposed politicians. In Accra, Ghana a statement was issued by the National Liberation Council that the military and police wished to make it clear that they had no political ambition and were anxious to hand over power to a duly constituted representative government as soon as possible -

"to achieve this object it is the intention of the National Liberation Council as soon as practicable to avail themselves of the power conferred on the Head of State by the Commission of Inquiries Act and to appoint a constitutional commission to draft a new

constitution. The constitution would be submitted to a referendum and if approved it could become the fundamental law of the country. The National Liberation Council will ensure free and fair elections, would gladly relinquish its powers to any government formed in accordance with the constitution."¹

Similar sentiments were expressed by General YAKUBU GOWON of Nigeria - namely that the military would return power to civilians when the military had brought about conditions favourable for a return to civilian rule. Political detainees or restrictees were as a matter of course released from detention shortly after the success of the coup, but at the same time a good number of leading politicians and their supporters were put into "protective custody." Shortly after the success of the coup the military issued statements justifying their assumption of power through unconstitutional means and deprivation of individual civil liberties, capricious exercise of power, national bankruptcy, corruption and nepotism were cited (especially in Ghana) as the reasons that prompted the military to assume power. In Ghana General KOTOKA said -

"the concentration of power in the hands of one man has led to the abuse of individual rights and liberty. Power has been exercised by the former president capriciously. The operation of laws has been suspended to the advantage of his favourites and he has been running the country as his personal property. The economic situation of the country is in such a chaotic condition that unless something is done about it the whole economic system will collapse and thus the country is on the brink of national bankruptcy"²

For our purposes it would appear in general that the military try to give an impression to the general public that during their time of rule everything will be perfect i.e. there will be no restrictions on individual liberties and freedoms, if anything these rights and freedoms would be enlarged, the economy revived and there would be no corruption, nepotism nor any abuse of government power.

In Ghana in his first major speech the then Chairman of the National Liberation Council General Ankrah asserted that the National Liberation Council would -

"run the affairs of this country until true democracy has been fully restored. The overthrow of the old regime is necessary and the only way to restore the blessings of liberty, justice, happiness and prosperity to Ghana"³

The important question posed is - Did the military in fact enlarge individual rights and freedoms or did they restrict them?

In Ghana the Preventive Detention Act was repealed on the 5th of April 1966 and immediately after coup some nine hundred persons then held without trial under it - a few for as long as eight years - were released.⁴ However law similar to it was made by the National Liberation Council shortly afterwards - the Protective Custody Decree.

Supposedly this decree was "for the preservation of public peace and the protection of persons" detained under it.⁵ But like its predecessor the Preventive Detention Act of 1958 persons detained under the Protective Custody decree were to remain in custody "for such period as the National Liberation Council may determine."⁶ What it meant in

effect was that persons could be kept in custody for an indefinite period without trial or without being furnished with the grounds or reasons for their detention. The detained or "protected person" could not even make representations to the detaining authority or to have his case reviewed by an independent and impartial tribunal, for no provision was made for any of the aforementioned things under the Protective Custody decree or for that matter any other decree. It is not disputed that the 1960 Republican Constitution had no formal bill of rights but in any case a government which had expressed strong views on the issue of deprivations of individual rights and liberties would have made elaborate provisions for dealing with the release or trial of persons put into "protective custody." This Protective Custody decree was repressive of individual personal liberty and freedom of movement especially when it provided (after an amendment to it) that even after the release of persons from custody, such released persons were to report periodically to the police.

Another Ghanaian decree which had similar effect to the Protective Custody decree was the CRIMINAL PROCEDURE (AMENDMENT) DECREE 1966⁷ which provided in Section 15(5) as follows:-

"Notwithstanding anything to the contrary a person taken into custody without a warrant may with the consent in writing of the Attorney-General be held in custody for a period of twenty-eight days or such other period as the Attorney-General may determine and the provisions of Section 96 of this Code (relating to bail) shall not apply to a person so held"

This meant that the accused person, even a suspect could with the Attorney-General's written consent be kept in custody for a period of up to twenty-eight days without the requirement that he should be brought before a court of law to stand trial or be conditionally or otherwise released. What is more objectionable is the fact that a person held in custody under this decree could not even be admitted to bail.

A report which appeared in "WEST AFRICA" No. 2602 of April 15, 1967 stated that Mr. EDWARD AFUEFO-ADDO the Chief Justice of Ghana and four other judges asked the National Liberation Council to repeal it when they were giving judgment in appeal in the case of YUSUF ITENBA AMINU w

had been arrested by the Armed Forces (under powers of arrest and prosecution granted to them on equal terms with the police by Decree No. 109 -

The Law Enforcement (Powers of the Army) Decree).

Yusuf Itenba Aminu had been arrested by the army on suspicion of stealing and was detained for twenty-eight days on the written consent of the Attorney-General. When Aminu continued to be held after the end of this period a writ of habeas corpus was sought and obtained for him in the High Court on the grounds that the Attorney-General had no power to extend the detention after the initial twenty-eight days. The appeal court allowed the appeal, the Chief Justice saying the court was satisfied that the continued detention was justified. However Mr. Justice Akuffo-Addo said the decree - Criminal Procedure (Amendment) Decree 1966 departed from normal principles of criminal law and could easily be abused as it had under the old regime "for those reasons we express the hope that an early consideration will be given to its removal from the statute book."

Although the circumstances of the assumption of power by the military on January 15, 1966 were rather different

from those in Ghana in that the civilian government in Nigeria abdicated power to the military, Nigeria has its share of decrees similar to those referred to above. Nigeria unlike Ghana had a bill of rights in the 1963 Federal Constitution and this was continued in operation after the military had assumed power.

The military made the STATE SECURITY (DETENTION OF PERSONS) DECREE. This decree provides that persons could be detained if the Head of the Federal military government is satisfied that it is in the interests of the security of Nigeria to do so. The detention is to be for six months. A detained person could make representations to the detaining authority "as soon as may be."⁸

If the Federal military government thinks fit it could constitute tribunals for the purpose of advising it on any detention cases which that government may consider to refer to a tribunal.⁹

But under this decree a detainee is not entitled to attend in person or be represented by any other person during consideration by the tribunal of the case as it affected him.¹⁰ Of much importance for our purposes Section 5 of the State Security (Detention of Persons)

decree provides that no suit, prosecution or other legal proceeding is to lie against any person for anything done in good faith or intended to be done in pursuance of this decree. Section 6 of the same decree expressly suspends chapter three of the constitution (the human rights chapter) from the operation of this decree. No question therefore relating to whether any provision of chapter three has been, is being or would be contravened by anything done or proposed to be done in pursuance of this decree can be inquired into in any court of law, nor may an application for a writ of habeas corpus be entertained by the courts. One could therefore say that in both Nigeria and Ghana a person detained, has no access to courts of law for redress, although in Nigeria he can make representations to the detaining authority in writing. In addition to the State Security (Detention of Persons) Decree, Nigeria has the SUPPRESSION OF DISORDER DECREE - under this decree if the chairman of a military area executive committee is satisfied that any person in a military area, is or has recently been concerned in acts prejudicial to public order or in the preparation or instigation of such acts and that by reason thereof it is

necessary to exercise control over him, he could by order made in writing direct that person to be detained.

A detention order so made is to be effective until it is revoked or the military area in question ceases to be one.¹¹ No provision is made for such detention cases to be reviewed by tribunals nor is the detainee afforded the right to make representations to the detaining authority. The detention period is thus indefinite.

Since there is no requirement that the names of detained persons would be published in the official Gazettee no one can really say how many people have been detained under the provisions of this decree. This is serious because such a decree could easily be abused. What is more, like its sister (the State Security (Detention of Persons) Decree) Section 21 of the Suppression of Disorder decree provides -

"the question whether any provision of chapter three of the constitution of the Federation has been, is being or would be contravened by anything done or proposed to be done in pursuance of this decree shall not be inquired into in any court of law and accordingly Sections 32, 115 and 117 (1) (d) of that constitution shall not apply"

It is submitted that these decrees that were made in Ghana and Nigeria rendered a person's right to liberty and freedom of movement as protected by the constitution totally useless - for such - right or freedom could not be asserted in a court of law once a person was detained.

In the field of political activity in both Ghana and Nigeria an effective ban was effected. No political campaigns, processions, meetings etc. could be conducted. Three or more persons could not assemble or associate for a political purpose. No new political parties or associations could be formed. It was made an offence to do or carry on any of the activities mentioned above - in Nigeria by the PUBLIC ORDER DECREE OF 1966 and in Ghana by the PRESERVATION OF PUBLIC PEACE DECREE 1966. In Nigeria however the Public Order Decree provides in Section 10 that nothing in the decree is to apply to any town development union (membership of which is open to all the inhabitants of the town) or to any society or association of three or more persons formed for purposes of sports, culture or charity or under the Trade Union Act or other similar society or association having a non political objective. But the benefit of this section is not to extend to any union, society or association which

engages in or carried on any activity similar to that of a scheduled society or is used as a platform for engaging in or carrying on such activity. Political rights are such therefore are out of the question. People can associate for non political purposes but this is all they can do.

Soon after their assumption of power the military in both Ghana and Nigeria made statements and even decrees to enable free expression of opinions by both the general public and the press. In Ghana censorship on outgoing cables which had been imposed by the Nkrumah regime was lifted by the National Liberation Council.¹² In Nigeria the CIRCULAR OF EMERGENCY DECREE provides that any provision made by a local government council or city or town council or any other municipal authority which prohibited or restricted the distribution or general sale of any newspaper in any part of Nigeria is to cease to have effect and it is made an offence for any person whether alone or with other persons and whether as a member of a municipal authority or otherwise to do anything calculated to prevent or restrict the distribution or general sale of any newspaper in any part of Nigeria.

The term "newspaper" it is stated includes a newspaper published by or under the authority of government.

However with the passage of time the military authorities in both Ghana and Nigeria became tough on the freedom of speech and expression. The military as we have seen earlier expressed dislike for "destructive" "harmful" "biased" and "irresponsible" criticism. In both Nigeria and Ghana decrees were made to try and keep this freedom in step with the authoritarian outlook of the military.

In Ghana a PROHIBITION OF RUMOURS DECREE 1966 (NLCD 92) was made and this provided that any person who published or reproduced any statement, rumour or report which was likely to cause fear and alarm or despondency to the public or to disturb public peace or to cause disaffection against the National Liberation Council among the public or among members of the Armed forces or the police service would be guilty of an offence and upon conviction would be liable to a fine not exceeding one thousand new cedis or to a term of imprisonment not exceeding three years or to both such fine and term of imprisonment. In Nigeria a NEWSPAPERS (PROHIBITION OF CIRCULATION) decree of 1967 provides that if the Head of Federal Military government is satisfied that the unrestricted circulation in Nigeria of a newspaper

is or may be detrimental to the interest of the Federation or of any state thereof he could by order published in the Gazettee prohibit the circulation in the Federation or in any part thereof as the case may be and unless any other period is prescribed in the prohibition order, the prohibition would continue for a period of twelve months.¹³ Failure to comply with the requirements of a prohibition order is made an offence punishable on conviction -

(a) in the case of an individual by a fine of not less than fifty pounds and not more than one hundred pounds or by imprisonment for a term of not less than six months and not more than twelve months in the case of a first offence and for a subsequent offence the penalty is to be double that prescribed for a first offence.

(b) in the case of any other person by a fine of not less than five hundred pounds and not more than one thousand pounds for a first offence and by the maximum prescribed for a second or subsequent offence.¹⁴

In both Nigeria and Ghana there is evidence of newspaper editors having been dismissed and sometimes imprisoned for not apparently complying with the official line or publishing unduly critical items. The freedom of speech and expression was one to be exercised with extreme caution. Those whose words or writing exceeded certain limits could find themselves in trouble with the decrees referred to above and there is evidence that some were in fact caught.

Finally in as far as the administration of justice was concerned, the ordinary civil courts were continued in operation by the military in both countries and it was stated that the courts were to continue to exercise their functions as they used to do before the assumption of power by the military and they were to exercise their usual jurisdiction, although in certain cases jurisdiction was ousted. But shortly afterwards a new type of court was established to try civilians - the military tribunal. In Ghana the Armed Forces Act 1962 (Amendment) decree 1967 provided in section 2(1) that a person who committed the offence of subversion was liable to suffer death by shooting or be sentenced to a term of imprisonment of not less than twenty-one years. A decision of a military

tribunal was to be final and no appeal could lie from such a decision. In Nigeria, The Suppression of Disorder decree provides for the trial of civilians by military tribunals. The military governor of a region in which any "military area" is situated could constitute military tribunals to try persons charged with having committed offences under the schedule to the same decree.¹⁵

A military tribunal so constituted has jurisdiction to the exclusion of all other courts of law to try persons charged with having committed within that military area any offence against public order under schedule 1 of the Suppression of Disorder decree. Where however any person is brought before a military tribunal charged with an offence against public order, the tribunal could if it considers that the case is one which ought not to be tried by a military tribunal, direct that fresh proceedings be commenced against the accused in a civil court.¹⁶ Like the Ghana Armed Forces Act 1962 (Amendment) decree no appeal lies from a decision of a military tribunal in Nigeria.

On the whole although there is evidence to indicate that by and large individual civil liberties have been respected

by the military regimes in Ghana and Nigeria¹⁷ and that these governments have tried to maintain the conditions of a free society and the rule of Law, there is however evidence to show that within these states there are laws in existence which could easily be used to the detriment or peril of civil rights and liberties. What is more the military have both the physical and the law making powers which in a single moment could whittle away individual civil liberties.

FOOTNOTES

CHAPTER I

1. B.O. Nwabueze "CONSTITUTIONALISM IN THE EMERGENT STATES" page 219
2. B.O. Nwabueze "CONSTITUTIONALISM IN THE EMERGENT STATES" page 220

CHAPTER II

1. "AFRICAN FORUM" Volume 2 No.I Summer 1966
2. "AFRICAN AFFAIRS" Volume 66/67 "THE POLITICAL ROLE OF AFRICAN ARMED FORCES: THE IMPACT OF FOREIGN MILITARY ASSISTANCE"
3. "CONSTITUTIONALISM IN THE EMERGENT STATES" at page 222
4. See B.O. Nwabueze "CONSTITUTIONALISM IN THE EMERGENT STATES" - page 226
5. See B.O. Nwabueze "CONSTITUTIONALISM IN THE EMERGENT STATES" at page 221

CHAPTER III

1. HANS KELSEN "GENERAL THEORY OF LAW AND STATE" at page 113
2. CONST O.C.1/70 of April 20. Unreported

3. Paragraph 3(1) of the Proclamation
4. Paragraph 3(2) of the Proclamation
5. Paragraph 5 of the Proclamation
6. THE STATE v. DOSSO P.L.D. 1958 S.C 533
7. THE STATE v. DOSSO P.L.D. 1958 at pages 538-9
8. THE STATE v. DOSSO P.L.D. 1958 at page 540
9. HANS KELSEN "GENERAL THEORY OF LAW AND STATE" page 118
10. [1969] A.C. 645
11. [1966] E.A. 514
12. Section 12 of the CONSTITUTION (SUSPENSION AND MODIFICATION) Decree 1966 See also the similar provision quoted above.
13. SAMMUT v. STRICKLAND [1938] A.C. 678
14. Paragraphs 3(2) and 5 respectively of the Proclamation

CHAPTER IV

1. WEST AFRICA No 2616 July 22 at page 961
2. LEGON OBSERVER Volume VIII No. 4
3. NG 58/69 of April 24 1970 (unreported)
4. ARTICLE 13(1) of the 1960 Republican Constitution of Ghana
5. [1961] GHANA LAW REPORTS (Part II) at page 523
6. STATE v. DOSSO cited above
7. CHIEF ALHAJI AGBAJE v. COMMISSIONER OF POLICE, WESTERN STATE, SUIT No. M/22/69; ADEOYE v. COMMISSIONER OF POLICE, WESTERN STATE SUIT No. M/42/70

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1. NLCD 1 of 1966
2. PUBLIC ORDER DECREE 1966 - Decree No. 33/1966
3. SECTION 1 Decree No. 33/66
4. See parts I and II of the Schedule to the PUBLIC ORDER DECREE 1966
5. SECTION 1(3) PUBLIC ORDER DECREE 1966-Decree 33/1966
6. SECTION 2(1) PUBLIC ORDER DECREE 1966
7. ZAMBIA DAILY MAIL - Wednesday October 2, 1974"
8. SECTION 2(3) of Decree 33/1966

9. NLCD 3.
10. The POLITICAL PARTIES DECREE 1969 - NLCD 345 - paragraph 2(1)
11. NLCD 345 - Paragraph 17(b)
12. NIGERIA WEEKLY - Volume No. 13 October 14, 1966
13. See "ZAMBIA DAILY MAIL" OCTOBER 2, 1974 under caption "ARMY RULE STAYS - GOWON"
14. NLCD I - Proclamation (Amendment) Decree 1966

CHAPTER VI

1. B.O. Nwabueze "CONSTITUTIONALISM IN THE EMERGENT STATES" pages 248-9
2. Section 25 of the 1963 FEDERAL CONSTITUTION OF NIGERIA ALSO ARTICLE 22 OF CONSTITUTION OF ZAMBIA
3. Section 1(1) Decree No. 2 of 1966
4. Section 1(3) Decree 2:1966
5. DAILY GRAPHIC 27 March 1967
6. LEGON OBSERVER 17 February 1967
7. LEGON OBSERVER 17 February 1967
8. NIGERIA WEEKLY Volume 1 No. 13, 1966
9. DAILY GRAPHIC 22 March 1967
10. LEGON OBSERVER 31 March 1966
11. DAILY GRAPHIC 14 March 1966
12. DAILY GRAPHIC 14 March 1966
13. DAILY GRAPHIC 27 May 1967
14. ROBERT PINKNEY "GHANA UNDER MILITARY RULE 1966-9 at page 43.

15. WEST AFRICA No. 2589 14 January 1967
16. WEST AFRICA No. 2589 14 January 1967 page 34
17. WEST AFRICA No. 2589 14 January 1967
18. DAILY GRAPHIC 28 March 1966
19. LEGON OBSERVER 19 August 1966
20. LEGON OBSERVER 30 September 1966
21. LEGON OBSERVER 14 October 1966
22. NLCD 92:1966
23. Paragraph 1 Decree 92 of 1966
24. Decree No. 17 of 1967
25. Section 1(1) of Decree 17:1967
26. Section 2 Decree No. 44:1966
27. ROBERT PINKNEY "GHANA UNDER MILITARY RULE 1966-9"-
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28. NIGERIA WEEKLY Volume 1 No. 13, 14th October 1966
29. DAILY GRAPHIC 27 May 1967
30. ROBERT PINKNEY "GHANA UNDER MILITARY RULE 1966-9" -
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31. ERNEST LEFEVER "ARMY, POLICE AND POLITICS IN
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32. E. LEFEVER "ARMY, POLICE AND POLITICS IN TROPICAL
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33. "GHANA UNDER MILITARY RULE 1966-9" pages 45-6
34. LEFEVER "ARMY, POLICE AND POLITICS IN TROPICAL
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35. AFRICA RESEARCH BULLETIN 1966 page 564
36. AFRICA RESEARCH BULLETIN 1966 page 472
37. AFRICA RESEARCH BULLETIN 1966

38. AFRICA RESEARCH BULLETIN 1967 page 711
39. AFRICA RESEARCH BULLETIN 1971 page 2150
40. WEST AFRICA - 7th October 1974 page 1236
41. WEST AFRICA - 2nd September 1974
42. WEST AFRICA 9th September 1974 page 1117
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1. Articles 15 and 24 of the Zambian Constitution, Also Section 21 of 1963 Federal Constitution of Nigeria.
2. SECTION 27, 1963 NIGERIAN CONSTITUTION, ALSO ARTICLE 24 ZAMBIAN CONSTITUTION.
3. Article 26A of the Constitution of Zambia
4. ERNEST, LEFEVER "ARMY, POLICE AND POLITICS IN TROPICAL AFRICA" page 63
5. E. LEFEVER "ARMY, POLICE AND POLITICS IN TROPICAL AFRICA", page 62 Also NLCD 161 and NLCD 164, PROTECTIVE CUSTODY (CONSOLIDATION) (AMENDMENT) No. 77
6. WEST AFRICA No. 2609 June 31, 1967
7. E. LEFEVER "ARMY, POLICE AND POLITICS IN TROPICAL AFRICA" page 62
8. Paragraph 3(1) of Decree 149 of 1967 (Ghana)
9. NLCD 111 - Protective Custody (CONSOLIDATION) Decree 1966 paragraph 2.
10. Section 2 Decree No. 3 of 1966 (Nigeria).

11. Section 3(c) Decree 3/1966
12. Section 3(d) Decree 3/1966
13. SECTION 1 Decree No. 3 of 1966
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15. Section 1 Decree No. 4 of 1966
16. See Section 18 of Decree 4/1966
17. See Section 3(1) *ibid*

CHAPTER VIII

1. "ARMY, POLICE AND POLITICS IN TROPICAL AFRICA -"
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2. SUPPRESSION OF ROBBERY DECREE, Decree No. 2: 1967
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3. ROBBERY AND FIREARMS (SPECIAL PROVISIONS) Decree
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7. WEST AFRICA June 17th 1974 No. 2974
8. AFRICA RESEARCH BULLETIN 1972
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10. Section 19(1) of the 1963 Federal Constitution of
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11. Volume VIII No. 4 of 1972
12. WEST AFRICA No. 2597 - March 1967
13. AFRICA RESEARCH BULLETIN 1971 at 2230.
14. TIMES OF ZAMBIA September 29, 1972
15. TIMES OF ZAMBIA March 27, 1972, April 28, 1972
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1. NLCD 40 of 1966
2. Paragraph I Decree No. 40:1966
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5. NLCD 72:1966
6. Paragraph 1(1) NLCD 72
7. Paragraph I Subparagraph (5)(a)(b) and (c) of
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8. NLCD 101 - paragraph I
9. Paragraph 2 subparagraph 2 NLCD 72
10. Paragraph 2(8) Decree 72, also paragraph 1(a) NLCD 253
11. Paragraph 2 subparagraph 8 NLCD 72
12. Paragraph 4 Decree 72:1966
13. NLCD 129 - paragraph 1
14. See Schedule to Investigation and Forfeiture of
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15. NLCD 40 - as amended from time to time
16. NLCD 7:1966 - amended from time to time - see NLCD 9, 10, 13, 24, 57, 60, 75, 79, 139, 142, 163, 169, 176, 216, 220, 248, 260, 272, 275
17. paragraphs 1 and 2 of Decree 7 of 1966
18. paragraph 3 Decree 7 of 1966
19. paragraphs 5 and 6 of Decree 7 of 1966
20. See Schedule to Decree 7:1966
21. See NLCD 9, 10, 13, 21, 24, 57, 60, 75, 79, 139, 142, 163, 169, 176, 216, 220, 248, 260, 272, and 275.
22. NLCD 10 - NLCD (Bank Accounts) (AMENDMENT) No. 2
23. NLCD (BANK ACCOUNTS) (AMENDMENT) No. 5 NLCD 248 paragraphs 1 and 2
24. NLCD 154
25. paragraph 5 subparagraph 6 of NLCD 154
26. NLCD 180
27. NLCD 180 - paragraph 1 subparagraphs 1 - 3
28. Decree No. 51:1966
29. Section 1 of Decree 51:1966
30. Section 2 Decree 51:1966
31. Section 6 Decree 51:1966
32. No. 37 of 1968
33. For example Section 6 of Decree 51, of 1966 became Section 13 of Decree 37:1968, Section 4 of Decree 51 of 1966 became Section 8 of Decree 37 of 1968
34. Section 6 Decree 37:1968

18. West Africa No. 2590 - 21 January, 1967
19. 212 U.S. (1909)
20. EXPARTE MILLIGAN 4 WALL 2(1866) at page 127
21. 327 U.S. 304
22. WEST AFRICA No. 2590 - 21 January 1967
23. See SUPPRESSION OF DISORDER DECREE 1966 and PUBLIC SECURITY DECREE 1967

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1. WEST AFRICA No. 2544 - 5th March 1966
2. WEST AFRICA No. 2544 - 5th March 1966
3. RADIO BROADCAST FEBRUARY 28, 1966. The text is in the "Rebirth of Ghana; The End of Tyranny" pages 22 - 30
4. E. LEFEVER "ARMY, POLICE AND POLITICS IN TROPICAL AFRICA" page 62
5. Preamble to Protective Custody Decree
6. Paragraph 1 of Decree NLCD 2/1966
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9. Section 3(a) Decree No. 3/1966
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11. Section 18 - Suppression of Disorder Decree

12. WEST AFRICA No. 25898 14th January 1967
13. Section 1(1) Decree No. 17/1967
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15. Section 5(1) Decree No. 4 of 1966 (Nigeria)
16. Section 6(2) Decree No. 4 of 1966 (Nigeria)
17. B.O. Nwabueze "CONSTITUTIONALISM IN THE EMERGENT STATES" page 249 E.F. LEFEVER "ARMY, POLICE AND POLITICS IN TROPICAL AFRICA" page 72.

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NLCD 154	Kwame Nkrumah Properties Decree.
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