



COMMISSION ON
HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE
(CHRAJ)

**IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE ACT 1993 (ACT 456).**

SUIT No.
COMPLAINANTS

1. SAMUEL OKUDZETO ABLAKWA
2. EMMANUEL ARMAH KOFI BUAH

VRS

RESPONDENTS

1. MINISTER OF INTERIOR
2. GHANA ARMED FORCES
3. GHANA POLICE SERVICE
4. MINISTER OF DEFENCE
5. INSPECTOR GENERAL OF POLICE
6. CHIEF OF DEFENCE STAFF

DECISION

1.0 INTRODUCTION

The Commission on the 26th day of August 2021 received a complaint from **Hon. SAMUEL OKUDZETO ABLAKWA AND Hon. EMMANUEL ARMAH KOFI BUAH** (herein after referred to as “the Complainants”) who are both Members of Parliament acting through their lawyer Cosmas Ampegnou Esq. The complaint is titled “**RE: INVESTIGATIONS INTO ELECTION VIOLENCE AND THE KILLING OF CITIZENS DURING THE 2020 PRESIDENTIAL AND PARLIAMENTARY ELECTIONS**”. The Complainants brought the complaint under Article 218(a) of the 1992 Constitution and section 7(1) (a) of the Commission on Human Rights and Administrative justice Act, 1993 (Act 456) and sought the following reliefs:

I. RELIEFS SOUGHT FROM THE COMMISSION

A. Investigation into the matters complained about

1. *In terms of the Commission's mandate provided for under article 218(a) of the Constitution, the complainants demand an investigation into the following:*
2. *The Complainants demand that the Commission conduct investigations into the NESTF's activities during the December 2020 elections at the Techiman South, Ododiodio, Ablekuma Central, and Savelugu Constituencies in the Bono East, Greater Accra Region, and Northern Regions of the Republic of Ghana.*
3. *The Complainants also demand that the investigation identify officials of the Ghana Police Service and Ghana Armed Forces responsible for the unlawful acts the subject matter of the present complaint and the persons under whose command and instructions they acted.*
4. *The Complainants finally demand that the investigation identify the role played by the Ministers of the Interior and Defense in terms of instructions and orders in relation to the conduct resulting in this complaint, and the lack of leadership or proper oversight to prevent, stop or respond in a manner to curb the violations that have occurred.*

B. Compensation

1. *In terms of the Commission's mandate under article 218(a) the Complainants demand that the Commission recommend that the Ghana Police Service and Ghana Armed Forces negotiate and reach an agreed sum as compensation with the victims and in appropriate cases, their personal representatives, or in the alternative, that the Commission recommends an amount as compensation to the victims or families of the victims.*

C. Disciplinary action and prosecution

1. *The Complainants also pray that upon identifying the officials responsible for the acts the subject matter of the instant complaint, that the Commission recommends appropriate disciplinary sanctions in accordance with law.*

2.0 SUMMARY OF COMPLAINT

Given the nature of the complaint the Commission has decided to reproduce it in extenso as a summary would not do justice to various allegations made against each of the Respondents jointly and severally.

II. “INTRODUCTION

A. Invoking the mandate of the Commission

1. Regulation 1 of the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C.I. 67) requires that constitutional mandate of the Commission on Human Rights and Administrative Justice be invoked by complaint to the Commission. **See Regulation 1 (1) of CI 67.**
2. For the sake of convenience, we shall hereafter refer to the Commission on Human Rights and Administrative Justice simply as the “Commission” and the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C.I. 67) as “CI 67” or “the regulations”.
3. The law is that the use of the word “complaints” in article 218 (a) of the 1992 Constitution is “limited to formal complaints made to the Commission...” **See: Republic v High Court (Fast Track Division) Accra; Ex parte Commission Human Rights and Administrative Justice (Richard Anane-Interested Party) [2007-2008] 1 SCGLR 213.** It is for this reason the instant complaint is formally lodged in this manner.

B. Complainants and capacity

1. In the case of Republic v High Court (Fast Track Division) Accra; Ex parte Commission Human Rights and Administrative Justice (Richard Anane-Interested Party) [2007-2008] 1 SCGLR 213 at page 260, the Supreme Court held that the formal complaint required to invoke the mandate of the Commission may be made “by an identifiable Complainant; **not necessarily the victim**, but an identifiable complainant, armed with the complaint.” **Id at page 260.**
2. The complainants in this matter are Mr. Samuel Okudzeto Ablawa who is the Member of Parliament for the North Tongu Constituency in the Volta Region of the Republic of Ghana and Mr. Emmanuel Armah-Kofi Buah also Member of Parliament for the Ellembele Constituency in the Western Region of the Republic of Ghana.
3. The instant complaint is lodged by COSMAS AMPENGNUO, ESQ., of Messrs. BAYONG LAW CONSULT for and on behalf of the complainants.

For this reason, although the contact address of the complainants as required by the provisions of regulation 2(1) of CI 67 will be stated hereafter, all communication and/ or correspondences regarding and in connection with the instant complaint should be addressed to the complainants' lawyer, COSMAS AMPENGNUO, ESQ. whose address is; BAYONG LAW CONSULT, 23 OROKO AVENUE, KOKOMLEMLE, ACCRA.

4. *The contact address of the complainants is;*
PARLIAMENT OF GHANA,
PARLIAMENT HOUSE,
OSU, ACCRA.
5. *The address above provided is to ensure compliance with the provision of CI 67. It is repeated however that all correspondences and communication relating to the instant matter be directed at the complainants' lawyers.*

C. Bodies and Officials against whom the complaints is lodged

1. *The complaint is lodged against, the Minister of the Interior, the Minister of Defence as well as the Ghana Police Service and the Ghana Armed Forces respectively.*
2. *The Minister for the Interior is the appointee of His Excellency the President of the Republic of Ghana and has oversight responsibility for the Ghana Police Service.*
3. *The Minister of Defence is the appointee of His Excellency the President of the Republic of Ghana and has oversight responsibility for the Ghana Armed Forces.*
4. *The Inspector-General of the Ghana Police Service is by virtue of article 202 of the 1992 Constitution, the head of the Police Service "responsible for the operational control" and "the administration" of the Police Service.*
5. *The Chief of Defense Staff is by virtue of article 213 of the 1992 Constitution, responsible for the operational control and command of the Ghana Armed Forces.*

III. PARTICULARS OF COMPLAINT

A. National Election Security Taskforce (NESTF)

1. *During the general elections held in the Republic of Ghana in or about December 7, 2020, the Ghana Police Service and the Ghana Armed Forces established a National Election Security Taskforce (NESTF) to support the effort to ensure smooth and transparent conduct of the said elections. This was necessary for purposes of safeguarding the democratic values and principles of free and fair elections.*
2. *This effort was also necessary to provide citizens of the Republic of Ghana including voters with security during the conduct of the elections.*
3. *Apart from the NESTF, there were other members of the Police Service and Ghana Armed Forces who played diverse roles during the period of the 2020 Presidential and Parliamentary elections.*
4. *The complaint is restricted to the Techiman South, Ododiodio, Ablekuma Central, and Savelugu Constituencies in the Bono East, Greater Accra Region and Northern Regions of the Republic of Ghana respectively.*
5. *The complaint relates to the manner in which the Ghana Police Service and the Ghana Armed Forces discharged their Constitutional and Statutory mandates in the Constituencies mentioned above.*
6. *In the case of the Ghana Armed Forces, their conduct in furtherance of the purpose of the NESTF did not promote the development of Ghana as prescribed by article 210(3) of the 1992 Constitution, as their conduct caused damage to life, limb and property.*
7. *Regarding the Ghana Police Service, the manner in which they carried out their functions to further the purpose of the NESTF undermined their constitutional obligation under article 200(3) of performing their “traditional role of maintaining law and order.”*

B. Techiman South Constituency

1. *At about 3:00pm [15:00 hours GMT], on the 8th day of December 2020, armed officers attacked, violently abused, and in some instances killed civilians in the Techiman South Constituency. The victims of their actions were unarmed civilians who had turned out peacefully in front of the Brokyepem Hall close to the Municipal Assembly to exercise their franchise.*

2. *The officers carried out the acts referred to in paragraph 1 above, by indiscriminately shooting into the crowd of voters and observers at the said polling station. It is important to underscore the fact that at the time the uniformed officers decided to, and indeed indiscriminately shot at the voters and observers at the Brokyepem Hall in the Techiman South Constituency, there was no imminent and compelling threat to justify the use of, let alone the excessive and rather reckless use of such force against the unarmed civilians who were lawfully exercising their constitutional right at the polls.*
3. *The result of their actions was death caused to the following individuals.*
 - i. *39 years old Tajudeen Alhassan and*
 - ii. *18 years old Abdallah Ayaric.*
4. *Apart from causing death of the two above mentioned, the officers also unlawfully assaulted and battered civilians gathered in front of the Brokyepem Hall close to the Techiman Municipal Assembly. Amongst the injured were;*
 - i. *Alhassan Nasiru*
 - ii. *Abubakar Iddris*
 - iii. *Paul Asue*
 - iv. *Shaibu Bani*
 - v. *Jadalhak Iddris*
 - vi. *Aremeyaw Alhassan and*
 - vii. *Sulemana Eliasu.*

C. Odododiodio Constituency

1. *On the same day (8th day of December 2020) the uniformed officers employed unreasonable and unjustifiable force in the discharge of their functions by discharging tear gas and apprehending persons who were resident in a hotel known as Modak Hotel at the Bombay Korle Wokon area and against whom no crime was alleged.*
2. *The acts of these uniformed officers resulted in the death of two persons namely;*
 - i. *36 years old Emmanuel Dompere and*
 - ii. *15 years old Rita Otoo.*
3. *The armed officers executed these acts in clear breach of the statutory procedure for arrest and needlessly visited upon unarmed and peaceful civilians, acts of brutality resulting in death and injuries to others.*

D. Savelugu Constituency

1. *In the Savelugu Constituency two young persons, were shot and killed by armed officers on the 8th day of December 2020 without any provocation whatsoever. These young persons are;*
 - i. *14 years old Samira Zakaria, and*
 - ii. *15 years old Fuseini Musah.*

E. Ablekuma Central Constituency

1. *In this Constituency, at the Odorkor Police Church Collation Centre;*
 - I. *Thirty (30) years old Ibrahim Abbas was shot dead.*
 - II. *A level 300 student journalist at the Ghana Institute of Journalism by name Pious Kwanin Asiedu was also shot and injured.*
2. *Like the other shooting incidents, there was no justification for this clear violation of their (the officers) mandate to provide and safeguard the security of citizens who legitimately came to the polling station to vote and observe the polls.*

F. Evidence supporting the acts complained about.

1. *Attached to this complaint are;*
 - i. *Medical reports for Aremeyaw Alhassan, Mohammed Tajudeen, Paul Asue, Sulemana Elliasu, Abubakari Iddrisu, Abdallah Ayaric, Alhassan Abdul-Rahman, and Alhassan Nasiru are attached hereto and marked A1, A2, A3, A4, A5, A6, A7 and A8 respectively.*
 - ii. *Statement dated 10th December, 2020 issued by National Election Security Taskforce (NESTF) as reproduced by Citi News Room marked B1.*
 - iii. *Media reports from Citi newsroom and the website named pulse.com.gh attached hereto and marked "B2" and "B3".*
 - iv. *Video footages on some of the incidents contained in a pen drive attached hereto and marked "C". its contents include:*
 - a. *A Citi TV Video report on the inauguration of the NESTF.*

- b. *New report by TV3 showing chaos with sounds believed to be from gunshots at the Ablekuma Central Collation Centre.*
 - c. *A Citi TV newsroom report on updates from Court proceedings following the shooting incident at Ablekuma Central.*
 - d. *A Citi TV report on the chaos at the Odorkor Police Church Collation Centre.*
 - e. *A Joy news video report on the Ablekuma Central incident.*
 - f. *A Citi TV video report on the Techiman South incident.*
 - g. *An amateur video showing victims of the Techiman South shootings.*
 - h. *An Ohbraa Tv video showing victims of the Techiman South shootings.*
 - i. *A Hitz 103. 9FM video showing armed uniformed officers firing into a crowd at the Techiman South Collation Centre.*
 - v. *A police report signed by C/Supt. Alhaji Huseini M. Awinaba dated that 9th of February 2021 in respect of the Techiman South Constituency shooting incident marked "D".*
 - vi. *Witnesses will be called to testify and corroborate the facts contained herein.*
2. *A review of the documents and video footages which accompany this complaint will show that, the victims were indeed injured and killed by the direct conduct or actions of uniformed officers and the NESTF during the period of the December 2020 Presidential and Parliamentary elections.*
 3. *The evidence will also point to a display of needless and unjustifiable brute and excessive force incommensurate with the actual threat with disregard for other less fatal options for the purpose.*

IV. CASE FOR INVESTIGATIONS

A. Mandate of the Commission

1. *Under and by virtue of the provisions of article 218(a) of the 1992 Constitution, the functions of the Commission are described as inclusive of the duty to investigate complaints of violations of:*
 - i. *Fundamental right and freedoms,*
 - ii. *Injustice,*
 - iii. *Abuse of power, and*
 - iv. *Unfair treatment of any person.*
2. *The matters above specified, and which fall within the Commission's Constitutional mandate to investigate must arise from acts "by a public officer in the exercise of his official duties".*
3. *It has already been stated above that the Ghana Police Service and the Ghana Armed Forces, formed the NESTF for purposes of assisting in the conduct of free, fair and transparent elections during the general elections of December 2020.*
4. *It has also been established that aside the NESTF, other uniformed officers from both the police service and military played diverse roles during the period of the elections.*
5. *In carrying out the functions entrusted to the NESTF therefore, there can be no doubt whatsoever that the NESTF carried out those functions as "public officers[s] in the exercise of [their] official duties".*
6. *The acts alleged against the NESTF who are, members of the Ghana Police Service, and the Ghana Armed Forces put it beyond every doubt whatsoever that in the purported exercise of their official duties, the NESTF and other officers violated;*
 - i. *The fundamental right and freedoms of the victims mentioned in this complaint.*
 - ii. *Caused them injustice.*
 - iii. *Treated them unfairly, and*
 - iv. *Abused their power.*
7. *The matter above mentioned undoubtedly fall within the constitutional mandate of the Commission to investigate.*

B. The Ghana Police Service

1. *In the case of the Ghana Police Service, the fact that they abused their power apart, the Ghana Police Service, is constitutionally and statutorily established to “prevent and detect crime, apprehend offenders, and maintain public order and the safety of persons and property.” See article 200 of the 1992 constitution and Section 1(1) of the Ghana Police Service Act, 1970 (Act 350).*
2. *In so far as the acts on which this complaint is lodged are concerned, the Ghana Police Service has a constitutional and statutory obligation to have ensured that in the discharge of the official duties of the NESTF,*
 - i. *The safety of persons was maintained.*
 - ii. *Detected and acted on the crimes of murder and assault committed against citizens; and*
 - iii. *Apprehended all members of the NESTF who engaged in such crimes.*
3. *The failure to carry out their constitutional and statutory functions above set out resulted in a further breach of article 12(1) of the 1992 Constitution of the Republic of Ghana. This Constitutional provision requires that “the Executive, Legislature, Judiciary, and all other organs of government and its agencies” respect and uphold the fundamental human rights and freedoms enshrined in the Constitution.*
4. *In the light of the constitutional provision just referred to, the Ghana Police Service is not only under a burden or obligation to have avoided all acts which undermined the fundamental human rights of the victims mentioned in the complaint but also had a responsibility to have used its constitutional and statutory powers to ensure that their rights were not violated.*

C. The Ghana Armed Forces

1. *In the case of the Ghana Armed Forces, it suffices to refer to the provisions of article 12(1) discussed in relation to the police service. In the discharge of their obligations, they not only owed a duty to;*
2. *The Ghana Armed Forces also ought to have been mindful of their constitutional obligations as an “organ[s] of government” to respect and uphold the fundamental human rights and freedoms enshrined in the Constitution.*

3. *The direct engagement of the Ghana Armed Forces in the matters the subject matter of the instant complaint certainly falls within the constitutional mandate of the Commission to investigate.*

V. RELIEFS SOUGHT FROM THE COMMISSION

D. Investigation into the matters complained about

5. *In terms of the commission's mandate provided for under article 218(a) of the constitution, the complainants demand an investigation into the following:*
6. *The Complainants demand that the Commission conduct investigations into the NESTF's activities during the December 2020 elections at the Techiman South, Odododiodio, Ablekuma Central, and Savelugu Constituencies in the Bono East, Greater Accra Region, and Northern Regions of the Republic of Ghana.*
7. *The Complaints also demand that the investigation identify officials of the Ghana Police Service and Ghana Armed Forces responsible for the unlawful acts the subject matter of the present complaint and the persons under whose command and instructions they acted.*
8. *The Complainants finally demand that the investigation identify the role played by the Ministers of the Interior and Defence in terms of instructions and orders in relation to the conduct resulting in this complaint, and the lack of leadership or proper oversight to prevent, stop or respond in a manner to curb the violations that have occurred.*

E. Compensation

2. *In terms of the Commission's mandate under article 218(a) the Complainants demand that the Commission recommend that the Ghana Police Service and Ghana Armed Forces negotiate and reach an agreed sum as compensation with the victims and in appropriate cases, their personal representatives, or in the alternative, that the Commission recommends an amount as compensation to the victims or families of the victims.*

F. Disciplinary action and prosecution

2. *The Complainants also pray that upon identifying the officials responsible for the acts the subject matter of the instant complaint, that the Commission recommends appropriate disciplinary sanctions in accordance with law.*

VI. CONCLUSION

1. *The Complainants herein bring this matter before the Commission based on the Commission's legal mandate to investigate the conduct of the security officers complained about in the instant petition in a timeous manner for justice to prevail for the victims and their families.*
2. *It is instructive to note that the Ministers holding the portfolios of Defense and Interior, as well as the Chief of Defense Staff [with two other members of the Armed Forces] and the Inspector-General of Police [also with two other members of the Police Service] are members of the National Security Council. See article 83(1)(c), (d) and (e) of the 1992 Constitution.*
3. *The functions of the National Security Council include among others considering and taking appropriate measures to safeguard the internal security of Ghana and indeed ensuring the collection of information relating to the security of Ghana and integration of the domestic security polices relating to it so as to enable the security services and other departments and agencies of the Government to cooperate more effectively in matters relating to national security. See article 83(2)(a) and (b) of the 1992 Constitution. The Respondents to this complaint who are all members of the National Security Council, all failed the Republic of Ghana in this regard."*

COMMENTS FROM RESPONDENTS

Regulation 3 of C.I.67_Commission on Human Rights and Administrative Justice (Investigation Procedure) Regulations, 2010 (C.I.67) provides as follows:

1. *the Commission shall transmit a copy of the complaint to and request a response from*
 - a. *a person against whom the complaint is made, and*
 - b. *the head of the body or organization of the person against whom the complaint is made after receiving a complaint that is within the mandate of the Commission.*
2. *The person against whom the complaint is made or the head of the body or organization of the person against whom the complaint is made shall submit a response to the Commission.*
3. *The Commission or a representative of the Commissioner may conduct preliminary investigations into a complaint lodged with the Commission.*

the Commission, after assessing the complaint requested comments or responses from the Respondents. The Commission received responses from the Ghana Police Service on the 14th of October 2021 indicating that the allegations as stated in the complaint are currently being prosecuted by the Attorney General's Department and that the Inspector-General of Police has also directed that Directors-General of Legal and Prosecution and the Criminal Investigations Department liaise with the Attorney-General on their status.

3.0 THE MANDATE OF THE COMMISSION

Article 218(a) of the 1992 Constitution and Section 7(1) (a) of Act 456 stipulates the functions of the Commission as follows:

Article 218 "The functions of the Commission shall be defined and prescribed by an Act of Parliament and shall include the duty-

- (a) To investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties"

7(1) *"In accordance with article 218 of the Constitution, the functions of the Commission are-*

- (a) *"to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power, and unfair treatment of any person by a public officer in the exercise of official duties"*
- (b) *"to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Coordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services, or equal access by all to the recruitment of those services or fair administration in relation to those services"*

Also, article 12(2) provides:

every person in Ghana whatever his race, place of origin, political opinion, creed or gender shall be entitled to the fundamental human

rights and freedoms of the individual contained in this chapter but subject to the respect for the rights and freedoms of others and for the public interest.

Similarly, article 13(1) states

No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.

The instant complaint borders on the protection of the right to life and respect for human dignity which are fundamental human rights. The combined effect of Articles 218(a) and (b) 12(2) and 13(1) of the Constitution 1992, Sections 7(1) (a) and (b) of Act 456 is that the Commission as the national human rights institution has the mandate or jurisdiction to investigate allegations of human rights violations on the basis of a complaint filed before it by an identifiable individuals or persons and to that extent therefore, the Commission's mandate has been properly invoked by the Complainants.

5.0. METHOD OF INVESTIGATION

The Commission conducted these investigations in accordance with Sections 14 of the CHRAJ Act, 1993 (Act 456) and the CHRAJ (Investigations Procedure) Regulations 2010 (C.I.67). The approach adopted in this preliminary investigation included review of the Complaint and Comments from Respondents and a plethora of documents from the Respondents as well as copies of documents from the Office of the Attorney-General and the High Courts in Wenchi, Tamale and Accra.

6 .0. PRELIMINARY INVESTIGATION

The Commission after receiving the comments from the Ghana Police Service on 14th October 2021 signed by Chief Staff Officer Alex Kwame Safo-Adu on behalf of the Inspector-General of Police to the effect that ***"I am directed by the Inspector-General of Police to respectfully convey that the complaints as stated in the petition is (sic) currently being prosecuted by the Attorney-General's Department"***, followed later by another letter to the Commissioner from the Ghana Police Service on the 12th January 2022 under the signature of DCOP W.B Frimpong on behalf of the Director-General Legal and Prosecutions, the Commission decided to conduct preliminary investigations to ascertain and to satisfy itself whether the ouster provisions in Article 219 of the Constitution, 1992

and section 8(2) of Act 456 as implied in the response of the Ghana Police Service applies to the instant complaint.

Article 219 (2) mandatorily provides that, the Commissioner shall not investigate:

- a. a matter which is pending before a court or judicial tribunal;*
- b. a matter involving the relations or dealings between the Government and any other Government or an international organization; or*
- c. a matter relating to the exercise of the prerogative of mercy.*

This same provision is captured under section 8(2)(a) of Act 456

In addition, section 13(1) of Act 456, provides:

*(1) The Commission may **refuse to investigate** a matter where in the course of the investigation of the complaint it appears to the Commission*

(a) that under the law or existing administrative practice there is adequate remedy for the complaint, whether or not the complainant has availed himself of it; or

(b) that having regard to all the circumstances of the case, a further investigation is not necessary.

Based on the responses received from the Ghana Police Service, and in accordance with the provisions of Section 14(4) of Act 456,(1) which provides that *without prejudice to the generality of this section, the Commission may obtain information from any other person and in the manner, and make the inquiries, that it considers necessary* the Commission requested in writing documents from a number of institutions including High Court Wenchi, Accra, Tamale, and Attorney General's Office, Accra.

ISSUE FOR DETERMINATION

The main issue at this stage of the investigation for determination is:

(1) Whether or not the subject matters in the instant complaint are in fact pending before a court or other judicial tribunal

SUMMARY OF EVIDENCE AND DOCUMENTS RELIED ON.

The Commission relied on the following documents:

6.1. Written Complaint from the complainants with the following annexures.

- a. Medical Reports marked as exhibit **A1, A2, A3, A4, A5, A6, A7 & A8**
- b. Statement issued by NESTF on 10th December 2020 marked as **Exh. B1**
- c. Media Reports marked as **B2 & B3**
- d. Video footage of some incidents marked **Exhibit C**
- e. Police report by C/Supt Alhaji Huseini Awinaba from Techiman marked **Exhibit D**

6.2. Comments or responses from the Attorney- General's Department and the Ghana Police Service

6.3. Court Records and processes.

Below is a summary of the review of records obtained from the courts, and the Offices of Attorney General's Department Accra and Tamale.

a. HIGH COURT, WENCHI.

Records received from the High Court, Wenchi, revealed that some of the victims from Techiman South in the complaint before the Commission are in fact before the court seeking some remedies either personally or by their personal representatives or family members. One of such being **suit number C12/10/21** which is an Originating Motion with **Edmond Ayarek** as the Applicant. He brings the action in his capacity as the father of **Abdallah Ayarek** (deceased).

The reliefs being sought by the applicant include:

2. An order directed at the State

a. to investigate the killing of Abdallah Ayarek as soon as possible, find the perpetrator (s) of the killing and punish them in accordance with law.

b. To pay the Applicant an amount of Ten million Ghana Cedis (Gh10,000,000) as compensation for the psychological trauma the death Of Abdallah Ayarik brought upon the Applicant and his family.

Furthermore, the Commission received a copy of an originating motion on notice issued by **Hawa Musah** in her capacity as the mother of **TAJUDEEN MUHAMMED** (deceased) and **Mukarrama Tajudeen** in her capacity as the widow

of *Tajudeen Muhammed* and as guardian ad litem of *Hawa Muhammed, Aisha Muhammed, Abdul Hamid Muhammed and Hajara Muhammed* with suit No. C12/9/21

In the above action the reliefs being sought include:

2. An order directed at the State:

- a. To investigate the killing of *Tajudeen Muhammed* as soon as possible, find the perpetrators of the killing and punish them accordance with the law.**
- b. To pay the Applicants an amount of Ten million Ghana Cedis (Ghc10,000,000.) as compensation for the trauma and economic hardship the death of *Tajudeen Muhammed* brought upon his children and the Applicants herein.**

The 3rd action is also an Originating motion on notice with *Sulemana Elliasu, Abubakari Iddrisu, Alhassan Nasiru, Aremeaw Alhassan, Alhassan Abdul-Rahman* and *Paul Asue* as applicants and numbered as C12/08/21

The reliefs being sought include:

2. An order directed at the state

a. To investigate the said infliction of injuries on *Sulemana Elliasu Abubakari Iddrisu, Alhassan Nasiru, Aremeaw Alhassan and Alhassan Abdul-Rahman and Paul Asue* as soon as possible, find the perpetrator(s) of the afflictions and punish them in accordance with law.

b. To pay

i. *Sulemana Eliasu* an amount of five million Ghana cedis (5,000,000) as compensation for agony from torture, inhuman and degrading treatment, psychological trauma and for being rendered disabled with almost no existent prospect and ability to work and earn a living.

ii. Each and every applicant herein (other than *Sulemana Iddrissu*) an amount of two million Ghana Cedis (GHc2,000,000) as compensation for agony from torture, inhuman and degrading treatment, psychological trauma and diminished prospects and ability to work and earn a living.

b. ODODODIODIO CONSTITUENCY

For the Odododiodio Constituency, the Commission received a letter from the Police headquarters indicating that the complaint before the Commission was being prosecuted by the Attorney General and attached reports indicating that the matter was indeed before the courts.

To be more precise, there is a criminal prosecution on going between the Republic vrs L/CPL Ishmael Akai Nartey and Mawuku Nyarko Dompseh Alias Nii Oship II. The facts as contained in the records received from the Ghana Police Service reveal that the two persons are in court answering to charges which relate to the death *of Dompseh Emmanuel and Rita Otoo*, victims mentioned in the instant complaint before the Commission.

c. ABLEKUMA CENTRAL CONSTITUENCY

With regards to the Ablekuma Central Constituency, the Commission received a letter dated 12th January 2022 from the Ghana Police Service and an attached report on the matter between the **Republic vrs Collins Quarcoo**. In this case, the victims are *Police Inspector Nixon Awuni, Rashid Umar and Pious Kwanin Asiedu a level 300 student journalist*. It is worth mentioning that Pious Kwanin Asiedu is one of the victims in the instant complaint before the Commission.

d. SAVELUGU CONSTITUENCY

In respect of the incidence at Savelugu Constituency, the Commission received a copy of a bill of indictment from the Tamale High court entitled the *Republic vrs Naa Mohammed Ahmed and Hon. Abdulai Jacob Iddriss*. The accused persons were charged with various counts of unlawful possession of arms and not directly being tried for formenting any violence during the elections. The Commission further requested information from the Attorney General's Office concerning the death of Zakaria Samira and Fuseni Musah (both deceased) the Commission received a letter dated 30th March 2023 from the Northern Regional Police Command to the effect that it had forwarded a docket in respect of the death of Zakaria Samira to the Attorney-General's Department for study and legal opinion. The suspects in the matter intituled **The Republic vrs. 1. Naa Mohammed Ahmed, 2. Hon. Abdulai Jacob Iddris** upon a study of the case docket, the Law Office directed the Police Command to grant the suspects their liberty, because the evidence on record did not disclose any nexus between the suspect and the death of Zakaria Samira. The letter stated that no case docket was forwarded to the Law Office in respect of the death of Fuseni Musah.

8.0. ANALYSIS OF THE ISSUE

(1) Whether or not the subject matters in the instant complaint are in fact pending before a court or other judicial tribunal

The Commission on human rights and administrative justice is a creature of the Constitution, 1992 and of statute, Act 456 of 1993.

The functions of the Commission are provided in Article 218 and for the purpose of this decision, article 218(a) (b) and (c) which relate to the complaint before the Commission provide:

218. The functions of the Commission shall be defined and prescribed by Act of Parliament and shall include the duty-

(a). To investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;

(b)to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Coordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services, or equal access by all to the recruitment of those services or fair administration in relation to those services”

(c). To investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution;

Despite these very broad functions, the Commission’s powers are expressly curtailed in the same Constitution under circumstances.

Article 219 (2) provides that, The Commissioner **shall not** investigate-

- (a) **a matter which is pending before a court or judicial tribunal;** or
- (b) *a matter involving the relations or dealings between the Government and any other Government or an international organization; or*
- (c) *a matter relating to the exercise of the prerogative of mercy.*

Also, section 13(1) of Act 456 gives the Commission some discretionary powers to refuse or cease to investigate complaints in certain circumstances. Section 13(1) provide as follows:

(1) *The Commission may **refuse to investigate** a matter where in the course of the investigation of the complaint it appears to the Commission*

- (a) that under the law or existing administrative practice there is adequate remedy for the complaint, whether or not the complainant has availed himself of it; or*
- (b) that having regard to all the circumstances of the case, a further investigation is not necessary.*

The instant complaint is pivoted around the allegation of violation of the right to life and/or causing bodily injury in respect of the victims stated therein by public officers under the command and control of the Respondents in the complaint.

Article 13 of the Constitution, 1992 of Ghana protects the right to life of all persons. It provides as follows:

- 1. No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.*
- 2. A person shall not be held to have deprived another person of his life in contravention of clause (1) of this article if that other person dies as the result of a lawful act of war or if that other person dies as the result of the use of force to such an extent as is reasonably justifiable in the particular circumstances*
 - a. for the defense of any person from violence or for the defense of property; or*
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or,*
 - c. for the purposes of suppressing a riot, insurrection or mutiny; or*
 - d. in order to prevent the commission of a crime by that person.*

According to the Complainants, some members of the **Techiman South Constituency** as well as the **Odododiodo** and the **Ablekuma Central** Constituencies lost their lives as a result of the activities of the Respondents in those constituencies during the 2020 general elections. To be precise, Complainants allege that *Abdallah Ayarek* and *Tajudeen Muhammed* were killed while *Sulemana Elliasu Abubakari Iddrisu*, *Alhassan Nasiru*, *Areameaw Alhassan* and *Alhassan Abdul-Rahman* and *Paul Asue* were injured in the Techiman South Constituency.

Also, *Emmanuel Dompreeh* and *Rita Otoo* were killed in the Odododiodoo Constituency by gunmen believed to be working with the Respondents while *Ibrahim Abbas* was shot and killed and *Pious Kwamin Asiedu* a level 300 student at the Ghana Institute of Journalism was shot and injured in the Ablekuma Central Constituency.

The Complainants further sought some reliefs for the victims which have been reproduced in the opening paragraphs of this decision.

A careful perusal of the complaint and its attachments as well as the court processes received from the **Wenchi High Court**, reveal that all the names of the victims the Complainants set out in their complaint in respect of the **Techiman South Constituency** except Shaibu Bani and Jadalkak are already before the court in a number of originating motions on Notice filed by relations on their behalf seeking reliefs similar to the reliefs being sought by the Complainants before the Commission which means that the cases are **pending before the High Court, Wenchi**. The Commission is of the considered view that the outcome of the case before the High Court, Wenchi, would have some consequential effect on the others who have not brought actions before the court since the reliefs sought if granted will have a direct effect on them. The facts and reliefs of this aspect of the case have already been set out in extenso supra.

Similarly, with regards to Odododiodio and Ablekuma Central, the correspondence and documents received from the Ghana Police Service indicate that there is an ongoing criminal prosecution pending before the courts based on the same facts presented to the Commission regarding events in the Odododiodio constituency that resulted in the death of *Dompreeh Emmanuel* and *Rita Otoo* and Ablekuma Central Constituencies.

It is trite that the Complainants allege violation of the fundamental human rights of the victims in this complaint and bring same pursuant to provisions under the

Constitution of Ghana and require the Commission to conduct investigations into same. However, before the Commission can do so, it must first determine whether the subject matter of the complaint are matters that are caught by Article 219 (2) of the Constitution, 1992 and section 8(2) (a) of Act 456 which mandatorily state that ***‘ the Commission shall not investigate a matter which is pending before a court or judicial tribunal’*** In this instance the matters are “pending before a court(High court)

The issue as to whether or not a matter is said to be “pending before a court” fortunately has been interpreted by the Supreme Court in exercise of its special and exclusive jurisdiction in the case of Republic v Adu Boahen and Kwesi Pratt {1993-1994} SC 2 GLR 324 already. This is one of the earliest cases in which the Supreme Court had to exercise its exclusive interpretative jurisdiction under the Constitution, 1992, upon a case stated from the then National Public Tribunal for the determination of the Supreme Court as to the true interpretation of section 7 (1), (3) and (4) of the transitional provisions of the Constitution, 1992.

Section 7(4) which is germane to this case specifically provides:

(4) “All cases other than those referred to in subsection (1) of this section pending before the National Public Tribunal immediately before the coming into force of this Constitution, shall be transferred to such court or tribunal as the Chief Justice may direct”.

Francois JSC, who presided over the panel and delivered the lead judgement of the court stated as follows:

“The term **“pending”** can boast of compendious glossary. Restricting ourselves to a few authorities, we note in Awoonor Renner v Thensu (1930) 1WACA 77 that the justices of the West African Court of Appeal indorsed Jessel M.R’s definition in Fordham v Clagett (1882) 20 ChD 637 at 653 that:

“A cause is said to be pending in a Court of justice when any proceeding can be taken in it. That is the test. If you can take any proceeding it is pending. “pending” does not mean that it has not been tried. It may have been tried years ago. In fact, in the days of the old Court of Chancery, we were familiar with cases which had been tried fifty or even one hundred years before, and which were still pending. Sometimes, no doubt, they require a process which we call reviving, but which the Scotch call waking up; but nevertheless they were pending suits....”

This interpretation was adopted by the Court of Appeal, then the Highest Court in Ghana in the hierarchy of courts in the case of *CFAO V Zacca* [1972] 1 GLR 366, CA. In this case Sowah J.A in giving the judgment of the Majority cited with approval the definition of the word “pending” in the case of *Awoonor Renner v Thensu WACA* already cited above which adopted the definition of “pending” earlier given to the word “pending” by Jessel M.R in the Chancery Division case of *Fordham v Clagett* already cited.

Applying the position of the law as interpreted by the Supreme Court in *The Republic V Adu Boahen and Kwesi Pratt* in the case stated from the National Public Tribunal to the Supreme Court to give answers to section 7(4) of the transitional provisions to the Constitution, 1992 especially as to the meaning of the word “pending” there is no doubt that the preliminary investigations undertaken by the Commission has found as a fact that the subject matter of Complainants complaint are “pending” before a Court either at Wenchi High Court, Tamale or Accra High Courts either as civil actions by way of originating motions or criminal prosecutions involving the alleged perpetrators filed either by relations of the victims or by the State.

What then should the Commission do now that it has found as a fact that the subject matter of the Complaint the Commission is called upon to investigate by the Complainants are “pending before a court”?

It is the considered view of the Commission as a creature of the Constitution and statute that it can only exercise the mandate clearly and expressly conferred on it. Where the intention of the Framers of the Constitution, 1992 and that of Parliament as in section 8 (2)(a) of Act 456 is very clear, and as lucidly expounded by the Courts over a considerable period of time starting from the received common law in the case of *Fordham v Clagett* to the *WACA* case of *Awoonor Renner v Thensu* to the Court of Appeal case in 1972, then as the highest court of the land in *CFAO V Zacca* and finally to the case of the first Supreme Court as constituted under the Constitution, 1992 in *The Republic v Adu Boahen and Kwesi Pratt* as to the signification of the word “pending” in section 7(4) of the Transitional Provisions to the Constitution, 1992, it is the duty of the Commission to respect the definition of “pending” as it appears in article 219 (2) (a) and section 8 (2)(a) of Act 456 as interpreted by the Supreme Court and to apply it to the facts of this case.

Since the subject matters of the complaint are pending in one court or the other nationwide and going through the judicial processes, it is the considered view of the

Commission that its jurisdiction/mandate is clearly ousted by Article 219(2)(a) which expressly states:

“The Commissioner shall not investigate –

(a) A matter which is pending before a court or judicial tribunal”

9.0 FINDINGS

At the end of the preliminary investigations, the Commission finds as a fact that as at the date the complaint was received by the Commission,

1. The victims in the Techiman South Constituency by their lawyer, Abraham Amaliba Esq, were before the High Court, Wenchi seeking same or similar reliefs as the complainants in this case.
2. The Commission finds that the Respondents as representatives of the State in the cases pending before the Wenchi High Court are the same as those before the Commission.
3. The Commission also finds that the reliefs being sought at the Court are same or similar to those being sought by the Complainants.
4. The Commission finds that with regard to events occurring in the Odododiodio and Ablekuma Central Constituencies, there is criminal prosecution of some persons pending before the High Court, Accra ongoing based on the same facts as narrated by the Complainants.

10.DECISION

In the light of Article 219(2)(a) and section 8(2) (a) of Act 456 which provides:

8(2) (a) the Commission shall not investigate a **matter which is pending before a Court or judicial tribunal,**

At the conclusion of the preliminary investigation and findings of facts made that the same matters are pending before various Courts of competent jurisdiction, the Commission is of the considered view that its mandate to conduct any investigations into this complaint is clearly ousted by Article 219(2)(a) of the Constitution, 1992

and section 8(2)(a) of Act 456 and therefore declines to conduct any further investigations into this complaint.

RECOMMENDATIONS

The loss of eight (8) lives and grievous bodily injuries to several persons arising out of the 2020 Presidential and Parliamentary elections as a result of election-related violence which occurred in some parts of the country has indeed tarnished the reputation of Ghana as a beacon of democracy in Africa.

There is the urgent need for all Public Officials and institutions charged with the responsibility of prosecuting and adjudicating on these matters that have been found by the Commission to be pending before the courts to expedite action on bringing the trial of these cases to an end as soon as possible especially as the next Presidential and Parliamentary elections are just a year and half away.

From the findings of the Commission the election violence cases are presently before the Wenchi and Accra High Courts at which civil actions and criminal prosecutions are pending. The Commission strongly recommends that priority of attention is given by the Attorneys in the Office of the Attorney-General's Department to these cases while the High Court Justices as trial judges of these election violence cases do all within their power to complete these cases currently pending before their courts before the 2024 elections.

DATED AT THE COMMISSION ON HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE, HEAD OFFICE, OLD PARLIAMENT HOUSE,
ACCRA THIS 13TH DAY OF JUNE 2023


JOSEPH WHITTAL
COMMISSIONER