



**COMMISSION
RIGHTS AND**



ON HUMAN

ADMINISTRATIVE JUSTICE

***PROMOTING AND PROTECTING HUMAN
RIGHT, ENSURING ADMINISTRATIVE
JUSTICE AND FIGHTING CORRUPTION IN
GHANA***

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On 6th July 1993 pursuant to the provisions of the 1992 Constitution, Parliament enacted the Commission on Human Rights and Administrative Justice Act 1993, Act 456 to establish the Ghana Commission on Human Rights and Administrative Justice.¹

From its inception, the CHRAJ was set up not only to promote and protect human rights using the guidelines of the Paris Principles, but it was also to see to administrative justice and take over the functions of the Ombudsman. CHRAJ was also given an anti-corruption mandate

Organization of the Commission

The Commission consists of a Commissioner for Human Rights and Administrative Justice who is the Chair of the Commission and two Deputy Commissioners for Human Rights and Administrative Justice.

The President acting on the advice of the Council of State appoints the Commissioner and the Deputy Commissioners. The Chair has the status of Judge of the Court of Appeal and the Deputies have status of Judges of the High Court.²

The Chair of the Commission leads on all policy matters. Decisions at Commission level are collegial. The Deputy Commissioners have responsibility over Legal and Investigation and Public Education and Anti-Corruption departments respectively.

The Commission has four departments each headed by a director; Legal/Investigations, Public Education, Anti-Corruption, Administration and Finance. Units including registry, public relations, monitoring and evaluation, research, audit, accounts, human resources and ICT fall under those departments.

In pursuance of the provisions of Act 456, the Commission has branches in all the ten regional capitals and in 100 out of the 138 district capitals of the country.³ Lawyers head the regional offices whilst university graduates trained to handle minor complaints man the district branches. The district offices mostly undertake public education and thus reach out to a wider section of the population at the local and community level. CHRAJ's current staff strength is 770.

CHRAJ's Mandate

¹ Ibid . Ghana Human Rights Commission – Justice Emile Short

² The qualification stipulated in the act is that the Commissioner should meet the requirements to be appointed as justice of the Appeal Court and the deputies as justices of the high court

³ Number of districts has recently been increased to 138



The Ghana Commission represents the model of a national institution that has fused in one-office different institutional mandates namely operating as,

- a) A Human Rights Institution
- b) The Ombudsman
- c) An Anti-Corruption Agency

Powers and Functions

Under Act 456, the CHRAJ is empowered;

- 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, the administrative organs of state, the Armed Forces, the Police Service, and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structure 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 the Constitution,
- d. To investigate all instances of alleged or suspected corruption and the misappropriation of moneys by officials and to take appropriate steps including reports to the Attorney-General and the Auditor General, resulting from such investigations and
- e. To educate the public on human rights.
- f. In addition to these multiple functions, it is also empowered to investigate confiscations of properties made by the two previous military administrations from 1981 to 1993 and return them under specified conditions.

Powers of Investigation

For the purpose of performing its functions, the Act confers far-reaching powers of investigation on the Commission. These powers are set out in section 8(1) of *Act 456* and include the power to issue subpoenas requiring any



person to appear before the Commission to produce any document or record relevant to any matter under investigation by the Commission. A person who fails to respond to a subpoena issued by the Commission risks prosecution for contempt before a competent court. The Commission also has power to question a person in respect of any matter under investigation and to require any person to disclose truthfully any information within his knowledge relevant to any matter under investigation by the Commission.

The Commission rarely resorts to the issue of subpoenas. Most cases are handled by ordinary invitation to the persons or officials concerned. However, the Commission has often experienced frustration as a result of some recalcitrant institutions, which refuse or fail to respond to complaints forwarded to them by the Commission for their comments. The Commission has been compelled to issue subpoenas to defaulting respondents in a few cases. The Commission may also summon and examine on oath or affirmation any person required to give, or who will be able to give information relevant to an investigation. Most cases are handled by correspondence between the parties concerned and the Commission.

Non - Jurisdiction

No institution, body or person is excluded from the Commission's jurisdiction. However, the Commission cannot 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.

Method of Complaints Resolution

- a. Negotiation
- b. Mediation
- c. Panel Hearings
- d. Reporting the findings to a superior officer;
- e. Legal proceedings before a competent Court for enforcement
- f. Taking appropriate steps to address corruption, including reports to the Attorney-General and the Auditor-General

Enforcement Powers

CHRAJ has the power to make recommendations for corrective action but also to take action in court to enforce its recommendations if they are not complied with within three months.



Thus ultimately the Commission may seek the enforcement of its decision by going to Court.

The enforcement power is not often invoked. About fifty per cent of the cases handled by the Commission are resolved by conciliation or mediation to the satisfaction of both parties. In the vast majority of the remaining cases, which are decided on the merits, the recommendations of the Commission are accepted and implemented by the respondents, presumably because of the credibility of the office. The enforcement powers of the Commission, therefore, serve as a back-up power, which may be invoked, in those relatively few cases where it becomes necessary.

Remedies

Both the Constitution and *Act 456* are silent on the kinds of remedies the Commission is empowered to grant to successful complainants. However, it is pertinent to note that *Article 229* of the Constitution states that, for the purposes of performing his functions under the Constitution and any other law, the Commissioner may bring an action before any court in Ghana and may seek any remedy which may be available from that court.

Independence of the Commission

Article 225 of the Constitution provides that the Commission shall not be subject to the control of any person or authority. The Commission does not come under any Ministry or government department. It functions independently. In accordance with its constitutional and statutory obligation, the Commission annually prepares and issues a report on its activities over the preceding year, which it files with Parliament. Copies of the Annual Report are sent to all media houses as well as to the diplomatic community and various human rights agencies around the world, both statutory and non-governmental. Parliament may debate the report and pass resolutions but it cannot change any of the decisions of the Commission. The Commission, in consultation with the Public Services Commission, recruits its own staff. It also makes its own regulations governing its procedures.

Funding

With regard to financial autonomy, the salaries and expenses of the Commission are charged to the Consolidated Fund as provided by *Article 227* of the Constitution. The Commission's budget is not linked to any government ministry or other body. It prepares and submits its own budget to the Ministry of Finance for approval. Invariably, the Ministry cuts the budget after stringent budget hearings. The Commission has recommended to Parliament



that it should be permitted to submit its budget directly to Parliament after it has presented this has been presented to the Ministry of Finance for consultation as is the case with the judiciary. This would make its institutionally guaranteed independence more meaningful.

Donor support continues to be a vital support for initiating and sustaining public educational, staff training and development projects and activities. The Commission however urgently requires additional resources to strengthen its capacity in order to adequately and efficiently discharge its constitutional mandate.

Human Rights Mandate

Under its human right mandate, the Commission has the duty to investigate all complaints of violation of fundamental human rights and freedoms as enshrined in chapter 5 of the 1992 Constitution. This jurisdiction applies to complaints against public officials and institutions, individuals and private enterprises. Chapter contains a comprehensive list of human rights and freedoms embracing civil and political rights as well as economic, social and cultural rights including the right to life, personal liberty, fair and speedy trial, human dignity, protection from slavery and forced labor freedom of speech and expression, freedom of association, freedom of assembly and movement, freedom from discrimination etc.

Typical human rights complaints lodged with the Commission include wrongful detention and assault by the security agencies, delay in the trial of suspects remanded into custody, gender discrimination and sexual harassment at the work place, domestic violence etc. The Commission has intervened in a number of cases where children were being denied medical treatment, such as blood transfusion or open-heart surgery, because of the beliefs of their parents.

By far the greatest numbers of our complaints are family related and maintenance cases. It is pertinent to note that the CHRAJ under the Children's Act has jurisdiction to apply to a family tribunal for a maintenance order for a child (under 18 years) .

However , recently the Commission has been receiving more complaints regarding violations of economic , social and cultural rights. In that regards, individuals and communities have petitioned on their rights to housing, (Agbobloshie and Dzidjah) their rights to education and schooling (expulsion of girls from Achimota school) their rights to health and social security. The Commission is currently investigating the impact of activities of mining companies on mining communities.

Promotion of Human Rights through Public Education



Articles 7(1)(g) and (h) of *Act 456* mandates the Commission to educate the public as to human rights and freedoms through publications, lectures and symposia. The CHRAJ thus undertakes public education especially at the Community levels essentially to deepen public understanding of the functions of the Commission and to enhance public awareness of human rights, freedoms and responsibilities as enshrined in the 1992 Constitution

As part of our human rights mandate the Commission has undertaken the task of examining social and customary practices in the society, which it considers dehumanizing and a violation of the human rights provisions of the Constitution. Such customary practices include the "Trokosi" system, which is a form of servitude, and forced labour practiced in some parts of Ghana whereby women and children are sent to shrines to serve fetish priests as atonement for transgressions allegedly committed by members of their family. Through dialogue and interaction with the practitioners of this system, the Commission in collaboration with International Needs Ghana, a local NGO, has succeeded in securing the release of some of these women and children.

Inspection of Prison and Police Cell

Since 1995 CHRAJ has been carrying out nation-wide inspection of Police Cells and Prisons to ensure that the conditions therein meet minimum international standards and to report our observations and make recommendation to the authorities. This exercise was also intended among other things, to find out the details and particulars of suspects who have been remanded into custody pending trial for an unreasonable period of time. The Commission publishes an Annual Prisons Report which is widely circulated and submitted to the relevant authorities.

The inspection and monitoring exercise has been expanded to include health and educational facilities.

Ombusman Mandate

The "core business" of the office of ombudsman is the pursuit of administrative justice in a manner that is confidential, informal and flexible and which provides people with an opportunity to complain about (*mis*)conduct or "maladministration" by public officials.

In Zambia a former Investigator-General has provided a useful list of examples of such (*mis*)conduct:-

"The abuse of authority or maladministration ... may take various forms, for example, *corruption, favouritism, bribes, tribalism, harshness, misleading a member of the public as to his rights, failing to give reasons when under a duty to do so, using powers for the wrong*



purposes, failing to reply to correspondence or causing unreasonable delay in doing desired public acts"⁴

Administrative justice or labor related cases that used to form the bulk or 76% of complaints handled by the Commission now constitute only about 16.4% of cases since the establishment of the Labour Commission.

Of the state institutions that are respondents the Ghana Education Service and the Police Service continue to be the worst offenders in recruitment and staffing practices, and the Metropolitan and Municipal Authorities in maladministration

Anti-Corruption Mandate

With regards to its corruption mandate⁵, the Commission is expected to:

- a) Investigate complaints of corruption and abuse of power (Article 218(a) of the 1992 Constitution)
- b) Investigate ***all instances of alleged or suspected corruption*** and the misappropriation of public moneys by officials. (Article 218(e)).

In the case of (a) above, the Commission after investigations may take appropriate action to call for the remedying, correction and reversal of instances specified [under this paragraph of this clause] through such means as are fair, proper and effective, including ...bringing proceedings in a competent court for remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the of the offending procedures..." (218 (a)) For (b), the Commission may take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations (Article 218(e))

The Commission is also expected to investigate allegations of violations of Code of Conduct for Public Officers (Chapter 24 of the 1992 Constitution), which states that "*a public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office*" (Article 284).

"No person shall be appointed or act as the Chairman of the governing body of a public corporation or authority while he holds a position in the service of that corporation or authority" (Article 285).

"persons who hold public offices shall submit to the Auditor-General written declarations of all property or assets owned by, or liabilities owed by, them whether directly or indirectly within (a) within three months after the coming into force of this Constitution or before taking office, as the case may be; (b) at the end of every four years; and (c) at the end of their terms of office(Article 286(1)(2)

If a public officer who has contravened or has not complied with the above stated provisions (Chapter 24), fails to make a written admission of the

⁵ This is provided for under Article 218 of the 1992 Constitution of Ghana and Section 7 of the Commission on Human Rights and Administrative Justice (CHRAJ) Act 1993(Act 456)



contravention or non-compliance of the provisions of the said Chapter, the Commission shall cause the matter to be investigated and may take such action as appropriate in respect of the results of the investigation or the admission. Thus the Commission is entrusted to investigate corruption, misappropriation and mismanagement of public money by public officials, as well as conflict of interest.

Undoubtedly, the anticorruption mandate of the Commission is unique. With regard to breaches of the code of conduct of public officials, the President of the Republic of Ghana is first on the list of public officials, whose conduct the Commission may investigate.

Corruption Investigations

In 1995/96 the Commission conducted investigations into allegations of corruption and illegal acquisition of assets made against four ministers of state and some senior government officials. The case under review involved Col E, M Osei-Owusu (Rtd), a former Minister of the Interior; P.V. Obeng, Presidential Staffer, Ibrahim Adam, Minister for Agriculture and two others from the Agriculture Ministry and Adjei Marfo, Chief executive officer of a state owned company. The Commission made adverse findings against the three of the officials and exonerated one for lack of evidence. Sadly, the government at the time issued a White Paper contesting the findings made by the Commission.⁶[1]

Apart from the above investigations, the CHRAJ has conducted investigations into allegations of mismanagement of investments as well as abuse of office by certain officials of the Social Security and National Insurance Trust (SSNIT) otherwise known as “the SSNIT PROBE.” Also in 2002, the CHRAJ conducted investigations into allegations of corruption made against the former Commissioner of the National Insurance Commission (NIC), Mr. Appiah Ampofo.

After investigating these cases, the Commission made adverse findings against the public officials concerned and made recommendations to the Attorney General’s Department for the necessary action, including prosecutorial measures, to be taken against the officials.

In the case of the Commissioner of the NIC, the Commission further recommended that he should be barred from holding public office in view of the seriousness of the findings made against him. That case is now before the Supreme Court.

In 2003, the Commission investigated a complaint, lodged by the Leader of the Opposition Party in Parliament, against the President, a former Minister for Works and Housing and a former Chief of Staff alleging that they had used state funds to renovate the private property of the President. The complaint also alleged that the President violated the conflict of interest provision in the Constitution by accepting a gift from a farmer who decided to pay for the renovation works because of the intense media debate over the propriety of using state funds for the renovation works..

⁶ [1] Government White Paper. 1997. WP. 1/97. Ghana Assembly Press, Accra



In 2005 and 2006, the Commission investigated a case against the President of the Republic following allegations of corruption and conflict of interest made against him concerning the acquisition of a hotel close to his private residence. The allegations carried in the media were that the President, acquired the hotel from a Ghanaian businessman, at a cost of \$3million, and registered the said hotel in the name of his son, John Addo Kufuor who thus served as a front for the President. Furthermore that the President used national security considerations/agents and arm-twisting tactics to coerce the businessman to sell the Hotel to him. The Commission's findings did not support the allegations made against him

In 2006 the Minister for Road Transport Dr. Anane, was forced to resign his position after the Commission recommended his dismissal after making adverse findings of conflict of interest and abuse of power. This case polarized the country for more than a year, since the minister who was also the MP for a very large constituency was known to be very close to the President of the Republic.

To facilitate our investigations into matters concerning conflict of interest, as well as, assist public officials identify conflict of interest situations and to manage them, the Commission has developed and published Guidelines on Prevention of Conflict of interest. The Commission is developing Guidelines for Code of Conduct for Public Officials and this year is helping to set up ethic desks at ministries, department and agencies.

The CHRAJ is a founding member of the **Ghana Anti-Corruption Coalition (GACC)**. This is a broad-based coalition of agencies comprising membership from public sector, private and civil society organizations which is intended to achieve a more structured approach to curb corruption in Ghana. Its members include civil society and NGOs and agencies that have an anti-corruption role such as the Commission on Human Rights and Administrative Justice (CHRAJ) te Serious Fraud Office (SFO), the Institute of Economic Affairs (IEA) Private Enterprise Foundation (PEF), the Ghana Integrity Initiative (GII) (Chana Chapter of Transparency International) the Ghana Journalists Association (GJA) and the Centre for Democratic Development (CDD-Ghana).

Challenges and Prospects

- (1) **Very Broad Mandate** – The Commission has been granted very wide extensive powers and functions and there has been much debate concerning the desirability or wisdom in concentrating all these functions and powers in one institution. Though it may appear cost effective, experience has shown that the financial resources from the Consolidated funds always fall short and does not seem to reflect the fact that the triple mandate.ie we are dealing with 3 institutions under one umbrella. Another disadvantage is the potential of making the



institution unduly bureaucratic and overburdened with work which in turn can and does affect efficiency and quality. We have found this to be true as we have not been able to discharge our anti-corruption mandate as efficiently as we would wish due to a very heavy workload in complaint resolution. It is also clear that the wide and vague nature of our human rights mandate creates a problem of jurisdiction especially at our district level, where a very wide and varied nature of complaints ranging from landlord – tenancy issues to property related matters and intestate succession.

- (2) **Lack of complete Financial autonomy - and insufficient funding from Central Government.** CHRAJ continues to rely on the “largesse” from the Ministry of Finance. The procedure for budgetary allocation is cumbersome and usually there are budget cuts and irregular remittance of agreed allocations which tends to undermine the independence of the Commission. We have asked to be permitted to submit our annual budget directly to Parliament as we believe is envisaged in the Constitution. In the past three years, there has been a gradual increase in our budget.
- (3) **Enforcement Powers** - The Commission is empowered to go to Court to have its decisions enforced. We have proposed that our decisions and recommendations be registered by a successful petitioner and thus constitute a judgment of the Court. The respondent would of course have the right of appeal to a higher court
- (4) **High exit rate of staff, especially among the Legal class due to poor remuneration.** Low salaries and unattractive conditions of service for staff of the Commission have resulted in the exodus of competent and trained personnel from the Commission for other institutions
- (5) **Need to streamline the mandates and be more focused-** The heavy workload of cases Commission’s Headquarters Office has to handle. The inordinate number of petitions received by the Commission is due mainly to its extensive functions, functions that in other jurisdictions would be shared among three or more different institutions. The fact that the Commission’s services, which are provided by professional lawyers and investigators, are delivered free coupled with its informal procedure has made it a more attractive forum than the traditional Courts for dispute resolution. In addition to that we have taken the firm decision to move away from being so complaint driven and to focus more on commission selected investigations and public enquiries.
- (6) **Need to review the constitutional provisions** relating to composition, appointment and conditions of service of commissioners.



Assessment

- a) The Commission has a high reputation both locally and internationally. The Amnesty International adjudged CHRAJ one of the 3 best Human Rights institutions in Africa.
- b) In view of the informal and expeditious methods of disposal of cases and the free services rendered, pressures of significant magnitude have been taken off the traditional courts.
- c) The Commission has assisted and continues to provide assistance and sharing of experience and expertise to African countries in the establishment of their Human Rights Institutions i.e. Zambia, Sierra Leone, Gambia and Tanzania Zimbabwe ,
- d) Maintenance of independence from the three arms of government by the Commission has been scrupulously carried through.