

**THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE  
JUSTICE (CHRAJ) AS A RELEVANT INSTITUTION FOR  
DEMOCRATIC GOVERNANCE – PAPER PRESENTED BY  
COMMISSIONER JOSEPH WHITTAL AT UCC FACULTY OF LAW  
JURIST CONFAB-2017**

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My Lord Chairman,  
Hon. Ministers of State present,  
Vice Chancellor of UCC,  
The Provost of UCC,  
Founding Dean of the  
Faculty of Law UCC,  
Distinguished Guests of the  
Legal Fraternity,  
The Media.

I perceive my task today as a very simple one. I have 30 minutes within which to justify the relevance of the CHRAJ in our democratic governance or otherwise to consider myself possibly out of my job as Commissioner. Therefore, if I ask for more paper in this "all die be die" examination, it is because I do not want to be out of a job. I therefore intend to persuade you with all the powers at my command that indeed CHRAJ in the scheme of our constitutional democratic governance is a very relevant institution.

The Report of the Constitution Review Commission (CRC) “from a political to a developmental constitution” aptly captured the *raison d’etre* and if you may, the relevance of the Independent Constitutional Bodies established pursuant to the 1992 Constitution as follows:

“Ghana’s transition from military rule to multiparty democracy in 1993 came with the declaration and affirmation of the commitment of the people of Ghana to: Freedom, Justice, Probity and Accountability; the principle that all powers of government spring from the sovereign will of the people of Ghana; the principle of Universal Adult Suffrage; the Rule of Law; the preservation of Fundamental Human Rights and Freedoms, and the unity and stability of the nation. **As a way of securing these values and principles, Ghanaians instituted a number of oversight institutions, independent of the executive, legislature or judicial arms of government**”. These institutions include the CHRAJ.

Mr. Chair,

Indeed these independent oversight institutions are promoted in some democracies such as Ghana’s CHRAJ as institutions that can effectively address the accountability deficits of the administrative state. The CHRAJ is a novel institution in the sense that it is the first body to be established in the Constitutional history of Ghana by combining the functions of three distinct institutions namely: a national human rights Commission; an Ombudsman; and an anti-corruption agency.

Mr. Chair,

The promotion and protection of human rights especially the rights of the vulnerable; ensuring transparency and accountability of public service institutions and officials and as well as ensuring public officials perform their official duty with integrity and in an ethical manner are some of the governance issues that come within the mandate of the Commission.

## **CURRENT ACTIVITIES**

### **PROMOTION AND PROTECTION OF HUMAN RIGHTS:**

#### **ACCESS TO JUSTICE**

The Commission has a mandate to investigate complaints of violations of fundamental human rights and freedoms by public officials as well as complaints concerning practices and actions by individuals, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the 1992 Constitution (Art. 218 & Section 7 of Act 456).

In 2016, the Commission received a total of **8,554** and completed or disposed of **8,248**. The breakdown of the cases are: Child rights related complaints: **3,227**; Women's human rights complaints: **1,016**; Property rights related complaints: **1,320**; Economic, Social and Cultural Rights: **2,445** and Civil and Political Rights: **473**.

In the area of access to justice especially by the vulnerable as the figures indicate, the Commission is the most relevant dispute settlement mechanism especially in the rural areas of Ghana. A number of issues account for this: poverty and the

inability to meet the cost formal adjudication in court ; the family nature of the disputes make them more amenable to ADR as compared to formal litigation; the fact that CHRAJ **services are free of charge** (see Section 7(2) of Act 456).

7(2) “All costs and expenses related to investigations conducted by the Commission into a complaint shall be borne by the Commission”.

### **MONITORING REPORTS AND RECOMMENDATIONS**

In addition to the provision of the 1992 Constitution and the Commission’s enabling legislation Act 456, UN General Assembly Resolution 48/134 of 1993 on National Institution for the promotion and protection of human rights also called “**The Paris Principles**” extra-jurisdictional competences have been given by the General Assembly to National Human Rights Institution (NHRI) to prepare and issue reports on the national situation with regards to human rights in general and on specific matters.

The CHRAJ has consistently since 1995 compiled and issued a State of Human Rights Report (SOHR) on the human rights situation in Ghana on the 10<sup>th</sup> December which is the UN International Human Rights Day. The Report covers the state of all categories of rights together with Recommendations to specific duty bearers including the state as the primary duty bearer to take action.

Mr. Chair,

The protection of human rights is also undertaken through monitoring of specific rights. For the past ten years, the Commission has prioritised the fulfillment of Economic and Social Rights (ESCRs) by the State. The Commission therefore

annually monitors government interventions in the realization of the Right to Education and the Right to Health specifically.

Monitoring Reports made up of findings and recommendations are then presented to Government, Parliament, Diplomatic Community, Civil Society and the Media through Press Conferences annually. These Reports are also forwarded to the appropriate UN Committees or mandate officers to assist them in assessing the state of Ghana's compliance with its Treaty or Convention obligations.

In 2015, the interventions of Government towards the realization of the Right to Education monitored by the Commission included the Free School Uniform and sandals policy; Capitation Grant; The One hot Meal a day. In the area of Health, the National Health Insurance reimbursement by Government; The Monitoring Report and Recommendations have been made public by the Commission.

Mr. Chair,

Still in the area of human rights protection, the Commission has been in the forefront of championing the ratification by Parliament of Ghana of the Optional Protocol to the Convention against Torture (OPCAT). Parliament finally ratified the OPCAT in December 2016. The OPCAT makes provision for the establishment of a National Preventive Mechanism (NPM) which would have the right to visit Prisons, Police Cells and other places of Detention unannounced in order to carry out inspection to determine whether there are any violations of persons in detention and to take remedial action.

Mr. Chair,

The Commission presently carries out prison and police cells visits through a creative application of its extra jurisdictional competence under the Paris Principles. Such visits are accompanied by Inspection Reports to Government. Over the years, we have seen much improvement in the conditions of detention in the area of sanitation, food and beddings. The Remand situation is however deteriorating badly due to over-crowding. The Commission expects to be designated as the NPM of Ghana by an Act of Parliament after the ratification in order to legalise the de facto inspections being conducted by CHRAJ. We also expect in that case to be given the requisite human and financial resources to perform the task of NPM.

Mr. Chair,

### **THE SUSTAINABLE DEVELOPMENT GOALS (SDGs)**

All National Human Rights Institutions in the world met in Merida in Mexico in 2015 and adopted **the Merida Declaration of NHRIs**. This Declaration coming in the wake of the adoption of the Sustainable Development Goals and their Targets, commits National Human Rights Institutions to undertake a number of activities within their mandates in the realization of the SDGs.

Unlike the Millennium Development Goals (MDGs) which did not adopt a human rights approach to development, through the advocacy of the International Coordinating Committee (ICC) of National Human Rights Institutions the SDGs have adopted a human rights based approach to development.

The Commission will contribute to the implementation of the SDGs by assisting the NDPC in the development of human rights based indicators in the measurement of implementation of the SDGs by the state of Ghana and to also

ensure that these indicators are incorporated in the Medium Term Development Plans.

Additionally, once implementation of the SDAs begin, the Commission will monitor on annual basis their implementation to determine levels of achievement and to prepare Reports and Recommendations to the Executive, Parliament and other International human rights mechanisms.

### **HOLDING STATE ACCOUNTABLE TO INTERNATIONAL TREATY AND CONVENTION OBLIGATIONS**

One of the key responsibilities of the Commission arising from the Paris Principles relating to the status of National Institutions for the promotion and protection of human rights is the duty to contribute to the reports which states are required to submit to the United Nation bodies and committees and to regional institutions such as the African Union Commission and the African Commission on Human and Peoples Rights through the preparation and submission of Independent/Alternate Reports to these Bodies directly and to express an independent opinion on the subject with due respect to the Commission's Independence.

Mr. Chair,

The State of Ghana is not doing well with regard to its obligations to submit reports to these UN Committees and bodies. The Commission has not hesitated in the past in drawing Government's attention to this in its Independent Reports. Presently the Commission is assisting the Attorney-General's Department in the preparation of the overdue State Reports. To that end, in 2016 Government was

finally able to submit its Initial Report on the International Convention on Civil and Political Rights to the Human Rights Committee after a 25 year overdue period. Similarly with regards to the combined Report on the Convention on the Rights of the Child (CRC) the Commission collaborated with the Ministry of Gender, Children and Social Protection (MGCSP) to submit them to the UN Committee on the Rights of the Child. Ghana is therefore up to date in its reporting obligation under the CRC Convention.

The Commission is presently assisting the Attorney-General's Department in the preparation of Ghana's Report on the Universal Periodic Review (UPR) to be submitted to the Human Rights Council of the United Nations in November 2017 when Ghana will undergo its 3<sup>rd</sup> Cycle of Review at the Human Rights Council. Notwithstanding this assistance to the Attorney-General, the Commission has completed its own Independent Report on the UPR and will submit it before the deadline of end of March 2017.

### **ADVOCACY AND MEMORANDA TO PARLIAMENT**

The Attorney-General intends to submit the Right to Information Bill (RTI) to Cabinet and to Parliament thereafter. The Commission has been requested and is currently working on recommendations to the Bill which must reach the Attorney-General latest the week ending 24<sup>th</sup> March 2017.

Mr. Chair,

It must be emphasized that the role of the Commission goes beyond dispute settlement and as a matter of fact, the Commission's contribution to governance in terms of passage of laws, opinions on various governance issues and state reporting to mention but a few, shows how relevant the Commission is in our democratic governance.



## **ADMINISTRATIVE REVIEW JURISDICTION**

Mr. Chair,

The Ombudsman function of the Commission is an oversight function that is not well understood by most stakeholders. But it need not be so. While judicial Review of administrative action is exercisable by the Courts, administrative review of the actions and decisions of public services and officials is carried out by the Commission upon a complaint.

Section 7(1)(b) of Act 456 provides as follows:

7(1) The functions of the Commission are:

(b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Coordination 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”

and in Section 18(1) of Act 456, it is provided as follows:

**“Where after making an investigation under this Act, the Commission is of the view that the decision, recommendation, act or omission that was the subject matter of investigation –**

- (a) Amounts to a breach of the fundamental rights and freedoms provided in the Constitution; or**
- (b) Appears to have been contrary to law; or**

- (c) was unreasonable, unjust, oppressive, discriminatory or was in accordance with a rule of law or a provision of any Act or a practice that is unreasonable, unjust, oppressive or discriminatory or;**
- (d) was based wholly or partly on a mistake of law or fact; or**
- (e) was based on irrelevant grounds or made for an improper purpose; or**
- (f) was made in exercise of a discretionary power and reasons should have been given for the decision,”**

Thus whiles Section 7(1)(a) & (b) set out the administrative justice oversight function, Section 18(1) sets out the grounds or standards of control that the Commission uses to assess the action, decision, recommendation or omission of a public service or public official when a complaint is laid against that service or official.

Mr. Chair,

The Commission has awesome power to subject any decision or action of a public service or public official to the test of accountability and thus determines the complaint against such decisions by the control standards set out in Section 18(1) of Act 456. The standards set out in section 18(1) of Act 456 act as grounds for judicial review in the case of the courts. But we ought to note that these standards are more flexible and subjective than in the case of the grounds for judicial review.

Mr. Chair,

Under our democratic constitutional governance, accountability for any decision or action is very crucial. The contribution of the Commission to our democratic governance through subjecting public service decision making and actions to the laid down control standards underscores its relevance in the governance matrix.

In 2016, the Commission subjected 341 actions and decisions of a number of public service institution to the standards of review set out above. The actions and decisions concerned a whole range of governance issues including termination of appointments, abuse of power, delay in dispensing justice, maltreatment by police; payment of social security, etc.

Mr. Chair,

In addition to the complaints which are reactive, the Commission is working on a Client Service Charter project together with the Public Sector Reform Secretariat (PSRS) to standardize Client Service Charters in the public services. The purpose of the Client Charter is to bring about transparency and accountability in public service delivery. It is intended to make all public services set out the services they provide; timelines within which customers should legitimately expect to be served; avenues for complaint for poor service, etc.

The standardized template of the Client Charter is ready and in 2017 the Commission with the support of UNDP will work with 10 public service institutions using the standardized template to develop their Client Service Charters.

#### ANTI-CORRUPTION MANDATE

Mr. Chair,

The Commission has a 3<sup>rd</sup> mandate. The anti-corruption and integrity and ethics mandate. Under its anti-corruption mandate, it has the power not only to receive and investigate complaints of corruption, but it can on its own undertake to investigate suspicions and allegations of corruption against public officials based

on informal sources. To avoid being seen as witch-hunting, it presently relies on media reports or allegations against public officials to trigger such own initiative investigations. In 2016, it undertook 59 such own initiative investigation.

Since corruption has been criminalised and ought to be handled by the Attorney-General and the Police, the concentration of the Commission's activities are more geared towards Code of Conduct breaches under Chapter 24 of the 1992 Constitution.

To this end, it has sponsored the development of the conduct of Public Officers Bill in order to clarify and guide public officials in complying with the prescriptions in Chapter 24 relating to conflict of interest; Assets Declaration; taking and subscribing to oaths, etc. and to provide for sanctions which can be imposed by the Commission where necessary

The Conduct of Public Officers Bill could not be passed by the 6th Parliament before it dissolved. It has since received an input by the current Attorney-General with a request to the Commission to make any further input before it is presented to the new Cabinet of H.E. Nana Akufo-Addo.

Similarly, the Commission sponsored the preparation of a Witness Protection Bill and the Whistleblower amendment Bill to strengthen the legal framework for the fight against corruption in Ghana.

Mr. Chair,

The Commission came to the realization in 2013 that the fight against corruption in order for it to be well coordinated, required a national strategy that will see the

synchronization of the efforts of all. To that end, the Commission with the support of DANIDA facilitated the development of the National Anti-Corruption Action Plan (NACAP) as the national blueprint for fighting corruption. To ensure that the plan survived any change of government since it is a ten year plan, the Commission ensured that it was adopted as a by-partisan national document by the 6<sup>th</sup> Parliament of Ghana.

The implementation of the ten year Action Plan began in 2015 with a directive by the President to all MDAs/MMDAs to ensure that they carried out their assigned activities annually and to report to CHRAJ quarterly on implementation of their activities under the Annual Work Plan (AWP).

I am happy to note that the Plan has survived the change of Government with the present Government making an express commitment to prioritise its implementation in the 2017 Budget Statement and Economic Policy read on the behalf of the President in Parliament by the Minister of Finance.

There is a high level Implementation Committee for the NACAP with the Chief of Staff at the Presidency as the Chair and the Commissioner of CHRAJ as the Deputy Chair. The HILIC has a membership of 25.

Another structure in the NACAP is the MONICOM, i.e. Monitoring and Evaluation. The Commissioner of CHRAJ is the Chair with membership drawn from the NDPC Civil Society and the private sector.

Mr. Chair,

The NACAP has scored huge approval especially among the Development Partners (DPs) who see that at last something seriously is being done about corruption in Ghana. The support from DPs has reflected in budgetary support to Government since 2015 by a number of including the EU and CIDA. USAID is currently considering institutional support to CHRAJ

## **UNCAC REVIEW**

Mr. Chair,

Ghana as a State Party to the UN Convention against corruption (UNCAC) came up for peer review in 2015. The Commission was appointed as the Nation Focal Institution for the review by two other countries. The UNCAC Experts Review Report on Ghana has been deliberated at the Conference of State Parties (COSP) in Vienna and adopted. A number of legislative gaps have been flagged to assist Ghana's legal framework meet international standards as demanded by the UNCAC.

At the moment Ghana and Yemen have been selected by the COSP to review Indonesia. The review has commenced. Mr. Charles Ayamdoo, Director Anti-corruption of CHRAJ is one of the two Experts reviewing Indonesia

In conclusion despite funding challenges arising mainly due to the mismatch between putting three otherwise separate institutions into one without commensurate funding, I can say with all conviction that the CHRAJ is a very relevant institution in Ghana's democratic governance.

Thank you.

