



SECOND INTERNATIONAL OMBUD EXPO HELD IN GABORONE,
BOTSWANA – 29 JULY- 2 August 2024

**ADDRESS BY ADV. DR. JOSEPH WHITTAL, Commissioner of the
Commission on Human Rights and Administrative Justice (CHRAJ), Ghana
and Chairman of the Network of African National Human Rights Institutions
(NANHRI)**

Theme:

Trusted Institutions: Righting Injustices, Bolstering Governance

Topic

**Promoting Human Rights and Managing Multiple Mandates-Lessons of
Experience and Future Prospects**

1.0 Introduction

There is no doubt that the work of an independent Ombudsman and a National Human Rights Institution (NHRI) is critical for the consolidation of democracy, respect for rule of law and deepening the culture of peace in any sovereign State. This recognition can be said to have found expression in the Sustainable Development Goals (SDGs) which dedicated SDG 16 to Peace, Justice and Strong Institutions. Indeed, if we do not have strong institutions to check abuse of power, unfair treatment, wrongful exercise of discretionary power and lack of respect for human rights among others, society may be in “**a war of all against all**” as described by Thomas Hobbes.

It is against this backdrop that I find this year’s theme for the Ombud Expo very apt and timely. The main theme for this year’s Expo is “**Trusted Institutions: Righting Injustices, Bolstering Quality Governance**”. I am a firm believer that the Ombuds Institutions and NHRIs are the trusted Institutions of accountability at the forefront of righting injustices and bolstering the quality of governance in a nation that if nation states are to do right by all persons and commit to improving on the quality of governance globally and within our various States, the world will be a better place devoid of injustices and human rights abuses.

Within the main theme of the Expo, I have been tasked to speak on the Sub-theme “**Promoting Human Rights and Managing Multiple Mandates- Lessons of Experience and Future Prospects**”.

According to **William Ramsey Clark**, “a right is not what someone gives you; it is what no one can take from you”. I find this statement profound because an attempt to take away rights is to destroy the very essence of our humanity.

The Universal Declaration of Human Rights notes in Article 1 that **“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”**.

The Vienna Declaration and Programme of Action 1993 also notes that; **“Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments”**.

This is why governments must create the necessary environment for the culture of human rights to be nurtured. Governments must set up or strengthen already existing NHRIs and Ombudsman institutions into strong, independent, effective and well-resourced Ombudsmen and National Human Rights Institutions (NHRIs) to ensure effective promotion and protection of human rights.

2.0 Roles of Ombudsmen and NHRIs

The role of an ombudsman and a national human rights institution in ensuring respect for human dignity, protecting and safeguarding the rights of citizens in a modern State cannot be overemphasized. It is for this reason that principles and standards have been developed and adopted as criteria of effectiveness to give impetus to the work of an ombudsman and NHRIs. For instance, **The Principles Relating to the Status of National Human Rights Institutions (The Paris Principles)** adopted on 20th December 1993 by the UN General Assembly in Resolution 48/134 sought to essentially give “wings to NHRIs to fly” just as the **"Principles for the Protection and Promotion of the Institution of Ombudsman, or "The Venice Principles"** adopted in Resolution A/RES/75/186 also seek to make

Ombudsmen more robust with the right mix of values and standards to drive their work .

Bearing in mind that this is an Ombud expo, I will limit my presentation more to the role of an Ombudsman. As mentioned earlier, the role of an ombudsman is critical to hold the State and its people together. No State can stand if there are no mechanisms for checking human rights violations, administrative injustice and issues of endemic corruption.

The National Democratic Institute for International Affairs in a publication titled “The Role and Effectiveness of the Ombudsman Institution” notes as follows:

“Ombudsmen offices promote and protect individual rights, encourage more efficient public administration, provide a cost- effective dispute resolution mechanism, bridge the gap between government and the public, promote cooperation instead of litigation, and allow increased citizen access to dispute resolution”.

According to the Venice Commission, an Ombudsman has the important role of alerting the legislator of deficiencies, for instance when the implementation of laws are difficult or when they do not provide sufficient guarantees.

Again, the Ombudsman is strategically positioned to contribute to the dissemination of an administrative culture that encourages the protection of human rights. The Venice Commission notes that the Ombudsman is well placed to **“identify situations in which the implementation of laws, at an individual level as well as at the level of the administration as a whole, is problematic in terms of human rights”.**

The Commission notes further that in order to address these structural deficiencies, the Ombudsman can recommend changes in the administrative structures and staff behavior, as well as raising staff awareness.

Indeed, the Ombudsman acts as an **intermediary between individual and public bodies** and this intermediary role enables it to benefit from the trust of both the injured party and the public body. The public nature of the Ombudsman's actions contributes to public awareness concerning human rights and therefore disseminates a culture in favour of the rule of law and the promotion and protection of human rights within society according to the Venice Commission.

From the foregoing, one can say that an ombudsman is the “traffic light” that directs public bodies as to where to stop and which direction to turn to when it comes to rights of persons within their establishments.

3.0 Mandate of CHRAJ

In 1993, the Commission on Human Rights and Administrative Justice (CHRAJ) was established pursuant to the 1992 Constitution and the CHRAJ Act 1993 (Act 456). It was the first time in the constitutional history of Ghana that an oversight Institution combined the functions of 3 distinct institutions: a human rights institution; an ombudsman and an anti-corruption agency. CHRAJ is an independent Constitutional body with tenured office for its members. The fusion of the human rights and ombudsman mandates into CHRAJ as one institution accords with the constitutional architecture adopted for the 1992 Constitution which uniquely elevated the concept of administrative justice to a constitutional right and makes it one of the fundamental human rights (Article 23 of the 1992 Constitution). The right entails the duties constitutionally imposed on public institutions and public officials

to act fairly and reasonably and to comply with the requirements imposed on them by law. (*Awuni v. West African Examinations Council* [2004] SCGRL 471).

This inseparability of the human rights and ombudsman functions of CHRAJ in Ghana seems to accord with reason and financial prudence because unfair administrative practices, decisions and actions by public officials would invariably lead to violations of the fundamental rights and freedoms that the CHRAJ and the courts have been charged to protect and promote.

In practice, it is very common for complaints of administrative injustice against public agencies and officials to also have human rights implications. Besides, investigative and conflict resolution mechanisms and procedures in relation to both mandates are essentially the same.

To facilitate its work as an NHRI and Ombudsman, CHRAJ has Departments under these mandate areas to ensure that its objectives are achieved. Under the Human Rights Mandate are found the following Units: Investigations, Special Groups, Business and Human Rights, Sustainable Development Goals whereas under the Ombudsman mandate are the following units: Investigations, MDAs & Other Public Institutions, Security & Intelligence Services, Local Government Services (MMDAs).

It is also important to mention that apart from the 3 mandates of the Commission, there is a draft Bill going through the processes to amend the CHRAJ Act to formally designate it as the National Preventive Mechanism of Ghana under the Optional Protocol on the Convention Against Torture, Other Cruel, Inhuman and Degrading Treatment (OPCAT) to monitor and report on the situation in all places of detention or deprivation of liberty, a role or mandate that CHRAJ plays de facto since its establishment.

4.0 Prospects of Multiple Mandates

CHRAJ serves to provide the means by which ordinary persons in Ghana could exact legal and constitutional accountability, administrative accountability, financial accountability and transparency from public officers and agencies.

Some good reasons abound for why some countries may choose to fuse the ombudsman and anti-corruption mandates in one body. Very often, **“Ombudsmen come upon instances of corruption in the course of their investigations into administrative malpractices”** (Charles Maino Aoae - Chief Ombudsman, Papua New, 1988)

This is very true of the Ghanaian case – complaints of maladministration and abuse of power are very interrelated with allegations of corruption and conflict of interest. According to John Hatchard, 1992, the high profile status and independence of Ombudsmen is potentially better able to resist improper pressure from the Executive than other bodies especially under the Executive and is thus better equipped to undertake meaningful investigations.

The prestige and reputation for objectivity makes Ombudsmen the obvious point of contact for the reporting of wrongdoing by government officials. (John Hatchard, 1992). Relative to this, CHRAJ has been previously described as the **“conscience of the nation”** and **“most trusted institution”** in Ghana (Geoffrey Cameron, 2008).

CHRAJ has been able to live up to its fused and multiple tasks albeit with some challenges and a few highlights will suffice here:

- Ground breaking investigations involving key State officials and institutions including sitting Presidents, Ministers of State, Members of Parliament and some Justices of the Superior Courts.
- Regular Advisories to Government and other key State institutions in line with the Paris Principles which have engendered some critical reforms.
- Conduct of the National Baseline Assessment on Business and Human Rights and currently co-chairing the development of a National Action Plan on Business and Human Rights with the Office of the Attorney-General.
- Mission to improve service delivery in the administrative State – assisting institutions to develop service charters.
- Development, coordination and facilitating implementation and reporting on the 10-year National Anti-Corruption Action Plan (NACAP) 2015-2024.
- Development of Conflict of Interest Guidelines and Code of Conduct for Public Officers.
- Assisting a number of private institutions to develop sexual harassment policies.
- Public education on human rights and presentation of state of human rights reports.
- Leading the abolishing of dehumanizing and outmoded cultural practices including “trokosi”, a cultural practice whereby young girls under the age of 10 or less were given to fetish shrines as sexual/domestic slaves or wives.

Geoffrey Cameron's description of how CHRAJ exercises its mandate best captures the relevance of the Commission to governance in Ghana. Cameron argues that CHRAJ exercises political accountability through its participation in the public sphere in the following terms.

Social actors, such as NGOs and the media, research an issue and introduce it to the public to demand answerability from the State. The issue is investigated and framed as an abuse of authority by the State using the language of human rights or corruption. A coalition of social actors forms to publicly advocate on the issue through the use of media, litigation and/or isolated protests. The State provides a limited and unsatisfactory response to the concerns publicized by the coalition. Failing to obtain a satisfactory outcome from the available channels of the media, the matter is presented to the Commission with supporting evidence to request a formal investigation.

Following the formal complaint, the Commission carries out a public investigation into the matter. In the course of investigations or hearings, public answerability is required from government officials in response to the complaints leveled by social actors. Relevant stakeholders, including government representatives, may be subpoenaed for hearings or interviewed, and developments in the case are publicized in the media.

The Commission releases a report, which compiles observations from the testimonies received and documents submitted, and issues recommendations, often to the State, for reforms or reprisals. The report serves to validate or dismiss the allegations of social actors. Where the allegations are validated, the CHRAJ findings enjoy a high level of legitimacy and credibility. Public pressure on the State is amplified in response to the Commission's findings, and civil society is mobilized to demand accountability. The coalition of social actors is featured in media reports lauding the findings of the Commission, echoing their calls for reform and calling for the rapid enforcement of their decisions. [Geoffrey Cameron, 2008]

When the Commission takes the lead on an issue, public opinion surges in that direction and government is forced to respond to criticisms that emerge in the course

of the investigation. [Geoffrey Cameron, 2008]. In this regard, it is fair to say that CHRAJ has gained pre-eminence on issues of good governance in Ghana.

This has been achieved through firm leadership and bold stance on human rights, administrative justice and anti-corruption.

5.0 Advantages and Disadvantages of Fused Mandate

Funding

CHRAJ is obviously 3 institutions with multiple mandates combined into one body. However, the Commission is funded as if it were one institution. This has serious implications for the effective exercise of its mandates.

The argument has, therefore, been strongly made that the separation of CHRAJ into at least two separate institutions – one to combine the human rights and ombudsman mandates and the other for anti-corruption will ensure that both institutions are adequately funded. The latter argument has been jettisoned by the Government of Ghana. In place of hiving off any mandate Government has facilitated the increased funding and tripled staff strengthen and geographical presence to thousand and forty (1,040) staff and opened offices in all the 16 administrative regions of Ghana and 178 District Assemblies across the country in keeping with the Paris Principles

Triggering Mandate

The fused and multiple mandates of human rights, ombudsman, and anti-corruption of CHRAJ imply different means of triggering the investigation machinery of the Commission.

Ghana's Supreme Court has held that the CHRAJ cannot initiate investigations into allegations of abuse of office, conflict of interest by public officers and human rights

violations unless a formal complaint has been lodged with the Commission by a specific person. [*The Republic v. Fast Track High Court Ex Parte Commission on Human Rights and Administrative Justice, Dr. Richard Anane (Interested Party)* [2007-08] SCGLR 213.]

The effect of this decision is that CHRAJ cannot investigate human rights violations, maladministration, and conflict of interest situations on its own motion. Only allegations of corruption and misappropriation of public funds may be investigated by CHRAJ based on media reports.

Non-Binding Nature of Decisions

The ombudsman roots of CHRAJ also imply that its decisions/recommendations are not self-enforcing. In effect, CHRAJ decisions are enforceable in courts. Ordinarily, the courts would not allow the subject-matter of CHRAJ decisions to be re-opened or re-litigated. (*Ghana Commercial Bank v. CHRAJ* [2003-2004] SCGLR 91).

In some cases, however, the courts have allowed CHRAJ proceedings to be re-opened and re-litigated.

The Goodwill Factor

Closely related to the non-binding nature of its decisions is the reliance by CHRAJ on the goodwill of the people to garner public support for its decisions.

A classical public service ombudsman with no additional human rights and anti-corruption functions may not investigate private persons and enterprises.

The fused mandates of CHRAJ extends the scope of CHRAJ investigating powers to private persons and enterprises or companies in as far as the injustices can be couched in terms of human rights violations.

CHRAJ anti-corruption mandate also covers situations in which an individual, entity and/or person though not a "public official" is alleged to be involved or implicated in an act or alleged bribery or corruption involving public officials and which is under investigation by the Commission. (CHRAJ v. Attorney-General and Baba Kamara, Unreported decision of the Supreme Court, April 6, 2011, Suit No. J1/3/2010). This is very significant in the light of privatization of many public institutions.

Internal Organizational Structure

To be able to deal effectively with its multiple mandates, the Commission is internally structured into 10 Departments covering the core mandate areas including some support Departments and in the Regions a minimum of 17 staff headed by a lawyer while each District is staffed by a minimum of five staff who have a minimum of first university degree.

6.0 Conclusion

Essentially a complaints-handling institution, the ombudsman office exists principally to help individuals resolve problems they may have with virtually any aspect of government. In fulfilling this function, the ombudsman office also helps society at large by promoting administrative reform and drawing attention to what are often systemic problems. Moreover, the office's investigatory role enables it to contribute to parliamentary oversight of government, since it reports its findings to parliament annually.

In order to promote the interests of citizens by protecting their rights, the Ombudsman also needs to be protected. The Venice Commission systematically calls on States to give this institution a constitutional basis and the necessary means to

fulfil its mission effectively. This will protect the **independence and impartiality** of the Ombudsman, which are fundamental characteristics of the institution.

It is my submission that whether single or multiple mandate Institutions, Ombudsmen, NHRIs, Anti-Corruption institutions must be well resourced, independent, impartial, robust and forward looking to ensure that human rights abuses and violations are dealt with. These institutions can advocate for reforms to ensure good governance, improved public service delivery and respect for human rights. However, these institutions must also apply themselves to the various standards and principles that guide their operations such as the Venice Principles, Paris Principles, and other international best practices.

Thank You.