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The role of the commission on human rights

***And administrative justice (chraj) in
promoting***

Public service accountability under

Ghana's fourth republic

By

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Abstract

The tremendous expansion in the volume and complexity of government activities in Ghana after independence was accompanied by an increase in the size and importance of the public bureaucracy. The acquired discretionary powers of the public bureaucrats have increased the opportunity for corruption and unethical conduct. To ensure equity, fairness, justice, accountability and transparency in national life, the Commission on Human Rights and Administrative Justice (CHRAJ) was established under the 1992 Constitution of the Republic of Ghana. This paper discusses the role and performance of CHRAJ since its inception. It also attempts a critical evaluation of CHRAJ in the face of constitutional, legal, resource and administrative constraints. The paper concludes with some recommendations for strengthening the capacity of CHRAJ to perform its functions effectively. Lessons learnt from the Ghanaian experience in the operation of CHRAJ are also highlighted.

1. Introduction

All over the world, Governments have extended the scope of their activities beyond the traditional tasks of defence, maintenance of law and order, and the collection of taxes. Robson has remarked that:

The increased functions of the state are one of the most commonplace facts of modern political history. Every textbook on government emphasizes the vast growth in the duties and responsibilities of public authorities today compared with a century ago¹.

The state is now expected to provide education and social welfare, manage health programmes, operate basic infrastructure such as water, roads, telephone networks, railways, electricity and heavy capital demanding projects. However, in the pursuit of these multifaceted roles, politicians and public servants have acquired enormous powers. The exercise of discretionary powers and authority by politicians and public servants have increased the opportunities for corruption and unethical activities in many developing countries. This has necessitated the increasing demands by citizens on their leaders for appropriate safeguards and proper checks and balances on the responsible use of power and authority to protect the public from bureaucratic abuses. These safeguards are commonly referred to as “accountability” and “control” measures. Thus, the major concern in most developing countries is how to ensure that those who have power exercise it responsibly so that they can be held accountable for their actions.

Public service accountability and transparency in governance have therefore become important global issues which have attracted the attention of the international community in recent times. This is partly due to the linking of transparency and public accountability to good governance. Indeed, good governance has become one of the most important

considerations or conditions of the world's financial institutions and the donor communities for granting aid, loans and other forms of development assistance to third world countries.

In Ghana interest in public service accountability can be attributed to the country's espousal of and admiration for democratic ideals. This can be gleaned from some statements in the preamble to the 1992 Fourth Republican Constitution. It is stated inter alia that "...And in solemn declaration and affirmation of our commitment to Freedom, Justice, and Accountability". In addition to this, Article 35 (8) under the Directive Principles of State Policy also states that "The State shall take steps to eradicate corrupt practices and the abuse of power" and at Article 37(1) which states that:

The state shall endeavour to secure and protect a social order founded on the ideal and principles of freedom, equality, justice, probity and accountability.

It is clear that accountability is so dear to the goals and aspirations of the government and people of Ghana. The objectives of the Government of Ghana to develop and move from low income to middle income status through private sector participation and development as well as foreign investment require an accountable public service.

One of the quasi-judicial institutions created under the 1992 Constitution to help promote transparency and public accountability is the Commission on Human Rights and Administrative Justice (CHRAJ). This paper examines the effectiveness of CHRAJ as an institution for promoting public service accountability in Ghana since its inception in 1993. The paper begins with a historical review of the operations of the Ombudsman institution in Ghana. This is followed by a discussion of the powers, jurisdiction as well as the composition and organisation of CHRAJ. Thereafter, the paper discusses the role and achievements of CHRAJ and also its limitations and problems. Finally, the paper makes recommendations aimed at improving the effectiveness and efficiency of CHRAJ. Lessons learnt from the Ghanaian experience will also be highlighted.

1.1 Historical Review of the Ombudsman Institution in Ghana

The office of the Ombudsman was created to forestall the bitter experiences such as arbitrary arrest and imprisonment without trial, restriction on freedom of speech, Ghanaians suffered under the dictatorship of the Nkrumah regime. The National Liberation Council (NLC) Government which emerged after the overthrow of the Nkrumah's Convention People's Party Government, in 1966, established in November 1966 an Expediting Committee headed by A.A. Tivo. The Decree NLCD III creating the Expediting Committee was repealed by NLD 386 and the Committee was charged inter alia to:

- (a) Receive and investigate complaints from members of the public who may be aggrieved by any mistakes, acts of negligence or other shortcomings committed by any public officer in the performance of his duties.

- (b) Make frequent and unannounced visits to public offices where members of the public are won't to call for service, such as police stations, immigration offices, passport offices, post offices, hospitals, treasuries and deeds registry offices whose duty is to give such services;
- (c) Receive and investigate complaints of victimization within the public service from public officers of subordinate rank;
- (d) Receive and investigate complaints of delay on the part of public officers in replying to official correspondence from members of the public; and
- (e) Report any findings they may make against a public officer to the secretary to the NLC who may where necessary, take such remedial action as may lawfully be taken in respect of a public officer.²

The Committee's visits to government organisations and institutions uncovered the slipshodness, laziness, apathy, improper practices, lack of integrity and ineptitude among public servants. Though Articles 100 and 101 of the 1969 Second Republican Constitution provided for the Ombudsman institution, the drafters of the Constitution failed to make it obligatory for the incoming civilian administration of the Progress Party (P.P.) to appoint somebody to the office. The P.P. Government merely passed the Ombudsman Act on 30th September 1970, one year after the coming into force of the Constitution, without appointing any person to the office.

The National Redemption Council (NRC) Government headed by Colonel I.K. Acheampong overthrew that Progress Party Government in a coup d'état on 13th January 1972. The NRC also established the Investigations Division of the Special Action Unit under the NRC Decree 235 of 1973 and charged it with the task of dealing with all forms of abuse of power by public officials. The Investigations Division, eventually turned out to be a debt-collecting unit for the government and for individuals rather than a grievance redressing unit

The 1979 Third Republican Constitution also provided for the office of an Ombudsman. However, unlike the 1969 Constitution, the 1979 Constitution was innovatively progressive for it did not only stipulate that an Ombudsman office should be established, but more importantly made it mandatory for the government of the Third Republic to appoint somebody to the office one year after the coming into force of the Constitution. The Ombudsman Act (Act 400) was passed by Parliament in March 1980. The Act empowered the :

- (a) Ombudsman to investigate all acts of commission and omission by the public service, the armed forces, the Police Service and the Prison Service.
- (b) Specifically, the Ombudsman was to receive complaints about injustice and maladministration against government agencies and officials from aggrieved persons or individuals.
- (c) The Ombudsman had the power to investigate, criticise and recommend corrective actions. He was to submit annual reports on the operations of his office to Parliament.

Both the 1979 Constitution and the Ombudsman Act (Act 400) placed severe limitation on the jurisdiction of the Ombudsman. He was barred from investigating into the following:

(a) Cases which were subjudice;

Matters relating to the prerogative of mercy; and

(b) Matters involving the relations or dealings between the Government of Ghana and other countries or international organisations.

The Ombudsman was again prevented from initiating legal proceedings in any law court to enforce his recommendations. His recommendations were, therefore, not binding on defaulting government organisations and agencies.

Between 1979 and 1986 the office of the Ombudsman received 8,521 complaints from the public and only 6,345 of them were actually investigated, while 176 could not be considered as they were outside the jurisdiction of the Ombudsman. Only 2140 of the 6,345 cases investigated and reported on were enforced.⁴ Cases were rejected because:

(a) the target of complaint was not within the ambit of the institutions and bodies specified under section 2 (1) of Act 400

(b) the Ombudsman was barred by section 2 (2) of Act 400 from investigating;

(c) the complaint was adjudged stale under Section 20 of Act 400; and

(d) the Ombudsman declined further investigations in the exercise of his discretion; cases were withdrawn when complainants formally declined to pursue complaints any further.

Many of the initial complaints were rejected probably because as a novelty in Ghana, complainants were ignorant of the jurisdiction of the office of the Ombudsman. This could be attributed to the lack of public education about the role and the activities of the Ombudsman.⁵ The Daily Graphic, 1st December, 1981 reported that there was too much silence surrounding the office of the Ombudsman, a situation which the Daily Graphic attributed to the inability of the Press to project the image of the Ombudsman through vigorous public education.

The office of the Ombudsman faced some difficulties which hampered its work. First, it lacked a permanent office accommodation. Within a period of eight years, the Ombudsman office had been relocated four times. This made it difficult for aggrieved persons to physically locate the national headquarters. Even though both the 1979 Constitution and the Ombudsman Act (Act 400) of 1980 unambiguously stipulated that Ombudsman should decentralise its activities to the then nine regions and existing, 65 districts, only three regional capitals, namely Kumasi, Cape Coast and Sekondi-Takoradi, actually had offices. Undoubtedly the concentration of the offices of the Ombudsman in Accra, the national capital, and the other three regional capitals adversely hindered the accessibility and publicity that is usually associated with the ombudsman institutions in other countries.

According to the Third Annual Ombudsman Report, certain public organisations did not cooperate effectively with the Ombudsman. This was characterised by delays in responding to the Ombudsman's requests. For example, the Ministry of Health failed to acknowledge receipt of the copy of recommendations forwarded to it in respect of a complaint received from a senior Medical Officer of Health formerly with one of the Polyclinics in Accra. This prompted the Ombudsman, Mr. Justice G.K. Andoh, to issue a warning to recalcitrant officials.

It is not our wish to invoke the sanctions prescribed by law; and it would be appreciated if public officers would comply with the law.⁶

In his subsequent warnings to difficult companies like the Meat Marketing Board and some sub-divisions of the Ministry of Defence etc. the Ombudsman explained that his office had only resisted invoking or applying sanctions in the hope that recalcitrant employers would rather cooperate than risk prosecution.⁷

One of the problems which confronted the Ombudsman was the non-enforcement of his recommendations, a situation which made the Ombudsman appear a "toothless bulldog" in the eyes of the public. This prompted him to make a passionate appeal in his 1986 annual report to the Provisional National Defence Council (PNDC) Government that overthrew the democratically elected civilian government of Hilla Liman's People's National Party (PNP) Government on 31 December 1981, to help and co-operate with his office to enforce his recommendations.⁸

For example, the Ombudsman recommended the reinstatement of some employees of the State Fishing Corporation who were unjustifiably retrenched in 1984 without following the laid down labour laws. The Ombudsman felt slighted by the inability of the PNDC government to enforce his recommendation to have them reinstated despite repeated appeals (to the PNDC) for three years.

Another problem which also contributed to negative performance of the Ombudsman was the calibre and adequacy of the staff. The Ombudsman was not only handicapped by qualified and competent personnel but also its staff strength generally was inadequate. Available statistics up to 1988 revealed that out of 107 personnel strength of the Ombudsman in the four offices, an average of about 45% fell into the senior grade, while the rest were junior officers. Poor conditions of service, not different from those that pertained in the civil service, also prevented the institution from attracting competent/qualified lawyers who were better paid in other public service organisations and agencies. This resulted in high staff turnover as experienced investigators could not be retained. Consequently the Ombudsman was compelled to rely on lawyers on national service, who after completing their service of one year, usually left for better jobs in the public service.

The operations of the Ombudsman were further affected by the appointment of one person as the Ombudsman, and especially when he had no deputy. The workload was too

much for one person particularly when one had to work in a highly understaffed office. Mr. Justice Andoh was the sole Ombudsman and when he died in December 1989, the erstwhile PNDC never appointed anybody to fill the position until the establishment of the CHRAJ in July 1993.

This brief review has shown the extent of neglect, frustration and above all the difficulties the Ombudsman in Ghana has gone through. It has also shown the lack of commitment on the part of successive Ghanaian governments prior to 1993 towards not only the salutary development of the institution but also promoting transparency, accountability and good governance.

2. The commission on human rights and administrative justice: powers and jurisdiction

The Commission on Human Rights and Administrative Justice (CHRAJ) is enshrined in Chapter 18 of the 1992 Fourth Republican Constitution of Ghana. It was established by Act 456 of 1993 (The Commission on Human Rights and Administrative Justice Act), six months after the coming into force of the Constitution. The establishment of this institution was recommended in the Report of the Committee of Experts on Proposals for a Draft Constitution for Ghana (July 31, 1991). The CHRAJ is not only responsible for checking and redressing incidents of maladministration but also to promote human rights. Thus CHRAJ combines the characteristics of the Ombudsman and a Human Rights Commission and Ghana is one of the countries to have adopted this progressive innovation. The objective of CHRAJ is defined as:

To investigate complaints of violations of fundamental human rights and freedoms, injustice and corruption; abuse of power and unfair treatment of persons by public officers in the exercise of their duties, with power to seek remedy in respect of such acts or omissions and to provide for other related purposes.

Specifically, the CHRAJ is required to perform the following functions:

- (i) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the state, the officers of the Regional Coordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service as 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;
- (ii) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental human rights and freedoms under the Constitution;
- (iii) to investigate allegations that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct of Public Officers) of the Constitution;

- (iv) To investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor General, resulting from such investigation;
- (v) Unlike in the 1979 Constitution and the Ombudsman Act of 1980, to educate the public on human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia; and
- (vi) Unlike the Ombudsman Act of 1980, to report annually to Parliament on the performance of its functions.¹¹

To perform its functions effectively and efficiently, the CHRAJ, unlike under the Ombudsman Act of 1980, has been empowered to initiate legal proceedings to back its recommendations. In this regard, the CHRAJ has been empowered to take appropriate action to call for the remedying, correction and reversal of instances of abuse of power and human rights through such means as are fair, proper and effective, including:

- (a) bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures;
- (b) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;
- (c) the CHRAJ may bring any action before any court in Ghana and may seek any remedy which may be available from that court.¹²

It is interesting to note that this power to prosecute is an important innovation in the historical evolution of the ombudsman institution in Ghana. This is because no ombudsman system is anywhere authorized to make orders, reverse administrative action or enforce remedies.¹³

Unlike the previous Ombudsman, the CHRAJ has been given special powers of investigation. These are in respect to such matters as to :

- (a) issue subpoenas requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation to be conducted by CHRAJ;
- (b) cause any person contemptuous of any such subpoena to be prosecuted before a competent court;
- (c) question any person in respect of any subject matter under investigation before the Commission;

- (d) Require any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commission.

However, the jurisdiction of the CHRAJ has been restricted in that it is barred from investigating the following:

- (i) A matter or case pending before a court, or judicial tribunal;
- (ii) A matter involving Ghana's relations or dealings with other governments or an international organisation; and
- (iii) A matter relating to the exercise of the prerogative of mercy.

It is significant to note that these limitations are to ensure that the CHRAJ does not engage in unnecessary litigations and confrontations with the government of the day.

The CHRAJ is also seriously limited in obtaining information in two ways. First, production of official or classified "confidential" documents before the Commission is subject to Article 135 of the 1992 Constitution which stipulates that:

The supreme court shall have exclusive jurisdiction to determine whether an official document shall not be produced in court because its production or the disclosure of its contents will be prejudicial to the security of the state or will be injurious to the public interests.

Second, although under section 15 (2) of 456, CHRAJ can summon before it and examine on oath or affirmation – a person required to give information or produce anything, document or paper, a complainant or any person who the CHRAJ considers will be able to give information - it cannot under section 15 (3) and (4), compel a person to give evidence or produce papers or documents if that person is bound by law to maintain secrecy in relation to, or not to disclose, any matter, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

As rightly pointed out by Ayee, what is termed "confidential" document or maintaining "secrecy or non-disclosure" are purely subjective criteria which could provide a mask behind which government institutions, officials and agencies and above all the government itself can hide to abuse human rights as well as discretionary powers.¹⁴

2.1. Composition And Organisation of CHRAJ

The composition of the CHRAJ is significantly different from the Ombudsman Act, 1980, where one man was appointed to the office of Ombudsman. The CHRAJ is a collective body which consists of three persons: a Commissioner and two Deputy Commissioners and supporting staff at the national level. This is meant to ensure that, in the absence of the Commissioner, any of his two deputies could effectively perform his functions. The President appoints the Commissioner and his two deputies acting in consultation with the Council of

State and with the approval of Parliament. This is intended to ensure that the Commissioner and his deputies are independent of the executive arm of government.

Article 221 of the 1992 Constitution as well as the CHRAJ Act equate the Commissioner to an Appeal Court Judge while the two Deputy Commissioners are equated to High Court Judges. Again, Article 223 also assigns to the Commissioners the terms and conditions of service of the Judges, including the security of tenure that goes with these positions. Thus, grounds for their removal shall be the same as those provided for the removal of a Justice of the court of Appeal and a Justice of the High Court respectively under Article 146 of the 1992 Constitution which stipulates that:

A Justice of the Supreme Court shall not be removed from office except for stated misbehaviour or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind.

These provisions are also meant to further ensure the independence of the commissioner and his deputies. The independence of any institution in most cases also depends on its financial capacity. Both the 1992 Constitution and Act 456 (1993) stipulate that the administrative expenses, including all salaries, allowances and pensions payable to or in respect of persons serving with it, are charged on the Consolidated Fund. The financial task facing the CHRAJ is enormous. It will have to pay all costs and expenses related to its investigations. For instance, the CHRAJ is to pay to a person by whom a complaint is made and to any other person who attends and furnishes information for the purposes of an investigation:

- (a) sums of money in respect of expenses properly incurred by them; and
- (b) allowances by way of compensation for the loss of their time, in accordance with such scales and subject to such conditions as may be determined by the commission having regard to the rates for the time being applicable to the courts (Section 14 (4) Act 456).

Administratively, CHRAJ is enjoined to open regional and district branches in the 10 regions and in the 110 districts of the country. The Regional Office is headed by a Director who is assisted by various officers. A district officer heads the district branch with a supporting staff. (Article 220, 1992 Constitution; Act 456 Sections 10 and 11). Apart from these, the Commission is also required to decentralise its operations to such other lower structures as towns, villages and units. The issue is whether funds will be promptly released to enable CHRAJ honour these commitments, bearing in mind the centralised nature of the release of funds in Ghana.

3. The role and achievements of CHRAJ

This section discusses the achievements of CHRAJ in relation to its objective. The question to be examined is how effective or beneficial has the CHRAJ been to the state especially in the domain of human rights and accountability.

Since its inception in 1993, CHRAJ has made modest achievements against the backdrop of constraints confronting it. CHRAJ has been able to hold some individuals and corporate bodies responsible for their action and inaction in its effort at promoting public accountability. Cases handled by CHRAJ range from human rights abuses and corruption to administrative injustice. The Commission has helped to provide redress to several individuals who have been wronged by public officials many of whom would have otherwise been left to their fate.

The following are examples of various cases handled by CHRAJ:

1. Corruption Cases

The highest profile and spectacular corruption cases handled by CHRAJ involved two ministers of state – Retired Colonel Osei Owusu (the Minister of Interior), Ibrahim Adams (the Minister of Food and Agriculture), the Presidential staffer on Cocoa affairs, Dr. Adjei Marfo and P.V. Obeng – the Presidential Adviser on Governmental Affairs in 1996. Following press publication, CHRAJ was directed by Government to investigate allegations of corruption, illegal acquisition of wealth, and abuse of office involving these top government functionaries.

The investigations were conducted in accordance with Article 218 (e) of the constitution (1992) and Section 7(I) (f) of Act 456, both of which mandate the commission to investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney General and Auditor-General resulting from such investigations. The investigations were also conducted to determine whether the officials had complied with Article 286 of the Constitution, which requires public officers to submit a declaration of all their assets within three months of the coming into force of the Constitution, at the end of every four years, and at the end of their term of office.

Findings

At the end of the investigations, there were adverse findings against three, except the Presidential Adviser on Government Affairs, Mr. P.V. Obeng who was exonerated.

- (i) Colonel (Retired) Osei Owusu was asked to refund to the state Cedis 18,523,182.48 in excess of his income which he could not explain the source of
- (ii) Ibrahim Adams was found to have acted negligently in granting tax waivers to some fishing companies without reference to the requirements of the Law and the

proper procedure. A recommendation was made for him to be reprimanded for negligent and irresponsible behaviour.¹⁶

- (iii) Dr. Adjei Marfo failed not only to pay taxes on some of his earnings, but also to disclose in his assets declaration form and before the Commission a house he acquired in the name of his seven year old son. The Commission recommended that he be made to pay the appropriate taxes on his earnings while his position should be reconsidered by the government.

Even though a Government White Paper issued on the CHRAJ Report tried to clear the affected officials of any wrong doing, they subsequently lost their positions in government. Further development on this case has not been publicised. It is significant to note that these investigations brought CHRAJ into limelight and public confidence in the commission soared.

2. Labour Related Cases on Administrative Injustice

These cases emanated from administrative injustice meted out to some staff by some corporate bodies.

Case 1 – 1994 Case No. CHRAJ/200/93

In 1994 some Police Officers who were found with sums of money they could not account for while on duty at various road barriers were acquitted and discharged by Adjudicating Panels of Committee of Inquiry set up by the Police Service to investigate the matter. The Inspector General of Police (IGP) claimed the petitioners were found guilty and convicted for the offence, so he dismissed them from the Ghana Police Service. CHRAJ's investigation into the case pointed out the unjust nature of the dismissals which borders on arbitrariness and misuse of power. The Commission therefore recommended the reinstatement of the dismissed officers.¹⁷

Case 2 – Case No. CHRAJ 169/95

In 1995 the Commission ordered the immediate reinstatement, without loss of promotion, and with payment of all emoluments due to a lady worker at the Ministry of Trade which wrongfully terminated her appointment.

Case 3 – 1997 Case No. CHRAJ/GAR/311/96

In 1997 the Commission ordered the respondent to pay the petitioner retroactive salary and pension benefits commensurate with salary range applicable to the position of Assistant Director [Ghana Education Service (GES)]. The petitioner retired from employment as Principal superintendent. Following her retirement the respondent calculated her retirement benefits on the basis of her previous lower rank as a senior Superintendent. The petitioner claimed that she was entitled to a three-range higher promotion and retirement

benefits based on the range of an Assistant Director. The respondent provided the Commission with evidence of the promotion code applicable to this case which supported the petitioner's claim that she should have been promoted to the rank of Assistant Director.

Case 4 – 1998 Termination of Four Senior Audit Service Staff

Sometime in March 1997, four officers of the Audit Service, Nii Abbey, Assistant Director of Audit, Messrs J.F.K. Addae, Torgboi D.M. Nyavor Principal Auditors and Mr. A.N. Aboagye Atta, Senior Auditor, petitioned the President on the issue of Mr. Prempeh's (Auditor General) retiring age and were of the view that his continued stay in the office after his 60th birthday on April 20, 1997, "would be in clear breach of the Constitution". Subsequent to this petition, the President announced his retirement as the Auditor General but re-appointed him on contract with effect from April 21, 1997.

The petitioners were asked to appear before a sub-committee of the Audit Service Board to explain why disciplinary action should not be taken against them for attempting to remove the Auditor-General. When the petitioners objected to the jurisdiction of the sub-committee, they were again asked to appear before a Board of Inquiry whose members were appointed by Mr. Prempeh, the Auditor-General.

The petitioners again objected to its jurisdiction and on the following day, they heard their names on the air that they had been dismissed for "gross insubordination towards the President."¹⁸

Based on this, the four officers petitioned CHRAJ to have them re-instated since their dismissal was unconstitutional. CHRAJ found out that the terminations were unlawful, unconstitutional and void, and directed that the four senior officers of the Audit Service whose appointments were terminated on June 7, 1997, be reinstated. CHRAJ also directed that the officers be paid all arrears of salary from the date of termination of their appointments to the date of reinstatement. The Commission further directed that the four officers should be posted to an office other than headquarters. The Report stated:

It is the decision of the commission that the petitioners be re-instated into the Auditor Service but should be posted to an office other than the headquarters.¹⁹

3. Cases of CHRAJ Going to Court to enforce its Decisions

1. Deconfiscation of Assets Involving 153 Cases

CHRAJ has successfully deconfiscated some assets involving 153 cases from 1995 to 1997. This achievement has not been made on a silver platter as CHRAJ had to go to Supreme Court to seek clarification and was also taken to court by the Attorney-General who challenged the commission with regard to Article 35(1) and (2) of the 1992 Constitution as ultra vires. In both cases however, judgements were given in favour of CHRAJ, though considerable time was spent.²⁰

2. CHRAJ took steps to enforce some of its decisions through court action. These are notable achievements worth mentioning. There are about eight cases and out of this number five are public accountability related.

(i) **Suit No.361/96 (CHRAJ vs. IGP/Attorney General)**

In this case, a High Court Judge, His Lordship Kusi Appouh gave judgement enforcing the decision of CHRAJ that the petitioner, a police officer retired at age 55, be reinstated. The Police Service complied accordingly.

(ii) **Suit No.O/S.1417/97 (CHRAJ vs. Minister of Food and Agriculture)**

In the above case at the High Court, Mr. Justice Gyamera Tawiah on 30th July 1998 ordered that the petitioner, Dr. Joe Quansah, be placed at post and paid all arrears of monies due him.

(iii) Again, in another suit CHRAJ vs. Electricity Corporation, Mr. Justice Gyamera Tawiah made an order endorsing CHRAJ's decision that the petitioner, Monica Danso, had been victimized and was entitled to be compensated as reinstatement was not practicable.

(iv) **CHRAJ vs. State Housing Corporation (SHC)**

Mrs. Justice Akoto Bamfo in the case of CHRAJ vs. State Housing Corporation (SHC) ordered the SHC to pay the petitioner the assessed value of the SHC house, which has been confiscated to the state. The respondents have paid the judgement debt, leaving the interest and cost.

Table 1 provides information on the total number of cases received, cases brought forward from previous year, total cases treated or closed in the year by CHRAJ, total cases pending at the end of each year and the percentage of cases bordering on public accountability. CHRAJ received 29,011 cases and disposed of 27,975 of them between 1993 and 1999.

On the achievement of CHRAJ, the Commissioner is of the opinion that, it has been a considerable success, adding that the mere increase in complaints brought before it is a manifestation of confidence the public has in the Commission.

Apart from these court cases, the Commission has also taken a number of measures aimed at nurturing the culture of public accountability and ensuring its awareness among the general populace of Ghana. For instance in 1998, the Commission in collaboration with Government and Civil Societies organized a National Integrity Workshop in Accra with the theme "Toward A Collective Plan of Action for the Creation of a National Integrity System".

Among the participants was the Vice-President of the Republic of Ghana. This forum was given wide media coverage and thus served the purpose of educating the general public on how public accountability in Ghana could be enhanced.

Again, as part of its public education function, the Commission organized a National Workshop on Governance in Accra between 16th and 18th June 1997. Besides, the Commission has organized several public education fora especially in urban areas. CHRAJ has realized that the kind of complaints that reach the commission clearly demonstrate that many people do not know about their rights. Under the financial sponsorship of 210 million Cedis from DANIDA, CHRAJ intends to launch a number of advertising messages through the media to educate the people, particularly the rural dwellers, about their rights and responsibilities as citizens of the country as enshrined in the Constitution.

The Commission has also represented Ghana at a number of international conferences thus enhancing the image of the country abroad. For instance, in 1997 the Commission represented Ghana at four conferences in Uganda, Mexico, South Africa and the Netherlands. These conferences might have also enjoined the Government of Ghana to continue to promote good governance since reports given at these conferences are used for gauging a nation's democratic performance. Such reports can bring benefits to Ghana from the international community since donor countries and institutions of the developed world have made accountability and good governance conditionality for development assistance.

Table 1
Total Number of Cases Received by CHRAJ 1994-1999

	YEAR					
	1993/94	1995	1996	1997	1998	1999
Cases received	3,197	4,012	5,200	5,876	5,459	5,267
Cases Brought Forward from Previous Year	333	2,193	2,776	3,967	6,101	1,338
Total Cases Closed/Treated in the Year	1,004	4,766	4,009	3,742	10,222	4,233
Total Pending at the End of the Year	2,193	2,776	3,967	6,101	1,338	2,372
Percentage of cases Bordering on Public Accountability	37.7	42.6	42.5	48	27.8	...*

Source: CHRAJ Annual Reports 1994 to 1999

* Details of data for 1999 could not be obtained.

Having discussed the role and some of the positive achievements of CHRAJ, the next section will examine the limitations and difficulties facing the CHRAJ.

4. Problems of CHRAJ

1. CHRAJ has also encountered some difficulties which have hampered the effective performance of its functions. First, its inability to enforce its decision without recourse to the traditional judicial process, that is, the courts, serves as a severe limitation. Section 18 of the Commission for Human Rights and Administrative Justice Act (Act 456) provides that after arriving at a decision on an issue, the Commission should submit its report including its findings and recommendations to the appropriate person, minister, department or authority concerned, with a copy to the complainant. If after three months the recommendations are not enforced, the Commissioner may bring an action before any court and seek remedy as may be appropriate for an enforcement of its decision.

The Commissioner, Mr. Emile Short, has expressed CHRAJ's dissatisfaction with these provisions as precious time could be wasted before going to court. For example, as already pointed out, although the CHRAJ made adverse findings against top government officials in 1996, it could not enforce them. It is unfortunate that a Commission of three experienced lawyers qualified for appointment as High/Appeal Court Judges still have to initiate proceedings before a High Court before they can enforce their decisions.

Observations made at a National Integrity Workshop organized by CHRAJ in October 1998 in Accra concerning the weaknesses of the Commission, included among others:

- (a) the lack of power to prosecute corruption cases and to fine and commit individuals for contempt other than for failure to honour a subpoena. Various recommendations on institutions such as the Police and Prisons Services concerning the conditions of Accra Central Police Station Cell and those of the Prisons generally in the country are hardly implemented; yet, CHRAJ is unable to enforce them.²² This is because implementation of some of CHRAJ recommendations has wider legal implications. It will involve institutional and legal reforms in government machinery. For instance, if Police cells are overcrowded due to the delays inherent in the judicial system and perhaps also inadequate logistics, there is very little the Police can do if a Judge does not grant bail. Certainly more cells need to be constructed. This falls within the domain of public investment and expenditure. If prisons are overcrowded the penal system needs reform to enable convicts do community service outside prison walls. This is within the purview of legal reforms.²³

- (b) Also CHRAJ does not have the statutory power to verify the accuracy of the assets declaration forms submitted to the Auditor-General.
- (c) Recently in a press statement, CHRAJ disclosed that there is no administrative machinery for checking the accuracy or veracity of the assets public officials declared (June 13, 2000). There is also no official institution mandated to undertake that task. At present the declarations were filed with the Auditor-General, who simply acted as custodian and secondly the declarations are not accessible to the public and should only be produced at Commissions of Inquiry or competent court of jurisdiction or investigator appointed by CHRAJ.
- (d) Another nagging problem facing the commission borders on its financial autonomy and inadequate financial resources. Even though section 21 of Commission for Human Rights and Administrative Justice Act (Act 456) provides for its administrative expenses, including all salaries, allowances and pensions to be charged on the Consolidated Fund, in practice, CHRAJ cannot obtain funds without recourse to the Ministry of Finance. The independence of CHRAJ would be more meaningful if it were granted some financial autonomy. The lengthy budgetary hearings and cuts it is subjected to by the Ministry of Finance severely undermines its autonomy as provided for in Article 222 of the Constitution. Even

parliamentary approval is no guarantee that the funds will be released promptly by the Ministry of Finance. Budgetary cuts disrupt effective planning. Due to budgetary constraints CHRAJ has not been able to open offices in all the 110 districts of the country. The reason for this situation is that office accommodation and other logistics such as vehicles and equipment cannot be provided. So far 89 district offices have been established and have had staff at post. However, the Deputy Commissioner, Finance and Administration, mentions that some of these offices lack basic equipment such as typewriters. Further linked with the financial difficulties of CHRAJ is its inability to reach out to the majority of Ghanaians, especially the rural dwellers who constitute about 70% of Ghana's population, with its educational programmes. Again, due to financial difficulties the commission basically has to rely on charity from NGOs to partly carry out its public awareness programmes.

CHRAJ has also not been able to motivate and retain its staff, especially legal officers. When Mr. Emile Short, the Commissioner for Human Rights and Administrative Justice, took his turn at the Meet-the-Press series in Accra on June 13, 2000, he made a passionate appeal to the ruling National Democratic Congress (NDC) Government to take immediate steps to halt the drift of its personnel to other sectors because of low salaries and poor conditions of service. He stated:

Our lawyers whom we recruit and train with care continue to leave us to join other public sector institutions that have far higher salaries and better conditions of service.

In 1999 for instance, three lawyers resigned on the same day due to poor remuneration (The Ghanaian Times, September 10, 1999). Financial inadequacy has resulted

in a situation whereby the few staff/lawyers remaining with the Commission are overburdened with work. This has further resulted in a backlog of cases which can also be attributed in part to the refusal of some respondents to cooperate when cases involving them are being investigated.

According to the Commissioner, currently only 12 qualified lawyers are at the head office in Accra, handling an average of 200 cases at a time. He hinted that more than half of them have already submitted applications to other institutions and organisations. The workers of CHRAJ, Mr. Emile short said, deserve to be better paid, resourced and motivated, adding, the staff of CHRAJ deserve better conditions of service and government must act swiftly to rectify the situation before we lose our capacity to sustain a credible state machinery for ensuring and sustaining a culture of human rights and administrative justice (Daily Graphic June 14, 2000).

2. Conclusion: recommendations and lessons

3. Public service accountability and good governan

4. ce should be seen not only as global but also national issues which should be addressed seriously. Since its inception, CHRAJ has served as the spokesman for the voiceless, has offered many services to the people especially the less privileged in the society who do not have sufficient means to prosecute their grievances in the law courts. CHRAJ has had an impact, particularly in highlighting prison conditions, harmful traditional practices against women and girls and also in providing public education on human rights.

CHRAJ has established itself as a credible institution which enjoys public confidence. Commissioner Short and his staff have not shied away from taking on some of the more sensitive issues, such as those involving governmental corruption, and have held their ground against other government agencies that have sought to silence them. Especially, CHRAJ has kept the Executive arm of Government on its toes in terms of human rights and public accountability. Again, CHRAJ has been ambitious both in creating a nationwide network of offices and in taking on a broad array of issues, though the heavy workload and the poor conditions of service have led to high staff turnover.

2. Recommendations – What is to be Done?

Given the modest contributions CHRAJ has made and the multifaceted nature of the problems it faces, there is the need to strengthen CHRAJ to perform its mandated functions effectively. The following recommendations are made in that regard:

- (i) The issues of inadequate financial, human and logistic resources facing the CHRAJ must be address in order to enhance its ability to check corruption and other activities that impact negatively on the nation's

development. To this end, CHRAJ should be allowed to submit directly its annual budget to Parliament for scrutiny and approval. With appropriate budgetary allocation, CHRAJ's independence will be enhanced further and better placed to undertake its activities effectively. Additionally, the conditions of service of staff of CHRAJ should be improved to attract and retain staff.

(ii) There is the need to abolish the laws of libel, sedition, the Official Secrets Acts and the introduction of Freedom of Information Act. Sections 15(3) and 16 of Act 456 should therefore be amended to enable CHRAJ obtain secret official information without any impediment. This will facilitate speedy resolution of cases. The efforts of public servants and politicians to hide behind the Oaths of Secrecy will be thwarted to enable CHRAJ make the desired impact on the society.

(iii) CHRAJ is disabled by its inability to prosecute corruption and other criminal cases. Section 7(i) (f) of Act 456 empowers CHRAJ to investigate relevant cases, but it has to report prosecutable cases to the Attorney-General, who is a politician. Mr. Emile Short, the Commissioner has expressed grave concern about instances where corrupt officials are

allowed to resign or refund embezzled monies instead of letting them face the law. (Daily Graphic, June 14, 2000). For instance, those found to have been guilty of acts of impropriety in the Keta Sea Defence Project were only asked to refund some sums of money to state coffers. According to Kwaku Bio, "whether the directives have been complied with or not is still shrouded in secrecy". "The fundamental question is, why weren't they prosecuted?" (The Mirror, September 9, 2000).

Corruption is encouraged by the granting of freedom or exemption from criminal punishment, injury, loss or other negative consequence. The absence of criminal prosecution in the cases of official impropriety demonstrates that the government does not have the political will to fight corruption. We need to be more severe, firm and steadfast in the imposition of sanctions against offenders caught in corrupt acts to serve as deterrent to others.

CHRAJ should be empowered to investigate and subsequently prosecute corruption and other related criminal cases to discourage financial corruption. CHRAJ is convinced that there is a positive correlation between a reasonable level of timely punitive sanctions and deference from corruption and other crimes. Also the domineering position of the Attorney-General in the functioning of CHRAJ would have to be revisited because the Executive is likely to be an interested party in some of the criminal cases that would be reported to the Attorney-General by CHRAJ.

3. Lessons

Developing countries intending to establish an Ombudsman/Commission on Human Rights and Administrative Justice (CHRAJ) should ensure that it is granted substantial

autonomy to operate effectively. The CHRAJ should be given broad mandate, to investigate complaints of human rights violations and administrative justice as well as allegations of

corruption by state officials. It should thus have strong enforcement powers. The CHRAJ's investigatory and prosecutorial capabilities should not be limited but rather be broadened or strengthened. It should have free access to information. This calls for genuine political commitment from leaders of developing countries.

The Ghanaian experience in the operation of CHRAJ teaches us another important lesson, that is, the Ombudsman Institution/CHRAJ should have credibility. It should enjoy public confidence by boldly defending human rights without fear or favour. It must not shy away from taking on some of the more politically sensitive issues, such as governmental corruption. The credibility and autonomy of such an institution should not be hindered by Presidential control, it must not be seen as a compliant institution serving the Executive. This should be taken seriously because some Human Rights Commissions in Africa, for instance in Kenya, Cameroon, Algeria, Tunisia etc. have weak powers, and are silent on major abuses by the government. Consequently, these institutions have tarnished their claim to be credible force for protecting and defending human rights.²⁶

There is also the need for the relaxation of press censorship and support for a vibrant independent press that must demonstrate a marked enthusiasm for exposing official wrongdoing and other unethical activities. Some media practitioners such as Fred M'embe of the *Zambian Post* and Kofi Coomson of the *Ghanaian Chronicle* "have displayed superhuman bravery in the defence of democracy and good government in their respective countries".²⁷ This is worthy of emulation.

Another important lesson is that though CHRAJ has been endowed with enlarged powers and jurisdiction, it may be greatly under-utilized. This is mainly because there is likely to be insufficient knowledge and understanding about its existence and functions especially in a situation when CHRAJ's activities are concentrated mainly in the urban centres which constitute about 30% of Ghana's population. For developing countries with the intention to establish CHRAJ or its equivalent, there is the need for vigorous public awareness to sensitize especially rural communities or majority of the population about the functions of the CHRAJ.

Finally, the provisions of CHRAJ such as substantial operational autonomy and enlarged powers etc. are indeed, worthy of emulation. Developing countries that have not established such an institution are well advised to rely heavily on the provisions. It is equally important to recommend to those developing countries that have already established it but are contemplating the review of their provisions.

Footnotes

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2. CHRAJ Report 1996, pp. 49-51.
3. See *Daily Graphic* June 12, 1998.
4. Ibid.
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