**“THE EXPERIENCE OF THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE IN ADDRESSING CORRUPTION[[1]](#footnote-1)”**

 By

Ayamdoo Charles, Director, Anti-Corruption, CHRAJ-Ghana

…………………………………………………………………………

# **1.0. Introduction**

The Commission on Human Rights and Administrative Justice (the Commission) was established in 1993 as a national institution that fuses three different institutions in one office: National Human Rights Institution, an Ombudsman and an Anti-Corruption Agency.

In the exercise of their functions, themembers of the Commission are not subject to the direction or control of any person or authority. The Commissioner retires at age 70, while the two Deputy Commissioners retire at ages 65. They can be removed from office only on grounds of proven misconduct and after elaborate and long procedures spelt out in the Constitution have been followed.

The independence of the Commission is guaranteed under the Constitution and its investigative powers cover every public officer from the President to the ordinary person. Thus, making it unique.

The functions[[2]](#footnote-2) of the Commission include investigating complaints of violations of fundamental human rights and freedoms, administrative injustice, instances of alleged or suspected corruption, misappropriation of public moneys by officials, abuse of power and unfair treatment of persons by public officers and breaches of the code of conduct for public officers. In addition, the Commission investigates disclosures of impropriety and protects whistleblowers from victimization[[3]](#footnote-3). When it investigates allegations of victimization against whistleblowers or members of their families, it makes orders, which have the same effect as a judgment or order of the High Court and is enforceable in the same manner as a judgment or order of the High Court[[4]](#footnote-4).

# **2.0. Powers of the Commission**

In the performance of these onerous responsibilities, the Commission has power to[[5]](#footnote-5) –

(a) issue subpoena requiring attendance of a person before the Commission and the production of any document or record relevant to any investigation by the Commission;

(b) cause any person contemptuous of any such subpoena to be prosecuted before a competent court;

(c) question any person in respect of any such matter under investigation by the Commission;

(d) to require any person to disclose truthfully and frankly any information within his knowledge.

The Commission may take action in court to seek any remedy available from that court for the proper discharge of its functions. The Commission has no powers of arrest; neither does it have the power of prosecution. However, the Commission has power to go to Court to seek enforcement of its decisions and recommendations under its parent Act if they are not complied with within three months after the decision has been issued.

While performing its functions, the Commission is obliged to respect the rights of persons under investigation such as the right to be represented by counsel of choice and the right to be given opportunity to be heard. The principles of integrity, accountability and respect for the rights of persons under investigation are principles that have been incorporated in the anti-corruption functions and powers of the Commission.

# **2.0. Highlights of Performance**

The Commission would be 25 years in July 2018. And 25 years experience is so much that not all can be discussed within the time available. Therefore, only a few are considered in this presentation.

Development of the National Anti-Corruption Action Plan (NACAP)

The National Anti-Corruption Action Plan (NACAP), a ten-year plan adopted by the Parliament of Ghana in July 2014, is the blue print for tackling corruption in the country. The development of the NACAP was informed by the rising incidence of corruption in the country and the inadequacy of past efforts to tackle it more effectively. Some of the reasons for high levels of corruption in Ghana are, limited commitment to the values of integrity and self-discipline, minimal system of accountability and transparency, impunity and over politicisation of corruption and crime. Therefore, in order to address these and the other causes of corruption in the country, the NACAP should focus on the following, among others: limited awareness of the linkage between human rights and corruption, limited attention to gender in anti-corruption programming, unregulated discretion in the use of public authority. It should also strengthen partnerships with civil society and other non-state actors including the private sector.

NACAP contains strategic action plans based on four strategic objectives built on a three-prong approach (prevention, public awareness and education, law enforcement). It seeks to integrate the fight against corruption directly into national development planning, making it an integral part of the regular annual activities of public institutions.

The Commission coordinated the development of NACAP, because of its demonstrated independence and credibility and is coordinating its implementation, as well as chairing the National Monitoring and Evaluation Committee of NACAP.

Promoting Integrity

One of the key programmes under the NACAP is the introduction of a Public Service Integrity Programme, which seeks to promote integrity in the Public Service. Under the Programme, a National Ethics Advisory Committee (NEAC) for the Public Service was established, the first batch of 50 Ethics Officers and a number of CEOs and Heads of Ministries, Departments and Agencies of State, trained. Other measures being undertaken include regulation of gifts and conflict of interest.

Corruption and Human Rights.

The Commission has been leading the campaign on creating awareness of the linkage between Human rights and Corruption since 2005 when the debate on the subject was picking momentum. The Commission organised a three day international conference under the theme *“****The Role of National Human Rights Institutions and the Ombudsman in the Fight against Corruption”***in Accra in 2005. The Conference attracted approximately 80 participants, including the Danish Parliamentary Ombudsman, the Auditor-General of Denmark, the Public Protector of South Africa, the Commission on Human Rights and Good Governance of Tanzania, representatives of anti-corruption agencies in Ghana and civil society organizations, among others.

Participants urged relevant National Human Rights, Anti-Corruption and Ombudsman Institutions to increase public awareness on the evils of corruption through programmes that integrate human rights and civic education values to citizens.

The Commission also participated in a ***Regional* *Conference on the Human Rights Dimensions of Corruption,***which wasorganized by the Kenya National Human Rights Commission in 2006. Participants at that Conference recognised that corruption seriously undermines the protection and promotion of human rights as it inhibits the full realisation of economic, social and cultural rights. They called on the international community to declare corruption a crime against humanity.

The Commission has continued this campaign till today. It is implementing the NACAP which identifies poor awareness of the linkage between human rights and corruption as a key issue in the fight against corruption in the country[[6]](#footnote-6). It has intensified public education on the linkage between human rights and corruption[[7]](#footnote-7). Between 2015-2017, the Commission has organized over 415 awareness-raising events on the linkage between human rights and corruption.

Protecting Whistleblowers and Family

Under the Whistleblower Act 2006, the Commission has been provided the additional function to investigate disclosures of impropriety by whistleblowers and to offer them protection against victimization. Since October 2006 when the law came into force, the Commission has investigated on average three (3) cases a year and has, in cooperation with the Attorney-General, offered police protection to one (1) whistleblower whose safety was under threat. Just this year, the Commission recommended a 10% reward to a whistleblower in connection with monies to be recovered as a result of his disclosure. Apart from the protection function, the Commission, in collaboration with other agencies and CSOs, has done public awareness on the Whistleblower Act and conducted training for institutions mandated under the Act to receive whistleblower Disclosures. Training and public education manuals on whistleblowing have also been published.

Anti-Corruption and Human Rights Education in Schools

As part of measures to inculcate integrity in the younger generation and encourage the teaching of anti-corruption as part of human rights education, the Commission developed a Human Rights Training Manual for Teachers, which incorporates anti-corruption education. Over 50,000 copies of this manual were printed and submitted to the Ghana Education Service for distribution to Senior High Schools. Prior to the printing of the manual, selected teachers were trained in human rights, ethics and corruption. In addition, the Commission facilitated the establishment of Human Rights and Integrity Clubs in Senior High Schools, trained the Patrons of these clubs, and organises annual quiz competitions, as well as Human Rights and Integrity Camps for selected Senior High School students annually.

Tackling Corruption in Elections

The Commission begun a programme on monitoring pre-elections environment as well as observing public elections in the country in order to document and deal with electoral corruption, promote and protect the right to vote and promote peace, among others. The programme was initiated in 2008 and the Commission deploys on average 300 of its staff to Presidential and Parliamentary Elections in the country.

Strengthening and Building Partnerships

Ghana adopted the multi-agency approach to dealing with corruption. The Commission and other agencies that deal with corruption in the country established the Key Accountability Institutions Platform (the Platform) to, among others, foster better understanding and co-operation among the institutions, promote better co-ordination of their activities and to minimise the potential for duplicating efforts in executing the various mandates.[[8]](#footnote-8)

In addition, the Commission has established partnerships with the Ghana Anti-Corruption Coalition, (the GACC) whose aim is to build a national effort to confront the problem of corruption and to devise effective control measures. Under this partnership,

a number of tools have been developed including hotlines, web-based complaints system, a training manuals and a guide on whistle blowing in Ghana.

Training of Police Officers and Health professionals

The Commission also organized workshops on Human Rights, corruption and elections for Police Officers across the country. The workshops focused on respect for human rights in Police duties, Conflict of interest and abuse of office, as well as Code of Conduct/Ethics for Health Professionals. During these workshops, the linkage between Human rights, ethics and health care delivery, was examined.

Conducting Investigations

Modest achievements have been made in relation to corruption investigations. In 1995/96, the Commission successfully conducted a major investigation into allegations of corruption and illegal acquisition of assets made against four ministers of state and some senior government officials. Since then, the Commission receives less than 100 cases a year and disposes off about 60% of the cases annually. High profile cases investigated by the Commission include those relating to corruption and conflict of interest involving two sitting Presidents of the Republic, ministers of state and a number of high level government officials. A summary of some of the cases investigated, are the following:

1. ***Social Security and National Insurance Trust (SSNIT)*** otherwise known as “the SSNIT PROBE.” (2001); see Republic v. High Court, Accra; Ex Parte CHRAJ (Addo, Interested Party) [2003-2004] SCGLR 312. This is a case that quashed the findings of corruption and conflict of interest against the applicant for breaching the principle of natural justice.
2. ***Appiah Ampofo v CHRAJ [2005-2006] SCGLR 227:***In this case,the Commission found (supported by Court) that, the US96,500 that the respondent received was a bribe and not a gift because (i) of the source of the payment (from a company in the UK (ii) the timing of the payments (after facilitating a contract (iii) continued denial by the respondent that no payments were received and (iv) lack of transparency in the payment of the money (secret lodgments into the account of the respondent in the UK (also *See Crusading Guide v Appiah Ampofo, Case No. CHRAJ/195/2001/1319)*
3. ***R v High Court (Fast Track Division) Ex parte, CHRAJ; Interested Party, Richard Anane (HC) [2007-8] SCGLR 340.*** The Supreme Court, in this case, held, inter alia that to invoke the investigative machinery of the Commission under Chapter 24 of the Constitution, which relates to enforcement of the Code of Conduct for Public Officers by CHRAJ, a complainant needs to file a complaint before the Commission. The Complainant does not have to be the victim and the complainant could be an individual or a body corporate.

iv. ***Somi V. Tema General Hospital [1994-2000] CHRAJ 196,*** relates infringement on the right to health care of a patient by the absence of medical Doctor at a Health facility, or abuse of the employer’s (state) time. In that case, CHRAJ held, inter alia,that the conduct of the servants and agents of the hospital constituted an act of injustice and amounted to unfair treatment and in breach of the duty to respect the right to life***.*** CHRAJ awarded compensation against the Hospital in favour of the complainant who had lost both a child and spouse.

1. In *Manso V. Norvor [1994-2000] CHRAJ 1,* the Commission, after investigations, held that “Sexual harassment constitutes a form of sex discrimination and is also an unwarranted impediment to the individual's right to work in an environment free from discrimination. And by virtue of articles 27(3) and 33(5) of the 1992 Constitution[of Ghana], sexual harassment should be read into the list of prohibited grounds of discrimination found in article 17(2).
2. ***CHRAJ v. President Kufour (Hotel Kufour):*** This case relates to allegations in the media that the President had acquired an uncompleted Hotel building (the Hotel) located near his private residence at the cost of $3,000,0000). The newspaper alleged that the President, having acquired the Hotel, registered it in the name of his son to conceal the real ownership of the Hotel.

At the conclusion of the investigation, CHRAJ concluded, ***“At this time, the evidence available to the Commission does not support the allegations of corruption and conflict of interest against the President”.***

The Commission also investigated conflict of interest and corruption allegations against former President Mahama, as well as the current Minister for Finance in relation to the issuance of Government of Ghana Bonds. The Minister has filed a writ against CHRAJ for judicial review, which is pending.

The few high profile cases just discussed are significant in many respects as they bear testimony to what anti-corruption agencies can do when provided adequate operational independence and resources. It is most unlikely that if the Commission were under the control of government, it would have been allowed to investigate the cases against two sitting Presidents (one twice and the other once) and powerful state officials.

# 3.0. ACHIEVEMENTS

Some of the modest achievements of the Commission are the following:

* The Commission remains the unique institution that provides leadership in tackling corruption and strengthening human rights in Ghana;
* It has brought into focus the need to raise awareness of the connection between human rights and corruption in Ghana as key to controlling corruption.
* It occupies centre stage in advocating the passage of transparency-enhancing legislation in Ghana such as the whistleblower act, the witness protection law and the right to information law;
* It provides protection to whistleblowers, as part of its unique functions under the whistleblower act 2006;
* The Commission has successfully facilitated the introduction of Anti-Corruption in Human Rights Education in Senior High Schools and plans to extend same to junior high schools, and

* It coordinated the development of the National Anti-Corruption Action Plan, and continues to coordinate its implementation.

# 4.0. Assessment of Performance

“*CHRAJ has emerged as an important actor in the process of democratisation in Ghana, is "critical...in the promotion of good governance and accountability.”* : The Africa Peer Review Mechanism Report on Ghana, 2005

*“the Commission represents the 'conscience' of the nation, and is considered the most trusted institution-whether public or private in Ghana.*

*Source: CDD-Ghana*

*“The CHRAJ has succeeded in winning a high degree of public legitimacy. This primarily derives, without question, from its willingness to hold senior public figures to account over sensitive matters such* ***as corruption..”****:* ***Source: International Council on Human Rights, Geneva***

Aside the National Peace Council, CHRAJ was the most trusted institution among all the institutions surveyed (National Peace Council, Electoral Commission, Law Courts, District Assembly): ***Source: Governance and Peace Poll in Ghana, 2014***

# 5.0. SIGNIFICANT CHALLENGES

The Commission faces a number of challenges in the discharge of its anti-corruption mandate. Significant among these include legislative, inadequate resources and capacity, high tolerance for corruption resulting in low reporting of corruption by the public and over politicization of corruption and crime.

Ghana had its Constitution reviewed and the anticipated for reform would, address some of the challenges confronting the Commission. The Commission is to empowered to conduct investigations on its own initiative, the definition of corruption is to be widened to encompass all corruption-related offences provided under both the United Nations Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption and its decisions are to be made directly enforceable. On reliable funding, a “Democracy Fund” is to be established as a way of ensuring sustainable funding for the Commission and other independent governance institutions in the country.

On the code of conduct for public officers, rules of evidence will be reviewed to shift the burden of proof onto a person alleged to have been bribed, where that person admits the receipt of a monetary or other advantage but denies that what was received amounted to a bribe.

# 6.0. CONCLUSION

I have, in this brief presentation, provided a gist of CHRAJ’s experience on the subject, an almost impossible task as its experience spans over a period of 25 years. The highlights however, do indicate that the linkage between corruption and human rights is direct and clear and that the set up of the Commission as a National Human Rights Institution, Ombudsman Institution, and an Anti-Corruption Agency, places it in a better stead to address corruption while ensuring the promotion and protection of human rights.

By way of conclusion, I would like to underscore the following:

* That capacity building for anti-corruption agencies and relevant national authorities to appreciate the direct negative impact of corruption on human rights, to enable them implement anti-corruption measures in accordance with human rights principles. This is a role that the UN System can assume.
* National anti-corruption action plans and National Human rights action plans must “talk to each other”, and UN system should devise measures to support states parties develop National Anti-Corruption strategies that clearly incorporate human rights principles.

Thank you.

1. Notes for presentation by Ayamdoo Charles, Director, Anti-Corruption, CHRAJ-Ghana, at an Experts Workshop on Good Practices of the United Nations System Support to States in Preventing and Fighting Against Corruption, with a Focus on Human Rights, Geneva, Monday, 11"' Of June 2018, [↑](#footnote-ref-1)
2. Article 218 of the 1992 Constitution of Ghana, section 7 of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) and the Whistleblower Act 2006 (Act 720). [↑](#footnote-ref-2)
3. Article 218 of the1992 Constitution [↑](#footnote-ref-3)
4. S. 14 (5) of Act 720 [↑](#footnote-ref-4)
5. s. 8 of Act 456 [↑](#footnote-ref-5)
6. See page 18 [↑](#footnote-ref-6)
7. See page 60 [↑](#footnote-ref-7)
8. Memorandum of Understanding Between Key Accountability Institutions in Ghana on Information Exchange and Collaboration in Combating Crime and Corruption, 2016 [↑](#footnote-ref-8)