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Panel 2 : How Human Rights and Good Governance Principles can help in fighting Corruption



**THE ANTI-CORRUPTION MANDATE OF
GHANA'S COMMISSION ON HUMAN RIGHTS
AND ADMINISTRATIVE JUSTICE (CHRAJ)**

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AG. CHAIR**

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Background

The Commission on Human Rights and Administrative Justice (“the Commission exists to foster a culture of respect for fundamental human rights and freedoms, as well as administrative justice and fairness in Ghanaian society¹. The Commission also exists to promote integrity and decency in Ghanaian public life by investigating corruption and educating the public to appreciate the high costs of corruption, and conversely, the significant pay-offs of a relatively corruption-free society. Our vision is the creation of a free, just and equitable society where human rights and human dignity are respected and duly protected where power is accountable; and governance is transparent.

The Commission was established in October 1993 following Ghana’s return to constitutional, civilian democratic governance and combines 3 institutions under one umbrella , a human rights institution, the Ombudsman and an Anti-Corruption Agency.

Its independence is guaranteed under the Constitution not subject to the control or authority of any arm of government.

- *A Human Rights Institution*

The Commission has the duty to investigate all complaints of violation of fundamental human rights and freedoms as enshrined in chapter 5 of our 1992 constitution. Furthermore , the Commission promotes human rights through Public Education_focusing on examining social and customary practices in the society, which it considers dehumanizing and a violation of the human rights provisions of the Constitution.

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

¹ Mission statement

- *The Ombudsman*

The Commission took over the role of the Ombudsman as a result of the repeal of the Ombudsman Act of 1980 CHRAJ and thus operates as a classical Ombudsman²; pursuing administrative justice in a manner that is confidential, informal and flexible and which provides the people with an opportunity to complain about "maladministration" by public officials.

- *An Anti-Corruption Agency*

The anticorruption mandate of the Commission consists of the following:

- i. To investigate complaints of violations of fundamental human rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties.
- ii. To investigate allegations that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution, namely that a Public Officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office
- iii. 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

From its inception the Commission has linked human rights protection and promotion with the fight against corruption , insisting that there could not be development and sustainable democracy without good governance and the adherence to the rule of law.

Our commission is the only constitutional body expressly mandated to investigate corruption and conflict of interest of public officers.

Our Anti-Corruption strategy has been *prevention, public education and investigation*. In pursuing this strategy, in 2005, the Anti-corruption unit of the Commission was upgraded to the status of a Department to further augment its capacity to execute its anticorruption mandate. Officers of various categories presently serve in the Department. There are also designated anticorruption officers in all the ten regional offices of the Commission. Training of officers is ongoing in-house and externally including , short term courses and attachments and visits to anti-corruption agencies in Malaysia, Hong Kong, Singapore, South Africa and Botswana among others.

² S18 , Act 456,

The Commission has also pursued anti-corruption educational activities within the general human rights education framework of the Commission to raise public awareness of the evils of corruption and its negative impacts on development . Futhermore the Commission has developed guidelines of conflict of interest, which are being discussed by stakeholders for input before being released for implementation by the end of 2006. Target groups that have benefited from our workshops apart from our own staff include the TUC, the media, Chief Directors (principal secretaries) of ministries and members of the Ghana Anti- Corruption Coalition These efforts are also aimed at enlisting public support in combating corruption throughout the nation.

Corruption Investigations

Since its inception in 1994, the Commission has investigated over 125 corruption cases throughout the country. At the Head Office we have handled 88; while other regional offices have handled the rest .

A number of high profile investigations have been conducted over the years, prompted by media allegations of corruption against ministers of state and high ranking government officials in which the Commission made adverse findings resulting in the resignation of these officials. One such investigation conducted in 1995/96 into allegations of corruption and illegal acquisition of assets at the height of the Rawlings Regime helped in establishing the Commission's reputation as a fair and credible and dependable anti-corruption agency.

Recent High Profile Cases

- a) Preliminary investigation by the CHRAJ into allegations of corruption and conflict of interest against His Excellency J.A. Kufuor , President of the Republic of Ghana, in respect of the acquisition of a "hotel" at Airport West, Accra (known as "Hotel Kufuour")
- b) Investigation into allegation of corruption, abuse of power and conflict of interest against the Hon. Transport Minister Dr. Richard Anane

In 2005 country was rocked by 2 major scandals , one involving the President of the Republic and the other the Minister of Transport reputed to be one of the closest confidantes and friends of the President. Minister of transport . Both stories which were broken by the media polarized the country into two divisions, pro and against government and along party lines. Both had potential of causing major problems, disgracing the President and his Cabinet and heightening public perception of a corrupt, morally decadent and unethical government. The public debate and outcry was strident more so because this present government came in with a clarion call of zero tolerance for corruption. The Commission took the cases up on its own initiative.

In the first case, it was alleged that the President of the Republic had used his son as a front to buy a hotel adjacent to his private residence and had used state security apparatus to coerce the former owner into selling it. Upon preliminary investigations those allegations could not be substantiated . But the fact that the President accepted

the jurisdiction of the Commission to investigate him further enhanced the Commission's independence and stature.

In the second case, the Honorable minister was alleged to have transferred various sums of money to his mistress in the US , who as also at that time purporting to enter into contract with the Government of Ghana . The Minister was also alleged to have lied before Parliament on matters pertaining to this affair. The CHRAJ found that there was indeed conflict of interest and abuse of power and recommended that the President sack the said Minister. The Minister in fact resigned . The Commission further recommended that all future ministers take a compulsory 2 months course in conflict of interest upon taking office.

With both these cases, the Commission was highlighting the principles of accountability and integrity in public service.

The Commission was also making the point that everyone is equal before the law and that even the President could be held accountable .

May I just indicate here that from 1994 to present date, we have investigated over 100,000 cases of human rights, administrative justice and corruption. Our average is about 10,000 cases a year nation wide (Headquarters, 10 regional offices, 2 sub-regional 99 district offices currently staff strength 770)

The Ghana Anti-Corruption Coalition

Ghana's experience like others globally has brought to the fore the need to develop an all-inclusive and more sustainable and structured approach in the anti-corruption crusade. In this regard, a broad-based coalition of agencies comprising membership from public sector, private and civil society organizations has been formed and known as the **Ghana Anti-Corruption Coalition (GACC)**. The members of the GACC are: the Commission on Human Rights and Administrative Justice (CHRAJ) the Serious Fraud Office (SFO), the Institute of Economic Affairs (IEA) the National Governance Program (NGP), the Private Enterprise Foundation (PEF), the Ghana Integrity Initiative (GII) (Ghana Chapter of TI) , the Ghana Journalists Association (GJA) and the Centre for Democratic Development (CDD-Ghana). The broad objectives of the GACC include the creation of a forum for interaction among the government, public and private sector institutions and civil society groups working in the area of anti-corruption as well fostering greater cooperation between international organizations and donor agencies in the global effort to establish good governance for sustainable development and anti-corruption.

External Challenges:

In our fight against corruption, the Commission faces a number of external and internal challenges including;

Legal and Institutional framework

Criminal laws on corruption are scattered in a number of other laws. The Criminal Code of 1960 contains inadequate provisions on corruption. As part of its recent decision in the Anane case, the Commission recommended that that the necessary processes be initiated to upgrade our laws to meet the AU minimum standards as contained in the AU Convention against Corruption as in our view , its present state

the law cannot provide the necessary deterrence for achieving Zero Tolerance for Corruption.

Lack of Government Commitment or *Political Will*

We have emphasized that the government must demonstrate political will and commitment to the fight against corruption adequately resourcing our institutions and have made presentations at the Ministry of Finance , as well as before the relevant Parliamentary Committee. By our recent decision in the Anane case as well as previous cases involving high ranking government officials, we are urging the executive to do its own house cleaning and not to shield corrupt officials - in other words by exercising probity, and accountability; ensuring a transparent government of integrity.

Responsible Media

The media occupies an important part in curbing corruption and enhancing the stature of the Commission through raising awareness about corruption, investigating and reporting on corruption. The media is therefore a strong ally in any strategic fight against corruption and that is why we deem it crucial to keep constantly engaged with the media. However, the media must be more responsible in their reportage and guard against media tyranny . In some cases, we have found that in reporting what is perceived to be corruption the media has not been motivated by personal integrity or reasons of public interest but rather by malice. (Next session on media so defer)

Internal Challenges

The preceding discourse highlights the external and environmental challenges that we as a nation face in combating corruption. But as an institution, we face impediments and obstacles that seriously challenge our efficacy and the efficient discharge of our mandate. These problems include;

Resource Constraints

Inadequate resourcing and the need for financial independence in order to fully execute our mandate. It is in the interest of both the Executive and Legislature to ensure adequate and appropriate resourcing of CHRAJ which as we have been at pains to point out, is 3 bodies in one, and the funds allocated should reflect this.

Other challenges

Poor conditions of service of our staff lead to exodus of qualified core staff, especially our legal officers . This hampers service delivery and causes backlog in our cases.

Lessons learned.

An Anti-Corruption Environment

- Corruption *is* a system and corruption *has* a system. Therefore, it can only be combated with a system that provides an enabling environment within which anticorruption agencies and institutions of governance such as the CHRAJ, SFO, the Judiciary, the Auditor- General, and the Police, among others, can effectively operate. Such an environment is created through an elaborate **anticorruption policy, an appropriate legal and institutional framework, a responsible media, civil society/citizen engagement, coalitions, international cooperation, and above all political will.**
- There exist the Financial Management Laws, namely the Financial Admin Act, 2003 (Act 654), Public Procurement Act, 2003 (Act 663), Internal Audit Agency Act, 2003 (Act 658), Audit Service Act, 2000. All these are intended to bring sanity in financial management and to curb leakage of resources but they are not in themselves a panacea for corruption.
- Laws are not self-executing. People and institutions must implement the laws to make them operational. Institutions and staff need resources to implement the laws. Strong commitment from all stakeholders, especially from government is important.
- An independent national human rights institution , well resourced can effectively enhance and contribute significantly to the promotion and protection of human rights in combating corruption.