The Dispute Resolution Mechanism in the CHRAJ in Ghana

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PRESENTATION OUTLINE

- General profile of the Commission- mode of establishment/appointments of Members/Independence/accreditation status/Staffing and accessibility

- Mandates of the Commission

- Powers of the Commission

- Alternative Dispute Resolution Mechanisms used by the Commission.
General Profile


- Constituted by 3 Executive Commissioners – a Commissioner and two Deputy Commissioners of Human Rights and Administrative Justice who must qualify for appointment as Justices of the Court of Appeal and High Court respectively.

- Appointed by the President in consultation with the Council of State (Update up-coming Constitutional amendments)
Tenure and Terms and conditions of service same as Justices of Appeal and High Court. Retiring at ages 70 and 65 respectively. Removal process same as Justices of the Superior Court of Judicature.

Independent, and in the performance of their functions not subject to the direction and control of any person or authority. Financial independence? Update on arrangements under proposed Constitutional amendments.
General Profile

- The Commission is empowered to appoint its own staff in consultation with the Public Services Commission. Currently has a staff strength of approximately 768.

- Has Offices in all the 10 administrative Regions and 110 Administrative Districts in Ghana. Continuing to open more district offices resources allowing. Each Regional office has a minimum staff strength of 18 and the Districts 5. The Head Office has about 150. Thus the Commission is geographically accessible nationwide.

- All services rendered are free of charge.

- Accredited with “A” status under the Paris Principles.
Mandates

- The Commission has 3 very broad mandates – fusing 3 otherwise separate Institutions into one:
  - It is the National Human Rights Institution
  - It is the Ombudsman with all public services and public officials under its remit
  - It is an Anti-Corruption Agency for the public service

- Meets the Paris principles requirements- but resources overstretched to carry out all mandates effectively. Relies on DP support a lot
Mandates

- Specifically investigates complaints by any person against violations of fundamental human rights - civil/political; social/economic/cultural guaranteed under the Ghanaian Constitution as well as international human rights considered inherent in a democracy and intended to secure the freedom and dignity of man.

- Investigates complaints of abuse of power; injustice and unfair treatment of any person by a public official in the discharge of his official duty.

- Investigates complaints concerning the functioning of all public services including administrative organs of state; the Police; the Armed Forces and Prisons and in particular including recruitment; balanced structuring and fair administration of public services.
Mandates

- Investigates complaints concerning practices and actions by private individuals, private enterprises and other institutions for human rights abuses.

- Investigates instances of alleged or suspected corruption and the misappropriation of public monies and to take appropriate action on its own motion.

- Investigates allegations of conflict of interest against public officers and take such action as the Commissioner considers appropriate.

- To educate the public on human rights.
Special Powers of Investigations

- Power to issue subpoenas requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission

- Power to bring contempt proceedings against persons contemptuous of its subpoenas

- Power to question any person in respect of any subject matter under investigations

- Power to require any person to disclose truthfully and frankly any information within his knowledge relevant to any information
The provisions of the Constitution and its enabling law clearly established the Commission as an alternative forum for redress of disputes alternative to the formal courts.

The Constitution and Act 456 requires that in undertaking its investigative functions it “take[s] appropriate action to call for the remedying, correction and reversal of instances specified……through such means as are fair, proper and effective, including negotiation and compromise between the parties concerned. .”

Within the Ghanaian context, this has been interpreted as intended differentiation/disatisfaction with the process and procedure of the courts with their technical rules as well as high costs of litigation and the tendency to alienate the parties as major actors in dispute resolution in favor of technical rules.
ADR Mechanisms in use

- Conduct investigations into complaints, make findings and report the findings to the superior of an offending person
- Where the remedy can only be obtained from a court, bring proceedings in a competent court for a remedy terminating the offending action or conduct or the abandonment of the offending procedures.
- Or bringing proceedings to restrain the enforcement of legislation or regulations if the offending action is sought to be justified by that legislation or regulation which the Commission deems unreasonable
- Clearly negotiation and compromise or mediation has been interpreted by the Commission as the true alternative dispute resolution to those requiring action in court

From its establishment in 1993 the Commission had adopted mediation as the ADR mechanism of choice in the resolution of disputes brought before it to resounding success throughout the years.

Available research and other empirically verifiable data prove that in the area of access to justice especially of the vulnerable, CHRAJ is the lead organization in Ghana.
Reference can be made to the UNDP GaP poll (governance and peace poll) of 2014 a survey conducted to determine the performance and trust levels of Ghanaians of governance institutions in Ghana. The Commission came second to the National Peace Council beating all other governance institutions including the courts.

Another survey by the African Peer Review Mechanism and the Royal Danish Embassy in 2013 again scored the Commission’s performance especially its popular mediation mechanism highly by Ghanaians interviewed.

2014 Perception study commissioned by the Commission and conducted by the APRM whiles showing weaknesses in the performance of some mandates, the popular mediation mechanism was the most praised by those surveyed.
Available statistics indicate that on the average since 2000 the Commission receives about 12,000 complaints per year nationwide and that 95% of these complaints are redressed through mediation with a closure rate of about 87%.

Throughput time for resolving complaints which are mostly concerned with maintenance of children; property distribution; landlord and tenant etc is between two weeks upon receipt of complaint to a month.
MEDIATION

- Training of staff in all areas of its mandate – international human rights law and principles and how to apply them in dispute resolution; ombudsman investigation skills; knowledge of anti-corruption legislation and investigation deemed very paramount

- Training and refresher courses in the process elements of mediation and the role of the mediator as well as writing good agreements for parties is high on the Commission’s training programme
The popularity of mediation as a dispute resolution mechanism in the context of Ghana and much of Africa is due to its close resemblance to the traditional methods of resolving disputes among the extended family and even the clan.

With the extended family giving way due to urbanization a close replacement is needed and mediation has come in handy.

Indeed even the courts have introduced court-connected ADR in the commercial division of the High Court as a condition before any commercial litigation and the Magistrate courts.
With about 90%-95% of the Commission’s complaints resolved through mediation, the administrative justice and corruption mandates have suffered (see Gyimah-Boadi et al. - Achieving successful governance in Africa: the case of Ghana’s Commission on Human Rights and Administrative Justice).

But with Ghana attaining lower Middle income status, the governance issues such as corruption and mismanagement of state resources have become very serious concerns.

The Commission has prioritised revamping these two mandates with rigorous training of staff in order to correct the misalignment within the financial constraints facing it.
Ghana is in the process of amending its 1992 Constitution after twenty years of operation. Key among the amendments are matters perceived to be the basis of institutional weakness of the Commission:

- The status of decisions of the Commission which require enforcement in court if not complied with are now to be registered and immediately become enforceable as decisions of the relevant court depending on the office which makes the decision with a right of appeal to the next appellate court.

- Thus a district office of the Commission’s decision would be registrable in a magistrate court as the decision of that court with a right of appeal to the High Court.
Constitutional amendments

- A Regional Director’s decision would be the equivalent of a Circuit Court with a right of Appeal to the Court of Appeal while a decision of the Commission when registered becomes the decision of the High Court with a right of Appeal to the Court of Appeal.

- When the Constitutional amendments are effected the Commission would practice both consensual-based and adjudicative based ADR Mechanisms.
THANK YOU