



# INNOVATIONS FOR SUCCESSFUL SOCIETIES

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## EARNING A REPUTATION FOR INDEPENDENCE: GHANA'S COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE, 1993 - 2003

### SYNOPSIS

In 1993, Emile Short, a private practice lawyer, took on the challenging job of leading Ghana's new Commission on Human Rights and Administrative Justice. Created by the 1992 constitution, the commission had a triple mandate: ombudsman, anti-corruption agency and human rights monitor. Short had to construct the organization from scratch and make it relevant in a political landscape dominated by the presidency. He had to execute a constitutionally broad mandate and develop a public reputation for independence, despite a limited resource base and no enforcement authority. The commission's power lay in its evidence-based investigations and public hearings, which, combined with media and public support, helped to expose high-level corruption and mobilize social pressures for greater accountability. Short focused on building the commission's credibility, developing public education programs and creating a network of anti-corruption civil society groups. Short asserted the commission's independence early on, investigating allegations of corruption against sitting ministers in 1996. For the first time in Ghana, public investigations of incumbent politicians triggered ministerial resignations.

*Deepa Iyer drafted this case on the basis of interviews conducted in Accra, Ghana, in July 2011. Itumeleng Makgetla contributed interviews in September 2009. Case published November 2011.*

## INTRODUCTION

In July 1993, Emile Short was surprised to hear the local radio station announce that he would lead Ghana's new Commission on Human Rights and Administrative Justice. A lawyer who had practiced in the southern city of Cape Coast since 1974, Short had made a name for himself locally by serving on the human rights committee of the Central Region Bar Association. A year earlier, members of regional political parties had approached Short to consider a post in Ghana's new democratic government, but nothing had come of the conversation. His appointment to the commission, which was created by Ghana's 1992 constitution, catapulted him onto the national scene.

After Ghana's independence in 1957, repeated military coups had interrupted brief periods of civilian rule. The government of the Provisional National Defense Council (PNDC), headed by Flight Lieutenant Jerry Rawlings, came to power via military coup in June 1979. While the PNDC tightened its grip on the country through the 1980s, civil society groups and international financial institutions pressured the government to democratize. Rawlings stepped down after creating a civilian government, took power again at the end of 1983, and then moved once more to create a multiparty system embodied in the country's 1992 constitution.

The new constitution created a commission to investigate complaints concerning human rights violations, administrative injustice and corruption. Corruption, a dearth of accountability, and infringements of justice were common under past authoritarian and civilian regimes. Quasi-judicial institutions addressing these issues mainly focused on

purging the government of opposition from prior governments. In 1985, soon after the second Rawlings military government took over, the International Country Risk Guide assigned Ghana a corruption score of 2 on a scale of 0-6, with 6 as the least risk, indicating high risks emerging from political corruption.

Although previous Ghanaian governments had created ombudsman institutions to gather public complaints, these offices had little investigative or enforcement authority. During the 1991 deliberations to produce a new multiparty constitution, the nine members of the drafting group appointed by Rawlings, called the Committee of Experts, recommended the creation of a government agency that would have the ability to investigate complaints and allegations of corruption, human rights violations and administrative injustice. In August 1991, the government convened a 258-member consultative assembly that debated the Committee of Experts' report and drafted a constitution. On April 29, 1992, Ghanaians approved the constitution in a national referendum. Elections followed. Rawlings founded a political party, the National Democratic Congress (NDC), and ran as a civilian. He won 58.4% of the vote and took office in January 1993.

Six months later, Parliament passed Act 456, creating the Commission on Human Rights and Administrative Justice, which became known by its acronym CHRAJ. Rawlings appointed Short as CHRAJ's first commissioner, based on recommendations from members of the Council of State, a group of presidential advisers. Short had spent 20 years working in private legal practice in Ghana, the United States, and

the United Kingdom. “I had little experience in this area and, in 1993, there were very few such commissions in Africa and therefore few examples to go by,” Short said. “We had just made a transition from military rule to democracy, so there was still a legacy of authoritarianism in the body politic. Here we were, a democratic institution that was supposed to be independent of any other institution, especially the government, and promote the rule of law in a new era of constitutional rule. We had to build up this institution.”

This case study assesses CHRAJ’s anti-corruption functions. The study sheds light on how a poorly resourced institution funded by the government managed to take on controversial cases, conduct evidence-based investigations, establish a reputation for political independence, and, ultimately, raise the political costs of corruption thanks largely to strong leadership in its formative years and the support of vibrant media. Under Short, CHRAJ placed both prevention and correction of corruption onto postcolonial Ghana’s political landscape for the first time. CHRAJ created a network of anti-corruption organizations to facilitate prevention and produced some of Africa’s first real examples of incumbent public servants suffering exposure for corruption.

## THE CHALLENGE

From the start, the commission’s design limited its reach. CHRAJ combined the mandates of an ombudsman, a human rights commission and an anti-corruption institution under one umbrella. The Committee of Experts had envisioned the extraordinarily broad mandate as a way to keep costs low. According to Act 456 and

the constitution, CHRAJ could investigate complaints of administrative injustice, corruption and human rights violations against the public service commission, all administrative units of the state, the armed forces, the police service and the prison service. CHRAJ also could specifically investigate allegations that a public officer failed to comply with the Code of Conduct of Public Officers in the Constitution and allegations of corruption, submitting reports to the attorney general and auditor general concerning findings. Last, CHRAJ was responsible for educating the public on corruption, human rights and administrative justice. The commission had to report annually to Parliament on its performance.

CHRAJ’s commissioner and two deputy commissioners, all of whom were appointed by the president, had the same status as appeals court and high court judges in Ghana, with the same security of lifelong tenure. The purpose of the tenure provision was to enable the commissioners to make decisions impartially, without fear of losing their jobs. The Committee of Experts also empowered CHRAJ to enforce its remedies “through such means as are fair, proper and effective,” including reporting findings to a superior officer, bringing court proceedings to stop or change actions that violate rights, challenging any law that violated constitutional rights, and submitting reports to the attorney general and auditor general on corruption investigations. CHRAJ could issue subpoenas requiring people to appear before the commission and to produce records relevant to the investigation, bring court proceedings against anyone who refused to comply with its subpoenas, question any person on any subject under investigation,

and require any person to disclose, under oath, any knowledge relevant to an investigation.

Short recognized that key elements of the commission's design directly hindered the performance of these functions. In a concession to the Provisional National Defense Council (Rawlings' military regime when the constitution was being written), the Committee of Experts had limited CHRAJ's mandate. CHRAJ's jurisdiction did not extend to matters pending before a court or judicial tribunal, to matters involving Ghanaians' dealings with other governments or international organizations, or to matters dealing with executive pardons. Additionally, parts of CHRAJ's mandate were vague and open to conflicting interpretation, for example, issues like whether CHRAJ could focus on the former pre-1993 PNDC regime and whether CHRAJ could only investigate public officials as opposed to private sector individuals. Last, CHRAJ's broad mandate meant that staff and finances would be spread thin.

Given these constraints in CHRAJ's design, Short had to find ways to endow the commission with relevance. He faced a threefold challenge: to build operational capacity, to execute a constitutionally broad mandate given a limited resource base, and to develop a public reputation for independence. "The previous ombudsman institution was not effective, and now we had a successor: one that had a wider reach than anything before it, although not without its limits," Short said. "We had to make this institution work." Angelina Mornah Domakyaareh, a founding deputy commissioner of CHRAJ, said, "It really was an enormous task

initially. There was so much to do. It was a struggle from the start, but one that we felt able and ready to address."

### FRAMING A RESPONSE

Short realized that three preconditions were critical to building a functioning organization: staff, outreach and funding. When Short joined the commission in 1993, he and his two deputy commissioners, Domakyaareh and Benjamin Oppong, had no support staff. All three had been private practice lawyers. Cases began to pour into the commission's central headquarters in Accra, adding to a deep backlog from the ombudsman's office, which was abolished with the creation of CHRAJ. Short needed staff—lawyers, investigators and administrative personnel—to start addressing incoming cases. He wanted to use meritocratic recruitment methods to create a competent and dedicated pool of employees.

Short worked with administrators from the Public Service Commission to identify the qualifications and skills needed for various CHRAJ positions: investigators, lawyers, directors of departments and administrative staff. The commission then advertised the positions in the media. Short and the deputy commissioners conducted interviews with candidates along with a representative of the Public Service Commission on the interview panel. Hiring decisions hinged on applicants' background, experience and references. Short said he and the deputy commissioners favored candidates with strong personal integrity, although he conceded that this characteristic was often difficult to identify. Short hired several retired police officers as commission

investigators, thinking that their former ties to the security forces lent them valuable experience.

The commissioners also had to expand CHRAJ's access throughout Ghana, to improve its investigative capacity. "Because approximately 70% of Ghanaians live in rural areas, we needed to decentralize and make it clear that anybody could submit a complaint at a CHRAJ office," Short said. Short and Oppong toured Ghana's regions and districts, identifying buildings to use as offices and giving priority to the most populous regions. Within a year, the commission had 38 offices in regional capitals and districts. Short and Oppong then prioritized Ghana's other districts, allocating a portion of CHRAJ's budget annually for expansion. By 2003, at the end of Short's tenure, the commission had set up 110 district offices and had a total staff of 738.<sup>1</sup> Lawyers headed regional branches, while university graduates manned district offices to handle lower-priority complaints.

Short knew that the commission's annual budget was insufficient to cover the three broad mandates of the commission. The budget came from the government's consolidated fund and was allocated by the Ministry of Finance. Short allocated most of the government's funding to salaries, and set about building relationships with international donor organizations to secure additional funding for the commission's activities. "I went, cup in hand, to many donor organizations," he said. "I went first to the embassies and spoke to the officials there about the need to assist us." Short and the deputy commissioners wrote proposals for specific projects as the need arose, securing grant funding for several. The commission secured funding from the

Danish International Development Agency (Danida), the United Nations Development Programme, the United States Agency for International Development, and the U.K.'s Department for International Development. Danida quickly became the commission's most important funding agency. "Danida started in 1994-1995 and invested massively in us," Short said. "We received sustained support through the 1990s and even until the present day. They provided money for workshops, building offices, vehicles, the purchase of computer equipment, and even offered overseas training to our staff. This was very useful in the beginning, because we needed to prove our worth to the government before we could expect the government to raise our budget, and Danida supported us before the government started to raise the budget later, in the early 2000s."

Developing an anti-corruption strategy was a delicate matter. Short said, "We didn't want it to be a witch-hunting exercise, which would have made public officials uncomfortable. We had to strike a balance between holding public officials accountable and at the same time not being unduly intrusive by just summoning people on the slightest allegation of corruption or illegal acquisition of wealth." Domakyaareh said, "We had to interpret our mandate and build a commission that would stand the test of time, so it was critical to start off well, which we kept in our mind from the beginning."

## GETTING DOWN TO WORK

Short and his staff gave priority to the backlog, allocating cases inherited from the ombudsman. The commissioners and department heads conducted in-house training sessions for staff, dividing them regionally into clusters and by their roles.

Staff participated in training on the principles and techniques of investigation, which emphasized systematic analysis of evidence, while district-level staff studied dispute arbitration and mediation. Training sessions involved lectures, case studies, simulation exercises and group work. Additionally, managers produced video-recorded vignettes of staff members doing their jobs, and provided critiques and feedback on their performance.

### *Building a reputation for independence*

Short and the deputy commissioners knew that the commission needed to assert its independence early on. The commission's first face-to-face encounter with the government arose in 1994. Under the 1992 constitution's transitional provisions, the commission had to return private assets that had been seized by the PNDC regime if evidence proved that the PNDC had confiscated the property without sufficient grounds. CHRAJ investigators assembled historical records and witness accounts, and held hearings attended by petitioners and plaintiffs. At the hearings, defendants and plaintiffs presented their versions of the story, after which the commissioners publicly evaluated the evidence and asked questions of both sides. The commissioners then issued rulings and, if needed, submitted recommendations for action to the attorney general. Between 1994 and 1997, CHRAJ ordered the return of citizen properties in 153 cases following public hearings. Further, CHRAJ reversed several executive decisions taken during the PNDC era that had dismissed public officials without due process. These rulings against Rawlings' former regime, which still held power after being elected democratically,

served as a testament to the commission's independence even though Rawlings had appointed all three commissioners.

In 1996, CHRAJ seized the opportunity to handle its first high-profile anti-corruption case. Newspapers had carried allegations of illegal acquisition of wealth, abuse of office and misappropriation of public funds by two ministers and two senior presidential advisers. Rawlings, seeking to demonstrate his faith in the democratic process, invited CHRAJ to investigate the allegations, in accordance with provisions in the constitution and the law that gave the commission responsibility for investigating suspected corruption.

Short directed CHRAJ's investigators to conduct a preliminary inquiry. They asked newspapers to submit their evidence and evaluated the findings in light of public records and independent witness accounts. The commission's investigators also sought to determine whether the officials in question had complied with Article 286 of the constitution, which required public officers to submit an asset declaration within three months of the constitution's effective date in 1992, every four years thereafter, and at the end of their terms of office. In light of the evidence uncovered by CHRAJ'S preliminary inquiry, Short and the deputy commissioners decided that the original allegations were credible and that it made sense to move ahead with further investigations and hearings.

The commissioners asked the accused officials to provide their versions of the events in question. Dissatisfied with the officials' responses, the commissioners summoned the four to a series of public hearings that were open to citizens and media. "The hearings were public. We

wanted the process to be as transparent and accountable as possible,” Short said. The hearings generally followed a courtroom format, as CHRAJ lawyers presented evidence compiled by commission investigators and attorneys for the accused responded to questions and presented a defense.

Following the hearings, the commissioners exonerated one presidential adviser and ruled against the three other officials, two of whom were ministers. The commission recommended that the minister of interior refund about 18.5 million old Ghanaian cedis (approximately US\$1,200) to the state—a sum that exceeded the amount that he had made from the transaction that was the subject of the investigation. The commission found that minister of food and agriculture had granted tax waivers to certain fishing companies without following proper procedures. The commission recommended that he be reprimanded for negligent behavior. The commission ruled that a presidential staffer had failed to pay the correct taxes on his earnings and to disclose a house acquired in the name of his 7-year-old son on his asset-declaration form. The commission recommended that the staffer pay the appropriate tax and that the government should reconsider his employment.

Although CHRAJ had investigated the cases at the request of the president, the government officially rejected CHRAJ’s findings. A formal document addressed each of the allegations in detail and “gave explanations for why each finding was not correct, and why the recommendations were flawed,” Short said. The statement also accused CHRAJ of intentionally releasing its recommendations three months before the

December 1996 elections in a bid to influence voters. In response, CHRAJ issued its own white paper, condemning the government’s position as incongruent with the commission’s mandate under the 1992 constitution and criticizing government reluctance to take action against corruption.

Citizen resentment grew as media covered the public hearings, the government’s outright denial of the findings, and CHRAJ’s stern rejoinder. The commission garnered public support, and eventually Rawlings acquiesced and forced the three accused men to resign from their roles.

These cases represented the first time in Ghanaian history that an incumbent government faced investigations, earning CHRAJ a reputation for independence among the Ghanaian public, media and civil society. These initial cases set the basis and process for CHRAJ’s future anti-corruption investigations, all of which were based on media allegations or third-party complaints. Typically, between 1994 and 2003, anti-corruption cases amounted to 2% or less of CHRAJ’s annual caseload, with perhaps one or two high-profile cases per year.

#### *Creating a network of anti-corruption organizations*

Short worked hard to partner CHRAJ with civil society organizations and, more importantly, to generate a network of organizations in Ghana dedicated to corruption issues. “Over the years, we had meetings with other institutions that dealt with anti-corruption,” he said. “CHRAJ played a prominent role in making these meetings happen and in developing an agenda for fighting corruption in general.” Kenneth Attafuah, head of the anti-

corruption and public education unit at CHRAJ from 1998 to 2003, said, “We built bridges with civil society and enlisted their support in serving as additional eyes and ears on the ground for us.” CHRAJ frequently worked with the Center for Democratic Development, an independent Ghanaian think tank founded in 1998 and based in Accra. Short said, “By helping to build a stronger civil society base on corruption issues, I hoped that CHRAJ and these groups could all work together, as a broad coalition, to promote public sector evolution on tackling corruption.”

Short was instrumental in bringing Transparency International to Ghana. The global anti-corruption organization contacted him in 1999 for advice on how to set up a branch in Ghana, as the group had a policy of securing government approval prior to opening local chapters. Short broached the issue with the then-speaker of Parliament, Justice Daniel Annan, and with Rawlings, who agreed to the idea. That December, Transparency International established its local branch, called the Ghana Integrity Initiative, with Short serving as chairman of the board, a position that he held until his departure from CHRAJ in 2003.

In 2000, Short and CHRAJ, with support from donor organizations, facilitated the formation of the Ghana Anti-Corruption Coalition (GACC), an alliance of public, private and civil society organizations focused on building a national effort to confront corruption. Member organizations included CHRAJ, the Private Enterprise Foundation, the Forum of Religious Bodies, the Ghana Integrity Initiative, the Ghana Journalists’ Association, the Economic and Organized Crime Office, the National

Governance Program, the Institute of Economic Affairs, and the Center for Democratic Development. As a collective platform for anti-corruption advocacy, the GACC developed training and monitoring programs, including public surveys that measured corruption perceptions. The group also published, with the encouragement and participation of CHRAJ, a 10-year national agenda to fight corruption.

Attafuah said, “As the foremost national anti-corruption institution in Ghana’s Fourth Republic, the CHRAJ was instrumental in strengthening the capacity of civil society groups committed to the promotion of integrity and high ethics in Ghana, and today, we have multiple organizations oriented towards the issue.”

#### *Public education initiatives*

As part of its mandate, CHRAJ focused on prevention work through public education programs. Short and the commissioners started by identifying target groups of interest for public education—for example, public officials, the police service, journalists, the military and schoolchildren. With the help of CHRAJ staff, they then developed a specific curriculum for each sector. The program focused on issues pertinent to CHRAJ’s broad mandate, both in terms of anti-corruption and human rights.

CHRAJ hosted workshops and training sessions on investigative techniques for journalists. For public officials, workshops concentrated on issues related to conflicts of interest, looking into ways for public officials to separate their public and private lives. For the police force, workshops focused on human rights violations, bribery

and similar concerns. According to Attafuah, curriculum development “involved providing insights into international standards of integrity and universal perceptions of what makes for a better society, while remaining attentive to the unique cultural practices in the Ghanaian context.” Training sessions involved lectures, role playing, writing exercises, video-recorded vignettes, and case studies. Domakyaareh said, “We often fed staff to other public sector institutions, because the public sector knew that CHRAJ trained its staff well. For example, several CHRAJ lawyers left to join the judiciary and other public sector institutions.”

The commission also held a National Integrity Workshop, in close collaboration with the Center for Democratic Development and Transparency International, in October of 1998, focused largely on anti-corruption issues. The workshop brought together public officials, CHRAJ officials, civil society groups, and members of international anti-corruption bodies. At the workshop, Short said that previous efforts to curb corruption had been focused too narrowly and concentrated on legal enforcement, and he urged a collaborative effort that emphasized prevention.

At the workshop, participants brainstormed ways of generating public awareness of corruption’s economic and social costs, and developing the framework for a national integrity system that addressed anti-corruption issues. Workshop participants stressed the importance of isolating the factors that promoted corruption in Ghana and building targeted solutions. The workshop also launched a study conducted by the Center for

Democratic Development on public corruption perceptions in the delivery of health care and education services. “It was an extremely rewarding experience,” Domakyaareh said, “and it set the stage to build a larger network of anti-corruption organizations in Ghana. People sat up and listened, rather than deriding anti-corruption issues like they had before.”

## OVERCOMING OBSTACLES

Over a period of years, several constraints undermined CHRAJ’s efforts. First, the institution’s broad mandate resulted in a heavy workload for all employees. For example, in 2002, the 12 lawyers at the commission’s main office in Accra handled an average of 200 cases each. The triple mandate of ombudsman, human rights agency and anti-corruption commission created a heavy caseload and a congested docket. In 1993-1994, CHRAJ received 3,197 cases. In 2003, it received 13,726 cases.

Lack of money impeded the commission’s efforts. “The government,” said Short, “did not see us as three separate institutions: ombudsman, anti-corruption institution, and human rights commission. They saw us as a single institution from the start, which resulted in the institution receiving inadequate funding.” CHRAJ reported to Parliament, which approved its budget, although the Ministry of Finance typically proposed cuts. Budgets were funded quarterly and were not guaranteed. Increases in CHRAJ’s staff size between 1993 and 2003 (from three commissioners in 1993 to 738 staff in 2003) were not matched by corresponding budget increases. In 1993, CHRAJ’s budget was approximately 8.5 billion old Ghanaian cedis, or about

US\$557,000, and rose by early 2004 to approximately 25.9 billion old Ghanaian cedis, or about US\$1.7 million.

Several CHRAJ employees suggested that low annual budget allocations represented a way for the executive branch to weaken the institution. Indeed, the commission's lack of financial resources resulted in low staff salaries that led to high staff attrition. "The unfortunate part of it is that we lose quite a number of the people that we train because of the unattractive conditions of service," Short said. In the context of these budgetary constraints, the commission tried to reward its staff by giving awards for long service and recognizing those who had served a particular length of time.

Under the law, the commission had to investigate all complaints that came before it, which meant that other aspects of its mandate received less attention. In rural areas, the commission was often the only resource for free and fair dispute resolution. "Our experience has been that a lot of people bring complaints which are not within our remit," Short said. "And they expect us to take those cases because they don't have the means to take these cases to court. Also, our services are free, and people have confidence in the commission." Typically, 70% to 80% of the commission's cases involved dealing with private grievances in rural districts, and most of the remaining cases dealt with administrative justice.

To cope with the heavy caseload, the commissioners developed guidelines for priorities. In the area of property rights, for example, they tried to avoid investigating landlord-tenant disputes, Short said. Rather, they focused on instances that

involved state confiscation without compensation.

Not surprisingly, CHRAJ investigations encountered resistance. CHRAJ's design limited its investigators' ability to obtain information. CHRAJ could not compel a defendant to give evidence or produce a document if the defendant was bound by law to maintain secrecy. Additionally, the Supreme Court had exclusive jurisdiction over whether an official document could be produced in a hearing or in court. Only the Supreme Court could decide if the disclosure of a document would be prejudicial to state security or public interest. Sam Asibuo, professor at the University of Ghana, made the point that the definition of confidential documentation and the rules surrounding nondisclosure were subjective and provided public officials plenty of room to maneuver.

During the Rawlings era, which ended in 2001, the commission often faced outspoken opposition from government officials. Complaints against the commission appeared occasionally in government-run publications. One example was the government's white-paper response to the commission's decision in the seminal 1996 anti-corruption case. In his annual New Year's address, Rawlings publicly attacked Short, insinuating that Short and CHRAJ were eroding the gains of the revolution. A member of the cabinet later called Short to apologize. However, this opposition diminished in 2001 with the democratic transition of power to President John Kufuor. "When there was a leadership transition in 2001 ... the tension between the government and the commission had waned considerably, and so we did not face the kinds of challenges that we faced during the

first seven years of the administration that took over the reins of power on the transition to constitutional rule,” Short said.

The commission also faced opposition from the Serious Fraud Office (SFO), later renamed the Economic and Organized Crimes Office (EOCO), which was established in 1998 to address fraud and embezzlement in public and private institutions. The Serious Fraud Office lacked CHRAJ’s credibility and public reputation for independence. Given that CHRAJ also possessed an anti-corruption mandate, the two institutions often butted heads over cases. “There were some occasions when we both investigated the same cases, or when neither of us investigated a case when we thought that the other was doing so. We had two meetings to discuss the overlap, but the collaboration has not been as effective as it should be,” Short said. However, over time, Short and the deputy commissioners came to an understanding with the SFO that CHRAJ would limit itself to corruption involving public officials, while the SFO would focus on pure fraud (instances of forgery, money laundering, etc.). After the SFO became the EOCO in 2010, its mandate became more distinct from that of CHRAJ. “There is a growing distinction between fraud and corruption, and of course, we mainly focused on public officials while they also looked at offenses committed by the private sector,” said Short.

## ASSESSING RESULTS

Ghana experienced a gradual improvement in corruption perceptions at the same time that CHRAJ was active.<sup>2</sup> CHRAJ’s power lay in its investigative capacity: The commission’s investigations

had triggered ministerial resignations, ultimately improving accountability. Although anti-corruption cases accounted for 2% or less of the total caseload throughout CHRAJ’s existence, these cases were typically high-profile and controversial.

CHRAJ set a precedent in Ghanaian political history. For the first time, sitting ministers suffered exposure and faced political costs for their misdemeanors. CHRAJ built a strong public constituency, including citizens and Ghana’s vibrant mass media. CHRAJ’s reputation was greatly aided by its role as an ombudsman and human rights institution in addition to an anti-corruption agency; its work offering free dispute-resolution services in rural areas and its campaigns against cultural practices that violated human rights, although contributing to a heavy influx of cases, increasingly made CHRAJ’s presence felt throughout the country. A survey conducted by the Center for Democratic Development found that only 8.4% of the surveyed sample stated that they did not trust CHRAJ—much lower than the other public institutions covered by the survey.<sup>3</sup>

Domakyaareh, the former deputy commissioner, said, “There were several people who got a pleasant surprise: I think that they were cynical that we would investigate the cases. They were very happy that we looked into it. It showed that we were willing to cooperate fully with citizens and look into the matter. We always made sure that the decision was based on evidence. As commissioners, we made sure that we set the commission on a very sound pedestal and portrayed its independence clearly and systematically. Only CHRAJ was involved in its own decision making—not the government, not the presidency.”

Brobbeey, of the Center for Democratic Development, said, “No other institutions in Ghana investigated sitting ministers or public officials. That gave CHRAJ respect, and allowed CHRAJ’s findings to carry weight. Although governments might not act on CHRAJ’s findings, it still leaves a question mark, a stain, on the individual. The question is what happens after CHRAJ’s issues its recommendations. To date, when a person is found guilty of corruption, the attorney general has often not acted on CHRAJ findings. Public and media pressure supporting CHRAJ triggered ministerial resignation.”

In Ghana, where the attorney general also served as minister of justice, this lack of prosecution came as little surprise. Brobbey said, “The chief legal adviser within the government and the chief prosecutor are the same person. The attorney general has tender to refuse to prosecute any of his colleagues in the cabinet, and therefore, CHRAJ’s recommendations were consistently ignored.”

CHRAJ recommendations carried weight with the donor community. In 2005, the government had to nominate an individual to head Ghana’s Millennium Challenge Corporation account and implementation efforts. The individual nominated by the president had previously come under a CHRAJ investigation that yielded adverse findings. When USAID and the American government had to confirm the nomination, they found the candidate unsuitable, largely because of CHRAJ’s findings.

The commission received widespread commendation for its work despite the resource constraints that narrowed the scope

of its impact. In 2005, Northwestern University in the U.S. awarded Short an honorary doctorate, stating, “Despite chronic underfunding and the loss of personnel to organizations offering higher levels of compensation, CHRAJ has admirably discharged its broad mandate.” Similarly, Asibuo of the University of Ghana concluded his report on the commission by stating that CHRAJ “has established itself as a credible institution which enjoys public confidence.” Asibuo recommended that the government should ease CHRAJ’s resourcing problems and enhance its enforcement powers.

Ultimately, CHRAJ was able to build a reputation for itself as an institution of integrity, willing to take on political heavyweights in pursuit of its mandate to tackle corruption, uphold administrative justice and defend human rights. It also built a popular constituency by working with and catalyzing the creation of civil society organizations while ensuring media coverage to keep the public abreast of its investigations. Another key factor underlying the commission’s performance was motivated, sustained leadership supported by constitutional protections of tenure.

Several studies made the point that the performance of CHRAJ relied too heavily on the choice of the commissioner, a presidential appointee. Other criticisms pointed to CHRAJ’s potentially crippling weaknesses—high staff turnover, low budget and salaries, hefty caseload and weak enforcement power. “To continue sustainably, CHRAJ really needs to tackle these problems, which are eating away at the institution,” Brobbey said.

## REFLECTIONS

In 2003, Emile Short took a leave of absence from his post as head of Ghana's Commission on Human Rights and Administrative Justice to serve as a justice on the International Criminal Tribunal for Rwanda in Arusha, Tanzania. With Short's extended leave of absence, his then-deputy, Anna Bossman (who succeeded Deputy Commissioner Angelina Mornah Domakyaareh in 2002), stepped in as acting commissioner. With only two commissioners and the ensuing uncertainty concerning Short's return, CHRAJ's fate was left hanging in the balance. Although several interviewees credited Bossman for doing an excellent job in continuing the commission's work, the same key problems—opposition from the executive, lack of budget, high staff turnover, and broadness of mandate—continued to severely inhibit the institution's performance. After Short's departure and eventual retirement in 2010, CHRAJ continued to handle occasional high-profile, controversial corruption cases.

Bossman resigned in June 2011 to take a position at the African Development Bank. Despite her eight years as acting commissioner, the government had never confirmed her nor promoted her to the role of commissioner. The Center for Democratic Development, on her retirement, wrote, "This development also draws attention to the longstanding but anomalous and dangerous practice in which our presidents have kept in a state of uncertainty occupants of top positions in some key state governance institutions, perpetually keeping them in acting capacities, particularly those whose functions include 'policing' the presidency

and the government at large." President John Atta Mills appointed Laretta Lamptey, a former lawyer and investment banker, as the new commissioner after Bossman resigned.

Early in 2011, Mills convened Ghana's first constitutional review process, opening the door to changes in CHRAJ's legal structure. During the review, Short called for CHRAJ to be made more financially autonomous, receiving its annual budget allocation from Parliament rather than the Ministry of Finance. He also called for improvements in the terms and conditions of the commissioners and deputy commissioners, insisting on a five-year term renewable once, as he felt that life-long tenure was contrary to international best practices. "The linking of the commissioners' and deputy commissioners' salaries to those of the Court of Appeal and High Court Judges respectively has created a glass ceiling," Short said. "It's very difficult for a commissioner to progress beyond this structure—there is no room for career progression at the higher levels of CHRAJ." Short also emphasized increased salaries for CHRAJ staff to address the problem of attrition, and increasing the number of commissioners. Most importantly, Short made a case for narrowing CHRAJ's mandate. As of August 2011, the constitutional review was still under way.

Kenneth Attafuah, former director of anti-corruption and public education at CHRAJ, said, "With all the recent changes at CHRAJ, we can only await the future with anticipation; the CHRAJ has always done its job to the extent possible, given the severe funding, logistical and human resource challenges constraining its effectiveness." Domakyaareh added, "We always conducted

our work with integrity, and I hope that this continues.”

Short said, “Bringing about reform in institutions requires moral courage, and you’re going to face a lot of challenges. When I occasionally train commissioners in other African commissions, I tell them that it’s not easy unless you have the determination and the will to go through difficult times to achieve what you want.”

Victor Brobbey, researcher at the Center for Democratic Development, said, “CHRAJ’s successes can be attributed to the excellent initial leadership of Mr. Emile Short, and, following him, Ms. Anna Bossman. Short set the institution on a strong path for the future – under a lesser leader, a far more incapable institution would likely have emerged. They’ve been quite fearless, and that can be attributed to

the leadership of CHRAJ being unhesitant to take our political leadership to account. If it goes to CHRAJ, they won’t stop investigating the matter. CHRAJ is increasingly respected as our democracy evolves.”

Short said, “I think that what other institutions can learn from CHRAJ is the need to assert the independence of the institution early on, from the inception of its establishment. It is very important that such institutions are not established for window-dressing purposes or to please the international community. On the other hand, we still face so many challenges – the broad mandate, a constant need for more resources, the brain drain, low salaries – this has all been the fallout in taking a firm stance in asserting our independence in accordance with the oath we took.”

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<sup>1</sup> The Commission on Human Rights and Administrative Justice. *CHRAJ Annual Report*. Accra, Ghana: 2003.

<sup>2</sup> The Transparency International Corruption Perceptions Index for Ghana started at 3.3 in 1998 and had risen to 4.1 in 2010. Zero is the lowest score on the 10-point scale, indicating a high degree of corruption.

<sup>3</sup> Brobbey, Victor. “CDP Modelling Success – Interim Report.” Accra: Center for Democratic Development, December 2010.

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