**Stephen SONDEM**

# NATIONAL HUMAN RIGHTS INSTITUTIONS - THE GHANAIAN EXPERIENCE

## Background of the Study

Despite the domestication of human rights norms in the various constitutions of African states, until the last decade of the 20th century, the only institution responsible for their protection and enforcement was the judiciary. At the dawn of independence from colonial rule, most African States incorporated into their domestic Constitutions many of the provisions in the Universal Declaration of Human Rights (Asante, 1969, pp. 72-3)[1]. Beyond the constitutional guarantees of substantive fundamental human rights and freedoms, no institutions other than the traditional courts were responsible for their enforcement. It is however, a sad commentary that often, those who are most likely to have their rights violated are least able to seek effective equal access to the law courts. The relative inaccessibility of the

The author is faculty member of the Kwame Nkrumah University of Science and Technology, Kumasi, Ghana and a PhD candidate at The University of Essex, UK

1 For the Universal Declaration of Human Rights, see G.A. RES. 217(III) A, U.N. Doc. A/ 810, RES.217 (III) (Dec.10, 1948).

courts by socially disadvantaged groups has caused most nations to resort to quasi-judicial bodies as grievance-handling mechanisms (Government of Ghana, 1974, p. 369)[2]. In the specific case of human rights adjudication, procedural difficulties, inadequate training in human rights jurisprudence by judges and magistrates, exorbitant court fees and perceived corruption of the judiciary, have undermined the capacity of the judiciary to effectively redress human rights violations. Besides these, there are some types of human rights violations that are resilient to judicial enforcement[3]. By their very nature, a different strategy ought to be employed and this has called for the adoption of other institutional mechanisms to complement the role of the judiciary in redressing human rights violations.

In the quest for alternative strategies or complementary mechanisms for effectively redressing human rights violations, the United Nations (UN) have called for the establishment of national human rights institutions by States (Commission on Human Rights, 2002)[4]. The Vienna Declaration and Programme of Action (para 36), for example, underscored the importance of national human rights institutions and called on States to establish and strengthen such institutions using the Paris Principles as a blueprint. The Declaration stated, *inter alia*, that:

"The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights...

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the 'Principles relating to the status of national institutions' and recognising that it is the right of each State to choose the framework which is best suited to its particular needs at the national level."

The objectives of the Conference were to examine the ways and means to improve the implementation of existing human rights standards and formulate concrete proposals for improving the effectiveness of the UN's activities and mechanisms in the field of human rights (UN General Assembly, 1990). It is important to underscore the fact that the Conference emphasised the right

2 The Committee recommended the establishment of a National Bureau of Complaints.

3 In Africa, widespread and deep-seated belief systems and practices such as witchcraft, ancestral worship, and trial by ordeal, widowhood rites and other deleterious traditional practices are not susceptible to judicial resolution.

4 Also see Protecting Human Rights: The Role of National Institutions, Commonwealth Conference of National Human Rights Institutions, 4-6 July 2000 (Cambridge, Commonwealth Secretariat), p.20.

of each State to establish a national institution best suited to its particular needs. This is so because of the different socio – political context in which such institutions emerged in different countries[5]. Given the long-standing conceptual battle[6] between Universalists and Relativists in the human rights discourse, which tended to affect the legitimacy of human rights in some societies, this was a welcome compromise**.** These conceptual differences largely accounted for the adoption of the two separate Covenants in the Bill of Rights. The Conference shifted the focus of UN's activities in human rights at the international and regional levels to the national level. It must be emphasized that even long before the World Conference on Human Rights, the idea of establishing human rights institutions at the national level had been of concern to various UN bodies since the inception of the organization (United Nations, 1983, p. 344). In several resolutions and recommendations, the Economic and Social Council, the Human Rights Commission and the General Assembly, had called upon States members to consider establishing national institutions for the promotion and protection of human rights.[7] The UN Committee on Economic, Social and Cultural Rights has found that national human rights institutions are one means by which States can fulfil their obligation under article 2(1) of the Covenant on Economic, Social and Cultural Rights. The Committee noted that:

"In recent years there has been a proliferation of these institutions and the trend has been strongly encouraged by the General Assembly and the Commission on Human Rights. The Office of the United Nations High Commissioner for Human Rights has established a major programme to assist

5 It is impossible to expect a single model of national human rights institution for the whole world. Different models are acceptable provided the core values and principles of the institutions are not sacrificed.

6 Since the adoption of the Universal Declaration on Human Rights in 1948, there has been an on-going debate that seeks to question the universal validity and acceptability of the values and norms expressed in the Declaration. The debate is essentially between legal theorists and social anthropologists. Whilst the former accepts the universality of the values of human rights, the latter disputes the existence of any such values that can have a universal application.

7 In Resolution 9 (II) of 21 June 1946, the Economic and Social Council, on the recommendation of the "nuclear" Commission on Human Rights, invited Members of the United Nations to consider the desirability of establishing information groups or local human rights committees within their respective Countries to collaborate with them in furthering the work of the Commission on Human Rights. The Commission, by Resolution 23 (xxxiv) of 8 March 1978, recognized the importance of action by Member States to develop and utilize their national machinery for the effective realization of human rights and repeated the invitation addressed to Member States by the General Assembly and the Economic and Social Council, to set up such national institutions.

and encouraged States in relation to national institutions."[8]

The Committee has also issued General Comments on the role national human rights institutions should play in the promotion and protection of economic, social and cultural rights (Committee on Economic, Social and Cultural Rights, para 1, 1998). The normative framework for the establishment of national human rights institutions include the Paris Principles (UN General Assembly, 1993), the Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights, and the Maastricht Guidelines on violations of Economic, Social and Cultural Rights[9] that set benchmarks for national human rights institutions on how to address economic, social and cultural rights.

The term, national institution, in the context of human rights, refers to a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights (United Nations, 1995).[10] National human rights institutions can assume different names, but they share common characteristics. They may be called a Commission, a Centre or a Public Defender. In some countries, the institution may combine the functions of a human rights Commission with that of an Ombudsman or some other organization.[11] Their responsibilities usually include reporting and making recommendations to government on human rights matters such as the adoption or amendment of national legislations, the reporting of human rights violations, ensuring conformity of national law and practice with international human rights standards, recommending the ratification of international human rights treaties by the government and carrying out human rights education within the state (Human Rights Watch, 2001, p. 13).

Since the 1990s, many African countries have established national human rights institutions. However, human rights activists have questioned the *bona fide* of African governments in establishing national human rights institutions. Commenting on the proliferation of State-sponsored national human rights commissions in Africa, Human Rights Watch made the following observations:

8 See Paragraph 1 of General Comment No.10 (December, 1998) of the Committee on Economic, Social and Cultural Rights.

9 In 1997, a group of international law experts met at Maastricht, the Netherlands, where guidelines were prepared on violations of economic, social and cultural rights. These guidelines are supplementary to the Limburg Principles.

10 Also see Murray R (2007)., National Human Rights Institutions: Criteria and Factors for Assessing their Effectiveness', Netherlands Quarterly of Human Rights 25 (2),p.189

11 The Ghana Commission is a typical example.

"State-sponsored national human rights Commissions have become a new vogue among governments, particularly in Africa, over the past decade. While many human rights activists view this trend with scepticism, the UN High Commissioner for Human Rights and donor governments are actively championing these institutions as a manifest contribution to human rights.

…The proliferation of these Commissions, many formed by repressive governments, poses something of a dilemma for human rights activists who are more accustomed to challenging the state on rights issues than collaborating with it. The question is: are such state-sponsored human rights bodies to be regarded with suspicion or should their development be encouraged?" (Human Rights Watch, 2001, p. 10)

Human rights activists, especially those in the non-governmental sector, hold the view that these State-sponsored institutions are not truly independent and therefore lack the capacity to effectively redress human rights violations (Human Rights Watch, 2001). On the other hand those who encourage the establishment of these institutions argue that the advantage these institutions have over non-governmental institutions is that they are endowed with statutory and or constitutional powers which enable them to carry out their functions effectively, for example, the power to subpoena witnesses, to make recommendations that can be enforced, and to be accountable. In most instances, these institutions are established by the national constitution and it is this constitutional backing that accord them public legitimacy (International Council on Human Rights Policy, 2000, p. 58). A national human rights institution can be independent and function effectively, albeit a state institution.

Despite the doubts raised concerning the effectiveness of state-sponsored national human rights institutions to carry out their mandates, there are compelling practical reasons justifying the establishment of national human rights institutions, particularly in Africa where access to justice is inhibited by several factors.

**The Ghanaian Experience**

In 1991, the government of the Provisional National Defence Council (PNDC) set up a Consultative Assembly[12] to prepare a draft Constitution for the administration of Ghana. The Assembly submitted the draft Constitution to the Government, which appointed a Committee of Experts to study the draft Constitution. PNDC Law 253, which set up the Committee, specifically

12 See the Consultative Assembly Law, 1991,PNDC Law 252,

tasked it to formulate proposals that would, among others, guarantee, protect and secure the enforcement of the enjoyment by every person in Ghana of his or her fundamental human rights and freedoms.[13] The Committee made substantial inputs to the draft Constitution, after which it was submitted to a national referendum held throughout Ghana. The people of Ghana approved the Constitution, which came into force on 7 January, 1993.[14] The 1992 Fourth Republican Constitution established a system of checks and balances, with an executive branch headed by the President, a legislature, an independent Judiciary, and several autonomous Commissions, including the Commission on Human Rights and Administrative Justice (CHRAJ).

### *A. Establishment of the Commission on Human Rights and Administrative Justice*

The Constitution sets out the powers and functions of the Commission to be set up by Parliament[15]. Pursuant to article 216 of the Constitution, Parliament passed The Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) establishing the Commission. The Act spells out the functions and powers of the Commission, within the confines of article 218.[16] The long title to the Act describes it as:

An Act to establish a Commission on Human Rights and Administrative Justice 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 provide for other related purposes.

### *B. Mandate of the Commission on Human Rights and Administrative Justice*

The Commission has three broad mandates, namely, human rights, administrative justice, and anti-corruption. It serves as the national human rights institution of Ghana, the Ombudsman of Ghana and an Anti-Corruption

13 See PNDCL Law 253, S. 4 (2)

14 See the Constitution of the Fourth Republic of Ghana (Promulgation) Law, 1992, PNDCL 282, which brought the Constitution into force.

15 See Chapter 18 of the Constitution which establishes the Commission as an independent body for the promotion, protection and enforcement of fundamental human rights and freedoms. See particularly article 218.

16 Section 7(1) a-h of Act 456 is almost a reproduction of article 218, and it spells out the functions of the Commission

Agency of Ghana. Additionally, it also plays the role of Ethics Office for the Public Service.

*1. Human Rights*

The Commission has a broad mandate to promote and protect universal human rights and freedoms (Article 218(a),(c), and (f) of the 1992 Constitution and Section 7(1)(a),(c) and (g) of Act 456), especially those under the 1992 Constitution which includes civil, political, economic, social, and cultural rights, and other international human rights instruments which Ghana has ratified.

*2. Administrative Justice*

The Commission is mandated to protect and promote Administrative Justice to ensure that the government and its officers are accountable and transparent (Article 218(a), (b) of the 1992 Constitution and Section 7(1) (a) & (b) of Act 456). This function is to ensure that public officials avoid arbitrariness and discrimination in their decisions and actions.

*3. Anti-corruption*

The Commission also serves as an anti-corruption agency. It is mandated to investigate abuse of power and all instances of alleged or suspected corruption and the misappropriation of public monies by officials (Article 218(a) and (e) and Section 7(1)(a) and (f) of Act 456). It also investigates allegations of conflict of interest and breach of the code of conduct under Chapter 24 of the 1992 Constitution (Articles 284-288 of the 1992 Constitution and Section 7(1)(e) of Act 456). Under this mandate, the Commission also promotes integrity and ethics in the public service, and conducts training and public education to sensitize public officials and the general public on corruption. Under the Whistle-Blower Act, the Commission has additional mandate to investigate disclosures of impropriety such as economic crime, waste, and mismanagement, misappropriation of public resources, environmental degradation and complaints of victimization of whistle blowers.

The mandate of the Commission is arguably too broad and this calls into question its capacity to effectively address traditional human rights abuses. It must be conceded that with such vast powers of investigation, the Commission is likely to be inundated with complaints that could overstretch its financial and human resources. The issue however, did not escape the attention of the Consultative Assembly that drafted the 1992 Constitution. The Assembly recognized the desirability of creating a separate and specialized anti-corruption agency, but such an option was not feasible due to financial considerations and the strong possibility of entrenching institutional over-

laps.[17] It was this factor that tilted in favour of a fused institution. To the extent that the Commission's mandate transcends traditional human rights to administrative justice and anti-corruption, the Commission is indeed unique. Human rights, administrative justice, probity and accountability, lie at the heart of Ghana's constitutional order.[18]

### *C. The Relationship between Human Rights, Administrative Justice and Anti-Corruption*

There is a strong interconnection between the three mandates of the Commission. As an Ombudsman, the Commission promotes administrative justice in public administration and secures improvement in public sector service delivery in Ghana. Under its administrative justice mandate, the Commission investigates complaints about how public institutions and their officers carry out their executive and administrative functions.[19] The Committee of Experts that studied the draft Constitution before its promulgation, stressing the need to establish the Commission, stated in its report as follows:[20]

The constitutional experience of many countries, including ours, demonstrates that a catalogue of constitutional rights together with provisions for judicial enforcement is inadequate to ensure meaningful enforcement of fundamental rights and freedoms on the ground. The Committee accordingly proposes the establishment of a Commission on Human Rights and Administrative Justice which would sensitize people to their constitutional rights, investigate violations of such rights, and assist individuals in prosecuting them. The Commission would incorporate the office of the Ombudsman. (Emphasis supplied).

Maladministration in the public sector in a developing country like Ghana can undermine the enjoyment of human rights, particularly socio-economic rights. Actions of public institutions which result in poor service delivery can result in the denial of basic services to the public. As an Ombudsman, the Commission investigates complaints about maladministration, abuse of power and unfair treatment by public officials, discrimination, delays,

17 See The Commission on Human Rights and Administrative Justice, Ghana, Country Report, 1998, pp. 1-2;

18 The preamble to the Constitution solemnly declares and affirms the commitment to "Freedom, Justice, Probity and Accountability; The Rule of Law; The protection and preservation of Fundamental Human Rights and Freedoms…"

19 Article 218(a) & (b) of the 1992 Constitution and Section 7 (1) (a) & (b) of Act 456 spell out the administrative justice mandate of the Commission.

20 See paragraph 358 of the Report of the Committee of Experts on Proposal for a Draft Constitution of Ghana (July 31, 1991).

omissions or failures by public institutions or officials, unequal access to recruitment into public services and actions of public institutions where such actions and decisions occasion injustice, unfairness or hardship. Following investigations, the Commission is mandated to take appropriate action to remedy, correct or reverse any action or decision that can be described as maladministration, abuse of office or unfair treatment or which undermines sound public administration.

As an Anti-Corruption Agency, the Commission investigates allegations of corruption and conflict of interest, abuse of power or office and misuse of public monies in the public sector. The Commission does this by sensitizing the general public about corruption and enlist public support to fight corruption at all levels of society. The issue of corruption has received considerable attention in the Constitution. Under the political objective of the State, the government has a duty to take steps to eradicate corrupt practices and the abuse of power.[21] Also, the constitutional emphasis on probity and accountability reinforces the political objective of eradicating corruption from the society. Indeed, one of the core values of the 1992 Constitution is public accountability of the government and its agencies. The Commission, under its Anti-Corruption mandate, has the power to investigate complaints of corruption and abuse of power, all instances of alleged or suspected corruption and the misappropriation of public monies by officials, allegations of conflict of interest and noncompliance with the Code of Conduct for Public Officers under Chapter 24 of the Constitution.[22]

The mandate of the Commission in relation to investigation of allegations of corruption and abuse of power by public office holders, especially Ministers of State, has become a controversial issue in Ghanaian jurisprudence. Respondents in such Investigations have constantly challenged the jurisdiction of the Commission to investigate them on such allegations. For example, the issue as to whether the Commission can, *suo motu,* initiate investigations into allegations of corruption based on media reports have come up in a number of cases. Basically, the question is whether the Commission's jurisdiction in such matters can only be invoked by a formal complaint.[23] The Commission also investigates disclosures of impropriety and victimization of whistle blowers in both the public and private sectors, provides free advice and service on corruption prevention, assist public officials to properly man-

21 See Article 35 (8) of the 1992 Constitution

22 Refer to articles 218(a) & (e), 284-288 of the 1992 Constitution, and Section 7(1) (a), (e) & (f) of Act 456.

23 See Republic v Commission on Human Rights and Administrative Justice; ex parte Richard Anane [2007-2008] SCGLR pp. 340-370.

age and resolve conflict of interest situations, conducts training seminars to increase awareness on the dangers of corruption, promotes anti-corruption public education programmes to sensitize the general public to corruption, as well as enlist public support to fight corruption at all levels of society.

As an Ethics Office, the Commission contributes to the promotion of high integrity in the public service, and enforce compliance with the ethical standards contained in the Code of Conduct for Public Officers. The Commission undertakes ethics education and training for public institutions and public officials in order to maintain high ethical standards in the public service. In carrying out this function, the Commission investigates allegations of noncompliance with the Code of Conduct for Public Officials, complaints relating to the failure to uphold work discipline, professional ethics and undertakes ethics education and training for public institutions and public officials.

To the extent that maladministration in public service, including corruption, can erode the enjoyment of basic needs such as socio-economic rights, there is a causal relationship between the three mandates of the Commission. In achieving all three mandates, the Commission has adopted a three-pronged strategy namely education, prevention and investigation. It does so in collaboration with other stakeholders.

### *D. Composition of the Commission on Human Rights and Administrative Justice*

The Commission consists of a Commissioner and two deputy Commissioners, appointed by the President in consultation with the Council of State, an advisory body of elders of the State.[24] To qualify for appointment as a Commissioner, the person must be qualified to be appointed a Justice of the Court of Appeal. In the case of the deputy Commissioner, the person must be qualified for appointment as a judge of the High Court. The reason for recommending a three-member commission is not obvious and seems to be unique to Ghana. It may be logically assumed that in recommending a trinity, instead of a one-man commission, the Committee took into account the trilogy of functions the Commission is mandated to perform. The task is obviously more than one person can perform. It is also possible that the Committee took a cue from the report of the Ad Hoc Committee on Union

24 The Council of State is an institution comprising of representatives of all major organs of state, all regions and various walks of life. In its advisory role the Council counsels the president on major constitutional issues. The process of electing the members of the Council is political and this has tended to undermine its utility. The Council invariably will rubber stamp a presidential nominee for the position.

Government on the establishment of a National Bureau of Complaints (NBC), a kind of Ombudsman institution. In its Report on the organisational structure of the proposed NBC, the Committee stated as follows:

There is a great deal to be said for a collegiate body of men rather than one man, to head this type of institution … The collegial system which requires co-operation and consultation among the Ombudsmen, also serves to reduce the task of arbitrariness quite apart from the fact that it removes much of the workload from one person's shoulders (para 379=.

… We therefore suggest the establishment of a National Bureau of Complaints (NBC), headed by three persons to be known as Directors, to carry out the basic functions of the institution otherwise known as the Ombudsman. The NBC will have regional and district offices, manned by its own employees, to receive complaints from the public for transmission to the Directors, to make on-the spot investigations, and to discharge any other functions assigned to them (para 381).

The appointment procedure, qualifications and dismissal of the Commissioner and his two deputies, are a reproduction of the Ad Hoc Committee's proposal in 1974. The procedure for the removal of the Commissioner and deputy Commissioners is the same as that provided for the removal of a Justice of the Court of Appeal and the High Court respectively[25]. The current appointment procedure does not guarantee independence of the Commission and is not in conformity with the guidelines prescribed by the Paris Principles. On the composition of national human rights institutions, the Principles recommend a pluralist representation of social forces involved in the promotion and protection of human rights (UN General Assembly, 1993). The Council of State, which the President consults in the appointment process, is merely an advisory body and will invariably rubber stamp the Presidential appointee.[26] It may be concluded that even though the Constitution provides that the Commission and the Commissioners shall not be subject to the direction or control of any person or authority in the performance of their functions,[27] the appointment procedure does not guarantee independence. In a country like Ghana, where appointments to key public offices are based

25 See Article 228 of the Constitution.

26 One of the independent Commissions established under the Constitution is the National Media Commission (NMC). The appointment of the chairman of the NMC follows the guidelines in the Paris Principles recommended for the appointment of national human rights commissioners. Under article 166 (2) of the Constitution it is the members of the MNC that elects its own Chairman. Members of the NMC are nominated by a variety of Civil Society Organizations and they serve a fixed term.

27 See article 225 of the 1992 Constitution of the Republic of Ghana

on political party loyalty, independence is likely to be compromised. It is strongly suggested that the appointment procedure be reviewed to allow independent bodies such as the Bar Association, Political Parties and other civil society organizations to participate in the appointment process.

### *E. Structure of the Commission on Human Rights and Administrative Justice*

The Commission has four departments headed by directors. These departments are: the Legal and Investigations, Public Education, Anti – Corruption, and Finance and Administration. The Constitution and Act 456 provide for the establishment in each region and district of Ghana, regional and district branches of the Commission. Each regional and district office is headed by an officer appointed by the Commission. The Act further provides that the Commission may create such other lower structures as would facilitate its operations. The functions of the regional and district branches of the Commission include the receipt of complaints from the public in the region or district, the making of on-the-spot investigations as and when necessary and the discharge of other duties relating to the functions of the Commission that may be assigned by the Commissioner. Currently, there are ten regional offices, two sub-regional offices and 97 district offices nationwide.

### *F. Powers of the Commission on Human Rights and Administrative Justice*

The Commission has the power to compel the attendance and production of evidence by witnesses during an investigation.[28] The powers of the Commission are similar to those of the High Court. The Commissioner or any public officer authorised by him, may enter at any time any premises occupied by a department, authority or a person to whose act or omission the Commission is conducting an investigation into. The Commission, pending the investigation of a substantive complaint, may order interim measures to hold in balance the scales. It is an offence for any person who wilfully obstructs, hinders or resists a member of the Commission or an officer authorised by the Commissioner in the exercise of any powers under the Act.[29] Finally, any person who wilfully makes any false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of his functions under the Act commits an offence.[30]

28 See Section 8(1) of Act 456
29 See Section 24 (b) of Act 456
30 See Section 24 (c) of Act 456

### *G. Complaints and Investigations Procedure*

The Commission is empowered by both the Constitution and Act 456 to make, by constitutional instrument, regulations regarding the manner and procedure for bringing complaints before it and the investigation of such complaints.[31] In exercise of the said powers the Commission made the Commission on Human Rights and Administrative Justice (Complaint Procedure) Regulations, 1994 (CI. 7) to regulate the procedure for investigating complaints. However, following the decision in the Anane case and other challenges to the Commission's procedure for investigation of complaints, CI 7 was revoked and a new investigations procedure regulations, the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (CI 67) came into force.

Section 12 of Act 456 and CI 67, which deal with the procedure for lodging a complaint with the Commission, provide that a complaint may be made in writing or orally to the national offices of the Commission or to a representative of the Commission in the region or district branch. It is further provided under section 12(3) that where the complaint is made orally, the person to whom it is made shall reduce same into writing and he or she shall append his or her signature and the signature or thumbprint of the complainant. A complaint may be made by any individual or a body of persons, whether corporate or unincorporated. Under section 12(6), where the victim of a violation is dead or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him.

### *H. Procedure after investigation by the Commission on Human Rights and Administrative Justice*

If after an investigation, the Commission is of the view that the decision, recommendation, act or omission that was the subject of the investigation amounts to a breach of the provision(s) of Act 456:

The Commission shall report its decision and the reasons for it to the appropriate person, Minister, department or authority concerned and shall make such recommendations as it thinks fit and the Commission shall submit a copy of its report and recommendations to the complainant (Article 229 of the 1992 Constitution and Section 18(1) of Act 456).

If within three months after the report is made no action is taken which seems to the Commission to be adequate and appropriate, the Commissioner, may bring an action before any court and seek such remedy as may be ap-

31 See article 230 of the Constitution and Section 26 of Act 456

propriate for the enforcement of the recommendations of the Commission.[32] In practice, the Commission will normally send a reminder to the respondent calling upon it to comply with the recommendations and may follow up. It is only after all attempts to persuade the respondent to comply with the recommendations have failed that the Commission will apply to the court for enforcement.

### *I. Enforcement of the Recommendations of the Commission on Human Rights and Administrative Justice*

The Commission has no direct powers of enforcement of its decisions following an investigation. It is empowered to bring an action before any court in Ghana and seek any remedy which may be available from that court.[33] Since its establishment, and until the coming into force of the High Court (Civil) Procedure Rules, 2004 (CI. 47), the procedure by which the Commission was to bring the action for the enforcement of its recommendations generated much legal debate. The debate generally centred around two questions –

(a) by what method or procedure is the Commission to bring the action to seek enforcement of its recommendations?

(b) when the matter comes before the court, is the court to simply order the enforcement of the recommendations or will it be entitled to review the findings and recommendations?

Neither the Constitution nor Act 456 lays down any specific method by which the Commission may seek enforcement of its recommendations. In Ghana Commercial Bank v Commission on Human Rights and Administrative Justice, the Commission took the action by originating summons or notice of motion supported by an affidavit. One of the issues raised for determination by the court related to the procedure by which the Commission sought to enforce its recommendation. Citing the case of People's Popular Party v Attorney-General, where it was held that when a statute provides for an application to court without specifying the form in which it is to be made and the normal rules of court do not expressly provide for any special procedure, such an application may be made by an originating motion, the Supreme Court, affirming the ruling of the Court of Appeal, held that the use of originating summons or notice of motion by the Commission could not be faulted.

32 See Section 18(2) of Act 456
33 See Section 18(2) of Act 456

**Conclusion**

Since its establishment in 1993, several key issues have been raised regarding the juridical limits of the powers of the Commission. Some of these questions have been answered by the Supreme Court, but there are calls for constitutional amendments to enhance the Commission's powers. The establishment of the Commission has brought hope to many Ghanaians who have suffered injustice. The sustained public education policy of the Commission has created awareness and increased rights consciousness in the public. The Commission's alternative dispute resolution mechanisms and cost-free nature of its services have attracted many people. It is hoped that the Constitution Review Committee will take into account the call for amendment of Act 456, with a view to strengthening its powers. The Ghanaian model is truly unique.

**Abstract**

In the last decade of the XX century, Africa witnessed a proliferation of NHRIs. Whilst the UN and donor Countries have supported and encouraged this trend, some non-governmental human rights organizations including Human Rights Watch are opposed to this development. They view state-sponsored human rights institutions in Africa with some scepticism, believing that the sole aim is to attract development assistance.

In 1993, Ghana established a new Constitution under its Fourth Republic. The 1992 Fourth Republican Constitution established a system of checks and balances, including the Commission on Human Rights and Administrative Justice, which is the national human rights institution for Ghana. The Commission has three-prong mandate, namely, human rights, administrative justice and anti-corruption. The purpose of this paper is to briefly present the institutional model of the Ghanaian Commission, outlining its composition, powers and functions.

**Резиме**

Во последната деценија на дваесеттиот век, Африка доживеа наплив од Национални институции за човекови права. Додека ОН и земјите-донатори го поддржуваа овој тренд, некои невладини организации за човекови права, вклучувајќи го и Хјуман Рајтс Воч, не се согласуваа со оваа појава. Тие на државните институции за човекови права во Африка гледаат со одреден скептицизам, сметајќи дека единствена цел е привлекување на странска развојна помош.

Во 1993 година, Гана воспостави нов устав како дел од својата Четврта република, со кој е воведен балансиран систем на повеќе институции, меѓу кои и Комисијата за човекови права и административна правда, која претставува националната институција за човекови права на Гана. Комисијата има тростран мандат: човекови права, административна правда, и борба против корупцијата. Целта на овој труд е да го претстави институционалниот модел на Комисијата во Гана, преку исцртување на нејзината структура, овластувања и функции.

**Bibliography**

Asante, S.K. (1969), ' Nation Building and Human Rights in Emerging African Nations', 2 Cornell Int'l Law Journal.

United Nations (1983), *United Nations Action in the Field of Human Rights: National Institutions for the Promotion and Protection of Human Rights* (New York).

Commission on Human Rights, E/CN.4/2002/L.103, 19 April 2002

Commission on Human Rights (July 4-6, 2000), Promoting Human Rights: The Role of National Institutions, Commonwealth Conference of National Human Rights Institutions (Commonwealth Secretariat).

United Nations (1995), *National Human Rights Institutions: A Hand Book on the Establishment and Strengthening of National Human Rights Institutions for the Promotion and Protection of Human Rights, Professional Training Series No.4.*

Human Rights Watch, *(2001), Protectors or Pretenders? Government Human Rights Commissions in Africa,* Human Rights Watch.

International Council on Human Rights Policy (2000), *Performance and Legitimacy: National Human Rights Institutions;* Versoix, Switzerland.

Government of Ghana, (1993),1992 *Constitution of the Republic of Ghana,* Ghana Publishing Corporation, Accra, Ghana.

Government of Ghana, (1974), *Report of the Adhoc Committee on Union Government,* Ghana Publishing Corporation, Accra, Ghana.

Government of Ghana, (1991), *Report of the Committee on Proposals for a Draft Constitution for Ghana.*

Murray, R. (2007), National Human Rights Institutions: Criteria and Factors for Assessing their Effectiveness, Netherlands Quarterly of Human Rights.

Kjoerum, M. (May 30-31, 2002), 'The Role of National Human Rights Institutions in Implementing Economic, Social and Cultural Rights'. Paper Presented at Conference on EU-China Dialogue on Human Rights, Beijing.

United Nation General Assembly, Worlds Conference on Human Rights, UN Res.45/155 of 18 December, 1990

Republic v Commission on Human Rights and Administrative Justice; ex parte Richard Anane [2007-2008] SCGLR PP.340-370