

**THE POLICE, THE PEOPLE, THE POLITICS: POLICE
ACCOUNTABILITY IN EAST AFRICA
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(ROUNDTABLE FACILITATED BY CHRI IN COLLABORATION
WITH THE EAST AFRICA LAW SOCIETY)**

THE POLICE COUNCIL IN GHANA

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Opening Remarks:

Member of the International Advisory Commission of the Commonwealth Human Rights Initiative, Her Excellency Dr. Eunice Brookman-Amisah,
The Executive Director of the Commonwealth Human Rights Initiative, Ms. Maja Daruwala,
The Chief Executive Officer of the East Africa Law Society, Mr. Donald Deya,
Distinguished members of the East Africa Law Society,
Fellow Colleagues in the CHRI Office in New Delhi,
Distinguished speakers from Tanzania, Kenya and Uganda,
Fellow participants,
Distinguished Guests, Ladies and Gentlemen.

I bring you warmest greetings from Ghana, West Africa and from the CHRI Africa Office in Accra. On behalf of the CHRI Africa Office Coordinator, Nana Oye Lithur, I extend our heartfelt gratitude to the East Africa Law Society and the CHRI Office in New Delhi for inviting us to this conference and the launch of the East Africa Police Accountability Project Reports. I am

personally privileged and feel honoured to deliver this paper on the oversight and supervisory role of the Police Council in Ghana.

Background of the Police Council

The Police Council in Ghana is one of the three advisory and supervisory Councils established by the 1992 4th Republican Constitution of Ghana for the three main security institutions of Ghana, namely the Armed Forces, Police and Prisons. By article 203(1) of the Constitution, the Police Council is tasked with advising the President on *“matters of policy relating to internal security, including the role of the Police Service, budgeting and finance, administration and the promotion of officers above the rank of Assistant Commissioner of Police”*. The Police Council may, with the prior approval of the President, by constitutional instrument, make regulations for the effective and efficient administration of the Police Service.ⁱ

These regulations shall include matters dealing with control and administration of the Police Service, ranks of officers and men of the various Units of the Ghana Police Service and the use of uniforms by members of these ranks, conditions of service, including remuneration and pensions, authority and powers of command of officers and men, and delegation of powers to other person to exercise disciplinary authority within the Service and the conditions for the exercise of such power.ⁱⁱ

Article 201 of the Constitution sets out the membership of Police Council as consisting of the following persons:ⁱⁱⁱ

- A Chairman appointed by the President acting in consultation with the Council of State;
- The Minister responsible for internal affairs;

- The Inspector-General of Police;
- The Attorney-General or his representative;
- A lawyer nominated by the Ghana Bar Association;
- A representative of the Retired Senior Police Officers Association;
- Two members of the Ghana Police Service, appointed by the President acting in consultation with the Council of State one of whom shall be of a junior rank; and
- Two other members appointed by the President.

I would add quickly here that the Council of State is established by article 89 of the Constitution to counsel the President in the performance of his functions. The Council of State is analogous to the council of elders that advises a chief in traditional governance in Ghana. The Council has national and strategic sectoral representation. In all major constitutional appointments therefore the Constitution requires that the President does so in consultation with the Council, hence the requirement to make appointments to the Police Council in consultation with the Council of State.

The current Police Council was sworn into office by the President on 10th March 2006 after consistent advocacy for the establishment of the Council by the Africa Office of the Commonwealth Human Rights Initiative. The Chairman of the Council is Justice Scott Glenn Baddoo, a retired Justice of the Supreme Court and a highly successful former prosecutor.

The Council holds monthly meetings, however its deliberations are considered to be matters of national security and not available to the public. In an interview with a member of the current Police Council, Prof. Henrietta Mensa-

Bonsu, Vice-Dean of the Faculty of Law and a leading writer on criminal law and policing in Ghana, she stated that the Council has been meeting once a month since its inauguration in March 2006. One of the immediate priorities of the Council, she stated, was the establishment of the Regional Police Committees in accordance with article 204 of the Constitution. She said the Council had requested nominations from all 10 Regions in Ghana and hoped to inaugurate the first Regional Committees by the end of June 2006.

Regional Police Committees

Closely-linked to the Police Council are the Regional Police Committees. Ghana is divided into 10 administrative regions and article 204 of the Constitution provides for the establishment of a Regional Police Committee for each region. The Committee is made up of the Regional Minister as chairman, the two most senior members of the Police Service in the region, a representative of each district in the region appointed by the District Assembly in the region, a lawyer practicing in the region nominated by the Ghana Bar Association, a representative of the Attorney-General and a representative of the Regional House of Chiefs.

The Regional Police Committee is tasked with advising the Police Council on any matter relating to the administration of the Police Service in the region.^{iv}

History of the Police Council

One of the positive steps taken by the British Colonial Administration in the then Gold Coast was the appointment of a British Police Commissioner, Mr. A. Y. Young to head a Committee to examine the Police and make recommendations on the organisational structure, training and proper methods

for effective policing in Ghana. Among the recommendations of the Young Report of 1951 was the establishment of a Police Council as an oversight body. It is not known what happened to this recommendation.

The Police Council however emerged again in 1968 during the deliberations of the Committee established by the then military National Liberation Council (NLC) to make proposals for a Constitution that would return Ghana to constitutional rule after the 1966 coup d'état. The Constitutional Committee recommended that the Police Service should form part of the Public Services of Ghana but still maintain its distinctive character as a disciplined service.^v The Committee recommended further that to ensure that the Police Service – as a disciplined service and the law enforcement arm of the Executive – is insulated from political control appointments to the Police Service should be made by President acting in consultation with a Police Council.^{vi} The Constitutional Committee recommended that the membership of the Police Council include the Head of the Police, who shall be the Chairman, the two most senior Police Officers next to the Head of the Police, a member of the Public Services Commission, a representative of the Attorney-General, the Official Head of the Ministry for internal affairs, and not more than three other members one of whom shall be a legal practitioner who the President may, on the advice of the Prime Minister, appoint.

In the 1969 2nd Republican Constitution promulgated that year, article 143 provided for the Police Council which had a member of the Public Services Commission as its chairman as opposed to the Head of Police recommended by the Constitutional Committee. Much of the membership proposed by the Committee was maintained except that of the three persons to be appointed by

the President, one was to be a person who should have held office as a Senior Police Officer. The Police Council under the 1969 Constitution was to advise the President in his appointments to the Police Service.

In 1970 however the Police Service Act, (Act 350) was passed. The Act expanded on the functions of the Police Council outlining four main functions^{vii}:

- Advising the authority for the time being vested with power to appoint members of the Police Service below the rank of Inspector-General of Police to hold or act in any office in the Service;
- Hear appeals brought under section 20 of the Act which provides for disciplinary proceedings. (In the exercise of this function, section 20(6) requires that the Inspector-General of Police shall not sit as a member of the Police Council);
- Examine and advise upon all matters relating to welfare and discipline within the Police Service, police-public relations, utilisation of the Police Welfare Fund, prevention and detection of crime, maintenance of public order, safety of persons and property.
- Advise the President on the making of regulations pursuant to section 37 of the Act on matters generally affecting the Police Service.

The quorum for the Police Council under the Act is five.^{viii} The Act also provides for a Secretary to the Council who shall be a public officer but shall not be member of the Council.^{ix} The Police Council currently has its Secretariat at the Ghana Police Headquarters in Accra. Act 350 grants immunity from legal proceedings to members of the Police Council in the exercise of their judicial and appellate functions under section 20 of the Act, as

already mentioned. The Council has powers to subpoena any public officer to appear before it where necessary for the exercise of its functions and to provide any documentation required by the Council.^x Any public officer who fails to comply with such a request from the Police Council, lawfully and properly made, shall be guilty of misconduct and the Council may direct that such misconduct be brought to the attention of the appropriate disciplinary authority.^{xi}

The Act also established the Regional Police Committees under section 11 in accordance with the 1969 Constitution. The Regional Police Committee was to advise the Police Council on matters affecting the police in the Region and to exercise supervisory powers over the Police Administration in the Region. The quorum for the Committee was not less than half the members of the Committee.

The constitutional order established by the 1969 Constitution was disrupted between 1972 and 1979 when Ghana was ruled by the military National Redemption Council (NRC), Supreme Military Council (SMC) and the Armed Forces Revolutionary Council (AFRC). Under the NRC, the Police Service Act was amended by NRCD 303 which removed the Police from the Public Service of Ghana and made the IGP the Chairman of the Police Council.

In 1978 however the ruling SMC established a Constitutional Commission to submit proposals for a new Constitution for the establishment of a Transitional (Interim) Government for Ghana. This Constitutional Commission recommended the re-establishment of the Police Council and Regional Police Committees to ensure the effective operation of the Police Force^{xii}

The 1979 3rd Republican Constitution which was based on the proposals made by the Constitutional Commission varied the chairmanship of the Police Council, providing in article 173 that the Vice-President shall be the chairman. It also provided that the nominated member of the Ghana Bar Association on the Council should be a lawyer of not less than 10 years standing.

This Constitution also provided for the first time that the Inspector-General of Police should be appointed by the President acting in accordance with the advice of the Police Council.^{xiii} The Inspector-General of Police was also made subject to the control and direction of the Police Council in the exercise of his operational and administrative control of the Police Service.^{xiv} Previously under the 1969 Constitution, the Head of Police was appointed by the President, acting in accordance with the advice of the Prime Minister.^{xv}

With the coming into force of the 1992 4th Republican Constitution after military rule by the Provisional National Defence Council (PNDC) between 1981 and 1992, the Police Council and Regional Police Committees were once again revived with its current membership and functions under the Constitution as has been earlier on mentioned.

An assessment of the Police Council

The Police Council under the various constitutions Ghana has had is at the apex of the supervisory structures of the Ghana Police Service. The Council has responsibility to oversee the effective administration of the Service and the IGP is subject to its direction and control in the exercise of his functions.

The Police Council has however been ineffective in the exercise of its functions. The following reasons can be assigned for the ineffectiveness of the Council:

a) Inadequacy in the legal framework:

It will be observed from this paper that the composition and functions of the Police Council as provided for in the Police Service Act, 1970 (Act 350) were based on the 1969 Constitution. This Constitution has long since been abrogated and the current constitutional dispensation is governed by the 1992 Constitution. The membership and functions of the Council under the Constitution are however markedly different from what pertains under the Act. Sadly, the Police Service Act has not been amended to reflect the changes made by the Constitution. The Constitution only sets out the broad outlines of the Police Council's mandate – namely its advisory and supervisory powers – yet the Act which provides the details of these powers stands inconsistent with the Constitution. This, in my view, remains a serious legal setback to the functioning of the Police Council.

It is noted however that Justice Archer Commission appointed in 1997 to review the structure and operations of the Ghana Police Service made a number far-reaching recommendations including a complete overhaul of Act 350 to conform with modern trends in policing, human rights and effective accountability of the Service to the State and the public. It is unfortunate that the recommendation for a review of the legal framework has not been done.

b) Inconsistency in the leadership of the Police Council

For the Police Council to operate effectively as the primary accountability institution for the police there must be stability in its leadership. A review of the constitutional provisions for the leadership shows that the chairmanship of the Council has varied with each Constitution. In 1969, the chairman was a member of the Public Services Commission. Between 1972 and 1978, it was the IGP. In 1979, it was the Vice-President and in 1992, it is a chairman appointed by the President. It is important to state here that under the 1992 Constitution, article 201 initially provided that the Vice-President shall be the chairman. This provision was amended in 1996 by section 7 of the Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527) which empowered the President to appoint a chairman. This constitutional amendment came in the wake of bitter differences between the then President Jerry John Rawlings and the Vice-President, the late Kow Nkensen Arkaah.

Between 2000 and 2004, the Police Council could not meet often due to the illness of the chairman, Mr. J. B. Da Rocha and the President had not made any effort to replace him. This situation seriously hampered the work of the Council.

Political Interference and lack of political will to appoint the Council.

The ineffectiveness of the Police Council cannot be divorced from the ineffectiveness suffered by other public institutions in Ghana as a result of the disruptions in constitutional rule by the Military and the Police. Between independence in 1957 and constitutional rule in 1993, Ghana experienced four unconstitutional regimes which interfered with the smooth functioning of constitutional bodies such as the Police Council. This is because these unconstitutional regimes abrogated the constitution undermining the legal basis

for the existence of the Police Council. During current constitutional dispensation, the CHRI Africa Office observed with deep concern that the President, since assuming power for a second term in 2005 had not appointed the Police Council and this was seriously affecting the administration of the Police Service. This was also in the light of the fact that the Council under the President's first term from 2000 – 2004 had not met regularly due to the illness of chairman.

In October 2005 the Africa Office of the CHRI commenced the Police Accountability Project in Ghana. The project aims at ensuring an effective and accountable Police Service in Ghana through an examination of the accountability mechanisms that exist within and outside the Police Service. The project team noted that the Police Council in Ghana is the lead institution with both internal and external oversight responsibility for the Ghana Police Service. The project team therefore set itself the task of advocating for the establishment of a new Police Council by His Excellency President John Agyekum Kufuor.

CHRI Advocacy towards the establishment of the Ghana Police Council

The CHRI's lobbying for a new Council began with a call on the Members of the Parliamentary Committee on Defence and Interior to raise the issue of the appointment of a new Police Council on the floor of Parliament and request the President to fulfil his constitutional obligation of putting in place a new Police Council. This call was made during the meeting with some members of the Committee on 8th December 2005.

The CHRI also repeated its request for a new Council when the Project Coordinator met the Minister of Interior on 22nd December 2005. The Minister stated that the nominations for the Council had been done and the President hoped to formally appoint the Council, early in January 2006.

With no results forthcoming at the end of January 2006, the CHRI took the opportunity of the President's People's Forum, held in Cape Coast on 7th February 2006 to engage the President directly on why he had still not appointed the Police Council and the Regional Police Committees as required by the Constitution.

At the Forum, Nana Oye Lithur, the CHRI Africa Office Coordinator stated in her question to the President directly that the lack of effective accountability of the police to the public had been identified as a key contributor to the increasing human rights violations by the police. She therefore wanted to know from the President what measures he had put in place to ensure that the Ghanaians had access to efficient mechanisms for holding the police accountable for their actions. She inquired further what had accounted for the delay in appointing the by the President, reminding him of the constitutional implications for the efficient running of the Police Service.

In his response, President Kufuor stated that the Police Council was in existence for a fact and that he only needed to change one or two members. This statement came as a surprise to the CHRI Africa Office because from its research there was no Police Council in place since the beginning of a new Presidential term in 2005. The CHRI therefore sought clarification on the

status of the Police Council in a letter to President Kufuor on 8th February 2006.

With a response not forthcoming, the CHRI Africa Office Coordinator again raised the issue and called for the urgent appointment of the Police Council in an interview on an Accra-based radio station, JOY FM on 9th March 2006.

Thus the persistent lobbying and advocacy work by the CHRI paid off with the announcement on Friday, 10th March 2006 that the President had finally inaugurated a new Police Council with Justice Scott Glenn Baddoo, as the Chairman.

The CHRI therefore issued a statement on the appointment of the Council, welcoming the membership of the Council to this important constitutional office. The statement, among others, called on the new Police Council to formulate a national policy on Policing in Ghana. The statement also urged the President to follow up the appointment of the Council with the appointment of the Regional Police Committees which assisted the Police Council in its work as required by the Constitution. The CHRI also sent a congratulatory letter to the President on the appointment of the Council.

Other CHRI advocacy work on Police Accountability in Ghana

At about 4:00am on 26th April 2006, the city of Accra woke up with grief at a tragedy: the shooting of four innocent civilians, including two women, who were mistaken for armed robbers in Dansoman, a residential suburb of the city. The two women incidentally had been robbed by some men in a speeding taxi cab and they in turn had stopped a second taxi which had two occupants

already to pursue the robbers and recover their property. Not long thereafter, a police patrol team appears and apparently ordered the taxi cab with the four occupants to stop. When the taxi did not stop, the police opened fire killing all four persons on board. The shooting woke up the neighbourhood and drew a crowd including the mother of one of the deceased women. The Police team however refused to allow the mother and any other member of the public to come near the taxi cab to either ascertain whether the four persons were in fact dead or if dead already, to convey the bodies to the mortuary. The Police team had by then covered the cab with blankets and stood around the cab with their guns.

We at the CHRI immediately issued a press statement calling for an independent investigation into the shooting incident and also urged the Police Administration to also investigate the matter and keep the public informed of the progress of their investigations.

Barely a month after this shooting incident, in the early hours of 22nd May a police officer shot and killed a 26-year old man in Kotobabi, a suburb of Accra, claiming that he suspected he was an armed robber. Again I repeated the call on the police and the government to investigate this and other previous shooting incidents and also review the inadequate guidelines of the Ghana Police Service on the use of force.

This call was heeded when the Minister for Interior set up a five-member Committee to investigate the shooting incidents and make the necessary recommendations to the Government to prevent such occurrences in the future. The CHRI Africa Office has taken the opportunity to go further in

assisting the Committee by preparing a memorandum on new guidelines for the use of force by the Ghana Police.

The CHRI Africa Office is also leading a coalition of civil society groups advocating for the passage of the Right to Information Bill in Ghana, currently before Parliament.

The Future of the Police Council and the CHRI

The CHRI has welcomed the appointment of the new Police Council. In informal meetings with members of the Council, they have expressed their desire to meet their constitutional obligations with a view to giving Ghana a better Police Service. As part of the Police Accountability Project, the CHRI Africa Office is actively and keenly following the progress of the Police Council. As the lead institution for police accountability in Ghana, the Police Council is not only relevant for the CHRI project but also for the progress of police reform in Ghana.

To this end, the Africa Office is looking forward to meeting the Police Council in the coming weeks. At this meeting, the CHRI Office hopes to highlight the following issues:

- Review of the legal framework of the Police Service and the development of clearer terms of reference for the Police Council and the Regional Police Committees, particularly with a view to making some of their deliberations that are in the public interest, available;
- The drafting and the implementation of a national policy on Policing for Ghana; and

- The expansion of the Police Intelligence and Professional Standards Bureau (PIPS) which serves both as an internal and external accountability mechanism.

Conclusion

The future looks bright for the Police Council in Ghana. The political atmosphere in which the Council has to operate is cordial at present and through the work of the CHRI, the focus on the police has increased, hence the spotlight on the Police Council as its oversight body. The CHRI Africa Office hopes at the end of the two-year target period for the Police Accountability Project to have begun a public debate on police reform in Ghana. The CHRI therefore views the sensitisation of the Police Council to its oversight responsibility as crucial to this process towards reforms. The Africa Office has also forged close relationships with some individual members of the Council which would be helpful to its advocacy and lobbying for police reform in Ghana. It is our hope that the Government of Ghana and the Police Administration will cooperate with the Council and its Regional Police Committees to improve policing in Ghana and to share the Ghanaian experience with other African countries.

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ⁱ Article 203(2).

ⁱⁱ Article 203(3)(a)– (e).

ⁱⁱⁱ Article 201 as amended by section 7 of the Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527).

^{iv} Article 204.

^v *Memorandum on the Proposals for a Constitution for Ghana*, paras. 619.

^{vi} As above, para 620.

^{vii} Section 10(6) of Act 350.

^{viii} Section 10(7).

^{ix} Section 12.

^x Sections 14 and 15.

^{xi} Section 16.

^{xii} *The Proposals for the Constitutional Commission for a Constitution for the Establishment of a Transitional (Interim) Government for Ghana* 1978, paras. 244 – 247. The term ‘Force’ was being used during this era for the Police as opposed to ‘Service’ in view of the fact that the Ghana Police Service was now organized as para-military organisation.

^{xiii} Article 173(2).

^{xiv} Article 173(3).

^{xv} Article 143(2) of the 1969 Constitution.