

**Establishing
an Independent**

Police Complaint Body

in Ghana



**Commonwealth Human Rights Initiative
(CHRI) Africa-Office**

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states. Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses UN, the Commonwealth Secretariat, member governments and civil society organisations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations allows for a national presence and an international network. These professionals can also steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policy-makers, highlight issues, and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

International Advisory Commission: Chair: YashpalGhai

Members: Alison Duxbury, Wajahat Habibullah, Neville Linton, Vivek Maru, Edward Mortimer, Sam Okudzeto, Sanjoy Hazarika

Executive Committee, India: Chair: Wajahat Habibullah

Members: B. K. Chandrashekar, Nitin Desai, Maja Daruwala, Kamal Kumar, Poonam Muttreja, Ruma Pal, Jacob Punnoose, A P Shah, Sanjoy Hazarika, Director, CHRI

Executive Committee, UK: Chair: Lord Carlile of Berriew

Members: Richard Bourne, Joanna Ewart-James, Pralab Barua, Neville Linton, Sashy Nathan, Rita Payne, Sanjoy Hazarika

Executive Committee, Africa Office, Ghana: Chair Mr. Sam Okudzeto

Members: Akoto-Ampaw, Juliette Tuakli, Kofi Quashigah, Emile Short, Yashpal Ghai, Wajahat Habibullah, Sanjoy Hazarika

CHRI Headquarters, CHRI United Kingdom, CHRI Africa,

New Delhi

55A, 3rd Floor, Siddharth Chambers
Kalu Sarai, New Delhi 110 016
INDIA

Tel: +91-11-43180200 / +91-11-2686-4688 / +91-11-4318-0217

E-mail: info@humanrightsinitiative.org

Facebook: <https://web.facebook.com/chri2017/>

Twitter: https://twitter.com/CHRI_INT

London

Room No. 219 School of Advanced Study
South Block, Senate House
Malet Street, London WC1E 7HU
United Kingdom

E-mail: london@humanrightsinitiative.org

Twitter: https://twitter.com/CHRI_UK

Africa- Accra

House No. 9, Samora Machel Street Asylum
Down, Opposite Beverly Hills Hotel Near Trust Towers,
Accra, Ghana

Tel: +233 302 971170 / +233 269 508889

Fax: +233 302 244819

E-mail: chriafrika@humanrightsinitiative.org

www.humanrightsinitiative.org

Facebook: <https://web.facebook.com/chriafrika/>

Twitter: https://twitter.com/CHRI_AFRICA

**Establishing
an Independent**

Police Complaint Body

in Ghana



TABLE OF CONTENTS

TABLE OF CONTENTS.....	4
Foreword.....	6
Acknowledgement.....	7
Abbreviations.....	8
List of Tables.....	9
EXECUTIVE SUMMARY	10

1-INTRODUCTION

1.1 Background.....	14
1.2 Objective of the Research	15
1.3 Statement of the Problem	15
1.4 Methodology	16

2-ARGUMENTS FOR IPCC– THE GLOBAL AND GHANAIAI CONTEXTS

2.1 The challenges with the Police investigating themselves.....	17
2.2 Global reports of public dissatisfaction with internal Police investigations.....	17
2.3 Ghanaian cases of public dissatisfaction with Police investigations	19
2.4. Underlying causes of dissatisfaction with Police investigating complaints	22
2.4.1 Public perception of the inadequacies of Police internal investigations.....	22
2.4.2 Public attitudes towards internal Police investigation of complaints	24
2.4.3 Complainant attitudes and experience of Police investigations.....	25

3-THE LEGISLATIVE FRAMEWORK AND ACCOUNTABILITY MECHANISMS OF THE GHANA POLICE SERVICE

3.1 The 1992 Constitution	27
3.2 Accountability mechanisms of the Ghana Police Service	27
3.2.1 Internal accountability mechanisms	27
3.2.2 Internal public complaints mechanism in the GPS	30
3.2.3 External accountability mechanisms of the Ghana Police Service	32
3.2.4 Public complaints against the Police.....	34

3.2.5 Other relevant external Police oversight bodies.....	35
3.2.6 Regional and international standards	38
4-INDEPENDENT POLICE COMPLAINTS AND OVERSIGHT BODIES	41
4.1 Mandate of independent Police oversight and complaint bodies.....	42
4.2 Models for independent Police complaint bodies	43
4.3 Establishing an independent Police complaint body	44
5-INDEPENDENT POLICE COMPLAINT MODELS IN OPERATION	46
5.1 The Independent Police Investigative Directorate (IPID) of South Africa	46
Table 5.1: Strengths and weaknesses of the IPID	48
5.2 The Independent Police Complaints Commission (IPCC) of the United Kingdom: England and Wales	49
Table 5.2: Strengths and Weaknesses of the IPCC	50
5.3 The Northern Ireland Policing Board (NIPB)	52
5.4 Office of the Independent Police Review Director (OIPRD) OF Ontario, Canada	54
5.4 Office for Public Integrity of South Australia	58
5.5 Independent Police Complaints Board of Sierra Leone (IPCB)	60
6-RECOMMENDATIONS	64
6.1 Expectations of the proposed IPCC/A	64
6.2 Organizational structure of the IPCC/A.....	64
6.3 Independence of the proposed IPCC/A.....	65
6.4 Mandate of the proposed IPCC/A.....	65
6.5 Powers of officers of the proposed IPCC/A	66
6.6 Access to the proposed IPCC/A to the public	66

FOREWORD

One of the principal functions of every government is the maintenance of law and order. The Police Service has therefore been the frontline institution of the State, employed by the government in performing this function. Accordingly, the Police is vested with considerable powers which enable them, where necessary, to make incursions into the fundamental rights of individuals. The exercise of these immense powers has sometimes been fraught with challenges – complaints over excessive use of force, failure to adhere to accepted standard operating procedures and violations of individual rights.

To curb the potential and actual occurrence of these excesses, the Police institution itself establishes internal oversight mechanisms. While some have proved effective, in most cases, these mechanisms have been beset with public mistrust in their independence and effectiveness and their lack of enforcement of sanctions.

With modern trends in policing advocating for a regime of democratic policing, independent oversight of the Police has become a sine qua non to establishing the rule of law, respect for fundamental human rights and police accountability.

Across the world the Commonwealth Human Rights Initiative (CHRI) has been at the forefront of the advocacy for better police accountability and independent oversight. CHRI has sought to provide policy makers and lawmakers with evidence-based arguments for the establishment of independent police oversight institutions. CHRI is pleased to note that in Ghana, there is consensus among the Police Service, the Police Council, the Ministry of Interior (MOI) and other State and non-State security sector actors on the need for an independent police oversight body. To facilitate the institutionalization of this consensus, The Africa Office of CHRI embarked on this research project to evaluate the Ghanaian legal framework for police oversight and identify best practice across the world, from which Ghana could learn.

This Report is the outcome of CHRI Africa's research conducted to aid the process of establishing an independent police oversight mechanism. The Report synthesizes best practices from selected countries and recommends a good mix of factors to be taken into account when fashioning a mechanism for Ghana. It is CHRI's hope that the Report will inform the Police, MOI and Parliament in particular as well as expedite efforts to establish an independent Police oversight institution as soon as possible. The Report, CHRI expects, will serve as an advocacy tool for civil society actors here in Ghana and across the continent to motivate for the establishment of similar structures in Africa to enhance police accountability.

–Sam Okudzeto
Chair, Executive Committee
CHRI Africa office

ACKNOWLEDGEMENTS

The Africa Regional Office of the Commonwealth Human Rights Initiative (CHRI) produced this research report as part of a 12 month project on advocacy towards establishing an independent police complaint body in Ghana. The report is the result of the work of many people, both inside and outside CHRI.

Our special appreciation goes to all who made this report a reality: Mr. Gideon Commey an Associate Fellow of the Royal Commonwealth Society and Regional Youth Co-ordinator for Africa and Ms. Anastacia Karimu, a Legal Practitioner for conducting a comprehensive research on key models of IPCC from around the world and Mr. Edmund Amarkwei-Foley, Head of Department for Public Law, GIMPA Faculty of Law for providing key information on some cases of public dissatisfaction with the handling of incidents of fatalities involving the police to support the research.

CHRI is also grateful to all those who availed themselves for the one on one engagement and provided informed comments, suggestions, and opinions, especially: Her Ladyship Justice Sophia Akuffo-the Chief Justice of Ghana, Gloria Akuffo (Ms.)- the Minister of Justice and Attorney General, Members of the Parliamentary Select Committee on Defence and Interior; Mr Joseph Whitall, Commissioner of CHRAJ; Mr. S.Y Seini, Director Legal Aid Scheme, and the Executive Members of the National Association of Retired Police Officers (NARPO).

CHRI will also like to appreciate Nana Kwabena Aborampah-Mensah of CDD Ghana, Nana Yaw Akwada of Bureau for Public Safety and Daphne Lariba Nabila of LRC for their very useful comments that enriched the report.

Special thanks and appreciation goes to STAR- GHANA who generously provided funding to CHRI for its advocacy on establishing an independent police complaint body in Ghana.

The report was edited by Mina Mensah, Head of CHRI Africa Office. She was assisted by Gideon Neequaye, Project Officer Access to Justice and Arimiyao Adamu, Project Officer, all of CHRI Africa Office.

CHRI also wishes to thank the members of the Independent Police Complaint Coalition (INPOCOCO) their support:

- Centre for Democratic Development (CDD)
- Bureau for Public Safety
- Amnesty International
- POS Foundation
- Centre for Advocacy and Law Enforcement Research (CALER)
- Human Rights Advocacy Centre (HRAC)
- Legal Resources Centre (LRC)
- Penplusbytes
- Mr. Edmund Amarkwei Foley

ABBREVIATIONS

ASP	Assistant Superintendent of Police
AFP	Australian Federal Police
CSOs	Civil Society Organizations
CHRAJ	Commission on Human Rights and Administrative Justice
CHRI	Commonwealth Human Rights Initiative
CAT	Convention Against Torture and other Cruel, Inhuman or Degrading Treatments or Punishment
CRC	Convention on the Rights of the Child
CID	Criminal Investigation Department
COA	Criminal Offences Act
CPC	Criminal Procedure Code
DSI	Death or Serious Injury
DOJ	Department of Justice
DCOP	Deputy Commissioner of Police
ECOWAS	Economic Community of West African States
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
GPS	Ghana Police Service
ICD	Independent Complaints Directorate
IPCC/A	Independent Police Complaints Commission/Authority
IPCC	Independent Police Complaints Commission
IPID	Independent Police Investigative Directorate
IGP	Inspector General of Police
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LAPD	Los Angeles Police Department
MEC	Member of Executive Council
MMDAs	Metropolitan, Municipal and District Assemblies
MOI	Ministry of Interior
NHRI	National Human Rights Institutions
NYPD	New York City Police Department
NDPB	Non-Departmental Public Body
NIPB	Northern Ireland Policing Board
OAU	Organization of African Unity
PIPS	Police Intelligence and Professional Standards Bureau
PSA	Police Service Act
PSI	Police Service Instructions
PSNI	Police Service of Northern Ireland
PSR	Police Service Regulations
PCSP	Policing and Community Safety Partnerships
PNDCL	Provisional National Defence Council Law

PRO	Public Relations Officer
QPS	Queensland Police Service
RMP	Royal Malaysian Police
SAPS	South African Police Service
UNODC	The United Nations Office on Drugs and Crime
UK	United Kingdom
UN	United Nations
UDHR	Universal Declaration of Human Rights

LIST OF TABLES

Table 3.1: List of Police complaints mechanisms in the GPS (From 1970s to Date)

Table 3.2: Other external Police oversight bodies

Table 4.1: The different mandates of independent Police complaint bodies

Table 4.2: General minimum functions of an independent Police complaint body

Table 5.1: Strengths and weaknesses of the IPID

Table 5.2: Strengths of the IPCC

EXECUTIVE SUMMARY

The UN defines policing as a “function of governance responsible for the prevention, detection and investigation of crime; the protection of persons and property; and the maintenance of public order and safety.” In line with this definition, the UN Code of Conduct for Law Enforcement Officials outlines standards and principles for policing in member countries. It provides that in the performance of their duties the Police must respect, protect, maintain, and uphold the rights of citizens.

The Ghana Police Service (GPS) is mandated by the 1992 Constitution of Ghana, the Police Service Act, 1970 (Act 350), and international laws such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (which Ghana is a signatory) to maintain law and order. The mandate of the police to protect lives and property leads inevitably to interference in the lives of citizens. This naturally leads to complaints by citizens against the conduct of the police in the exercise of its mandate.

The GPS has internal accountability mechanisms as well as some external bodies with oversight responsibilities to address issues of misconduct and abuse of power. However, these bodies (internal and external) are not independent enough to handle cases involving complaints brought against officers by members of the public. Police accountability being key to effective policing and building public confidence, there is the need for an independent body to oversee complaints and investigations into alleged Police misconduct.

Over the years CSOs such as the Commonwealth Human Rights Initiative (CHRI) have been campaigning for Government to set up an Independent Police Complaints Commission/Authority (IPCC/A) in Ghana. In 2014 the GPS itself added its voice to this call when the then Inspector General of Police (IGP), Mr. Mohammed Alhassan announced that the GPS has made proposals to the Ministry of Interior (MOI) to set up an IPCC/A to be hosted at the MOI as part of a campaign to build public confidence in the GPS.

As much as this was welcome news and the GPS was commended by CSOs for that bold initiative, CSOs were of the view that hosting the IPCC/A at the MOI which happens to be the GPS’s supervisory body will defeat the purpose and will render it dependent on MOI. Another key challenge is the form/type of IPCC/A that Ghana needs to adopt.

The goal of this research therefore is to give an overview of the legislative framework and accountability mechanisms of the Police Service in Ghana, provide a summary of six models of IPCC from around the world and make recommendations to inform advocacy and aid stakeholder dialogue to determine the appropriate IPCC/A model for Ghana.

The report which has been put together using a qualitative approach- mainly analysing secondary data- is summarized as follows:

Arguments for IPCC – The Global and Ghanaian Contexts

This chapter of the report discusses various arguments made to support the need for an IPCC to investigate complaints brought against Police officers, as opposed to the Police investigating themselves. Examples of cases are cited from both global and Ghanaian perspectives to show public dissatisfaction with internal Police investigations. Public attitude toward internal Police investigations of complaints is shown to be an important factor that accounts for the preference of an independent body to investigate complaints against the Police. The attitude of police officers towards complainants and public experience of Police investigations were also revealed to be an underlying cause of the dissatisfaction with Police internal investigations of complaints.

Legislative Framework and Accountability Mechanisms of GPS

In this section, the legislative framework and accountability mechanisms of the Ghana Police Service is extensively discussed.

The research shows that the 1992 Constitution of the Republic of Ghana is the major legislative framework for the main function of the GPS, which is to maintain law and order. Other legal instruments identified to support the mandate of the Police Service including the Police Service Act, 1970 (Act 350), the Criminal Procedure Code of 1960 (Act 30) and the Criminal Offences Act of 1960 (Act 29).

The chapter also looks at the internal accountability mechanisms of the Police Service—the standards of conduct and self-regulatory mechanisms that promote responsibility and instil discipline in the service. The Police Service Regulations (PSR) 2012 (C.I. 76) and the Police Service Instructions (PSI) were identified to be some of these mechanisms. While the PSR is an instrument that specifies the Administration and Disciplinary Regulations of the Police Service, the PSI is a set of guidelines on Police conduct that is published by the IGP as an internal accountability measure.

The external accountability mechanisms are also discussed. Here the report outlines the various bodies and institutions that perform oversight roles over the Police Service. Some of these bodies include the Police Council, the Regional Police Committees and CHRAJ. It was noted that while these bodies are not fully independent, CHRAJ is the only Police oversight body that is known to receive and handle public complaints against the Police. The Commission however lacks prosecutorial powers and only makes recommendations for the IGP to act on.

The report also mentions a couple of regional and international standards on policing that Ghana has assented to. These are also supposed to influence the conduct of Police officers in discharging their duties. Some of the standards include The African Charter on Human and Peoples' Rights (referred to as the 'Banjul Charter'), The African Commission on Human and Peoples' Rights, the Universal Declaration of Human Rights of the United Nations (UDHR) among others.

Independent Police Complaints and Oversight Bodies

The criteria for establishing an independent Police complaints and oversight body are discussed in this section. The report indicates that an IPCC should have statutory underpinning for its establishment, be accountable and report to an independent body such as Parliament, receive funding from an independent source, and appoint officials and staff through a transparent process based on merit and experience. The different mandates of independent Police complaints and oversight bodies were also examined. Five different types of mandates were looked at, namely: bodies that deal with complaints; those that have general oversight functions; bodies that have direction-setting which are policy input and priority setting; the ones that deal with personnel management issues (hiring and firing); and independent bodies that have oversight over detention facilities.

Independent Police Complaints Bodies in Operation

A review of selected models of independent Police complaint bodies in operation around the world was conducted. The mandates of these bodies were identified, as well as their organizational structures and accountability measures. The weaknesses and strengths of the selected models were also examined together with their effectiveness in operation. The 6 main models of complaint bodies focused on in this research are the Independent Police Investigative Directorate (IPID) in South Africa, the Independent Police Complaints Commission (IPCC) of the United Kingdom, Great Britain: England and Wales, the Northern Ireland Policing Board (NIPB), the Office of the Independent Police Review Director (OIPRD) in Ontario, Canada, the Office for Public Integrity (OPI), South Australia and the Independent Police Complaints Board (IPCB) of Sierra Leone.

Concluding Recommendations

Establishing an IPCC/A is the sole responsibility of Government, however for it to be effective and successful it needs the collaboration of all stakeholders. The Report calls for stakeholders such as the CHRAJ, CHRI and other CSOs, the Police Service, the Police Council, the Ministry of Interior (MOI) and other State and non- State security sector actors to work closely together towards establishing an IPCC/A in Ghana.

The Report made recommendations based on the research findings, for action by stakeholders to inform policy and advocacy for the setting up of an IPCC/A in Ghana. The recommendations are as follows:

- To ensure that the proposed Ghana IPCC/A is fully independent, the research recommends that it needs statutory underpinning; meaning a statutory law should establish it. Another proposal is that the Ghana IPCC should be accountable to an independent institution such as Parliament and receive its funding from there.
- The Ghana IPCC/A have a very clear and focused mandate in order to be effective.
- The Commission in this case should have a primary mandate to receive record and investigate cases that cause death and serious injury as a result of a direct or indirect contact of a victim with a Police officer.

- The Ghana IPCC should be accessible to complainants, and that a media campaign and other forms of publicity are required to reach out to the public and educate them on the Commission's activities.

1. INTRODUCTION

1.1 Background

According to the UN, policing is a “function of governance responsible for the prevention, detection and investigation of crime; the protection of persons and property; and the maintenance of public order and safety”.¹ To this end, the UN calls for policing and law enforcement within a legal framework that is based on the rule of law— Police officers and law enforcement officials are obliged to respect and protect the rights of citizens.

The UN Code of Conduct for Law Enforcement Officials outlines standards and principles for policing in member countries. Article 1 states that “law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the Community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession”.² It indicates further that in performing their duties, the Police must respect, protect, maintain and uphold the rights of citizens. These human rights are identified and protected by both national and international laws. Notable among them are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³, among others.

The Ghana Police Service (GPS) in addition to international law is primarily mandated by the 1992 Constitution of Ghana, and the Police Service Act 1970 (Act 350) to perform its traditional role of maintaining law and order. The Police have been endowed with the powers to protect lives and property, and the responsibility to uphold the law by acting independently. Because of this legally mandated duty, they inevitably interfere in the lives of people. This results in disputes and conflicts, which lead to complaints.

Some of these complaints amount to accusations and allegations of criminal conduct levelled against Police officers—the very people who have been empowered and entrusted to uphold the law. In investigating these complaints, there have been concerns about the independence of bodies and institutions overseeing the process. In most cases, the Police administration ends up investigating complaints against their own officers, which compromises the independence of the process.

Since Police accountability issues are key to effective policing, building public confidence and strengthening the justice system, there is an urgent need for independent investigations and oversight of Police conduct that culminates in the complaints.

Civil Society Organizations (CSOs) in Ghana such as the CHRI Africa Office have been calling for an IPCC/A since 2005, nonetheless these calls fell on deaf years. However on March 18, 2014, the GPS

¹ United Nations Peacekeeping, Policing. Accessed May 24 2018, <https://peacekeeping.un.org/en/policing>

² Code of Conduct for Law Enforcement Officials. Accessed May 24 2018, <https://www.un.org/ruleoflaw/files/CODEOF~1.PDF>

³ *ibid*

finally validated the calls by CSOs when it announced at the launch of its campaign to re-affirm public confidence in the GPS that they have proposed the setting up of an IPCC as part of measures to win public confidence. The then Inspector General of Police (IGP) Mr. Mohammed Alhassan who made the announcement indicated that the GPS had proposed to the Ministry of Interior (MOI), to set up an independent Police complaint body to be hosted by the Ministry to deal with public complaints against the Police. CSOs however were of the view that if such a body is hosted by the parent body of the GPS it will defeat the purpose of establishing it and attract the same criticisms that the Police Intelligence and Professional Standards Bureau has attracted.

This kick started a year-long advocacy drive in 2014, initiated by the CHRI Africa Office and funded by STAR Ghana which resulted in all the key stakeholders including the Attorney-General, the Commission on Human Rights and Administrative Justice (CHRAJ), the MOI and Parliament agreeing that there is an urgent need to set up an IPCC/A in Ghana. Nevertheless no consensus was reached on the type of IPCC/A suitable for Ghana.

1.2 Objectives of Research

The research is conducted under 3 main objectives:

1. Give an overview of the legislative framework and accountability mechanisms of the Police Service in Ghana, vis-à-vis international best practice on policing oversight.
2. Provide a summary of six (6) models or systems of IPCC operating in some parts of the world, including their strengths and weaknesses.
3. Make recommendations to inform advocacy and aid stakeholder dialogue to determine the appropriate IPCC/A model for Ghana.

1.3 Statement of the Problem

The debate around police reform and accountability in Ghana is nothing new. In 2005 the Commonwealth Human Rights Initiative began advocacy to ensure increased awareness and acceptance of human rights norms and the rule of law in the GPS. Among the issues the CHRI has been discussing since then is the need for an Independent Police Complaint body to increase and improve accountability of the GPS. This call was finally validated by the GPS in 2014 however the GPS preferred that this body be hosted by the Ministry of Interior. Subsequently, the (CHRI) Africa Office in 2014 began a project to accelerate discussions on the setting up of an Independent Police Complaint Authority to enhance accountability of the Ghana Police Service. Among other initiatives, CHRI brought together CSO's working on policing in a Coalition to have a strong voice to engage stakeholders. Subsequently after one on one engagements and round table discussions with stakeholders which included Commission on Human Rights and Administrative Justice, Ministry of Interior, Attorney-General's Department, the Parliamentary Select Committee on Defence and Interior, academia and CSOs among others, the key outcome was that all stakeholders engaged were of the view that the setting up of an IPCC in Ghana is long overdue. However, different stakeholders have different views on the type IPCC Ghana needed. Whereas the Coalition of CSOs advocating for

Independent Police Complaint body proposed a completely independent entity, the GPS prefers setting up a body outside the ambit of the GPS but hosted at the Ministry of Interior, its parent institution. Another view shared was that due to CHRAJ's mandate and the fact that it is already playing some oversight role over the Police, the IPCC should be created at CHRAJ.

1.4 Methodology

A qualitative method using secondary literary sources was utilised. A selection of reports and articles were consulted for this work. The United Nations Office on Drugs and Crime (UNODC) Handbook (2011) on 'Police accountability, oversight and integrity', as well as the CHRI's report on Police accountability in Ghana were heavily used. In addition the legal framework and policy documents setting up complaints bodies of other jurisdictions such as UK, South Africa, Sierra Leone, Australia, Canada and Northern Ireland were reviewed. A full list of references consulted for this research is listed on the bibliography page.

2. ARGUMENTS FOR AN IPCC - THE GLOBAL AND GHANAIAN CONTEXT

2.1 The challenges with the Police investigating themselves

The practice of the Police investigating itself and its members is fraught with a lot of problems. Issues of conflict of interest and bias in favour of the Police can influence the outcome of investigations. The mere fact that the Police play a major role in investigating themselves raises a lot of serious questions about the transparency and overall integrity of the entire investigative process.

An internal investigation does not necessarily imply corruption; however, there is a negative perception when a Police officer evaluates the actions of another officer. Consequently, the more neutral the investigation is, the fairer and more impartial it will be perceived. Since public perception is key in building public confidence in the Police, it is important that fairness in the investigative process be preserved.

Additionally, the hierarchical and fraternal structure of the Police Service further exacerbates bias within internal investigations. The Police Service may be tempted to protect their own from public criticisms, at the expense of the community's best interest, rendering investigations ineffective and suspicious. When the public is dissatisfied with internal Police investigations, they may be deterred from making new complaints, profoundly impacting the protection of human rights and justice in society.

2.2 Global reports of public dissatisfaction with internal Police investigations

Dissatisfaction with internal investigations is part of a wider global trend shown by public and complainant surveys conducted in various contexts. Several reports on the issue have been published with evidence to support the argument for an IPCC in different countries. Some of these cases are outlined below:

The Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the UK Government in 1997

In 1997 a delegation from the CPT carried out a visit to the United Kingdom and the Crown Dependency of the Isle of Man from 8th to 17th of September. One of the issues they looked into was public complaints against Police misconduct. The Committee wrote a report to the UK government in January 2000 titled 'Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)'.

One of the key findings was the biased handling of complaints by the Police against their officers. "From the very beginning of the complaints process, at which stage the Police retain sole discretion as to whether to record a complaint, through an investigation conducted and controlled by Police officers, to the moment at which a Police officer is required to assess the criminal and/or disciplinary implications of that investigation, the Police themselves maintain a firm grip upon the handling of complaints against them".⁴

After publishing its findings, the CPT made a recommendation and called for a reform in the way investigations of Police complaints are handled:

"...the CPT entertains reservations about whether the Police Complaints Authority, even equipped with the enhanced powers which have been proposed, will be capable of persuading public opinion that complaints against the Police are vigorously investigated. In the view of the CPT, the creation of a fully-fledged independent investigating agency would be a most welcome development".⁵

The Stephen Lawrence Inquiry

The Stephen Lawrence Inquiry was an inquiry into the matters arising from the death of Stephen Lawrence by Sir William MacPherson of Cluny. The report was written in February 1999 and presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty the Queen. The author, Sir William MacPherson also addressed the issue of the internal investigations of Police officers by the Police Service and recommended an independent body to handle such investigations:

"The Home Secretary, taking into account the strong expression of public perception in this regard, considers what steps can and should be taken to ensure that serious complaints against Police officers are independently investigated. Investigation of Police officers by their own or another Police Service is widely regarded as unjust, and does not inspire public confidence".⁶

The Home Affairs Committee's Report to the House of Commons on Police Complaints in the UK in 1997

The Home Affairs Committee is one of the House of Commons Select Committees in the United Kingdom. It is appointed with a term of reference to "examine the expenditure, administration and policy of the Home Office and associated public bodies". The Committee wrote a report⁷ in 1997 on Police disciplinary complaints and procedures to deal with them. They consulted a wide range of

⁴ Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 8 to 17 September 1997, section 48

⁵ *ibid*, section 55

⁶ The Stephen Lawrence Inquiry Report by Sir William MacPherson of Cluny, The Stationery Office Limited, 1999, p333

⁷ Home Affairs Committee, First Report, Police Complaints and Disciplinary Procedures, The Stationery Office Limited, 1997

respondents for this exercise. This included oral evidence from government officials, senior Police officers, Police lawyers and Police associations in England and Wales. They also took written evidence from a section of the public and other bodies. One of the main conclusions of the report was that:

“There was almost no argument in the evidence we received against the conclusion that independent investigation would be desirable in principle, not least because of the boost this would give to public confidence in the system. “We are of the same view”⁸

The report then offered some recommendations on obstacles that ought to be overcome for an independent investigation of Police complaints to be successfully realized. Some of their suggestions will be taken into consideration in this document.

Report by the Royal Commission to the Malaysian Government on Public Dissatisfaction of the Malaysian Police Force in 2005

For many years, the Malaysian public expressed dissatisfaction about the performance of the Royal Malaysian Police (RMP). The Malaysian government responded with the formation of the Royal Commission to conduct thorough investigations of the operations of the Police force and make recommendations. In 2005, the Commission published their report findings, which included 125 recommendations. The report strongly advocated for an independent Police complaints body to investigate allegations of misconduct brought by the public against the Police:

“In a political climate characterized by a decline in trust in the political process, loss of respect for public servants and an increase in public expectations, the existence of an overarching national, external and independent body for investigating allegations of Police misconduct must be viewed as vital for holding the Police to account and for dealing with Police misconduct”.⁹

2.3 Ghanaian cases of public dissatisfaction with Police investigations

Public disaffection with Police internal investigations is not only a global trend as seen from the examples above. There are numerous cases in Ghana outlined below to prove this point:

The Death of Emmanuel Amofa involving the Police patrol team in April 2018

The family of a 27-year-old man Emmanuel Amofa, a citizen of Agbogba, a suburb of Accra threatened to take legal action against the Police for allegedly shooting and murdering him. The victim was shot and killed in the early hours of April 16, 2018, by personnel of the Police patrol team. The Greater

⁸ Ibid, vol 1 p v

⁹ Management Science and Engineering ISSN 1913-0341 Vol.3 No.3 2009

Canadian Research & Development Centre of Sciences and Cultures 09/20/2009. Accessed February 20 2018, <http://www.cscanada.net/index.php/mse/article/viewFile/818/831>

Accra Regional Police PRO Afia Tenge narrating the story told the press that the deceased was armed with a pistol at the time of the incident

The family of the deceased however debunked the claim and called on the IGP to investigate the killing.¹⁰

Tema New Town Shooting Incident on Tuesday, 9th May 2017

In the early hours of Tuesday, 9th May 2017, a police patrol team shot and killed a 30-year-old man, Patrick Mensah who they suspected of attempting to snatch a car.¹¹¹ The police had responded to a distress call from the complainant that some persons had attempted to snatch his car away from him. Upon arrival at the scene the suspected robbers took to their heels. The police apprehended the deceased and when they tried to handcuff him, they alleged that he seized a weapon from an officer, whereupon in the attempt to retrieve the weapon, another officer shot the deceased. The incident led to protests from the community and the destruction of police property over the innocence of the deceased.

The aforementioned examples demonstrate that there are more than enough credible arguments supporting the need for an independent body to investigate Police complaints. Most of these cases point to the dissatisfaction with Police internal investigation systems and the outcomes of the Police Service investigating their own officers. However, it is equally important to discuss and differentiate between the most common underlying causes of dissatisfaction from the different point of views.

The Krofrom riots in response to the death of Richmond Osei Tawiah in 2016

On May 27, 2016, irate youth of Krofrom, a suburb of Kumasi in the Ashanti Region of Ghana, took to the streets to violently protest the mysterious circumstances that led to the death of a young man named Richmond Osei Tawiah. It was alleged that the deceased was brutally assaulted by Police personnel on suspicion of being an armed robber. Meanwhile, an autopsy report released indicated natural causes of his death. This triggered rioting and vandalism by the youth of Krofrom. The case was transferred to the Criminal Investigation Department (CID) of the GPS for further investigations amid public outcry and criticism.

The CHRI released a statement that strengthened its previous arguments for the establishment of an independent body to handle such controversial investigations:

“The recent controversy surrounding the death of Osei Tawiah and posturing of the Ashanti Regional Police Commander, District Commissioner of Police (DCOP) Kofi Boakyie indicates that an independent body is needed as a matter of urgency. It is obvious there is more to this issue than what the public is being told and this mystery can only be resolved to the

¹⁰Family chases killer cop, Dailyguide Africa, April 21 2016. Accessed May 28 2018, <http://dailyguideafrica.com/family-chases-killer-cops/>.

satisfaction of all parties when an independent investigation is conducted. This is especially important when reports of a number of such deaths allegedly at the hands of the Police, investigated by PIPS are kept as closely guarded secrets although outcomes of such investigations are of high public interest".¹²

The Tema Community 3 Ramsar site shooting incident in 2016

In August 2016, residents of Tema Community 3 accused the Tema Police of wrongfully shooting and killing an innocent taxi driver in the area. The Police however refuted the claim and maintained that the deceased was an armed robber who engaged the Police officers in a shootout with his gang. Through a press conference the Tema Police Public Relations Officer (PRO) at the time, Assistant Superintendent of Police (ASP) Juliana Obeng, suggested that the Police were accurate in their investigations but the residents disagreed.¹³

The Nmai - Dzorn shooting incident in 2016

The family of a deceased man, Joseph Adjei, 24, accused the Police of shooting and killing their son in Nmai-Dzorn near Adentan in the Greater Accra Region. The Police however indicated that the man was harbouring a murder suspect and attacked them with a machete when they attempted to arrest the suspect. The report of Joseph's mother was sharp contrast to this. The IGP at that time Mr. John Kudalor directed the CID of the GPS to take over the investigations.¹⁴ To date nothing has been heard about the outcome of the investigations.

Dansoman Shooting Incident on Friday, 21st April 2006

Four persons, including two women were shot dead on 21st April 2006 in Dansoman by a Police patrol team from the Dansoman District Police Station. The four were suspected to be armed robbers who were fleeing in a Daewoo Tico taxi cab, however they were innocent civilians who were allegedly mistaken for armed robbers who had earlier snatched a bag from one of the deceased women around Zodiac in Dansoman. The Police issued two press statements on the incident. In the first statement, the Police maintained that they suspected the occupants of the taxi to be armed robbers, however, in the second statement, they confirmed that they had killed innocent persons.¹⁵ The same day the incident occurred, the then Inspector-General of Police, Mr Patrick Acheampong, ordered an investigation into the incident.¹⁶

A five-member Committee chaired by Justice J. C. Amonoo-Monney, a retired Justice of the Court of Appeal, was established by the Minister for Interior on 24th May 2006. The Committee presented a

¹² Krofrom riots buttress need for complaint authority- CHRI, Ghana News Agency, June 5 2016. Accessed February

¹³ Police shot and killed innocent driver – Comm.3 residents allege, My joyonline news, August 22 2016. Accessed May 28 2018, <https://www.myjoyonline.com/news/2016/August-22nd/Police-shot-and-killed-innocent-driver-comm-3-residents-allege.php>

¹⁴ Family of man gunned down by Police demands justice, Graphiconline, January 23 2016. Accessed May 28 2018, <https://www.graphic.com.gh/news/general-news/family-of-man-gunned-down-by-Policeman-demands-justice.html>

¹⁵ The Knapp Commission Report on Police Corruption, Knapp W, George Braziller, 1972 p14.

¹⁶ Statement by the Commonwealth Human Rights Initiative on the Shooting of Innocent Civilians by Policemen at Dansoman, Accra on Friday, 21st April 2006

report on its findings to the Minister in November 2006 but it is not clear whether any officers were specifically identified as culpable or any recommendations were implemented as the report was not made public.

Kotobabi Shooting Incident on May 20th 2006

A 26-year-old man, Isaac KojoTetteh-Nartey, was mistaken for an armed robber and shot and killed by Police officers in Kotobabi, Accra on 20th May 2006. This incident was barely a month after the shooting of four innocent persons in Dansoman in April. The Justice Amonoo-Monney Committee which had been set up to investigate the Dansoman shooting incident was also tasked to investigate the Kotobabi incident.¹⁷ Similar to the Dansoman shooting incident, the Committee's report was not made public to determine whether any individual officers were found culpable or the nature of recommendations made.

2.4. Underlying causes of dissatisfaction with Police investigating complaints

There are many propositions and different schools of thought on what influences public dissatisfaction, about the process and outcomes of Police internal investigations of complaints brought against them. A few of them are outlined below.

2.4.1 Public perception of the inadequacies of Police internal investigations

The first reason can be attributed to the lack of public confidence in Police internal investigations. There is enough evidence to show that people believe that when it comes to complaints brought against its own officers, investigations are not inadequately conducted by the police. The following reports cite some of these cases:

The Knapp Commission Report, New York City (1972)

The Knapp Commission was a five-member panel formed in 1970 to investigate corruption within the New York City Police Department (NYPD). This panel was formed in response to widespread allegations of corruption made by the public against the Police. One of the findings of this report was the negative perception of the public towards the way the Police handle complaints:

“At the present time a citizen wishing to complain about a policeman knows that his complaint will ultimately be investigated by other Policemen. This discourages complaints, because New Yorkers just don't trust Policemen to investigate each other”.¹⁸

¹⁷ Ghanaweb, General News, 'Committee inaugurated to investigate Police shootings' Available at <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Committee-inaugurated-to-investigate-Police-shootings-104805> (last accessed on 17th July 2018)

¹⁸ Christopher Commission Report, Los Angeles (1991):

The Independent Commission on the Los Angeles Police Department -The Christopher Commission (1991)

This Commission was an Independent Commission of Inquiry created in April 1991 in response to public outcry, to investigate the use of excessive force against members of the public by the Los Angeles Police Department (LAPD). The Christopher Commission also reported the lack of public confidence in the way the Police Department handled complains:

“No area of police operations received more adverse comment during the Commission’s public hearings than the Department’s handling of citizen complaints against LAPD officers...Many community groups and members of the general public firmly believe that the Department is incapable of disciplining its own officers...Our study indicates that there are significant problems with the initiation, investigation, and classification of complaints”.¹⁹

Australian Law Reform Commission, Australia (1995)

This Commission was formed in March 1995 in Australia with terms of reference to inquire into the public complaints and entire disciplinary system of the Australian Federal Police (AFP). Their report shed light on the cause of public dissatisfaction in the way the AFP conducted its investigations into public complaints:

“The record of internal units is generally inadequate in terms of the effective conduct of investigations and there are excessive delays. A siege like mentality of Police officers and their own Police culture means that there are strong risks that they will not be able to conduct thorough and fair investigations”.²⁰

The Fitzgerald Inquiry, Queensland (1989)

This Commission of Inquiry was named after its Chairman G.E. Fitzgerald in Queensland, Australia in 1989. It conducted an inquiry into the alleged illegal activities and misconduct of officials and officers of the Queensland Police Service (QPS). The report made damning comments about Police internal investigations and called for it to be totally scrapped:

“The Internal Investigations Section has been woefully ineffective... It has been a friendly, sympathetic and inept overseer. It must be abolished”.²¹

¹⁹ Report of the Independent Commission on the Los Angeles Police Department, Christopher W, Independent Commission on the LAPD, 1991, p153.

²⁰ Under the Spotlight: complaints against the AFP and NCA, Australian Law Reform Commission, Australia Government Publishing Service, 1995, pp194–195

²¹ Report of a Commission of Inquiry Pursuant to Orders in Council, Fitzgerald, G, Goprint, 1989, p289.

The Wood Commission Report, New South Wales (1997)

The Wood Report was the work of a Commission of Inquiry led by its Commissioner the Hon Justice J.R.T. Wood in New South Wales, Australia. The report was submitted in May 1997 after investigating the administration and operations of the New South Wales Police Service. It also highlighted the problem of Police internal investigations:

“There is an inherent bias in investigations as the result of which the Service failed to carry out impartial investigations or pursue allegations with the same rigor or approach seen in ordinary criminal inquiries.”²²

2.4.2 Public attitudes towards internal Police investigation of complaints

Another important factor for the preference of an independent body to investigate complaints against Police rather than the Police Service is public attitudes. Historically, public attitude surveys conducted have shown that majority of respondents prefer an independent Police authority or body to investigate complaints.

For example, the British Crime Survey conducted in 1988 published a report on the attitudes of the public to the investigations of complaints. The report noted:

“...when asked how happy they were with the present system, only 36% declared themselves ‘very’ or ‘reasonably’ happy. And to the question of who they thought should investigate complaints, under one in six said they were content to leave it to the Police: the most frequent response was ‘an independent lay body’. The above questions drew negative answers from significantly higher proportions of black and ethnic minority respondents than of white respondents”.²³

The Police Complaints Authority (PCA) of the United Kingdom also conducted a survey in 1996 on public attitudes of the process of Police complaints and how they are handled. One of the conclusions of the report was that public confidence in the Police handling investigations of complaints against themselves was very low. A key outcome of the survey was that:

“There was...a sharp fall in public confidence in the Police investigating complaints against fellow officers. In previous surveys between 41% and 44% of those interviewed believed that the Police could be trusted to carry out these inquiries fairly. However the 1996 survey put

²² Royal Commission into the NSW Police Service: Final Report, Wood, J, Government of the State of New South Wales, 1997, p201

²³ Royal Commission into the NSW Police Service: Final Report, Wood, J, Government of the State of New South Wales, 1997, p201.

²³ Maguire, M, and Corbett, C, A Study of the Police Complaints System, HMSO, 1991, p159.

this figure at only 37% compared to 40% who did not trust the Police. This was the first time in five surveys that these questions had suggested an adverse anti- Police balance”.²⁴

In addition to the above, a Police Federation survey conducted in September 1997 also revealed a similar trend. The survey was conducted among the general public in both England and Wales in 23 different locations.

“When asked what system of investigation of Police complaints would give them greatest confidence 59.4% said they would have greatest confidence in independent investigation, 16.4% said the Police investigating themselves, and 19.6% said they would have equal confidence in either system. The Police Federation concluded that this indicated that there was widespread public concern about the lack of independent investigation of complaints against the Police.”²⁵

The above surveys and figures reveal public attitudes as an important underlying cause for the general dissatisfaction with the Police investigating themselves, and such majority preference for an independent body to handle complaints.

2.4.3 Complainant attitudes and experience of Police investigations

The attitudes and experience of complainants who have been directly involved in the process of Police investigating their complaints is also an underlying cause of the dissatisfaction with Police internal investigation of complaints. Complainants whose issues have not been handled fairly and thoroughly have a strong preference for independent investigations.

As part of an evaluation of the Police complaints system in the UK, the Home Office published the results of research on complainant attitudes towards the handling of investigations by the Police.

The report “showed that the vast majority of complainants do not believe that the Police should be investigating complaints against themselves. Almost 90% stated that they thought an external body should investigate complaints. The research also showed that the current system leaves the vast majority of complainants dissatisfied, many with their perceptions of the Police damaged because of the experience they have had during the investigation of their complaints. Seventy four per cent (74%) of the 100 interviewees expressed dissatisfaction with the handling of their complaints, with most very dissatisfied, this increased to 90% when cases had been fully investigated by Police as opposed to informally resolved”.²⁶

²⁴The 1995/96 Annual Report of the Police Complaints Authority, The Stationery Office Ltd, 1996, p48.

²⁵ Home Affairs Committee Report 1997, p194-195.

²⁶ Maguire and Corbett 1991, p180.

Statistics of research surveys and interviews in Canada and Northern Ireland also reveal a similar trend to the above further proving that complainants' mistrust of Police investigating complaints against its own is a widespread phenomenon.

In a Canada interview conducted by Landau in 1996, 104 complainants were interviewed in the city of Toronto. Police investigators interviewed these complainants, with the Police Complaints Commission (a civilian review agency) performing a supervisory role. The report indicated that, "only 14% of complainants who had experienced the entire process felt that their complaint received a fair investigation. In addition, 35% felt that the Police investigation was biased and 70% of those interviewed thought internal investigation was undesirable"²⁷

In Northern Ireland, 82% of the respondents who were interviewed expressed dislike for internal Police investigations; 83% of the respondents indicated that they preferred an independent body to investigate complaints because they believe that the Police investigation process was ineffective and bias.²⁸

The overall trend of complainant attitudes and experiences as discussed above emphasize the general lack of trust and dissatisfaction with Police internal investigation of complaints.

²⁷ When Police investigate Police: a view from complainants, Landau, T, in Canadian Journal of Criminology, July 1996.

²⁸ A Police Ombudsman for Northern Ireland? A review of the Police complaints system in Northern Ireland, Hayes, Maurice, The Stationery Office Ltd, 1997, p62.

3. THE LEGISLATIVE FRAMEWORK AND ACCOUNTABILITY MECHANISMS OF THE GHANA POLICE SERVICE

3.1 The 1992 Constitution

The GPS operates under the 1992 Constitution of the Republic of Ghana. Article 15(3) states that the “Police Service shall be equipped and maintained to perform its traditional role of maintaining law and order.”

The procedure for the appointment of the IGP, the head of the Police Service is set out by the 1992 Constitution, as well as the Police Council and the Regional Police Committees. These bodies have key advisory roles they perform on policing, as well as the potential to play oversight functions over the Police Service.

Article 202 (1) “The Inspector General of Police shall be appointed by the President acting in consultation with the Council of State”. Article 203 (1) provides for the functions of the Police Council as an advisory body to the President on matters of policy which includes the role of the Police Service. Article 203 (2) provides “with the prior approval of the President, by constitutional instrument, make regulations for the performance of its function under the Constitution or any other law and for the effective and efficient administration of the police service. Article 204 establishes the Regional Police Committees, their membership and functions.

In addition to the 1992 Constitution, there are both internal and external accountability mechanisms that also prescribe the standards of conduct for Police officers in the discharge of their duties.

3.2 Accountability mechanisms of the Ghana Police Service

3.2.1 Internal accountability mechanisms

These are self-regulatory mechanisms and standards of conduct that instil discipline and promote responsibility and professionalism in the Police Service. Internal mechanisms are aimed at regulating the conduct of officers and also improving their performance in the discharge of their core duties. Some of these standards in the Ghana Police Service are outlined below.

Standards of conduct of the Ghana Police Service

The standards of conduct of the GPS are set out under different regulations, laws and policies. These include the Criminal Procedure Code 1960 (Act 30), the Criminal Offences Act 1960 (Act 29), the

Police Service Act 1970 (350), Police Service Regulations (PSR) 2012 (C.I. 76), the Police Service Instructions (PSI) and the Ghana Police Service Police Handbook (2010).

The Criminal Procedure Code (CPC)

The Criminal Procedure Code of 1960 (Act 30)²⁹ has specific Sections in the Act that deal with the conduct of Police officers in their line of duty. For example, Sections 3 to 21 details important information about the powers of the Police during arrest and search. For the purpose of this research, a few of the relevant Sections have been outlined below:

Section 3: Arrest how made- this deals with how a Police officer should make an arrest.

Section 6: No unnecessary restraint- the Section indicates: “the person arrested shall not be subjected to more restraint than is necessary to prevent his escape”.

Section 8: Searching of arrested persons- outlines the procedures for searching persons arrested by a Police officer.

Section 10: Arrest by a Police officer without warrant- provides several guidelines for a Police officer to effect an arrest without using an arrest warrant

Section 19: Recapture of person escaping- provides a Police officer the power to pursue and arrest a person who escapes or is rescued from custody.

The Criminal Offences Act (COA)

The Criminal Offences Act, 1960 (Act 29) is also an important instrument that ensures accountability in the Police Service. For example, Section 30 to 36 provide for the justifiable use of force or harm and covers the work of the Police in the execution of court orders and effect of arrests. Failure to meet the standards set for justifiable force or harm could result in criminal proceedings for the officer concerned.

The Police Service Act (PSA)

The Police Service Act of 1970 (Act 350) defines and empowers the Police to discharge their duties. Section 1 of the Act sets out the primary function of the Police: “It shall be the duty of the Police Service to prevent and detect crime, to apprehend offenders, and to maintain public order and the safety of persons and property.”

The PSA sets out procedures and guidelines for standards of conduct for all Police Officers, both junior and senior officers. It also provides instructions for Police officers to deal with public complaints. For example, Sections 17 and 19 prescribe what constitutes misconduct and the

²⁹ Police Service Act, Accessed May 31 2018, <http://www.ohchr.org/Documents/Issues/Mercenaries/WG/Law/Ghana.pdf>.

disciplinary proceedings required to address them respectively. Section 23 provides guidelines on public complaints against the Police.

The Police Service Regulations (PSR) 2012 (C.I. 76)

The Police Service is regulated by the PSR 2012 (C.I. 76). The Regulations spell out both the Administrative Regulations and the Disciplinary Regulations, among others. While the Administrative Regulations provide guidelines on issues such as the Structure of the Service, Administration of the Service, Recruitment and enlistment in the Service; the Disciplinary Regulations indicate the types of disciplinary offences, their penalties, the disciplinary authorities to deal with each offence, and the disciplinary proceedings to follow.

Police Service Instructions (PSI)

These are a “set of conduct guidelines published by the IGP. The IGP is empowered to set these guidelines by both the 1992 Constitution and the PSA. Acts – or failures to act – that are a breach of discipline are set out in the PSI, which sit beside the regulations dealing with standards of conduct”.³⁰

The PSI however has two main divisions—misconducts by senior Police Officers (Chief Inspectors and Inspectors), and junior Police officers (officers who rank lower than Inspectors).

“The PSI is very focused on internal conduct – there is not much scope for members of the public to use them to bolster an allegation against an officer. This means that the instructions are mainly used by more senior officers, to mete out punishment for misconduct to more junior officers”.³¹

Police Handbook, 2010

Acting pursuant to his powers under the 1992 Constitution and the Police Service Act, 1970 (Act 350), the Inspector-General of Police issued the Ghana Police Service Police Handbook in May 2010.³² The Handbook is intended to be a quick reference guide for policemen in their day-to-day duties and they are encouraged to always carry a copy with them, as it is designed to fit into one’s pocket.³³ The Handbook also reminds police officers of the vision of the Service to be a world-class Service that delivers planned, democratic, protective and peaceful services according to international best practice.

The Handbook covers issues of fundamental human rights, the role of the police in preliminary investigations, arrest, use of force, de-escalation and justifiable force, search, breach of discipline,

³⁰ The Handbook is available online at <http://www.icla.up.ac.za/images/un/use-offforce/africa/Ghana/Police%20Handbook.pdf> (last accessed on 19th July 2018)

³¹ The Handbook is available online at <http://www.icla.up.ac.za/images/un/use-offforce/africa/Ghana/Police%20Handbook.pdf> (last accessed on 19th July 2018)

³² See the Preamble of the Handbook.

³³ *ibid*

duties at the charge office, grievance procedure, arms and ammunition, use of firearms, traffic control and road accidents, exhibits and specimens, incident scene procedures, violent crime, domestic violence, investigation of unnatural deaths and treatment of dead bodies, prohibited drugs, fire cases and health and safety precautions.

3.2.2 Internal public complaints mechanism in the GPS

The GPS in its quest to ensure accountability also has a mechanism that deals with public complaints made against its officers. These mechanisms are instituted in direct response to section 23(1) of the PSA. This states that “any member of the public shall be entitled... to make a complaint in writing...as to: (a) any instance of bribery, corruption, oppression or intimidation (b) any neglect or non-performance of duty or (c) other misconduct by a Police officer”.

“Under the Act, complaints of bribery, corruption, oppression or intimidation were to be addressed to the senior Police officer in the relevant district or unit (or the Inspector General of Police). Complaints of neglect, non-performance of duty or other misconduct were to be addressed to any senior Police officer. After receiving a complaint, the officer is obliged by section 23(4) of the Act to conduct a full and impartial investigation into the complaint, send a report of his or her conclusions to the complainant and take such action as required.”³³

Historically, the Police Service within the past four decades has set out various mechanisms and internal bodies to receive and handle public complaints against its officers. The effectiveness and efficiency of these structures were improved as the years went by.

A chronology of these is presented in the table below:

Table 3.1: List of Police complaints mechanisms in the GPS (From 1970s to Date)

Mechanism/Body	Era
Suggestion box	Early 1970s
Public Complaints Unit	Late 1970s to early 1980s
Special Police Command Unit	Early 1980s to early 2000s
Monitoring and Inspection Unit	2001 to 2005
The Police Intelligence and Professional Standards Bureau (PIPS)	2005 to May 2018
Police Professional Standards Bureau (PPSB)	May 2018 to Date

The Police Intelligence and Professional Standards Bureau (PIPS)/PPSB

The Bureau currently is the body that deals internally with public complaints against Police Officers. It replaced the Monitoring and Inspection Unit in 2005. It has been able to implement programmes to give it the needed visibility as the internal complaints unit of the service.

“As of August 2016 PIPS received more than 900 complaints; 25 of these cases were completed and 749 remained under investigation. Over this period PIPS investigated 200 reports of unprofessional handling of cases, 145 reports of undue delay of investigation, 109 reports of unfair treatment, 52 reports of Police brutality, 50 reports of unlawful arrest and detention, 22 reports of extortion, and one report each of stealing, a shooting incident, and robbery. As of August 2016, 66 officers had been dismissed as a result of PIPS investigations, but none had been criminally prosecuted”.³⁴

Recently the intelligence role of PIPS has been assigned to the newly created Police Intelligence Directorate. The Unit has now been re-named the Police Professional Standards Bureau (PPSB).

The Police Intelligence and Professional Standards Bureau (PIPS)/PPSB

The Bureau currently is the body that deals internally with public complaints against Police Officers. It replaced the Monitoring and Inspection Unit in 2005. It has been able to implement programmes to give it the needed visibility as the internal complaints unit of the service.

“As of August 2016 PIPS received more than 900 complaints; 25 of these cases were completed and 749 remained under investigation. Over this period PIPS investigated 200 reports of unprofessional handling of cases, 145 reports of undue delay of investigation, 109 reports of unfair treatment, 52 reports of Police brutality, 50 reports of unlawful arrest and detention, 22 reports of extortion, and one report each of stealing, a shooting incident, and robbery. As of August 2016, 66 officers had been dismissed as a result of PIPS investigations, but none had been criminally prosecuted”.³⁵

Recently the intelligence role of PIPS has been assigned to the newly created Police Intelligence Directorate. The Unit has now been re-named the Police Professional Standards Bureau (PPSB).

In addition to the internal mechanisms discussed above, the Police also operate under some external accountability mechanisms. The external measures, which are required to be effective, credible and independent are also systems and procedures that ought to ensure that the Police Service is responsible for its actions and accountable in the discharge of its duties. These mechanisms are further discussed below.

³⁴ Ghana 2016 Human Rights Report

³⁵ Ghana 2016 Human Rights Report

3.2.3 External accountability mechanisms of the Ghana Police Service

External accountability as stated earlier is to ensure that the Police Service is responsible for its actions in the course of discharging its duties. In Ghana, there are notable bodies that perform external oversight roles over the Police. The major ones include the Police Council, the Regional Police Committees and CHRAJ.

Accountability however, is a collective responsibility involving every sector of society, working together with the three arms of government, and its institutions and agencies to preserve the integrity and public confidence in the Police Service. Thus other bodies whose work is also important in supporting the external accountability systems include the executive; through the MOI and the Ministry of National Security, Parliament; through the Parliamentary Select Committees on Defence and Interior; committees of enquiry, the judiciary, civil society and the mass media.

The Police Council

This is one of the key oversight bodies mandated by the 1992 Constitution of Ghana (Article 203) to have oversight duties over the Police Service. The Council was formed to “advise 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 Assistance Commissioner of Police”.³⁶

The PSA under Section 10(6) further explains the responsibilities of the Police Council:

Under the Act, the Council is to “advise on the appointment of officers, hear appeals from internal disciplinary hearings, examine and advise on welfare and discipline, recruitment and training, Police/public relations, the use of the Police Welfare Fund (a fund set up under the Act to provide money for gratuities for junior officers, for officer-related payments that cannot be covered by general funds, and for compensation to the families of deceased officers), the prevention and detection of crime, public order matters, the safety of people and property and advise the President on making regulations”.³⁷

Membership

Membership of the Police Council as set out by Article 201 of the Constitution is as follows:

1. A Chairman appointed by the President acting in consultation with the Council of State;
2. The Minister responsible for internal affairs;
3. The Inspector General of Police;

³⁶ The Police, The People, The Politics: Police accountability in Ghana, 2007 Commonwealth Human Rights Initiative Report.

³⁷ *ibid*

4. The Attorney General or his representative;
5. A lawyer nominated by the Ghana Bar Association;
6. A representative of the Retired Senior Police Officers' Association;
7. 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
8. Two other members appointed by the President.

Independence

The Police Council's independence is a subject for debate. First, some of the members on the Council, including its Chair are appointed by the President—this exposes the Council to possible influence by the executive.

Second, "The Inspector General of Police's position as member of the Council is problematic as it means that the Council is not independent of the senior Police hierarchy – and for an oversight body to be effective, it must be independent of the institution it is watching over. It also means that the Council is extremely unlikely to sanction the Inspector General for misconduct. As well as limiting independence, the Inspector General's inclusion also limits the ability of junior officers on the Council to become an effective voice for their peers."³⁸

This point is especially important since the IGP has even in the past been appointed as the Chair of the Police Council

"The Chairpersonship of the Council has varied with each new Constitution – in 1969 the Chair was a member of the Public Services Commission, while between 1972 and 1978 it was the Inspector General of Police. From 1979, the Vice President took over the role, and in 1992 the Chairpersonship shifted to presidential appointment (this change occurred by constitutional amendment and came in the wake of bitter differences between the then President, Jerry John Rawlings and the Vice President, the late Kow Nkensen Arkaah)".³⁹

³⁸ *ibid*

³⁹ *ibid*

Regional Police Committees

The Regional Police Committees are a network of Committees that work to support the Police Council in delivering its mandate. They advise the Council on policing issues in their respective regions. They function to disseminate and implement the decisions and ideas of the Police Council at the local level.

“Each Regional Police Committee is made up of the relevant Minister of State (who is Chair), the two most senior Police officers in the region and a representative of the Attorney General, the regional House of Chiefs and a local practicing lawyer”.³⁸ As an appendage of the Police Council, the independence of the Regional Police Committees are also compromised.

There is very little information on the current state of existence of the Regional Police Committees. The study could not obtain any information on the state of the Regional Police Committees across the country and to determine if they had in any way executed their mandates in respect of cases bordering on police accountability.

CHRAJ

CHRAJ was established in 1993 as a constitutional body to protect the human rights of Ghanaians and address administrative justice issues.

The Commission is “empowered to investigate complaints of breaches of fundamental rights and freedoms, injustice, corruption, abuse of power or unfair treatment of a person by a public official doing his or her job. The Commission can also investigate administrative complaints about the functioning of administrative organs of state (including the Police). The Commission has the power to call for a human rights violation or administrative injustice to be remedied through negotiation between the parties, reporting to the offender’s senior officer, bringing court proceedings to stop the offending action or bringing a court case to stop a law that illegitimately justifies misconduct (or is beyond its power) from being enforced”.⁴⁰

3.2.4 Public complaints against the Police

CHRAJ is the only external oversight body that is known to receive and handle public complaints against the Police.

Powers and independence

The Commission has powers to investigate and make recommendations on charges brought before it with regards to human rights abuses committed by the Police Service. In the event of investigating a complaint against the Police, the Commission after its findings will make recommendations to the IGP to take action on the Police officer found guilty of misconduct. CHRAJ lacks prosecutorial powers and thus relies on the trust of the IGP to consider and implement its recommendations

⁴⁰ *ibid*

3.2.5 Other relevant external Police oversight bodies

There are other Police oversight bodies in operation aside those mentioned above that perform different functions. They are presented in the table below.

Table 3.2: Other external Police oversight bodies

Body	Function/mandate
Executive: Ministry of Interior	<p>According to the Ministry's website, it is "mandated to ensure internal security, maintenance of law and order in the country. The mandate of the Ministry of the Interior and its Agencies is guided by the 1992 Constitution of Ghana. The Ministry is further guided by the Civil Service Act, 1993 (PNDCL 327) and other relevant enactments".</p> <p>"The Ministry's role overseeing the Police has, in practice, been as an agency appointing high-level Committees of Inquiry into deaths resulting from Police conduct and the relationship between the Police and drug dealers".⁴¹</p>
Executive: Ministry of National Security	<p>The Ministry of National Security was created in 2006 to coordinate the activities of the bodies that relate to Ghana's national security.</p> <p>The Ministry is able to have oversight roles over the Police. "It has the power to investigate allegations of Police misconduct, of its own volition or following a public complaint. The Ministry has been involved in investigating the alleged role of high-ranking Police officers in drug offences".⁴²</p>
Attorney General	<p>"The Attorney General's department has a key role in Police accountability, as it is responsible for deciding whether to pursue a prosecution (based on Police information) for a senior</p>

⁴¹ ibid

⁴² ibid

	<p>offence and provides the Police with the power to prosecute minor offences itself. The Attorney General's department ensures that the Police are not able to prosecute for inappropriate reasons, and ensures that criminal charges framed against a Police officer for misconduct are prosecuted".⁴³</p>
Parliament	<p>Parliament also has oversight responsibilities over the Police. Members of Parliament (MPs) have the power to question wrongdoings of Police officers and demand investigations into Police misconduct during Parliamentary sessions</p>
Parliamentary Select Committee on Defence and Interior	<p>"The Parliamentary Select Committee on Defence and Interior is a group of 18 Members of Parliament mandated to "examine all questions relating to defence and internal affairs." The Committee has the powers given to all Parliamentary select committees; this means that it can investigate and inquire into the activities and administration of ministries, departments, public Organisations And corporations as Parliament determines. It has the powers of a High Court in terms of requiring witness attendance, compelling the production of documents and the issuing of commissions to examine overseas witnesses".⁴⁴</p>
The Judiciary	<p>The Ghanaian judiciary also has an important role to play in Police accountability. The judiciary ensures that cases brought to it, including public complaints against the Police are dealt with Fairly</p>
Committees of Inquiry	<p>"The Constitution empowers the President to appoint a Committee of Inquiry to look at matters of public interest. The Constitution also empowers the Council of State to recommend that a Committee of Inquiry be set up, while Parliament can, by resolution, request that a</p>

⁴³ ibid

⁴⁴ ibid

	Committee of Inquiry be put together". ⁴⁵
	"A Committee of Inquiry, or Commission, is given the powers of the High Court (or a High Court Judge) and so is able to enforce the attendance of witnesses, examine those witnesses and compel the production of documents. A variation on Committees of Inquiry are commissions instituted as fact finding bodies to investigate specific events and to Make recommendations". ⁴⁶
Civil society	Civil society organizations have an oversight role to play over the Police through advocacy on Various policing issues. The Commonwealth Human Rights Initiative, supported by other groups, work to raise awareness on Police Accountability issues. They have in the past made calls for the establishment of an IPCC in Ghana.
Media	"The media can play an important Police watchdog role, revealing unlawful activity, getting information into the public domain, making comments and creating public awareness. The media is also a vital part of any Police reform effort. Strategic media coverage of Police abuses can be a way to put pressure on the Government to reform the Police, to create oversight mechanisms, or to prosecute errant officers". ⁴⁷

⁴⁵ ibid

⁴⁶ ibid

⁴⁷ ibid

3.2.6 Regional and international standards

As part of regional blocs and the international community, Ghana also observes and has assented to a number of regional mechanisms and international standards that have an impact on policing; through advocating for the enforcement of measures and practices to promote human rights and protect people. Regional and international best practices on policing oversight can be fully adhered to, only when Police oversight bodies are independent. A number of these standards are as follows:

- United Nations: "Ghana is a signatory to a number of important United Nations treaties. It has ratified the International Covenant on Civil and Political Rights (ICCPR) (and the first optional protocol to the ICCPR, although not the second optional protocol that prohibits the death penalty), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)". Ghana is also a participant to the Universal Declaration of Human Rights (UDHR).⁴⁸
- "It has also signed the Convention on the Rights of the Child (CRC) and has ratified, with a reservation, the Convention Against Torture (CAT). The reservation deals with the consent of parties to arbitration or jurisdiction of the International Court of Justice regarding interpretation of the CAT".⁴⁹
- The African Charter on Human and Peoples' Rights (referred to as the 'Banjul Charter') which was adopted by members of the Organization of African Unity (OAU) in 1981 and came into force in 1986.

Article 3 of the Charter indicates that: i) Every individual shall be equal before the law, and ii) Every individual shall be entitled to equal protection of the law.

Article 26 of the Charter also requires State Parties to establish independent national institutions for the protection of human rights.

It is important to note that equality before the law and equal protection of the law, in this case by the Police Service; mandated by the 1992 Constitution to maintain law and order, can only be attained in the presence of independent Police oversight bodies.

⁴⁸ The Guidelines are available at http://www.achpr.org/files/specialmechanisms/cpta/robben_island_guidelines_2nd.pdf (last accessed on 19th July 2018)

⁴⁹ *ibid*

Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, 2002 (Robben Island Guidelines)

The 'Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, also known as the 'Robben Island Guidelines'⁵⁰¹ were adopted by the African Commission on Human and Peoples' Rights during its 32nd Ordinary Session held in Banjul from 17th to 23rd October 2002.

Although the Guidelines focus on torture, cruel, inhuman or degrading treatment or punishment, it does provide for the establishment of independent investigative mechanisms. Paragraph F17 enjoins States to 'ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.'

African Commission on Human and Peoples' Rights, Resolution 103a Resolution on Police Reform, Accountability and Civilian Police Oversight in Africa, 2006

At its 40th Ordinary Session held in Banjul, The Gambia from 15th to 29th November 2006, the African Commission on Human and Peoples' Rights adopted a resolution on police reform, accountability and civilian oversight. The Resolution recognises the critical role that the police play in the maintenance of law and order and the enhancement of peace and security. It however expresses the Commission's concern that in many independent states there are no independent oversight mechanisms to address cases of abuse of power and professional misconduct by the police. The Resolution then underscores the importance of independent oversight of the police as an integral part of democratic policing and police accountability.⁵¹ Consequently, the Resolution, in paragraph 3:

"Urges State Parties to the African Charter to establish independent civilian policing oversight mechanism, where they do not exist, which shall include civilian participation."

These normative standards are complemented by some human rights mechanisms which have a mandate to ensure the protection of individual rights and liberties through national independent police accountability institutions.

- The African Commission on Human and Peoples' Rights; established out of the Banjul Charter in 1987 with aims to promote and protect the rights set out in the Charter. It is tasked with promoting and protecting human rights by interpreting the African Charter and considering individual complaints.
- The African Court on Human and Peoples' Rights; established under the African Charter on Human and Peoples' Rights to hear cases brought by signatory states, the Commission, and African intergovernmental organizations.

⁵¹The Guidelines are available at http://www.achpr.org/files/specialmechanisms/cpta/robben_island_guidelines_2nd.pdf (last accessed on 19th July 2018)

- Economic Community of West African States (ECOWAS): The Community Court of Justice was created from an ECOWAS protocol and adopted in July 1991. This court deals with disputes between parties and do not have a human right mandate.

All these regional and international standards and best practices have a bearing on policing in the country. Without independent Police oversight bodies at work, the protection of lives, equality before the law and the respect for human rights cannot be guaranteed.

4.0 INDEPENDENT POLICE COMPLAINTS AND OVERSIGHT BODIES

The effectiveness of any Police accountability system requires several players performing multiple roles to achieve success. These actors include various institutions and people who come together to work towards the common good. Since the Police is expected to serve the interest of the public and uphold the law at all times with fairness and integrity, it is important to have an independent body that oversees the entire system to ensure transparency and accountability in justice delivery.

There are several independent bodies operating in different parts of the world. Notable among them in some countries are National Human Rights Institutions (NHRIs), otherwise known as human rights commissions that operate under the Paris Principles. The Paris Principles are a set of international standards which frame and guide the work of NHRIs. They were drafted at an international NHRIs workshop in Paris in 1991, and adopted by the United Nations General Assembly in 1993.⁵² In other countries, bodies such as Police Councils, Police bodies and Commissions, as well as independent Police complaint bodies perform the same function.

Whatever shape and form they may take, it is expected that these bodies discharge their duties and perform their functions without any influence from an external source.

Article 36 (*specialized authorities*) of the United Nations Convention Against Corruption iterates this:

“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence”.⁵³

The UNODC published a ‘handbook on Police accountability, oversight and integrity’ in 2011⁵⁴ that sets out some criteria to ensure that these bodies are fully independent throughout their establishment and operation. Key among them is that rather than being established by a decree, independence is fully maintained when the independent body has a statutory underpinning. For example, public perception of some Police complaint bodies being truly independent is negative because they have been established under the Police Act.

⁵¹ <https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>, accessed February 21 2018.

⁵³ https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, accessed February 21 2018.

⁵⁴ UNODC-UN office on Drugs and Crime. Handbook on Police accountability, oversight and integrity (2011), p. 50.

A summary of the criteria for the independence of Police complaint bodies is as follows:

1. Statutory underpinning
2. Reporting to Parliament/Legislature
3. Independent funding
4. Transparent process based on merit, for the appointment of commissioners and staff

4.1 Mandate of independent Police oversight and complaint bodies

The different types of independent Police complaint bodies that exist presently in some parts of the world have specific mandates. While some of them handle complaints, others perform general oversight functions. The different mandates are presented in Table 4.1 below.

Table 4.1: The different mandates of independent Police complaint bodies⁵⁵

Mandate	Description
Dealing with complaints	Receive, investigate and/or record complaints. They have evaluation functions aimed at correcting or punishing misconduct
General oversight functions	Have general oversight functions on Police performance without focusing on specific cases. They also have evaluation functions aimed at correcting or punishing misconduct
Direction-setting: policy input and priority Setting	Provide policy guidance in Police deployment. They have functions aimed at providing guidance and preventing misconduct
Personnel management issues: "hiring and firing"	Focus specifically on the selection and appointment of the national chief of Police. They also have functions aimed at providing guidance and preventing Misconduct
Oversight over detention facilities	Some mandates focus on oversight over Police detention facilities which may be a combination of evaluation after operations and giving directions Beforehand

⁵⁵Ibid, p. 51.

It should be noted that a single independent body could perform all the above functions. However, to ensure transparency and effective accountability in the Police Service, there must be an independent body that focuses on investigating complaints against the police.

4.2 Models for independent Police complaint bodies

There are notable models for independent bodies whose mandate is only to handle complaints.⁵⁶ Some of these are discussed in details in the next chapter.

- **Investigative and quality assurance models**

These share responsibility for investigations into allegations of misconduct with the Police. They usually deal only with serious complaints, such as death and serious injuries.

- **Review and appellate models**

After the Police have completed an internal investigation into a complaint, the boards under this model review the file and decide whether a specific case was competently or fairly handled and, if not, request that the problem identified be corrected.

- **Evaluative and performance-based models**

These do not concentrate on individual complaints, but are geared toward identifying patterns and practices of Police misconduct and systemic failures to deal with them.

- **Mixed models**

Oversight bodies may use a combination of two or more of the above models.

A competent, independent Police complaint body must have the capacity to investigate all complaints against the Police. However, it would be inefficient to conduct a comprehensive investigation into every complaint. It is considered good practice for such a body not to investigate all complaints but rather serious complaints. An appropriate allocation of resources would require thorough investigations of more serious complaints and close monitoring of less severe complaints. While every complaint of Police misconduct is serious, complaints that include death or severe injuries are of particular importance and demand a higher degree of examination.⁵⁷

The general minimum functions of an independent body that handles only complaints are presented in the table below:

⁵⁶ *ibid*, p. 52.

⁵⁷ *ibid*, p. 53.

Table 4.2: General minimum functions of an independent Police complaint body

1.	Have the capacity to receive complaints from the public (as well as from members of the government)
2.	Record all complaints filed against Police (whether submitted at the Police station, Police headquarters, prosecutor's office or directly to the independent body)
3.	Have the capacity to start an investigation on its own initiative
4.	Have the investigative powers to make an assessment of the case in hand, including: <ul style="list-style-type: none"> • The power to hear any person and subpoena powers • The power to obtain any information required, including the power to access Police dockets and to conduct searches and seizures • The power to compel the presence of witnesses including the Police • The capacity to offer witness protection
5.	Have the power to recommend further penal or disciplinary action
6.	Have the capacity to make recommendations for structural change, hence enabling the Police to prevent the reoccurrence of the misconduct

Though an independent Police complaint body has the powers to perform the above, it does not automatically mean it invariably has the powers to also prosecute, sentence or discipline any persons it investigates. What it must do is make recommendations of penalties and refer cases for criminal prosecution.

4.3 Establishing an independent Police complaint body

The guiding principles or criteria for establishing an independent Police complaint body rests on a good assessment of the existing Police accountability system to understand its strength and weakness. This will reveal its challenges, their causes and how to complement them. It is very important that this independent body plays a complementary role to the existing accountability mechanisms; fill the gaps, solve the barriers and instil greater public confidence in the Police force.

There are some criteria that are virtually common to all the different models of independent Police complaint bodies in operation:⁵⁸

⁵⁸ *ibid*, p. 54.

Political commitment

The government must be committed to transparency and accountability of the policing system. This will make the independent body effective. The executive and legislative arms of government must commit to the independence of such bodies and not attempt to interfere in its work, or influence the make-up of its constitution for its own interest.

A clear mandate

The mandate of independent Police complaint bodies is very important to their effectiveness. A clear mandate is crucial because if it is too narrow it will restrict the body from being able to accomplish anything, and if it is too broad it will stretch the complaint body's capacity beyond effectiveness. A thorough assessment of the system through data collection and analysis to understand the needs and weaknesses of the prevailing system would help develop a clear mandate.

Adequate financial and human resources

An independent Police complaints body must have independent, adequate source of funding to run its affairs. Lack of funding or personnel to carry out its core mandate will render it redundant.

Engagement with the Police

The independent Police complaint body must have a harmonious relationship with the Police force. The latter must not feel threatened by the former neither should the independent body feel overly superior to the Police. The independent body plays an oversight role in Police accountability. It is not a substitute for the Police Service's internal accountability mechanisms. It is an external body that is supposed to work with the Police force to collectively preserve the integrity of the system. In light of this, an independent Police complaint body must enjoy mutual respect with the Police and achieve its goal and vision through mutual cooperation.

Engagement with the general public

One of the arguments discussed earlier in this report that favours the establishment of an independent Police complaint body is public dissatisfaction about the Police investigating their own people. A fruitful engagement with the public will make the work of the independent body easier in investigating complaints, and also improve the public's relationship with the Police.

5. INDEPENDENT POLICE COMPLAINT MODELS IN OPERATION

5.1 The Independent Police Investigative Directorate (IPID) of South Africa

Background

The IPID was established in South Africa as the Independent Complaints Directorate (ICD) under the 1995 South African Police Act. In 1994, post-apartheid dialogue under the National Peace Accord, between the Police and the public about what kind of Police is desired for the future led to its establishment. This was in response to the Police brutalities and fatalities encountered during the apartheid era.

“The Interim Constitution provided for the establishment of an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the South African Police Service were investigated in an effective and efficient manner”.⁵⁹

In 1997 the ICD became IPID. The name change was to rebrand the Directorate as an ‘investigative’ institution rather than just a ‘complaints receiving body’. The IPID Act 2011 extended the mandate of the Directorate to focus on more serious and priority crimes committed by members of the South African Police Service (SAPS) and the Municipal Police Services.

Mandate of the IPID

Section 28(1) of the IPID Act indicates that the Directorate is obliged to investigate the following:

1. Any deaths in Police custody;
2. Deaths as a result of Police actions;
3. Complaints relating to the discharge of an official firearm by any Police officer;
4. Rape by a Police officer, whether the Police officer is on or off duty;
5. Rape of any person in Police custody;
6. Any complaint of torture or assault against a Police officer in the execution of his or her duties;

⁵⁹ *ibid*, p. 59.

7. Corruption matters within the Police initiated by the Executive Director, or after a complaint from a member of the public or referred to the Directorate by the Minister, a Member of Executive Council (MEC) or the Secretary for the Police Service;
8. Any other matter referred to the IPID as a result of a decision by the Executive Director or if so requested by the Minister, an MEC or the Secretary for the Police Service as the case may be.

Organizational structure/ composition of the IPID

The head of the IPID is the Executive Director who is nominated by the Minister of Police and subject to the confirmation by the relevant Parliamentary Committee within 30 Parliamentary days. The Directorate is composed of the following officials

- The Executive Director
- The Chief Financial Officer
- The Chief Director: Corporate Service
- The Chief Director: Investigation & Information Management
- Chief Director: Legal Services
- Chief Director: Compliance Monitoring & Stakeholder Management
- 9 Provincial Heads

Investigators

An IPID investigator is appointed by the Executive Director, and must show evidence of knowledge and experience in criminal investigation. Investigators are also given policing powers to discharge their duties. The investigators of the IPID are not Police officers.

Accountability

The Executive Director of the Directorate submits an annual report of the activities and finances of the IPID to the Minister of Police, who then tables a copy of the report in Parliament for discussions.

Table 5.1: Strengths and weaknesses of the IPID

Strength	Weakness
<p>It is primarily an investigative department, thus giving it a very clear and focused mandate; it investigates the more serious cases and refers the other complaints to the Police for investigations, which can also be overseen by the IPID.</p> <p>An IPID investigation does not prevent the Police from carrying out their own investigations.</p>	<p>It is less active in the areas of monitoring and Evaluation</p> <p>Recommendations by the IPID after an investigation are not mandatory</p>

Other privileges of the IPID

1. Investigators are conferred with policing powers.
2. Investigators enjoy the same powers as members of the South African Police Service.
3. They have search and seizure powers and can make arrests (with or without a warrant).
4. They can also use SAPS detention facilities.

Independence of the IPID

1. It has a budget received from Parliament and separate from that of the Police
2. It reports to Parliament
3. The Directorate is subject to several oversight bodies such as the Parliament, the Public Service Commission and the Auditor General

Investigations of the IPID

According to the 2016/2017 IPID Annual Report, a total of 7,014 cases were reported to the IPID during the reporting period. Of these, 3,827 were assault cases, 1,640 were cases of complaints

related to the discharge of an official firearm(s), and 394 were cases of deaths as a result of Police action and followed by 302 cases of death in Police custody.⁶⁰

Effectiveness of the IPID

For the 2016/17 year, the Directorate had a planned target of 60% (5,433) of investigations finalized with decisions ready. Out of this, the actual achievement of the year was 49% (3,449). This shows an 11% deviation from planned target to an actual achievement in 2016/17.⁶¹

5.2 The Independent Police Complaints Commission (IPCC) of the United Kingdom: England and Wales

Background

The IPCC was established in 2004 under the Police Reform Act of 2002. This occurred as a response to consultations that were held as a result of the Brixton riots that occurred in 1981 and the Stephen Lawrence inquiry in 1999. Calls for the establishment of an independent body heightened during this period. The IPCC in the United Kingdom is a non-departmental public body, which is funded by the Home Office.

Mandate of the IPCC

The IPCC oversees the whole Police complaints system. The Commission has the power to either conduct independent investigations or manage and supervise an investigation by the Police Service.

The organizational structure and composition of the IPCC

A Chair, who is supported by six operational Commissioners and three non-executive Commissioners, oversees the IPCC. The Chair is a Crown appointment and Commissioners are public appointments. The Chair and Commissioners must not have worked for the Police in any capacity prior to their appointment. A Chief Executive who leads a staff of nearly a thousand people supports the Commission. This arrangement has resulted in Commissioners "being engaged in both the governance of the organization and its operational activity".⁶²

⁶⁰ IPID Annual Report 2016/17, Accessed April 23 2018, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/IPID_Annual_Reports_Annual_Reports_201617CD_File.pdf, pg.35.

⁶¹ *ibid*, pg.26

⁶² Policy Proposals on New Powers for the Independent Police Complaints Commission, June 7, 2014. Accessed April 23 2018, <http://www.northumbria-pcc.gov.uk/policy-proposals-new-powers-independent-Police-complaints-commission-ipcc/>

Table 5.2: Strengths and Weaknesses of the IPCC

Strengths	Weaknesses
Members of the public can lodge an appeal or refer a case to the IPCC if they are dissatisfied with cases that are handled by the Police.	It has no regulatory framework that enables it to follow up on the recommendations it makes to the Police and other bodies, when it conducts investigations and reveals 'institutional failings'. This has often attracted criticisms from families and community groups, when the Police and other bodies fail to act on these recommendations. ⁶⁴
The Police have a mandatory duty to refer to the IPCC in cases or incidents where people have died or have been seriously injured due to a direct or indirect contact with the Police, where it is suspected that the contact may have contributed to the death or injury. This is called mandatory referral.	The IPCC also lacks the power to recommend and direct unsatisfactory performance proceedings following a Death or Serious Injury (DSI). "Under the Police Reform and Social Responsibility Act 2011, the IPCC was provided with the power to recommend and direct unsatisfactory performance proceedings following an investigation into a complaint or conduct matter. This power did not, however, extend to DSI matters which, as a result, have created an anomaly". ⁶⁵
The Police must also refer complaints and conduct matters that include serious assault, criminal behaviour, cases aggravated by discrimination and those involving serious corruption.	
. IPCC has the power to "call in" cases of particular concern or sensitivity that might not otherwise be referred	
Following an investigation, IPCC can either refer the case to the Crown/State Prosecutor for criminal prosecution or recommend disciplinary action. If the Police fail to comply, in serious cases, IPCC can overrule them.	

Independence of the IPCC

1. The IPCC is funded by the Home Office, but by law is entirely separate from the Police, interest groups and political parties.
2. Decisions on cases are free from government involvement.
3. Commissioners of the IPCC should not have worked with the Police in the past
4. The IPCC reports directly to Parliament

Investigations by the IPCC

In 2015/16 the Police recorded a total of 34,247 complaint cases – a decrease of 8% compared to 2014/15. The IPCC received 3,900 referrals in 2015/16. It started 519 investigations and processed 3,610 appeals.⁶³

Effectiveness of the IPCC

A 2014 survey conducted by the IPCC indicated public satisfaction with the IPCC. However, the Chairwoman of the IPCC; Dame Anne Owers referred to the Commission as “over-complex and inconsistent and is clearly failing to satisfy a significant number of complainants”.⁶⁴ The research also published the following findings about the Commission⁶⁵:

- Wide inconsistencies in the way Police complaints were handled between individual forces.
- More people were dissatisfied with the way their complaints were handled - the total number of appeals made by dissatisfied complainants increased by 7%.
- Of the complaints investigated 14% were upheld - the same as in 2013-14.
- 14% of complaints were made about “incivility, impoliteness and intolerance”.
- The time taken to resolve complaints increased to 147 days, 12 days longer than the year before.
- Those who appeal over how their complaints are handled are twice as likely to be successful if their case is heard by the IPCC rather than the individual police force.

⁶³ Policy Proposals on New Powers for the Independent Police Complaints Commission, June 7, 2014. Accessed April 23 2018, <http://www.northumbria-pcc.gov.uk/policy-proposals-new-powers-independent-Police-complaints-commission-ipcc/>.

⁶⁴ PCAN Network, Independent Police Complaints Commission. Accessed April 23 2018, <https://ipcan.org/members/independent-Police-complaints-commission>.

⁶⁵ Police complaints reach record high in England and Wales, BBC News, October 7 2015. Accessed April 23 2018, <http://www.bbc.com/news/uk-34464181>.

5.3 The Northern Ireland Policing Board (NIPB)

Background

The Northern Ireland Policing Board (NIPB) was established by the Police Ombudsman of Northern Ireland, in response to recommendations made by the Independent Commission on Policing for Northern Ireland (Patten Commission) to reform the Police Service of Northern Ireland. It was formed as an executive Non-Departmental Public Body (NDPB) of the Northern Ireland Office (NIO) on 4th November 2001 by the Police (NI) Act 2000, as amended by the Police (NI) Act 2003.

Mandate of the Board

The Board's statutory duty is to ensure that the Police Service of Northern Ireland (PSNI) is effective and efficient and to hold the Chief Constable to account. Its primary responsibilities are⁶⁶:

1. To consult with the community to obtain their views on policing and their cooperation with the Police in preventing crime;
2. To set and publish objectives and targets for PSNI as part of an Annual Policing Plan and to monitor PSNI performance against this plan;
3. To appoint all officers of the Service above the rank of Chief Superintendent;
4. To set the budget for policing and monitoring expenditure;
5. To monitor trends and patterns in complaints against the PSNI;
6. To oversee complaints and disciplinary proceedings against the PSNI;
7. To monitor PSNI Human Rights compliance with the Human Rights Act 1998;
8. To ensure arrangements are in place to secure continuous improvement within the PSNI
9. and the Board;
10. To assess the level of public satisfaction with the performance of the Police and improving the performance of and assessing public satisfaction with Policing and Community Safety Partnerships (PCSPs); and
11. To monitor the National Crime Agency's (NCA) performance in carrying out its Annual Plan; and making arrangements to obtain the co-operation of the public with NCA in the prevention of organised crime.

⁶⁶ Northern Ireland Policing Board, Annual Report and Accounts 2016/17, Accessed 23 April 2018, <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/northern-ireland-policing-board-annual-report-2016-2017.pdf>,

Organizational structure/composition of the Board

The Policing Board is an independent public body made up of 19 political and independent members. The 10 political members, who are all members of the Northern Ireland Assembly are appointed under D'Hondt principles.⁶⁷ The Justice Minister appoints the 9 independent members. The Board has a Chair and the Chief Executive who is the Accounting Officer for the Board. The Chief Executive reports directly to the Permanent Secretary who is the Principal Accounting Officer for the Department of Justice (DOJ).

Major weakness of the Policing Board

The Policing Board is made of 19 members, 10 have political affiliation and 9 are independent. The Chair is an independent member. The major weakness of the policing board is that its work risks been compromised due to the political affiliation of the majority of its members.

Independence of the Northern Ireland Policing Board

1. Funding of the body comes from the Northern Ireland Office from funds allocated by Parliament.
2. Reports annually to Parliament.

Effectiveness of the Board

The performance of the NIPB is based on its 4 Corporate Plan objectives⁶⁸ as follows:

Objective 1: An effective and efficient Policing Board;

Objective 2: An effective and efficient Police Service of Northern Ireland;

Objective 3: Effective engagement and communication; and

Objective 4: Partnership working

Within the 2016-17 Board Business Plan there were 47 targets of which 38 were Achieved (81%); and 9 were Partially Achieved (19%). The breakdown of the target vis-à-vis the objectives are⁶⁹:

- Objective 1: An effective and efficient Policing Board had 12 targets of which 9 were Achieved (75%) and 3 were Partially Achieved (25%).

⁶⁷This system, also known as the highest average method is named after Victor D'Hondt, a Belgian lawyer from the last century. The principle of the system is that seats are won singly and successively on the basis of the highest average. The method requires that the number of seats each party gained in the Assembly will be divided initially by one and thereafter by one more than the number of seats won, until all the seats are won.

⁶⁸ibid, pg.14.

⁶⁹ibid, pg. 15

- Objective 2: An effective and efficient PSNI had 16 targets of which 13 were Achieved (81%) and 3 were Partially Achieved (19%).
- Objective 3: Effective engagement and communication had 12 targets of which 10 were Achieved (83%) and 2 were Partially Achieved (17%).
- Objective 4: Partnership working had 7 targets of which 6 were Achieved (86%) and 1 was Partially Achieved (14%).

5.4 Office of the Independent Police Review Director (OIPRD) of Ontario, Canada

Background

The Ontario legislature passed the Independent Police Review Act in May 2007 to create the Office of the Independent Police Review Director (OIPRD). The act amended the Police Service Act (PSA) and established new guidelines for public complaints.⁷⁰ The OIPRD receives, manages and oversees public complaints about sworn police officers employed by all municipal and regional police services and the Ontario Provincial Police.

Mandate of OIPRD

The mandate of the OIPRD are:⁷¹

1. To manage complaints made to the director by members of the public on the policies or services provided by the police
2. To manage complaints made to the director by members of the public about the conduct of a police officer
3. To exercise such powers and perform such duties as may be prescribed

Organizational structure/ composition of the OIPRD⁷²

The independent Police Review Director is appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General. A police officer or former police officer cannot be appointed as an Independent Police Review Director.

The OIPRD has 52 full-time employees and five temporary positions. All OIPRD employees are civilians and cannot be serving police officers.

⁷⁰ ⁷² The establishment of the Independent Police Review Director is under chapter five (5) of the Act.

⁷¹ Ibid section 26.2

⁷² Ibid section 26

The OIPRD is organized as follows:

- Executive Officer
- Case Management
- Investigations
- Legal services
- Communications, Outreach and Education
- Business Operations

Investigating Powers⁷³

An Independent Police Review Director has the powers of a commission when investigating a complaint or conducting a review. Where an investigator or an employee of the Independent Police Review Director is conducting an investigation or review on behalf of the IPRD, he or she has the powers of a commission. An investigator may apply to a justice of the peace for an order to enter a place in respect of a record, data, thing, or information which relates to the investigation.⁷⁴

Investigators

Investigators and employees of the OIPRD are appointed by the Director.

Accountability⁷⁵

At the end of each year, the Independent Police Review Director must file an annual report with the Attorney General on the affairs of the Office of the Independent Police Review Director. The report must be made available to the public.

Table 5.3: Strengths and Weaknesses of the IPRD

Strengths	Weaknesses
Any member of the public may make a complaint to the IPRD about the policies of or services by a police force or the conduct of a public officer ⁷⁶	The IPRD may decide not to deal with a complaint made by a member of the public if in his or her opinion the complaint is frivolous, vexatious or made in bad faith

⁷³ Ibid, section 26.4

⁷⁴ Ibid, Section 26.7

⁷⁵ Ibid, Section 26.1(8)

⁷⁶ Ibid, Section 58

An investigator working with the IPRD may enter and search a police station or detachment of a police force if he or she deems it necessary for an investigation ⁷⁷	The IPRD may decide not to deal with a complaint made by a member of the public if the complaint is made more than six months after the facts on which it is based occurred
An investigator has the power to enter a station or a detachment of a police force to access any record, data, information that relates to an investigation. The investigator may also search, examine, copy or remove any record, data, thing, or information that relates to an investigation. He or she may use the data storage or retrieval system of that police station or detachment to produce any record or data that relates to an investigation ⁷⁸	The IPRD may decide not to deal with a complaint made by a member of the public about a policy or service provided by a police force if the policy or service did not have a direct effect on the complainant ⁷⁹
The independent Police Review Director may establish rules for anything related to the powers, duties or functions of his or her work ⁸⁰	The IPRD does not conduct any appeals
A complainant may request a review within 30 days of a chief's decision where the chief determines that the complaint is unsubstantiated or not of a serious nature	
A document prepared in the course of his or her duties by the Independent Police Review Director, an employee in the office of the Independent police Review Director, or an investigator is not admissible in a civil proceeding	

⁷⁷ Ibid, Section 26.6

⁷⁸ Ibid, Section 26.6

⁷⁹ Ibid, Section 26.6

⁸⁰ Ibid, Section 56

The Independent Police Review Director, his or her employees, or investigator cannot be compelled to give testimony in a civil proceeding regarding information obtained in the course of his or her duties.	
--	--

Other privileges of the IPRD⁸¹

No action or proceedings for damages may be instituted against the IPRD, his or her employee or investigator for any act done in good faith in the execution of his or her duty.

If an investigator believes that as part of his or her duty, it is necessary for purposes of investigation, he or she may on notice to the chief of police or detachment commander of a police force, enter and search the station or detachment of that police force, including any vehicle that is owned by the police force wherever it may be located

The investigator may be accompanied and assisted by persons who have special, expert or professional knowledge

Independence

As stated earlier the Independent Police Review Director is appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

The independent Police Review Director may establish rules for anything related to the powers, duties or functions of his or her work

At any time during an investigation the IPRD has the power to direct the Chief to deal with the complaint as he/she specifies; assign the investigation to another police service; take over the investigation; or direct the chief to take other actions as he/she deems necessary or take the action him/herself.

Effectiveness

In 2016/2017, the OIPRD managed a total of 3,962 complaints, which included 3,274 complaints received between April 1, 2016 and March 1, 2017, and 688 complaints carried over from the previous years (2015-2016). The OIPRD conducted investigations into 3,370 complaints. 166 were in respect of Service complaints; 146 in respect of customer Service Resolution; and 25 in respect of Policy complaints. 255 complaints were yet to be screened as at the end of 216/2017 year. All 146 Customer Service Resolution complaints were successful resolved.

⁸¹ Ibid, Section 56

5.5 Office for Public Integrity of South Australia

Background

On September 1, 2017 the Office of the Police Ombudsman closed. From September 4, 2017, the assessment and investigation of all complaints and reports about police became subject to oversight by the Office for Public Integrity (OPI) under the *Police Complaints and Discipline Act 2016* (Police Complaints Act). OPI is responsible to the Independent Commissioner Against Corruption and is also the point of contact for any person wanting to make a complaint or report under the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act).⁸²

Mandate of the OPI

The functions of the OPI are:

- To receive and assess complaints about public administration from members of the public.
- To receive and assess reports about corruption, misconduct, and maladministration in public administration from inquiry agencies, public authorities, and public officers.
- To give directions or guidance to public authorities in circumstances approved by the Commissioner.
- To refer complaints and reports to inquiry agencies, public authorities and public officers in circumstances approved by the Commissioner or make recommendations to the Commissioner in relation to complaints and reports.
- To perform any other functions assigned to the office by the Commissioner⁸³

Organizational Structure and Composition of the OPI

The head of the ICAC-OPI is the Commissioner who is referred by the Attorney-General, approved by a Parliamentary Committee and appointed by the Governor. The Commissioner appoints the Chief Executive Officer. The rest of the staff of the OPI office are Public Service employees or employees of the Commissioner. The OPI has nine staff comprising an acting manager, senior assessment officers, assessment officers, complaints officers and an administration officer.⁸⁴

⁸² <https://icac.sa.gov.au/content/office-public-integrity>

⁸³ https://icac.sa.gov.au/sites/default/files/2016-2017_ICAC_OPI_Annual_Report.pdf

⁸⁴ *ibid*

Table 5:4: Strengths and Weaknesses of the OPI

Strengths	Weaknesses
<ul style="list-style-type: none"> • Commissioner's office is a law enforcement body • Commissioner has significant and coercive powers including, entry, search and seizure powers, the power to require a person to produce a document, and the power to conduct examinations ⁸⁵ • Prevention agenda served by a combination of education and communication activities and initiatives delivered to public officers and the South Australian community ⁸⁶ 	<ul style="list-style-type: none"> • Commissioner does not have prosecutorial powers, can only refer to the Department of Public Prosecution • Relies on other agencies, including the SA Police, for the delivery of support services ⁸⁷

Independence of the OPI

- Commissioner is not subject to the direction of any person in respect of investigations
- Independent reviewer reports directly to Parliament ⁸⁸

Investigations of the OPI

In the 2016-2017 reporting period five matters were referred to the DPP for consideration and a total of 10 persons were charged with 158 offences. Seven persons were found guilty of engaging in corruption, while corruption investigations referred to the SA Police have resulted in 32 persons being prosecuted. ⁸⁹

Effectiveness of the OPI

The performance indicators applied to the 2016-2017 reporting period were that 75% of all investigations were to be completed within 12 months of allocation and 100% of all investigations were to be reviewed within 20 working days of completion

- During the reporting period 61% of all corruption investigations were completed within 12 months of allocation

⁸⁵ https://icac.sa.gov.au/sites/default/files/2016-2017_ICAC_OPI_Annual_Report.pdf

⁸⁶ *ibid*

⁸⁷ *ibid*

⁸⁸ https://icac.sa.gov.au/sites/default/files/2016-2017_ICAC_OPI_Annual_Report.pdf

⁸⁹ *ibid*

- In the reporting period 98% of all investigations were reviewed within 20 working days of completion⁹⁰

5.6 Independent Police Complaints Board of Sierra Leone (IPCB)

Background

In July 2013, the Government of Sierra Leone passed regulations to establish an Independent Police Complaints Board (IPCB)⁹¹ (referred to as the Board). The IPCB is a non-departmental public body established under Section 158 of the Constitution of Sierra Leone.⁹²

Mandate of the IPCB

The Board has the power to investigate the following:

1. the death of any person while in the custody of the police
2. a fatal road accident in which a police vehicle is involved
3. a shooting incident where a police officer has discharged a firearm or killed a person
4. incidents of injuries, assault or wounding caused by a police officer
5. allegations of misconduct involving an officer of the rank of Superintendent or higher
6. any matter involving misconduct by the police referred to it by the Inspector- General of Police where the Inspector-General of Police thinks an independent investigation will be in the public interest
7. any matter or incident which it thinks the action or inaction of the police is likely to impact significantly on the confidence of the people in the police
8. any matter whether remote or otherwise which gave cause for an investigation to be conducted under this regulation⁹³

The Regulations also entitle the IPCB to disseminate information to any private or public body in order to perform its functions. The Board is also required to keep a permanent record of all complaints and investigations.

Organizational Structure and Composition of the IPCB

The Board is made up of a Chairman who is appointed by the President from among persons with formal qualification in any profession or discipline, a Commissioner of the Human Rights Commission of Sierra, a representative of the Sierra Leone Bar Association, a representative of the Anti-Corruption Commission, a representative of the Inter-Religious Council, a representative of the Police Council who is not a member of the Police force, and a retired senior police officer selected by the Minister responsible for Internal Affairs on the advice of the Inspector-General of Police.

⁹⁰ *ibid*

⁹² *ibid*

⁹³ Constitutional Instrument NO. 11 OF 2013

A member of the Board is appointed for a term of three years and may be re-appointed for another term.⁹⁴

Table 5.5: Strengths and Weaknesses of the IPCB

Strengths	Weaknesses
The Board has the power to investigate complaints received and, where appropriate, to hold hearings. The Regulations also empower the Board to make recommendations to both the police themselves and, in the case of criminal behaviour by the police, to the Director of Public Prosecutions (DPP) ⁹⁵	The IPCB's existence is based on a regulation made under section 158 of the 1991 Constitution of Sierra Leone. However, the Constitution is silent with regard to the role of both the IPCB. ⁹⁶ The IPCB does not have its own Act of Parliament which not only governs its operations and functioning but also enables it to make its own regulations.
	Once the Board completes investigations, it makes an assessment as to whether the complaint has or may have occurred; is or may be occurring; is or may be about to occur; or is likely to occur. The Board may, based on its assessment, would recommend prosecution or invoke disciplinary proceedings may make recommendations any other action as it considers appropriate. ⁹⁷ Therefore, there is no obligation on the part of the police to implement or respond to recommendations and advice provided by the IPCB. Further, once the IPCB recommends disciplinary sanctions against a police officer, the Regulations are silent on who is responsible for ensuring this happens.
	The Board is governed by regulations and not an act of Parliament, which makes it easily open to subsequent amendment by the Police Council. The Regulations is silent on how the IPCB is to be funded. The Regulations do not place any obligation on the IPCB to report to Government, Parliament or the Public.

⁹⁴ Constitutional Instrument NO. 11 OF 2013

⁹⁵ (Act No. 6 of 1991)

⁹⁶ *ibid*, Section 1

⁹⁷ *ibid*, Section 13

A complaint shall not be entertained under these Regulations unless it is made to the Board not later than one year from the day on which the person making the complaint first had notice of the matter alleged in the complaint. However, The Board may conduct an investigation pursuant to a complaint not made within the period prescribed only if it considers that there are special circumstances which make it proper to do so.⁹⁸

Independence of IPCB

The Board must report back in writing on the outcome of a complaint to both the complainant and the police officer involved in the complaint. The IPCB is not subject to the direction of any person in regarding it investigations

Investigations of the IPCB

The Board may conduct an investigation on its own initiative or on the basis of a complaint made by a member of the public, a police officer or a public body⁹⁹The Board may conduct a preliminary investigation to identify whether or not there is conduct to justify a more complete investigation

For the purpose of an investigation, the Board may enter and inspect any premises occupied or used by a public body or authority in that capacity, inspect any document or other thing in the premises, and take copies of any document in the premises.¹⁰⁰

Where the Board wishes to enter private premises in furtherance of an investigation it shall first obtain a search warrant from a court. The Board may enter and inspect any premises occupied or used by a person, inspect any document or other thing in the premises, and take copies of any document in the premises. A person shall make available to the Board such facilities as are necessary to enable the powers conferred to be exercised.¹⁰¹

The Board may hold hearings for the purpose of conducting an investigation. The Board may also hold its hearings in public or in private, or partly in public and partly in private as it considers appropriate.¹⁰² When conducting a hearing the Board is not bound by the rules or practices of evidence and can inform itself on any matter in such manner as it considers appropriate.¹⁰³

Other privileges of the IPCB

The Board can compel any person to provide any information or to answer any question which the Board considers necessary in connection with any investigation.¹⁰⁴

⁹⁸ibid, Section 3

⁹⁹ibid, Section 10

¹⁰⁰ IPCB presentation to the constitutional review committee

¹⁰¹ibid, Section 25

¹⁰²ibid, Section 9

¹⁰³ibid, Section 13

¹⁰⁴ibid, Section 15

The Board may engage any suitably qualified person to provide it with services and assistance in the exercise of its functions.¹⁰⁵

The Board may summon a person to appear at a hearing to give evidence or to produce such documents or other things as are referred to in the summons. The Board may require a person appearing at a hearing to give evidence on oath or affirmation.¹⁰⁶

¹⁰⁵ *ibid*, Section 10

6. CONCLUDING RECOMMENDATIONS

The establishment of an effective IPCC/A is a collaborative effort between Government, civil society organizations, the Ghana Police Service, the media and the general public. A deliberate effort is required to fully engage all these actors and stakeholders to arrive at an appropriate model for Ghana. This will not only rehabilitate the negative public image of the GPS, it will also inure to the benefit of the entire human rights and justice system in the country.

The previous Chapter provided a detailed review of six (6) different examples of independent police complaints bodies in operation around the world. These included the IPID of South Africa, the IPCC of the United Kingdom - England and Wales, the Northern Ireland Policing Board, the OIPRD of Ontario Canada, the OPI of Southern Australia and the IPCB of Sierra Leone. The core objective of this Chapter is to make recommendations that will inform discussions by stakeholders to reach a consensus on the appropriate model for Ghana. This will help to guide deliberations from an informed position. The following are recommended from the research findings:

6.1 Expectations of the proposed IPCC/A

The research established public dissatisfaction in Ghana about the current system of Police investigating themselves. Thus the appropriate IPCC/A that will emerge needs to enjoy the confidence of the public by ensuring that it delivers thorough, efficient and speedy investigations into complaints. It should also deliver results that are impartial and fair to all parties involved. It is also important for it to have the confidence and full cooperation of the GPS, and in the instance of working with them, have a clear division of roles to avoid overlapping responsibilities.

6.2 Organizational structure of the IPCC/A

The organizational structure of the appropriate IPCC/A is important in ensuring its effectiveness and efficiency. A wide range of personnel with the tailored expertise will be needed to ensure it delivers its mandate. It is recommended that leaders and officials of the IPCC/A be appointed through a very transparent process by an independent body.

The Police Council and the Regional Police Committees are two external Police oversight bodies that are not fully independent as a result of the process involved in the appointment of their members. Currently the President of Ghana appoints the Chair of the Police Council and some of its key members. The IGP is also a member of the Council and has even served as a Chair in the past. The Regional Police Committees on the other hand are set up to be influenced by the Police Council in disseminating and implementing its decisions. The IPCC/A that will be established needs to avoid this situation and aim for an independent route in the appointment process.

Furthermore, officers of the Commission need to perform their duties creditably and effectively without any interference and influence. It is also proposed that the Commission's staff members be

evenly representative of a wide range of interests without discrimination and devoid of political affiliations. Appointments should also be based on merit and experience.

6.3 Independence of the proposed IPCC/A

This Report recommends that the proposed IPCC/A in Ghana should be fully independent. To ensure this, it requires a statutory underpinning; which means a statutory law should establish it. Additionally, it needs to have an independent source of funding, as well as being accountable and reporting to an independent body such as Parliament. Independence can also be preserved if its officials or Commissioners have not served in the past as Police officers.

CHRAJ was established by the CHRAJ Act 456 in 1993 by the Parliament of Ghana and is duly required to render an annual report to Parliament on its functions. However, the financial autonomy of the institution is questionable. Section 21 of Act 456 provides for its administrative expenses, including all salaries, allowances and pensions to be charged on the Consolidated Fund. The result is that CHRAJ cannot obtain funding for its work without resort to processes at the Finance Ministry. The potential elaborate procedures, delays and budget cuts that the human rights organization might go through hinder its financial independence.

The appropriate IPCC/A will be more meaningful and successful if it has the financial autonomy to ensure effective planning and efficient delivery of its core functions.

6.4 Mandate of the proposed IPCC/A

The proposed IPCC/A in Ghana needs to have a clear and focused mandate in order to be effective. CHRAJ for example, has not been entirely effective in dealing with public complaints against the Police because of its already broad scope of functions. While the IPCC/A may not necessarily investigate all complaints, it is recommended that it should have a primary mandate to receive, record and investigate Police actions that cause death, and serious injuries. It needs to also consider investigating cases of ethnic discrimination, bribery and corruption. In addition to this, it is recommended that the Police refer to the IPCC/A, cases where death or a serious injury has occurred as a result of a direct or indirect contact of the victim with a Police officer. The Ghana IPCC/A should also have the power to commence an investigation on its own volition, even when a complaint has not been made

The Report further suggests that the IPCC/A should be able to receive petitions from persons who are dissatisfied with PIPS investigative outcomes for further investigations. It must also be able to either recommend penal or disciplinary action and/or make recommendations for a State Prosecutor to do so.

6.5 Powers of officers of the proposed IPCC/A

With regard to the powers of officers of the IPCC/A in performing their investigative functions, this report recommends that investigative officers of the IPCC should be invested with the powers of a Police officer, as well as the powers to enter into a Police premises. Its officers should also have the power to request and demand the preservation and production of items, documents and materials to aid their investigations.

6.6 Access to the proposed IPCC/A to the public

The IPCC/A should be easily accessible to complainants. It is important that people who want to access the system do not get discouraged because of difficulty in reaching it. This report suggests that complaints should be made on a standardized form which must be free and readily available online and at the Commission's designated offices. A nationwide media campaign and other forms of publicity needs to be embarked upon to provide information on the complaints system of the IPCC/A. Furthermore, toll free lines should to be provided to respond to inquiries by complainants and members of the public. Furthermore, Metropolitan, Municipal and District Assemblies (MMDAs), as well as civil society organizations need to play an important role by referring their members and the general public to the IPCC/A.

REFERENCES

1. A Police Ombudsman for Northern Ireland? A review of the Police complaints system in Northern Ireland, Hayes, Maurice, The Stationery Office Ltd, 1997, p62.
2. Canadian Research & Development Center of Sciences and Cultures 09/20/2009. Accessed February 20 2018, <http://www.cscanada.net/index.php/mse/article/viewFile/818/831>.
3. Code of Conduct for Law Enforcement Officials. Accessed May 24 2018, <https://www.un.org/ruleoflaw/files/CODEOF~1.PDF>.
4. Family chases killer cop, Daily Guide Africa, April 21 2016. Accessed May 28 2018, <http://dailyguideafrica.com/family-chases-killer-cops/>.
5. Family of man gunned down by Police demands justice, Graphic online, January 23 2016. Accessed May 28 2018, <https://www.graphic.com.gh/news/general-news/family-of-man-gunned-down-by-Policeman-demands-justice.html>.
6. Findings from the Afrobarometer Round 7 survey in Ghana. Accessed May 25 2018, http://afrobarometer.org/sites/default/files/gha_r7_presentation_2811017.pdf.
7. Ghana 2016 Human Rights Report.
8. Home Affairs Committee Report 1997, p194-195.
9. Home Affairs Committee, First Report, Police Complaints and Disciplinary Procedures, The Stationery Office Limited, 1997.
10. <http://www.ohchr.org/Documents/Issues/Mercenaries/WG/Law/Ghana.pdf>.
11. <https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>, accessed February 21 2018.
12. https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, accessed February 21 2018.
13. Independent Police Commission to be set up, The Ghanaian Times, May 14 2015. Accessed February 19 2018, <http://www.ghanaiantimes.com.gh/independent-Police-Commission-to-be-set-up/>.

14. IPCAN Network, Independent Police Complaints Commission. Accessed April 23 2018, <https://ipcan.org/members/independent-Police-complaints-commission>.
15. IPID Annual Report 2016/17, Accessed April 23 2018, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/IPID_Annual_Reports_Annual_Reports_201617CD_File.pdf, pg.35.
16. Krofrom riots buttress need for complaint authority- CHRI, Ghana News Agency, June 5 2016. Accessed February 20 2016, <http://www.ghananewsagency.org/social/krofrom-riots-buttress-need-for-complaint-authority-chri-104535>.
17. Maguire, M, and Corbett, C, A Study of the Police Complaints System, HMSO, 1991, p159.
18. Management Science and Engineering ISSN 1913-0341 Vol.3 No.3 2009.
19. Northern Ireland Policing Board, Annual Report and Accounts 2016/17, Accessed 23 April 2018, <https://www.nipoliceboard.org.uk/sites/nipb/files/media-files/northern-ireland-policing-board-annual-report-2016-2017.pdf>, pg.8.
20. Police complaints reach record high in England and Wales, BBC News, October 7 2015. Accessed April 23 2018, <http://www.bbc.com/news/uk-34464181>.
21. Police shot and killed innocent driver – Comm.3 residents allege, Myjoyonline news, August 22 2016. Accessed May 28 2018, <https://www.myjoyonline.com/news/2016/August-22nd/Police-shot-and-killed-innocent-driver-comm-3-residents-allege.php>.
22. Policy Proposals on New Powers for the Independent Police Complaints Commission, June 7, 2014. Accessed April 23 2018, <http://www.northumbria-pcc.gov.uk/policy-proposals-new-powers-independent-Police-complaints-commission-ipcc/>.
23. Reforming the Independent Police Complaints Commission: structure and governance: a public consultation. Accessed April 23 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486700/20151216-IPCC_Governance_ConDoc-WEB-v6_0-UK_O_3_.pdf.
15. IPID Annual Report 2016/17, Accessed April 23 2018, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/IPID_Annual_Reports_Annual_Reports_201617CD_File.pdf, pg.35.
16. Krofrom riots buttress need for complaint authority- CHRI, Ghana News Agency, June 5 2016. Accessed February 20 2016, <http://www.ghananewsagency.org/social/krofrom-riots-buttress-need-for-complaint-authority-chri-104535>.
17. Maguire, M, and Corbett, C, A Study of the Police Complaints System, HMSO, 1991, p159.
18. Management Science and Engineering ISSN 1913-0341 Vol.3 No.3 2009.

19. Northern Ireland Policing Board, Annual Report and Accounts 2016/17, Accessed 23 April 2018, <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/northern-ireland-policing-board-annual-report-2016-2017.pdf>, pg.8.
20. Police complaints reach record high in England and Wales, BBC News, October 7 2015. Accessed April 23 2018, <http://www.bbc.com/news/uk-34464181>.
21. Police shot and killed innocent driver – Comm.3 residents allege, Myjoyonline news, August 22 2016. Accessed May 28 2018, <https://www.myjoyonline.com/news/2016/August-22nd/Police-shot-and-killed-innocent-driver-comm-3-residents-allege.php>.
22. Policy Proposals on New Powers for the Independent Police Complaints Commission, June 7, 2014. Accessed April 23 2018, <http://www.northumbria-pcc.gov.uk/policy-proposals-new-powers-independent-Police-complaints-commission-ipcc/>.
23. Reforming the Independent Police Complaints Commission: structure and governance: a public consultation. Accessed April 23 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486700/20151216-IPCC_Governance_ConDoc-WEB-v6_0-UK_O_3_.pdf.
24. Report of a Commission of Inquiry Pursuant to Orders in Council, Fitzgerald, G, Goprint, 1989, p289.
25. Report of the Independent Commission on the Los Angeles Police Department, Christopher W, Independent Commission on the LAPD, 1991, p153.
26. Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 8 to 17 September 1997, section 48.
27. Royal Commission into the NSW Police Service: Final Report, Wood, J, Government of the State of New South Wales, 1997, p201.
28. The 1995/96 Annual Report of the Police Complaints Authority, The Stationery Office Ltd, 1996, p48.
29. The Knapp Commission Report on Police Corruption, Knapp W, George Braziller, 1972 p14.
30. The Police, The People, The Politics: Police accountability in Ghana, 2007 Commonwealth Human Rights Initiative Report.
31. The Stephen Lawrence Inquiry Report by Sir William MacPherson of Cluny, the Stationery Office Limited, 1999, p333.
32. Under the Spotlight: complaints against the AFP and NCA, Australian Law Reform Commission, Australia Government Publishing Service, 1995, pp194–195.

33. United Nations Peacekeeping, Policing. Accessed May 24 2018, <https://peacekeeping.un.org/en/policing>.
34. UNODC-UN office on Drugs and Crime. Handbook on Police accountability, oversight and integrity (2011), p. 50.
35. When Police investigate Police: a view from complainants, Landau, T, in Canadian Journal of Criminology, July 1996



COMMONWEALTH HUMAN RIGHTS INITIATIVE • AFRICA OFFICE •

House No. 9, Samora Machel Street, Asylum Down, Near Trust Towers.
P.O. Box CT 6136, Accra - Ghana.
T.: + 233 (0) 302 971170 / + 233 (0) 269 508889 F.: + 233 (0) 302 244819
www.humanrightsinitiative.org

Facebook : @chriafrika
Twitter: @CHRI_Africa

