

The Accra Dialogue II



ILPA
INSTITUTE OF LAW AND PUBLIC AFFAIRS

**FRIEDRICH
EBERT** 
STIFTUNG

Topic:

The Role of the Council of State: A Critical Essay.

Background

The Council of State was first established by the 1969 Constitution. Under Article 53 of that Constitution, the Council was a “part of the Office of the President.” It comprised of the Prime Minister, the Speaker of the National Assembly, the leader of the opposition, the President of the National House of Chiefs and not more than 12 other persons not more than 4 of whom must be a former Chief Justice, a former President, a former Prime Minister or a former Speaker. The Council was simply to counsel the President. However, because the 1969 Constitution created a government of bi-cephalous executive (the President and the Prime Minister), one may say that the Council was more or less intended to be for the President what Cabinet was to the Prime Minister.

The Council was retained by Chapter 10 of the 1979 Constitution. This is notwithstanding that the 1979 Constitution created a mono-cephalous government. Here, the Council had an enlarged mandate and composition. It was made up of about 30 members. Under this regime, the Council played some legislative and appointment functions, quite apart from counselling the President. It, however, no longer formed part of the Office of the President. Further, the appointment by the President of the unofficial members of the Council was subject to parliamentary approval.

Under Chapter 9 of the 1992 Constitution, however, the Council’s membership dropped to twenty-five. Eleven of its members are to be directly appointed by the President as unofficial members but, this time, with no parliamentary approval requirements. The Council is to counsel the President, generally. However, it is also required to advise and consult with the President on specific issues. Also, the Council retained its legislative role.



There has, however, always been an element of doubt over the relevance and effectiveness of the Council, particularly under a mono-cephalous system of government where a cabinet exists to advise and assist the President in the performance of her functions. Many factors account for this doubt. Key among this factors is the effect of the Council’s advice to the President. This doubt has been invigorated by a recent Supreme Court decision which, if applied liberally, would mean that nothing which the Council does is binding on either Parliament or the President.

This situation has invited vehement criticism against the very existence of the Council, particularly in the light of the fact that the members of the Council are entitled to salaries and other amenities from the Consolidated Fund. In short, there are concerted calls for accountability from the Council. The Constitution Review Commission (CRC), for instance, recommend an institutional representation scheme for the Council’s membership. Other civil society organisations have seconded the CRC’s recommendation and have gone further to call for publication of its proceedings. Yet, a section of the public has called for its abolition altogether, stating that Cabinet does and could better perform the functions of the Council.

The Dialogue

Purpose

One of the principal objectives of the Institute of Law and Public Affairs (ILPA) is to help improve policy-making processes and, concomitantly, the quality of policy by creating a free and healthy market of ideas from the perspective of law, governance and development. In line with this objective, ILPA, in partnership with the Friedrich-Ebert-Stiftung (FES), has created a formal platform – the Accra Dialogue – for weighing public policy options.

This 2nd edition of the Accra Dialogue will bring the Council of State under consideration. The Dialogue will bring together leading academics and thinkers on the subject. This will be done with the aim of influencing government decisions and actions in respect of the Council of State going forward, particularly in respect of the ongoing constitution review exercise. Accordingly, the products of the debate will be synthesised and published as a position paper or communique by ILPA for general education of the public and consideration by government.



Structure

The fundamental objective of the Accra Dialogue is to give currency to expert opinion on the matter. To ensure this and also keep it simple and interactive, the Dialogue will be structured as follows:

The lead-speaker (where any) would be allotted up to 20 minutes to state and explain her position. Thereafter, each panellist would be allotted up to 10 minutes to, first, state their respective positions on the issues. Thirty minutes would, then, be allowed for the panellists to peer review each other's positions on the issues. Thereafter, the audience would be allowed 30 minutes to put questions to the panellists.

Particulars

Date: Wednesday, August 16, 2017.

Venue: Moot Court Auditorium, Faculty of Law, GIMPA.

Time: 4:00 pm.

Lead-Speakers:



H.E. J.J. Rawlings, First President of the Fourth Republic.



H.E. J.A. Kufour, 2nd President of the 4th Republic

Panellists (Tentative):



Dr Esther Ofei-Aboagye, Vice Chairperson, NDPC.



Mr Justice Emile Short, Former Chairperson, CHRAJ.



Prof Kwame Boafo-Arthur, Dep't of Political Science, UG.



Host: Mr. E. Foley, Head, Public Law Dep't, GIMPA Law.