



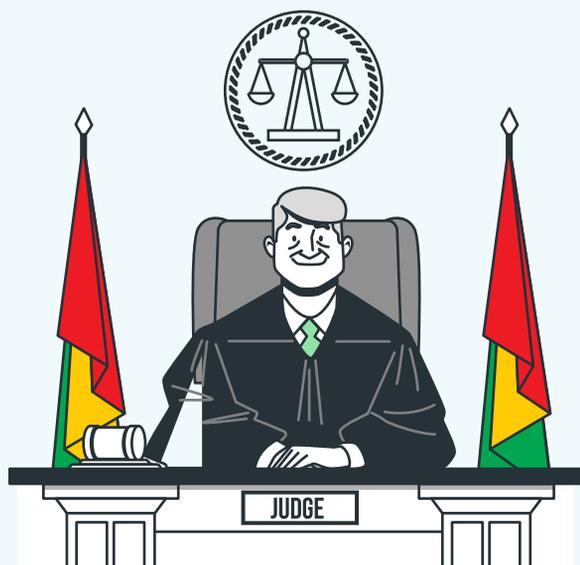
Ghana Integrity Initiative (GII)
Local Chapter of Transparency International



POLICY BRIEF

**ASSESSING ACCOUNTABILITY OF LAW ENFORCEMENT
AND JUSTICE INSTITUTIONS IN GHANA**

A STUDY BY THE GHANA INTEGRITY INITIATIVE



OVERVIEW:

This brief is an advocacy tool that seeks to draw attention to the key accountability and other challenges that three Justice sector institutions in Ghana encounter in their effort to combat organized crime in general and drug trafficking offences in particular.

Pacta Sunt Servanda, meaning, agreements must be kept, is a well-known principle. It provides that once states willingly enter into international agreements or conventions, they must implement the obligations under those agreements fully. Unfortunately, Ghana, represented by three institutions, was found wanting in terms of her compliance with benchmarks of international instruments on law enforcement, (investigation, prosecution and adjudication) in relation to 1) Codes of Conduct/Ethics Rules, 2) Internal and External Oversight Mechanisms 2) Independence and Integrity 3) Protection; 4) Capacity, and 5) Avenues/opportunities for participation of or collaboration with Civil Society Organisations in their operations.

The Narcotics Unit of the Ghana Police Service, representing drug law investigative function; the Office of the Director of Public Prosecutions-Prosecution function and the Criminal Division of the High Court (adjudication function) where focus on.

1.0. INTRODUCTION

Drug trafficking and related organized crime threaten security and public health in affected communities. They also undermine governance and the rule of law in many countries and Ghana is no exception. Indeed, it has been reported that Ghana, considered as one of Africa's brightest success stories, is a location where drug traffickers use various methods including corruption to turn the country into a key transshipment point.

It is well accepted that international standards/benchmarks play a crucial role in preventing and combating organized crime in general and drug trafficking offences in particular, yet many countries often underperform in terms of fulfilling their obligations under international instruments that they have willingly accepted to be part.

A study conducted by the Ghana Integrity Initiative (GII) found that Ghana, represented by three key criminal justice institutions in drug law enforcement, has not fully complied with standards expected of her under international legal instruments, that she is a state party. Specifically, GII focus on Narcotics Unit of the Ghana Police Service (Narcotics Unit), the Office of the Director of Public Prosecutions (DPP) and the Criminal Division of the High Court (High Court): Assessing Accountability of Law Enforcement and Justice Institutions in Ghana- A Study by the Ghana Integrity Initiative.

The research or study was conducted by the GII as part of CRIMJUST project initiated by the United Nations Office on Drugs and Crime (UNODC). The main objective of the research is to contribute to the fight against drug trafficking along the drug trafficking routes in Latin America, the Caribbean and West Africa and in line with human rights and international legal instruments.

Of the seven indicators used as basis to assess each of the three target institutions, the Narcotics of the Ghana Police Service (Investigative Function) was in full compliance by only 20% of international standards; in partial compliance by 72%; and not compliant by 8%. The Office of the Director of Public Prosecution (Prosecution Function) was in full compliance by only 36%; in partial compliance by 44%; and not in compliance by 20%, whereas the Criminal Division of the High Court (Adjudication Function), though better, was in full compliance by 48%; in partial compliance by 48%; and not compliant by 4%.



2.0. BACKGROUND

The Research, conducted by the GII, with funding from the European Union, was under the "Institutional Integrity" pillar of the CRIMJUST Project, which begun in 2016 as a joint initiative by the United Nations Office on Drugs and Crime (UNODC), the International Police Organisation (INTERPOL) and Transparency International, with the overall objective of contributing to the fight against organized crime in general, and drug trafficking in particular, along the Cocaine route in Latin America, the Caribbean and West Africa and in line with human rights and international legal instruments.

The "Institutional Integrity" pillar seeks to strengthen the integrity and accountability of criminal justice institutions with the active involvement of civil society organizations. To assist in data collection, a Law Enforcement and Justice Institution Accountability Assessment Tool (the Tool) was developed.

Data for the research was gathered through primary and secondary sources including interviews, Internet searches and review of documents. The Criteria or benchmarks established by the under listed main International Legal Instruments of which Ghana is state party and other related documents/guidelines were employed:

- United Nations Convention against Corruption (UNCAC)
- United Nations Convention against Transnational Organized Crime (UNTOC), and
- Global Standards to Combat Corruption in Police by Interpol

Using those criteria and benchmarks, scores were then made for each of the pre-set indicators: 1) Internal and External Oversight; 2) Protection; 3) Transparency; 4) Capacity; 5) Independence and Integrity and 6) Civil Society Participation.

3.0. SUMMARY OF FINDINGS

3.1. INTERNAL OVERSIGHT

3.1.1. Narcotics Unit of the Ghana Police Service

As a Unit primarily responsible for investigating drug trafficking offences in Ghana, it was assessed against the international benchmarks on Internal and External Oversight (see fig. 1).

On the existence of code of conduct and/or ethics rules, the Narcotics Unit is subject to Code of Conduct/Ethics Rules, (CoE) which are consistent with benchmarks provided under the United Nations (UN) Code of Conduct for Law Enforcement Officials and the Global Standards to Combat Corruption in Police by Interpol. The CoE can be found in the Ghana Police Service Regulations, 2012 (Constitutional Instrument 76) and Service Instructions (SI) of the Ghana Police Service, among others. However, there is no training on the COE, apart from the general training the Ghana Police Service organises for new recruits.

Some aspects of internal checks on the Unit do not exist. For instance, there is no system in place to track cases assigned to officers from commencement of investigations to the conclusion

Fig. 1: International Benchmarks on Internal Oversight-Narcotics Unit/ODPP, include:

- Existence of code of conduct and/or ethics rules
- Level of Internal Checks
- Whether subject to Internal Disciplinary Process
- Responsiveness of the internal Disciplinary Mechanism to Public Complaints

of the case at the Court, that is, a case management/tracking system, which is an integral part of internal checks.

In terms of internal disciplinary process, complaints against officers may be brought before the Police Intelligence and Professional Standards Bureau (PIPS), which processes only 60% of cases a year, partly to due resource constraints. Nevertheless, the PIPS, provides an opportunity for officers not satisfied with the outcome of their cases to appeal against the decisions to higher authority as well as to the Courts.

3.1.2. Office of the Director of Public Prosecutions

The professional and ethical conduct of Prosecutors of the ODPP are regulated by the Ghana Code for Prosecutors, the Legal Profession (Professional Conduct and Etiquette) Rules, and Standard Operating Procedures, among others. But as found, the Ghana Code for Prosecutors does not meet the requirements of Articles 8 and 11 of UNCAC, (art. 8-UN Code of Conduct for Public Officials), and CCPCJ Resolution 17/2, among others.

Public Prosecutors receive training on dos and don'ts of the prosecution service among others, on recruitment into the service but further training is hardly organized.

Internal checks on prosecutorial decisions is non-existent as there was no system in place to track cases from assignment to closure. On internal disciplinary mechanism, complaints against prosecutors may be brought before the Team leader, the Director of Public Prosecutions, the Attorney- General and Minister for Justice, as well as the Legal Services Board.

The research also found that the DPP is responsive to complaints of misconduct against prosecutors but not online, that is, through the website of the Ministry of Justice and Attorney- General's Department.

1. Renamed, Police Professional Standards Bureau (PPSB)

3.1.3. Criminal Division of the High Court

Assessing the Judiciary on Judicial Accountability, the research found that:

- The provisions of Articles 128 (4), 136 (3) and 139 (4) of the 1992 Constitution, the Code of Conduct for Judges and Magistrates, and Judicial Service Regulations, among others, are in compliance with international legal instruments on Judicial accountability such as articles 8, 11 of the UNCAC and the UN Basic Principles on the Independence of the Judiciary.
- Judges and magistrates undergo training on judicial ethics at the Judicial Training Institute on recruitment, which is in sync with the Bangalore Principles of Judicial Conduct.
- The administration and performance of Judicial functions are aligned with the UNTOC, Arts.11(3) and (4); UN Basic Principles on the Independence of the Judiciary, Principle 14; and the Bangalore Principle of Judicial Conduct.

In terms of Internal Disciplinary Mechanism in line with the UN Basic Principles on the Independence of the Judiciary, the study observed that the Public Complaints and Court Inspectorate Units of the Judicial Service receive complaints of misconduct, among others, against Judges, Magistrates and staff of the Judicial Service.

On the Internal Responsiveness to Complaints, the Court provides information on resolved cases of misconduct that it has completed only upon a request made to the Director of the Public Complaints and Court Inspectorate Unit.

3.2. EXTERNAL OVERSIGHT

3.2.1. Narcotics Unit of the Ghana Police Service

An External Oversight body with powers to effectively address complaints filed against officers of the Narcotics Unit, does not exist. However, the Commission on Human Rights and

Administrative Justice (CHRAJ), and independent institution, exercises quasi-external oversight over the Unit. Thus, any person aggrieved by the conduct of an Officer of the Unit may complain/petition the CHRAJ and seek appropriate remedies.

Though the public can file complaints against investigators/police officers at the courts or at the CHRAJ, but as found, both institutions do not appear to be the most preferred option for the public. Rather, an Independent Police Complaints Commission (IPCC) is more preferable.

Officers of the Unit, just as any other Police Officer, is required to declare assets owned and liabilities owed (Assets Declaration) by virtue of section 3 (t) of the First Schedule of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550). However, not many Police Officers at the Narcotics Unit are aware of this law.

3.2.2. Office of the Director of Public Prosecutions

There is no External Oversight Mechanism on prosecutorial decisions by the ODDP as criminal prosecutions are conducted by and in the name of the Attorney General, who may sanction Prosecutors for misconduct. The General Legal Council (GLC), which is independent of the Attorney-General, also exercises some external oversight over prosecutors who are lawyers in so far as the complaints relate to unprofessional conduct of the prosecutor as a lawyer. The GLC is responsive to complaints of misconduct from the general public. Prosecutors are also required by section 3 (aa) of the First Schedule of Act 550² to declare their assets.

3.2.3. Criminal Division of the High Court

The HC, as part of the Judiciary, is independent. In consequence, there is no external oversight over the High Court/Judiciary. Judges are required by Article 286 (5) of the 1992 Constitution and section 3 of Act 550 to declare their assets. However, the law does not provide for verification of assets the Judges file at the Auditor General's.

2. See Section 3 (Schedule 1), *(aa) an officer in any other public office or public institution other than the Armed Forces, the salary attached to which is equivalent to or above the salary (less than 4,000 cedis a month) of a Director in the Civil Service.

3.3. INDEPENDENCE

3.3.1. Narcotics Unit of the Ghana Police Service

Apart from it being a Unit under the Criminal Investigation Department and subject to orders/directives given by the Director-General of the CID and above, the study found that occasionally, there are interferences in the work of investigators, especially when the person being investigated by the Officers for drug trafficking or organized crime, is a person with high political connections.

3.3.2. Office of the Director of Public Prosecutions

The research did not find any empirical evidence to support the claim that there is external influence over the ODPP. However, anecdotal evidence exist of attempts ie by non-state and state actors to interfere in the prosecution of cases.

3.3.3. Criminal Division of the High Court

The 1992 Constitution guarantees the independence of the Judiciary similar to provisions of the UN Basic Principles on the Independence of the Judiciary and Bangalore Principles of Judicial Conduct. The study also found that in practice however, attempts are sometimes made to interfere with work of Judges as evidenced by the investigation by investigative journalist Anas Aremeyaw Anas in 2015 where certain individuals paid bribes in their attempt to get the judges to decide cases before them in their favour.

On Appointments to the High Court, the study found that the Judicial Council is responsible and the process seems transparent. Background checks are done on prospective applicants, which offer the public an opportunity to participate in the appointment process. Criminal records are also reviewed, among others. Indeed, the research established that efforts are being made by the Judicial Service to implement global conventions, which Ghana has signed onto.

On Performance Evaluations and Promotions of Judges of the High Court, the study found that there are clear guidelines governing careers and path of progression of Judges and Magistrates in Ghana.

Transparency Standards:

POLICE:

- *Publishing information of cases*
- *Disclosure to the Public of disciplinary action taken against officers*

ODPP:

- *Publishing information on no. and type of cases prosecuted, budget, spending and financial audits*
- *Internal disciplinary mechanism*
- *Responsiveness to requests for information by the Public*

HIGH COURT:

- *Provision of reliable statistics on cases, and publicly available statistics on criminal caseload*
- *Publication of information on Internal Oversight*

3.4. TRANSPARENCY

3.4.1. Narcotics Unit of the Ghana Police Service

On publication of information on criminal investigations, the study found that the Narcotics Unit publishes information on the number and types of organized crime investigations conducted but the information published is not up to date. The public can, however, access the latest information on cases handled by written request to the Statistics section of the Ghana Police Service.

In the case of PIPs, it publishes through the Inspector General of Police or a senior police officer, number of police officers against whom disciplinary action has been taken, but to be in compliance with article 10 of UNCAC, such publication must be done at least, once a month.

The ODPP does not publish any significant reliable and updated information on the number and types of criminal cases, including organized crime cases, it has prosecuted and the outcomes, neither does it publish information on its internal disciplinary mechanism, the Code of Conduct for Prosecutors. The ODPP, thus, seems to be the most opaque as far as the law enforcement chain is concerned.

The Office of the Attorney-General and Ministry of Justice, of which the ODPP is a part, does not publish information on its budget, spending, and

financial audits directly but the information can be accessed through Reports of the Auditor General on the Public Accounts.

On Responsiveness of the ODPP to request for Information, the study found that Public Relations Officers of the OAGMOJ process such requests the information is often not provided in time. The delay, as the study found, was part of the larger problem of lack of effective implementation of the Right to Information Act.

3.4.3. Criminal Division of the High Court

On transparency of the High Court, the study found that there were attempts to publish information on cases processed at the Courts on the website of the Judicial Service but the tap created was inactive. The Judiciary does not publish information on contracts awarded on its website.

The study found that requests for information are typically processed through the Communications Department of the Court but there are no timelines on when the requested information would be provided. The Courts sit in public and media and general public can be present during hearings except situations where the Court decides to sit on cases in camera.

3.5. CAPACITY

3.5.1. Narcotics Unit of the Ghana Police Service

Investigators at the Narcotics Unit undergo specialized training on organized crime and drug trafficking but the training is ad-hoc, irregular and unpredictable. Financial and Human Resources capacity is also weak and it represents the topmost of all the challenges of the Unit.

3.5.2. Office of the Director of Public Prosecutions

Prosecutors of the ODPP undergo specialized training on organized crime and drug trafficking, but the training is ad-hoc and inconsistent. In addition, the ODPP is understaffed and the prosecutors are overworked. This is, perhaps, the biggest challenge the ODPP and the MOJAGD

face.

3.5.3. Criminal Division of the High Court

It was found that the Judiciary receives resources as provided through the Appropriation Act. However, the funds received usually falls short of what they have budgeted for and thus limits their capacity to effectively adjudicate and resolve all most complaints in accordance with UN Basic Principles on the Independence of the Judiciary, Principles 17-20.

3.6. PROTECTION

3.6.1. Narcotics Unit of the Ghana Police Service

In order to promote citizen's involvement in the fight against corruption, protection of whistleblowers is paramount, which as the study found, is inadequate. Thus, justifying the need for an urgent review of the Whistleblower Act 2006 to provide for more protection for whistleblowers. Civil Society groups and anti-corruption practitioners should step up advocacy and public education for the passage of the Whistleblower (Amendment) Bill 2017.

Even though investigators protect the identity of informants, they are unable to protect the informants from civil and criminal liability, as they do not have such power under the law. In terms of protection for investigators, there seems to be a general feeling of insecurity among them, especially those in uniform, as they have been subjects of attacks by gangs and some members of the civilian population.

3.6.2. Office of the Director of Public Prosecutions

As already found, section 107 of the Evidence Act, NRCD 323 provides for protection for reporting persons, whilst the Whistleblower Act, 2006 (Act 720) offers protection to whistleblowers. In terms of protection for Prosecutors themselves, it was found that they are not protected against violent attacks: no police protection is provided them even when they are prosecuting high-stakes cases involving violent crime, organized crime, and corruption by the political and business class. The offices and

case files of prosecutors are therefore at risks.

3.6.3. Criminal Division of the High Court

Section 69 of the Evidence Act enjoins the court to protect witnesses who appear before the court. They are also subject to protection under the Witness Protection Act in 2019, but a Witness Protection programme is yet to be operationalized.

Because Judges are required to dispense justice without fear or favour, it is the duty of the state to provide personal security/protection for them consistent with the Protection of Judges under the UN Basic Principles on the Independence of the Judiciary, which is done in Ghana. However, there is no policy on threat management.

3.7. CSO PARTICIPATION

3.7.1. Narcotics Unit of the Ghana Police Service

Even though Civil Society plays an important role in the law enforcement value chain, the Narcotics Unit seldom engages with the public. When the Unit engages the public, it does so either as publicity on a successful investigation and/or in order to seek public/community cooperation on a case.

It is worthy of mentioning that, although the Ghana Police Service and Narcotics Unit do not provide opportunity for civilian oversight, some civil society organisations including the Ghana Integrity Initiative (GII) have successfully engaged the Ghana Police Service to promote accountability and indirect oversight. The Ghana Police Service now has a Police-Private Sector Advisory Board.

The Narcotics Unit interacts with the media occasionally through the Public Relations Directorate of the Ghana Police Service, which has written protocols on engagement with the media. However, there are often delays in providing information to the media due partly to the centralized system of releasing information to the public by the Police Service.

3.7.2. Office of the Director of Public Prosecutions

The role of Civil Society in the law enforcement value chain is critical. As such, it is expected that entities would have clear protocols of engagement with civil society but as the research found, the ODPP does not have any written protocol on engagement with civil society. Information is provided to the media on written request to the Public Relations Unit or the Attorney-General and Minister of Justice.

3.7.3. Criminal Division of the High Court

Civil Society engagement with the Judiciary is an important standard for open Governance but the study did not establish that the Court has a formal written policy of engagement with civil society including the media. However, the Chief Justice's Forum and Public Complaints and Court Inspectorate Units are platforms that the Judiciary to reach out to the public and the media. Furthermore, the Communications Department of the Court handles request for information by the Media as Judges and other personnel do not communicate directly with the media.

Due to the independence of the Judiciary, there is no oversight over the functions of the Court. However, such a practice is found to have enhanced the confidence in the Judiciary in Indonesia, Kenya, Kosovo, Nepal, Nigeria, Paraguay, Philippines, and Somalia, among others.

4.0. CONCLUSION

Overall, it was found that none of the target institutions scored more than 49% of the 25 indicators against which they were assessed. This implies that none of them are in full compliance with the international standards provided for under the international legal conventions, which Ghana voluntarily selected to be part of. However, all is not lost. Efforts are ongoing to bring these institutions into full compliance with international standards. Whereas the Law enforcement function is about 72% in partial compliance, the Prosecution and adjudicative functions are below 50%. These ongoing efforts give room for hope.

5.0. IMPLICATIONS AND RECOMMENDATIONS

If these most important institutions of state, which should work towards preventing and combating organized crime in general and drug trafficking along drug trafficking routes in Latin America, the Caribbean and West Africa, in particular, fail to meet the international standards required of them, then the fight against these crimes is far from being won.

Ghana could be noted for not fulfilling its obligations under the UNCAC, UNTOC, and other international instruments, with respect to the Criminal Justice System. This has the potential to injure the solid reputation the country has built over the years.

Furthermore, the performance of criminal justice institutions could be undermined, leading to possible loss of confidence in the justice system and high staff attrition.

Some of the institutions lack the capacity, (human, financial and material resources) to deliver on their mandates. Others require some level of independence and protection to deal with frequent interference in their work. All three institutions have only minimum levels of transparency in their efforts to prevent and combat organized crime and drug trafficking. Some view the contribution of civil society organisations in their work as irrelevant.

The implementation of the National Anti-Corruption Action Plan, especially Strategic Object 4 (To conduct effective investigations and prosecution of corruption), which provides the actions to deal with corruption and crime including implementation of the UNCAC and UNTOC and other international conventions, is highly recommended.

Specifically, the following are recommended:

- Training on Code of Conduct compliance in general and the ethics of the various professions relating to the Investigators, prosecutors and Judges, in particular, should be organized periodically. The training could either be face-to-face instruction or virtual or a combination of both. Satisfactory completion of such training could be made a condition for promotion;
- Full operationalization of the recently developed case management/tracking system should be done to enhance transparency in the work of the justice sector institutions;
- Government should ensure the establishment of an Independent Police Complaints Commission, which Ghana accepted at the UN Human Rights Council in November 2017, to establish;
- The three institutions should create online complaint platforms to encourage the public to submit complaints to them without fear of retribution, and where such a platform has already been created, to ensure it functions always. Furthermore, they should publish reliable and up-to-date information on the numbers and types of criminal cases, including organized crime cases they have processed on their websites;
- The Ghana Police Service, the Attorney General and Minister for Justice and the Judicial Service should consider providing enhanced personal protection for officers, prosecutors and Judges. As a first step to sustained and reliable protection, a threat Management system should be put in place;
- The Right to Information Commission, in collaboration with the Ministry of Information, the National Commission for Civic Education, should upscale its public education efforts on the Right to Information Act, 2019 (Act 989).
- The Justice Sector institutions should engage civil society more regularly in their effort to prevent and combat crime, drug trafficking and corruption.



Join effort to fight drug crimes in Ghana

*Make corruption a high cost and low gain venture.
Committed people and strong institutions are key to overcome
the drug menace in our society*

The Ghana Integrity Initiative (GII), is a local chapter of the Transparency International (TI), the leading global anti-corruption organisation with chapters in over 100 countries/territories.

In giving effect to Ghana's obligations in the United Nations Convention against Corruption (UNCAC) and United Nations Convention against Transnational Organized Crime (UNTOC), GII accepted a formal invitation to participate in the CRIMJUST Project, a multi-stakeholder initiative aimed at promoting integrated national, regional, and interregional responses to the increasing threat of cocaine trafficking, related transnational organized crimes, and strengthening operational cooperation between the countries of Latin America, the Caribbean, and West Africa.

GII therefore undertook a research aimed at assisting Ghana with the implementation of her obligations and commitments under international law in respect of the UNCAC and the UNTOC, both of which Ghana became a State Party to, on 27th June 2007, and 21st August 2012 respectively.

REPORT

CORRUPTION TO GI's

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