



Private Mail Bag CT 317. Hse No. 21
Abelenkpe Rd, Abelenkpe Accra, Ghana.
Tel:+233 302 760884
Digital Address: GA-091-6655
Email: info@tighana.org
Website: www.tighana.org
Facebook: Ghana Integrity Initiative-GII
Youtube: Ghana Integrity
Twitter: @GhanaIntegrity



REPORT ON LAW ENFORCEMENT AND JUSTICE INSTITUTION ACCOUNTABILITY ASSESSMENT IN GHANA

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Ghana Integrity Initiative (GII)
Local Chapter of Transparency International



**TRANSPARENCY
INTERNATIONAL**
the global coalition against corruption

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.

Conducted interviews between
15th December 2017 - 15th January 2018
by Mr William Nyarko, Master of Laws in International and
Comparative Law (LL.M) and Master of Public Policy

Findings compiled by GII CRIMJUST Team and Edited by Adam Foldes, Transparency International Secretariat, Germany and Mr Charles Ayamdoo, Commission on Human Rights and Administrative Justice, Ghana

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of 19th April 2018. Nevertheless, GII can not accept responsibility for the consequences of its use for other purpose or in other contexts.

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FORWARD

Drug trafficking and related organized crime threaten security and public health in affected communities as well as undermine governance and the rule of law in many countries and Ghana is no exception. In deed, 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 trans shipment point. Therefore, efforts to curb drug trafficking are not only timely but crucial.

The Ghana Integrity Initiative (GII), the Ghana Chapter of Transparency International (TI) commissioned the research as part of CRIMJUST project that it had been collaborating with the United Nations Office on Drugs and Crime (UNODC). CRIMJUST seeks to enhance the capacities and integrity of criminal justice institutions to tackle drug trafficking and transnational organized crime along the drug trafficking routes in Latin America, the Caribbean and West Africa.

The Research paper adopts a qualitative research strategy using data gathering through primary and secondary sources; analysis of data, based on which scores for each of the following pre-set indicators are made: Internal and External Oversight; Protections; Transparency; Civil society participation; Capacity; Independence, and Integrity.

The research paper assessed those institutions involved in investigating, prosecuting and adjudicating drug trafficking offences in Ghana: the Narcotics Unit of the Ghana Police Service; the Prosecution Division of the Office of the Attorney-General and Ministry of Justice, and the Criminal Division of the High Court.

The research paper reveals that the Narcotics Unit of the Ghana Police Service, which represents the "Investigative Function" was in full compliance with the international standards by 20% and was in partial compliance by 72%. It was not in compliance with the standards by 8%.

In terms of the Office of the Director of Public Prosecution, the Prosecution Function, the research revealed that it was in full compliance with the standards by 36% and in partial compliance by 44%. It was not in compliance with the standards by 20%.

The Criminal Division of the High Court, on its part, the "Adjudication Function", was in full compliance with the standards by 48%, in partial compliance by 48%. It was not in compliance with the standards by 4%.

Very useful recommendations are made which, when implemented would bring the Ghana Police Service, the Office of the Director of Public Prosecutions, and the Criminal Division of the High Court into full compliance with international standards derived from International Instruments, many of which Ghana is a state party.

I have no doubt that the research paper will contribute significantly to the fulfilment of the main object of CRIMJUST project which is, to strengthen criminal investigation and criminal justice cooperation along the cocaine routes in Latin America, the Caribbean, and West Africa. Government, the Inspector-General of Police and His Lordship the Chief Justice and the Attorney-General and Minister for Justice, would definitely find the research paper very useful. The research paper is a "must-read" document for Academics, Anti-Corruption and Law Enforcement Practitioners in particular and the general public in general.

BACKGROUND TO CRIMJUST

The United Nations Office on Drugs and Crime (UNODC), in partnership with INTERPOL and Transparency International, has been implementing a project dubbed “Project CRIMJUST” since 2016. The Project CRIMJUST, which ends in 2020, aims at strengthening criminal investigation and criminal justice cooperation along the cocaine routes in Latin America, the Caribbean, and West Africa. This joint initiative is funded by the European Union.

Project CRIMJUST focuses on three pillars: Capacity Building, Interregional Cooperation, and Institutional Integrity. Under the third pillar, “Institutional Integrity”, the initiative aims at strengthening the integrity and accountability of criminal justice institutions with the active involvement of civil society organizations.

As part of the third pillar, Transparency International (TI), in coordination with UNODC and other partners, has developed a Law Enforcement and Justice Institution Accountability Assessment Tool to enhance the capacity of civil society organisations to identify, monitor, and propose measures to address key accountability challenges to effectively combat organized crime in law enforcement and the judiciary.

The Law Enforcement and Justice Institution Accountability Assessment Tool (the Tool) was developed through an in-depth review of international instruments in consultation with experts and practitioners in the field and piloted simultaneously by TI's Chapters in six countries: Colombia, Dominican Republic, Ghana, Nigeria, Panama, and Peru.

Objective of CRIMJUST Project

The overall objective of the CRIMJUST Project is to contribute to the fight against organized crime in general, and drug trafficking in particular, along the Cocaine routes in line with human rights and international legal instruments.

The implementation framework of the Tool is divided into three phases:

1. Exploratory Phase
2. Assessment Phase and
3. Advocacy Phase

Methodology of the CRIMJUST Research

The methodology for the assessment phase of Project CRIMJUST is a four-step approach comprising:

- (1) data gathering through primary and secondary sources including laws, regulations, institutional rules, guidelines, manuals and data reports, media searches, and interviews;
- (2) analysis of data and decisions on scores for each indicator;
- (3) validation of findings; and
- (4) preparation of an online summary of findings and scoring.

The framework of this research is contained in a guideline developed through an in-depth review of international instruments, in particular the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC); UNODC's multiple guidance and assessment tools on criminal justice institutions; international and regional guidelines pertaining to the role of law enforcement and justice actors¹. TI's principles and guidance on topics such as whistle-blower protection, access to information laws, policing and corruption, and empowering civil society; academic works on comparative criminal justice laws and institutions and organized crime; and the work of civil society organizations in promoting justice reform in the regions. The guidelines was also developed in consultation with experts and practitioners from both regions and from UNODC.

Mapping the Institutions Assessed

It was noted during the mapping process, that a number of state agencies in Ghana have primary, secondary, overlapping or incidental remit for investigating, prosecuting, and adjudicating drug trafficking cases. The state agencies are the Narcotics Control Board (NACOB), Economic and Organized Crime Office (EOCO), Bureau of National Investigation (BNI), Ghana Police Service, Office of the Attorney-General and Ministry of Justice (OAGMOJ), and the Judiciary.

The Guidelines in the Terms of Reference (TOR) acknowledged that while there could be several agencies with secondary or incidental remit in the fight against drug trafficking, a targeted focus should be on agencies or institutions with primary remit for investigating, prosecuting, and adjudicating drug trafficking cases.

1. These include the UN Guidelines on the Role of Prosecutors; the UN Basic Principles on the Independence of the Judiciary; the UN Code of Conduct for Law Enforcement Officials; INTERPOL's Global Standards to Combat Corruption in Police; Organisation of American States' Draft Model Law on the Declaration of Assets; and the African Commission on Human and Peoples' Rights' Resolution on Police Reform in Africa.

In view of this, the research was conducted in the following targeted units of their respective institutions, namely the Drug Law Enforcement Unit – Narcotics Unit of the Ghana Police Service² (Investigative), Office of the Director of Public Prosecutions³ of the Attorney General Department and Ministry of Justice (Prosecution Function) and the Criminal Division of the High Court of Ghana⁴ (Adjudication Function).

The Drug Law Enforcement Unit (hereinafter called the Narcotics Unit) of the Ghana Police Service is primarily responsible for investigating drug trafficking cases and, sometimes, on the authority of the Attorney General prosecuting such cases in court.

The Office of the Director of Public Prosecutions is the criminal division of the OAGMOJ responsible for prosecuting all criminal cases, including drug trafficking cases on behalf of the state.

Within the Judiciary, proceedings for the adjudication of drug trafficking cases could start at the lower courts but final determination and sentencing occur at the criminal division of the High Court, which has powers under law to impose higher penalties than the lower courts. The Appeal Court can be petitioned after the High Court gives its decision and a party to the case is dissatisfied with the decision of the High Court.

The Narcotics Unit of the Ghana Police Service, Prosecutions Division of the OAGMOJ, and the Criminal Division of the High Court were, therefore, selected for a focussed and in-depth assessment for their roles in the investigation, prosecution, and adjudication of drug trafficking cases using a set of pre-defined indicators for each of the three institutions.

The pre-defined indicators include the following:

- Internal and external oversight
- Protections
- Transparency
- Civil society participation
- Capacity
- Independence and Integrity

2. See Drug Law Enforcement Unit – Narcotics of the Ghana Police Service

3. See Director of Public Prosecutions

4. See Criminal Division of the High Court of Ghana

Limitation to the Assessment

The assessment acknowledges that the Narcotics Unit of the Ghana Police Service, the Prosecution Division of the OAGMOJ, and the Criminal Division of the High Court are not autonomous. Therefore, the potential to draw conclusions affecting all other units of the institutions and for that matter, about the whole institution, is likely to arise.

Table 1: Summary of benchmark conventions and standards

INVESTIGATION

Dimensions	Standard of Convention
Internal Oversight	<p>1.1 Code of Conduct/Ethics Rules (Standard from UN Code of Conduct for Law Enforcement Officials, Articles 4, 7 and 8; Interpol: Global Standards to Combat Corruption in Police, Art. 4.1)</p> <p>1.2 Ethics Training (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.5 and 4.6)</p> <p>1.3 Checks on Internal Investigative Functions (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.2; 4.12; UN Code of Conduct for Law Enforcement Officials, Arts. 4, 7 and 8)</p> <p>1.4 Internal Disciplinary Mechanism (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.15; UN Code of Conduct for Law Enforcement Officials, Art.8 commentary (c))</p> <p>1.5 Internal Responsiveness to Complaints (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.15; UN Code of Conduct for Law Enforcement Officials, Art. 8 commentary (c))</p>
Protections	<p>2.1 Whistleblower Protections (Standard from UNCAC, Art. 33; UNTOC, Art. 24)</p> <p>II.2.2 Witness and Victim Protections (Standard from UNTOC Arts. 24, 25 and 26; UNCAC Art. 32)</p> <p>2.3 Protection of Investigators (Standard N/A)</p>
External Oversight	<p>3.1 Powers of External Oversight Body/ies (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.15; UNODC Handbook on Police Accountability, Oversight and Integrity; UNCAC, Art. 13(2)) (Answer Indicators I.3.1. to I.3.4 for each external oversight body)</p> <p>3.2 Independence of External Oversight Body (Standard from UNODC Handbook on Police Accountability, Oversight and Integrity; UNCAC, Art. 13(2)) (Answer Indicators 3.1. to I.3.4 for each external oversight body)</p> <p>3.3 Responsiveness of External Oversight Body (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.15; UNCAC, Art. 13(2)) (Answer Indicators I.3.1. to 3.4 for each external oversight body)</p>
Transparency	<p>4.1 Publication of Information on Criminal Investigations in general and Organized Crime Investigations in Particular (Standard from UNCAC, Art. 10; SDG Proposed Framework of Indicators, Goals and respective indicators for 16.1. and 16.10))</p> <p>4.2 Publication of Information on Internal Oversight (Standard from UNCAC, Art. 10)</p> <p>4.3 Publication of Investigative Institution's Financial Information (Standard from UNCAC, Art. 10; SDG Proposed Framework of Indicators, Goals and respective indicators for 16.6)</p> <p>I.4.4 Responsiveness to Requests for Information (Standard from UNCAC, Art. 13, paragraph 1(b); SDG Proposed Framework of Indicators, Goals and respective indicators for 16.10))</p>

Dimensions	Standard of Convention
Civil Society Participation	<p>I.5.1 Engagement with Civil Society (Standard from UNCAC Art. 13)</p> <p>I.5.2 Support of Civilian Oversight of Institution (Standard from UNODC Handbook on Police Accountability, Oversight and Integrity; African Commission on Human and Peoples' Rights, Resolution on Police Reform, Accountability and Civilian Police Oversight in Africa; Interpol: Global Standards to Combat Corruption in Police, Art. 4.10)</p> <p>I.5.3 Policy Toward Media (Standard from UNODC, Criminal Justice Assessment Toolkit, The Integrity and Accountability of the Police; International Association of Chiefs of Police, An Internal Affairs Promising Practices Guide for Local Law Enforcement; UNODC Handbook on Police Accountability, Oversight and Integrity)</p>
Capacity	<p>I.6.1 Financial and Human Resources (Standard N/A)</p> <p>I.6.2 Organized Crime Training and Technical Support (Standard from UNTOC, Art. 29)</p> <p>I.6.3 Resources and Support for Internal Disciplinary Mechanism (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.15; UN Code of Conduct for Law Enforcement Officials, Art. 8 commentary (c))</p>
Independency and Integrity	<p>I.7.1. Independence from External Interference (Standard from TI NIS Assessment)</p> <p>I.7.2. Professional Recruitment/Appointment/Selection (Standard from Interpol: Global Standards to Combat Corruption in Police, Arts. 4.3 and 4.4)</p> <p>I.7.3 Performance Evaluations and Promotions (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.4)</p>

PROSECUTION

Dimensions	Standard of Convention
Internal Oversight	<p>1.1 Rules of Professional and Ethical Conduct for Prosecutors (Standard from UNCAC, Art. 8 and 11; UN Guidelines on the Role of Prosecutors, Guidelines 21 and 22)</p> <p>1.2 Ethics Training (Standard from UN Guidelines on the Role of Prosecutors, Guideline 2(b))</p> <p>1.3 Internal Checks on Prosecutorial Decisions (Standard from UNTOC, Article 11(2); UN Guidelines on the Role of Prosecutors, Guidelines 11, 12, 14, 16 and 17; International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 2.1 and 4)</p> <p>1.4 Internal Disciplinary Mechanism (Standard from UN Guidelines on the Role of Prosecutors, Guideline 21; International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 6 (f))</p> <p>1.5 Internal Responsiveness to Complaints (Standard from UN Guidelines on the Role of Prosecutors, Guideline 21 and 22; International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 6 (f) and (g))</p>
Protections	<p>2.1 Internal Whistleblower Protections (Standard from UNCAC, Art. 33; UNTOC, Art. 24)</p> <p>2.2 Witness and Victim Protection (Standard from UNTOC Arts. 24, 25 and 26; UNCAC Art. 32)</p> <p>2.3 Protection of Prosecutors (Standard from International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 6 (a) and (b); UN Guidelines on the Role of Prosecutors, Guideline 4)</p>

Dimensions	Standard of Convention
External Oversight	<p>3.1 Powers of External Oversight Body/ies (Standard from UNODC and IAP Guide on the Status and Role of Prosecutors)(Answer Indicators II.3.1 to II.3.4 for each external oversight body)</p> <p>3.2 Independence of External Oversight Body (Standard from TI Speak Up, Empowering Citizens Against Corruption) (Answer Indicators II.3.1 to I.3.4 for each external oversight body)</p> <p>3.3 Responsiveness of External Oversight Body (Standard from TI Speak Up, Empowering Citizens Against Corruption, p. 30-31) (Answer Indicators II.3.1 to II.3.4 for each external oversight body)</p> <p>3.4 Asset Declarations (Standard from UNCAC Art. 8; Council of Europe Model Code of Conduct for Public Officials, Arts. 13(4), 14 and 15; OAS draft model law on the declaration of interests, income, assets and liabilities of persons performing public functions)</p>
Transparency	<p>4.1 Publication of Information on Cases (Standard from UNCAC, Art. 10;SDG Proposed Framework of Indicators, Goals and respective indicators for 16.1. and 16.10)</p> <p>4.2 Publication of Information on Internal Oversight (Standard N/A)</p> <p>4.3 Publication of the Prosecution Service Institution's Financial Information (Standard from UNCAC, Art. 10; SDG Proposed Framework of Indicators, Goals and respective indicators for 16.6)</p> <p>4.4 Responsiveness to Requests for Information (Standard from UNCAC, Article 13, paragraph 1(b); SDG Proposed Framework of Indicators, Goals and respective indicators for 16.10))</p>
Civil Society Participation	<p>5.1 Engagement with Civil Society (Standard from UNCAC Art. 13; The World Bank, Preventing Corruption in Prosecution Offices: Understanding and Managing for Integrity)</p> <p>5.2 Support of Civilian Oversight of Institution (Standard from The World Bank, Preventing Corruption in Prosecution Offices: Understanding and Managing for Integrity)</p> <p>5.3 Policy Toward Media (Standard from UNODC and IAP Guide on the Status and Role of Prosecutors)</p>
Capacity	<p>6.1 Financial and Human Resources (Standard from UNODC and IAP Guide on the Status and Role of Prosecutors)</p> <p>6.2 Organized Crime Training and Technical Support (Standard from UN Guidelines on the Role of Prosecutors, Guideline 1; UNTOC, Art. 12(2) and 29)</p> <p>6.3 Resources and Support for Internal Disciplinary Mechanism (Standard from UN Guidelines on the Role of Prosecutors, Guidelines 21 and 22; International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 6 (f) and (g))</p>
Independence and Integrity	<p>7.1 Independence from External Interference (Standard from International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 2 and 6; UN Guidelines on the Role of Prosecutors, Guideline 10)</p> <p>7.2 Professional Recruitment/Selection/Appointment (Standard from UN Guidelines on the Role of Prosecutors, Guidelines 1 and 2(a))</p> <p>7.3 Performance Evaluations and Promotions (Standard from UN Guidelines on the Role of Prosecutors, Guideline 7; International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 6(e))</p>

ADJUDICATION

Dimensions	Standard of Convention
Internal Oversight	1.1 Rules of Judicial Ethics (Standard from UNCAC, Arts. 8 and 11; UN Basic Principles on the Independence of the Judiciary, Principles 19 and 20) 1.2 Ethics Training (Standard from Bangalore Principles of Judicial Conduct, Principle 6.3) 1.3 Checks in the Administration and Performance of Judicial Functions (Standard from UNTOC, Arts.11(3) and (4); UN Basic Principles on the Independence of the Judiciary, Principle 14; Bangalore Principle of Judicial Conduct, Principle 4) 1.4 Internal Disciplinary Mechanism (Standard from UN Basic Principles on the Independence of the Judiciary, Principles 19 and 20) 1.5 Internal Responsiveness to Complaints (Standard from UN Basic Principles on the Independence of the Judiciary, Principles 17-20)
Protections	2.1 Internal Whistleblower Protections (Standard from UNCAC, Article 33; UNTOC, Article 24) 2.2 Witness and Victim Protection (Standard from UNCAC, Art. 32; UNTOC Arts. 24, 25 and 26) 2.3 Protection of Judges (Standard from UN Basic Principles on the Independence of the Judiciary, Principle 2)
External Oversight	3.1 Powers of External Oversight Body/ies (Standard from UNCAC, Art. 13(2)) (Answer Indicators III.3.1 to III.3.4 for each external oversight body) 3.2 Independence of External Oversight Body (Standard from UNCAC, Art. 13(2) TI Speak Up, Empowering Citizens Against Corruption) (Answer Indicators III.3.1 to 3.4 for each external oversight body) 3.3 Responsiveness of External Oversight Body (Standard from UNCAC, Article 13(2); TI Speak Up, Empowering Citizens Against Corruption) (Answer Indicators 3.1 to 3.4 for each external oversight body) 3.4 Asset Declarations (Standard from UNCAC Art. 8; Council of Europe Model Code of Conduct for Public Officials; OAS draft model law on the declaration of interests, income, assets and liabilities of persons performing public functions)
Transparency	4.1 Publication of Information on Criminal Cases in General and Organized Crime Cases in Particular (Standard from UNCAC, Art. 10; SDG Proposed Framework of Indicators, Goals and respective indicators for 16.1. and 16.10) 4.2 Publication of Information on Internal Oversight (Standard from UNODC the Independence, Impartiality and the Integrity of the Judiciary; UNCAC, Art. 10) 4.3 Publication of the Criminal Court's Financial Information (Standard from UNCAC, Article 10; SDG Proposed Framework of Indicators, Goals and respective indicators for 16.6) 4.4 Responsiveness to Requests for Information (Standard from UNCAC, Art. 13, paragraph 1(b); SDG Proposed Framework of Indicators, Goals and respective indicators for 16.10) 4.5 Transparency of Jurisdictional Functions (Standard from UNCAC Art.13, paragraph 1(b))
Civil Society Participation	5.1 Engagement with Civil Society (Standard from UNCAC Art. 13) 5.2 Support of Civilian Oversight of Institution (Standard from World Bank: Access to Information and Transparency in the Judiciary, A Guide to Good Practices from Latin America, pages 31-33) 5.3 Policy Toward Media (Standard from World Bank: Access to Information and Transparency in the Judiciary, A Guide to Good Practices from Latin America; p. 24 -26; UNODC The Independence, Impartiality and the Integrity of the Judiciary, p. 18; justiciaviva.org.pe; poderciudadano.org)
Capacity	6.1 Financial and Human Resources (Standard from UN Basic Principles on the Independence of the Judiciary, Principle 7; UN Procedures for the Effective Implementation of the Basic Principles, Procedure 5) 6.2 Resources and Support for Internal Disciplinary Mechanism (Standard from UN Basic Principles on the Independence of the Judiciary, Principles 17-20)

Dimensions	Standard of Convention
Independency and Integrity	<p>7.1 Independence from External Interference (Standard from the UN Basic Principles on the Independence of the Judiciary; Bangalore Principles of Judicial Conduct)</p> <p>7.2 Professional Appointment/Selection/Recruitment (Standard from UN Basic Principles on the Independence of the Judiciary, Principle 10)</p> <p>7.3 Performance Evaluations and Promotions (UN Basic Principles on the Independence of the Judiciary, Principles 11-13)</p>

SUMMARY OF FINDINGS

In terms of the extent of compliance with commitments made in the UNODC and UNTOC by law enforcement bodies, the following findings were made in respect of each of the three target institutions, the Drug Law Enforcement Unit – Narcotics of the Ghana Police Service (Investigative Function), The Public Prosecution (Prosecution Function) and The Criminal Division of the High Court (Adjudication Function):

- The Drug Law Enforcement Unit – Narcotics of the Ghana Police Service (Investigative Function) was in full compliance by 20% of international standards; in partial compliance by 72%; and not in compliance by 8.
- The Office of the Director of Public Prosecution (Prosecution Function) was in full compliance by 36%; in partial compliance by 44%; and not in compliance by 20%.
- The Criminal Division of the High Court (Adjudication Function) was in full compliance by 48%; in partial compliance by 48%; and not in compliance by 4%.
- In all, 7 indicators were assessed for each of the three target institutions for a total of 75 indicators divided in Table 2 below;

	Investigative	Prosecution	Adjudication
Internal Oversight	5	5	5
Protections	3	3	3
External Oversight	4	4	4
Transparency	4	4	5
Civil Society Participation	3	3	3
Capacity	3	3	2
Independence	3	3	3
Total	25	25	25

RESEARCH FINDINGS AND RECOMMENDATIONS - INVESTIGATIVE - NARCOTICS

UNIT OF THE GHANA POLICE SERVICE

The Drug Law Enforcement Unit (hereinafter called the Narcotics Unit) of the Ghana Police Service is primarily responsible for investigating drug trafficking cases.

1.0 INTERNAL OVERSIGHT

- 1.1. In ascertaining the existence of code of conduct and/or ethics rules that follow basic internationally recognized standards of conduct and ethics, the research found that the Ghana Police Service, of which the Narcotics Unit is a part, has Code of Conduct/Ethics Rules⁵, which are in alignment with the requirements of the UN Code of Conduct for Law Enforcement Officials, Articles 4, 7 and 8; Interpol: Global Standards to Combat Corruption in Police, Art. 4.1). The ethics rules and code of conduct are contained in several instruments and regulations including the Rules and Regulations of the Ghana Police Service (CI 76) and Service Instructions (SI), which have been reduced to writing in the Standard Operating Procedures by the Legal and Prosecutions Directorate of the Ghana Police Service⁶
- 1.2. Even as the Ghana Police Service has a code of conduct and operate with ethical considerations, officers of the Narcotics Unit receive six months training, that includes ethics, when they are recruited into the Ghana Police Service, but do not receive periodic and refresher training on ethics when they are posted to the Narcotics Unit. It is recommended that training on ethics is provided at least once a year (every 12 months) and must be made a requirement for promotion or advancement. The training could be deployed either by face-to-face instruction or by online certification or both.

5. <http://www.mojagd.gov.gh/sites/default/files/public/Police%20SOPs%20%28Revised%29.pdf>

6. Code of Conduct/Ethics Rules (Standard from UN Code of Conduct for Law Enforcement Officials, Articles 4, 7 and 8; Interpol: Global Standards to Combat Corruption in Police, Art. 4.1)

- 1.3. The study also considered the level of internal oversight and found that, the Narcotics Unit of the Ghana Police Service does not have an electronic case management system that allows for vertical and horizontal accountability. It is, therefore, recommended that an integrated electronic case management (investigation, prosecution, and adjudication) system be established to allow for horizontal and vertical accountability and tracking of cases from the commencement of an investigation to the conclusion of the case in Court.
- 1.4. A finding was made that, pursuant to the Police Service Act, 1970 (Act 350) (as amended); CI 76, and the Service Instructions (SI), officers of the Narcotics Unit are subject to an internal disciplinary process by the Police Intelligence and Professional Standards Bureau (PIPS). Although PIPs face resource constraints and hence delays in completing investigation of cases referred to them, opportunities exist for officers who are unhappy with the decision of the Inspector General of Police based on the recommendations of PIPs, to appeal against such a decision up to the Court.
- 1.5. Also with the existence of PIPs the study checked on the responsiveness of the internal disciplinary mechanisms to public complaints and found that, there were delays in the investigation and resolution of cases as the PIPS, one of the internal disciplinary mechanisms, is only able to complete investigations of about 60% of complaints of misconduct before it in a year. This delay was largely due to human resource and logistics challenges. A suggestion was made by officers of the PIPS that, an incremental increase in resources by 10% for PIPS and increased public education about the role of the PIPS in addressing misconduct will likely lead to responsiveness and effectiveness

2.0 PROTECTIONS

- 2.1 In line with the quest to promote citizen's involvement in the fight against corruption, protection of whistleblowers is paramount, and the research made findings of limited protection for whistleblowers. Example of the extent of the limitation is summed in Daily Guide (2011), a local newspaper, which reported a case of a whistleblower (fits the description of an informant more than a whistleblower) to the Ghana Police Service. The report alleged that the identity of the whistleblower was revealed by the Ghana Police Service to suspected armed robbers after the whistleblower had disclosed an impending operation by the robbers. This case appears to be an isolated one, but it underscores the need to step up advocacy and public education on the Whistleblower Act, the protection it can provide and the need to enact the Whistleblower (Amendment) Bill 2017. This begs the Whistleblower Protections Standard from UNCAC, Art. 33;

- 2.2 News reports of investigators leaking the identities of whistleblowers are known to every Ghanaian. The research sort to enquire the level of protection being provided to whistleblowers and found that even though there seem to be some protection for whistleblowers including protection against disclosure of the identity of whistleblowers, a comprehensive witness protection program did not exist to provide for the protection of witnesses. The Witness Protect Bill,⁷ 2017 which envisaged the establishment of a Witness Protection Programme, was still pending before Parliament as at year ending 2017.⁸
- 2.3 As a general matter, police officers in uniform have been subjected to attacks by gangs and some members of the civilian population. However, investigators at the Narcotics Unit, who are part of the general population of the Criminal Investigation Division of the Ghana Police Service, wear plainclothes. Although advocating protection for investigators at the Narcotics Unit is a good idea; however, such a proposal should necessarily include making a case for the protection of all investigators within the Criminal Investigations Division of the Ghana Police Service as well as the general population of uniformed police officers⁹ (NB: the point does not come out whether there is protection for police officers or not, which ought to be case before offering recommendations).

3.0 EXTERNAL OVERSIGHT

- 3.1 The study explored the existence of an External Oversight body for the Narcotics Unit? Or Ghana Police Service??] and found that, such a body did not exist within the meaning of (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.15; UNODC Handbook on Police Accountability, Oversight and Integrity; UNCAC, Art. 13(2)) with powers to effectively address complaints filed against officers at the Narcotics Unit. Some external oversight is provided by the Commission on Human Rights and Administrative Justice (CHRAJ) and the courts as officers and citizens can petition CHRAJ to investigate an action that infringes their rights. They may also proceed to court to vindicate such rights as appropriate. It is recommended that advocacy for the establishment of an external oversight body – an Independent Police Complaints Commission - to ensure and assure effective oversight, be intensified. It is pertinent to note that Ghana accepted recommendations made by the UN Human Rights Council in November 2017 to establish an Independent Police Complaint Commission (IPCC) when Ghana appeared before the Council for a review of its human rights record.¹⁰

7. The Witness Protection Bill was finally passed into law in 2019 (see Witness Protection Act, 2019 (Act 975)).

8. Witness Protection Act 2019 (Act 975)

9. <https://ghanaxtra.com/2017/07/accra-police-officer-shot-dead-in-daylight-robbery.html>

10. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/367/88/PDF/G1736788.pdf?OpenElement>

- 3.2 As has been alluded to above, the study also found that there exist a Quasi External Oversight body – CHRAJ, whose independence is provided for by the 1992 Constitution. However, CHRAJ does not have the power to prosecute, nor does it have budget autonomy (ACA 2018). As the President, on the advice of the Council of State, appoints the commissioners, the organisation is not kept free from the executive's influence (Global Integrity 2011; ACA 2018).” [NB: Could you therefore say that the Judiciary is not “kept free from executive influence” because the President appoints the CJ and the members of the Judiciary?]. And if so, who else in Ghana “would be kept free from executive influence” as the President appoints almost everybody.
- 3.3 The Narcotics Unit is typically headed by either a Superintendent of Police or a Deputy Superintendent of Police and by the Public Office Holders (Declaration Of Assets And Disqualification) Act 1998 (Act 550) passed pursuant to Art 286 of the Constitution, provides in First Schedule to section 3 of Act 550 that “(t) officers of the Police Service; and officers of the Prison Service” are subject to declare their assets. Besides, First Schedule of section 3, further provides in “(y)” that “...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 of a Director in the Civil Service. Therefore, officers in the Narcotics Unit, being Police Officers, are required to make declarations under Article 286 of Ghana 1992 Constitution.
- 3.4 About the responsiveness of External Oversight Body (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.15; UNCAC, Art. 13(2)) (Answer Indicators I.3.1. to I.3.4 for each external oversight body), The study found that the public can file complaints against investigators/police officers at the courts and at CHRAJ but filing cases at these two institutions doesn't appear to be the first option among the general public. An external Independent Police Complaint Commission (IPCC) is more likely to be the go-to institution for the public to file complaints against investigators/officers if established than CHRAJ and the courts. Currently the media houses, particularly the radio stations have become the first point of call should there be any form of infraction involving a police officer by the public.

4.0 TRANSPARENCY

- 4.1 On the publishing of information on [criminal] investigations in general and Organized Crime Investigations in Particular (Standard from UNCAC, Art. 10;) the study found that the Narcotics Unit of the Ghana Police Service publishes information on the numbers and types of organized crime investigations¹¹ but the information published on its

11. Source: Statistics & Information Technology Unit (Situ), CID Headquarters, Accra

website is not updated regularly. Current reported cases date back to 2013, even though the information at the Ghana Police Service Report is dated 2017. The public could write to the Statistics section of the Ghana Police Service for the latest information on organized crime cases.

- 4.2 Also, periodically, the PIPs, through the Inspector General of Police or a senior police officer, discloses the number of police officers against whom disciplinary action has been taken. To be in compliance with Article 10 of UNCAC and international best practice, there must be, at the minimum, monthly publication of information on internal oversight procedures and the disciplinary action that has been taken against investigators.
- 4.3 Further findings made on transparency include: the Ghana Police Service, of which the Narcotics Unit is a part, does not publish information on its budget, spending, financial audits or public contracts as per the Standard from UNCAC, Art. 10; however, the service's financial information is audited by the Auditor-General and which audit report is available to the public. Also, the passage of the Right to Information Law will open up the space to demand information on the budget of Ghana Police Service.¹³
- 4.4 How responsive to Requests for Information (Standard from UNCAC, Art. 13, paragraph 1(b); SDG Proposed Framework of Indicators, Goals and respective indicators for 16.10)), the studies found that Investigators at the Narcotics Unit do not speak directly to the media or respond to requests for information. Such requests are fielded by the spokespersons of the Ghana Police Service at the public relations directorate or by a superior duly authorized. There are significant delays without any assurance about when the requested information would be provided. The delay is part of a larger problem of not having a working freedom of information law such as the Right to Information law which was enacted and assented to by the President on 21 May, 2019 but was still not being implemented due, partly, to the unavailability of budgetary provision for its implementation in the 2019 Appropriation Act. Therefore, any advocacy to expedite the release of information to the media and public by the Narcotics Unit, must be done in tandem with advocating for the implementation of the Right to Information Law in 2020.

5.0 CIVIL SOCIETY PARTICIPATION

- 5.1 Even though the role of Civil Society in the law enforcement value chain has been accepted as very critical, the Narcotics Unit of the Ghana Police Service only engages with the public occasionally, especially when the Unit makes a significant drug bust but

12. <https://police.gov.gh/en/wp-content/uploads/2018/08/ANNUAL-REPORT-2017.pdf>

13. Rights to Information Act 2019 (Section 2)

this is usually done to publicise its work or request public/community cooperation on a case and not to give or receive feedback about its work. There is no requirement placed on the Ghana Police Service to publish their report on cases received, cases completed and cases pending as of the time of compiling this report within specified periods. It is recommended to advocate a civil society/Narcotics Unit collaboration to engender more responsiveness, transparency, accountability, and support for the work of the Narcotics Unit in particular, and the Ghana Police Service in general.

- 5.2 It is worthy of mentioning that although the Ghana Police Service and Narcotics Unit do not provide civilian oversight of its institution, some civil society organisations including the Ghana Integrity Initiative (GII) had been engaging the Ghana Police Service to promote accountability and indirect oversight. In November 2017, GII in collaboration with the Ghana Police Service and the European Union Accountability, Rule of Law and Anti-Corruption Programme (EU- ARAP) organized a workshop with the theme – “The GPS Transformational Agenda: Facilitating Civil Society Dialogue to Enhance Accountability”. Since the workshop, the Ghana Police Service has opened up to frequent engagement with civil society. The Ghana Police Service now has Police-Private Sector Advisory Board.¹⁴
- 5.3 On the Narcotic Unit of the Ghana Police Service's Policy towards the Media as per the Standard from UNODC, Criminal Justice Assessment Toolkit, The Integrity and Accountability of the Police; International Association of Chiefs of Police, An Internal Affairs Promising Practices Guide for Local Law Enforcement; UNODC Handbook on Police Accountability, Oversight and Integrity, the Narcotics Unit, through the public relations directorate of the Ghana Police Service, has written protocols providing guidance on when and how the Unit will interact with the media. However, there are significant delays in providing information to the media in part because of the centralisation of information release and the lack of a right to information law.

6.0 CAPACITY

- 6.1 The study at this point interrogated the Ghana Police Service under which the Narcotics Unit operates, on its financial and human resources capacity and found that financial and human resource challenges are the topmost of all the challenges confronting drug investigators at the Narcotics Unit. An increased financial and logistical support is likely to contribute to effectiveness and responsiveness.
- 6.2 Also, on capacity building of the Human Resources of the Narcotic Unit, it was found that, Investigators at the Narcotics Unit undergo specialized training on organized

¹⁴ <https://police.gov.gh/en/index.php/igp-inaugurates-police-private-sector-advisory-board/>.

crime and drug trafficking but the training is ad-hoc and not periodic. It is recommended that a predictable and regular specialized refresher training on organized crime/drug trafficking be held every six months for investigators. Trainings could be conducted online and should include periodic tests administered online and recertification.

- 6.3 The study found that on resources and support for Internal Disciplinary Mechanism (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.15; UN Code of Conduct for Law Enforcement Officials, Art. 8 commentary (c)), the PIPs, which started operating from only one region in Greater Accra, has been investigating and bringing closure to cases but it lacks the personnel and resources it needs to investigate cases in a timely manner. The Inspector-General of Police has indicated a strong direction to strengthen the PIPs and establish more PIPs offices in the other regions of Ghana¹⁵. Three additional offices are to be established in the Volta, Northern, and Western regions of Ghana. Advocating more support for the establishment of PIPs offices, the provision of human and financial resources along with an external oversight body would coincide with the agenda of the IGP to make the Ghana Police Service a world class force and bring improvement to the internal disciplinary mechanism at the Ghana Police Service.

7.0 INDEPENDENCE AND INTEGRITY

- 7.1 The study probed into the independence of the Unit to carry out its responsibilities and received this response from Investigators and officers interviewed: there are occasional interference especially when a person with political clout is being investigated for alleged involvement in high-stakes drug trafficking or organized crimes cases.
- 7.2 It was discovered that, the appointment process for the head of the Narcotics Unit is not advertised for a competitive recruitment process. Also, the candidate is not publicly vetted. Similarly, the appointment process of the Inspector General of Police (IGP) who is the head of the Ghana Police Service is not made through a competitive process and the IGP is not publicly vetted. Argument has been made that the process of appointing the IGP can undermine the independence of the IGP in the discharge of his/her mandate as effectively and objectively as necessary.

There is a need to advocate a meritorious appointment process for the IGP and heads of units including the Narcotic Control Division at the Ghana Police Service. It is pertinent to note that advocating a meritorious appointment process would require legislative

15. <https://www.modernghana.com/news/820520/pips-department-of-police-service-to-open-more.html>

16. <http://constitutionnet.org/news/ghana-calls-constitutional-reform-appointment-procedures-head-security-services>

reform as the president is required by law to make the appointment of the IGP in consultation with the Council of State. In addition, the IGP also has power under the Ghana Police Service Act 1970 (as amended) to appoint head of the DLEU.

- 7.3 Investigators do not receive periodic written evaluations in accordance with Performance Evaluations and Promotions (Standard from Interpol: Global Standards to Combat Corruption in Police, Art. 4.4) therefore the suspicions abound among the investigators that promotions are not based on merit.

8.0 CONCLUSION

In conclusion, the research established that efforts are being made by the Ghana Police Service as an institution to implement global conventions which Ghana has signed onto within the service and its Units. For instance, there is a piloting process on-going by the CID division to institute an electronic case management system in the service. However, a lot more remain to be done in all seven indicators that were examined – Internal Oversight, Protection, External Oversight, Transparency, Civil Society Participation, capacity, Independence and Integrity. Evidence sighted by way of laws, policies, service manuals suggest that the investigation service institution has only fulfilled or implemented global frameworks like the SDGs, UNCAC, UNTOC, UN guidelines etc. partially.

This report is aimed at contributing to the fulfilment of the main object of the CRIMJUST project which is, strengthening criminal investigation and criminal justice cooperation along the cocaine routes in Latin America, the Caribbean, and West Africa.



From the right are representatives from GII, Ghana Police Service, Attorney General and Ministry of Justice, The Finder and Awake Newspapers.

RESEARCH FINDINGS AND RECOMMENDATIONS – DIRECTOR OF PUBLIC PROSECUTIONS – DPP

9.0 INTERNAL OVERSIGHT

9.1. The research found that the prosecutors at the DPP are subject to professional and ethical conduct, which are contained in several instruments and codes, rules of professional and legal practice, Ghana Code for Prosecutors, and standard operating procedures. As an example, Section 2(d) of the Ghana Code for Prosecutors prohibits bribery and promotes integrity of prosecutorial duties.

2(d) [Prosecutors] must not engage in any conduct that would cause a reasonable person to question the impartiality or integrity of the prosecutor as in the case of soliciting or receiving money, gifts in kind or influence of the prosecutor or family or friends of the prosecutor in respect of the conduct of a case.

It is recommended, however, that the Ghana Code for Prosecutors, which has not been reviewed and updated since 2010, be reviewed and mainstreamed into the standard operating procedures for Prosecutors to ensure alignment with UNCAC, Art. 8 and 11; and UN Guidelines on the Role of Prosecutors, Guidelines 21 and 22) and the resolution “Strengthening the rule of law through improved integrity and capacity of prosecution services” adopted by the U.N. Commission on Crime Prevention and Criminal Justice.¹⁷

9.2 Also, prosecutors receive training on ethics among other things, when they are hired but further training is adhoc, that is, follow up training does not follow any planned and predictable periods. Follow-up training or capacity building is often provided by external bodies, including donor partners. It is recommended that capacity building on ethics is provided at least once a year (every 12 months) and made a requirement for promotion or advancement. Capacity building training

17. [https://www.iap-association.org/Resources-Documentation/IAP-Standards-\(1\)/UN-Resolution](https://www.iap-association.org/Resources-Documentation/IAP-Standards-(1)/UN-Resolution)

could be deployed either by face-to-face instruction or via the internet or both.

- 9.3 On Internal Checks on Prosecutorial Decisions (Standard from UNTOC, Article 11(2); UN Guidelines on the Role of Prosecutors, Guidelines 11, 12, 14, 16 and 17; International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 2.1 and 4), is also endorsed by the U.N. Commission on Crime prevention and Criminal Justice in its resolution. In Ghana the duty of prosecution lies squarely on the Minister of Justice and Attorney General as per Article 88 of the 1992 Constitution of Ghana and per section 54 of the Criminal Procedure Code, 1960 (Act 30), the Attorney General can enter a nolle prosequi and the decision is not subject to judicial enquiry or review, unless it offends the use of discretionary powers¹⁸. The research found that, cases were assigned to prosecutors by a team leaders but there are gaps in ensuring that cases are followed up on and tracked from assignment to closure. By the close of 2017, an electronic case management system was not yet in place at the office of the Director for Public Prosecution (DPP) at the Attorney General Department. It is recommended that the implementation of a case management system being supported by Ghana's Development Partners, be expedited to address the gaps.
- 9.4 Internal Disciplinary Mechanism (Standard from UN Guidelines on the Role of Prosecutors, Guideline 21; International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 6 (f)) do exist at the DPP. Internal checks on prosecutors for misconduct are addressed at several levels by the Team leader, Director of Public Prosecutions, Attorney-General and Minister for Justice, and the Legal Services Board.
- 9.5 The research found that the DPP is responsive to complaints of misconduct against prosecutors, however, the outfit does not provide the public an opportunity to file complaints against prosecutors online, that is, on the website of the Ministry of Justice and Attorney-General's Department (www.mojagd.gov.gh). It is recommended that the prosecution service creates an online complaint platform on its website and educates the public about the existence of the online complaint platform. The prosecution service could take some comparative guidance from Kenya's Office of the Director of Public Prosecutions which has a "Complaints Section" on its website and is available at www.odpp.go.ke/complaints-compliments/

18. Article 296 of 1992 Constitution

10.0 PROTECTIONS

- 10.1 The research found that, in spite of the fact that a Witness Protection Act 2019 (Act 975) has been in existence since June 2018, it is yet to offer protection to prosecution witnesses (Standard from UNCAC, Art. 33; UNTOC, Art. 24). It is therefore recommended that advocacy for the implementation of the Witness Protection Act be intensified.
- 10.2 Witness and Victim Protection law (Standard from UNTOC Arts. 24, 25 and 26; UNCAC Art. 32) has been passed but yet to offer any form of protection to Witnesses and Victims. A Witness Protection program is therefore lacking in Ghana's criminal justice infrastructure.
- 10.3 The research discovered that Prosecutors are not protected against violent attacks; no police protection is provided to them even when they are prosecuting high-stakes cases involving violent crime, organized crime, and corruption by the political and business class (Standard from International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 6 (a) and (b); UN Guidelines on the Role of Prosecutors, Guideline 4). The offices and case files of prosecutors are not secure. In March this year, 2018, the office of the Director of Public Prosecutions was burgled at the time when an investigation was ongoing. As a first step, it is recommended that a threat management system should be established to protect prosecutors and their families; police protection must be provided to prosecutors prosecuting cases that have been assessed by the prosecution service as “high- stakes cases”

11.0 EXTERNAL OVERSIGHT

- 11.1 The Constitution of Ghana makes the power of criminal prosecution the sole preserve of the Attorney General. All other persons who undertake prosecutions do so in the name of the Attorney General and hence liable to sanctions for any misconduct. The General Legal Council (GLC), an external oversight body that regulates the conduct of lawyers becomes seized of a case of misconduct if the prosecutor is a lawyer. If he/she is a lawyer and has misconduct himself/herself, or is involved in professional misconduct, then the GLC is clothed with the authority to investigate and sanction the prosecutor. Further, if the lawyer-prosecutor is found guilty of an offence by a court of competent jurisdiction in relation to his or her professional practice, then one can go to the GLC under the principle of “res ipsa loquitur” (the matter speaks for itself) and ask the GLC to sanction the prosecutor.¹⁸

19. Powers of External Oversight Body/ies (Standard from UNODC and IAP Guide on the Status and Role of Prosecutors) (Answer Indicators II.3.1 to II.3.4 for each external oversight body)

- 11.2 On the independence of the external oversight body, the research concluded that, GLC is an external body independent of the control and direction of the Attorney General and therefore ensures an independent external oversight over prosecutors who are lawyers for professional misconduct.²⁰
- 11.3 The research found that the external oversight entity is responsive to complaints of misconduct from the general public.²¹
- 11.4 Article 286 (5) of the 1992 Constitution of Ghana does extend to members of the prosecution service hence prosecutors are required by law to declare their assets currently as per the standard from UNCAC Art. 8; Council of Europe Model Code of Conduct for Public Officials, Arts. 13(4), 14 and 15; OAS draft model law on the declaration of interests, income, assets and liabilities of persons performing public functions. The assets declaration regime in Ghana requires a declaration of assets before assuming office, once every four years and at the end of term of office.

12.0 TRANSPARENCY

12.1 The prosecution in Ghana seems to be the most opaque as far as the law enforcement chain is concern - investigation to adjudication. The prosecution service institution does not publish any significant reliable and updated information on the numbers and types of criminal cases, including organized crime cases it has prosecuted and the outcomes. In order to meet the requirements of Article 10 of UNCAC and the Goals and respective indicator 16.10 in the SDG Proposed Framework of Indicators, it is recommended that the Research, Statistics and Information and Management (RSIM) Directorate of the Ministry of Justice and Attorney-General's Department publishes reliable and updated information on the numbers and types of criminal cases, including organized crime cases it has prosecuted and the outcomes on the website of MOJAGD. Also, with the passage of the Right to Information Law, it is expected that the DPP will proactively disclose information on cases it is working and have closed with a stated period.

12.2 Even on internal disciplinary mechanism, the prosecution does not publish any reliable and updated information on the Rules of Professional and Ethical Conduct for Prosecutors, ethics training and the disciplinary mechanism that apply to its personnel. As a follow up to the recommendation to the Prosecution service to create an online complaint platform on its website and educate the public about the existence of the online complaint platform, the research further recommended that the

20. Independence of External Oversight Body (Standard from TI Speak Up, Empowering Citizens Against Corruption) (Answer Indicators II.3.1 to I.3.4 for each external oversight body)

21. Responsiveness of External Oversight Body (Standard from TI Speak Up, Empowering Citizens Against Corruption, p. 30-31) (Answer Indicators II.3.1 to II.3.4 for each external oversight body)

prosecution service publishes reliable and updated information on the Rules of Professional and Ethical Conduct for Prosecutors, ethics training, and the disciplinary mechanism that applies to its personnel on its website.

- 12.3 The prosecution service in Ghana does not publish any significant, reliable and updated information on the numbers and types of criminal cases, including organized crime cases it has prosecuted and the outcomes. In order to meet the requirements of Article 10 of UNCAC and the Goals and respective indicator for 16.10 in the SDG Proposed Framework of Indicators, it is recommended that the Research, Statistics and Information and Management (RSIM) Directorate of the Ministry of Justice and Attorney-General's Department publishes reliable and updated information on the numbers and types of criminal cases, including organized crime cases it has prosecuted and the outcomes on the website of MOJAGD.²²
- 12.4 The Ministry of Justice and Attorney-General's Department (MOJAGD), of which the prosecution service is a part, does not publish information on its budget, spending, and financial audits directly. Information on the audited accounts of the MOJAGD can be obtained from the Auditor General's Report presented to the Parliament of Ghana. Contracts for public works are advertised in the newspapers. The Prosecution service could also publish contracts for public works on its website (www.mojagd.gov.gh) and link the audited accounts to its website as well.²³ The Right to Information Law should facilitate the voluntary or proactive disclosure of information on its budget, spending, and financial audits directly.
- 12.5 Critical among the issues of transparency of the MOJAGD is how responsive they are to public request for information. Request for information is fielded by the public relations officers at the Ministry of Justice and Attorney General's Department. There are significant delays without any assurance about when the requested information would be provided. The delay was part of the larger problem of not having a freedom of information law. Even though Ghana currently has a Right to Information Law, its implementation is deferred to the year 2020. It is recommended that any advocacy to expedite the release of information to the media and public must be done in tandem with the call for adherence to section 2 of the Right to Information Act 2019.
- 13.1 The role of Civil Society in the law enforcement value chain is critical hence it is expected that entities would have clear protocols of engagement with civil society but as the

22. Publication of Information on Cases (Standard from UNCAC, Art. 10;SDG Proposed Framework of Indicators, Goals and respective indicators for 16.1. and 16.10)

23. Publication of the Prosecution Service Institution's Financial Information (Standard from UNCAC, Art. 10;SDG Proposed Framework of Indicators, Goals and respective indicators for 16.6)

13.0 CIVIL SOCIETY PARTICIPATION

research found that, the prosecution in Ghana do not have any documented protocol of engagement with civil society except to the evolved practice where media personnel write to request information from the Public Relations Unit or the Minister of Justice and Attorney-General. This request for information is not guided by any timelines by which the enquiries will be responded to. The Right to Information Law when operationalized will address this gap.

14.0 CAPACITY

- 14.1 The query as to the adequacy of financial and human resources for the prosecution to effectively carry out its mandate to prosecute criminals, especially those engaged in organized crime, the research found that the prosecution service is understaffed and the prosecutors are overworked. Lack of adequate financial and human resources is, perhaps, the biggest challenge the Prosecution service and the MOJAGD faces. Advocating an increase in budgetary allocation by at least 10% along with the hiring of at least 50 additional prosecutors is an idea whose time has come.
- 14.2 In terms of whether prosecutors are provided with specialized training on prosecuting organized crime? The research established that, prosecutors undergo specialized training on organized crime and drug trafficking, but the training is ad-hoc and inconsistent. It is recommended that capacity building on organized crime and drug trafficking is deployed at least once a year (every 12 months) and is made a requirement for promotion or advancement for prosecutors. This training could be deployed either by face-to-face instruction or by online certification or both.²⁴

15.0 INDEPENDENCE AND INTEGRITY

- 15.1 The research examined the independence and integrity of prosecution in Ghana as per International Association of Prosecutors --Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 2 and 6; UN Guidelines on the Role of Prosecutors, Guideline 10. The concerns of whether or not any prosecutors can indict or drop cases. As per the 1992 Constitution of Ghana, Article 88(3) it is only the Attorney General who can initiate prosecution of all criminal cases in Ghana. However, the Attorney General may delegate the power to initiate

24. Organized Crime Training and Technical Support (Standard from UN Guidelines on the Role of Prosecutors, Guideline 1;UNTOC, Art. 12(2) and 29)

prosecution and per section 195 of the Criminal Procedure Act 1960 (Act 30) only the Attorney General has the power to enter nolle prosequi and any person exercising this delegated power must have an express authorization from the Attorney General. However, in *Republic v Dr. Adu Tutu Gyamfi*²⁵, the Court of Appeal pointed out that a nolle prosequi may be entered in the absence of an express authorization from the Attorney-General. The research did not find any empirical evidence to support the claim of external influence (of what?). However, there is anecdotal evidence of attempted interference by non-state and state actors in the prosecution of cases which could be considered and corrective action taken as needed.

15.2 Responses from the DPP's office revealed that promotion of prosecutors is based on a combination of factors, including time in position, performance, and approval for promotion by the Legal Service Board²⁶

16.0 CONCLUSION

In conclusion, the research established that efforts are being made by the prosecution service institution to implement global conventions which Ghana has signed onto. However, a lot more remain to be done in all seven indicators that were examined – Internal Oversight, Protection, External Oversight, Transparency, capacity, Independence and Integrity. Evidence sighted by way of laws, policies, service manuals suggest that the prosecution service institution has only fulfil or implemented global frameworks like the SDGs, UNCAC, UNTOC, UN guidelines etc. partially. This report is aimed at contributing to the fulfilment the main object of the CRIMJUST project which is, strengthening criminal investigation and criminal justice cooperation along the cocaine routes in Latin America, the Caribbean, and West Africa.

25. *Republic v Dr. Adu Tutu Gyamfi* 2010 DLCA 3165

25. <http://focusghonline.com/articles/politics/ayariga-sending-pastors-chiefs-to-beg-me-not-to-investigate-him-amidu/>

26. Performance Evaluations and Promotions (Standard from UN Guidelines on the Role of Prosecutors, Guideline 7; International Association of Prosecutors –Standards of professional responsibility and statement of the essential duties and rights of prosecutors, Standard 6(e))

RESEARCH FINDINGS AND RECOMMENDATIONS (ADJUDICATION)

The study at this stage looked at Judicial Accountability. The importance of judicial independence and the notion of judicial accountability is checked against 25 indicators to ensure that the Judiciary in Ghana is compliant with global standards. Among the indicators are;

17.0 INTERNAL OVERSIGHT

- 17.1 The research found that, the Judicial Service is endowed with legal and administrative standards and controls which are consistent with global standards. For instance, the judiciary has the standalone Code of Conduct for Judges and Magistrates, Articles 128(4), 136(3) and 139(4) of the 1992 Constitution, and Judicial Service Regulations contain provisions that are in alignment with the UNCAC, Arts. 8 and 11; UN Basic Principles on the Independence of the Judiciary, Principles 19 and 20. The standards set out in the Constitution of Ghana as cited above ensures that appointment to the bench is done with the assurance of high integrity and quality.
- 17.2 Also under internal oversight the study enquired about the ethical training of the judiciary in accordance with the Standard from Bangalore Principles of Judicial Conduct, Principle 6.3. Respondents indicated that Judges and magistrates undergo training on judicial ethics at the Judicial Training Institute when they are hired. Follow-up capacity building, is, however, not done within a set timeframe. It is recommended that capacity building on judicial ethics is provided at least once a year (every 12 months) and must be made a requirement for promotion or advancement. Capacity building training could be deployed either by face-to-face instruction or by online certification or both.
- 17.3 The study probed into the Administration and Performance of Judicial functions according to the standard from UNTOC, Arts.11(3) and (4); UN Basic Principles on the Independence of the Judiciary, Principle 14; Bangalore Principle of Judicial Conduct, Principle 4). Findings indicated that 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, Principle 4 which are provided by the Administrative Rules of Court and processes for review in both Acts 30 and the Courts Act, 1993, Act 46. Sentencing guidelines and the Code of Conduct for Judges and Magistrates also provide additional alignment.

17.4 On Internal Disciplinary Mechanism in line with the UN Basic Principles on the Independence of the Judiciary, Principles 19 and 20, the study observed that that the Public Complaints Unit receives complaints of misconduct, among others, against Judges, Magistrates, and staff. The Chief Justice then sets up a committee to investigate the allegations and forward a report to the Chief Justice for the necessary action in accordance with the law.

17.5 But to check on how complaints are made and Internal Responsiveness of the Judiciary to Complaints as per the UN Basic Principles on the Independence of the Judiciary, Principles 17-20 as the standard, it was found that the Court provides information about resolved cases of misconduct it has completed upon a request made to the Director of the Public Complaints Unit.

18.0 PROTECTIONS

18.1 The study considers the protection of the judiciary as a critical requirement to the administration of justice and so explored such mechanism as Internal Whistleblower Protections according standards from UNCAC, Article 33; UNTOC, Article 24) and discovered that Section 107 of the Evidence Act, NRCO 323 provides protection for reporting persons. In addition, the Whistleblower Act 2006 (Act 720) offers some protection to whistleblowers. It is anticipated that the proposed amendment to the Whistleblower Act, 2006 (Act 720) will fix the gaps and provide protection to whistleblowers. It is recommended that civil society increase its advocacy for the amendment of the Whistleblower Act, 2006 (Act 720).

18.2 Following closely after the need for the protection of the internal whistleblower is the provision for a Witness and Victim Protection in accordance with UNCAC, Art. 32; UNTOC Arts. 24, 25 and 26. The study found that although Section 69 of the Evidence Act enjoins the court to protect witnesses who appear before the court, a witness protection program is lacking in Ghana's criminal justice infrastructure. At year's end 2018, a Witness Protection Bill has been passed by Parliament and awaiting the assent of the President.²⁷ It is recommended that advocacy be stepped up to encourage the

27. The Witness Protect Bill has been signed into Witness Protection Act 2019 (Act 975) as at mid-2019

President to sign the bill into law and the necessary implementation framework be put in place.

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- 18.3 Because Judges are required to dispense with justice without fear or favour, it is mandatory of the state to provide personal security/protection for them consistent with the Protection of Judges (Standard from UN Basic Principles on the Independence of the Judiciary, Principle 2). In Ghana, although there is no formalised threat management system to protect judges and their families against violence or other threats, judges are provided security by the state. The state ensures security and physical protection of Judges and their families especially in the event of threats made against them while they are trying high-stakes cases. It is recommended that written policies for a threat management system be developed and the procedures implemented and updated.

19.0 EXTERNAL OVERSIGHT

- 19.1 The study enquired on the existence of any External Oversight Body(ies) and the Powers of such External Oversight Body(ies) in accordance with the UNCAC, Art. 13(2)) (Answer Indicators III.3.1 to III.3.4 for each external oversight body) and found that in recent past of Ghana's history (2015), a committee was established pursuant to Article 144 of the 1992 Constitution of Ghana following a judicial corruption investigation by Anas Aremeyaw Anas led to the dismissal of high court judges and lower level judges and magistrates. Refer to the links below:
- Ghana dismisses judges guilty of bribery charges
 - Mahama sacks another judge over Anas' exposé
 - Anas' exposé: 20 lower court judges sacked
- 19.2 As a follow-up to the enquiry of the existence of an External Oversight Body(ies) is the Independence of the External Oversight Body in accordance with the Standard from UNCAC, Art. 13(2) TI Speak Up, Empowering Citizens Against Corruption) (Answer Indicators III.3.1 to III.3.4 for each external oversight body. The findings made suggested that indeed the independence of judicial committees of investigation are very independent.
- 19.3 The study also enquired of respondent from the judiciary as to whether judges declare their assets as per the Standard from UNCAC Art. 8; Council of Europe Model Code of Conduct for Public Officials; OAS draft model law on the declaration of interests,

income, assets and liabilities of persons performing public functions. The study found that there is no internal policy for declaration of assets but High Court Judges are required by law, that is, by Article 286 (5) of the 1992 Constitution of Ghana to declare their assets every four years. Judges declare their assets within three months after taking office and at the end of their term in office. However, the law does not provide for verification of assets filed with the Auditor General unless the assets become a matter of dispute or a proceeding before a court of law.

20.0 TRANSPARENCY

20.1 The study tested the level of transparency that the judiciary is in Ghana. The study looked at the last three years and enquired if the courts provided reliable, periodic (at least once per year) and publicly available statistics on its criminal caseload? Does the institution have a systematic approach to collecting and updating the data? Does court management rely on the statistics for policy decision-making? Can the cases be broken down (disaggregated) by severity of crime: major vs. minor or violent vs. non-violent, felony v. misdemeanour? By crime category? By outcome: trial, plea, dismissal, verdict?²⁸

To the above the study found that the court appears to have an intention to publish information on cases on its website because it has created a tab for it. However, the link does not provide any information when accessed. Applicants can apply for details of trials and judgements from the Registrar of the Court. It is recommended that the Court publishes information on cases and judgments on its website and provide regular updates of same.

20.2 The study enquired if the judiciary Publishes Information on Internal Oversight (Standard from UNODC The Independence, Impartiality and the Integrity of the Judiciary; UNCAC, Art. 10) and found that the Court does not meet the requirements of the UNODC on the Independence, Impartiality and the Integrity of the Judiciary; UNCAC, Art. 10). It is, therefore, recommended that the court publishes reliable and updated information on the applicable rules of judicial conduct, ethics training and the disciplinary mechanism that apply to its personnel.

20.3 The study checked if in the past three years, the judiciary has been providing publicly available information including its annual budget periodically (at least once a year)? Published checkbook-level spending information (e.g., access to information to all

28. Publication of Information on Criminal Cases in General and Organized Crime Cases in Particular (Standard from UNCAC, Art. 10;SDG Proposed Framework of Indicators, Goals and respective indicators for 16.1. and 16.10)

payments disaggregated by date and recipient)? Annual financial audit report? (The financial audit reports may be available from another agency such as the Office of the Comptroller) Does the institution publish information on public contracts including all invitations to bid, clear rules on non-competitive bids, contract awards and criteria for the award? Does the institution follow generally accepted accounting principles or standards that allow for examination of the financial information? Is the information updated and collected in a systematic way? Findings made with regards to financial transparency of the court indicated that the court publishes audited account and it is made available at www.judicial.gov.gh. In addition, the Judiciary's financial information is audited by the Audit Service of Ghana and the report of the Auditor General is available to the public; however, it does not publish contract awards on its website. Also, the annual budget of the Judiciary is part of the national budget which is published widely on the website of the Ministry of Finance.²⁹

20.4 The 1992 Constitution of Ghana made provision for Freedom of Information, how to operationalise the provision, a functional Right to Information law is necessary. The absence of a functional RTI law provided for accessing information from public institutions is extremely difficult there as a measure of the transparency of the Judiciary, the study enquired on the responsiveness to requests for information as per the standard from UNCAC, Art. 13, paragraph 1(b); SDG Proposed Framework of Indicators, Goals and respective indicators for 16.10. The study found out that requests for information are typically processed through the Communications Department of the Court but there are no timelines about when the requested information will be provided. It is expected that the draft RTI Bill, when passed into law, will address such gaps.

20.5 How transparent is the Judiciary in performing its functions was the next enquiry that the study made? By transparency of judiciary functions the study looked at whether the criminal court publishes its decisions/sentences? Whether the court publicise hearings with broad public relevance? Does it hold public hearings on at least cases of public relevance? Does it allow media coverage of hearings? Does it publish transcripts of hearings? Are there restrictions to the media and public access to hearings such as for the protection of minors or the protection of witnesses? Are those restrictions concretely defined, narrowly tailored and only used in limited circumstances? In the past three years, have there been any complaints, reports or articles that indicate that restrictions are overused to prevent public access to court hearings? Does the court

29. <https://www.mofep.gov.gh/publications/budget-statements>

make available information on the terms of plea and charge agreements? The study found that although the Court does not publish decisions on its website, the media and public are given access to hearings except where the Court decides to hold aspects or all of the proceedings in camera depending on the nature of the case and in accordance with the law and regulations of court.

21.0 CIVIL SOCIETY PARTICIPATION

- 21.1 Civil Society engagement with the Judiciary is an important standard for open governance thus the study explored to what extent does the criminal court pro-actively engage with civil society organizations and the public to inform the public and gain feedback from key community groups in line with the standard from UNCAC Art. 13 and found that it was not established that the Court has a formal written policy of engagement with civil society; however, the Communications Department engages civil society. In addition, the Chief Justice's Justice Forum and Public Complaints Units are platforms used to deploy outreach programs to the public.
- 21.2 Enquiring whether the criminal court accepted and collaborated with civilian oversight of the institution, the study found that the court provides information to civil society organisations and collaborates on an ad-hoc basis (as and when needed) with civil society organizations; however, there's no civilian oversight of the Court because of concerns that, such framework could come into conflict with the independence of the judiciary. In a UNDP Report (2016)³⁰ countries such as Afghanistan, Bosnia and Herzegovina, Colombia, Indonesia, Kenya, Kosovo, Nepal, Nigeria, Paraguay, Philippines, and Somalia were observed in their efforts to promote transparency and accountability within the judiciary by opening up to the public without compromising their independence. The outcome helped in enhancing confidence in the judiciary.
- 21.3 Also, whether the criminal court have sound and appropriate protocols of engagement with the media to communicate about its performance or aspects of a criminal proceeding while at the same time not jeopardizing the integrity of the proceeding itself or a person's right to privacy, the study found that, the Communications Department fields media request for information. Judges and other personnel do not communicate with the media, especially on cases of national or public interest.

30. <https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/a-transparent-and-accountable-judiciary-to-deliver-justice-for-a.html>

22.0 CAPACITY

- 22.1 Taking into consideration the court's caseload, is the court's budget sufficient to adjudicate all the criminal cases under its jurisdiction as per the Financial and Human Resources standard from UN Basic Principles on the Independence of the Judiciary, Principle 7; UN Procedures for the Effective Implementation of the Basic Principles, Procedure 5. The study found that the caseload for a Judge and how long it takes for trials to be concluded suggests that the appointment of more Judges could reduce the caseload and expedite the adjudication of cases.
- 22.2 The study found that the Judiciary receives resources as provided for 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

23.0 INDEPENDENCE AND INTEGRITY

- 23.1 Articles 125, 126, and 127 of the 1992 Constitution set out the independence of the Judiciary and freedom from interference with its work as is set out by the standard from the UN Basic Principles on the Independence of the Judiciary; Bangalore Principles of Judicial Conduct. In practice however, attempts are made to interfere with its work as demonstrated by the expose' by undercover investigative journalist Anas Aremeyaw Anas³¹. Following the publication of the undercover investigations and disciplinary actions that ensued, the Judicial Service has instituted several Anti-Corruption measures. Among the measures are Integrated Case Management Systems, e-judiciary and a Public Relations Complaint Unit (PRCU)
- 23.2 On Professional Appointment/Selection/Recruitment as per the standard from UN Basic Principles on the Independence of the Judiciary, Principle 10, the study found that The Judicial Council is responsible for appointments. The process seems transparent and background checks and criminal records are conducted through a public process.³² The background checks offer the public an opportunity to participate in the appointment process.
- 23.3 On Performance Evaluations and Promotions (UN Basic Principles on the Independence of the Judiciary, Principles 11-13), the study found that there are clear

31. <https://www.bbc.com/news/av/world-africa-34814630/anas-aremeyaw-anas-ghana-s-undercover-journalist-unmasked>

32. https://www.transparency.org/whatwedo/publication/global_corruption_report_2007_corruption_and_judicial_systems

guidelines governing careers and progression of Judges and Magistrates in Ghana.

24.0 CONCLUSION

In conclusion, the research established that efforts are being made by the Judicial Service to implement global conventions which Ghana has signed onto. However, there are some gaps that require the attention of officialdom in order to bring the institution up to the standards set by frameworks like the SDGs, UNCAC, UNTOC, UN guidelines etc.

This report is aimed at contributing to the fulfilment the main object of the CRIMJUST project which is, strengthening criminal investigation and criminal justice cooperation along the cocaine routes in Latin America, the Caribbean, and West Africa.



The Supreme Court building of Ghana

25.0 ABBREVIATIONS

- AG - Attorney General
- ARAP-EU - Accountability, Rule of Law and Anti-Corruption Programme, European Union
- BNI - Bureau of National Investigations
- CHRAJ - Commission on Human Rights and Administrative Justice
- CI - Constitutional Instrument
- DLEU - Drug Law Enforcement Unit
- DPP - Director of Public Prosecution
- EOCO - Economic and Organised Crime Office
- GII - Ghana Integrity Initiative
- GLC - General Legal Council
- IGP - Inspector General of Police
- IPCC - Independent Public Complaints Commission
- MOJAGD - Ministry of Justice and Attorney General's Department
- NACOB - Narcotics Control Board
- PIPS - Police intelligence and Professional Standards
- PRCU - Public Relation and Complaints Unit
- RSIM - Research, Statistics, Information and Management
- SDG - Sustainable Development Goals
- SI - Service Instrument
- TOR - Terms of Reference
- UNODC - United Nation's Convention Against Corruption
- UNTOC - United Nation Convention Against Transnational Organised Crime