

Due process in police-led prosecutions: Views of Ghanaian police prosecutors

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Abstract

Criminal prosecutions led by police officers are integral to justice delivery in some common-law countries. Cooperation and participation of interested parties, particularly victims and witnesses, are important for successful prosecutions as most police prosecutors are not lawyers. Prosecutors adherence to due process when handling cases can secure parties' willing cooperation and participation. However, is due processes followed during police-led prosecutions of criminal cases? This study uses interview data from police prosecutors to explore police-led prosecutions in Ghana. Results show that police prosecutors do not pay significant attention to pre-trial conferencing with disputed parties. In addition, prosecutors non-adherence to due process is aggravated by irregular training and professional development, inadequate professional competence, and lack of pre-trial procedural uniformity and clarity. Finally, the paper discusses the implication of the results for theory and police prosecution policies.

Keywords: police prosecution, police prosecutor, pre-trial conference, Ghana, due process, professional development, training

Introduction

Lawyers employed by states usually prosecute criminal cases on behalf of countries or individuals who make criminal complaints against others. However, in some common-law jurisdictions, such as the United Kingdom (UK), Australia, New Zealand, Ghana, Nigeria, Zambia, Kenya, India, Malaysia, Singapore, and British colonies in the Caribbean and Central America, police officers prosecute misdemeanour cases (Alemika, 2009; Amagnya, 2011; Appiahene-Gyamfi, 2009; Opolot, 2008). When police officers bring charges against persons, present evidence, and lead witnesses at trials, it is called police prosecution (USLegal, 2011). Sworn police officers who prosecute criminal cases are referred to as police prosecutors. Despite police prosecution being vital to justice delivery in common-law jurisdictions, some scholars argued that it is characterised by challenges that hamper justice delivery (Beck, 2006; Corns, 1999, 2000; Horwitz, 1998; McGonigle, 1996). Notable concerns often raised include prosecutors' exercise of discretionary powers, the absence of sound and workable accountability mechanisms, and lack of requisite legal knowledge and skills for conducting prosecutions (Abegunde, 2014; Archer Commission, 1997; Beck, 2006; Corns, 2000; Horwitz, 1998).

Police prosecution challenges can be overcome when litigants, witnesses, and relatives willingly cooperate and participate in prosecutions. Research has shown that justice officials can secure people's willing cooperation and participation by adhering to due processes (see Akinlabi, 2018; Murphy & Cherney, 2011; Tankebe, Boakye, & Amagnya, 2019; Tyler, 2011; Tyler & Fagan, 2008; Tyler & Huo, 2002; Tyler & Murphy, 2011). However, studies on police prosecution and criminal prosecution more generally do not often explore the role of due process. Besides, police prosecution is the least researched area in policing (Brodeur, 2010; Hodgson & Roberts, 2010; Ulmer, 2018), which is blamed on the discontinuation of police prosecution in common-law

nations like the UK in the 1980s (Beck, 2006; Corns, 2000). However, police prosecution's discontinuance in the UK cannot explain the research apathy in Africa, Oceania, Asia and Central and Latin America since police prosecutions are still dominant in those jurisdictions. The perception that a significant part of what transpires in the lower courts is undeserving of considerable attention – 'ideology of triviality' (McBarnett, 1981, p. 223) – is a plausible explanation of the research apathy in such jurisdictions. This is supported by participants stating that this was the first time a researcher spoke to them about their work.

In this context, the current study examines police prosecution practices from the perspectives of police prosecutors. The study addresses the following research questions: (1) Do police prosecutors follow due processes in criminal prosecutions? (2) What challenges do police prosecutors and police prosecution face? (3) Do challenges of police prosecution impact adherence to due process? Police prosecution is an important area of research, given that cases handle in such prosecutions often affect vulnerable people. Also, prosecutors usually exercise vast discretionary powers, especially at the pre-trial stages that are unmatched by other justice officials and mostly beyond any form of review, not even by the courts (see Alemika, 2009; Beck, 2006; Ward, 2015). Moreover, prosecutors are typically not legally bound to publicly declare principles governing the exercise of discretionary powers or give reasons for decisions (Corns, 1999; Potas, 1984). So, prosecutors can exercise discretionary powers improperly due to error in judgement, corruption, discrimination, vindictiveness, lack of legal competence, and vague guidelines on discretionary powers (Beck, 2006; Gelsthorpe & Padfield, 2003; Horwitz, 1998; McGonigle, 1996). Improper exercise of discretionary powers can exacerbate if due process is not followed when prosecuting.

The next part of the paper discusses the historical development of police prosecution, its role in justice administration and challenges identified to be facing police prosecution. There is also a discussion of police prosecution in Ghana and the concept of due process and its relationship with police prosecution. The next part discusses the methods used to conduct the study, including the research design, sampling, data collection and sample characteristics. Next part presents the results of the study and discussion of key results, including police prosecutors not paying considerable attention to pre-trial processes, lack of logistics and resources, procedural impediments and inadequate training and professional development.

Police Prosecution: Origin, Importance and Challenges

Prosecution was not originally a function of the police but arose in the UK around the 1800s and was later introduced to other parts of the world through colonisation (Opolot, 2008). Police prosecution's emergence has been credited to the police's desire to prosecute cases they get to know so well through investigations (Corns, 1999; Laws of New Zealand, 1992; Opolot, 2008). Equally, police agencies' resistance to reforms towards changing police prosecutorial functions and treating summary prosecutions as dealing with 'less serious' crimes with 'minor' sanctions account for its persistence (Beck, 2006; Corns, 1999). Amagnya (2011) asserts that police prosecution's existence in modern days is due to increased crimes resulting in vast criminal cases requiring prosecution and the huge cost of establishing separate prosecution bodies or employing or maintaining adequate prosecution lawyers. Police prosecution existed in the UK until 1986 when a Crown Prosecution Service (CPS) was created to replace it. **However, it should be noted that substantial prosecution duties were returned to the UK police in 2012 for cases where there are guilty pleas, no pleas, defendants fail to appear, or drivers plead "exceptional hardship" (Bardens, 2014, p. 4).**

Police prosecution and police prosecutors' work are essential and can impact justice administration and delivery. For instance, the New Zealand Law Commission (1997) found that police prosecutors' role was the most influential contributor to confidence in the justice system. Also, the UK's reinstatement of additional prosecution powers to the police in 2012 after operating the CPS for over two decades (Bardens, 2014; Bristow, 2012; Home Office, 2014; Kinsman, 1993) demonstrates that police prosecution is relevant to justice administration. Precisely, police prosecution can reduce prosecutors' workloads and trials' durations. It can also free criminal justice systems (CJSs) of irrelevant cases by screening out cases without merits or sufficient evidence. These can expedite trials that will otherwise take long periods to be prosecuted by inadequate prosecution lawyers alone and reduce the costs of accessing and administering justice (Amagnya, 2011). Also, police prosecutors can act as independent and impartial 'ministers of justice', advance the rule of law, protect citizens, and maintain and improve trust and confidence in law enforcement agencies and justice systems (Beck, 2006; Horwitz, 1998). The discussions in this paragraph suggest that treating the police as only a law-enforcing institution omits their important prosecutorial function (Dixon, 1997).

Although police prosecution can help achieve greater efficiency in justice administration, it is often deemed as failing to achieve this in practice due to several challenges negatively impact its operations (see Beck, 2006; Corns, 1999, 2000; Frye, 2012; Horwitz, 1998; Ward, 2015). First, prosecution powers of the police are often without statutory backing. For instance, the UK introduced police prosecution to the world, but no statutes confer prosecution powers on the police at the start (Corns, 1999; Laws of New Zealand, 1992). The lack of statutory backing usually creates problems for police prosecution's and forms the basis of procedural criticisms. Other criticisms

are lack of procedural uniformity and clarity, competence, independence and impartiality, inadequate supervision and non-accountability, exercise of vast discretionary powers, limited or improper training and professional development, and corruption (Beck, 2006; Corns, 1999, 2000; Horwitz, 1998).

Several studies report that police prosecutors usually exhibit high levels of bias and partiality in criminal prosecutions (Ashworth & Redmayne, 2010; Beck, 2006; Corns, 1999; Frye, 2012; Law Commission, 1997; Ward, 2015). Police prosecutors exhibit partiality and bias because often, they cannot insulate themselves from police cultures of shielding colleagues and maintaining safety and security acquired from operational policing (Beck, 2006; Horwitz, 1998). In addition, the duality or bound-up nature of police prosecutions (i.e., the police being deciders and initiators of investigations and prosecutions) also accounts for police prosecutors' partiality or bias (Beck, 2006; Corns, 1999). Consequently, prosecutors' partiality or bias can result in inefficiencies and unfairness in prosecutions and affects effective justice delivery.

Equally, police prosecutors are usually accused of not following formal procedures properly. This is often blamed on lack of clarity and uniformity of prosecution procedures and inadequate training on critical ethical duties that can facilitate adherence to guidelines (Horwitz, 1998). For instance, several studies have shown that police prosecutors are typically not lawyers and lack the requisite legal competencies and skills for conducting prosecutions (see Amagnya, 2011; Law Commission, 1997; Wood, 1997). Besides, police prosecutors usually receive little and short training on prosecutorial duties that cannot adequately develop prosecuting skills like timing, presenting case facts and theories, advocacy, and cross-examination (Schönteich, 1999). As a result, they often rely significantly on operational training for

prosecutions, which unfortunately does not follow procedures and guidelines (Beck, 2006).

Police prosecution is essential to justice administration in some jurisdictions; however, prosecutors not adhering to due processes and guidelines can affect their performance and lead to injustice. For example, if due procedures are not followed, cases not meeting public interest principles and evidential requirements such as evidence being admissible at trial and sufficient to justify criminal charges and establish prima facie and guilt beyond a reasonable doubt will proceed to trials (Beck, 2006; Crown Law, 2010, 2013; Horwitz, 1998; McGonigle, 1996). This can be detrimental to justice delivery by opening avenues for miscarriage of justice and affect the legitimacy of justice systems and people's lives, freedoms, safety, reputations, property rights, and well-being (see Ashworth & Redmayne, 2010; McConville, Sanders, & Leng, 1991). Therefore, this study aims to explore challenges of police prosecution that can be remedied to promote fairness, efficiency and improve confidence and trust in CJSs.

Police Prosecution in Ghana

The then Gold Coast has traditional and customary procedures for adjudicating cases (see M Assimeng, 1986; M Assimeng, 1999; Nukunya, 1992). However, most of the procedures were demonised and replaced with British legal systems during colonial rule. That includes police-led prosecution, which began in 1876 when the British asked District Police Commissioners and officers in charge of police stations to act as judges and magistrates aside their policing functions (Appiahene-Gyamfi, 1995). Ghana continued to practice police-led prosecutions after independence without legal backing until the Law Officers Decree (1974, known as NRCD 279) legally granted prosecution powers to the police. Also, Executive Instrument 74 (1985) mandated the police to prosecute cases after military regimes suspended NRCD 279. Although Ghana's current

Constitution (1992) mandates the Attorney General (A-G) to prosecute all cases for the government, the A-G authorise the police to prosecute under Article 88(4) of the Constitution (1992).

So, in a majority of minor criminal offences, the police determine and review charges, decide whether to initiate prosecutions, and conduct prosecutions at the lower courts (Amagnya, 2011; Appiahene-Gyamfi, 2009). The police service has established Judicial Police (JUPOL) units at the district, divisional, regional, and national commands to handle criminal prosecutions (Amagnya, 2011). To be posted to the JUPOL units as prosecutors, police officers only need to obtain at least a sergeant's rank. All police prosecutors in Ghana are active police officers, with most of them merely possessing basic legal knowledge obtained from training attended when they joined the JUPOL units (Amagnya, 2017). Although police prosecutors in Ghana assist in prosecuting criminal cases and play critical roles in justice administration, police-led prosecutions are often perceived as fraught with challenges that hinder justice delivery. Police prosecutors have been accused of using coercive and extra-legal methods when dealing with the public and abusing prosecution processes, particularly at pre-trial stages (see Archer Commission, 1997; Daily Graphic, 2007; Dilip & Otwin, 2009; Ghana Police Service, 2009). Suspects and defence lawyers often complain of police prosecutors conspiring with police officers to torture and molest suspects to obtain evidence (see Daily Graphic, 2007).

Police prosecution in Ghana has a long history with several laws governing criminal prosecutions (e.g., Constitution, 1992; Criminal and Other Offences (Procedure) Act, 1960; Criminal Offences Act, 1960). So, what accounts for the complaints? Can non-adherence to due processes, prosecutors' exercise of vast discretionary powers, and the absence of prosecution guidelines and proper

accountability mechanisms account for the complaints? While policing in Ghana has generally attracted a significant amount of research (see Aning, 2002; Atuguba, 2007; Boateng, Makin, Abess, & Wu, 2019; Tankebe, 2008), police prosecution has received little to no scholarly attention not to talk of due process perspectives. Except for political motivated media discussions, news reports and a few studies (e.g., Archer Commission, 1997; Amagnya 2011), there is no information on police prosecution practices and police prosecutors' role in justice administration in Ghana.

Pre-trial conferencing with parties is an important process that ensures fair and impartial justice delivery, especially in some advanced jurisdictions and commercial cases (African Human Security Initiative, 2009; AfriMAP, OSIWA, & IDEG, 2007; House of Commons Justice Committee 2009). Pre-trial conferencing is similar to Packer's (1968) sense of due process as it allows prosecutors to listen and understand disputed parties by giving them a voice. However, pre-trial conferencing with parties is not formally regulated in Ghana. Thus, prosecutors are not legally required to hold pre-trial conferencing but do it out of common practice. Indeed, as the results of this study will show, only a few police prosecutors in Ghana out of practice meet defendants, victims, and others to discuss cases before trials. In addition, it should be noted that prosecutors do not meet all parties together, as it happens in restorative justice cases. Instead, they often hold separate discussions with victims, witnesses, defendants, and others to hear about their cases before going to court. From this context, the current study explores police prosecution practices from the perspectives of police prosecutors.

Due Process and Police Prosecution

The due process model proposed by Packer's (1968) concerns following laid down procedures in making decisions and treating people justly and fairly. Its main aim is to ensure that justice officials do not infringe on people's legal rights. The due process

model is innately linked to the procedural justice elements of treating people with respect and dignity, being impartial or unbiased, having trustworthy motives, and giving people a voice (Bottoms & Tankebe, 2012; Davies, Meliala, & Buttle, 2014; Sunshine & Tyler, 2003; Tyler, 1990; Tyler & Murphy, 2011). A crucial part of due process is giving litigants a voice – offering them the chance to tell their ‘side of the story’ before decisions are made (Tyler, 1990). It is also about having honourable intentions behind actions and being impartial – ensuring an absence of bias or discrimination in decision-making and making decisions based on relevant accurate information (Tyler & Huo, 2002). Finally, a vital part of due process is for officials’ to be courteous towards citizens and uphold people’s rights to make them feel valued (Mastrofski, Snipes, & Supina, 1996; Mazerolle, Bennett, Antrobus, & Eggins, 2012; Tyler, 1990; Tyler & Lind, 1992).

When officials adhere to due process in making decisions, the public tends to accept decisions, comply with the law, and cooperate or express willingness to cooperate with officials. For instance, several studies have shown that official-citizen encounters exhibiting elements of due process lead to citizens being more satisfied with interactions and outcomes of encounters (Mazerolle, Antrobus, Bennett, & Tyler, 2013; Mazerolle et al., 2012; Mazerolle & Martin, 2012; McCluskey, 2003; Tyler & Fagan, 2008). Satisfaction with interactions and outcomes can engender voluntary compliance and cooperation with officials. Studies have shown that adhering to due process significantly predicted people’s willingness to supply information about crime, cooperate with justice officials, participate in justice processes, and support the prosecution of cases (see Akinlabi, 2018; Bradford & Jackson, 2010; Cherney & Murphy, 2011; Jackson et al., 2012; Murphy, Bradford, & Jackson, 2015; Murphy & Cherney, 2011; Sunshine & Tyler, 2003; Tankebe et al., 2019; Tyler, 1990, 2011; Tyler

& Fagan, 2008; Tyler & Huo, 2002; Tyler & Murphy, 2011). For instance, Tankebe et al. (2019) found that perceived police fairness significantly increased Ghanaian commercial drivers likelihood of cooperating with the police. Also, Akinlabi (2018) found that Nigerians willingness to cooperate with the police is linked to officials' adherence to due process.

Police prosecutors are ministers of justice and advocates who have obligations to ensure that cases go through due processes where guilt or innocence is decided based on sufficient evidence and legal procedures. However, whether police prosecutors follow due process when prosecuting criminal cases is underexplored. Indeed, most studies on due process tend to focus on regular policing (see Mazerolle et al., 2013; Mazerolle et al., 2012; Mazerolle & Martin, 2012; Murphy & Cherney, 2011; Murphy & Mazerolle, 2018; Sunshine & Tyler, 2003; Tyler & Fagan, 2008; Tyler & Huo, 2002). This paper, therefore, examines police prosecution practices in Ghana, focusing on adherence to due process in police-led prosecutions and challenges of police-led prosecutions. Particularly, due process model elements of giving parties a voice and respecting fundamental human rights are explored. Giving parties a voice is linked to the pre-trial conferencing results where disputed parties are given a voice to talk about cases prior to actual court trials.

Methods

Research Design, Setting and Population

This study adopts a qualitative research design involving interviews and observations as the subject has no known research in Ghana. Interviews provided an opportunity for the researcher to clarify participants' concerns and probe further to obtain comprehensive information about police prosecution practices and challenges. Equally, observations allowed for direct experiences of actual events in the courts. The data were collected in

the two largest Ghanaian cities of Accra and Kumasi between March and April 2011. The cosmopolitan nature of those cities (see Ghana Statistical Service, 2016) and the readily available police prosecutors, courts, and high criminal activities associated with city life (Ghana Police Service, 2017; Judicial Service of Ghana, 2014) made them suitable for the study. Although the data was collected about ten years ago, the findings are relevant today as police prosecution in Ghana has not changed much. For instance, when the author interviewed state attorneys and police officers in 2018, they cited a lack of guidelines for police prosecution and police prosecutors' unawareness of guidelines used by state attorneys as major challenges hampering police prosecutions.

Access and Sampling

The study conforms to the University of Cambridge ethical guidelines for human research. Also, before interviews were conducted, permission was obtained from the police headquarters. Copies of the approval letter were circulated to JUPOL units at the police headquarters, Accra, and Kumasi. The JUPOL units were then contacted for permission and access to police prosecutors. The JUPOL heads facilitated access to prosecutors by inviting them to meetings, where the study details and confidentiality and anonymity issues were explained to them, and their consents sought. Of the 121 police prosecutors in the two cities, 48 comprising 13 in the headquarters, 20 in Accra, and 15 in Kumasi attended the meetings. However, only participants who consented and were accessible were interviewed. Some prosecutors who participated in the meetings were not interviewed due to busy schedules (Bachman & Schutt, 2019).

Research Instrument

The author developed a semi-structured interview guide with open- and closed-ended questions covering demographics and various themes on police prosecution. The areas include policing and prosecution career; prosecution processes and police prosecutors'

responsibilities; courts and the law; training and development; and police prosecution challenges. While most open-ended questions allowed prosecutors freeway explanations, some returned definitive responses such as age, year of joining service, police experience before becoming prosecutor, rank, the average number of cases handled per month, and court attendance per month. Examples of open-ended questions are ‘What do your work as a police prosecutor entail?’, ‘Are there problems facing police prosecution in Ghana, and if any, which ones do you consider to be serious?’ Questions on gender, education, and courts where prosecutors work were closed-ended with known options.

Data Collection

One-on-one interviews were conducted with 20 prosecutors who consented to participate in the study in Accra and Kumasi. Each city has ten prosecutors to prevent a situation where one city is overly represented (see Bachman & Schutt, 2019; Hagan, 2010). In addition, a group interview was conducted with thirteen prosecutors based at the headquarters. As police prosecutors conducted criminal prosecutions on behalf of the A-G’s Department and made some remarks about the department, a meeting was held with the A-G’s Department to verify discussions relating to it. Additionally, four courts (i.e., a district and circuit court in each city) were randomly visited to observe prosecutors’ work and interactions with judges, defence lawyers, complainants, accused persons, and witnesses. While the 20 one-on-one interviews were audio-recorded, notes were taken from the group interview, court observations and A-G’s Department’s discussion.

Data Analysis

The author transcribed the audio-recorded interviews averaging 50 minutes. The transcribed data and the notes from the group interview, court observations and A-G’s

Department discussion were systematically analysed. **This was done through content analysis.** First, the transcripts and notes were read several times to understand the information captured in the interviews fully. Next, words, statements, phrases, sentences, and paragraphs were chunked into categories in a word document based on similarities and differences (see Braun & Clarke, 2012). After the data was put into various categories on the word document, it was imported into NVivo for further analyses to create themes such as ‘pre-trial processes’, ‘training and development’, ‘procedural impediments’, and ‘logistics and resources’. Also, through the NVivo software, quantitative data about the number of interviewees who expressed a particular opinion or discussed a theme was generated. Finally, data from closed-ended questions and questions requiring definitive responses were input into SPSS to create statistics about the sample characteristics: age, gender, rank, education, among others. **The SPSS, as one of the most popular statistical packages for analysing data, allows this study to generate descriptive statistics to support the qualitative results.**

Sample Characteristics

The participants in this study comprised 33 police prosecutors, consisting of 76% males and 24% females aged 39 to 59 years. The gender distribution and age range reflected the police’s professional gender distributions and work age range (see Ghana Statistical Service, 2016). Nine of the prosecutors’ highest education was up to high school, with 24 having tertiary education, of which five were lawyers. None of the participants started as a prosecutor but in policing roles such as general policing, criminal investigating, secretaryship, administration, driving, and communication. Policing experience before becoming a prosecutor ranged from four to 30 years, while prosecution experience ranged from one to 19 years. Prosecutors’ ranks ranged from Sergeant to Deputy Superintendent of Police, held between two and 15 years. Twenty-

five prosecutors worked at circuit courts while eight worked at district courts, with most reporting to work directly at the courts except that they do not have court cases.

Results

This study has recorded significant findings that can impact justice administration and police prosecutions in Ghana. It found that police prosecutors underperformed in some tasks and performed well in others contrary to expectations. The study also identified challenges of police prosecutions in areas such as prosecutors paying less attention to pre-trial processes, defence lawyers frustrating trials and abusing police prosecutors, inadequate logistics and resources, and lack of training and professional development. The next sections present key findings.

Paying Less Attention to Pre-Trial Processes

Police prosecutors perform vital pre-trial and trial tasks when prosecuting criminal cases, significantly impacting justice delivery and outcomes. Key pre-trial duties include collaborating with investigators during investigations, reviewing dockets after investigations, and holding conferences with disputed parties before trials. However, it emerged that police prosecutors do not give pre-trial tasks as much attention as trial tasks. For example, all police prosecutors stated that they only get to know about cases referred to them after investigations have been completed, suggesting that prosecutors do not play any role during investigations. In this regard, a female prosecutor in Kumasi said, “*As prosecutors, we only get to know of cases after investigations have been completed and cases refer to us by JUPOL heads.*” This quote, many of which are in other interviews, suggests that prosecutors do not have opportunities to contribute to investigations that can improve evidence gathering. Buttressing this point, most prosecutors complained about investigators conducting armchair investigations resulting in weak evidence or the absence of essential ingredients for successful prosecutions.

Prosecutors explained armchair investigations as situations where investigators sit in the office to gather evidence instead of going to where offences allegedly took place. So, not collaborating with investigators during investigations can be regarded as non-adherence to due process.

The second pre-trial task is reviewing dockets where prosecutors peruse case files assigned to them to understand and appreciate the nature of cases and verify whether evidence assembled by investigators support charge(s) preferred and are sufficient. This process allows prosecutors to supervise cases investigated and charged by police officers by determining whether evidence support preferred charge(s) or is adequate to support prosecutions (see Gelsthorpe & Giller, 1990). In addition, it allows prosecutors to amend charges or return cases to investigators for re-investigation. All these can ensure that the courts deal with cases with sufficient evidence, maximise resources and time, and reduce delays that characterise justice processes. Consequently, people who encounter justice systems can experience quick and perhaps, efficient justice delivery. All participants stated that they review dockets after cases have been referred to them to decide whether to take them to court for prosecution or not. *For example, one female prosecutor in Kumasi said, “when dockets are referred to prosecutors by JUPOL heads, we review the dockets to find out whether there is sufficient evidence to support cases being taken to court or not.”* Although this process can mitigate the effects of non-collaboration between investigators and prosecutors discussed earlier, it delays cases. It is also likely that by the time prosecutors send cases back for re-investigation, evidence might have been tainted with time-lapse.

The final pre-trial task is conferencing, where prosecutors meet with disputed parties (e.g., victims, witnesses, accused persons, and relatives) to discuss cases and impending trials. Unfortunately, the data shows that most prosecutors do not pay

adequate attention to conferencing with disputed parties before trials. For instance, only 20% of interviewees talked about conferencing with parties in the one-on-one interviews. The remaining 80% did not mention or discuss conferencing with parties before trials as either a prosecution process or task performed by prosecutors. Likewise, pre-trial conferencing with parties was not mentioned or discussed in the group interview either as a prosecution process or a task performed by prosecutors. However, the four interviewees who spoke about conferencing with parties regarded it as a vital process and duty of prosecutors that gives parties a voice after investigations and allows prosecutors to obtain firsthand information and understand cases from different angles. For instance, a 48-year-old female prosecutor in Accra stated:

You need to hold conferences with victims and witnesses to hear from them as you were not there when offences were committed. What you read from dockets are investigators' perspectives based on hearsay. So, it is always good to listen to the victims, witnesses and even accused persons before trials.

The remaining three made similar expressions to show how important pre-trial conferencing with parties is to prosecute cases successfully and ensure fairness in justice delivery. However, as the results show, most prosecutors appear not to place much importance on this process that gives parties a voice post-investigation. Besides prosecutors not adhering to some pre-trial procedures, other challenges were identified.

Lack of Logistics and Resources

A major challenge raised by interviewees was the lack of logistics and resources relating to office spaces, official vehicles, libraries, and books. All interviewees in the one-on-one interview and most participants in the group interview raised concerns about the lack of logistics and resources needed to perform their functions effectively. For

example, a male prosecutor in Accra said, *“we as police prosecutors do not have separate offices where we can review dockets and hold conferences with disputed parties.”* Indeed, the author observed that most prosecutors shared spaces with colleagues in open rooms at the police stations and courts, corroborating prosecutors’ accounts about the lack of individual office spaces. Participants also talked about the unavailability of libraries and books that can help improve their knowledge and skills. In this regard, a male prosecutor in Accra asserted, *“prosecution is a job that requires regular use of legislation. However, police prosecutors have no access to libraries, laws or books to refer to when the need arises.”* In addition, most participants talked about the absence of vehicles to transport accused persons to and from courts. Several participants stated that they use their cars or hired cars to transport accused persons to and from courts, which the state does not reimburse. **Recounting, a male prosecutor in Kumasi** said, *“there have been several instances where I have to convey accused persons to and from court in my personal car.”* Indeed, when interviewees discussed proposals for improving police prosecution, providing adequate vehicles for transporting suspects to and from police stations or prisons and the courts was the second most crucial suggestion.

These challenges can contribute to inefficiencies and corruption, as public officials who are not satisfied or comfortable with their working environment can be prone to the dangers of corruption (Amagnya, 2020). Also, prosecutors may be less caring when not provided with adequate resources and logistics, impacting justice administration, and affecting individuals’ lives and liberties. Equally, the lack of individual office spaces can affect prosecutors’ holding of pre-trial conferences with parties, which often require privacy to ensure confidentiality and honest discussion.

Training and Professional Development

Many prosecutors acknowledged that training and professional development are essential in helping them perform their duties efficiently and effectively. They noted that training content, such as laws, evidence, prosecution procedures, and preparation of cases, helped them complete their prosecution jobs. For instance, a 46-year-old male prosecutor in Kumasi stated, *“I got to know about new laws and developments in prosecution through a training I attended.”* However, despite the importance of training and development, most participants complained of inadequate training of police prosecutors. Participants in the group interview extensively discussed the lack of regular training for police prosecutors. They noted that training organised for prosecutors often depends on the availability of surplus funds to the police administration and/or the generosity of external organisations. The idea of surplus funds and the generosity of external organisations were also raised in the one-on-one interviews by most participants. For example, a 43-year female in Kumasi stated, *“Most of the training for police prosecutors are funded by external organisations as police authorities often rely on surplus budgets to train us.”* So, it was unsurprising that all participants mentioned regular training of prosecutors as the most significant improvement needed to advance police prosecution in Ghana.

Procedural Impediments

Most prosecutors complained of various impediments they encounter when prosecuting cases. Prominent ones include non-cooperative complainants and witnesses, awareness of rights and demanding prosecution of cases, easy access to legal services due to availability of lawyers, emergence of new laws requiring continuous learning, and effects of modernisation and technological advancement. For example, on the availability of lawyers and easy access to legal services, a 54-year-old male in Accra stated:

Hmmm, it is quite difficult to conduct prosecutions now than in the past when we have only a few lawyers [...], and so many cases were trialled without legal representations. However, lawyers are now everywhere, even in the villages, making it easy to access legal services. So, to prosecute effectively as a police prosecutor, one should know the law to enable them to argue with the lawyers.

On non-cooperative complainants and witnesses, a 28-year-old male in Accra said, “*I took one case to court and surprisingly, the complainant denied knowing the accused person when it was time for them to testify.*” In addition to the one-on-one interviews, all the stated impediments were extensively raised and discussed in the group interview.

Participants also cited some legal challenges to police prosecution, such as dismissal of cases when police prosecutors are late or absent for hearings, burden of proof, and restricting police prosecutors from replying to issues of law. For instance, a 48-year-old male in Kumasi said, “*Police prosecutors cannot reply to questions of law because we are not lawyers. So, lawyers sometimes wrongly quote laws and get away with them, especially when judges are not firm.*” On the dismissal of cases when prosecutors are absent or delayed in arriving at courts, a 52-year-old male in Accra remarked:

When lawyers get to the courts and realise police prosecutors are absent or late to court, they quickly make applications for cases to be struck out. Indeed, cases are sometimes struck out before police prosecutors get to the courts. However, when lawyers delayed or are absent, judges will ask us to wait for them, and even in some instances, cases are adjourned due to lawyers’ absence. So, why is it that the courts wait or adjourn cases when lawyers are late or absent but strike cases out when it is police prosecutors?

Another hurdle cited as making police prosecutions difficult is defence lawyers frustrating proceedings with adjournments. All the prosecutors complained of defence lawyers adopting tactics, such as ‘unnecessary’ requests for adjournments with flimsy excuses to delay, distract, and frustrate court processes. According to them, this mainly happens when lawyers realise that they have weak cases with less chance of succeeding. Some prosecutors even described defence lawyers as ‘headaches’ and bullies. For example, one prosecutor in Accra cited a situation where a judge intervened when a defence lawyer tried to verbally abuse and bully him during a hearing. A 49-year-old male in Kumasi also remarked:

Defence lawyers are a severe ‘headache’. For example, I had a case where a defence lawyer strangely brought medical reports to request adjournments on seven different occasions. I thought that was not common, and it was just a way of buying time and delaying the processes. So, I decided to go to the said hospital one day to find out (...), and there was nobody like that on admission at the hospital. Lawyers even tell all kinds of lies to the courts and/or clients to deceive them when they want to delay cases.

Although the results about lawyers are interesting, it is essential to acknowledge possible bias in the prosecutors’ accounts. Justifiably, police prosecutors may have an overly pessimistic and non-objective view of defence lawyers. Therefore, future studies should consider the views of multiple stakeholders to validate these results or otherwise.

Discussion

This study found that police prosecutors do not pay adequate attention to due process. This is manifested in them paying little attention to the pre-trial process or task of conferencing with parties. Holding pre-trial conferences with disputed parties enhances

justice delivery by giving disputed parties a voice after investigation and allowing prosecutors to discuss cases with parties and obtain firsthand information about cases' histories and facts. Importantly, it will enable prosecutors to provide parties with information about trial times and prepare parties for what Ellison (2007) describes as "the unfamiliar process of testifying in criminal proceedings" (p.117). Therefore, not paying appropriate attention to pre-trial conferencing can result in non-adherence to due process and affect the impartiality of justice systems, effective, efficient, and fair justice delivery. Moreover, when prosecutors do not hold pre-trial conferences with parties, there is a high potential for injustice as they will rely solely on evidence gathered by investigators to prosecute cases. Research has shown that investigators sometimes manipulate evidence to secure successful prosecutions and convictions to boost their status or protect colleagues, institutions, or authorities (see Horwitz, 1998).

Equally, when victims and witnesses are unaware of trial dates or times or feel that they are not given a voice, respected or treated fairly due to no pre-trial conferencing, they may not cooperate with prosecutors or participate in prosecutions. Several reasons may account for police prosecutors' not paying significant attention to pre-trial conferencing. First, the lack of pre-trial procedural clarity is due to the absence of written guidelines on police prosecution in Ghana and most common-law countries, particularly during pre-trial processes (see Amagnya, 2011; Gelsthorpe & Padfield, 2003), can be a major factor. Second, the lack of explicit guidelines and procedural clarity on how police prosecutors handle complainants, victims, witnesses, and litigants' relatives can confuse and/or frustrate litigants and their relatives during criminal justice processes and create avenues for corruption and injustice. **This is particularly so in jurisdictions such as Ghana, where police officers in various department frequently**

abuse their authority and powers, engage in gross misconduct, and intimidate people that come into contact with them at the slightest opportunity (see Boateng et al., 2019).

A provision of clear prosecution guidelines, especially for the pre-trial processes, is necessary to facilitate easy and secure handling of cases, regulate the exercise of discretionary power, and ensure proper treatment of litigants and their relatives during justice processes. Although such guidelines may not prevent all misconduct, they can aid in borderline cases and persuade officers deterred by more precise and/or additional rules to adhere to due process when dealing with litigants. An urgent action to improve police prosecution is making codes used by prosecution lawyers and new laws about criminal prosecution available to police prosecutors and training them on their usage. In the long term, the author will submit draft guidelines to Ghanaian authorities to consider as a policy document that can harmonise police prosecution practices and processes.

Consistent with findings of prior studies (e.g., Beck, 2006; Corns, 2000; Frye, 2012), prosecutors' inadequate training and professional development emerged as a significant challenge of police prosecution. Prosecutors' training and professional development are linked to their legal competence and understanding of legal principles and rules of evidence (Alemika, 2009; Beck, 2006; Gelsthorpe & Padfield, 2003; Horwitz, 1998). Indeed, training and professional development help prosecutors to refresh or improve their knowledge and understanding of the law, learn about new or changing rules and modern prosecution practices and procedures to enhance the conduct of criminal prosecutions (see Beck, 2006; Horwitz, 1998). Thus, police prosecutors' inadequate training and professional development imply that they lack the required knowledge, competence, and skills to charge and prosecute cases successfully.

Irregular training and professional development for police prosecutors may indicate that authorities do not regard police prosecution as playing an important role in justice administration. All Ghanaian officials complain – often rightly so – about lack of training and resources. However, police prosecutors ‘sandwiched’ between the police and A-G’s Department appears to substantially contribute to police prosecutors’ irregular training and professional development. In Ghana and most common-law countries, police prosecutors are usually sworn police officers under the police management but prosecute cases on behalf of justice ministries. This situation makes it hard to determine the institution responsible for police prosecutors’ training and professional development.

Since police prosecution is integral to justice administration in some countries, measures must be implemented to address police prosecutors’ irregular training and professional development. First, authorities in jurisdictions that practise police prosecutions must allocate and provide sufficient and dedicated resources for police prosecutors’ training and professional development. Regular and consistent training can equip prosecutors with the requisite knowledge and skills to perform their duties and adhere to due process. Also, it can prevent the high costs and problems of establishing independent institutions or recruiting only lawyers to replace police prosecutors as prior studies recommended (Beck, 2006; Horwitz, 1998; McGonigle, 1996). After this study, the United States supported the Law and Development Associates to train police prosecutors in Ghana between 2015 and 2017 (see Abbey, 2016; LADA Group, 2018; Ministry of Interior, 2017). Such a welcoming development must be continued by Ghanaian authorities and replicated in other jurisdictions practising police prosecutions.

Second, governments can recruit and assign lawyers to district and divisional police commands to assist and supervise police prosecutors. Such lawyers can also

liaise between prosecuting agencies, prosecutors, and the police. Thirdly, the police can strategically recruit lawyers as police officers who will become prosecutors instead of regular police officers. Finally, in the long term, scholarships should be awarded to existing police prosecutors to be trained as lawyers on a part-time basis.

Contrary to well-known arguments, this study found that investigators and police prosecutors do not collaborate during investigations despite both works in the police. Police prosecutors typically emerge from police institutions and usually strongly associate with them. As a result, they usually cooperate with investigators to ensure that cases are investigated appropriately to gather appropriate and sufficient evidence to guarantee convictions at the end of prosecutions (see Horwitz, 1998; Ma, 2008). The result also counters criticisms against police prosecutors, such as lacking impartiality and seeking convictions at all costs to get offenders to account for their crimes through imprisonment or fines and deter potential criminals (see Horwitz, 1998; Ma, 2008). The result is refreshing for due process and fairness reasons. Investigators and prosecutors not cooperating may allow prosecutors to be independent and follow due procedures that ensure impartiality, less bias, and safeguards litigants' rights. In this study, prosecutors stating that they aim to assist the courts in delivering justice and not gain convictions at all costs can be attributed to non-cooperation with investigators.

Police prosecutors not desiring to gain convictions at all costs contradicts and challenges arguments in the police prosecution literature. However, it may be due to a desirability effect where the participants want to make their institution looks good or impress the researcher. Further studies on police prosecution practices are needed to confirm or disprove these results. In addition, the findings' generalisability can be limited by the study's small and regional sample. Future studies should include a bigger sample that also considers the perspectives of other actors relevant in trials (e.g.,

detectives, complainants, witnesses, accused persons, attorneys, judges) and rural regions, where police prosecutors may have different experiences and views. This will be a broader approach to the topic and allow police prosecutors' accounts to be contrasted with versions of other actors. Despite the limitations, this study's results have implications for police prosecutions beyond Ghana, as democratic and administrative institutions and practices in Ghana are models for some African countries (Amagnya, 2020; Mahama, 2013; Roberts, 2012).

Conclusion

This study examined police prosecution practices in Ghana using interview data from police prosecutors. The results are significant insight from participants that can be a useful step towards integrating academic research with practices to improve police prosecution. In addition, this study identified challenges of police prosecution, such as not holding pre-trial conferences, defence lawyers verbal abuse of police prosecutors, and non-cooperation between investigators and prosecutors that have not been previously identified in the literature. Likewise, some results contradict and challenge criticisms of police prosecution, requiring further research. Finally, the study, which goes beyond citizens' assessment of practices in CJSs, shows that police prosecution can be improved by providing adequate logistics and resources and taking prosecutors' training and professional development seriously.

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