PUNISHING HONOURABLE MAHAMA AYARIGA FOR CONTEMPT OF PARLIAMENT IS UNCONSITIUTIONAL AND VOID: BY MARTIN A. B. K. AMIDU

INTRODUCTION

I have read, examined and analyzed the "Report of the Special Committee To Investigate The Bribery Allegation Made Against The Chairman And Some Members Of The Appointments Committee", dated 29th March 2017 and signed by Hon. Joe Ghartey, Chairman, Special Committee, and Alhaji Ibrahim Gombilla, Clerk to the Committee. I have also followed the proceedings of Parliament of 30th March, and 7th April 2017 respectively in connection therewith, and arrived at the considered conclusion that the conduct of the Committee and Parliament in punishing the Hon. Mahama Ayariga for contempt of Parliament is unconstitutional and void.

It would appear that because Parliament belittles the intelligence of the sovereign people of Ghana who voted it into office, it chose to give the ruling on such an important matter of public importance on the last day of its session before breaking for the Easter holidays so that public discussions, reactions, and exceptions to its conduct may take place while it is on recess. I have refused to take the bait and decided pursuant to my constitutional rights under Article 3 of the 1992 Constitution to publish my considered views on the unconstitutional conduct of Parliament on its resumption from the Easter recess.

For the purpose of the convenience of some readers, I state first the conclusions of my examination and analysis of the Report of the Special Committee and the conduct of Parliament in purporting to punish the Hon. Mohammed Ayariga for contempt of Parliament. The detailed examination and analysis of the Committee's report and the proceeding of Parliament that led me to arrive at those conclusions then follow together with a concluding epilogue.

The detailed examination and analysis of the report of the Special Committee hereunder demonstrates that a casual reading and comparison of the Terms of Reference of the Special or Ad Hoc Committee of Parliament with the purported conclusions and recommendations made by the Committee against Hon. Mahama Ayariga which were accepted, approved and acted upon by Parliament to sanction him for contempt of Parliament shows that the conduct and processes beginning with the appointment of the Committee and leading up to the conviction and sentencing of Hon. Mahama Ayariga are inconsistent with and in contravention of Articles 12, 17, 19, 24, 103, 116, 121, 122 and 296 of the 1992 Constitution, Section 32 of the Parliament Act, 1965 (Act 300), and Orders 28, 30 (2), 31, 102, and 164 of the Standing Orders of Parliament. They are accordingly null, void and without effect whatsoever.

Secondly it shows that the Committee and Parliament exceeded their respective jurisdiction and acted unconstitutionally when they purported to convict the Hon. Mahama Ayariga of "contempt of Parliament on the strength of Article 122 of the 1992 Constitution, Section 32 of the Parliament Act, 1965 (Act 300) and Orders 28 and 30 (2) of the Standing Orders of Parliament".

The Committee knew that under Order 197 of the Standing Orders it was enjoined to confine its deliberations to the matter referred to it by the House and any extensions or limitations to it made by the House (in this case the bribery allegations) but nonetheless went beyond to make findings and recommendations for contempt of Parliament.

Thirdly it puts beyond doubt the fact that the Committee, and Parliament acted unconstitutionally in convicting and punishing the Hon. Ayariga "because Mr. Mahama Ayariga failed to prove that indeed Hon. Boakye Agyarko gave money to Hon. Joseph Osei-Owusu to be distributed to Members of the Appointments Committee with a view to bribe them" when there was no complaint or charge of contempt of Parliament under the Committee's Terms of Reference against him personally pursuant to which such findings, recommendations and sanctions could even have been exacted under Articles 103 and 122 of the 1992 Constitution and the Standing Orders of Parliament.

Fourthly, it shows clearly that, the Committee and Parliament deliberately acted unconstitutionally and with impunity in disrespect of the sovereignty of the people under Article 1 of the Constitution. This is demonstrated by the fact that the Committee could not have referred to Article 122 of the 1992 Constitution, Section 32 of the Parliament Act, 1965 (Act 300) and Orders 28, 30 (2), and 102 (2) of the Standing Orders in its report without realizing that it was exercising powers and functions exclusively reserved for the Committee of Privileges in finding and recommending Hon. Mahama Ayariga to be convicted and sentenced for contempt of Parliament for matters that were said outside Parliament. This is why the conduct of the Committee and Parliament affronts and abuses the sovereign people of Ghana to whom it is answerable at all times by virtue of Articles 1 and 3 of the 1992 Constitution.

The examination and analysis herein also shows that a comparison of the Terms of Reference with the conclusions and recommendations of the Committee demonstrate clearly that there is no express or implied complaint, allegation or charge of contempt of Parliament made in the Terms of Reference against Hon. Mahama Ayariga personally or any other person to ground any power in the Committee to make the findings and recommendations of contempt of Parliament it purported to make in its report to Parliament. It also explains why Hon. Mahama Ayariga boldly and publicly in Parliament (and was widely broadcast and reported on 30th March 2017 to have) objected to the jurisdiction of the Committee and Parliament to find him guilty of contempt of Parliament.

It further explains why Hon. Mahama Ayariga rendered the type of verbal apology he made on 30th March 2017 and which he subsequently wrote at the behest of Parliament and read again on 7th April 2017. It is amazing that reasonable people can call the letter read by Hon. Mahama Ayariga on 7th April 2017 an unconditional apology simply because the word "unconditional" appears in the letter. The meaning and effect of that letter to any reasonable person should be clear: "Parliament has found me in contempt of Parliament and demanded an unconditional

apology from me consequently I unconditionally apologize to Parliament." No remorse or regret whatsoever expressed by him in the purported letter of apology.

Speaking for myself and in exercise of my fundamental constitutional rights pursuant to Article 3 of the Constitution I say that Parliament still owes the Sovereign People of Ghana a fair, transparent and accountable investigation into the allegations of bribery and corruption made against the Appointments Committee of Parliament. It affronts the dignity and honour of the people under Article 1 and 3 of the 1992 Constitution to be treated to an unconstitutional process that ends up sacrificing one of its members as a scape goat for very serious allegations that affects the confidence of We The People in the working and integrity of such an important constitutional body established to guarantee to us democracy, the rule of law, separation of powers, transparency, probity and accountability in governance.

The people of Ghana voted on 7th December 2016 to change an inept and corrupt Government and its majority in Parliament and to replace it with a President and his party in Parliament which promised to deal with the cancer of corruption that had consumed the body polity. No credit is done to the change voted for by the overwhelming majority of Ghanaians when one of the first allegations of bribery and corruption made against prominent members of the 7th Parliament is investigated in a manner that leaves a perception of an unconstitutional window dressing and whitewashing intended to deceive the sovereign people of Ghana. The bi-partisan manner and collaboration in Parliament to accept without debate an investigation report which is clearly unconstitutional demonstrates how far the political establishment undermines the Constitution when no voice is raised against its abuses.

Parliament could not have been unaware of the fact that because prominent members from its ranks were the subject of the allegations of bribery and corruption, the most transparent and accountable way to dispose of those allegations was to use the processes provided for under Chapter Twenty-Three of the Constitution, particularly Article 278 © thereof to submit a resolution to the President to appoint a Committee of Enquiry to investigate the allegations of bribery and corruption against members of the Appointments Committee. Parliament knowingly chose to constitute itself into a prosecutor, jury and judge in its own cause and act unconstitutionally to punish a scapegoat for contempt in the hope of appeasing the public perceived to be a rabble instead of sovereign and intelligent.

An impartial and independent Committee of Enquiry can yet be constituted to impartially investigate the allegations of bribery and corruption in the Appointments Committee of Parliament.

The President of the Republic was elected upon an anti-corruption agenda and it is expected that he will put this matter to rest by setting up a Commission of Enquiry under Article 278 of the 1992 Constitution to assuage the public's suspicion of any perception of unconstitutional cover-up or window dressing in this matter. This is a challenge to the President because his party, the

New Patriotic Party (NPP) on whose behalf he promised the fight against corruption is the majority in the Parliament against which the allegations of bribery have been made in the Appointments Committee and which also supervised the unconstitutional investigations. May the anti-corruption wishes of Ghanaians for changing the Government at the polls on 7th December 2017 not be in vain!

EXAMINATION AND ANALYSIS OF THE UNCONSTITUTIONAL CONVICTION FOR CONTEMPT OF PARLIAMENT

Introduction

On 7th April 2017 Parliament completed the process of convicting and sentencing Honourable Mahama Ayariga for contempt of Parliament based solely upon the Report of an Ad Hoc or Special Committee of Parliament without the Hon. Ayariga having ever been charged personally with any offence of Contempt of Parliament or offered the opportunity to specifically defend such a charge. The Speaker on this day instructed and compelled Hon. Mahama Ayariga to read a prior agreed written apology letter by him to Parliament dated 3rd April, 2017. The Speaker of Parliament on behalf of Parliament then purported to accept Hon. Mahama Ayariga's apology and to forgive him because: "In all circumstances of this case, I have come to the conclusion that the Honourable Ayariga should be shown mercy on this occasion. May he go and sin no more. He is warned never to peddle such expensive rumours in his affairs in this house." The Speaker is reported by Starr FM to have continued: "I must also extend a warning to some four or five honourable members who deemed it proper to make untoward lies apparently in support of Ayariga regarding the conduct for which the Honourable Ayariga has now apologized." Parliament thus concluded the theatrics surrounding the acceptance of the investigations report of an Ad hoc Committee of Parliament into allegations of bribery made against the Chairman and other members of the Appointments Committee and a nominee whom it had vetted.

The context of the proceedings of Parliament on 7th April 2017 cannot be understood without the events that took place in Parliament on 30th March 2017 using Citi FM online as my source. On 30th March 2017 I read on Citi FM online that the Report of the Ad Hoc or Special Committee purportedly appointed by Parliament to investigate the bribery allegation made against the Chairman and other members of the Appointments Committee of the 7th Parliament had been laid before, approved and accepted by Parliament. Hon. Mahama Ayariga was reported to have been found guilty of contempt of Parliament with a recommendation for him to be reprimanded by the Speaker of Parliament and to render an unqualified apology to Parliament to purge himself of contempt.

When the alleged contemnor, Hon. Mahama Ayariga, was called upon to render his apology to Parliament he took objection to the jurisdiction of the Special Committee to have found him guilty of contempt of Parliament before stating that he apologizes because the Speaker and the House had asked him to do so. In consequence of the manner and nature of the apology rendered

by the alleged contemnor, the Speaker adjourned the proceedings to the next day to enable him make a ruling on the matter. The matter was again adjourned the next day to enable the Speaker to make a ruling in due course; the proceedings of 7th April 2017 contains the ruling made by the Speaker on the last sitting of Parliament before the Easter break.

After the proceedings of Parliament on 30th March 2017 I received several invitations and entreaties from the media for my opinion on the report of the Committee and the proceedings of Parliament in connection with it. I declined to hazard any views when I had not seen the Report of the Special Committee based on which Parliament purported to have found the contemnor guilty and exacted the punishment of an apology from him. On 5th April 2017 one of the media houses made available to me a copy of the 44 pages "Report Of The Special Committee To Investigate The Bribery Allegation Made Against The Chairman And Some Members Of The Appointments Committee" dated 29th March 2017 and signed by Hon. Joe Ghartey, Chairman, Special Committee and Alhaji Ibrahim Gombilla, Clerk to the Committee. As the matter was still pending before Parliament for a ruling I had to await the delivery of the ruling and conclusion of the matter by Parliament.

Now that Parliament has concluded the proceedings in respect of the allegation of bribery, and transformed it into an allegation and punishment of contempt of Parliament without any findings and recommendations of the Committee of Privileges contrary to the mandatory injunctions of the Constitution and Standing Orders of Parliament, the matter passes into the public domain for the judgment of We The People in whom sovereignty and the defence of the Constitution is vested under Articles 1 and 3 of the 1992 Constitution.

EXAMINATION AND ANALYSIS

Terms of Reference of the Committee

The Terms of Reference of the Committee as stated in paragraph 9 of the Report are as follows:

> "i. Establish whether the First Deputy Speaker, Mr. Joseph Osei-Owusu took money from the Energy Minister designate, Mr. Boakye Agyarko and gave it to the Minority Chief Whip, Alhaji Mohammed-Mubarak Muntaka to distribute to Members of the Appointments Committee;
>
> ii. Establish whether there were attempts to bribe Members of Appointments Committee, and
>
> iii. Look into the remit of complaints and assertions made by the First Deputy Speaker about the matter."

The Terms of Reference of the Committee upon which it proceeded to enquire into and make a report to Parliament did not mandate it to make any recommendations to Parliament but simply to establish the facts based on its terms of reference.

The Committee's Methodology and Immunity of Witnesses in Parliament

The Special Committee appears to have noticed the limitations imposed upon it by its Terms of Reference and consequently decided to spell out in clear terms the methodology upon which to execute its mandate in paragraph 13 of the Report thereof.

In the Committee's methodology section particularly paragraph 13 thereof the Committee stated that it decided to hold some sittings in public since the matter was of public importance. The Committee identified four key witnesses for the purpose of the public hearings, namely, Hon. Joseph Osei-Owusu, Hon. Alhaji Mohammed-Mubarack Muntaka, Hon. Mahama Ayariga, and Hon. Boakye Agyarko. In the words of the Committee: "All these witnesses, were witnesses of the Committee. None of them was considered as an accused person, plaintiff or defendant." Hon Samuel Okudzeto Ablakwa was later added to the list of four of the Committee's public witnesses upon the specific request from his lawyers to be permitted to give evidence and "to provide evidence that would assist your Committee to reach a fair and true conclusion on this substantially important matter of public interest."

In spite of the clear statement by the Committee that none of the witnesses appearing before it was accused of any breaches of law or the Constitution for which a defence had to be proffered at the hearing, the Committee after reviewing the evidence of the witnesses before it decided to evaluate the evidence by some standard of proof as though it had conducted an adversarial adjudication. In this connection it reminded itself at paragraph 81 and 82 of the Committee's Report of the fact that "Parliament established this Special Committee to inquire into the allegation of bribery" and underscored the fact that "indeed Parliament itself, like Caesar's wife should be above reproach."

Again, in paragraph 83 of the Report the Committee repeated the fact that: "the Committee is a fact-finding Committee….this Committee did not conduct a trial in the nature of a court trial. There were no accused persons before us, neither were there plaintiffs nor defendants. All the persons who appeared before the Committee or submitted Memoranda were witnesses assisting the Committee to ascertain the truth or otherwise of the allegation." Who then was to meet the alleged standard of proof which the Committee had purported to set out in the Report when the Committee had itself decreed that there was to be "no accused before us, neither were there plaintiffs or defendants"? None of the public witnesses!

By stating in the report that there was to be "no accused before us, neither were there plaintiffs or defendants" the Committee had invoked Article 121 of the 1992 Constitution which gives witnesses to proceedings in Parliament the same privileges as if they were appearing before a court. One of the privileges of such a witness appearing as the court's own witness is that he cannot suddenly be treated by the court as an accused or a person complained against and convicted upon the evidence adduced before the court of which he was a mere witness of that court. This cannot be done even to a witness called by a party to the case.

I believe that it is for this reason that Article 121(2) of the 1992 Constitution states that an answer by a person to a question put by Parliament is not admissible against him in any civil or criminal proceedings outside of Parliament, except proceedings for perjury brought under the criminal law. It stands to reason from Article 121 of the 1992 Constitution that the Committee bound itself by this provision of the Constitution and disabled itself by its own adopted methodology from finding and recommending any of the five public witnesses of the Committee, namely, Hon. Joseph Osei-Owusu, Hon. Alhaji Mohammed-Mubarack Muntaka, Hon. Mahama Ayariga, Hon. Boakye Agyarko, and Hon. Samuel Okudzeto Ablakwa for conviction and sentencing for the offence of contempt of Parliament.

Evaluation and Observations by the Committee

The Committee after what it called a critical evaluation of the evidence adduced before it made four observations, namely: (1) that Hon Mahama Ayariga was the person who gave credence to what was circulating on the social and other media platforms as rumour "that the Appointments Committee had been bribed by the Minister of Energy Designate, Honourable Boakye Agyako; (2) Hon Ayariga failed to ascertain the veracity of the rumour prior to publishing same as a result of which trust and confidence amongst members and inter-party cohesion needed for consensus building at the Appointments Committee has broken down considerably; (3) the reputation and image of the institution of Parliament has been greatly injured by the allegation; and (4) the reputation and dignity of the Appointments Committee and that of the Minister of Energy, equally suffered considerable damage".

It is important to underscore the fact there is a world of a difference between observations, and the definite findings of facts by a Committees of Enquiry. Instead of making definite findings of fact on its Terms of Reference on bribery the Committee after making its observations then stated that: "the Committee came to the firm conclusion that Mr. Mahama Ayariga is in contempt of Parliament on the strength of Article 122 of the 1992 Constitution, Section 32 of the Parliament Act, 1965 (Act 300) and Orders 28 and 30 (2) of the Standing Orders of Parliament. The Committee came to this conclusion because Mr. Mahama Ayariga failed to prove that indeed Hon. Boakye Agyarko gave money to Hon. Joseph Osei-Owuwu to be distributed to Members of the Appointments Committee with a view to bribe them." But conclusions of a Committee of Enquiry cannot be a substituted for its constitutional obligations to make findings of fact based upon each of its Terms of Reference on bribery and not on contempt.

Nonetheless, the Committee consequent upon purporting to come to the forgoing conclusions made two recommendations to Parliament which were approved on 30th March 2017:

(i) That the Hon. Member for Bawku Central, Mr. Mahama Ayariga, be reprimanded by the Rt. Hon. Speaker in accordance with Section 35 of the Parliament Act, 1965 (Act 300), and

(ii) That Mr. Mahama Ayariga, render an unqualified apology to the House, purging himself of contempt.

Unlike the powers expressly conferred upon the Committee of Privileges of Parliament one cannot find in the Terms of Reference of this Committee any power to investigate let alone to make findings and recommendations to Parliament for contempt of Parliament. And it should be obvious to anybody slightly acquainted with the mandatory duties and functions of the Committee of Privileges, and an Ad hoc or Special Committee that Article 122 of the 1992 Constitution, Section 32 of the Parliament Act, 1965 (Act 300) and Standing Orders 28 and 30(2) confer powers upon the Committee of Privileges in executing its Constitutional functions, and not on an Ad hoc or Special Committee to convict a person of contempt of Parliament. One may also ask why the Special Committee omitted to refer to Order 31 of the Standing Orders which makes it abundantly clear that: "31. In all cases of proceedings where complaint is made of a breach of privilege or contempt of Parliament, Mr. Speaker may direct that the matter be referred to the Committee of Privileges."

Furthermore, it could not have escaped the Committee that Orders 28, 29, and 30 it referred to comes under Part Three Sub-Part Two of the Standing Orders under the heading Contempt of Parliament or Breach of Privilege and includes Order 31 which it omitted. If the omission was deliberate, it demonstrates lack of transparency and accountability on the part of the Committee; if it was inadvertent it demonstrates the sloppiness of the investigation conducted by it.

The Committee, unless it did a sloppy job of its terms of reference, cannot be heard to say that it was not aware of Order 201 of the Standing Orders which empowers a Committee of Parliament to request the Attorney General to attend upon it to give such assistance in the examination of witnesses as the Chairman may direct; the mandatory requirement that a person alleged to be in contempt of Parliament may be represented in the Committee by Counsel in proceedings in the Committee of Privileges; and the fact that a witness before any other Committee may also be represented by Counsel. It cannot be doubted from the foregoing that the Committee was aware of its lack of jurisdiction to make any finding of contempt of Parliament under Articles 122 of the 1992 Constitution, Section 32 of the Parliament Act, 1965 (Act 300) and the Standing Orders 28 and 30(2) but chose to act unconstitutionally and with impunity.

Establishment of Parliamentary Committees

The fact that in making its findings and recommendations the Special Committee acted unconstitutionally and outside its jurisdiction is further demonstrable by a casual reading of Article 103 of the 1992 Constitution, Part Three, Sub-Part Two, and Part Twenty of the Standing Orders of the Parliament of Ghana (2000) that makes elaborate provisions for the establishment of Parliamentary Committees to facilitate the work of Parliament.

Article 103 of the Constitution specifically provides that: "Parliament shall appoint standing committees and other committees as may be necessary for the effective discharge of its

functions." In accordance with Article 103 (2) of the Constitution the Committee of Privileges, a standing committee, of not more than thirty members was appointed for the 7th Parliament at the first meet of Parliament after the election of the Speaker and the Deputy Speakers.

Orders 151 to 190 of Part Twenty of the Standing Orders also specifically provide for several subject matter committees of Parliament assigned with specific mandates. In accordance with Article 103 of the 1992 Constitution, Order 164 of the Standing Orders specifically provides for a Committee of Privileges which shall consist of the First Deputy Speaker as Chairman and not more than thirty other members. Order 164 (2) mandatorily provides that: "It shall be the duty of the Committee, by order of the House, to enquire into any complaint of contempt of Parliament or breach of privilege or any other matter of privilege which may be referred to it and to recommend to the House such action as the Committee may consider appropriate."

I hasten to add that Order 164 (3) and (4) make provision for circumstances in which a member of the Committee is ineligible to participate in any Committee proceedings, and for a Member to disqualify himself from participating in any investigation of the conduct of a Member which takes care of the situation the First Deputy Speaker and Chairman of the Appointments Committee found himself in the present controversy.

Article 122 of the 1992 Constitution provides for what constitutes Contempt of Parliament and the Privileges Committee made up of a Chairman and not more than thirty other members is the specific Committee entrusted under Article 103 of the Constitution with the duty of enquiring into complaints of Contempt of Parliament or breach of privilege and making recommendations to Parliament. Provision has also been made in the Standing Orders of Parliament for specifically dealing with contempt allegedly committed in the face of Parliament or in Parliament.

Order 191 of the Standing Orders under which the five-member Special Committee was appointed to investigate the allegations of bribery is a residual provision for matters or cases of public importance for which the Standing Orders had not assigned to an existing specific subject matter Committee; that is why it is called special or ad hoc committee. A Special Committee appointed under Section 191 of the Standing Orders will thus be acting inconsistent with and in contravention of Articles 103, and 122 of the 1992 Constitution and Orders 164 and 197 of the Standing Orders in purporting to hear a complaint of contempt of Parliament.

The Committee of Privileges is the only Committee with the mandate "to enquire into any complaint of contempt of Parliament or breach of privilege which may be referred to it and to recommend to the House such action as the Committee may consider appropriate." Every citizen of Ghana has a settled expectation in accordance with Articles 103 and 122 of the 1992 Constitution and Orders 28, 30 31, 164, 197, and 201 (2) of the Standing Orders that he can only be convicted of the crime of contempt of Parliament outside Parliament and possibly lose his liberty by the appropriate Constitutional body established in accordance with law to enquire into any such complaint against him.

Consequently, the conclusions made by the Special Committee and its recommendations to punish Hon. Mahama Ayariga for contempt of Parliament were clearly unconstitutional and an exercise of a naked power of impunity by Parliament. It only served as a smokescreen behind which to hide the very serious allegations of bribery made against the Honourable members of the Appointments Committee and is accordingly unconstitutional.

Defamatory statements made outside Parliament not within Parliament's jurisdiction

The Committee observed at paragraph 138 of its report that Hon Mahama Ayariga defamed both the institution of Parliament and "the First Deputy Speaker, other members of the Appointments Committee and that of the Minister for Energy...." The Committee on the basis of the alleged defamatory statements outside parliament concluded that Hon. Ayariga was guilty of contempt of Parliament. In coming to this conclusion the Committee refused or failed to realize that the only occasion on which the 1992 Constitution gives Parliament the jurisdiction to punish a Member of Parliament for "a statement which is prima facie defamatory of any person" is when the defamatory statement is made in the face (in facie) of Parliament pursuant to Articles 115 and 116 of the Constitution thereof. On such an occasion, "the person presiding shall refer the matter for inquiry to the Parliamentary committee on privileges which shall report its findings to Parliament not later than thirty days after the matter was referred to it."

It follows from the foregoing that defamatory statements made outside Parliament by any person (including a Member of Parliament) against any person (including "the First Deputy Speaker and other members of the Appointments Committee and that of the Minister of Energy..") is a matter subject to the jurisdiction of the ordinary courts of the land and not Parliament. It is pitiful that reasonable members of Parliament were unaware that they did not need the permission of Parliament to vindicate their dignity and damaged reputation in a court of law. Unless of course, the members of the Appointments Committee allegedly defamed outside Parliament did not have any reputation to vindicate or could not in the particular circumstances vindicate one at a public court trial before the whole nation and were merely shopping for their own forum to save-face and whitewash the defamatory allegations.

The specific constitutional provisions in respect of defamatory statements made in Parliament against any person and giving exclusive inquiry jurisdiction to the Committee of Privileges also demonstrates clearly the unconstitutionality of a Special Committee of five members of Parliament purporting to inquire into and recommending the punishment of any person for contempt of Parliament for a defamatory statement made outside Parliament. The Special Committee observed that: "The reputation and image of the institution of Parliament has been greatly injured by the allegation" contained in the defamatory statements made outside Parliament against members of the Appointments Committee as one of the reasons for concluding that Hon. Ayariga was guilty of contempt of Parliament.

But if the Committee and Parliament had respected the intelligence of the sovereign people of Ghana they would not have failed to realize that by unconstitutionally assuming jurisdiction to make conclusions, recommendations, and punishing for contempt of Parliament for defamatory statements outside Parliament in which Parliament had a vested interest of vindicating its own reputation it was wittingly or unwittingly lending credence to the perception that the defamatory statements might be of such high probative credibility and truthfulness to be contested in a court of law.

Honourable Mahama Ayariga the Scapegoat and Smokescreen burying allegations of bribery of grave public importance.

The evidence before the Special Committee, which it accepted, showed that a number of people made and or published defamatory statements outside Parliament about money being given by Mr. Boakye Agyarko to Hon. Osei-Owusu to influence his approval by the Appointments Committee. One Ablordepey, a journalist, purporting to report from Parliament named an amount of GHC100, 000 to be the amount that had been given for the purpose of influencing the Appointments Committee. Radio Gold is also said to have been the first to broadcast the defamatory allegations on its network. Hon. Mahama Ayariga is recorded to have confirmed aspects of the defamatory allegation to Radio Gold later even though it was clear that most of his statements were hearsay, apart from the definite fact (not rumour) that he and other NDC Members on the Appointment's Committee received from and later returned an amount of GHC3, 000 each to the NDC (Minority) Chief Whip who had given it to them. Joy FM, Peace FM and other media are also said to have variously published the defamatory statements of alleged bribery.

The report of the Committee records the fact that the Committee accepted Mr. Okudzeto Ablakwa's account denying the allegation made by the First Deputy Speaker and Chairman of the Appointments Committee on oath before it that he did not insist on the allegations being investigated because Hon Okudzeto Ablakwa indicated that the allegation was just created to "spread the corruption" and to "level up the allegation against John Mahama." Prima facie Hon. Ablakwa had established that the First Deputy Speaker and Chairman of the Appointments Committee had lied on oath before the Committee. Lying on oath before a committee of Parliament constitutes perjury, a very serious criminal offence in civilized nations. Just imagine what the results would have been if Hon. Ablakwa had not gone to the expense of getting his lawyers to demand that he be invited to refute the perjured evidence given against him and he had also been found guilty of contempt based on the evidence of such a material witness.

Having established his credibility as a truthful witness, Hon. Samuel Okudzeto Ablakwa further made a direct written allegation of fact (not rumour) in Appendix 3 of the Committee's report against the Chairman of the Appointments Committee. He alleged that the Chairman of the Appointments Committee confirmed to him and two other members of the Appointments Committee of NDC side that the money they received from the minority Chief Whip "was not

our allowance as we had thought and that the envelopes containing Three Thousand Cedis (GHC3, 000) each were from Mr. Boakey Agyarko…"

Hon. Ablakwa offered the Committee every opportunity to corroborate his allegations against the Chairman of the Appointment's Committee, but the Committee side-stepped its mandate as a fact finding Committee by using technicalities as a smokescreen behind which not to summon those witnesses. Why the Committee as a fact finding body and Parliament refused to truthfully and transparently investigate such an uncontroverted piece of evidence of Hon. Ablakwa should be anybody's conjuncture! But I hope to God it was not because to do so would have greatly injured the reputation and image of the institution of Parliament and equally also damaged the reputation and dignity of the Appointments Committee as the Committee and Parliament appeared at great pains to avoid.

No transparent findings made on second Term of Reference

The Committee's second term of reference required it to: "Establish whether there were attempts to bribe Members of Appointments Committee". The evidence of Hon. Mahama Ayariga on oath and the written memorandum of Hon. Okudzeto Ablakwa contained in the report of the Committee state that they were each given Three Thousand Cedis (GHC3, 000) as bribe through the Minority Chief Whip needed to be cleared, even if Mr. Boakey Agyarko and/or the Chairman of the Appointments Committee were not demonstrated to have been the source of the bribe. Ghanaians need to know why a reasonable number of the members of the minority NDC would be lying for their Chief Whip if indeed they did not receive envelopes containing Three Thousand Cedis each from him. Definite statement by members of Parliament that they each received an amount of money from their Chief Whip cannot be a rumour as the Committee and Parliament disingenuously describe it.

Unfortunately, the Committee failed to discharge the responsibility demanded by the second term of reference satisfactorily and transparently. The reputation of Parliament which the Committee sought to protect and the reputation of persons affected by any such defamatory statements outside Parliament has still been left open to question and suspicion of an attempt at an unconstitutional cover up of the facts.

The Terms of Reference of the Committee did not charge or lay a complaint against any particular person against whom the Committee was to establish the bribery facts of public importance. The question may therefore be asked, upon what standard did the Committee find Hon. Mahama Ayariga guilty of contempt without making any finding whatsoever in respect of Ablordepey, Radio Gold, Hon. Samuel Okudzeto Ablakwa and others whose defamatory statements and publications were also on the evaluative reasoning of the Committee in contempt of Parliament? The conduct of the Committee and Parliament, from the foregoing, clearly violates Article 12, 17, 19, 24, 103, 121, 122 and 296 of the 1992 Constitution by acting unfairly, capriciously and in a discriminatory manner against Hon. Mahama Ayariga who had also not

been charged with any offence of contempt of Parliament before the Special Committee. It also clearly exhibits naked impunity and patent disregard of the Constitution and laws by the Committee and Parliament.

The unconstitutional conduct of Parliament appears to have continued even after punishing the alleged contemnor. The Speaker is reported by Starr FM to have stated in concluding the proceeding punishing for contempt of Parliament that: "I must also extend a warning to some four or five honourable members who deemed it proper to make untoward lies apparently in support of Ayariga regarding the conduct for which the Honourable Ayariga has now apologized." Nobody including Hon. Ayariga was ever indicted for defamation in facie or ex facie Parliament. The unconstitutional Committee set up by the Speaker did not find any other person guilty of contempt except the unconstitutional conclusion against the scapegoat, Hon Ayariga. So why did the Rt. Hon. Speaker of Parliament issue a warning to faceless and unknown contemnors in a case in which his First Deputy Speaker was one of the subjects of an investigation. Does this not give credence to the perception that the intention was to intimidate the sovereign public from exercising their right to free speech in making allegations of impropriety against members of Parliament in defence of the Constitution?

EPILOGUE

I have had the privilege of schooling and several years of public service working with many members of the 7th Parliament who have always been men of great integrity, learning, and experience. I could not believe that they would knowingly condone such unconstitutionality by Parliament. I therefore interviewed some selected Members of Parliament to assure myself that I had not misapprehended the facts.

Each of the Members of Parliament I interviewed from both sides of the House agreed with my analysis of the unconstitutionality of the conduct of the Committee and Parliament. When I pressed my interviewees on why they did not call attention to the unconstitutionality of the report on the floor of the House, the reply was that the procedure adopted on 30th March 2017 did not give any of them time to read the 44 page report that had been tabled and that if I had followed the proceedings I would have realized that no debate was allowed on the matter. Each of them referred me to what happened to Hon. Ayariga when he tried to raise objection to the jurisdiction of the Committee to find him guilty of contempt of Parliament. I have no reason to doubt any of them. I do understand the pressure group dynamics can bring to bear on group members not to fall out of line with the group's goals even when they are unconstitutional.

On 10th April 2017 Hon. Samuel Okudzeto Ablakwa was reported to have granted an interview to one Yaa Titi on Top FM in which he "reiterated that the allegation was nothing but the truth." The interview reported under the title: "We acted to save the image of Parliament – Ablakwa" vindicates the contention that the Special Committee's report and the conduct of Parliament transforming it into contempt proceedings is not only unconstitutional but also constitutes an

unpardonable whitewash of the bribery allegations amounting to a raw abuse of power. It was reported that:

> "The North Tongue (sic) legislator Hon Ablakwa, said Honourable Ayariga apologized to save the image of the 7th Parliament of the country in accordance with the statement by the Rt Hon Speaker about the need for Parliament to move on, on which basis they supported Hon Ayariga's apology, because to him (Hon Ablakwa) the minority does not want to be seen as problematic in the house. According to him, if the committee wanted to find out the real truth, they shouldn't have refused to call the witnesses he mentioned in his memo that he presented to the committee for questioning. He said when he recommended the CCTV camera evidence, the committee insisted it would tarnish the image of the house and that the public would get to know how the CCTV cameras installed in the house operates, which he claims is ridiculous. 'If that one is not evidence enough, what about the CCTV camera footage that was recommended?' He added that, if the minority telling the truth to shield the House from further embarrassment is (sic) seen as liars, they have accepted it according to the Speaker's call." (See Ghanaweb 10th April 2017).

The constitutional oath of the Speaker and the oath of members of Parliament, from both sides of the House, were each abused and violated, according to the above report of the interview, just to protect suspected commission of the crime of bribery and corruption in Parliament in preference to transparently maintaining the institutional integrity of the legislature. The report of the interview also underscores why an independent and impartial investigation consistent with the 1992 Constitution appears to be the only solution to restoring the dignity and reputation of Parliament in this matter as it woefully refused or failed to behave like Caesar's wife, beyond reproach and above suspicion, as demonstrated in the foregoing examination and analysis. Otherwise, let's frankly admit that the fight against bribery and corruption amongst the political elite in Ghana has become a mere political slogan for winning political power and signifies nothing. God Save Ghana! AMEN! AMEN! AND, AMEN!

Martin A. B. K. Amidu
(Citizens Vigilance for Justice)