

## **THE ROLE OF THE OFFICE OF THE SPECIAL PROSECUTOR IN PROTECTING NATIONAL RESOURCES**

### **INTRODUCTION**

The work of the Office of the Special Prosecutor is set out in the Office of the Special Prosecutor Act, 2017, (Act 959). The Office came into existence on the 3<sup>rd</sup> of January 2018 with the notification in the Gazette of the enactment of the Act.

The Office of the Special Prosecutor has been established as a corporate legal body with perpetual succession with powers to sue, be sued and acquire property. Under the scheme of Act 959, the Special Prosecutor personifies the Office and is ultimately responsible for the day to day administration and functions of the Office. The Special Prosecutor and his Office are enjoined to prevent, investigate, and prosecute corruption and corruption-related offences, and recover and manage assets related thereto.

The role of the Office of the Special Prosecutor can better be understood in the historical context of the factors, and the forces that gave rise to the establishment of the Office, almost sixty-one years after Ghana attained her independence and later became a Republic.

In presenting the role of the Office of the Special Prosecutor in the protection of national resources, this paper will describe, examine and analyze the topic from a historical perspective from independence to the establishment of the Office in 2018. The functions and structure of the role of the Office in protecting national resources will then be discussed. A consideration of the jurisdiction of the Office as fundamental to its ultimate role in protecting national resources will also be made. A discussion of collaborative efforts between the Office and Audit Service, the Ministry of Finance and the Financial Intelligence Center in protecting national resources will be undertaken. The paper will conclude by asserting that the extent to which the role of the Office in protecting the nation's resources succeeds or fails will depend on the way the President's anti-corruption vision is supported by or obstructed by his political and public service appointees.

### **THE HISTORICAL PERSPECTIVE**

Ghana has since independence on 6<sup>th</sup> March 1957, witnessed the birth and rebirth of various state anti-corruption institutions and mechanisms for combating corruption established under various enactments. The Criminal Code, 1960 (Act 29) and the Criminal Procedure Code, 1960 (Act 30) have since been revised and renamed with amendments as the Criminal Offences Act, 1960 (Act 29) and the Criminal and Other Offences (Procedure) Act, 1960 (Act 30). Act 29 has since 1960 dealt with crimes of corruption in Chapter Five under the general heading: Offences relating to

Public Officers and to Public Elections. Act 30 guides the procedures in the investigation and prosecution of crimes generally including corruption offences.

The difficulty of obtaining evidence for the investigation and prosecution of corruption offences led the first Republican Government to enact the Corrupt Practices (Prevention) Act, 1964 (Act 230) which, as is usual with many governments in developing countries, was never operationalized by the enacting Government until it was overthrown on 24<sup>th</sup> February 1966 military coup d'état. Consequently, it took the National Liberation Council Government which overthrew it to use the provisions of Act 230 to prosecute the operatives of the previous Government of the Convention People's Party for corruption and related offences. The Republic v Akainyah [1968] GLR 330 and Benneh v the Republic [1971] 2 GLR 354 are the most serious attempts to deal with corruption and are the locus classicus on corruption, reported in the Ghana Law Reports. Act 230 used the mechanism of Commissions of Enquiry to achieve anti-corruption objectives because of the difficulty of gathering evidence to prove corruption offences which are normally committed in secrecy.

The Justice P. D. Anin Report on Corruption, 1970 describes the level of corruption prior to and in the 1970s and prophesized as follows in its paragraph 141: "...a deadly virus that is eating its way into the body politic. If it is not checked and brought under control, it will seriously undermine the effectiveness of the present or any future government of Ghana."

The pervasive, endemic and canker of corruption persisted and led the Nation Redemption Council to enact the Commission of Inquiry (Implementation of Findings Act, 1974 (NRCD 261) which still survives in a watered down form. The Armed Forces Revolutionary Council that overthrew the Supreme Military Council tried within the three months of its existence to use drastic methods of the Peoples' Courts to solve the cancerous corruption problem. Some of the accused persons, mainly military officers, were tried summarily and executed by firing squad for allegedly taking bank loans under the colour of their offices.

The intractable and cancerous nature of corruption reappeared in devastating forms during the People's National Party Government under the 1979 Constitution. It was, therefore, not surprising that pervasive and endemic corruption was one of the reasons given by the Provisional National Defence Council (PNDC) Government for the initiation of the 31<sup>st</sup> December 1981 Revolution which overthrew the Constitutional Government and lasted almost eleven years. The PNDC established the now defunct Public Tribunals system [and later the Serious Fraud Office Law, 1993 (Act 466)] as a panacea to the canker of corruption. This is what eventually gave way to the Economic and Organised Crime Office Act, 2010 (Act 804).

The 1992 Constitution which was born from the ashes of the 31<sup>st</sup> December Revolution was drafted by the Consultative Assembly for the Constitution for Ghana, 1991, by using the historical experience since independence to formulate the 1992 Fourth Republican Constitution. The Constitution accordingly solemnly declared and affirmed this nation's commitment to

freedom, justice, Probity, and accountability, and the rule of law as preamble objectives of the Constitution. Article 35 (8) of the Constitution enjoins the state to "... take steps to eradicate corrupt practices and the abuse of power." And Article 41(f) imposes a duty upon every citizen "to protect and preserve public property and expose and combat misuse and waste of public funds and property."

Consequently, the 1992 Constitution which Ghana operates today provides for a Ghana Police Service, a Commission for Human Rights and Administrative Justice, and an Auditor- General with an Audit Service as constitutional instruments to fight corruption and abuse of office. Parliament under this Constitution has not only enacted pursuant legislation to facilitate the actualization of the work of these constitutional bodies but has further by legislation, provided for a Serious Fraud Office under the Serious Fraud Office Act, 1993 (Act 466). This was succeeded by the existing Economic and Organised Crime Office in 2010 under Act 804, a Bureau of National Intelligence, a Financial Intelligence Centre, a Ghana Revenue Authority, new Banking, and Bank of Ghana Acts, a Public Procurement Authority Act, a new Ghana Immigration Service Act, a Political Office Holders (Declaration and Disqualification) Act, 1998 (Act 550), an Internal Audit Agency Act, 2003 (Act 658), a Whistleblowers Act, 2006 (Act 720), an Anti-Money Laundering Act, 2007 (Act 749), a Mutual Legal Assistance Act, 2010 (Act 807), a public Financial Management Act, 2016 (Act 921), a Witness Protection Act, 2018 (Act 975), the Companies Act, 2019 (Act 992) and the Right to Information Act, 2019 (Act 989) amongst numerous other enactments, intended so as to assist law enforcement to stop the rapid spread of the canker of corruption which the framers of the Constitution had recognized in Articles 38 (8) and 41 (f) of the Directive Principles of State Policy thereof.

Twenty-six years down the line, since the promulgation of the 1992 Constitution, the majority of the people of Ghana have again confirmed in the last election in 2016 that corruption has over the years been on the ascendancy and not on the decline. According to Transparency International's (TI) Corruption Barometer (2009), in the 2000s about 42% of all households in Ghana said they had paid a bribe in the last year. The proportion of the population who reported having paid a bribe to public officials to get things done increased to 56.2% in 2013. The perception of the existence of corruption among public officials continued for the worse with Ghana scoring below 49 of the Transparency International Perception Index. The CDD reported recently that weak governance and corruption hurts every nation and the poor are the hardest hit by it. It stated that over the years: "Ghana has lost a great fortune to corruption, and since its inception in November 2017, Corruption Watch alone has discovered 9.6 billion Ghana cedis stolen from the public purse".

The nation's latest experiment in fighting corruption is captured in debates and campaigns preceding the 2016 General and Presidential Elections and after that, eventually led to the establishment of the Office of the Special Prosecutor in 2018 under Act 959 as a new specialized anti-corruption agency with prosecutorial powers, as an expected solution to the problem of corruption. In spite of the experiences this nation has gone through since independence in 1957,

the mere enactment of the Office of the Special Prosecutor Act is being touted by the Ministry of Justice at the least opportunity as an achievement. I sincerely beg to differ. This nation's experiences from independence shows beyond any further research that the number of normative provisions on corruption in the Constitution or enacted by Parliament have never successfully actualized in a successful and lasting fight against corruption.

The failure of this country to successfully fight corruption has lain in the nation's inability to ensure the proper establishment of law enforcement agencies and commissions with adequate resources and independence to execute their mandate without political interference. Apart from the institutional bane of law enforcement agencies themselves suffering from internalized corruption and corrupt practices which is traceable to lack of resources, the nation's inability to adequately resource and guarantee the independence of law enforcement from politics has affected the achievement of a lasting successful fight against corruption over the years.

The Office of the Special Prosecutor has naturally been born into this culture and unless there is a change of attitude in practice the Office of the Special Prosecutor Act would soon be seen by the public to be, like its predecessors, a delusion and rather than an achievement oriented Office. The fact that the President of the Republic of Ghana sincerely intends it to be a real signature achievement of his tenure of office is beyond doubt to me. The reality, however, appears to be that his intentions are not congruent with those of his subordinates who have to help him achieve those objectives.

It is important that we focus whatever I am saying to this conference on the role of the Special Prosecutor in the protection of national resources within the context of this historical preamble so that it is not said that when the Office had an opportunity to speak to such an august forum it was less than candid.

## **THE FUNCTIONAL AND STRUCTURAL FOUNDATIONS OF THE ROLE OF THE OFFICE IN PROTECTING NATIONAL RESOURCES**

### **An overview**

The Office of the Special Prosecutor Act, 2017 (Act 959), I have stated already, is the latest attempt in Ghana's political and Constitutional history, to establish a more efficient and effective mechanism to achieve a successful fight against the canker of corruption which is perceived to be pervasive within the body politic. It is, however, the successful operationalization of Act 959 which will determine the actual role of the Office of the Special Prosecutor in the protection of national resources.

The Act contains the standard anti-corruption provisions, enhanced protections and indemnity for the Office of the Special Prosecutor and for the first time, the ceding of those portions of the Attorney General's prosecutorial powers relating to corruption and corruption related offences to

the Special Prosecutor and above all, guaranteeing the independence of the Office in the execution of its work and functions.

### **Objects and Functions**

The Act establishes the Office of the Special Prosecutor as a body corporate with perpetual succession with the attendant attributes of legal personality and spells out three main objectives of the Office, namely:

- (i) investigate and prosecute alleged corruption or suspected corruption and corruption related offences,
- (ii) recover the proceeds of corruption and corruption related offences, and
- (iii) take steps to prevent corruption.

The functions entrusted to the Office are also functions which participants in this conference may all be familiar with and include:

- (a) the investigation and prosecution of cases of alleged or suspected corruption and corruption related offences under the Public Procurement Act, 2003 (Act 663);
- (b) investigation and prosecution of cases of alleged corruption and corruption related offences under the Criminal Offences Act, 1960 (Act 29) involving public officers, politically exposed persons and persons in the private sector involved in the commission of the offence;
- (c) investigation and prosecution of cases of alleged or suspected corruption and corruption related offences involving public officers, politically exposed persons and persons in the private sector involved in the commission of the offence under any other relevant law;
- (d) recover and manage the proceeds of corruption;
- (e) disseminate information gathered in the course of investigation to competent authorities and other persons the Office considers appropriate in connection with the offences specified in paragraphs (a) and (b);
- (f) co-operate and coordinate with competent authorities and other relevant local and international agencies in furtherance of this Act;
- (g) receive and investigate complaints from a person on a matter that involves or may involve corruption and corruption-related offences;

(h) receive and act on referrals of investigations of alleged corruption and corruption related offences by Parliament, the Auditor-General's Office, the Commission on Human Rights and Administrative Justice, the Economic and Organized Crime Office and any other public body; and

(i) perform any other functions connected with the objects of the Office.

Read literally, the functions encompassed in the Act provide the Office with a very broad base for effectively and efficiently combating all forms of corruption and corruption-related offences. It will, however, be demonstrated presently that the supposedly expansive functions are surreptitiously taken away by Parliament through the back door in section 79 of the Act dealing with interpretations.

### **The Mandate of the Office**

The Office of the Special Prosecutor, subject to the Constitution, is not subject to the direction or control of a person or an authority in the performance of its functions. Act 959 makes it abundantly clear that subject to clause 4 of article 88 of the 1992 Constitution, the Office shall for the purpose of the Act be authorized by the Attorney General to initiate and conduct prosecution of corruption and corruption-related offence. This is the provision which arguably cedes the prosecutorial authority of the Attorney General for corruption and corruption related matters to the Special Prosecutor.

The framers of the Office of the Special Prosecutor Act thought it prudent to provide for a governing Board for the Office to assist it in protection national resources engendered by corruption and corruption-related offences.

### **The Board of the Office**

By the operation of the Constitution, the Office of the Special Prosecutor has a governing Board which consists of the Special Prosecutor, the Deputy Special Prosecutor, six institutional representatives from six anti-corruption, security and intelligence agencies not below the rank of Director nominated by the Head of the respective agency, and one other person who is female representing the Anti-corruption Civil Society Organizations.

The Board elects its own chairperson from amongst its members other than the Special Prosecutor and the Deputy Special Prosecutor. The functions of the Board are to:

- (a) formulate policies necessary for the achievement of the objects of the Office;
- (b) ensure the proper and effective performance of the functions of the Office;
- (c) advise the Special Prosecutor on the recruitment and selection of the Secretary and other senior staff of the Office;

(d) develop and monitor implementation of a code of conduct for the staff of the Office;

(e) facilitate cooperation between the Office and relevant national investigative bodies to ensure the proper and effective performance of the functions of the Office; and

(f) advise the Special Prosecutor on any policy matters that may be referred to the Board by the Special Prosecutor.

The provision of the Act spelling out the Board’s functions was at pains to under-score the fact that “the Board shall not interfere in the day to day functions of the Office.” Members of the Board are put under very strict and stringent fiduciary duties and responsibilities in the discharge of their duties.

**Qualification and Appointment of the Special Prosecutor and the Deputy**

The legislature appeared determined to secure the role of the Office in the protection of national resources by providing security of tenure to the Special Prosecutor and his deputy. Consequently, the Special Prosecutor and the Deputy Special Prosecutor are subject to strict nomination and approval process by Parliament before they may be appointed by the President. Their positions and status are notionally equated to those of a Justice of the Court of Appeal and a Justice of the High Court respectively and they enjoy the security of tenure and independence equal to those of superior court justices.

**Functions of the Special Prosecutor**

The Special Prosecutor has three functions, namely:

- (1) he is accountable to the Board in the performance of his functions under the Act,
- (2) despite the forgoing subsection (1) the Special Prosecutor shall have full authority and control over the investigation, initiation and conduct of the proceedings under the functions of the Office, and
- (3) the Special Prosecutor may assign responsibilities to an authorized officer but shall not be relieved of the ultimate responsibility for the performance of the assigned responsibility.

**Divisions, Secretariat, and other staff of the Office**

The Office has to work through divisions, a secretariat and other staff to be able to play any meaningful role in protecting the nation’s resources. The Act, therefore, established four main divisions (and any other divisions for the necessary effective performance of its functions established by the Board) for the Office which answer to its objects – administration, investigations, prosecutions, and assets recovery and management. We may add to this the corruption prevention division for the prevention of corruption as corruption prevention is a

separate objective of the Office under the law. These are the standard divisions of the Office. A six division known as the Special Operations division has been established as a residual division with the concurrence of the Board by legislative instrument for the effective performance of the functions of the Office. The Secretariat for the Office is headed by a Secretary who has responsibility for the day to day administration of the Office and is answerable to the Special Prosecutor in the performance of the functions under the Act; and arranges meetings of the Board.

The appointment of the other Staff of the Office is the prerogative of the President under article 195 of the Constitution. Other staff may also be transferred or seconded to the Office at the request of the Special Prosecutor and the Office may engage the services of relevant professional experts on the recommendation of the Board.

### **Police and Other powers of the Office**

The Special Prosecutor and authorized officers exercise the powers of a police officer specified in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) or any other enactment. The Office has powers to request for information, make production orders or apply for such orders, powers of search and seizure of documents, search and seizure of tainted or suspected tainted, making freezing orders and applying for freezing orders, realization of property, mutual legal assistance and many other powers to enable the Office to efficiently and effectively discharge its functions under the Act.

### **Corruption preventive and corrective measures**

The third object of the Office as provided for under Section 2 of Act 959, is the preventive function which is not expressly provided for under Section 3 of the Act as a function. It is captured by the omnibus provision mandating the Office to “perform any functions connected with the objects of the Office”. The absence of an express provision on the preventive functions may also be because the investigative, prosecutorial and assets recovery and management functions are impliedly directed towards the prevention of corruption generally.

This matter has now been settled by the provision of Regulation 31 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) and has taken into account international best practice which shows that almost every efficient and effective anti-corruption agency has well established prevention of corruption division to be a meaningful instrument in the protection of national resources for good governance.

The Office of the Special Prosecutor, therefore, when fully operationalized will have a prevention of corruption division of the Office whose responsibilities will include:

(1) Receiving, collecting and collating such reports, documents, materials, complaints, allegations, information, and intelligence to undertake the following measures of corruption prevention:

- (a) analysis of the risk of corruption;
- (b) anti-corruption programmes;
- (c) anti-corruption assessment of legislation and drafts legislation,
- (d) provision of information in relation to persons applying for or holding a position in the Ministries, Departments and Agencies;
- (e) provision of information to the Public Service Commission or other legal entities;
- (f) education and information of the public;
- (g) publicizing the detected acts of corruption; and
- (h) other corruption measures provided by law.

(2) The Office is to identify the causes that advance corruption to facilitate corruption prevention including:

- (a) deficiencies in regulatory enactments, regulations or procedures;
- (b) deficiencies in administration of institutions, including lack of internal control mechanisms or deficient mechanisms;
- (c) individual interest, including greed, lack of ethicalness and legal awareness; and
- (d) external influences, including public attitude, culture and traditions.

The foregoing activities of the prevention of corruption division are intended to guide the analysis and formulation of corrective measures that will ensure effective corruption prevention and selection.

A stitch in time, they say, saves nine. An efficient and effective prevention of corruption division and programme greatly reduces the opportunity for corruption and makes corruption a high risk enterprise for those who may contemplate engaging in it. In my submission, this division when fully operationalized, may constitute the most effective role of the Office of the Special Prosecutor in the protection of national resources. A successful prevention of corruption programme builds a culture of integrity in the body politic and makes it easier to detect and deal swiftly with corrupt elements within the body politic through investigation, prosecution, and assets recovery and management of proceeds of corruption for the protection of national resources.

## **JURISDICTION OF THE OFFICE AS FUNDAMENTAL TO AN ULTIMATE ROLE IN PROTECTING NATIONAL RESOURCES**

The foregoing analysis and exposition of the functions and structure of the Office demonstrates that an effective and efficient corruption prevention strategy and tactics reduces the necessity for investigation and prosecution of corruption and corruption-related offences. While prevention may be the carrot, deterrence of the crime of corruption needs the stick and this is what makes the jurisdiction of the Office of the Special Prosecutor in the investigation and prosecution of corruption and corruption-related offences very important to its ability to efficiently protect national resources which have the propensity to be squandered through corruption and related offences.

The black letter rules that make up the Office of the Special Prosecutor Act, 2017 (Act 959) read on the surface, appear to set a firm foundation for the Office so as to make a major contribution as never before, in the protection of national resource in so far as the prevention, investigation, and prosecution of corruption and corruption-related offences, and the recovery of assets and the management of proceeds of corruption are concerned. The efficiency and efficacy of the role of the Office to protect national resources depends not so much on the black letter rules, but on the actual investigative and prosecutorial jurisdiction of the Office as provided for in the interpretation section 79 of the Act.

When the average reasonable person on the Madina trotro bus reads the express and literal words of the nine functions of the Office of the Special Prosecutor, he or she cannot be blamed for assuming that the Office is empowered to investigate and prosecute every corruption and corruption-related offence in the Criminal Offences Act, 1960 (Act 29), the Public Procurement Act, 2003 (Act 633) and other relevant laws dealing with corruption and corruption-related offences in Ghana.

This has given rise to the perception out there amongst the populace that the Office of the Special Prosecutor can investigate and prosecute any criminal offence under the laws of Ghana. Granted that more than 65% of the population may not be able to read, writes, and properly understand the Office of the Special Prosecutor Act, the problem is compounded when enlightened persons, civil society, and political organizations which ought to know better choose to petition or complain to the Office on matters which have nothing to do with corruption and corruption-related offences as defined in the interpretation section of the Act.

Worse of all, these enlightened persons and organizations appear to be petitioning the Office more for media publicity and political point scoring than pursuing genuine complaints against adversaries. Their modus operandi is to write a letter, petition or complaint, have it published in the media long before submitting or post the complaint to the Office. The object of such persons and organisations may not be to seek a fair and impartial investigation and prosecution but to do maximum damage to perceived political opponents even before they can be investigated. It is a type of mob lynching attitude which no reasonable and impartial law enforcement agency should be used for. Every citizen is entitled to the constitutional right to be presumed innocent and not

to be presumed guilty and tried by public opinion before a determination even to commence investigations is made.

Unfortunately, the media aids in such cheap publicity seeking by just publishing the complaint without satisfying itself whether the petition really concerns a corruption and corruption-related offence. But it ought not to be very difficult for an average reasonable person to realize that the apparent broad functions given to the Office of the Special Prosecutor in section 3 of the Act to prevent, investigate and prosecute corruption and corruption-related offences have been surreptitiously taken away and restricted by Parliament through the side door in the interpretation section, Section 79 of the Office of the Special Prosecutor Act, 2017 (Act 959) by defining “corruption and corruption-related offences” “to mean”, (as distinct from the expansive word “to include”) offences under:

- (a) Section 146, 151, 179C, 239, 252, 253, 254, 256, 258 and 260 of the Criminal Offence Act, 1960 (Act 29);
- (b) Section 92 (2) of the Public Procurement Act, 2003 (Act 663); and
- (c) Existent offences under enactments arising out of or consequent to offences referred to in paragraphs (a) and (b);

An analysis of the above shows that out of the ten offences listed from the Criminal Offences Act, six of them are misdemeanours, two are felonies and the two are unclassified. The balance of criminal offences in the Criminal Offences Act which have not been apportioned to the Office deal with several felonies to be investigated by various law and order enforcement agencies under the Inspector General of Police, the Director-General CID, the Executive Director Economic and Organized Crime Office, the Director of the Bureau of National Investigations, the Director-General of the Ghana Immigration Service, The Executive Secretary for the Financial Intelligence Center, the National Security Co-ordinator, the Director of Public Prosecutions, and many others.

It may be useful to amplify briefly the corruption and corruption-related offences apportioned for investigation and prosecution by the Office to bring out the extent of the role the Office in protecting national resources. The following are the offences created under Act 959:

- (a) Section 146 deals with dishonestly receiving property that a person knows to have been obtained or appropriated by a punishable criminal offence
- (b) Section 151 deals with persons who extorts property from any other person by means of threat as committing a second degree felony
- (c) Section 179C deals with using public office for private profit as a criminal offence
- (d) Section 239 deals with corruption of and by public officers as a misdemeanor
- (e) Section 252 deals with accepting or giving bribe to influence a public officer or juror as a misdemeanor

- (f) Section 253 deals with corrupt promise by judicial officer or juror as a misdemeanour
- (g) Section 254 deals with corrupt selection of juror as a misdemeanor
- (h) Section 256 deals with corruption, intimidation, and personation in respect of election as a misdemeanor
- (i) Section 258 deals with falsification of returns at election as a second degree felony, and
- (j) Section 260 deals with withholding public money by public officer as a misdemeanour
- (k) Section 92(2) of the Public Procurement Act, 2003 (Act 663) deals with offences constituted under the Act for which jurisdiction is given to the Office. Surprisingly it fails to mention Section 93 dealing with corrupt practices.

The jurisdiction of the Office of the Special Prosecutor is therefore strictly provided for under the Act. It is more restrictive than any other anti-corruption agency I have come across.

Apart from the challenges which the Office has faced since the assumption of Office of the first Special Prosecutor, the foregoing explains why the Office is not investigating the several alleged suspected offences perceived to have been committed by particular ministers of state and operatives under the previous Governments and the present Government. The Office does not and cannot investigate financial and economic offences in which no evidence of corruption can be demonstrated from the beginning. I have explained the inability of the Office to investigate and prosecute financial and economic offences, including frauds, a week ago in an article dealing with the on-going Production Development Services (PDS) saga which is published on my website to need repeating here.

## **CHALLENGES OF THE OFFICE**

The Office has faced several problems since my assumption of office as the Special Prosecutor which signaled the operational birth of the Office. I got a private secretary and a records officer seconded to the Office in the second week of April 2018 from the Office of the Head of Civil Service, and a Chief Accountant from the Controller, and Accountant-General's Department on 2<sup>nd</sup> May 2018. I was notionally provided with a budget line and a budget in June 2018 to be expended through the Ministry of Justice without the requisite accompanying officials to constitute the signatories to any bank accounts for the Office until August 2018. A Deputy Special Prosecutor was appointed in May 2018 and assumed office in June 2018. The Ministry of Justice allowed the capital budget of two million Ghana cedis (GHC2 million) to go unutilized at the close of 2018.

A Special Prosecutor, a Deputy Special Prosecutor, A Chief Accountant, a Secretary to the Office, a Senior Private Secretary, a Special Assistant to the Special Prosecutor, a records

officer, a driver each for the Special Prosecutor and his deputy, one police orderly, soldiers on guard duty, a senior steward, and since 17<sup>th</sup> September 2018 three police other rank detectives and a driver is all what constitutes the Office of the Special Prosecutor. Almost all the members of staff are on secondment from other public agencies.

The challenges of the enactment of Legislative Instruments to govern the administrative and operational activities of the Office of the Special Prosecutor were eventually solved by the passage of the Office of the Special Prosecutor Regulations, 2018 (L. I. 2373) and the Office of the Special Prosecutor Regulations, 2018 (L. I. 2374) which both entered into force on 28<sup>th</sup> December 2018 more than the 90 days mandated by Act 959. Consequently, the Office received financial clearance to recruit about 241 staff or engagement some on contract but it has not been able to complete the recruitment process for lack of adequate office accommodation for even the present thirteen members of staff. A ten storey building accommodation has been ordered by the President to be allocated to the Office and hopefully, this challenge will soon be resolved to enable the Office be in a position to effectively protect the nation's resources.

As a result of the inability to recruit and house the expected staff, the budgetary allocation of one hundred and eighty million Ghana cedis (GHC180 million) provided in the 2019 budget for the Office still stands virtually unspent. Hopefully, the process will soon begin to convert the ten storey house accommodation into the various divisions of the Office, purchase the necessary equipment and vehicles that will enable a full operationalization of the Office to meaningfully play its role of protecting national resources.

One of the biggest challenges facing the Office of the Special Prosecutor as an anti-corruption investigative and prosecutorial agency in spite of all the powers conferred upon it, even in its present embryonic stage and difficulties, is not the President who promised the people of Ghana to establish the Office, but the heads of institutions who simply refuse to comply with laws designed to ensure good governance and to protect the national purse by fighting corruption. I need not repeat this challenge since I recently dealt with this matter in a publication which can be read on the website of the Office.

Within the one and half years of its embryonic existence, the Office faced interferences in the performance of its independent functions by both the members of the Executive and Parliament. It is most disconcerting that most of these interferences take a bi-partisan nature when it comes to the investigation and prosecution of members of Parliament alone or along with members of the Executive. The Executive and Parliament have a Constitutional and legal duty to respect the independence and impartiality of the Office of the Special Prosecutor as promised to the electorate in the 2016 elections. Any appearance of a bi-partisan mounting of pressure on the decision making process of the Office of the Special Prosecutor sends a wrong signal not only to the citizens of Ghana but also to the international community to whom the appearance was given that all citizens are willing to equally submit to an independent investigation and prosecution for suspected corruption and corruption-related offences. Further details on the form and nature of

such interference can be read from website of the Office in a press release of the Special Prosecutor with the heading: “The Special Prosecutor Has No Tall List of Members of Parliament for Possible Prosecution”.

It is most depressing when Parliament and the Executive appear to interfere even with the administration of justice when it comes to the prosecution of public officers for suspected corruption and corruption-related offences. A certificate of Parliament to a Court of law directing it on parliamentary immunity and when the Court may sit on cases involving its members, is clearly one such example. In such circumstances, even innocent decisions which favour the accused against the capacity of the Special Prosecutor are wont to be interpreted in terms of previous pressures particularly when the jurisdiction of the Court to make such a decision on matters pending in the Supreme Court on the qualification of the Special Prosecutor becomes questionable.

The Office has experienced the tendency of political appointees serving as public officers and other politically exposed persons to manipulate in choosing their own forum for the investigation of corruption and corruption-related offences affecting them. The Office of the Special Prosecutor is governed by statute and I am mandated to lead it in the achievement of that mandate. I do not need any direct or indirect instructions from any office holder of any political party as to how to exercise the functions of my office. The protection of national resources by the Office is affected by such greedy conduct.

### **COLLABORATION WITH GHANA AUDIT SERVICE AND OTHERS INSTITUTIONS**

The Office is required by its functions to co-operate and coordinate with competent authorities and other relevant local and international agencies in furtherance of the Act.

The Audit Service is one of the competent authorities in Ghana and is required by the 1992 Constitution to audit and report on “all public accounts of Ghana and of all public office including the courts, the central and local government administrations, of the Universities and public institutions of the like nature, any public corporations or other body or organization established by an Act of Parliament.” By the nature of its work the Audit Service provides an avenue for intelligence to the Office of the Special Prosecutor on the suspected commission of corruption and corruption-related offences for which the Office has the mandate to investigate, prosecute, and to prevent potential corruption activities.

The Office has also collaborated effectively with the Ministry of Finance and the Financial Intelligence Center in the prevention of corruption and corruption-related offences and the results have led to the protection of national resources.

It is also part of the understanding that the Audit Service, the Ministry of Finance and the Financial Intelligence Center may assist the Office with the services of their officers in the

investigations of corruption and corruption related offences that may require such expertise to unravel such offences.

## **CONCLUSIONS**

The Office of the Special Prosecutor is the latest experiment in fighting corruption. It has been demonstrated that the mere enactment of the Office of the Special Prosecutor Act is no guarantee of the success of the President's and the Government's intention to fight corruption. It is just a beginning.

It has been shown that the success of this latest experiment in combating corruption and thereby protecting national resources will depend on the extent to which ministries; departments and agencies of government with responsibility to cooperate with the Office, collaborate with it so as to achieve the vision of the President who championed the setting up of the Office.

The present situation where critical ministries and agencies have failed or refused to produce public records on demand so as to aid the Office in critical investigations of offences running into millions of cedis, clearly demonstrates that there is a divergence between the President and his Government's anti-corruption vision and that of some of his appointees.

This paper has shown and asserted that the extent to which the role of the Office in protecting the nation's resources succeeds or fails like previous experiments since independence in 1957, will depend on the way the President and his Government's anti-corruption vision is supported by or obstructed by his political and other public office appointees. The personality and unblemished reputation of the first Special Prosecutor posited against the bi-partisan pressures to have him removed from office by the Courts, cannot be the solution to the intractable problem of effectively and efficiently protecting the nation's resources which has festered since independence.

The success of the massive bi-partisan pressure to tacitly influence decisions of the Courts on the qualification or otherwise of the first Special Prosecutor which has lasted before his appointment on 23<sup>rd</sup> February 2018 and continues over one and half years now will only demonstrate to the electorate in Ghana and the international community the absurdity of Ghana's commitment to the goal of combating corruption and protecting the nation's resources through the instrumentality of an independent and impartial Special Prosecutor.

**DATED AT THE OFFICE OF THE SPECIAL PROSECUTOR, YANTRABI ROAD,  
LABONE, ACCRA, THIS 12<sup>TH</sup> DAY OF AUGUST 2019**

**MARTIN A. B. K. AMIDU  
(SPECIAL PROSECUTOR)**