

REVIEWING THE OFFICE OF THE SPECIAL PROSECUTOR (OSP), GHANA: ASSESSING PROGRESS ON THE RENEWED ANTI-CORRUPTION FIGHT



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A BRIEF PROFILE OF GGA-WARO

Good Governance Africa (GGA) is an international non-governmental, not-for-profit institution that aims to improve governance performance across the continent; to inform and persuade the policy community that transparency and accountability are the basic building blocks of successful development; to strengthen the rule of law; and to build an active citizenry that institutionalises constraints on executive power. GGA believes improved governance results in better economic, social and environmental performance, which leads to greater wellbeing for all citizens. GGA has offices across the continent; SADC Regional Office (Johannesburg, South Africa), Nigeria Country Office (Lagos, Nigeria), Francophone/ Sahel Regional Office (Dakar, Senegal), East African Regional Office (Addis Ababa, Ethiopia) and the West African Regional Office (Accra).

Established in the year 2015, the GGA-West African Regional Office exists to promote good governance practices in Anglophone West Africa excepting Nigeria. The Regional Office uses results from scientific based research in a number of development topics to advocate for policy reforms, to train development actors, and to mobilise civil support for changes in governance and promotion of societal development.

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- The Ghana Anti-Corruption Coalition (GACC)
- Ghana CSOs Platform for the Monitoring of the SDGs
- The Ghana Urbanisation Think Tank (GUTT)

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List of Acronyms

AG	Attorney General
BNI	Bureau for National Investigations
CDD-Ghana	Ghana Center for Democratic Development
CHRAJ	Commission of Human Rights and Administrative Justice
CID	Criminal Investigations Department
COVID-19	Coronavirus Disease 2019
CSJ	Centre for Social Justice
CSOs	Civil Society Organisations
EC	Electoral Commission
EITI	Extractive Industry Transparency Initiative
EOCO	Economic and Organised Crime Office
FATF	Financial Action Task Force
GACC	Ghana Anti-Corruption Coalition
GBC	Ghana Broadcasting Corporation
GGA	Good Governance Africa
GHEITI	Ghana Extractive Industry Transparency Initiative
GIABA	Inter-Governmental Action Group against Money Laundering
GII	Ghana Integrity Initiative
GNPC	Ghana National Petroleum Corporation
GoG	Government of Ghana
GPGC	Ghana Power Generation Company
IPP	Independent Power Producer
MDAs	Ministries Departments and Agencies
ML	Money Laundering
NACAP	National Anti-Corruption Action Plan
NDC	National Democratic Congress
NGOs	Non-Governmental Organizations
NPP	New Patriotic Party

List of Acronyms

OEM	Original Equipment Manufacturer
OSP	Office of the Special Prosecutor
PNDC	Provisional National Defence Council
PPA	Power Purchase Agreement
PPA	Public Procurement Authority
PS	Police Service
ROL	Rule of Law
SP	Special Prosecutor
TISDA	Transparency and Integrity in Service Delivery in Africa
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCITRAL	United Nations Commission on International Trade Law
US	United States
USD	United States Dollars

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Foreword

The fight against corruption in Ghana can best be described as an age-old development since independence. However, since the beginning of the fourth republic in 1992, the corruption fight has gained more popularity under a more institutionalized approach to addressing the canker. With Ghana's Fourth Republic being arguably the most stable and democratic era since independence, constitutional and well-instituted legal approaches have been adopted by successive governments to fight graft in both public and private sectors in the economy of Ghana. These measures as opposed to former non-democratic approaches such as coup d'états and forced incarcerations are seen as the most appropriate ways of dealing with reported cases of corruption. Again, with the country signing onto a number of international conventions and protocols aimed at promoting good democratic governance, including the fight against corruption, governments are expected to institute mechanisms to contain and reduce to the barest minimum corruption and its impact on the nation's development.

Some of the notable feats that have been achieved by successive governments under the Fourth Republic in Ghana's corruption fight include the increasing number of anti-graft institutions, governments' budgetary allocations to these institutions, passage of laws and legal instruments to aid the work of the relevant institutions, etc. Recent developments in this regard including the passage of the Right to Information bill and the establishment of the Office of the Special Prosecutor (OSP), further enhances the country's efforts at stemming the growing number of corrupt cases in both public and private sectors. Unfortunately, there are equally growing concerns on whether the work of existing anti-corruption institutions is making any significant impact in the fight against corruption in Ghana. This

Foreword

concern shared by some Ghanaians, anti-graft institutions (both local and external), development partners, etc. became more pronounced and took centre stage in the run-up to the country's 2016 presidential and parliamentary elections. It therefore was welcome news to a section of the population when the then candidate Nana Addo Dankwa Akufo Addo of the New Patriotic Party (now President), intimated of his intention to establish the OSP.

The establishment of the OSP was to deal with an aspect of Ghana's anti-corruption which was seen as non-effective and non-progressive and that had to do with the expeditious investigation, prosecutions of reported corruption cases and the retrieval of stolen resources back to the State for development. Before the establishment of the OSP some three years back (2018), the Attorney Generals' Office which was to lead this aspect of the work on anti-corruption fight was seen as not adequately executing this mandate, at least at the pace expected by development actors and ordinary citizens.

The establishment of the OSP and development in its operations thereafter however, has been met with mixed reactions following a period of what many considered little or no action to the unfortunate developments in 2020 involving Ghana's first special prosecutor (SP) and the Office of President which eventually led to the

resignation of the first SP. However, the appointment of the country's second SP in the person of Lawyer Kissi Agyebeng coupled with the OSP's engagement with various stakeholders including civil society and the media thereafter, is an indication that the work of the august office of the SP is back on track.

The Good Governance Africa (GGA) over six years now has been championing good governance practices in Ghana and other English-speaking West African countries with the aim of supporting improvements in governance processes in bringing development to the door step of the ordinary citizens. Corruption has been identified as one of the foremost cankers derailing the socio-economic progress of the region, depriving the poor and vulnerable of their rights and creating inequalities in greater proportions. The Centre is therefore supportive of all progressive steps taken by either government or other stakeholders in fighting and winning the fight against corruption. The review of the work of the OSP therefore is part of a bigger plan by GGA-WARO to put spotlight on the activities and interventions by various stakeholders in the fight against corruption in Ghana. This is a contribution to efforts to improve approaches adopted so far by various actors whilst taking stock of emerging trends in the discourse on the fight against corruption. This report gives the reader more than just a review of the work of the OSP but brings along an overview of corruption related events to help put the discussion on the aforementioned topic in better and clearer perspective to inform policy action.



Tina Asante-Apeatu

Executive Director, GGA WARO

Executive Summary

Growing perception of corruption has been a major feature in the Fourth Republic of Ghana. Since the country returned to constitutional rule in the early 1990s, there have been accusations and counter accusations of growing incidence of corruption in public life. Even so in the last three decades, the public has been critical of particularly the political class of using public power to extort monies from individuals and businesses before giving them service. Several corruption studies by anti-graft agencies and institutions within Ghana and beyond have all within this period reported various incidences of corruption within the public sphere with damning consequences on the development of the nation. This development has made the fight against corruption a major agenda in political campaigns. Successive governments of Ghana in the Fourth Republic have therefore been judged very much on their ability to fight against corruption through the strengthening of anti-graft institutions in the country.

The 2013 external review report on Ghana's implementation of United Nations Convention Against Corruption (UNCAC) found a limited number of prosecutions of corruption offences and recommended that the country "should clarify and align its investigation and prosecution powers and responsibilities to ensure efficiency, effectiveness and independence of the prosecution function in corruption cases." Indeed, surveys of public opinion had repeatedly indicated a lack of public confidence by Ghanaians in the state institutions mandated to fight corruption. It was in this context that during the 2016 election campaign the then-opposition New Patriotic Party (NPP) committed to establishing an independent Office of the Special Prosecutor (OSP) on corruption and corruption-related offences with powers to investigate and prosecute allegations of corruption. Once in office, President Nana Akufo-Addo restated his commitment to swiftly en-

act the OSP into law, offering Ghana a potentially significant step in assuaging growing concerns about corruption.

The government of Ghana subsequently established by an act of parliament in 2017 the Office of the Special Prosecutor to investigate and prosecute certain categories of cases and allegations of corruption and other criminal wrongdoing under the Criminal and Other Offences Act, 1960 (Act 29), including those involving alleged violations of the Public Procurement Act, 2003 (Act 663) and cases implicating public officers and politically exposed persons (Osei-Amoako 2018). The office was primarily created to fulfill an election promise of stamping out corruption made by President Nana Akufo-Addo when he came to power in 2017.

Study objectives:

The general objective of the study was to examine the work of the office of the special prosecutor three years on – in relation to the effectiveness of the office in fighting corruption; successes, challenges and way forward. Specifically, the study sought to: Assess the general legal set-up for fighting corruption in Ghana and the administrative set-up of the OSP to fight corruption; Assess the achievements of the OSP over the past three years in reducing/curbing corruption in Ghana; Identify possible challenges hindering the work of the OSP over the past three years in the delivery of effective and consistent investigations and prosecution of corruption cases in Ghana; and to make recommendations that could lead to reforms on both the set-up of the OSP and its delivery (processes) to ensure the achievement of its mandate.

Methodology:

This study adopted a mixed method approach using quantitative and qualitative methods – detailed desk review and in-depth interviews with key stakeholders in the anti-corruption space. The use of this approach allowed for the triangulation of findings from both desk review and the mini-fieldwork exercise. The team conducted

a detailed and comprehensive desk review of all relevant existing documents to serve as a basis for rolling the study. In relation to the in-depth interviews, the study adopted a purely purposive approach in selecting respondents in the anti-corruption sector as a result of the closed nature of the institutions within this space. In all, ten (10) anti-corruption agencies were targeted to participate in this study. However, the team was able to interview only four (4) of the institutions.

Study findings:

• General assessment of corruption in Ghana

The study assessed the thoughts of the anti-corruption agencies on the general corruption trends in the country. The findings show that though the agencies agree that issues of corruption have become more endemic, rampant and much more complex than in the past, the fight against corruption is improving as many state and non-state actors are taking strides to ensure that institutions and citizens are well aware and equipped to fight corruption. The Agencies further stressed that though there exist enough provisions in the many regulatory frameworks, these frameworks are not directly translating into transparency and accountability across the different sectors.

• Necessity of establishing the Office of the Special Prosecutor

The findings with reference to the necessity of establishing the Office of the Special Prosecutor in the face of the existence of major state and non-state anti-corruption agencies. The findings show that out of the four anti-graft agencies interviewed, three (75%) indicated that it was not very necessary to establish the Office of the Special Prosecutor because the country already has existing anti-corruption agencies which only needed more funding and strengthening to become more functional. The dissenting voices also indicated that though the country had existing institutions that were meant to lead the fight against corruption, these institutions were at the request and call of the government of the day, were not properly resourced

and were not transparent when it came to investigating corruption related issues having to do with the government of the day.

• General Impression about the work of the OSP

The general views/impressions of respondents in the anti-corruption sector were also sought in relation to the work of the OSP over the last three years of operation. The findings were grouped under key themes comprising impressions relating to resources (office space, staffing and financial) and on responses to issues of 'perceived and reported corruption':

Office space:

The findings in relation to office space revealed initial challenges with securing an appropriate office space for the OSP. However, as a result of pressure from anti-graft agencies and other like-minded CSOs, the government provided the OSP with a 10-storey building edifice in a prime location in Accra. This notwithstanding, the office complex requires equipment resourcing to make the office space more functional.

Staffing

Having the right staff in terms of numbers and expertise is key to making the OSP more functional. Issues relating to staffing have remained a major challenge since the inception of the OSP – the same issue persisted under the first Special Prosecutor and same seems to be the case under the current SP. The findings show that adequate funds were provided to cater for staffing in the 2018 budget where an amount of GH¢33,470,466 was provided for compensation to recruit 249 new crop of staff as part of the measures to fully operationalise the Office. This however, was not operationalised. Currently, the staff numbers are not up to the required number according to the new Special Prosecutor though provision has been made in the 2022 budget:

Financial

Over the three-year existence of the OSP, budgetary allocations have always been made to the office towards ensuring the OSP is well resourced to undertake its functions though this has always been below expectation. However, the major issue has been about actual disbursement. In 2018 and 2019, budget allocations for capital expenditure was not disbursed to the office to procure and establish the needed equipment.

- **Response to perceived issues of corruption**

The results in relation to the OSP's response to issues of perceived corruption pointed to the case of limited level of responsiveness from both the old and new Special Prosecutors. From the perspective of the anti-graft agencies, the OSP since its inception has not been effective with respect to its response to issues of corruption – the office has been unable to meet the expectations pertaining to the number of corruption issues reported. The office since inception has still not been able to conclusively complete any of the numerous cases of perceived and reported corruption.

- **Contribution of the OSP in reducing corruption in Ghana over the last 3-years**

The findings relating to the contribution of the OSP towards reducing corruption in Ghana point to disagreement across all the interviewed anti-corruption agencies – leaning towards 'disagree' and 'strongly disagree'. Out of the four key persons interviewed, three disagreed (75%) with one strongly disagreeing. This result shows that in the opinion of key agencies fighting against corruption, the OSP has in no way contributed towards fighting corruption – which is quite an indictment for an office that has been in operation over three years.

- **Contribution of the OSP in reducing the perception of corruption**

Perception of corruption has been growing over the years, especially across government and public institutions. The findings show sim-

ilar trend as was recorded on the issue relating to the contribution of the OSP to fighting corruption. Three of the respondents (75%) disagreed with the statement while one strongly disagreed. This further points to the fact that the OSP has not contributed to reducing the perception of corruption in the country.

- **The OSP is gradually achieving the purpose for which it was set-up**

In assessing the level of progress of the OSP, the study measured whether the OSP was achieving the purpose for which it was set up. The findings point to a split leaning towards 'strongly disagree' and 'neither agree or disagree' with half of the respondents 'strongly disagreeing' to the statement and the other half 'neither agreeing nor disagreeing'. Though it's still early days yet, the results however, indicate that largely, the OSP is not achieving the mandate for which it was set up.

- **To scrap or not to scrap the OSP**

One key point that dominated the discussions on the establishment of the OSP was whether the establishment was necessary in the face of numerous anti-corruption agencies – both public and private. The study assessed the views of the key stakeholders in the anti-graft space in relation to whether the OSP should be scrapped or not. The findings depict that of mixed views – two of the anti-graft agencies think the OSP should not be scrapped, one thinks it should be scrapped while the other neither agrees nor disagrees. This points to the fact that there may be no need to scrap the OSP but rather work at strengthening, resourcing and making the OSP much more functional.

- **Trust in the new Special Prosecutor to realise the mandate of the office**

The findings relating to trust of anti-graft agencies in the ability of the new Special Prosecutor to realise the mandate of the OSP reveal a higher leaning of respondents towards the 'Agree' scale (75%) – this indicates the anti-graft agencies believe in the expertise and ca-

capacity of the new SP to lead the OSP to achieve its mandate despite the seemingly slow start.

- **Ability of the OSP to achieve its mandate based on the current set-up**

A key point of discussion over the period of existence of the OSP has been on the set-up of the OSP in relation to the personnel structure i.e., the appointment of the SP by the political head, the composition of the board, the recruitment processes, the resourcing mechanisms etc. which have been a concern to many stakeholders in the anti-corruption space. The study therefore sought the views of respondents in relation to whether the current set-up of the OSP can help the office to achieve its mandate. The results show a higher level of uncertainty with three of the anti-graft agencies neither agreeing nor disagreeing to whether the set-up is appropriate/adequate to make it possible for the office to achieve its mandate.

- **Dwindling levels in the initial trust in the OSP**

The establishment of the OSP was met with great enthusiasm and hope from the general Ghanaian population and especially by key stakeholders in the anti-graft space. This level of trust and hope, however, has dwindled over the period as a result of the continuous increase in the perception of unchecked corruption especially in public office. The finding is in sync with this general perception - all the respondents agree to the fact that the initial trust in the establishment of the OSP has seen a significant dip in rating. This calls for a conscious and continuous efforts by the office to improve upon the perception and trust rating over the next few years.

- **Government will never fully empower the OSP to do its work**

One major concern of the anti-corruption agencies and the general public has been whether the government of the day will ever fully empower the OSP through adequate resourcing and full autonomy to do its work. The findings in relation to this shows a higher leaning

of respondents towards the 'Agree' option with a further respondent neither agreeing nor disagreeing. This shows that the likelihood of the OSP ever achieving full autonomy and empowerment from government to be fully functional may be in the distant future.

Policy Recommendations:

Based on the findings and the lessons learned from the study, a number of key policy recommendations have been made to guide ongoing work of the OSP:

Need to improve the resource allocation to the OSP:

The findings relating to resourcing of the OSP – staffing and financial shows very limited support from government, especially in relation to the actual disbursement of budget allocations. In line with this, it is recommended that:

a. Staffing: Full autonomy is provided the OSP to recruit full-time staff for the various departments under the OSP (Finance, Administration, Asset Recovery, Management and Investigations and Prosecutions Divisions). Secondments should only be applied to exceptional circumstances that require particular expertise.

b. Financials: The findings showed that out of the GH¢1.2 billion that was budgeted for capital and recurrent expenditure, only GH¢80 million was allocated for the 2022 financial year representing only 6.6% of what was requested. In line with this, it is recommended that the government allocates the needed financial resources

to the OSP so it can be fully operational.

Need to strengthen the prosecutorial powers and independence of the OSP: The results of the study show that over the three years of existence of the OSP, the office has not been able to prosecute or brought closure to any of the numerous corruption cases brought before it. This may be attributable to inherent weaknesses in certain sections of the Act which requires that express permission be sought from the Attorney-General for the OSP to initiate and conduct the prosecution of corruption and corruption-related offences. In line with this, it is recommended that Government, through parliament, should take appropriate steps to amend section 4 of the OSP Act to allow for full independence in prosecutions to prevent conflict of interest and interference in order to create confidence in the work of the OSP.

Need to work at reducing actual and perceived corruption: The findings in relation to the work of the OSP in reducing corruption and the perception of corruption shows the OSP has in no way contributed towards fighting corruption – which is quite an indictment for an office that has been in operation over three years the OSP. The office has also not contributed to reducing the perception of corruption in the country in any way through its work. This calls for a relook at the response of the OSP to reported and perceived corruption cases by being proactive in their responses and ensuring all investigations are conclusively ended. This will

largely contribute to reducing the perception of corruption in the country.

Need to rebuild the initial trust the public had in establishing the OSP: The establishment of the OSP was met with great enthusiasm and hope from the general Ghanaian population, however, the findings of the study show this initial trust and enthusiasm has dwindled over the period as a result of the continuous increase in the perception of unchecked corruption especially in public office. This calls for a conscious and continuous efforts by the office to improve upon the perception and trust rating over the next few years by being proactive in promptly responding to reported cases of corruption, conclusively investigating and prosecuting corruption and related case.

Need to strengthen the working relationship between the OSP and other anti-graft agencies: The findings show evidence of some level of collaboration between the OSP and anti-graft agencies, however, the level of working relation appears to be quite weak. With the level of voice and autonomy the anti-graft agencies have within the 'corruption fight' space in the

country, a strengthened working relationship will be to the benefit of the OSP in fighting against corruption. This will also contribute to ensuring that the functions of the OSP is carried out effectively devoid of any interference from the government or politicians.

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The general objective of the study was to examine the work of the office of the special prosecutor three years on

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Chapter 1

BACKGROUND AND CONTEXT

1.0 Introduction

Growing perception of corruption has been a major feature in the Fourth Republic of Ghana. After the PNDC returned the country to constitutional rule in the early 1990s, there have been accusations and counter accusations of growing incidence of corruption in public life. Even more so in the last three decades, the public has been critical of particularly the political class of using public power to extort monies from individuals and businesses before giving them service. Several corruption studies by anti-graft agencies and institutions within Ghana and beyond have all within this period reported various incidences of corruption within the public sphere with damning consequences on the development of the nation. This development has made the fight against corruption a major agenda in political campaigns and hence observers look out for political commitments to the fight against the issue of corruption. Such commitments are explicitly stated in the party manifestos of competing political parties in the Fourth Republic of Ghana. Successive governments of Ghana in the Fourth Republic have therefore been judged very much on their ability to bring down the incidence of corruption through the strengthening of anti-graft institutions in the country.

The political parties' commitment to the fight against corruption in Ghana over the last few decades have largely revolved around the governing party's ability to resource anti-graft institutions to carry out their mandates as stipulated by the 1992 Constitution or the Acts that establish those institutions. As a result, critics of governments' fight against corruption have often been referred to budget allocations within budgets as a sign of government's commitment to fight corruption. However, the ability of state anti-graft institutions to investigate and prosecute reported corruption offenders has been a subject of debate. With yearly audited reports from the

Auditor General's Department replete with cases of public officers' abuse of office and dissipation of public funds, much more is being demanded of government to walk the talk of really fighting corruption by prosecuting offenders and possibly reclaiming all lost funds for development.



The President of the Republic of Ghana, Nana Addo Dankwa Akufo-Addo (L) in a tete-a-tete with the former Special prosecutor, Mr Martin Amidu (R)

source: www.ghanaweb.com

Another aspect in the fight against corruption by successive Ghanaian governments which has been criticised, is the dependence of the anti-graft institutions on the executive arm of government. This situation many attribute to the over concentration of power in the executive arm of the Ghanaian government; making it the appointing authority for the top leadership of all the state anti-graft institutions. This appointing power coupled with the executive's determination of the resource allocation to these institutions have thus weakened the ability of the institutions to a large extent to independently carry out corruption related investigations not to talk of prosecuting offenders especially when named officials are within the executive arm of government. Unfortunately, even where the institutions are bold enough to take up such cases, the processes are truncated along the line. Over the years, this phenomenon has eroded public confidence in state anti-corruption fighting institutions and hence the call for political parties and governments to do things differently to stem the growing incidence of corruption.

1.1 Background to the Setting-up of the OSP

The 2013 external review report on Ghana's implementation of United Nations Convention Against Corruption (UNCAC) found a limited number of prosecutions of corruption offences and recommended that the country "should clarify and align its investigation and prosecution powers and responsibilities to ensure efficiency, effectiveness and independence of the prosecution function in corruption cases." Indeed, surveys of public opinion had repeatedly indicated a lack of public confidence by Ghanaians in the state institutions mandated to fight corruption. It was in this context that during the 2016 election campaign the then-opposition New Patriotic Party (NPP) committed to establishing an independent Office of the Special Prosecutor (OSP) on corruption and corruption-related offences with powers to investigate and prosecute allegations of corruption. Once in office, President Nana Akufo-Addo restated his commitment to swiftly enact the OSP into law, offering Ghana a potentially significant step in assuaging growing concerns about corruption.

After winning the 2016 General Elections, the president, Nana Addo Dankwa Akufo Addo announced his decision to set up the office of the special prosecutor in fulfilment of his campaign promise to renew the fight against corruption. Processes were thus initiated to constitutionally establish the OSP. Mr. Martin A.B.K. Amidu (a former Attorney General under the late President Atta Mills' administration and an anti-corruption campaigner) was named by the President as Ghana's first ever Special Prosecutor. Mr. Amidu's appointment as the SP came with mixed reaction, with a lot of Ghanaians happy to see the vociferous and fearless anti-corruption campaigner being given the opportunity to take his fight against corruption to a new level. To sympathizers of both the ruling and main opposition parties (the NPP and NDC respectively), his appointment could either spell doom for both sides. Some supporters of the ruling party (the NPP) considered the man as unpredictable giving his independent mind and mode of operation. To the opposition NDC, his criticism of the leadership of the party in the run-up to the 2016 general elections was enough grounds to suspect him of "witch hunting" attempts at past government appointees.

Unfortunately, Ghana's first Special



Mr Martin Amidu, Former Special
Prosecutor, Ghana
source: starrfm.com.gh

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*Indeed, surveys
of public opinion
had repeatedly
indicated a lack of
public confidence
by Ghanaians in the
state institutions
mandated to fight
corruption*

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Prosecutor (Mr. Martin Amidu) resigned on 16th November 2020, few weeks before the 7th December presidential and parliamentary elections. This surprising development came days after the Office of the Special Prosecutor (OSP) released an over sixty-page corruption assessment report on Governments infamous Agyapa Royalties Limited Deal (a deal that would have seen Ghana mortgaging its minerals royalties to raise a little over \$1bn on the international market). In a detailed letter to the president of Ghana, His Excellence Nana Addo Dankwa Akufo Addo, Mr. Martin Amidu indicated that fall outs after the release of that report has among other issues informed his decision to resign. Highlights of some Corruption Cases Handled by Ghana's first SP before his resignation from office.

- The Republic vs Mahama Ayariga & Kenerick Akwasi Marfo
- The Republic vs Hajia Hawa Ninchema
- The Republic vs Sumaila Ewuntomah Abudu
- The Republic vs Alex Avade
- The Republic vs Alhaji Abdul-Mumuni Jesewinde
- The Republic vs Mary-Stella Adapesa
- The Republic vs Mumuni Yakubu Nambe
- The Republic vs Mahama Ayariga
- The corruptions risk assessment on the Agyapa Royalties Agreement
- The Airbus scandal which identified former president Mahama as the government official one
- The Public Procurement Authority (PPA) boss Boateng Adjei and Charles Bissie in the galamsey bribery scandal

Following his successful second term bid as president of the Republic of Ghana, President Nana Addo Dankwa Akuffo Addo accepted the nomination by Ghana's Attorney General (Godfred Dame) of a private legal practitioner in the person of Lawyer Kissi Agyabeng to replace Mr. Martin A.B. K. Amidu (Ghana's first SP). He was sworn into office on Thursday 5th August 2021 after receiving a unanimous parliamentary approval on Friday July 30th after vetting, becoming Ghana's second Special Prosecutor.

1.2 Objectives and scope of the study

In line with the operationalisation of the OSP over the past three years, Good Governance Africa (GGA) sought to generally examine the work of the office of the special prosecutor – in relation to the effectiveness of the office in fighting corruption; successes, challenges and way forward. Specifically, the study sought to achieve the following:

1. Assess the general legal set-up for fighting corruption in Ghana and the administrative set-up of the OSP to fight corruption;
2. Assess the achievements of the OSP over the past three years in reducing/curbing corruption in Ghana;
3. Identify possible challenges hindering the work of the OSP over the past three years in the delivery of effective and consistent investigations and prosecution of corruption cases in Ghana;
4. Make recommendations that could lead to reforms on either the set-up of the OSP and its delivery (processes) to ensure the achievement of its mandate.

1.2.1 Research Questions

In adequately responding to the objectives of the study, the following research questions were formulated based on the objectives to guide the study:

1. What is the general legal set-up for fighting corruption in Ghana and the administrative set-up of the OSP to fight corruption?
2. What are the achievements of the OSP over the past three years in reducing/curbing corruption in Ghana?
3. What are the possible challenges hindering the work of the OSP over the past three years in the delivery of effective and consistent investigations and prosecution of corruption cases in Ghana?
4. What are the recommendations based on the findings that could

lead to reforms on either the set-up of the OSP and its delivery (processes) to ensure the achievement of its mandate?

1.3 Methodology

This study adopted a mixed method approach using quantitative and qualitative methods – detailed desk review and in-depth interviews with key stakeholders in the anti-corruption space (limited number of respondents). The use of this approach allowed for the triangulation of findings from both desk review and the mini-field-work exercise. The study was rolled out as the per the flow in Figure 1:

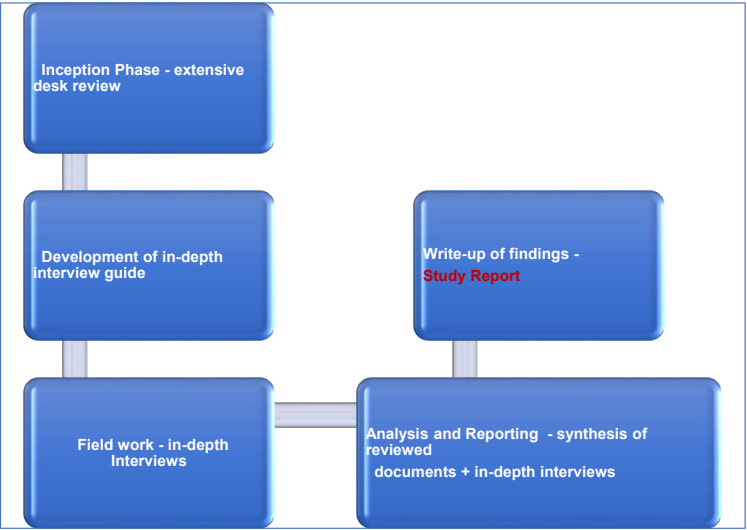


Figure 1: Flow of work

1.3.1. Approach to Desk Review

The team conducted a detailed and comprehensive desk review of all relevant existing documents to serve as a basis for rolling the study. This was done by reviewing all available documents/literature on corruption issues and trends in Ghana, the establishment of the office of the special prosecutor and the work of the office since inception. The review was done by searching academic and scholarly sites/databases including Google Scholar, Scopus, PubMed, Taylor and Francis, JStor, BMC, Science Direct, ResearchGate and corruption related portals and also across news and online portals in Ghana and beyond.

1.3.2 Sampling Strategy and Targets

The study adopted a purely purposive approach in selecting respondents in the anti-corruption sector as a result of the closed nature of the institutions within this space. In all, ten (10) anti-corruption agencies were targeted to participate in this study. However, the team was able to interview only four (4) of the institutions.

1.3.3 Study Limitation

The study limitation was largely related to the adopted methodology. The study was largely a desk review with limited in-depth interviews with anti-corruption agencies. The OSP was established a little over three years and as such there is very limited and scanty pieces of information on the work of the OSP.

Secondly, there was quite high level of non-responsiveness from stakeholders within the anti-corruption sector as a result of observed reluctance to be on record. Despite this limitation, frantic efforts were made at gleaning the highest level of available data/information which adds on to the available literature and knowledge on the fight against corruption in general and specifically on the work of the office of the special prosecutor.

Chapter 2

FRAMEWORKS TOWARDS ADDRESSING CORRUPTION IN GHANA

2.0 Legal and Institutional Frameworks to the fight Against Corruption in Ghana

This section highlights some of the international and national-level legal and institutional frameworks that have been guiding the fight against corruption over the years.

2.1 International conventions

Ghana has over the years signed unto a number of international Conventions relating to the fight against corruption. Ghana signed the United Nation Convention against Corruption in 2004 and ratified it in 2007 (UNODC 2018). Similarly, the African Union Convention on Preventing and Combating Corruption was signed in October, 2003 and ratified by parliament in June 2007.

2.2 National legal frameworks

Criminal code: While there is no singular piece of legislation to tackle corruption, the criminal code criminalises corruption in the form of active and passive bribery, extortion, wilful exploitation of public office, use of public office for private gain and bribery of foreign public officials (Global Integrity 2011; Parliament of the Republic of Ghana 2012; Duodo and Goddard 2017). Moreover, corruption is deemed illegal, and both agent and principal are liable – regardless of the nationality of the person who is bribing or being bribed (Global Integrity 2011; Parliament of the Republic of Ghana 2012; GAN Integrity 2018). The country's anti-corruption legal framework is comprehensive and strong, but faces challenges of implementation (Global Integrity 2011; US Department of State 2017; Bertelsmann Stiftung 2018).

Corruption under section 239 of Ghana's criminal code is defined as "corruption of a public officer", and subsequent clauses define various forms of corruption, including bribery and extortion. There is also a Code of Conduct for Public Officers and the Civil Service Act which provides guidelines on conflicts of interest for civil servants (Global Integrity 2011; Duodo and Goddard 2017; GAN Integrity 2018).

The Anti-Money Laundering Act 2008 also criminalises money laundering (GAN Integrity 2018). The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter financing of terrorism (AML/CTF) standards in Ghana was undertaken by the Financial Action Task Force (FATF) in 2017. According to that evaluation, Ghana was deemed "compliant" for 14 and "largely compliant" for 18 of the 40 FATF recommendations (Inter-Governmental Action Group against Money Laundering (GIABA) 2018).

While there is no law supporting the beneficial ownership transparency agenda in the country, the Companies Act 2016 lays a firm legal basis for collecting and maintaining a national database on beneficial owners in Ghana. The law mandates the Registrar General's Department to be the institutional body responsible for the collection and maintenance of beneficial ownership register in the country (EITI 2017). Despite Ghana's comprehensive legal framework and sound institutional structure for investigating and prosecuting money laundering (ML), investigation and prosecution appear to focus more on predicate offences, thus leading to few ML convictions. Ghana also does not actively pursue a policy of tracking confiscation of criminal proceeds. Thus, while Ghana's anti-money laundering laws largely comply with international standards, they are weakly and sporadically enforced (Bureau for International Narcotics and Law Enforcement Affairs 2017).

While there is a Whistle-blowers Act, passed in 2006 to protect witnesses in corruption cases from prosecution once they come forward with pertinent information, it is rarely implemented, as potential informants frequently fear losing their well-paid employment

(Bertelsmann Stiftung 2018).

The Public Procurement Act, the Financial Administration Act, the Internal Audit Agency Act and the Criminal Offences (Amendment) are meant to promote public sector accountability and seek to combat corruption. Companies found guilty of corruption are debarred from participating in future bidding for up to five years.

- **The Public Procurement Act 2003, Act 663**

Assented to on the 31st of December 2003, the Public Procurement Act (Act 663) exists to provide for public procurement, to establish the Public Procurement Authority, make administrative and institutional arrangements for procurement, stipulate tendering procedures and provide for related matters (The Public Procurement Act, 2003).

- **The Financial Administration Act 2003, Act 654**

An ACT to regulate the financial management of the public sector; prescribe the responsibilities of persons entrusted with financial management in the Govern-

ment; ensure the effective and efficient management of State revenue, expenditure, assets, liabilities, resources of the Government, the Consolidated Fund and other public funds and to provide for related matters.

- **The Internal Audit Agency Act 2003, Act 658**

An ACT to establish an Internal Audit Agency as a central agency to co-ordinate, facilitate, monitor and supervise internal audit activities within Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies in order to secure quality assurance of internal audit within these institutions of State; to provide for the Board of the Internal Audit Agency and to provide for connected purposes.

- **Criminal Offences (Amendment) Act 2012, Act 849**

This Act popularly known as the "Criminal Code" was first enacted and passed in the year 1960. The Act was originally referred to as Act 1960, Act 29 and it was amended to include the offences of unlawful use of human parts, enforced disappearance,

sexual exploitation, illicit trafficking in explosives, firearms and ammunition, participation in an organised criminal group, racketeering and to provide for related matters. This Act criminalizes active and passive bribery, extortion, willful exploitation of public office, use of public office for private gain and bribery of foreign public officials

A National Anti-Corruption Action Plan (NACAP) was passed in 2014, which aims to improve the prevention, investigation and prosecution of corruption by strengthening a number of state agencies and putting a premium on public awareness of corruption (Government of Ghana 2012; Freedom House 2016; Boateng 2018). However, A UN report, released in February 2015, highlighted the government's inability to implement its anti-corruption policies and effectively prosecute offenders (Freedom House 2016). Moreover, the NACAP story is deemed "not all that rosy", as politicians, after their initial in-front-of-camera pledges, do not seem too committed to the common strategy but rather to some party manifesto pledge; for instance, to create the Office of the Special Prosecutor (Boateng 2018).

2.3 Institutional frameworks

There are several anti-corruption bodies that exist in Ghana. These comprise the following:

- Commission of Human Rights and Administrative Justice (CHRAJ)

CHRAJ is one of Ghana's leading anti-corruption bodies. It consolidates the work of an anti-corruption agency, ombudsman, and human rights commission under one umbrella (Kukutschka 2014). Its anti-corruption powers stem from Articles 218(a) & (e); 284-288 of the 1992 constitution and section 7 (1) (a), (e) & (f) of Act 456. The commission investigates and works to prevent corruption (ACA 2018). However, CHRAJ does not have the power to prosecute, nor does it have budget autonomy (ACA 2018). As the president, on the advice of the Council of State, appoints the commissioners, the

organisation is not kept free from the executive's influence (Global Integrity 2011; ACA 2018). The CHRAJ website regularly updates news and events related to corruption, and offers research and publications on the topic. It also provides a link to submit three types of complaints: normal, whistle-blower and discrimination reporting (CHRAJ 2018). Also, in accordance with a supreme court ruling, the ombudsman cannot initiate its own investigation.

- **Economic and Organised Crime Office (EOCO)**

EOCO, inaugurated in 2010, keeps a specialised police agency which concentrates on economic crime prevention, detection, investigation and prosecution, as well as recovering the proceeds of crime (Bertelsmann Stiftung 2018; Office of the Attorney-General and Ministry of Justice 2018). The functions of the office are to investigate and, on the authority of the attorney-general, prosecute serious offences that involve financial or economic loss to the republic or any state entity or institution in which the state has financial interest. It is also empowered to recover the proceeds of crime. It specifically targets the following areas (EOCO 2018; Office of the Attorney-General and Ministry of Justice 2018):

- *money laundering*
- *human trafficking*
- *prohibited cyber activity*
- *tax fraud*
- *other serious offences*

EOCO, like CHRAJ, faces challenges in performing its duties, including interference from the executive. This interference is made possible by the fact that the director and the board are appointed by the executive and report to the attorney-general (Kukutschka 2014).

- **Audit Service of Ghana**

The aim of Ghana's audit service is to deliver good governance, transparency, accountability and probity in Ghana's public financial management system by auditing to recognised international stand-

ards and reporting their audit results and recommendations to parliament (Ghana Audit Service 2018). The auditor-general's audit jurisdiction extends to the following:

- *the public accounts of Ghana and of all public offices, including the courts, the central and local government administrations, the universities and public institutions*
- *he accounts of any public corporation or other body or organisation established by an act of parliament*
- *the Bank of Ghana*
- *the accounts of a statutory corporation, a state enterprise or a public commercial institution operating under its own enactment.*

- **Office of the Special Prosecutor (OSP)**

The government of Ghana has established by an act of parliament in 2017 the Office of the Special Prosecutor to investigate and prosecute certain categories of cases and allegations of corruption and other criminal wrongdoing under the Criminal and Other Offences Act, 1960 (Act 29), including those involving alleged violations of the Public Procurement Act, 2003 (Act 663) and cases implicating public officers and politically exposed persons (Osei-Amoako 2018). The office was primarily created to fulfill an election promise of stamping out corruption made by President Nana Akufo-Addo when he came to power in 2017 (Okello 2018).

- **Courts**

According to the constitution, the structure and the power of the judiciary are independent of the two other branches of government. The Supreme Court of Ghana stands at the apex and has broad powers of judicial review. The constitution authorises the apex body to rule on the constitutionality of any legislation or executive action at the request of any aggrieved citizen. The hierarchy of courts derives largely from British juridical forms. The courts have jurisdiction over all civil and criminal matters. They include the superior courts of judicature, established under the 1992 constitution, and the inferior courts, established by parliament (High Commission 2014). The judiciary is viewed as one of the most corrupt bodies, especially after

the 2015 scandal involving a host of judicial officers (Freedom House 2016).

Other stakeholders

- **Media**

Ghana has an enthusiastic press that plays a key role in political discourse, national identity and popular culture. Although the state-run Ghana Broadcasting Corporation (GBC) is protected by the constitution from government interference, political parties often try to influence coverage. Private media also face editorial pressure from their owners, especially those with political connections (Freedom House 2017).

Civil society

In Ghana, citizens are at liberty to create civil society organisations and engage in activism of any kind, including anti-corruption activities. The government does not create barriers for anti-corruption civil society organisations (CSOs). However, it is possible that the government monitors their activities and pronouncements, and sometimes reacts to the pronouncements (Global Integrity 2011). Non-governmental organisations (NGOs) and CSOs are generally able to operate freely, and play an important role in ensuring government accountability and transparency (GAN Integrity 2018). Some of the key CSOs comprise the following:

The Ghana Anti-Corruption Coalition (GACC) is a cross-sectoral grouping of public, private and civil society organisations with a focus on promoting good governance and fighting corruption in Ghana. Among other work, they routinely publish corruption research, run an anti-corruption hotline and have a section for people to report if they have paid a bribe (GACC 2018).

The Ghana Center for Democratic Development (CDD-Ghana) is dedicated to the promotion of society and government based on

the rule of law, appropriate checks on the power of the state and integrity in public administration. Its programmes include human rights promotion, natural resource governance, Afrobarometer Surveys and constitutional development (CDD-Ghana 2018).

Ghana Extractive Industry Transparency Initiative (GHEITI), is the Ghana subset of the global initiative (EITI) aimed at following due process and achieving transparency in payments by Extractive Industry companies to governments and government-linked entities. Alongside other efforts to improve transparency in government budget practice, it also seeks to usher processes whereby citizens can hold their governments accountable for the use of revenues earned from the extractive sector (GHEITI 2018). EITI has provided several aforementioned recommendations to improve transparency in the extractive sector (part of the natural resource management section). GHEITI has followed up with all the involved stakeholders on many of these recommendations, which has resulted in policy changes such as the introduction of capital gains tax, higher ground rent for mining and a fixed royalty rate (EITI 2018).

Ghana Integrity Initiative (GII) is a non-partisan, non-profit civil organisation focused on addressing corruption, and was established in 1999. GII is the Ghana Chapter of Transparency International. A few notable projects include (GII 2018):

- *organising sensitisation workshops, seminar etc. on the causes, effects and solution to corruption*
- *engaging student bodies in schools and identifiable youth groups to talk about the canker and possible remedies of corruption*
- *advocating for the initiation and/or passage of transparency-enhancing and anti-corruption legislations, such as Freedom of Information Bill, Whistle-blower Law, Assets Declaration Law (Regulation)*
- *organising nationwide radio programmes to educate the public on the importance of anti-corruption legislation to counter corruption*
- *holding meetings with key stakeholders in the water sector on transparency and integrity in the water sector under another new*

GII project called Transparency and Integrity in Service Delivery in Africa (TISDA)

- *organising ethics workshops titled “Zero Tolerance Against Corruption Campaign: The Role of Religious Bodies in Ghana” for religious groups throughout the country*

2.4 Corruption trends in Ghana

Over the years, there have been observed trends of perceived and actual cases of corruption across different sectors and institutions in Ghana. This section highlights some of these cases of corruption in the country. This is not intended to cover a comprehensive review of corruption in Ghana; it only highlights key contextual trends observed in the last decade in the Fourth Republic. It considers the political and institutional dynamics of corruption to understand why corruption works the way it does in Ghana and what implications that might have for civil society anti-corruption efforts. These have been categorised by institution and by specific cases:

2.4.1 Corruption in the Judicial Service

The judicial system in the country has always been perceived as corrupt, however, there had never been any evidence to that effect over the years till 2015. This section provides highlights on the investigative piece that led to some level of clean up in the judicial service and other allegations of corruption.

- *Dismissal of judges guilty of bribery charges:* On the 8th of December, 2015, twenty (20) judges and magistrates were sacked in Ghana after being found guilty of bribery. The dismissals followed an investigation into allegations of corruption in the judiciary as cited by the then Chief Justice of Ghana, Georgina Theodora Wood. In August, Anas Aremeyaw Anas, an investigative journalist revealed evidence showing judges demanding bribes and sex to influence judgements in court cases. Announcing the sackings, the chief justice indicated that she wanted to assure the public that the judicial council, the regulatory body for judges, would take "prompt and resolute" action to "redeem"

the image of the judiciary. Judicial council secretary Justice Alex Poku Acheampong said some of the sacked judges had been stripped of their benefits.

However, the benefits of other judges had been retained, after they had shown remorse and had apologised for bringing the judiciary into disrepute. The sacked judges and magistrates were from lower courts, and had been appointed by the chief justice. One judge was cleared of the charges. A second inquiry, focusing on similar allegations against 12 High Court judges, has not yet concluded its work. Investigative journalist Anas Aremeyaw Anas handed over nearly 500 hours of video evidence on tape to the chief justice in August.





Journalist Anas Aremeyaw Anas with the face covering

source: www.cjr.org

- **Current Chief Justice hit with bribery accusation**

Ghana's Chief Justice was accused of requesting a USD 5 million bribe to influence the outcome of a case. At this stage, it is an allegation only and could not be classified for our purposes as a credible assertion. Nevertheless, the episode features prominently in the local press and reignited doubts about the integrity of the judicial service in Ghana dating back to damning revelations from a 2015 undercover documentary. Remedial action taken at the time focused on specific individuals as opposed to practices/processes or oversight of the judiciary. In their absence, bribery risks persist at similar levels. Ghana's current chief justice, Kwasi Anin Yeboah was accused of demanding USD 5 million to influence the outcome of a case involving a central region traditional leader, years before his appointment as chief justice in January 2020. The Chief Justice requested that the Ghana Police Service Criminal Investigations Department (CID) carries out an investigation. The referral of the allegation to the CID may be indicative of willingness on the part of Anin Yeboah to open himself up to independent scrutiny. Nevertheless, the mere allegation of the most senior judge in the country being involved in corrupt practices weighs on the reputation of the judicial service. Moreover, in our research, private and commercial sources continue to cite instances of bribery pressure to influence the outcome of legal proceedings. This, at a time when governance failings are a particular focus for the country.

2.4.2 Alleged procurement breaches at the electoral Commission

The immediate past Chairperson of the Electoral Commission (EC), Charlotte Osei, was accused of breaching procurement laws in the award of several contracts in her three-year period at the helm of affairs, prior to the 2016 elections. The report of the committee set up by the then Chief Justice, Sophia Akuffo recommended her removal from office, after investigating separate complaints brought against her. She was investigated over six separate allegations of various procurement breaches, for which a prima facie case was established and which led to her removal from office.



Immediate past Commissioners of the Electoral Commission

Source: citinewsroom.com

2.4.3 GNPC Management engaged in procurement breaches worth \$34 million - Auditor General

A report by the Auditor General indicted the management of the Ghana National Petroleum Company of procurement breaches in 2018. According to the report, the breaches were to the tune of \$34 million. The Auditor General disclosed that the Ghana National Petroleum Corporation (GNPC) signed foreign contracts without prior parliamentary approvals.

“Contrary to the above provisions, we noted from the sampled records reviewed that the GNPC signed and awarded five (5) international business contracts to five foreign suppliers or contractors using Single-Source method in four of those transactions and in one instance used the Restricted Tendering method without seeking for the necessary Parliamentary approvals. The five contracts totalled US\$34,165,235.15, and £464,963.13”, the report said.

The report also recommended sanctions for some management staff for the breaches. It added: “We recommended that Management of GNPC should be sanctioned in accordance with Section 92 of the Public Procurement Act 2003, (Act 663) as amended for breaching the Public Procurement Law”. Despite attempts by the Management of GNPC to explain the breaches, the Auditor General maintained its audit recommendation should still stand. “Management explained that the products involved in the transactions in question were all proprietary products that needed to be procured from the Original Equipment Manufacturer (OEM). Further, Management stated that it sought and obtained PPA’s approval for those transactions and that the items involved were captured in the approved annual budget of the corporation which was approved by Parliament, as well as its approved procurement plans for the respective periods.

2.4.4 Judgement Debts

Judgement debts have over the last decade become a major channel through which public funds have been lost mainly through the abrogation of contracts. This section also highlights a few of such instances:

- Ghana lost GH¢1.89 billion to judgement debts between 2000 and 2019 – Report

Ghana's struggles with judgement debts have seen it lose GH¢1.89 billion in judgement debts between 2000 and 2019, according to a report by the Centre for Social Justice (CSJ, 2019). In the report, the centre notes that this figure is equivalent to 135 percent of new multilateral loans contracted by the government in 2019.

The report was launched during a virtual forum on the topic; 'A 20-year review of judgement debt payments in Ghana: Impact, Causes and Remedies'. The reasons for the judgement debt ranged from contractual breaches to government's failure to promptly pay compensations for its compulsory land acquisitions, as well as statutory breaches committed by public officials in the course of their official duties.

Judgement debt due to contractual breaches accounted for 73 percent of the total judgement debt payments made over the period covered in the report. Judgement debt due to failure to promptly pay compensations and statutory breaches accounted for 25 percent and 1.6 percent respectively. To date, the largest amount of judgement debt payments made in a given year was GH¢356.6 million paid in 2010. That amount was equivalent to about 20 percent of the total education expenditures for that year alone.

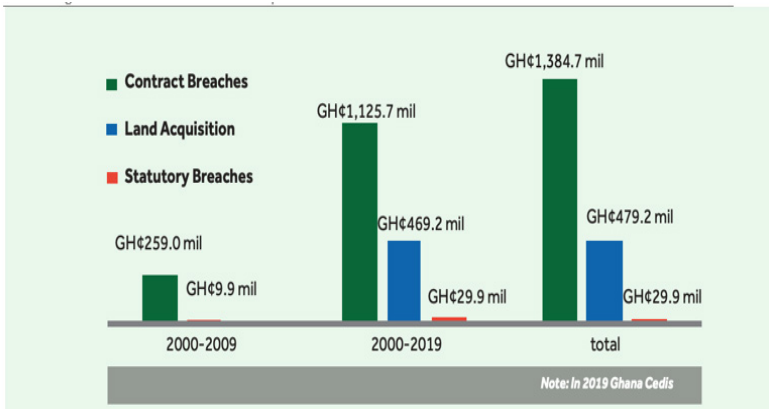


Figure 2: Judgment debt payments between 2010 – 2019

Source: Calculations based on Auditor General's Reports

The report noted that illegal abrogation of contracts involving huge amounts of money, which is part of judgement debts arising from contractual breaches, have mostly followed political transitions, according to the Sole Commissioner's report.

"Most judgement debts occur due to negligence, blatant disregard for public procurement laws, illegal abrogation of contracts, corrupt activities by public officials in their line of duty, all of which have resulted in the payment of huge sums from the public coffers."

Centre for Social Justice further notes that, per the Auditor-General's reports from 2013 to 2019, "staggering amounts of judgement debts awarded against the State remain outstanding." "For example, in 2017 alone, the amount outstanding as shown in the Auditor-General's report was GH¢411.6 million," it added. One of the cases cited in the report highlighted the damage caused over the years as a simple contract multiplied over a thousandfold into judgement debts.

The centre cited Rockshell International Ltd vs. Attorney General which saw a GH¢55,305.60 contractual obligation become a US\$35,000,000.00 judgement debt payment. The Report of the Sole

Commissioner for Judgment Debt Enquiry contained the payment of US\$35 million to Rockshell International Ltd as a negotiated settlement payment for performance under a contract to supply stones to the Keta Sea Defence Project. This contract was awarded in December 1983, and Rockshell performed its obligations under the contract, and on 28 January 1986, issued a certificate for payment of (GH¢55,305.60). After several unsuccessful demand notices and follow-ups, the company instituted legal action against the State and obtained a favourable judgement on November 20, 2006. A total of US\$70 million was awarded by the court in favour of Rockshell International. The government at the time could not settle its indebtedness to the company, but after a series of negotiations that ended in January 2009, the state agreed on the payment in instalments totalling US\$35 million as the full and final settlement of the judgement debt.

The most recent judgement debt is the US\$170 million, awarded against the government by the London-based United Nations Commission on International Trade Law (UNCITRAL) tribunal this year, over the termination of a power purchase agreement with the Ghana Power Generation Company. GPGC dragged the government of Ghana to UNCITRAL after the official termination in 2018, demanding compensation from the government for a breach of the contract.

- **Ghana slapped with \$137.9million judgement debt over power purchase contract**

An arbitration tribunal has ordered the government of Ghana (GoG) to pay \$137.9million to Ghana Power Generation Company (GPGC), an independent power producer (IPP), for terminating a power purchase agreement (PPA) between the two parties in 2018.

Out of the amount, \$134,348,661 represents early termination payment claim, which in itself is made up of \$69,361,680 as early termination fee, \$58,492,005.562 for mobilisation cost, \$6,462,528 as demobilisation cost and \$32,448 as preservation and maintenance cost.

The arbitration tribunal also awarded \$614,353.86 against Ghana as the cost of the arbitration, and also awarded cost of \$3 million against Ghana, which is the legal fees expended by GPGC during the arbitration. The International Court of Arbitration in its ruling on the matter put before it in 2019 also said the judgement debt comes with a \$30 million interest payment obligation. The contract, signed in 2015 was among those cancelled by former Energy Minister, Boakye Agyarko with the reason that they were not needed and were only going to further lead to the ballooning of Ghana's debts in the energy sector. The ruling by the International Court of Arbitration ordered the government to Ghana to pay to "GPGC the full value of the Early Termination Payment, together with Mobilization, Demobilization and preservation and maintenance costs in the amount of US\$ 134,348,661, together also with interest thereon from 12 November 2018 until the date of payment, accruing daily and compounded monthly, at the rate of LIBOR for six-month US dollar deposits plus six per cent(6%)."

“

Judgement debt due to contractual breaches accounted for 73 percent of the total judgement debt payments made over the period covered in the report.

”

The Government of Ghana was also to pay GPGC an amount of "US\$ 309,877.74 in respect of the Costs of the Arbitration, together with US\$ 3,000,000 in respect of GPGC's legal representation and the fees and expenses of its expert witness, together with interest on the aggregate amount of US\$ 3,309,877.74 at the rate of LIBOR for three-month US dollar deposits, compounded quarterly."

Chapter 3

THE OFFICE OF THE SPECIAL PROSECUTOR

3.0 Background

The Government of Ghana in the year 2017 set up the Office of the Special Prosecutor (OSP) after successfully passing into law the Special Prosecutor's Act, Act 915 of 2017. The Office of the Special Prosecutor serves as an independent investigating and prosecuting body to make inquiries into alleged cases of corruption, bribery or criminal cases at the national level whether they be in the public or private sector. The creation of the office of the Special Prosecutor (the first of its kind in Africa) was at the time said to be crucial as it was aimed at fast tracking cases of alleged corrupt practices which were seen as inimical to the economic growth of the nation.

In the run up to the 2016 general elections in Ghana, the corruption fight became a topical issue with several allegations of acts of corruption by activists of the then ruling party (the National Democratic Congress i.e., the NDC). The now ruling party, the New Patriotic Party (NPP) made 'political capital' and several promises of fighting the canker if given the reins of power and the establishment of the high office of the Special Prosecutor was a one sure solution proffered to adequately prosecute and fast track corruption cases. This solution however, was heavily criticised by a section of the population and in particular by the then ruling party, the NDC. The main argument against its establishment was the seeming duplication of mandates of existing anti-corruption fighting institutions such as the Economic and Organized Crime Office (EOCO), the Commission on Human Rights and Administrative Justice (CHRAJ), the Criminal Investigation Department of the Police Service (CID), and the Attorney General's office in particular.

The OSP Act, Act 959 (2017) provides for the appointment of a Special Prosecutor, a Deputy Special Prosecutor and the constitution of a Governing Board to manage the affairs of the Office. The procedure for the appointment of these officers and the Board are consistent with provisions in Ghana's 1992 Constitution specifically Article 88 which grants exclusive prosecutorial powers to Ghana's Attorney General (AG). This provision is particularly important as the OSP can only be effective if its independence is guaranteed under the laws of the land. Article 88(4) also grants the AG the power to delegate its prosecutorial powers to a legally established entity such as the OSP.

In fulfilment of the above provisions, the Special Prosecutor (SP) in the person of Mr. Martin A.B.K. Amidu was nominated by the AG, accepted by the President and vetted and approved by the Parliament of Ghana. The SP was sworn into office on 23rd February 2018 to begin his seven-year term. His deputy in the person of Ms. Jane Cynthia Naa Korshie Lamptey was sworn into office at the end of May 2018 after going through similar processes of appointment as the SP in between April and May. Unfortunately, Ghana's first special prosecutor in the person of Mr. Amidu on the 16th of November 2020, announced his resignation citing cases of political interference in the discharge of his mandate.

The above-mentioned developments have occasioned concerns amongst certain section of the public as to:

- i. The commitment of the political leadership to indeed fight corruption and not use such establishments as the OSP to deceive the public*
- ii. Whether the establishment of the OSP can indeed fight corruption by speedy and meticulous prosecution of alleged corrupt cases*

The government led by His Excellency President Nana Addo Danquah Akufo Addo has once again reiterated its commitment to get the office of the special prosecutor up and running by nominating a new SP in the person of Lawyer Kissi Agyabeng. The parliament of



Photograph of Lawyer Kissi Agyebeng (Special Prosecutor)

Source: briefghana.com

Ghana has since then vetted and approved the president's nomination (approval giving on 30th July 2021) and thus, Ghana's second SP has commenced his mandate after being sworn in by the President on Thursday August 5th, 2012, to investigate alleged cases of corruption and prosecute same to help deter potential offenders from committing similar offences whilst recovering monies misappropriated by offenders to the state.

With Ghana's second SP having made his first appearance in court on the 11th of October 2021 in the case involving his office and the Bawku Central member of parliament (Hon. Mahama Ayariga) on tax evasion charges against the latter, the OSP seems to have hit the ground running barely two months after the appointment of the SP. The SP also, has since engaged the public, CSOs and other interested anti-corruption fighting institutions to share his opinions on how the OSP will prosecute its mandate going forward. The SP's commitment to making corruption an expensive and high-risk venture to deter all from committing corruption crimes against the state as stated during his parliamentary vetting session is a laudable commitment and all well-meaning Ghanaians and development partners will be expected to support the work of the OSP.

3.1 Establishment and operationalisation of the OSP

This section highlights key dimensions and activities undertaken over the period - from the establishment of the Office of the Special Prosecutor to current happenings. This is based on extensive review of reports, online publications and other relevant documents. The key dimensions comprise: Appointment of key officers of the Office in terms of compliance with the spirit and letter of the law; Setting up of the Office including infrastructure, staffing, logistics and financing; Operationalization – looking at the core mandate of the Office to investigate, prosecute and recover stolen resources; coordination and collaboration with sister agencies; and public engagement.

1. Appointment of Key Officers

The OSP Act, 2017 (Act 959) provides for the appointment of a Special Prosecutor, a Deputy Special Prosecutor and the constitution of a Governing Board to manage the affairs of the Office. The procedure for appointing these officers and the Board were carefully designed to ensure the independence of the Special Prosecutor and the Deputy but also consistent with the tenets of Article 88 of the 1992 Constitution which grants exclusive prosecutorial powers to the Attorney General. Section 13(3) of Act 959 gives the Attorney General the power to nominate a person for the President to appoint, subject to the approval of a majority of all Members of Parliament. Entrusting the power of nomination in the hands of the AG is also consistent with Article 88(4) which allows the AG to delegate his/her exclusive powers to prosecute.

On the 31st of January, 2018, the then Attorney General Ms. Gloria Akuffo exercised her power of nomination and submitted Mr. Martin A.B.K Amidu's name to the president - the nomination duly received the acceptance of the president. Mr. Amidu was then vetted by Parliament's Appointments Committee, recommended for approval and unanimously passed by the House.

On 23rd February, 2018, he was sworn in by President Akufo-Addo to begin his seven-year term. The Deputy Special Prosecutor, Ms. Jane Cynthia Naa Korshie Lamptey went through the same process in April and May 2018, and was sworn in at the end of May. Subsequent to this, Section 5 of Act 959 provides for the establishment of the Governing Board consisting of:

- *(a) The Special Prosecutor;*
- *(b) The Deputy Special Prosecutor;*
- *(c) One senior representative from the following institutions:*
 - *1. The Audit Service (Director nominated by Auditor General)*
 - *2. The Ghana Police Service (ACP and above nominated by IGP)*
 - *3. The Economic and Organised Crime Office (Director nominated by ED)*
 - *4. The Financial Intelligence Centre (Director nominated by ED)*

- 5. *The Commission on Human Rights and Administrative Justice (Director, nominated by ED)*
- 6. *An individual with background in intelligence (Director, nominated by Minister responsible for National Security)*
- 7. *A female representing the Anti-Corruption Civil Society Organisations.*
-

Section 6 of Act 959 stipulates the Board's duties which include: policy development; ensuring effectiveness of the Office; advising on the appointment of the Administrative Secretary and other senior officers of the Office; promoting cooperation between the Office and relevant national investigative bodies and developing and monitoring the implementation of a code of conduct for staff of the Office. In addition, the Board should not interfere in the day-to-day functions of the Office. Though delayed, in July 2018, the President inaugurated the OSP Board, almost five months after Mr. Amidu took office. Per the OSP law, the Board elects its own chair. Mrs. Linda Ofori-Kwafo, Executive Director of the Ghana Integrity Initiative (GII) was elected Chair of the OSP Board.

Though the Board was constituted late and held its first board meeting a month later in August 2018, it was able to support the Special Prosecutor to address some of its immediate needs which included the appointment of an Administrative Secretary to run the office and consult on the passage of a Legislative Instrument for the OSP Act.

- Resignation of the first Special Prosecutor (SP)

On the 16th of November, 2020, the first SP resigned his position citing interference from the presidency on its operations. In a letter addressed to President Nana Akufo-Addo, Mr. Amidu indicated his decision was to enable the president to take steps to appoint a replacement as required by law.

"This is to inform the public that I resigned from my position as the Special Prosecutor of the Office of the Special Prosecutor with immediate effect upon the submission of my letter of resignation with reference number OSP/2/AM/14 dated November 16, 2020, which

was received at the Office of the President at 15:15 HRS this afternoon”

- Appointment of a new Special Prosecutor

The current Attorney General, Mr. Godfred Yeboah Dame, on 16th April 2021, nominated Mr. Kissi Agyebeng, under section 13(3) of Act 959, to the President for consideration as the second occupant of the Office of Special Prosecutor. The President of the Republic, Nana Akufo-Addo, accepted his nomination as Special Prosecutor and by letter to the Speaker of Parliament, Rt. Hon. Alban Bagbin, dated 29th April 2021, sought Parliament's approval of the appointment. The then nominee, Mr. Kissi Agyabeng on Thursday 22nd July 22, 2021, was vetted by Parliament's Appointments Committee, approved unanimously by Parliament and was subsequently sworn into office by the president on the 5th of August, 2021.

- Recruitment

For the OSP to be functional, the office requires key staff to be in place and according to the new Special Prosecutor, the office will soon begin a massive recruitment drive. Mr Kissi Agyebeng indicated that 250 personnel will be engaged by January 2022 as approved in the 2019 budget. This is aimed at fully operationalising the office and fast-track the loads of corruption cases it continues to receive. He further indicated that only one person was on the OSP payroll when he assumed office in August 2021. According to him, the nine other personnel are mostly on secondment from other government agencies.

“We are setting up the office at full force. We are operationalising it. We’re going to do some massive recruitment under the 2019 Appropriation Act. 251 staff approved as a start-up for the office. “It means that we are two years behind the 251 staff strength. By the end of January 2022, we should have all these people.”

2. Setting up the Office of the Special Prosecutor

Section 19 of ACT 959, the OSP is expected to have four divisions: Investigations; Prosecution; Asset Recovery and Management; Finance and Administration. The Board has power to establish more divisions if becomes necessary. A Secretariat is also to be established and headed by the Administrative Secretary. The Administrative Secretary is responsible for the day-to-day running of the office and answerable to the Special Prosecutor. The provision of a Secretary was to ensure that the OSP was freed up to focus on the core business of investigations, prosecutions and asset recovery and management. This was to address another Ghanaian public sector institutional culture where operational heads are tied up or attracted to day-to-day secretarial duties instead of core business. Other safeguards were provided to ensure the substantive independence



Special Prosecutor Kissi Agyebeng
and Attorney General
Godfred Dame

Source: awakenewsroom.com



Figure 3: New office complex for the OSP

Section 19 of ACT 959, the OSP is expected to have four divisions: Investigations; Prosecution; Asset Recovery and Management; Finance and Administration.

of the OSP. These include the requirement for the OSP to make a request, before an officer can be transferred or seconded to the Office. All other staff are still expected to be appointed by the President in accordance with Article 195 of the Constitution. However, the President may delegate that power of appointment to the Board or a public officer.

Upon their appointment, Mr. Amidu, his Deputy and a private secretary were housed in a former three-bedroom house in Accra. Once Mr. Amidu, his deputy and private secretary took up offices the only place left was a room downstairs which was converted into a conference room. Subsequently, the Special Prosecutor secured some additional staff including the administrative secretary and three investigators seconded from the Police Service. There was no room to house the officers so the boys' quarters was converted to accommodate them.

Seven months after his appointment, the situation had not changed, causing the Special Prosecutor to voice his frustration at a National Audit Forum organised by the Ghana Audit Service in September 2018. There the Special Prosecutor complained about the lack of a Legislative Instrument (LI) to guide his operations and the logistics to aid his work.

CSOs and media took up the matter and called on government to resource the office. The OSP subsequently settled on an office complex at Ridge – Accra where it currently operates from.

Also, in November, 2018 two Legislative Instruments – Office of the Special Prosecutor Regulations, 2018 and Office of the Special Prosecutor (Operations) Regulations 2018 – were laid before Parliament and passed after 21 sitting days. The general regulation was to elaborate on the powers of the SP in relations to its core mandate and the operations regulation was to address the general management of the Office.

- Financing the Office of the Special Prosecutor

Another key issue that had been raised by the former Special Prosecutor was the matter of funding. Some allocation had been made in the 2018 budget of the Attorney General but the delays in addressing the set-up of some basic structures had meant that the money could not be utilized. In the 2019 budget, the OSP was allocated GHS GH¢180,160,231. The breakdown was as follows:

- a.** *GH¢88,013,859 for goods and services*
- b.** *GH¢58,675,906 for capital expenditure including the acquisition of a purpose-built office facility, outfitting and procurement of special general-purpose vehicles, office furniture, computers, modern security and communication equipment, among others*
- c.** *GH¢33,470,466 for compensation to recruit 249 new staff as part of the measures to fully operationalize the Office.*

Apart from money from government, there has been significant development partner interest in supporting the Office right from the beginning. This also proved difficult because of section 22 of Act 959, which stipulates that all grants have to be approved by the Minister of Finance in consultation with the Attorney General. This meant that Minister of Finance needed to set out modalities on how the OSP can receive funds. This was subsequently addressed with all grants to the OSP now handled as normal grants between the Government of Ghana and Development Partners through the External Resource Mobilisation Divisions (Bilateral and Multilateral). The Finance Ministry, however, still needs to issue a direction note on how it will process such assistance.

- Current happenings in relation to financing of the OSP

The Special Prosecutor, Kissi Agyebeng, indicated on the 9th of December that the 2022 budget allocation to his office is below his expectation, as that is not enough to fund the numerous ideas and projects the Office has in mind (Citinewsroom.com, 9th December, 2021). According to Mr. Agyebeng, though he will not give up due to challenges with funding, under-resourcing is a major obstacle to the corruption fight. Speaking at a press conference to commem-

orate international anti-corruption day, he explained that “various divisions ought to be established on the ground; finance, administration, operations, investigations, prosecutions, strategies, communications, asset recovery, and management - all these have to be instituted:

“Without money, we can’t do anything. We will be reduced to writing long letters without any force.”

- Response from the Commissioner, Commission on Human Rights and Administrative Justice (CHRAJ) – related to limited funding of the OSP:

Following the statement by the Special Prosecutor, Kissi Agyebeng that the allocation made to his office in the 2022 budget is inadequate, Commissioner of the Commission on Human Rights and Administrative Justice (CHRAJ), Joseph Whittal, advised the SP to manage with what he has.

“It is not the money alone that can fight corruption. You cannot expect to start work with a bank, every institution started gradually and made it.”

Speaking to Citi News at the second edition of the Ghana Integrity Initiative Awards held in Accra on December 9, 2021, Mr. Whittal said: “the fight against corruption must begin from somewhere and not necessarily with money”.

The Special Prosecutor had said that without money, his office could not function efficiently. The office of the Special Prosecutor has been allocated GH¢194,920,000 in the 2022 budget. Joseph Whittal said, “if you start with a ten-storey building as the OSP has got now, and you’re given GH¢40 million to start, just start”. He stressed that; the fight against corruption is about “commitment” and willingness on the part of persons mandated to do so.

- Response of CSOs to the statement of the SP on limited funding:

A group of anti-corruption Civil Society Organizations (CSOs) has urged the President to ensure the Office of the Special Prosecutor has the required funding to operate. The CSOs said in a statement

after paying a courtesy call on Kissi Agyebeng, the Special Prosecutor that:

“We are dismayed to hear that of the GH¢1.2 billion that was budgeted for capital and recurrent expenditure, only GH¢80 million was allocated for the 2022 financial year representing only 6.6% of what was requested.”

“The CSOs further indicated that the budgetary allocation for the OSP for 2022 is far below what was even allocated by the government in the 2018 financial year for the setting up of the Office, although the money was never accessed. While the CSOs acknowledge that the COVID-19 pandemic has impacted negatively on government resources, it urged the government to do its best to ensure the OSP is finally able to get off the ground, so it can do its important integrity building and anti-corruption work. In addition, the CSOs called on the President to expedite action on the formation of the new OSP board to allow the Office to recruit its staff per the OSP Act 2017 (Act 959).

3. Investigations, Prosecution and Asset Recovery and Management

Two provisions are important in respect of this dimension and discussion. Section 6(2) of Act 959 stipulates that the Board shall not interfere in the day-to-day functions of the Office. Then, Section 14 states that the Special Prosecutor is accountable to the Board for the performance of his duties but retains full authority and control over investigations, initiations and conduct of proceedings regarding the functions of the Office. So, it is the SP’s sole responsibility to initiate investigations into cases, receive and act on referrals from CHRAJ, EOCO, Auditor General, any other public office. Critical to activating all these power and actions is having protocols in place to receive and investigate complaints of corruption and corruption related offences.

Based on the review, a number of cases that have and are being investigated have been highlighted and discussed:

1. BOST: In early 2018, the CEO of Chamber of Petroleum Consumers (COPEC), Duncan Amoah, petitioned the Special Prosecutor, Mr. Martin ABK Amidu on a case involving financial loss of an estimated GH¢ 30 million to the state at BOST. COPEC alleges that BOST decided to sell 1.8 million barrels of contaminated fuel to BB Energy. The SP acknowledged receipt and commenced investigations into the allegations. However, the issue still remains inconclusive.

2. Metro Mass: Some workers of Metro Mass Transport, led by Mr Fousseini Lawal Laah (the Head of Security of MMT) petitioned the Special Prosecutor to investigate Mr. Bennet Aboagye (former Managing Director of the MMT) over procurement malpractices in the award of a contract for the purchase of about 300 new buses and electrical products from Ankai Company. Again, Mr. Aboagye was alleged to have been receiving full salary and allowances though he had been interdicted by the President and a substantive MD had been appointed. Mr. Aboagye admitted to the payment of GH¢40,000 bribe to Mr. Lawal to retrieve an alleged recording implicating him, but claims the money was extorted from him.

Actions taken:

- Special Prosecutor responded to the petition and indicated that his Office will investigate the allegations once it starts work.

- CHRAJ is collaborating with the OSP in prosecuting this case. The Commissioner, Mr. Joseph Whital, has indicated that the Commission was waiting on the OSP to provide them with terms of reference to start their investigations – since petitioners petitioned both offices and parallel investigations will not be helpful.

3. Anas galamsey: Anas and his team Tiger Eye PI formally petitioned the office of the Special Prosecutor to investigate a piece on alleged corruption/bribery case involving Mr. Charles Bissie, Presidential Staffer and Secretary to the Inter-Ministerial Committee on Illegal Mining.

Actions taken:

- The OSP confirmed receipt of the petition and promised that his office would investigate the matter. The OSP invited and has now interrogated Mr. Bissie. Mr. Andy Owusu was also recently invited over their alleged involvement in corrupt acts.

- The Criminal Investigations department of the Ghana Police Service is conducting parallel investigations into the issue but the level of collaboration with the OSP has not been clear over the period.

4. Some 13 Ghanaians petitioned the office of the Special Prosecutor to investigate a report of alleged thievery of state resources by former appointees of then-President John Mahama, including Mr. Kwadwo Twum-Boafo of the Freezones Board, Mr. George Ben-Crenstsil of the Ghana Standards Authority, Mr. Kingsley Kwame Awuah-Darko of BOST, Sedina A. Tamakloe of MASLOC, Kakra Essamuah of BOST, among others.

5. Tax evasion- Honourable

Mahama Ayariga: The Special Prosecutor investigated Hon. Mahama Ayariga for abusing his public office for private gains. The case involved the importation into Ghana through alleged corrupt means and corruption-related activities of three used white Toyota Land Cruiser V8 vehicles.

Action taken:

- The Special Prosecutor indicated that he invited the Economic and Organised Crime Office to undertake a joint investigation of the suspected offences in accordance with the law. The Special Prosecutor also stated that he has reported the Bawku Central MP to the Economic and Organized Crime Organization (EOCO) for attempting to obstruct him. The case is still in court and yet to be determined.

6. A group known as the Strategic Energy Forum petitioned the Special Prosecutor to investigate alleged procurement breaches and conflict of interest against the Chief Executive Officer of the Ghana National Petroleum Cooperation (GNPC), Dr. K.K. Sarpong.

7. Ghost names on government payroll: The Auditor General is collaborating with the OSP to prosecute public servants who are found in payroll malfeasance.

Action taken:

- The Special Prosecutor confirmed the collaboration and indicated the willingness of his office to take on corruption cases emanating from audit reports. It is not clear whether cases have been referred to the OSP.

Based on these instances of alleged corruption, it can be concluded that some investigations have taken place and at least in one case, charges have been filed in Court.

4.Coordination and Collaboration with other Institutions

Section 73 of Act 959 states that the Office may work together with other institutions. All public officers are under an obligation to cooperate with the Office. An officer who refuses or fails to cooperate without reasonable cause commits an offence and can be fined or go to jail. Also under Section 28, the Office can

request for information from public officers and if the officer refuses, conceals or fails to comply without reasonable cause, he or she commits an offence under the Act. Thus, there is no shortage of powers for the Office to compel cooperation. However, Parliament understood that it was preferable not to use these powers in the first instance but rather cultivate an environment of cooperation. It was for this purpose that the composition of the governing board of the OSP consists of institutions the OSP would ordinarily work with. The frequent interaction with the Office at the highest level is supposed to build trust and cooperation. However, under the period of review it is clear that this has not been smooth sailing. The cases highlighted earlier shows that the OSP has tried to use the cooperation approach to kick start investigations for some of the cases. Examples are with the Tax Evasion case with EOCO, Ghost Names cases with the Auditor General and the Metro Mass Transit case with CHRAJ. Certainly, depending on whose investigators you are using for any of these cases, it is likely the OSP does not have full control of the case particu-

larly in a command and control setting like law enforcement. However, it appears in the Metro Mass case the matter was handled effectively, at least in the case of CHRAJ. Though CHRAJ has an original mandate under the Constitution to investigate corrupt cases and had also been petitioned, it deferred to the OSP on the case and sought to collaborate with OSP. This has not happened in the cooperation with the CID, in both the Metro Mass and the Galamsey cases. In the Metro Mass case, the complainant who took the case to the OSP ended up being investigated and prosecuted by the CID. In the Galamsey case, though Anas had announced that he had submitted the case to the OSP, the CID opened a case on the same matter upon the instructions of the Minister for Interior. Apart from the obvious duplication and waste of resources, it can only encourage forum shopping on the part of the suspect.

ACT 959 is clear that corruption and corruption-related offences are the preserve of the OSP. These offences included offences listed in the Criminal Offence Act of 1960, procurement of-

fences and related offences to the two categories. During the Parliamentary Committee deliberations, there was an effort to insert a takeover clause allowing the OSP the power to take over corruption cases started by other agencies if it so wished. This was to affirm its jurisdiction. The only reference to this jurisdiction was expressed in Section 81, under transitional proceedings where the AG could exercise its discretion to pass on cases handled by the other agencies to the OSP. Certainly, the propriety of such a decision by the Attorney General would depend on the capacity of the OSP to handle such cases.

But surely, it should be clear when a new matter on corruption has been reported to the OSP and he is dealing with it, there is no need to open another case at a different agency. The governing board was designed to deal with such matters and should be called upon to address it. But going forward, the OSP require a cooperation, coordination and collaboration protocol agreed with other agencies that would guide everybody when these overlaps emerge.

5.0 Public Engagements

The OSP law requires publication of certain pieces of information every half year. These include a list of corruption cases investigated and prosecuted, number of acquittals, convictions and cases pending in relation to prosecutions and the value of assets recovered. This should be published in two national dailies and on the website of the OSP. As has always been maintained these guidelines are the minimum standards and the OSP can and should provide more information as relevant and appropriate. The general principle of the citizen's right to know already exists as a constitutional right and, with the passage of the RTI law, should provide more encouragement to the OSP to share more. The Chairperson of the Board of OSP has stated that the Office will discharge its responsibility to publish a half yearly report which has still not materialized.

Another aspect of the public engagement goes beyond sharing information, but also engaging with the public and accounting to the people so they can also play their role in supporting the office to fulfill its mandate. That starts with the friendliness of the complaints procedure and accessibility. Given the constraints of the OSP, it is understandable that there is still a lot to do in this area. For example, there is no website yet for the office to even provide for online complaints, and tips. Going forward, this will need to be expedited. The public must have a user-friendly system for reaching out to the Office. The OSP has also worked closely with CSOs. This is because CSOs played an important role in preparing the law establishing the Office and have also been a strong supporter of the Office. The OSP have met with CSOs in a number of occasions to share information on his work and challenges and CSOs have used their advocacy to try to get these matters addressed.

Chapter 4

PRESENTATION OF FINDINGS

4.0 Introduction

This section presents the findings from the in-depth interviews conducted with selected anti-corruption agencies in Ghana. The issues discussed cover the work of the various anti-corruption agencies, general status of corruption in Ghana, knowledge levels on the establishment of the Office of the Special Prosecutor, resourcing of the OSP, achievements and successes, challenges and the way forward.

4.1 Role of anti-corruption agencies in fighting corruption in Ghana

The study assessed what the roles of the anti-corruption agencies in Ghana have been over the years in support of the fight against corruption across all sectors of the country. The findings show that generally, the work of the anti-graft agencies have focused on enhancing transparency and accountability in the use of public resources across different sectors of the Ghanaian economy, engaging in sensitization of citizens on the effects of corruption, building the capacity of citizens to fight corruption effectively and engaging policy makers on anti-corruption laws, processes and the need to strictly adhere to these standards. These are generally done through the following:

- *Research and advocacy*
- *Public sensitization and mobilization*
- *Training and capacity building*
- *Monitoring and Evaluation*
- *Social Accountability*

These agencies have also contributed to passage of critical anti-corruption legislation in Ghana. These comprise working with Parliament for the passage of the Whistle-blowers Act, 2006 (Act 720),

the development of simplified guides to the Act that was translated into four (4) Ghanaian languages; contribution to the passage of the Right to Information Act, 2019 (Act 989); Office of the Special Prosecutor Act, 2018 (Act 959); Witness Protection Act, 2018 (Act 975); Public Financial Management Regulations, 2019 (L.I 2378), among others. The following quotes speak to this finding:

“The institution has led the demand for accountability in public spending by monitoring the implementation of audit recommendations across the country. The work of institution in monitoring implementation of audit recommendation contributed to increase of the percentage of audit recommendation implementation from a baseline of 48% to 81% during the course of the intervention. The focus on systemic change approach in this intervention was appreciated by the Ghana Audit Service” (Head, Anti-corruption agency, Accra, Ghana)

“We as an anti-graft organization have over the years used strategies under the Citizens’ Participation and Accountability (CiPA) to promote government accountability and transparency. We empower citizens through media (traditional and social) platforms and community sensitization sessions to demand accountability from duty bearers on how state resources are utilized to their benefit (Executive Director, Anti-corruption agency, Accra, Ghana)

“Through our work we have enhanced access to data on high-value infrastructure projects involving millions of Ghana Cedis” (Assistant Project Coordinator, Anti-corruption agency, Takoradi, Ghana)

As part of the advocacy work of the anti-corruption agencies, communiques and statements on corruption and support for corruption fighting institutions are periodically issued. The most recent statement was a call by a group of anti-corruption Civil Society Organizations (CSOs) urging the President of the country to ensure the Office of the Special Prosecutor has the required funding to operate. While the CSOs acknowledged the impact of COVID-19 pandemic on government resources, it urged the government “to do its best to ensure the OSP is finally able to get off the ground, so it can do its important integrity building and anti-corruption work.” The fol-

lowing quotes speak to this finding:

“We are dismayed to hear that of the GH¢1.2 billion that was budgeted for capital and recurrent expenditure, only GH¢80 million was allocated for the 2022 financial year representing only 6.6% of what was requested,” the CSOs said in a statement after paying a courtesy call on Kissi Agyebeng, the Special Prosecutor” (Anti-corruption CSOs, 2021).

“This is far below what was even allocated by the government in the 2018 financial year for the setting up of the Office, although the money was never accessed” (Anti-corruption CSOs, 2021).

4.2 General Assessment of Corruption in Ghana

The study further assessed the thoughts of the anti-corruption agencies on the general corruption trends in the country. The findings show that though the agencies agree issues of corruption have become more endemic, rampant and much more complex than in the past, the fight against corruption is improving as many state and non-state actors are taking strides in ensuring that institutions and citizens are well aware and equipped to fight corruption. The Agencies further stressed that though there exist



Photograph of Franklin Cudjoe, President of IMANI AFRICA- one of the Policy Think Tanks/ Anti-corruption agencies in Ghana

Source: theindependentghana.com

enough provisions in the many regulatory frameworks, these frameworks are not directly translating into transparency and accountability across the different sectors. The following quotes corroborate this finding:

“Corruption is endemic; however, the fight against corruption is improving as many non-state actors are taking stride in ensuring that citizens are well aware and equipped to fight corruption. CSOs, media, academia and other relevant stakeholders have effectively collaborated to engage policy makers and law enforcement agencies on working towards making corruption more costly. However, the major problem hindering the fight against corruption is the commitment of policy makers” (Executive Director, Anti-corruption agency, Accra, Ghana)

“Issues of corruption keep increasing by the day and in many forms but I think having the issues of corruption been discussed in the public domain itself is a good thing and I think gradually, we may be able reduce the rate and incidences of corruption” (Project Coordinator, Anti-corruption agency, Accra, Ghana)

4.3 Necessity of establishing the Office of the Special Prosecutor

Figure 3 presents the findings with reference to the necessity of establishing the Office of the Special Prosecutor in the face of the existence of major state and non-state anti-corruption agencies. The findings show that out of the four anti-graft agencies interviewed, three (75%) indicated that it was not very necessary to establish the Office of the Special Prosecutor because the country already has existing anti-corruption agencies which only needed more funding and strengthening to become more functional. The dissenting voices also indicated that though the country had existing institutions that are meant to lead the fight against corruption, these institutions were at the request and call of the government of the day, were not properly resourced and were not transparent when it came to investigating corruption related issues having to do with the gov-

ernment of the day. The following voices validate these views:

"It was not necessary considering the fact that other anti-corruption agencies are likelihood to duplicate the work of other anti-corruption institutions already struggling for resources" (Executive Director, Anti-corruption Agency, Accra, Ghana)

"We already have existing institutions that require only strengthening through staffing and financing and no need to duplicate the functions of already existing anti-corruption agencies" (Project Coordinator, Anti-corruption Agency, Accra, Ghana).

"I think it was very important to have the OSP because its mandate is quite different from the existing state anti-corruption agencies and is in the position not to be fully controlled by the government of the day. So, I think it was the right thing to do – the office just needs to be resourced to make it more functional" (Head, Anti-corruption Agency, Accra, Ghana)

"It is evident that our 'sunshine' laws, ostensibly to prevent and check the commission of crime (corruption) have not been deterrent enough, especially in areas of grand corruption perpetrated by politically exposed persons. The set-up of the office of the Special Prosecutor (OSP) creates an avenue for independent investigations that could lead to the prosecution of corrupt public officials, recovery of proceeds of corruption, as well as deterrence of corrupt acts" (Assistant Project Coordinator, Anti-corruption Agency, Takoradi, Ghana).

4.4 General knowledge of anti-graft agencies on the OSP

In assessing the knowledge levels of the anti-graft agencies about the OSP, the respondents were asked to provide an overview on the establishment of the OSP. The findings point to high levels of knowledge in relation to the set-up of the OSP, the legal frameworks, the functional structures and so forth. Summaries of the key issues in relation to knowledge levels are presented below:

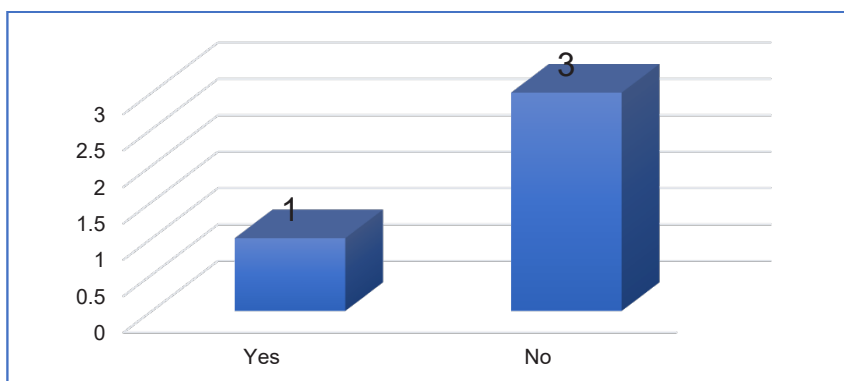


Figure 4: Necessity of establishing the OSP

Source: In-depth interviews with anti-graft agencies

- Investigation and prosecution of cases of alleged or suspected corruption and corruption related offences under the Public Procurement Act, 2003 (Act 663);
- Investigation and prosecution of cases of alleged or suspected corruption and corruption related offences under the Criminal and Other Offences Act, 1960 (Act 29) involving public officers, politically exposed persons and persons in the private sector involved in the commission of the offence;
- 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;

The following quotes speak to the knowledge levels of the anti-graft agencies:

"In December 2017, the Parliament of Ghana passed the Office of the Special Prosecutor (OSP) Bill 2017 into law. The office acts as an independent investigating and prosecuting authority at the national level, conducting probes into corruption, bribery, or other criminal matters in the public or private sectors (Anti-corruption Agency, Accra, Ghana)

“In pursuance of an overriding objective to combat and prevent corruption as a hindrance to national development, the government of Ghana established the OSP, through an act of parliament (Office of Special Prosecutor Act, 2017, Act 959) in 2017” (Assistant Project Coordinator, Anti-corruption Agency, Takoradi, Ghana).

“The OSP has been established as a special purpose vehicle to fight corruption under the Office of the Special Prosecutor Act, 2018 (Act 959)” (Head, Anti-corruption Agency, Accra, Ghana).

4.5 General Impression about the work of the OSP

The general views/impressions of respondents in the anti-corruption sector were also sought in relation to the work of the OSP over the last three years of operation. The findings are grouped under key themes comprising impression relating to resources (office space, staffing and financial) and on responses to issues of ‘perceived and reported corruption’:

1. Resourcing:

- Office space:

The findings in relation to office space revealed initial challenges with securing an appropriate office space for the OSP. However, as a result of pressure from anti-graft agencies and other like-minded CSOs, the government provided the OSP with a 10-storey building edifice in a prime location in Accra. This notwithstanding, the office complex requires equipment resourcing to make the office space more functional. The following quotes speak to this:

“Office space for the OSP has been a problem and hindered its effective functioning. Mr. Amidu (former OSP), his Deputy and a private secretary were housed in a former three-bedroom house in Accra. Once Mr. Amidu, his deputy and private secretary took up offices the only place left was a room downstairs which was converted into a conference room. However, issues on accommodation have been resolved with the handing over of 10 story complex. There is still need for the provision of resources to deal with other sophisti-

cated equipment for the functioning of the office” (Head, Anti-corruption Agency, Accra, Ghana).

“The allocation of office accommodation for the express use of the OSP is commendable and represents governments resolve to make the office operational” (Assistant Project Coordinator, Anti-corruption agency, Takoradi, Ghana)

- Staffing

Having the right staff in terms of numbers and expertise is key to making the OSP more functional. Issues relating to staffing have remained a major challenge since the inception of the OSP – the same issue persisted under the first Special Prosecutor and same seems to be the case under the current SP. The findings show that adequate funds were provided to cater for staffing in the 2018 budget where an amount of GH¢33,470,466 was provided for compensation to recruit 249 new crop of staff as part of the measures to fully operationalise the Office. This was however, was not operationalised. Currently, the staff numbers are not up to the required number according to the new Special Prosecutor though provision has been made in the 2022 budget:

“Initial reported staffing challenges of the OSP led one to question whether the commitment to operationalising the office was a mere rhetoric or a symptom of an infant agency still finding its feet; a commonality with new government agencies in the country. The reported issues by the former SP with the integrity of staff members seconded to the OSP also did not engender confidence or integrity in the work of the OSP” (Assistant Project Coordinator, Anti-corruption agency, Takoradi, Ghana)

“I do not know the exact number of staff required but based on complaints from those in charge, I think there is staff deficit which needs to be addressed” (Executive Director, Anti-corruption agency, Accra, Ghana)

- Financial

Over the three-year existence of the OSP, budgetary allocations have always been made to the office towards ensuring the OSP is well resourced to undertake its functions though it has always been below expectation. However, the major issue has been about actual disbursement. In 2018 and 2019, budget allocations for capital expenditure was not disbursed to the office to procure and establish the needed equipment.

“Since its establishment, the OSP reportedly been challenged with financial resourcing of its activities. The former SP revealed that although allocations had been made to the office, the OSP was hindered in its activities because it had not been classified for procurement purposes. Recently, the current SP has had cause to complain about reductions made to its budget for 2022; a situation that can seriously affect the work of the OSP” (Assistant Project Coordinator, Anti-corruption agency, Takoradi, Ghana)

“There is not enough budgetary allocation for effective service delivery by the OSP” (Executive Director, Anti-corruption agency, Accra, Ghana)

2. Response to perceived issues of corruption

The results in relation to the OSP’s response to issues of perceived corruption pointed to the case of limited level of responsiveness from both the old and new Special Prosecutors. From the perspective of the anti-graft agencies, the OSP since its inception has not been effective with respect to its response to issues of corruption – the office has been unable to meet their expectations pertaining to the number of corruption issues reported. The office since inception has still not been able to conclusively conclude any of the numerous cases of perceived and reported corruption. The following voices speak to this:

“Since its establishment in 2018, the OSP has not been able to successfully deal with the numerous perceived cases of corruption purported to involve politically exposed persons and public officials following the expectations accompanying the setting up of the office. Although details are yet to be made public on the 31 cases reportedly under investigation by the OSP, successful prosecutions and recovery of stolen assets would go a long way in restoring the confidence in citizens and collaboration from stakeholders required in the fight against corruption” (Assistant Project Coordinator, Anti-corruption agency, Takoradi, Ghana)

“Well, I will say their responses are good but they cannot ‘bite’ due to resource constraints” (Executive Director, Anti-corruption agency, Accra, Ghana)

4.6 Achievements/Successes of the OSP

This section provides details on the achievements/success stories recorded over the last three years of existence of the OSP from the perspective of the anti-graft agencies. A five stage Likert-scale approach (strongly agree, agree, neither agree nor disagree, disagree and strongly disagree) was adopted across key themes relating to the fight against corruption.

4.6.1 Contribution of the OSP in reducing corruption in Ghana over the last 3-years

Figure 5 presents findings relating to the contribution of the OSP towards reducing corruption in Ghana. The results point to disagreement across all the interviewed anti-corruption agencies – leaning towards ‘disagree’ and ‘strongly disagree’. Out of the four key persons interviewed, three disagreed (75%) with one strongly disagreeing. This result shows that in the opinion of key agencies fighting against corruption, the OSP has in no way contributed towards fighting corruption – which is quite an indictment for an office that has been in operation over three years. The following quotes speak to this finding:

“The achievement of the OSP since its establishment has been abysmal and ineffectual in the fight against corruption. The jury is still out on whether the office can repress corruption in the country” (Assistant Project Coordinator, Anti-corruption agency, Takoradi, Ghana)

“Apart from inviting alleged corrupt officials for questioning, I am yet to see any ground-breaking success chalked by the office” (Executive Director, Anti-corruption agency, Accra, Ghana)

“The office has started some investigations into corruption scandals such as BOST scandal, Double salary allegations and the Metro Mass scandal just to mention a few. So, at least we can say with some confidence that some investigations have taken place and at least in one case charges have been filed in Court” (Head, Anti-corruption agency, Accra, Ghana)

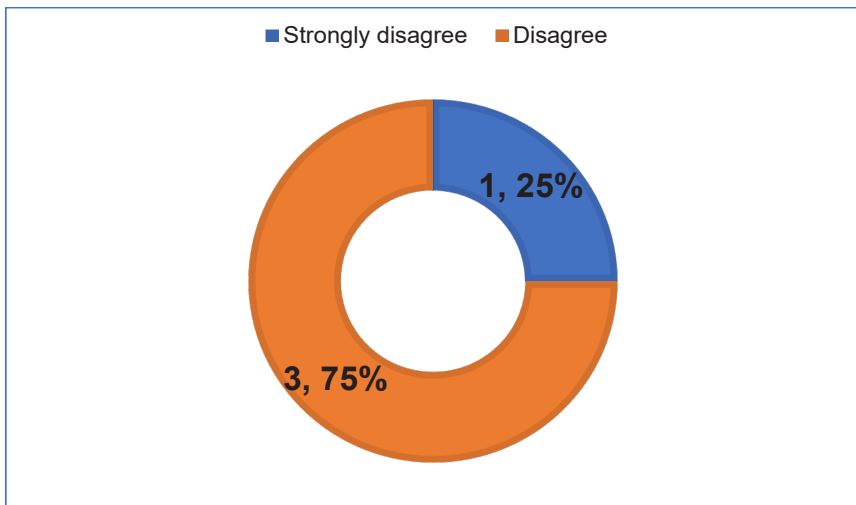


Figure 5: Contribution of the OSP to reducing corruption

Source: Source: In-depth interviews with anti-graft agencies

4.6.2 Contribution of the OSP in reducing the perception of corruption

Perception of corruption has been growing over the years, especially across government and public institutions. The study therefore further sought to assess the views of key anti-graft agencies on whether the OSP has contributed in any way to reducing the ever-growing perception of corruption. The findings as presented in Figure 6 shows a similar trend as was recorded on the issue relating to the contribution of the OSP to fighting corruption. Three of the respondents (75%) disagreed with the statement while one strongly disagreed. This further points to the fact that the OSP has not contributed to reducing the perception of corruption in the country.

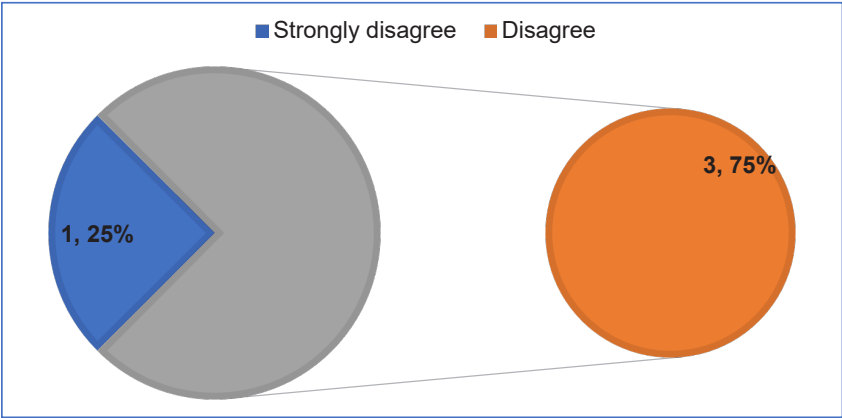


Figure 6: Contribution of the OSP to reducing perception of corruption

Source: In-depth interviews with anti-graft agencies

4.6.3 The OSP is gradually achieving the purpose for which it was set-up

In assessing the level of progress of the OSP, the study measured whether the OSP was achieving the purpose for which it was set up. The findings point to a split leaning towards 'strongly disagree' and 'neither agree or disagree' with half of the respondents 'strongly disagreeing' to the statement and the other half 'neither agreeing nor disagreeing'. Though it's still early days yet, the results however, indicate that largely, the OSP is not achieving the mandate for which it was set up.

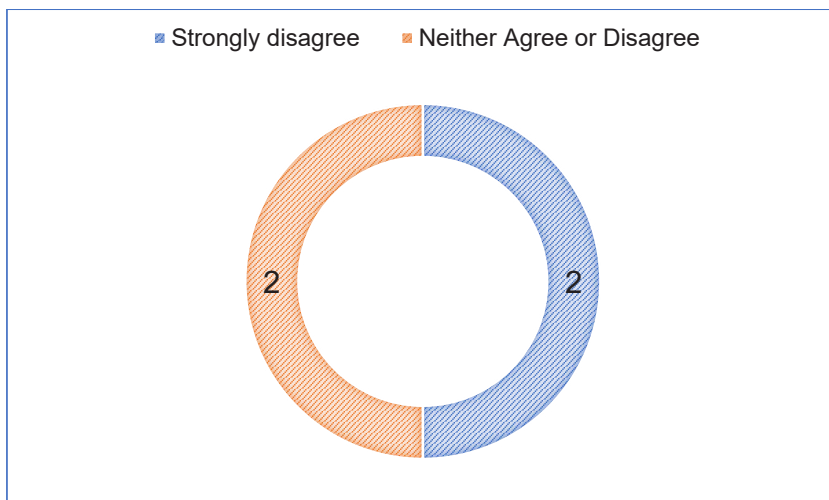


Figure 7: The OSP is gradually achieving its mandate

Source: In-depth interviews with anti-graft agencies

4.6.4 To scrap or not to scrap the OSP

One key point that dominated the discussions on the establishment of the OSP was whether the establishment was necessary in the face of numerous anti-corruption agencies – both public and private. The study assessed the views of the key stakeholders in the anti-graft space in relation to whether the OSP should be scrapped or not. The findings depict that of mixed views – two of the anti-graft agencies think the OSP should not be scrapped, one thinks it should be scrapped while the other neither agrees nor disagrees. This points to the fact that there may be no need to scrap the OSP but rather work at strengthening, resourcing and making the OSP much more functional.

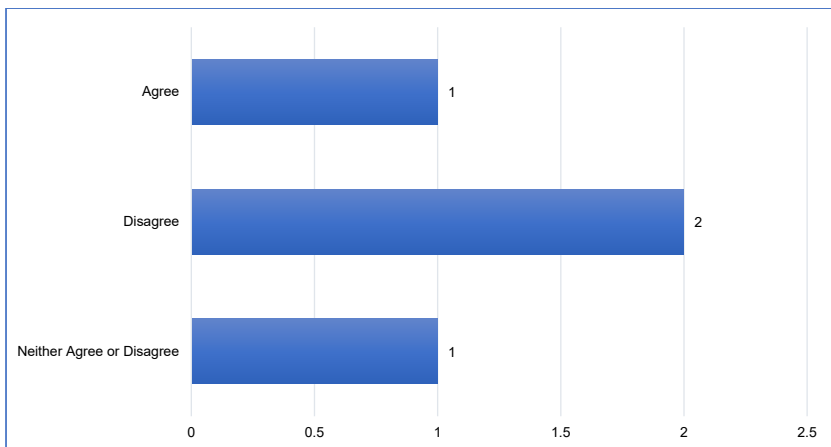


Figure 8: Scrapping of the OSP

Source: In-depth interviews with anti-graft agencies

4.6.5 Trust in the new Special Prosecutor to realise the mandate of the office

Figure 9 presents the findings relating to trust of anti-graft agencies in the ability of the new Special Prosecutor to realise the mandate of the OSP. The findings reveal a higher leaning of respondents towards 'Agree' scale (75%) – this indicates the anti-graft agencies believe in the expertise and capacity of the new SP to lead the OSP to achieve its mandate despite the seemingly slow start. This level of support from such key stakeholders should serve as a great boost to the SP to strive to meet the mandate of the office.

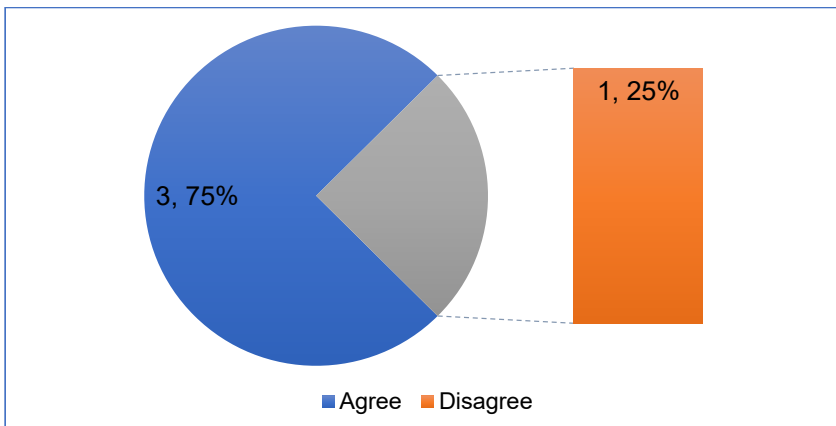


Figure 9: Trust in the new OSP to achieve its mandate

Source: In-depth interviews with anti-graft agencies

4.6.6 Ability of the OSP to achieve its mandate based on the current set-up

A key point of discussion over the period of existence of the OSP has been on the set-up of the OSP in relation to the personnel structure i.e., the appointment of the SP by the political head, the composition of the board, the recruitment processes, the resourcing mechanisms etc. which have been a concern to many stakeholders in the anti-corruption space. The study therefore sought the views of respondents in relation to whether the current set-up of the OSP can help the office to achieve its mandate. The results show a higher level of uncertainty with three of the anti-graft agencies neither agreeing nor disagreeing to whether the set-up is appropriate/adequate to make it possible for the office to achieve its mandate.

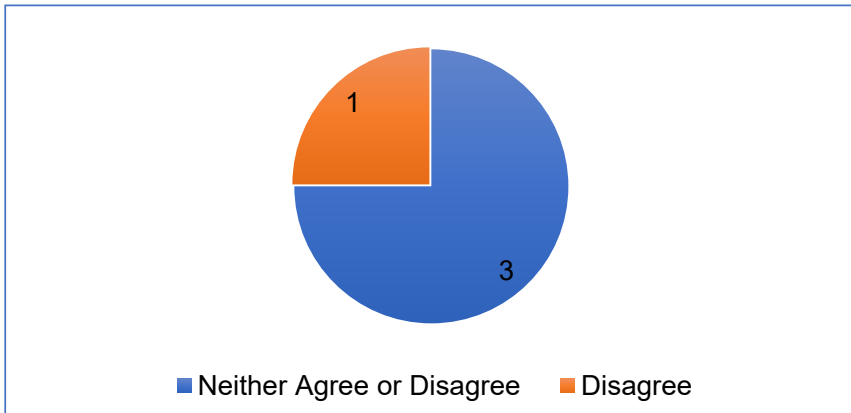


Figure 10: Achievement of the mandate of the OSP based on the current set-up

Source: In-depth interviews with anti-graft agencies

4.6.7 Dwindling levels in the initial trust in the OSP

The establishment of the OSP was met with great enthusiasm and hope from the general Ghanaian population and especially by key stakeholders in the anti-graft space. This level of trust and hope, however, has dwindled over the period as a result of the continuous increase in the perception of unchecked corruption especially in public office. The findings are in sync with this general perception - all the respondents agree to the fact that the initial trust in the establishment of the OSP has seen a significant dip in rating (Figure 11). This calls for a conscious and continuous effort by the office to improve upon the perception and trust rating over the next few years.

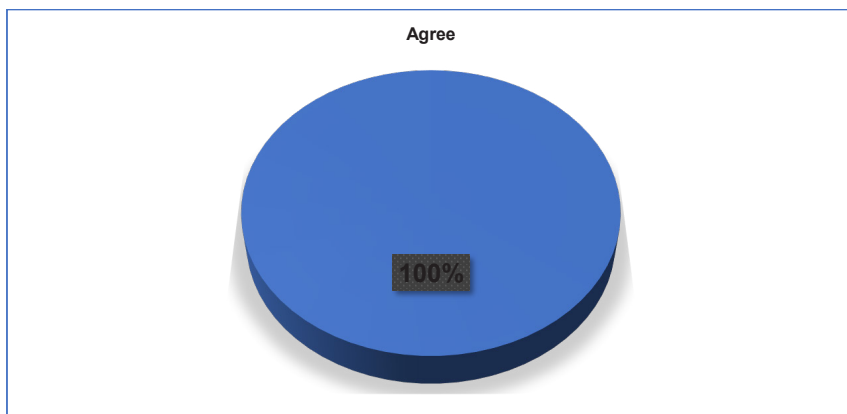


Figure 11: Dwindling level of trust in the OSP

Source: In-depth interviews with anti-graft agencies

4.6.8 Government will never fully empower the OSP to do its work

One major concern of the anti-corruption agencies and the general public has been whether the government of the day will ever fully empower the OSP through adequate resourcing and full autonomy to do its work. The findings in relation to this shows a higher leaning of respondents towards the 'Agree' option with a further respondent neither agreeing nor disagreeing (Figure 12). This shows that the likelihood of the OSP ever achieving full autonomy and empowerment from government to be fully functional may be in the distant future.

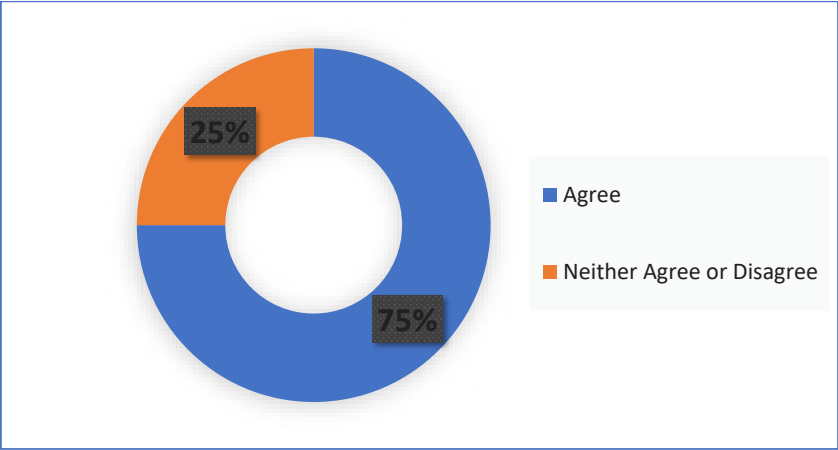


Figure 12: Government will never fully empower the OSP

Source: In-depth interviews with anti-graft agencies

4.7 Challenges

A number of key challenges hampering/likely to hamper the effective operation of the OSP from the perspective of the anti-graft agencies interviewed were highlighted. These challenges comprise:

- Inadequate resources - financial, human etc.
- Inability of the office to effectively and fully investigate and prosecute offenders
- Political interference – deliberate attempts by the political class to limit resources to the office to limit its ability to adequately function, interference in ongoing investigations etc.
- Inadequate collaboration with other relevant stakeholders

Another key challenge has to do with certain sections of the Act - Section 4 (subsection 2) of the Office of the Special Prosecutor Act, 2017, Act 959 creates an entry-point for government interference, in terms of shielding of politically exposed persons who may be complicit in the commission of corrupt acts. This same sub-section requires that express permission be sought from the Attorney-General for the OSP to initiate and conduct the prosecution of corruption and corruption-related offences. This could lead to the strong-arming of the OSP, especially where politically-exposed persons are cited in corruption and related cases. The following quotes further validate this finding:

“Financing challenges and staff deficit” (Executive Director, Anti-corruption agency, Accra, Ghana)

“In pursuance of an overriding objective to combat and prevent corruption as a hindrance to national development, the government of Ghana established the OSP, through an act of parliament (Office of Special Prosecutor Act, 2017, Act 959) in 2017. However, section 4 (sub-section 2), on the mandate of the office, could be an impediment to the conduct of the functions of the OSP; since express permission has to be sought from the Attorney-General to initiate and conduct the prosecution of corruption and corruption-related offences. This could lead to the strong-arming of the OSP, especially where politically-exposed persons are cited in probatively strong cases. This could

diminish the impact and influence of the OSP in the fight against corruption” (Assistant Project Coordinator, Anti-corruption Agency, Takoradi, Ghana).

4.8 Approach to addressing the identified challenges

Key solutions were also proposed at addressing the identified challenges. These include:

- The need to amend certain provisions in the establishing Act of the OSP, particularly section 4 (subsection 2) to give the office full independence in matters of prosecution to prevent influence peddling, interference and conflict of interest;
- Government must commit enough resources in support of the operations of the OSP;
- CSOs and other relevant institutions could collaborate with the OSP in ensuring that its function is carried effectively devoid of any interference from the government or politicians;
- Enough funds should be allocated to the Office, especially to cater for its capital expenditures.

Chapter 5

KEY POLICY AND IMPLEMENTATION RECOMMENDATIONS

5.1 Lessons Learned

Based on the desk review and in-depth interviews with key anti-graft agencies, a number of key lessons are highlighted to guide the work of OSP going forward:

- The role of anti-graft agencies has been central to the fight against corruption over the years. These institutions have significantly contributed to enacting relevant Acts and laws geared towards addressing issues of corruption. Strengthening the collaboration and working relationship with these other anti-corruption bodies and civil society organizations at the national and international level in areas of mutual interest will be extremely beneficial to the work and general outlook of the OSP;
- The Office of the Special Prosecutor Act represents perhaps the boldest step yet in the fight against corruption in Ghana. Yet the success of the regime remains heavily dependent on certain actor preferences and this constitutes a central weakness in the design model of the OSP. This if not well dealt with could continue the politics-dependent character of corruption fighting system in the country.
- The provisions of the law dealing with the obligation binding on the OSP to publish the list of investigated and pending corruption cases in the national dailies is a significant tool in the hands of the office. This when done consistently and devoid of interference will keep the general public well informed about the work of the OSP which will invariably improve the OSP's public rating.

5.2 Conclusions

The establishment of the Office of the Special Prosecutor represents one of the boldest steps yet in the fight against corruption in Ghana. The government of Ghana established by an act of parliament in 2017 the Office of the Special Prosecutor to investigate and prosecute certain categories of cases and allegations of corruption and other criminal wrongdoing under the Criminal and Other Offences Act, 1960 (Act 29), including those involving alleged violations of the Public Procurement Act, 2003 (Act 663) and cases implicating public officers and politically exposed persons (Osei-Amoako 2018). The office was primarily created to fulfill an election promise of stamping out corruption made by President Nana Akufo-Addo when he came to power in 2017.

Three years on, the OSP has seen some level of work, challenges and so forth. The study therefore sought to examine the work of the office of the special prosecutor three years on – in relation to the effectiveness of the office in fighting corruption; successes, challenges and way forward. The study significantly adds on to the available literature and knowledge on the fight against corruption in general and specifically on the work of the office of the special prosecutor.

5.3 Policy Recommendations

Based on the findings and the lessons learned from the study, a number of key policy recommendations have been made to guide ongoing work of the OSP:

5.3.1 Need to improve the resource allocation to the OSP

The findings relating to resourcing of the OSP – staffing and financial shows very limited support from government, especially in relation to the actual disbursement of budget allocations. In line with this, it is recommended that:

c. Staffing:

Full autonomy is provided the OSP to recruit full-time staff for the various departments under the OSP (Finance, Administration, Asset Recovery, Management and Investigations and Prosecutions Divisions). Secondments should only be applied to exceptional circumstances that require particular expertise.

d. Financials

The findings showed that out of the GH¢1.2 billion that was budgeted for capital and recurrent expenditure, only GH¢80 million was allocated for the 2022 financial year representing only 6.6% of what was requested. In line with this, it is recommended that the government allocates the needed financial resources to the OSP so it can be fully operational.

5.3.2 Need to strengthen the prosecutorial powers and independence of the OSP:

The results of the study show that over the three years of existence of the OSP, the office has not been able to prosecute or bring to closure any of the numerous corruption cases brought before it. This may be attributable to inherent weaknesses in certain sections of the Act which requires that express permission be sought from the Attorney-General for the OSP to initiate and conduct the prosecution of corruption and corruption-related offences. In line with this, it is recommended that Government, through parliament, should take appropriate steps to amend section 4 of the OSP Act to allow for full independence in prosecutions to prevent conflict of interest and interference in order to engender confidence in the work of the OSP.

5.3.3 Need to work at reducing actual and the perception of corruption

The findings in relation to the work of the OSP in reducing corruption and the perception of corruption shows the OSP has in no way contributed towards fighting corruption – which is quite an indictment for an office that has been in operation over three years the

OSP. The office has also not contributed to reducing the perception of corruption in the country in any way through its work. This calls for a relook at the response of the OSP to reported and perceived corruption cases by being proactive in their responses and ensuring all investigations are conclusively ended. This will largely contribute to reducing the perception of corruption in the country.

5.3.4 Need to rebuild the initial trust the public had in establishing the OSP

The establishment of the OSP was met with great enthusiasm and hope from the general Ghanaian population, however, the findings of the study show this initial trust and enthusiasm has dwindled over the period as a result of the continuous increase in the perception of unchecked corruption especially in public office. This calls for conscious and continuous efforts by the office to improve upon the perception and trust rating over the next few years by being proactive in promptly responding to reported cases of corruption, conclusively investigating and prosecuting corruption and related cases.

5.3.5 Need to strengthen the working relationship between the OSP and other anti-graft agencies

The findings show evidence of some level of collaboration between the OSP and anti-graft agencies, however, the level of working relation appears to be quite weak. With the level of voice and autonomy the anti-graft agencies have within the 'corruption fight' space in the country, a strengthened working relationship will be to the benefit of the OSP in fighting against corruption. This will also contribute to ensuring that the functions of the OSP are carried out effectively devoid of any interference from the government or politicians.

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Annexes

Annex 1: In-depth Interview Guide

EXAMINING THE WORK OF THE OFFICE OF THE SPECIAL PROSECUTOR THREE YEARS ON: ASSESSMENT OF THE EFFECTIVENESS OF THE OFFICE IN FIGHTING CORRUPTION; SUCCESSES, CHALLENGES AND WAY FORWARD

Instruction:

Good Governance Africa (GGA) is a non-governmental institution dedicated to advancing good governance principles across several development fields in Africa. The Centre specializes in the use of empirical research to inform its trainings and advocacy platforms to bring about positive changes in the broad spectrum of governance on the African Continent. As part of our processes in providing empirical data to inform good governance, we are conducting a simple research activity to assess the work of the Office of the Special Prosecutor (OSP) over the last 3-years.

You have been identified as a key stakeholder in the efforts at reducing/curbing corruption in Ghana and your views will be instrumental to understanding the status of the Office of the Special Prosecutor which will in turn help in the possible formulation of policies and programmes that will largely shape the approach to fighting corruption in the country.

We kindly ask that you take few minutes of your time to respond to the questions geared at generating a comprehensive pool of information/knowledge on the work of the OSP.

Your participation is completely voluntary, we however, request that you honour this request as part of your ongoing contribution to the fight against corruption in Ghana. Your views shared with us will be strictly anonymous and used solely for this research purpose.

INSTRUMENT 1: INTERVIEW GUIDE FOR ANTI-CORRUPTION AGENCIES

Note: This instrument is to be completed by heads/deputies or any officer assigned by the head of an anti-corruption agency.

Background Details

Name of Respondent	
Name of Institution	
Position	
Sex	Male [] Female []
Tel. No.:	
Number of years operating in the anti-corruption space	
Date of Interview	

Introductory Questions:

1. What has been the role of your institution as an anti-corruption institution in fighting corruption in Ghana?

.....

2. What specific successes has your organization achieved over the years in helping reduce incidences of corruption in Ghana?

.....

General Assessment of Corruption in Ghana

3. In your view, what is the general status of corruption in Ghana? (Probe: has corruption become endemic, are we failing as a country in the fight against corruption, etc.)

.....

Establishment of the Office of the Special Prosecutor:

4. Was the establishment of the Office of the Special Prosecutor necessary in light of the existence of many anti-corruption agencies in Ghana?

- o Yes
- o No

5. If yes/no, why?

.....

6. Can you tell us something about the establishment of the Office of the Special Prosecutor? (Probe for issues relating to the Act that establishes the office, the mandate of the office etc...)

.....

7. What is your general impression about the work of the Office of Special Prosecutor over the last 3-years in relation to the following?

a. Office space:

.....

b. Staffing

.....

c. Resourcing (financial etc.)

.....

d. Response to perceived issues of corruption

.....

e. Other issues:

.....

Achievements/Successes

8. In your view, what has been some of the achievement of the Office of the Special Prosecutor over the last 3-years of existence?

.....

Note: In this Table, a set of statements have been provided to ascertain your opinion on achievements/successes of the OSP. Kindly tick-off the responses that apply to each of the statements.

S/N	Statements	5 = Strongly	4 = Agree	3 = Neither Agree or Disagree	2 = Disagree	1 = Strongly Disagree
1	The OSP has contributed to reducing corruption in Ghana over the last 3-years	5	4	3	2	1
2	The OSP has contributed to reducing the perception of corruption over the last 3-years	5	4	3	2	1
3	The OSP is gradually achieving the purpose for which it was set-up	5	4	3	2	1
4	I think the OSP should be scrapped since it's not achieving anything meaningful in the fight against corruption	5	4	3	2	1
5	I trust the new Special Prosecutor to realise the mandate of the office	5	4	3	2	1
6	With the current set-up of the office, it can never achieve its mandate	5	4	3	2	1
7	The initial trust in the OSP has dwindled	5	4	3	2	1
8	Government will never fully empower the OSP to do its work	5	4	3	2	1

Challenges:

9. What are the prevailing challenges facing the OSP? (Probe: finances, government interference, staffing etc.)

.....

10. How can these challenges be addressed?

.....

Way forward / Sustainability:

11. In your view, how can the OSP be strengthened to achieve its objectives/mandate over the next few years?

.....

12. What are your recommendations in relation to the following?

a. Staffing:

.....

b. Prosecution:

.....

c. Maintaining Independence of the office:

.....

d. Other:

.....

Exit Question

13. Do you have any other concerns/suggestions/solutions that have not yet been captured? (Kindly outline them here...)

.....

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