

LABIANCA REPORT PUBLISHED BY THE OFFICE OF THE SPECIAL PROSECUTOR IS HOLLOW, WIHTOUT MANDATE, AND UNCONSTITUTIONAL: BY MARTIN A. B. K. AMIDU

THE PROLOGUE

The length of this critique and analysis of the report into alleged commission of corruption and corruption-related offences involving the Labianca Group of Companies Limited has been informed by the grave investigatory and prosecutorial misconduct and unconstitutional abuses of power that the report inflicts upon the independence, fairness, and impartiality of the Office of the Special Prosecutor (OSP). The report seriously violates the statutory mandate of the OSP under the 1992 Constitution. It is, therefore, imperative that the public appreciates through cogent and credible critique and analysis of the issues involved in the published Labianca report in which three investigation witnesses who appeared before an unauthorized investigation panel are being lynched in the court of public opinion as though they had been cautioned and/or charged with any corruption and/or corruption-related offences before the OSP. The 1992 Constitution enjoins every citizen to defend it against McCarthyism in all shapes and forms: a more burdensome duty is also cast upon me as the founding Special Prosecutor of the OSP to protect it against McCarthyism. This explains my first critique and analysis of the work of the OSP since the assumption of office of the Special Prosecutor on 9 August 2021.

INTRODUCTION

The “Report of Investigations into Alleged Commission of Corruption And Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 and published on 8 August 2022 in the electronic media does not contain or disclose the authority or mandate of the Office of the Special Prosecutor Act, 2017 (Act 959) under which the report was written, and directives given for payment of “...an amount of One Million Seventy-Four Thousand Cedis (**sic**) Six Hundred and Twenty-Seven Cedis (**sic**) Fifteen Pesewas (GHC 1,074,627.15) representing the short collection or shortfall of revenue arising from the issuance of the unlawful customs advance ruling into the Assets Recovery Account of the Office of the Special Prosecutor” and published for public consumption. The report is, therefore, inconsistent with and contravenes Act 959 and the 1992 Constitution. It constitutes an impermissible persecution of mere witnesses in the court of public opinion by the OSP instead of in a court of law. McCarthyism is not permitted under the 1992 Constitution.

A critical reading of the report discloses that it was purportedly made in pursuance of the exercise of the investigatory functions of the OSP into corruption and corruption-related offences in accordance with the functions of the Office contained in section 3 of the Office of the Special Prosecutor Act, 2017 (Act (959) and Regulations 5, 6, and 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) dealing with preliminary inquiry, investigation, full investigation, and investigation panels. These are the only provisions of the law governing the mandate of the Office referred to in the OSP report on the Labianca case as grounding the report.

Firstly, the foregoing provisions of Act 959 and L. I. 2374 do not provide the OSP the authority or legal mandate to publish the result of the investigation panel’s work for the trial

of suspects in the court of public opinion that damages their reputation as good citizens. Secondly, the OSP Labianca report does not disclose the commission of any corruption and corruption-related offences upon which the suspects or accused were cautioned or charged, if they were indeed cautioned or charged. The truth is that they were each treated as a witness in the investigation and made a written witness statement to the investigation at their respective interviews upon which no professional investigator and prosecutor could fairly, impartially, and independently make adverse findings against any of them.

Nonetheless a mere investigatory report which is an internal pre-trial documentary process under Section 3 of Act 959 and Regulations 5, 6, and 7 of L. I. 2374 dealing with preliminary inquiry, investigation, full investigation, and investigation panels has been unconstitutionally and unlawfully turned into a public report containing damning adverse findings of guilt in the court of public opinion against Ms. Eunice Jacqueline Buah Asomah-Hinneh, an elected Member of the Council of State and Board Member of the Ghana Ports and Harbours Authority, the Deputy Commissioner for Customs, Mr. Joseph Adu Kyei, and the Commissioner for Customs, Colonel Kwadwo Damoah (Rtd.) who were each only invited as a witness to the OSP's Labianca investigations.

THE FUNDAMENTAL HUMAN RIGHTS OF SUSPECTS

The breaches of the fundamental rights and freedoms of the suspects contained in the OSP report and its unconstitutionality and unlawfulness

The Constitution mandates that a person who is arrested, restricted, or detained for the commission of any offence shall be informed immediately, in a language that he understands, of the reasons thereof and of his right to a lawyer of his choice. The suspect is presumed innocent until he is proven or pleads guilty of the offence charged before a court of competent jurisdiction. In pursuance of this objective, the law requires that a person who is charged with an offence before a Court be informed in a language he understands, and in detail of the nature of the offence charged and given adequate time and facilities for the preparation of his defence, amongst other fundamental rights to a free trial. Above all, it is a constitutional requirement of due process that a person shall not be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law.

The OSP is an investigatory, prosecutorial and a corruption prevention agency. It is not a commission of enquiry whose unchallenged adverse findings may after the constitutionally specified period of time be deemed to be a judgment of the High Court appealable to the Court of Appeal. It also does not have the narrow mandate conferred upon a constitutional body such as the Commission for Human Rights and Administrative Justice to make adverse findings against a person pursuant to some of its functions which may have the force of a finding of guilt or culpability. Consequently, the purported findings contained in the OSP Labianca report making adverse findings against the witnesses unlawfully styled suspects, which is tantamount to findings of guilt in an investigation under Section 3 of Act 959 and Regulation 7 of L. I. 3274, is not only unlawful but pertinently unconstitutional as having been made without authority under the 1992 Constitution. As stated already, not even a caution statement was taken from any of the witnesses before the report was written and published for their lynching in the court of public opinion.

THE BACKGROUND INFORMATION ON THE OSP LABIANCA REPORT AND MANDATE OF THE OSP

Background information

The background information contained in the OSP report on the Labianca case states that the Office received a written complaint from one Frank Asare against the Labianca Group of Companies and its subsidiaries and the Customs Division of the Ghana Revenue Authority on 16 November 2021. The Deputy Commissioner for Customs, Mr. Joseph Adu Kyei was interviewed on 10 January 2022. Ms. Eunice Jacqueline Buah Asomah-Hinne, an elected Member of the Council of State, a Board Member of the Ghana Ports and Harbours Authority, and the owner of Labianca Limited was interviewed on 19 January 2022. Mr. Etse Gadegbeku of Labianca Limited against whom no adverse finding has been made in the report was also interviewed on 19 January 2022, and the Commissioner of Customs, Colonel Kwadwo Damoah (Rtd.) was interviewed on 16 February 2022.

Any experienced investigator and prosecutor would have been struck and set thinking by the use of the word “interviewed” instead of “interrogated” in relation to the only investigations allegedly conducted by the panel of investigators giving rise to the Labianca report. The use of the word “interviewed” in reference to the persons engaged by the investigation panel in the report led me to establish that the above persons interviewed and now turned into suspects or accused persons in the Labianca report were told by the leader of the investigation panel, who was Police Superintendent Emmanuel Amadu Basintale stationed in Takoradi, (an unauthorized investigator of the OSP), that they had been invited as witnesses. Consequently, each of them was made to write only a witness statement in the presence of their lawyers. They made no statement on caution and were never charged with any corruption and/or corruption-related offence under Act 959. The OSP cannot deny these facts because they can be verified under the Freedom of Information Act and from both the Station Diary, and Diary of Action on the investigation case docket.

The OSP mandate on Investigations Panels constituted by the Special Prosecutor

The OSP Labianca report refers to Regulation 7 of L. I. 2374 as the mandate upon which the Special Prosecutor constituted an investigation panel to fully investigate the Labianca complaint by one Frank Asare. But Section 7 of L. I. 2374 does not mandate the OSP to publicize the results of investigations by a panel constituted to investigate a complaint of an alleged corruption or a corruption-related offence for the trial of witnesses before a court of public opinion. The authority of the Special Prosecutor and the manner he may handle a report on a matter a panel has investigated and made recommendations to the Special Prosecutor pursuant to Regulations 7 of L. I. 2374 are stated as follows:

“Investigation panels

7. (1) The Office may, for the effective performance of its functions, constitute an investigation panel to investigate a complaint of alleged corruption or a corruption-related offence.

Xxxxxxxx

(3) A panel constituted under subregulation (1) shall report on a matter the panel has investigated and make recommendations to the Special Prosecutor.

(4) The Special Prosecutor shall consider the report and may

(a) accept the recommendations.

(b) reject the recommendations;

- (c) vary the recommendations, based on the evidence contained in the complete investigation docket; or
- (d) direct that further investigations be conducted under the direct supervision of the Special Prosecutor or an authorized officer nominated by the Special Prosecutor.”

It is important for the reading public to understand that the OSP’s Labianca report is not based on any authority upon which the report, which seriously damages the reputations of fellow citizens, was published in the media by the Special Prosecutor for the trial of the suspects in the court of public opinion instead of by a court of law as mandated under Act 959.

Mandate on investigations and prosecutions.

The only provision in Act 959 which mandates the publication of information to the public arising out of the performance of the OSP’s investigatory functions is contained in Section 3(3) which states that:

- (3) The Office shall, on a half yearly basis, publish the following information in at least two daily newspapers of national circulation and the website of the Office:
 - (a) the list of corruption cases investigated and prosecuted by the Office; and
 - (b) the number of acquittals, convictions and cases pending in respect of the cases prosecuted under paragraph (a) and the value of proceeds recovered if any.

The report of the OSP on Labianca was, therefore, clearly not written and published pursuant to Section 3(3) quoted above which mandates the publication of only the list of corruption cases investigated and prosecuted and the number of acquittals, convictions, pending cases and proceeds recovered, if any. This is because Act 959 forbids the public lynching of citizens in the name of fighting corruption in the court of public opinion when even a court of law may not find them guilty of any offence.

Mandate on publications under the prevention of corruption objectives of the OSP

The OSP may educate and inform the public and publicize detected acts of corruption when performing its prevention of corruption mandate. By Section 2(c) of Act 959 and Regulation 31 of L. I. 2374, sub-regulation 31(1), the prevention of corruption discretion is exercisable as follows:

- “31(1) The Office may receive, collect and collate reports, documents, materials, complaints, allegations, information and intelligence to undertake the following measures to prevent corruption:
 - (a) Analysis of the risk of corruption
Xxxxxxx
 - (f) education and information of the public;
 - (g) publicizing detected acts of corruption; and
 - (h) other corruption measures provided by Law.”

The report of the OSP on Labianca under discussion makes no reference to it as having been undertaken in pursuance of its objects under Section 2(c) of Act 959 and Regulation 31 of L. I. 2374. It is not stated in the Labianca report to be a prevention of corruption report, in the nature of, an analysis of the risk of corruption conducted by the OSP but conducted as a full investigation by a panel. The Agyapa Royalties analysis of the risk of corruption and anti-corruption risk assessment report of the OSP made it clear that it was written pursuant to the prevention of corruption mandate.

The ethics of a Prosecutor

What every prosecutor is ethically required to do is to “select the cases for prosecution and to select those in which the offence is the most flagrant, the public harm the greatest, and the proof the most certain.” (Emphasis supplied). He is ethically not to “pick people he thinks he should get, rather than pick cases that need to be prosecuted.” Every independent and impartial investigator and prosecutor must internalize and be guided by the concluding hallowed words of Justice Robert H. Jackson in a speech he made to The Second Annual Conference of the United States Attorney on April 1, 1940, at the Great Hall of the Department of Justice Building in Washington, D.C.:

“Sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen’s safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.” (See page 7 thereof).

The OSP Labianca report and its unlawful and unconstitutional publication for the trial of persons who had been told they were only witnesses and not suspects in the investigation in the court of public opinion fails to meet the basic mandate of the Office under Act 959, and the 1992 Constitution. It violates all prosecutorial ethics and conduct.

DETAILED ANALYSIS ON THE MANDATE OF THE OSP LABIANCA REPORT

The gravity of the investigatory and prosecutorial misconduct makes it imperative to repeat that the OSP is a creature of the 1992 Constitution and Act 959, and it can only act lawfully and constitutionally when the offences it investigates are demonstrated by it to fall within its authority of investigating and prosecuting corruption and corruption-related offences. The High Court in the Republic v Mahama Ayariga & Another, High Court, Accra, 17 June 2019 (Unreported), and Republic v Hajia Hawa Ninchema & Others, High Court, Accra, 7 May 2021 (Unreported) decided that:

“From the mandate under sections 2, 3 and 79 of Act 959, the Office may exercise its mandate under the specific Acts quoted therein in addition to ‘any other relevant law so long as they are corruption or corruption-related. Clearly then, when charges are laid, the Particulars of Offence must show that the offence arises out of ‘corruption or corruption-related’ circumstances or same must fail.”

In the Mahama Ayariga case, both suspects had been charged on Counts 1 and 3 with fraudulent evasion of Customs duties and taxes contrary to section 121(2)(f) of the Customs Act, 2015 (Act 891); the rest of the counts related to only the first suspect who had been charged on Count 2 with “Using public office for private benefit contrary to section 179 (a) of the Criminal Offences Act, 1960 (Act 29)”; on Count 4 with “Dealing in foreign exchange without licence contrary to section 3 (1) and 29(1) (a) of the Foreign Exchange Act, 2006 (Act 723)”; and on Count 5 with “Transfer of foreign exchange from Ghana through an unauthorized dealer contrary to Sections 15(3) and 29(1) (a) of the foreign Exchange Act, Act 723.” After reviewing the functions and mandate of the OSP, the High Court concluded that:

“... The drafting of the Particulars of Offence under Counts one (1), three (3) four(4) and five(5), do not make any reference to any part of those offences having been allegedly perpetrated in furtherance of corruption and/or corruption-related enterprise.

That is a drafting error, which in my candid opinion, has the effect of exceeding the mandate of the Office of the Special Prosecutor.

The application to strike out Counts one (1), three (3) four (4) and five 5 of the charge sheet filed on the 27th March, 2019 is accordingly granted.”

In the Hajia Hawa Ninchema case the Count of the charge sheet in question was Count seven (7) which stated the offence as: “Transfer of the Foreign Exchange from Ghana through an unauthorized dealer contrary to Section 15(3) and 291 29(1)(A) of the Foreign Exchange Act 2006, Act 723.” The particulars of offence made no reference to its relation to any of the corruption and/or corruption-related offence specified in Act 959. After making extensive references to her earlier ruling in the Mahama Ayariga case which has been quoted above, the Court concluded that:

“In this case, I have noted the drafting of the charge and the particulars in support thereof, as well as the evidence so far put before the Court. There is nothing to suggest that this offence is corruption or and/or corruption-related and as such is not mandated by Act 959.”

In the High Court case of In The Matter of Estate of Kwadwo Owusu Afriyie Alias Sir John (Deceased), Suit No. 0040/2022, 12 July 2022 (Unreported) the application of the Special Prosecutor for the Court to confirm his earlier sweeping order of confiscation of all the property of the deceased was refused by the Court on grounds of lack of mandate to do so under Act 959. The OSP had published the fact of the issuance of its freezing order and subjected the deceased to posthumous public lynching and trial by the court of public opinion even before seeking to confirm his order in court only for his pre-confirmation order to be declared void.

But the Special Prosecutor should have known that he did not have the mandate to freeze all the property of dead persons generally and that in the case of Sir John he could only tangentially investigate the Achimota Forest property bequeathed in the deceased’s will, through an investigation of the limited liability companies that acquired the property from the Owo Family, and the co-owner of the other Achimota Forest property. This could lead to an eventual freezing and confiscation of the Achimota Forest property by a court order. The person or persons stated on the deed of conveyance as having transferred the Ramsar property to Sir John during his lifetime, because the property is government acquired, were also the proper parties for investigation after the death of Sir John to tangentially be able to eventually freeze and confiscate that property by order of a court.

When I read the populist publication of notice of the OSP freezing order of all Sir John’s estate in the court of public opinion, I sent a copy of the case of Turk (Deceased) v Regina [2017] EWCA Crim 391 to friends and associates who still practice law and told them that the Special Prosecutor was going to fail in securing confirmation for his order in any court of law. The U. K. Court of Appeal had decided in the Turk case that when a person on trial dies a day before the jury can deliver a verdict in the case, the criminal proceeding in court automatically abates on grounds of due process of law. The Turk case though not binding on Ghanaian courts is of persuasive authority and it is likely that if the High Court Accra’s attention were drawn to it, the court would have relied upon it entirely as persuasive authority in refusing the Special Prosecutor’s application for confirmation.

The OSP, therefore, knows that by virtue of the foregoing decisions of the High Court elaborating on the ambit of the mandate of the Office it cannot investigate and prosecute suspects before any court of competent jurisdiction without linking the offences for which it seeks to prosecute suspects to the commission of any corruption and/or corruption-related offence(s) but chose the shortcut of damaging the reputation of the witnesses unlawfully. The witnesses were turned into suspects before the court of public opinion without referring to any corruption and/or corruption-related offence under which it allegedly investigated and made adverse findings against them as narrated in the Labianca report.

It was very saddening to have read the press release issued by the Special Prosecutor condemning the Court of Appeal judge sitting as an additional High Court judge in Accra for refusing his application even before he could file his threatened appeal to the Court of Appeal. The impression created in the court of public opinion by the press release of the OSP after the refusal of the confirmation order was that to successfully fight corruption, courts of law must not apply the law but blindly support whatever populist applications and actions the Special Prosecutor brings before the courts. The Special Prosecutor's tantrums on this matter runs against decent prosecutorial ethics and conduct. It is only hoped that the anger resulting from the High Court's refusal of the OSP application for the confirmation order in the Sir John estate case and the unethical tantrums thrown at the court thereafter, and the fear that a court of law will not convict the witnesses in the Labianca report against whom the adverse findings were made did not inform the trial in the court of public opinion engineered by the OSP instead of a fair trial in a court of law where the Labianca report would have been inadmissible.

Basis of the Directions to Labianca Company Limited to pay the alleged shortfall

According to the OSP Labianca report: "On 12 March 2022 the Special Prosecutor issued an interim directive to Labianca Company Limited to pay an amount of One Million Seventy-Four Thousand Cedis Six Hundred and Twenty-Seven Cedis Fifteen Pesewas (GHC1,074,627.15), representing the short collection or shortfall of revenue arising from the issuance of the unlawful customs advance ruling by the Deputy Commissioner for Customs in charge of operations, Mr. Joseph Adu Kyei into the Asset Recovery Account of the Office of the Special Prosecutor ."

There are no particulars anywhere in the OSP Labianca report published to the court of public opinion demonstrating that the alleged revenue shortfall, if valid, arising out of "the issuance of the unlawful customs advance ruling" by the named witness now turned into a suspect or an accused person is linked to the suspected commission of any corruption and/or corruption-related offence to warrant the public lynching of Mr. Joseph Adu Kyei and others in the court of public opinion instead of a trial in court of law.

The directive of the Special Prosecutor was for the Labianca Company Limited to pay the amount into the Asset Recovery and Preservation Account of the Office of the Special Prosecutor. This presupposes that the Special Prosecutor is mandated under Act 959 to make such a directive during the investigation of cases aside from the mandatory way all investigation exhibits in law enforcement investigations are recorded in the station diary, the diary of action on the case docket, and handled through the exhibits register by the investigating officer. Act 959 does not mandate the OSP to issue the mandatory directives the Special Prosecutor issued to Labianca to pay the alleged short collection of customs into the OSP's accounts as will presently be obvious hereunder.

The mandate of the OSP on Asset Recovery and Preservation

What was the authority or mandate of the OSP for giving the interim directive for the payment of "...an amount of One Million Seventy-Four Thousand Cedis Six Hundred and Twenty-Seven Cedis Fifteen Pesewas (GHC 1,074,627.15), representing the short collection or shortfall of revenue arising from the issuance of the unlawful customs advance ruling into the Assets Recovery Account of the Office of the Special Prosecutor"? The amount directed to be paid is neither from the realization of a frozen asset nor a confiscated asset ordered by a court. As an exhibit in an on-going investigation the amount cannot be treated as a recovered asset to be paid into the Asset Recovery and Preservation Account of the OSP under Regulation 24 of L. I. 2374. All seasoned prosecutors know how exhibits are managed and kept pending completion of investigations and prosecution. Exhibits collected during investigations whether interim or final do not fall within Section 77 of Act 959 and Regulation 24 of L. I. 2374 dealing with Asset Recover and Preservation agreements. Regulation 24 of L. I. 2374 for the avoidance of doubt states that:

"Asset recovery and preservation agreement

24. The Special Prosecutor may

(a) in furtherance of section 77 of the Act, liaise with an institution outside the country for the preservation of assets obtained from the commission of corruption or corruption-related offence outside the country; or

(b) where a confiscation order has been made by the Court after conclusion of criminal proceedings and the defendant cannot or will not voluntarily release the assets"

It is pertinent from the foregoing that the only compulsive directive the OSP made for the Labianca payment could not have been under Section 77 of Act 959 and Regulation 24(b) of L. I. 2374. But the OSP Labianca investigation report is not the result of any existing cautioned statement taken from the suspects, let alone a formal charge of each of them, for any trial, conviction of the suspects, and any consequential confiscatory order made by a court of law as required under Regulation 24(b) of L. I. 2374. Indeed, each of the witnesses unlawfully styled as suspects in the report and their lawyers who accompanied them to the OSP for the interviews by the unlawfully constituted investigation panel can testify that no cautioned statement was taken from any of them by the OSP. The persons now named as suspects and guilty in the OSP Labianca report were told they had been invited as witnesses and made only witness statements to the investigation.

Consequently, the compulsive directive given to Labianca Limited, and the payment made pursuant to that directive into the Asset Recovery and Preservation Account of the OSP was unlawful, unconstitutional, and a flagrant abuse of investigative and prosecutorial powers by the Special Prosecutor. The foregoing unlawful and unconstitutional conduct of the OSP renders the Office unfit to continue any fair, impartial, and independent investigation into the Labianca case on grounds of gross investigatory and prosecutorial misconduct. An independent constitutional Commission of Enquiry will be a better vehicle for dealing with any outstanding aspect of the Labianca complaint if justice is to be seen to be done.

Plea bargaining

Assuming again for the purposes of argument that the Special Prosecutor's directive was issued pursuant to a plea bargaining under Section 71 of Act 959, the Special Prosecutor's directive would still have been made contrary to his mandate and authority. Firstly, the Labianca report does not show on its face that the directive was made under Section 71 of Act 959 which makes it flawed. Secondly, payments made after a plea bargaining can only be ordered by a Court after it satisfies itself that the person under investigation or charged with the offence has voluntarily admitted the offence and made any offer of restitution or offered to provide information which will aid in the arrest and prosecution of other persons whom that person knows have committed or are about to commit corruption or a corruption-related offences. (See Sections 71 (1) to (7) of Act 959 on the mandate for plea bargaining).

The authority of the investigation panel to investigate and calculate the amount of short collection or revenue shortfall.

The condition precedent to the ability of the Special Prosecutor to constitute an investigation panel in the first place is the existence of more than one authorized officer as an employee of the Office with authority to conduct investigations. (See Section 14 of Act 959 and Regulation 35 of L. I. 2374 for the mandate to act only through authorized officers). The Special Prosecutor may wish to inform the public whether at the beginning of the investigation into the Labianca case he had enough authorized investigation officers prescribed by law from whom he could lawfully have constituted the alleged investigation panel which purportedly conducted the investigation which forms the subject matter of the Labianca report.

The OSP is mandated under Section 21, 28, and 74 of Act 959 and Regulation 2, 3, 12, 16, and 18 of Regulations, 2018 (L. I. 2373) to make appointments into the OSP through recruitment of authorized officers and provides for the scope of their authority as such officers, letter of appointment, probation and confirmation, conditions of service, seniority, and confidentiality by authorized officers amongst other things dealing with management of human capital.

It cannot be disputed that during the period from November 2021 to February 2022 the OSP had only one authorized investigation officer on secondment from the Ghana Police Service. Out of three authorized investigation officers made up of two Inspectors of Police and a Sergeant who were at post by 20 November 2020, the police sergeant who had almost completed investigating procurement malpractices at the Kpone Kantamanso Municipal Assembly was haunted out of office to abate the investigations; and the senior Inspector who was the acting Head of Investigations later left for the Police College for training to be commissioned as an officer, leaving only one authorized Detective Inspector of Police, Mr. Cephas Kukuia at post. A Detective Superintendent of Police, Mr. Daniel Dзам-tse, whom the Police Administration seconded on the request of my successor as the Special Prosecutor under Act 959 was not allowed to fulfil his mandate and eventually worked his way out of the Office on postings to the North-East Region during the tenure of the then Special Prosecutor.

Consequently, on 9 August 2021 when the current Special Prosecutor assumed the duties of his office, there was only one seconded D/Inspector of Police as an authorized officer in the Investigations Division of the OSP. Between 8 August 2021 and 21 March 2022 when the Special Prosecutor directed Labianca Limited to pay the alleged shortfall in revenue in the amount of One Million Seventy-Four Thousand Cedis Six Hundred and Twenty-Seven Cedis

Fifteen Pesewas (GHC 1,074,627.15) from a total of five hundred and thirty-one (531) declarations in respect of Labianca into its Asset Recovery and Preservation Account, there could not have been more than one authorized investigator at post in the OSP mandated under Act 959 to conduct investigations into corruption and/ or corruption-related offences.

The OSP Labianca report states that the case was investigated by an investigation panel, meaning the OSP had more than one authorized investigator during the period. Who then constituted the alleged authorized Investigation Panel assigned by the Special Prosecutor who commenced the interviews of the witnesses (now turned by abuse of power and office into suspects or accused persons) from January 2022 to February 2022 as disclosed by the report? An examination of the Station Diary and the Diary of Action in the Investigation Division of the OSP will disclose whether they were authorized investigation officers at the time of the interview of the witnesses now unlawfully renamed suspects without having ever been cautioned or charged with any corruption/and or corruption-related offence. The absence of an authorized investigation panel mandated by Act 959 and L. I. 2374 will mean that the whole report submitted by the supposed unauthorized panel of investigators to the Special Prosecutor upon which he based his Labianca report is null, void and without any legal force whatsoever.

The witnesses now unlawfully called the suspects Were invited for the investigation of the Labianca case and were interviewed by Superintendent of Police Mr. Emmanuel Amadu Basintale, who was stationed in Sekondi/Takoradi as a police court prosecutor, and the only authorized officer, the D/Chief Inspector, Mr. Cephas Kukuia of the OSP, who was described to me by one of the lawyers of the witnesses as a tall man (See “Five persons to testify in Takoradi Mayor’s traffic offence case on May 5”, reported by citifmonline.com on 22 March 2022, confirming Mr. Basintale was still a police prosecutor on that day, a day after 21 March 2022 when the Labianca payment directive was issued). Mr. Emmanuel Amadu Basintale and the Special Prosecutor have a history of client/lawyer relationship and personal friendship when the former was the Deputy Superintendent of Police (DSP) and the Officer-in-Charge of the East Legon Police Station (See “Court Orders IGP To Stop Hounding Basintale Over Alleged Gold Scam” published on Modern Ghana, 1 November 2017; Basintale, Others Sue Police Service Over GHc1.3 gold scam” published on citifmonline.com, 27 June 2017; and “Apologize And Reinstate My Clients – Lawyer To Police Service” published on peacefmonline.com, 15 June 2017).

But Mr. Basintale could not, because of his personal relationship with the Special Prosecutor have been serving as an authorized prosecutions officer of the Ghana Police Service in the Western Region and at the same time as an authorized investigation officer in the OSP under Act 959 investigating cases at the OSP. The Police Administration would not have allowed such serious breaches of discipline for a police officer assigned to prosecution duties in the Western Region to be commuting to the national capital to work for another law enforcement agency as Head of Investigations (See “Five Persons to Testify in Takoradi in Mayor’s traffic offence case on May 5”, citifmonline.com, 22 March 2022).

The contention being made is that from the foregoing Mr. Basintale could not have held any appointment pursuant to Act 959 and L. I. 2374 as an authorized officer in the OSP to have presided over an investigation panel lawfully constituted by the OSP as he held himself out and introduced himself to the witnesses now unlawfully called suspects or accused persons

when they appeared before the purported investigation panel on the named dates for interviews. The participation of Mr. Basintale as the Head of Investigations in the OSP at the time of the interviews when he was not an authorized officer of the OSP renders any investigation, report, and recommendations from the panel to the Special Prosecutor null, void and without effect whatsoever. The OSP Labianca report based on the unlawfully constituted investigation panel's report and recommendations suffers the same fate.

More seriously and in abuse of office, after his unauthorized engagement in the OSP as Head of Investigations, Superintendent Basintale subsequently voluntarily retired from the Ghana Police Service and was immediately appointed by his former lawyer and friend now the Special Prosecutor to the ultimate rank of Director of Investigations which is equivalent to the rank of a Commissioner of Police in the Ghana Police Service from which he had just resigned. So, Mr. Basintale takes his retirement benefits from the Ghana Police Service and becomes overnight equivalent to a Commissioner of Police in emoluments and conditions of service at the OSP and will finally retire at the OSP as a Commissioner of Police with all the attendant benefits of such a second retirement. The Board and the Public Services Commission would not have approved this appointment under Article 195 of the Constitution and Section 21 of Act 959.

The financial implications and economic cost and loss to the public purse resulting from Mr. Basintale's resignation from the Ghana Police Service on the guarantee of an immediate appointment by the Special Prosecutor to the enhanced position and emolument in addition to terminal benefits from his previous public employer, and from the same public purse is not only contrary to the ethics of the public service but also constitutes a clear abuse of public office and trust by both actors. And yet the witnesses who were never cautioned or charged with any offence have been put before the court of public opinion for trial as suspects or accused persons with Mr. Basintale enjoying a rank equivalent to Commissioner of Police in the OSP. Therefore, one can say with all the strength at one's disposal that the OSP Labianca report stinks to high heavens with the moral smell and perception of conflict of interest, and corruption as broadly understood.

The Commissioner of Customs allegation against the Special Prosecutor and a former Principal Revenue Officer of the GRA as colluding to persecute him.

In a public response by the Commissioner of the Customs Division of the GRA, Col. Kwadwo Damoah (Rtd) in Kumasi to the adverse findings of the OSP he made the following allegations against the lawfulness of the Labianca report:

“All that happened because he [Special Prosecutor] wanted Mr Akrugu (sic) to be seconded to his office and I said ‘no’, Mr Akrugu (sic) is a customs officer, primarily employed to do customs work. And he is to partner Mr. Akoto Fakyin in that office, Africa Continental Free Trade Area.

He [Akrugu] deals with tariffs and valuation and therefore, I cannot second him to the office of the Special Prosecutor because he has a primary role to play in customs. And then he comes back through the Commissioner General and again I said ‘I insist and we will go by that and he has a primary role; it is when I don't have a role for him or I can dispense with his services, (if) I have others to do what he is doing to do that I will give him to you.’

So, I insist and he calls me to his office in relation to Labianca and at the end of it, he talks to me about this same matter and I said, yes, it is not the Commissioner General, I wrote it (the denial letter) go and check it and I have my reasons, he will not be released to you; he will be

in customs. And then he goes to resign, he is given the position of Commissioner of Police rank and he is now in his office; and he goes to make allegations that Mr Adukye and myself, we hate him and they will deal with us and that is it – that is the basis of that publication," (See "Labianca gate: 'We acted within the law' – Customs boss", Ghana Web, 13 August 2022).

The Commissioner of the Customs Division of the GRA believes that Mr. Albert Akurugu while he was an authorized officer in the Customs Division of the GRA acted as an unauthorized officer in the OSP by taking part in investigating the Labianca allegations which contributed to the malicious adverse findings of guilt made by the OSP against him in the report. The Customs Commissioner's statement constitutes an objection to the authority and legality of the whole Labianca report with which the OSP is trying him and the other witnesses in the court of public opinion to destroy their reputations and standings in society. The truth of this allegation by this witness now unlawfully turned a suspect would mean that the OSP chose its victims and then targeted them with an unlawful investigation to tarnish their reputations and standings in society in the court of public opinion.

What is clear from the allegations of Col. Kwadwo Damoah (Rtd), the Commissioner of the Customs Division is that before 16 February 2022, the day he was invited to the OSP and a witness statement taken from him, the OSP had made a written request to the GRA for the secondment of Mr. Albert Akurugu, then a Principal Revenue Officer with the Customs Division of the GRA to the OSP. The request had been refused. It follows from the foregoing that like the circumstances of Superintendent Basintale of the Ghana Police Service, the Special Prosecutor must have previously known Mr. Albert Akurugu to have convinced Mr. Akurugu to allow him to request the GRA for his secondment to the OSP in the expectation of a future working relationship between them.

When the request for the secondment of Mr. Akurugu to the OSP was refused by the GRA the Special Prosecutor found it ethical to engage the witness, now unlawfully turned a suspect, Col. Damoah (Rtd.), who had been summoned to the OSP for the Labianca investigations in a conversation in which he tried to persuade Col. Damoah (Rtd.) of the wisdom of seconding Mr. Albert Akurugu to the OSP. By engaging the Commissioner for Customs on the secondment of Mr. Akurugu in the Special Prosecutor's office on the day he appeared before the investigation panel, the Special Prosecutor put himself in a conflict-of-interest situation during the pendency of the Labianca investigation.

One can, therefore, reasonably infer that when the Special Prosecutor and his friend Mr. Akurugu could not persuade the witness, now accused Customs Commissioner, to second Mr. Akurugu to the OSP, the OSP persuaded Mr. Akurugu to resign from the GRA and be appointed to a position in the OSP. Mr. Akurugu resigned from the GRA and as arranged, was immediately appointed by the OSP to the rank of a Director in the OSP without going through the statutory appointments processes mandated under Article 195 of the 1992 Constitution and Sections 6(1) and 21(2) of Act 959. The rank of Director in the OSP is the equivalent of the rank of a Commissioner of Police in the Ghana Police Service. Indeed, the rank of Director in the OSP is also equivalent to the rank of a Commissioner of the Customs Division of the GRA.

The participation of the Special Prosecutor in the resignation of Mr. Akurugu and then immediately offering him an appointment in the OSP to the rank of a Director without the

involvement of the OSP Board and the Public Services Commission also has serious financial and economic implications for the public purse. By encouraging Mr. Akurugu to resign from a sister public service and immediately appointing him into the ultimate rank of Director in the OSP Mr. Akurugu was not only going to receive his resignation benefits from the GRA as a departing GRA officer, but he was also immediately going to earn emoluments that are three times above the rank he held in the GRA and be equivalent in rank to the Commissioner of the Customs Division of the GRA who had refused the request for secondment to the OSP.

The Special Prosecutor had no authority under article 195 of the Constitution and Section 21(2) of Act 959 without the involvement of the Board of Directors of the OSP and the Public Services Commission to have appointed and made Mr. Akurugu a Director at the OSP. The Board and the Public Services Commission would not on the available facts have approved such an appointment because they would have known that the appointment of Mr. Basintale from Superintendent of Police to the Director position in the OSP which is equivalent to the Commissioner of Police rank, and the appointment of Mr. Akurugu from Principal Revenue Office of the GRA to the same Director position in the OSP which is equivalent to Commissioner of Police rank or Commissioner of Customs rank would be demoralizing to serving officers in those services, the public service generally, and destabilize the ranking and emoluments structure of the Public Service.

It has been contended already that Mr. Basintale while a serving officer of the Ghana Police Service was engaged by the Special Prosecutor to head the Labianca investigation panel without being an authorized officer of the OSP. Both Mr. Basintale and the only authorized officer of the OSP, the D/Chief Inspector of Police then on secondment, have no knowledge and skills on how to assess or calculate the alleged shortfall in collection or revenue shortfall from a total of five hundred and thirty-one (531) declarations allegedly assessed by the investigation panel. The conduct of the Special Prosecutor in allowing an unauthorized officer, Mr. Basintale, to participate in the work of an investigation panel constituted under L. I. 2374 gives credence to Col. Damoah's statement that Mr. Akurugu, an experienced Principal Revenue Officer of the GRA at the time was the person who made the calculations and assessment which were incorporated into the alleged report and recommendations of the Labianca investigation panel to the Special Prosecutor.

The subsequent appointments of both Mr. Basintale and Mr. Akurugu to the rank of Director contrary to Act 959 lends more credence to the suspicion by the Commissioner of the Customs Division of the GRA that Mr. Akurugu collaborated with the Special Prosecutor to frame him up in the Labianca report to wreak vengeance for the refusal to second Mr. Akurugu to the OSP. The facts of such collaboration would have been disclosed in a criminal trial and not a trial by public opinion. Nonetheless the production of the Station Diary and the Diary of Action on the case docket which must have entries on how the assessments or calculations were done and by whom, can exonerate the OSP of the foregoing inferences that Mr. Akurugu was not the unauthorized officer who was engaged by the OSP to calculate and make the assessment of the alleged short collections.

Be that as it may, in any case the only authority that can accept the assessment of duty payable and impose penalties for any infraction of the customs law is the Commissioner-General of the GRA under the Customs Act, 2015 (Act 891) and not the Special Prosecutor. This explains why the Special Prosecutor after usurping the powers granted to the GRA under

Act 891, could not impose any penalty or proceed to court under Section 121 of Act 891 so that the court may impose a fine of not less than three hundred percent of the duty or tax evaded or convict to a term of imprisonment the witnesses in the Labianca report and Labianca Limited pursuant to the Special Prosecutor's unlawful and unconstitutional adverse findings, and all the goods in respect of which the custom offence was committed be liable to forfeiture to the State. Offences under Section 121 of Act 891 are customs offences. The OSP Labianca report does not show any nexus between of any breaches of the Customs Act to the commission of corruption and/corruption-related offences under its mandate pursuant to Act 959.

The Special Prosecutor knew or ought to have known that he was acting without any mandate under Act 959 and Act 891 in making the assessment and accepting the amount of short collection of revenue of customs duty payable and giving the directive he purportedly gave for payment into the Asset Recovery Account of the OSP as stated in the Labianca report and that he could not have sustained same in any court of law.

By way of an aside, the OSP appears to have been turned into a family and friends' enterprise by the appointments of other persons with no public service experience straight from the private sector to the rank of Director without any interview by the Board and the Public Services Commission as required by law. A case in point is Mr. Samuel Appiah Darko who was an associate at Cromwell Gray, a private law firm founded by the Special Prosecutor as founding Manager from which Mr. Darko and him privately practiced law until his appointment as Special Prosecutor has, this year been recruited into the OSP without compliance with Article 195 of the 1992 Constitution and Sections 6(1) and 21(2) of Act 959 and appointed straight to the ultimate rank of a Director, the equivalence of a Commissioner of Police in emoluments and conditions of service.

Mr. Darko describes himself as a senior journalist, a lecturer at the University of Professional Studies (UPSA) and a lawyer by profession. He was enrolled on the Roll of lawyers in Ghana in 2017. As a senior journalist and a lawyer of less than five years standing on the Roll of Lawyers, he will never have been appointed into any of the law enforcement agencies to the ultimate rank of Director with the emoluments equivalent to those enjoyed by Commissioners of Police or Directors in the other Security and Intelligence services. He would not have been appointed to such position if he had also been recruited into Legal Service of the Ministry of Justice. The Board of the OSP and the Public Services Commission would not have allowed the appointment and rank had the OSP Act been complied with by the Special Prosecutor. By appointing Mr. Darko, a former associate from Cromwell Gray LLP which the Special Prosecutor had founded and with whom he had worked with in private practice until his own appointment as the Special Prosecutor, without compliance with Act 959, the Special Prosecutor puts himself in a very serious conflict of interest situation and violated the 1992 Constitution.

There are other forced resignations from the public service of seconded public officers to the OSP and immediate appointments to discriminatory higher ranks; and other direct arbitrary appointments of friends and associates to better higher ranks from the private sector into the OSP without compliance with the appointment procedure under Act 959 and L.I. 2374. There was no advertisement to the public for these recruitments. The short-listed applicants from the blind advertisement published in two national dailies which were compiled pending

interviews by an Appointments Committee of Board for appointment to each of the vacant positions in the OSP and which are still available in the OSP appear to have been ignored by the Special Prosecutor in favour of arbitrary recruitments into the OSP. By the foregoing, the integrity of the recruitment process and the ranking system and procedures have been abused contrary to the mandate of the OSP under Act 959 and the 1992 Constitution.

The OSP has from the foregoing discourse lost the moral compass and right to accuse mere witnesses who were never cautioned or charged with any corruption and/or corruption-related offences arising out of proven conflict of interest, influence peddling and other infractions, and tried them in the court of public opinion by virtue of the Special Prosecutor's own conflict of interest and unlawful and unconstitutional conduct in running the affairs of the OSP.

Hopefully the Board of the OSP, the Public Services Commission, the Ministry of Finance, the Auditor-General's Department, and the Accountant-General's Department by virtue of this critique and analysis will critically examine the appointments processes followed in the recruitments, appointments, and arbitrary rank allocation before committing public funds in payments of emoluments from the compensation budget of the OSP to avoid unwarranted losses to the public purse arising from the conflict of interest in the OSP.

The silent and implied adverse findings against the Commissioner-General of the GRA

The Labianca report states at page 3 that:

“Colonel (Rtd.) Kwadwo Damoah was considered a necessary person to the investigation as the supervisor of the official duties of Mr. Adu Kyei and the ultimate bearer of responsibility”

On page 5, paragraph 4.9 of the report it is stated, inter alia, that:

“Custom advance rulings are ordinarily done by the Commissioner-General of the Ghana Revenue Authority. The OSP finds that for practical purposes customs advance rulings are issued by the Commissioner of the Customs Division of the Ghana Revenue Authority. The propriety or otherwise of this practice is not the object of the subject of this investigation, and the OSP did not find any probable cause to involve the Commissioner-General in this investigation at this stage. This is because the purported customs advance ruling issued by Mr. Adu Kyei and apparently approved by Colonel Colonel (Rtd.) Damoah did not appear to have been brought to the notice of the Commissioner-General.”

Any intelligent reader would have noticed that even Colonel Damoah (Rtd.) in the above quoted paragraph only “apparently approved” and which “did not appear to have been brought to the notice of the Commissioner-General” showing that the Special Prosecutor himself had no certainty of who ultimately approved the customs advance ruling for which the Commissioner-General by law had ultimate responsibility for approving. The only way to have established the OSP's further finding “that for practical purposes customs advance rulings are issued by the Commissioner of the Customs Division of the Ghana Revenue Authority” was to conclusively establish from the Commissioner-General whether he had delegated this authority for the approval of customs advance rulings to the Commissioner of

Customs generally or whether he was always briefed for administrative clearance for the approval to be made by the Commissioner of Customs on his behalf.

If for “practical purposes customs advance rulings are issued by the Commissioner of the Customs Division of the Ghana Revenue Authority” without the final approval or the knowledge of the Commissioner-General, it reasonably means that the Commissioner-General who had ultimate statutory responsibility for approving them during his tenure was sleeping on the job and abdicated this responsibility. He is, therefore, still ultimately responsible for “the purported customs advance rulings issued by Mr. Adu Kyei and apparently approved by Colonel (Rtd.) Damoah [and] did not appear to have been brought to the notice of the Commissioner-General” (the insertion in square brackets has been supplied). Consequently, without hearing the Commissioner-General on the issue to create certainty of what were appearances the Special Prosecutor silently indicted the Commissioner-General.

The Special Prosecutor decided that Commissioner-General had ultimate responsibility by law for what Mr. Adu Kyei and Colonel Damoah (Rtd.) appeared to have done but crucified him silently in the court of public opinion without giving him a hearing as required by law. This silent crucifixion is made worse by the fact that neither Mr. Adu Kyei nor Colonel Damoah (Rtd.) were cautioned or charged with any corruption and/or corruption-related offence. They were invited by the OSP and interviewed as witnesses and the Special Prosecutor had no mandate under Act 959 and the 1992 Constitution to make adverse findings against them.

The trial by public opinion when the Labianca investigation panel report contained no charged statements.

The Special Prosecutor in his previous life as a lawyer defending suspects accused of crime and/or misconduct was against trials by public opinion and it is inexplicable why as personification of the OSP, trials by public opinion of witnesses and suspects by the OSP have now become the order of the day. For example, when Mr. Kissi Agyabeng successfully applied to a court of law to stop the proceedings of a Ghana Police Service disciplinary enquiry against five police officers who had been interdicted for alleged seizure of 13 gold bars from a gold buying firm pending administrative enquiry for misconduct Citi News reported that: “... he conveyed the judgment to Citi News, which largely went in his clients favour.” He was quoted as saying that:

“We practically have everything we asked for, except the court did not grant us cost. An order has been given crushing all disciplinary proceedings that were purportedly instituted against them.”

Citi News further reported that”

“Their Lawyer Kissi Agyabeng, argued that his clients “have borne in silence the brunt of the odium the publications reduced them to in their name, reputation and standing in society, until now””.

Citi News also reported that: “DSP Basintale and his three other colleagues subsequently threatened to sue the Police Service for defamation.” (See “Court Orders IGP To Stop Hounding Basintale Over Alleged Gold Scam” CitiFMonline, 01.11.2017, already referred to hereinbefore.)

The Special Prosecutor as an independent public officer with all the powers entrusted to him to protect the fundamental human rights of suspects and witnesses during investigations under Act 959 and the 1992 Constitution is the last public prosecutor expected to try witnesses and suspects in the court of public opinion when he knows that they are presumed innocent until found guilty by a court of law. It is, therefore, in the public interest to ask what the reason is for abandoning principles he held so dear as quoted above to engage in the trial of the Labianca witnesses in the court of public opinion which he so much detested in his previous life as a private legal practitioner but now gleefully contravening Act 959 and the 1992 Constitution.

CONCLUSIONS

The foregoing analysis and critique has contended that there was no valid report and recommendation made by the investigation panel to the Special Prosecutor upon which the Special Prosecutor purported to have written the Labianca report making adverse findings against persons who were only witnesses and made only witness statements to the panel. But they have now been styled suspects or accused persons, for the purpose of unlawful trials before the court of public opinion. The analysis and critique of the whole “Report of Investigations into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 and published on 8 August 2022 demonstrates that the Labianca report made in contravention of the mandate of the Office under the Office of the Special Prosecutor Act, 2017 (Act 959) and the Office of the Special Prosecutor (Operations) Regulations, 2018 L. I. 2374 is unconstitutional, unlawful and void. The public baying at the President to act on such an unconstitutional report against a witness who is an elected Member of the Council of State and a Member of the Board of Ghana Ports and Harbours Authority because she allegedly finances a political party is misconceived. The Ghana Ports and Harbours Authority in any case is not the same entity as the Ghana Revenue Authority to ground any accusation of conflict of interest and influence peddling which are not corruption and/or corruption-related offences under Act 959 for purposes of making any adverse finding against her in the report.

This critique and analysis have demonstrated that without hearing the Commissioner-General of the GRA on the approval of the customs advance ruling issue to create certainty whether he had delegated his ultimate statutory responsibility for approving customs advance rulings to the Customs Commissioner, the Special Prosecutor silently indicted the Commissioner-General based on the OSP’s own conjectures on appearances not premised on the available facts. The Commissioner-General was thus silently indicted for abdicating the duties of his office in the published Labianca investigation and report.

By abusing the investigatory and prosecutorial powers and mandate of the OSP the Special Prosecutor has disabled the OSP from any fair and impartial investigation into any alleged full investigation of outstanding matters in the complaint made by Frank Asare to the Office on 16 November 2021. There can be no expectation of fairness and impartiality on the part of the witnesses who were unlawfully portrayed to the court of public opinion as criminals without any conviction of crime by any court of law, of any further investigation conducted by the OSP. They cannot be guaranteed the Constitutional fundamental right to the presumption of innocence after the investigatory and prosecutorial misconducts and unlawful breaches of the mandate of the OSP under Act 959.

The Special Prosecutor, as has been shown, has no authority under article 195 of the Constitution and Sections 6(1) and 21(2) of Act 959 without the involvement of the Board of Directors of the OSP and the Public Services Commission to have purported to make recruitments and appointments into the OSP and arbitrarily assigned ranks to his personal appointees. The President could not even have made those appointments without acting in accordance with the advice of the governing council of the OSP in consultation with the Public Services Commission under Article 195(1) of the 1992 Constitution. It is, therefore, hoped that the Board of the OSP, the Public Services Commission, the Ministry of Finance, the Auditor-General's Department, and the Accountant-General's Department by virtue of this critique and analysis will critically examine the appointments processes followed in the recruitments, appointments, and arbitrary rank allocation before committing public funds in payments of emoluments from the compensation budget of the OSP to avoid unwarranted losses to the public purse arising from the conflict of interest in the OSP.

The OSP like Caesar's wife must live above suspicion that is why this critique and analysis of the Labianca investigation report published by the Special Prosecutor which is contended to be contrary to the mandate of the OSP under Act 959 and the 1992 Constitution has been made. The Constitution must be defended when such an august Office unlawfully tramples on the rights of citizens by lynching them in the court of public opinion despite the presumption of innocence and without a trial in a court of law. The participation of Corruption Watch Ghana and other civil society actors in the trial of the witnesses in the court of public opinion shows the dangers posed by McCarthyism in the name of fighting corruption. An application for certiorari in the High Court will certainly quash the unlawful and unconstitutional adverse findings contained in the Labianca report.

EPILOGUE

On 12 August 2022, exactly four days after the publication of the unconstitutional and unlawful Labianca report by the Special Prosecutor for the public trial of the witnesses who suddenly found themselves to have been turned into suspects or accused persons in the report in the court of public opinion instead of a court of law, the Asaase Radio owned by a perceived powerful maternal cousin of the President who is also a friend and associate of the Special Prosecutor reported that:

“Asaases sources say that both Colonel Kwadwo Damoah (rtd) and Amissahaddai are not likely to have their contracts, which have come to an end, renewed. Both men have attained the statutory retirement age and the Office of the President has been markedly reluctant in this second term of the Akufo-Addo government to renew contracts of appointees who have reached retirement age.

The GRA has also been at the centre of revenue mobilisation challenges in Ghana, heightened efforts by the Authority to keep revenue flowing in the challenging economic climate notwithstanding.

Colonel Damoah's case has also not been helped by the indictment by the Office of the Special Prosecutor which recently announced that Labianca Company Ltd, a frozen food importer, had evaded import duties through influence-peddling by the

owner, Eunice Jacqueline Buah Asomah-Hinneh, an elected member of the Council of State.”

This coincidence of events and messenger of the source, Asaase Radio, raises the question whether the OSP Labianca report which is not based on any cautioned or charged statement from the persons against whom the unlawful adverse findings were made and published for the trial in the court of public opinion was not just a ruse to remove Colonel Damoah (Rtd) and Mr. Amisahaddai from office. Governments and political parties are known to eat their own and this could be the situation of using an unlawful and unconstitutional report as a means of facilitating the removal of unwanted members of the troop. The fact that Assase Radio reported the scoop creates the reasonable suspicion that the Labianca report which is not supported by the mandate of the OSP partakes of a set up against both Colonel Damoah (Rtd), and Mr. Amisahaddai who bear ultimate responsibility for any perceived lapses by the men working under their watch as the Commissioner of Customs, and the Commissioner-General of the GRA respectively. McCarthyism must be fought against under the 1992 Constitution.

Asaase Radio and its unmentionable source should not pull wool over the eyes of Ghanaians with the retirement age of Col. Damoah (Rtd.) and Mr. Amisahaddai. At what age was Major General Francis Adu Amanfoh appointed as the National Security Co-ordinator in January 2021 by the President, for instance?

The Asaase Radio report from its alleged source of what is going to happen at the GRA reminds one of situations where when the mass of the people of a country are feeling the brunt of a mismanaged and run down economy and high cost of living everywhere, an unlawful report purporting to fight corruption helps to transfer the peoples disappointment and anger unto those falsely presented in the court of public opinion without a trial in court as required by law as being the ones responsible for running down the economy and for the sorry plight of the populace. The attendant public hysteria, bitter emotions, and mob lynching of the unfortunate victims diverts the public’s mind from the real perpetrators responsible for the conditions for the sorry plight of the mass of the people. It used to be called capitalist inferior tactics. Unfortunately, this is how the unlawful and unwarranted Labianca report presents the image of the GRA to me: I do not know how you see it.

The impression that no adverse finding was made in the Labianca report against the Commissioner-General of the GRA has already been demonstrated in this critique to be false and that a smokescreen was used by the Special Prosecutor in what is effectively a silent adverse finding against him for abdication of duty in his ultimate responsibility for customs advance rulings. There can be no example of grave investigatory and prosecutorial misconduct than when a report which is contrary to the Constitution and the mandate of the OSP forms the grounds for consideration for the removal of public officers from office without a trial and conviction by a court of law but rather a deliberate trial in the court of public opinion.

On 8 August 2022, seven members of the Family and Friends met after the publication of my article on the long game to break the 8 in the 2024 elections and the intelligence coming to me is that the only agenda item for discussion was how to disable and silence me from continuing my constitutional defence advocacy and media publications. I will not have written the foregoing critique and analysis in defence of the fundamental rights under the 1992 Constitution if I had allowed those threats to intimidate me. I was not, therefore, surprised to also read a report on Ghana Web of 16 August 2022 about similar threats of intimidation directed at Captain Smart (See “There is a plot to assassinate me in cells this week – Captain Smart alleges.”, Ghana Web, 16 August 2022). These threats can only be defeated when all patriotic citizens continue in solidarity to boldly defend the 1992 Constitution without fear or favour as the only solution towards putting Ghana First. Let the heavens fall, the 1992 Constitution must be defended.

Martin A. B. K. Amidu