

THE FIGHT AGAINST CORRUPTION REQUIRES A HIGH DECREE OF CRUSADING INTEGRITY AND NOT ENTERPRENEURSHIP: BY MARTIN A. B. K. AMIDU

INTRODUCTION

My critique and analysis of the report into alleged commission of corruption and corruption-related offences involving the Labianca Group of Companies Limited published on 19 August 2022 invoked insults and the casting of aspersions on my person instead of a reasoned response to the detailed critique and analysis presented to the public for informed debate. I have crusaded against corruption since 1982 when I chaired the three man National Investigation Committee, Sub-committee into the Cotton Development Board. I am not one of those whose crusade has ever had an eye on foreign and local donations and grants to fund or pay for my constitutional advocacy activities against corruption. That is the work of entrepreneurs whose salaries and emoluments are derived from fundings, donations or grants from foreign governments and/or their agents. I expect the CDD's Corruption Watch Ghana and those associates and lawyers attacking my person instead of the article I wrote to be bold to inform Ghanaians of how from June to October 2018, I refused to compromise the independence of the Office of the Special Prosecutor (OSP) when they tried on numerous occasions to let me violate Section 22 of the Office of the Special Prosecutor Act, 2017 (Act 959) on funding the OSP, and ceding the OSP to their management and control.

As a result of the unreasoned attack on my person instead of the article I wrote, I petitioned the Public Services Commission on 31st August 2022 on the unlawful appointment of permanent staff to the OSP contrary to Article 195 of the 1992 Constitution and Section 21 of Act 959. I followed this up on 2nd September 2022 with letters to the Minister for Finance, the Accountant-General, the Auditor-General, and the Chairman of the Public Accounts Committee of Parliament to protect the public purse.

A PROUD NORTHERNER TO BEAR THE PEJORATIVE NAME KONONGOKAYA

A member of parliament who is the chairperson of the Constitutional and Legal Committee of Parliament, Mr. Kwame Anyimadu-Antwi, within hours of the publication of the twenty-page article stooped so low to call me by the pejorative Gold Coast Colony and Ashanti name assigned my forebearers, northerners, from the Northern Territories of the British Protectorate in Konongo, as Konongokaya. No amount of attempting to clean the pejorative origins of the word "Konongokaya" can hide the insult to Northerners in the colony or to me as one of their descendants. Like the Kayayei of today, we are proud northerners and proud of our identities. It is however a shame that such a person calls himself a lawyer, and Chairman of the Constitutional and Legal Committee of the Parliament of the modern day Ghana founded on 6 March 1957 and passing laws for citizens under the 1992 Constitution. If simply reading a 20-page article was problematic for such a member of parliament to help him argue in a civilized manner without casting invectives at the author, then, one wanders how seriously the bills and regulations are scrutinized under such a lazy chairperson before Parliament passes them. Surely, Ghana deserves better representation in Parliament.

CDD-GHANA'S CORRUPTION WATCH GHANA

The next day, 20 August 2022, after the publication of my article, the supposed doyen of the NGO's, CDD-Ghana, in a statement signed by its Co-Founder, Dr Gyimah-Boadu, raised questions about Ms. Asomah-Hinneh's appointment by the president as a Board Member of the Ghana Ports and Harbours Authority (GPHA). Unfortunately, the President did not appoint Ms. Asomah-Hanneh to the Council of State. She is an elected member of the Council of State as stated in my article and the Ghana Ports and Harbours Authority is not the same entity as the Ghana Revenue Authority (GRA) to generate any conflict of interest in her dealings with the GRA. And clearly, the OSP was acting ultra vires its statutory and constitutional mandate and the question of the propriety or otherwise of any appointment by the President to the Board of GPHA did not arise. The impression subtly created that the OSP Labianca Report was constitutional and lawful was the issue at stake to be addressed by all adherents of the rule of law and the due process of law and not evading those issues through the side door.

The proper context of appreciating the CDD's stance after my article is to remember the position it took in support of the OSP Labianca Report as reported by Modern Ghana on 11 August 2022. Modern Ghana reported that:

“Advocacy group, Corruption Watch Ghana has commended the Office of the Special Prosecutor for recovering over GHS1 million in unpaid import duty charges from Labianca Company Limited...In a press release, Corruption Watch Ghana is pushing for the owner of Labianca Company Limited, Ms. Buah Asomah-Hinneh to be removed from her position as Council of State member...In addition, it also wants the Deputy Commissioner for Customs in charge of operations Mr. Joseph Adu Kyei sanctioned.”

In the words of the statement issued by Corruption Watch Ghana:

“Ms. Buah Asomah-Hinneh must be asked to resign or be removed from her membership of the Council of State and the Board of Directors of the Ghana Ports and Harbours Authority. Corruption Watch Ghana welcomes the directive for the opening of a wider investigation in respect of the issuance of customs advance rulings and markdown of benchmark values between July 2017 and December 2021. We further welcome the directive to the Commissioner-General of the Ghana Revenue Authority (GRA) to submit an Integrity Plan designed with the aim of preventing the corruption of the exercise of discretion by officials of the Customs Division by December 31, 2022. We believe that these directives are forward-looking.”

After welcoming whole heartedly an unlawful and unconstitutional report by their accredited partner in the fight against corruption my article which raised issues on the ultra vires of the OSP Labianca Report threatened to expose the collective who were participating in the mob lynching of witnesses who were being condemned without a hearing in accordance with Act 959 and the 1992 Constitution.

As reported in the Modern Ghana article, “Corruption Watch Ghana is an initiative by the Ghana Center for Democratic Development (CDD-Ghana) and a coalition of anti-corruption civil society organizations including, Ghana Integrity Initiative (GII), Ghana Anti- Corruption Coalition (GACC), and Africa Center for International Law and Accountability (ACILA)...” I do not consider the media acting pursuant to Chapter Twelve of the 1992 Constitution as partners of Corruption Watch Ghana. They are named as media partners just for the same

purposes of “influence peddling or trading of influence” as Corruption Watch Ghana criticizes others for practicing.

The same influence peddling or trading of influence can be seen on the website of the OSP where two of the leading foreign influenced NGOs have become integral partners of an independent OSP: Afrobarometre-Center for Democracy and Development (CDD), and Ghana Integrity Initiative (GII) - without the slightest shame of any conflict of interest in rigging the elections to Chairpersonship of the governing council of the OSP and violating Section 22 of Act 959 which forbids the OSP from accepting any funds directly or indirectly from anybody except from or through the Ministry of Finance. This partnership clearly negates the independence of the OSP and now enhances the ability of the NGOs to use influence peddling or trading of influence to source funds, grants and donations from foreign sources first to meet their administrative expenses and salaries, and secondly to interfere in the independent operations of the OSP. This is precisely what Section 22 of Act 959 sought to prevent. They failed to persuade me to violate this law during my tenure. The records are available on their illegal efforts should they wish to contest this claim.

The unanswered question which the CDD’s Corruption Watch Ghana does not want Ghanaians to think about is the fact that some of their members serve as public officers on governing councils of the executive branch of government as Chairpersons or members of state institutions and take the allowances and other perquisites of public office that come with such appointments. Those Ghanaians who do not see these entrepreneurial NGOs as suffering from the same “conflict of interest,” or “...influence peddling or trading of influence” they pontificate against should visit the definition of the expression “public officer” under Section 3 of the Criminal Offences Act, 1960 (Act 29). I refrain from naming them, but they know themselves. This is a typical lynching mob modus operandi that hides their own iniquities while lynching others who like themselves, have not been found guilty through the due process of law for the commission of any offence(s). Walk your talks and resign from those executive branch positions, if you truly have integrity and believe in what you preach.

THE INTEGRITY OF NOT READING ARTICLES WE CRITICISE

Mr. Martin Kpebu, a lawyer, who makes it his stock in trade to regularly appear as a guest in the electronic media as part of his private law practice, without reading my article, said that: “Mr Amidu shot over the bar. That’s what he did in Agyapa [case], so I don’t know why Mr Amidu suddenly has come to this 180 turn to stand on the other end. We have so much respect for him but in this particular thing we don’t agree with him.” This lawyer did not apparently, as simple legal ethics demanded, even read my article, or understand it, because if he had he would not have missed the last paragraph on page 4, (after I had stated the investigatory and prosecutorial powers of the OSP under which the OSP Labianca Report was written, including the publication of reports under Section 3(3) of Act 959) in which I stated that:

“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.”

A simple reading of pages 63 and 64 of the Agyapa Royalty Transaction Report dated 15 October 2020 clearly showed its difference from the OSP Labianca Report: “This assessment does not constitute an investigation even though a formal investigation for the suspected commission of ...offences may arise from this corruption risk assessment. It is not the work of a Commission or Committee of Enquiry...It partakes of a compliance audit...”

But this is a gentleman and a lawyer who had taken a position on the OSP Labianca Report when it was published in the media on 8 August 2022 without even considering the fact that the whole report by his friend, the Special Prosecutor, was written without any jurisdiction or mandate under the law establishing the OSP. In a report by Joy Multimedia dated 11 August 2022 this lawyer who knows it all, was reported to have “...thrown his support behind the Office of the Special Prosecutor (OSP) in the Labianca Company saga.” He is also quoted to have told the television station that: “Col. Damoah (Rtd) can’t take himself out of this case. It is just too late in the day so the ad hominem argument that the Special Prosecutor is a small boy is neither here nor there. So he should accept because I don’t see the grounds for the attack.”

And this is one of the human rights lawyers who had crucified persons accused of corruption by means of adverse findings for which they had no right of appeal to the High Court as guaranteed to commissions of enquiry under the 1992 Constitution. My critique and analysis of his friend’s OSP Labianca Report was therefore difficult for him to swallow as it contradicted his previous ill-considered position to Multimedia on the issue.

What integrity do we exhibit to the listening and reading public when we appear on television, urge our host to visit the OSP to see its abysmal state of affairs for himself because we had followed up our petition to the Special Prosecutor on the Northern Development Authority (NDA) alleged corruption case, and in the same breath accusing the President for not interfering in the independence guaranteed to the OSP by usurping that independence to fight corruption as President? There was no way the President could win the argument. If he dealt with the NDA case when it was pending before the OSP upon our man of integrity’s petition, the President would be interfering in its independence. If he awaited the results of the independent OSP he was part of criminal syndicate of corruption. Perfect logic of integrity! Then two days later the OSP which had held on to the NDA petition without acting on our man of integrity and human rights’ petition, announced the commencement of investigation into the NDA case. Was there a collusion to set-up the President for damnation? It should be everybody’s guess.

IMANI’S CHARGE OF OBSTRUCTION OF THE CURRENT SPECIAL PROSECUTOR

The Vice President of IMANI Africa, Kofi Bentil, is reported on 25 August 2022 on Joy News’ PM Express to have “cautioned against the hailing of the former Special Prosecutor, Martin Amidu, as an authority to be running commentary on the actions of the present Special Prosecutor, Kissi Agyebeng.” According to the reportage:

“Mr. Amidu should not be sniping at him, making such commentary. We all make commentary, we all criticize, we all say what we have to say. But you and I and everybody else should be careful not to make Martin into somebody who will be running commentary and then we will sit back and then be analyzing what Mr. Agyebeng is doing because of what Martin Amidu is saying. I absolutely will not join that bandwagon.”

Pathetically, Kofi Bentil of IMANI Africa accuses me of obstructing the work of the present Special Prosecutor with long epistles. The exercise of my constitutional right as a citizen to critique an unlawful and unconstitutional conduct did not matter to validity of the arguments contained in my considered article to this lawyer and Vice President of IMANI Africa. This is a person who did not even appear to have read the prologue to my critique and analysis which explained why I broke one year of silence to write on a patently unconstitutional and unlawful report of their friend.

The distinguished Vice President of IMANI Africa refused or failed to address the reasons for my article as I stated in the prologue even if he was lazy to read the entire 20-page article:

“...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.... his 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.”

But so are they all, all distinguished Vice Presidents of NGOs, who when they cannot engage the argument, engage a personality of their perceived adversary with disparaging trash in their defensive interactions. Let me say this for the first and the last time: I had to resign from the OSP after crossing swords with the President and his Family and Friends on 1 November 2020 on the Agyapa Royalties Transactions. Any experienced public officer would tell anyone that strategically, staying on in that office opened me up for trumped-up impeachment at the time of the Government’s own choosing. Resigning was the most strategic and tactical thing to do to both avoid the Charlotte Osei situation and to scuttle the Agyapa Royalties Transaction which has been more beneficial to Ghana than the GHC1million extorted from Labianca Company Limited. I had to make that decision based on decades of experience in public office and not cede it to any civil society organization or Mr. Kwame Anyimadu-Antwi who did not even know how I was persuaded to accept the appointment in the first place.

INVITATION TO ANTI-CORRUPTION NGOs FOR A REASONED DEBATE

I humbly invite the non-governmental organizations who chose to attack and cancel me from exercising my constitutional right to engage in critical and analytical discourse on the lawfulness of the OSP report to respond to my article in a civilized manner by demonstrating that pursuant to section 2(a), 3 and 79 of Act 959 and Regulations 5, 6, and 7 of L. I. 2374 under which the OSP purported to have written and published the OSP Labianca Report any specified corruption and corruption-related offences were committed.

The factual context is that the interpretation section, Section 79 of the Office of the Special Prosecutor Act, 2017 (Act 959) defines “corruption and corruption-related offences to mean offences under (a) Section 146, 151, 179C, 239, 252, 253, 254, 256, 258 and 260 of the Criminal Offence Act, 1960 (Act 29); (b) Section 92 (2) of the Public Procurement Act, 2003 (Act 663); and (c) Existent offences under enactments arising out of or consequent to offences referred to in paragraphs (a) and (b);...”

The following is a summation of the corruption and corruption-related offences created under Act 959:

- (a) Section 146 deals with dishonestly receiving property that a person knows to have been obtained or appropriated by a criminal offence punishable under the chapter;
- (b) Section 151 deals with a person who extorts property from any other person by means of threat;
- (c) Section 179C dealing with using public office for profit;
- (d) Section 239 deals with corruption of and by public officers;
- (e) Section 252 deals with accepting or giving bribe to influence public officer or juror,
- (g) Section 253 deals with corrupt promise by judicial officer or juror;
- (h) Section 254 deals with corrupt selection of juror,
- (i) Section 256 deals with corruption, intimidation, and personation in respect of election,
- (j) Section 258 deals with falsification of returns at election;
- (k) Section 260 deals with withholding public money by public officer; and
- (l) Section 92(2) of the Public Procurement Act, 2003 (Act 663) deals with offences constituted under the Act for which jurisdiction is given to the Office. Surprisingly, it fails to mention Section 93 dealing with corrupt practices.

I challenge Corruption Watch Ghana, its associated friends and lawyers to point to the offences indicated above the offences of “conflict of interest”, or “...influence peddling or trading of influence by Ms. Asomah-Hinneh by employing her position as a member of the Council of state and a member of the Board of Directors of Ghana Ports and Harbours Authority...” or “....an institutional culture of lighthearted (sic) unconcern regarding impropriety of action at the Customs division of the Ghana Revenue Authority – which indicated a high propensity to engender corruption and corruption-related activities” as corruption and corruption-related offences. Should they be able to show these to fall within Section 79 of Act 959, I would gladly accept the charges of obstructing, meddling, and shooting over the bar against me, and apologize for my transgression into the domain of the almighty Corruption Watch Ghana under the equally omnipotent CDD Ghana.

CONCLUSIONS

The efforts and attempts by the group of non-governmental organizations called Corruption Watch Ghana, their associated friends, and lawyers to silence, intimidate, and cancel my voice from defending the 1992 Constitution in the fight against corruption within the narrow laudable objectives of the Office of the Special Prosecutor, Act, 2017 (Act 959) and the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) to “investigate and prosecute specified cases of alleged or suspected corruption and corruption-related offences” will, and has failed.

The more my person is attacked and intimidated, the more I shall use all available legal and constitutional means at my disposal to ensure that the Office of the Special Prosecutor does not become a rogue institution of CDD-Ghana’s Corruption Watch Ghana and their associates who are pushing it into illegal acts to enhance their entrepreneurial influence peddling or trading of influence at the expense of the security and laws of Ghana.

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