

**IN THE SECOND MEETING OF THE FIRST SESSION  
OF THE EIGHTH PARLIAMENT OF THE FOURTH  
REPUBLIC OF GHANA**



**THE NINTH REPORT OF THE APPOINTEMENTS  
COMMITTEE ON HIS EXCELENCY THE  
PRESIDENT'S NOMINATION OF MR. KISSI  
AGYEBENG FOR THE APPOINTMENT AS THE  
SPECIAL PROSECUTOR**

**27<sup>TH</sup> JULY, 2021**

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**1.0. INTRODUCTION**

- 1.1 On Wednesday 21<sup>st</sup> April, 2021, H.E the President, Nana Addo Dankwa Akufo Addo, communicated to Parliament the nomination of the Special Prosecutor - Designate, Mr. Kissi Agyebeng, in accordance with Section 13 (3) and (8) of the Special Prosecutor Act, 2017 (Act 959).
- 1.2 The Rt. Hon. Speaker, Mr. Alban Sumana Kingsford Bagbin, pursuant to Order 172 of the Standing Orders of Parliament, referred the nomination to the Appointments Committee for consideration and report.

**2.0. REFERENCE DOCUMENTS**

The Committee made references to the under-listed documents during its deliberations:

- i. The 1992 Constitution;
- ii. The Standing Orders of Parliament;
- iii. The Office of the Special Prosecutor Act, Act, 2017 (Act 959); and
- iv. The Curriculum Vitae of the Nominee

**3.0. PROCEDURE FOR THE CONSIDERATION OF THE REFERRAL**

- 3.1. Pursuant to Order 172 (3) of the Standing Orders of Parliament, the Committee caused for publication in newspapers with national circulation for the attention of the general public, the nominee for the Special Prosecutor and requested for Memoranda to assist the Committee in its deliberation.
- 3.2 The Committee subsequently sought and obtained Confidential Reports on the nominee from the Ghana Police Service, the National Investigations Bureau (NIB) and the Ghana Revenue Authority (GRA) as part of its background checks.

3.3 Thereafter, the Committee held a Public Hearing on Thursday, 22<sup>nd</sup> July, 2021, to consider the nomination. At the commencement of proceedings, the Nominee subscribed to the Oath of a Witness and subsequently answered questions relating to his Curriculum Vitae, the role of the Office of the Special Prosecutor in preventing and fighting corruption, conflict of interest, matters relating to his eligibility and issues pertaining to the Office and other national concerns.

#### **4.0. BACKGROUND**

Mr. Kissi Agyebeng was born on 2<sup>nd</sup> July, 1978 at Kwahu - Tafo but hails from Kwahu - Nkwatia in the Eastern Region. He had his Basic Education at the Holy Star Academy, La from 1983 to 1987 and continued to Wajir Barracks School, Teshie, from 1987 to 1989 in Accra. In 1989, he passed the Common Entrance Examination at the Danfa L. A. Middle Mixed School, and gained admission to the Accra Academy School, Bubuashie, where he obtained both the Ordinary and Advanced Levels (GCE O' Level & A' Level) Certificates in June 1994 and June 1996 respectively.

In 1998, Mr. Agyebeng was admitted to study law at the University of Ghana, Legon where he was awarded with a Bachelor of Laws (LL.B.) in May, 2001. He, subsequently, proceeded to the Ghana School of Law for his Professional Law Course in 2003 and was called to the Ghana Bar in October 2003. The nominee in May 2005, was awarded a Master of Laws (LL.M.) in Marine and Environmental Law at the Schulich School of Law, Dalhousie University, Halifax, Nova with a Master of Laws (LL.M.) in Corporate Law, Securities Regulation, International Commercial Arbitration, International Economic Relations (WTO) and International Business Transactions from the Cornell School of Law, Ithaca, New York, USA.

He worked at the Information Services Department at the West Akyem District, Asamankese in 1997 for his National Service. He was a Teaching Assistant at the Faculty of Law, University of Ghana, Legon from 2003 to 2004. The nominee has also undertaken a number of Internship Programmes as part of his work experience.



He worked at the Alternative Dispute Resolution Centre, Faculty of Law, University of Ghana from 1999 to 2001, Data Centre (Legal Materials Publisher) in Accra from 2001 to 2002, Centre for Public Interest Law (Human Rights/Public Interest Law Firm) and Legal Resources Centre from 2001 to 2002.

The nominee was a Pupil at the Zoe, Akyea and Co. (Law Firm) in Accra from 2003 to 2004 and later an Associate from 2006 to 2007. From 2008 to 2009, he was a Senior Associate at the Centre for Public Interest Law (CEPIL) (Human Rights/Public Interest Law Firm) in Accra. From 2009 to 2013, Mr. Kissi Agyebeng was a Senior Associate at the Ayine and Felli (Law Firm) and has been the Managing Partner of Cromwell Gray LLP (Law Firm) in Accra since 2014.

The nominee has been a Lecturer at the University of Ghana School of Law from 2006 to date. He was an Adjunct Lecturer at the Regional Maritime University (Law of the Sea), Nungua in 2009 and as a Lecturer at the Legon Centre for International Affairs and Diplomacy (LECIAD) at the Ghana Armed Forces Staff College, Teshie, in 2011. Again, in 2012 he worked as a Lecturer at the Mountcrest University, Faculty of Law and the Central University, Ghana, Faculty of Law (Criminal law) in 2013. He was also a Lecturer at the Ghana Institute of Management and Public Administration (GIMPA), Faculty of Law, Greenhill from 2013 to 2014 and has been a Lecturer at the University of Ghana School of Law since 2006.

The nominee has been a member of the Ghana Bar Association since 2003. He has held a number of leadership positions including Chairman - Electronic Communication Tribunal and Notary Public, Ghana since 2019. He was the Vice Chairman, Appeals Committee, Ghana Football Association from 2017 to 2018 and a member of Elections Committee, Ghana Football Association from 2016 to 2017. He is also a Fellow of the Canadian International Development Agency Fellowship for the Maritime and Environmental Law Programme, Dalhousie, Halifax, Nova Scotia, Canada; Institute of African Development, Cornell University, Ithaca, New York, USA and Akuafu Hall, University of Ghana, Legon, Accra.

## **5.0. NOMINEE'S RESPONSES TO QUESTIONS**

### **5.1. Criminalisation of unexplained Wealth in Ghana**

In responding to a question on his position on criminalising unexplained wealth, as part of measures to combat corruption, Mr. Kissi Agyebeng informed the Committee that in criminal jurisprudence, a crime should be clearly delineated. This is in view of the fact that for a person to lose his freedom to a jail term or pay a sum of money as a fine, the State must satisfy itself beyond all reasonable doubt that the accused indeed committed the offence. He stated that in his opinion if an accused person cannot reasonably explain the source of his wealth, that aspect of the unexplained wealth should be criminalised. If an accused can explain all the sources of his wealth, all criminal charges levelled against the accused must be withdrawn.

### **5.2. Abuse of Processes and Conflict of Interest and Corruption**

The nominee indicated that pursuant to Section 2 of the Office of the Special Prosecutor Act, 2017, (Act 959) the Special Prosecutor (SP) is mandated to investigate and prosecute specific cases of alleged or suspected corruption and corruption-related offences and to take steps to prevent corruption amongst others.

He stated that the most veritable source of corruption in Ghana is the abuse of processes and conflict of interest. He added that if approved by the House to serve as the Special Prosecutor, he is not naive to state that he can put an end to corruption; however, he would make corruption very costly to engage in.

### **5.3. Measures to Prevent Corruption**

The nominee informed the Committee that in furtherance of his mandate to take steps to prevent corruption, he will institute what he refers to as "Pressure for Change" measures which will be a systemic review of Public Sector Institutions and the development of the integrity plans for the Institutions.



He stated that in developing the integrity of public institutions he would introduce Corruption Perception Indexes. He would set Public Sector Institutions against each other and publish the results of which institution ranks high in terms of corruption and which institution ranks the least. He added that Section 19 of Act 959 empowers the Board of the OSP to establish any other division necessary for the effective performance of the function of the Office. With the approval of the Board, he intends to create a Strategy and Research Division of the Office to enable the Office develop its capacity for the effective and efficient discharge of its mandate.

#### **5.6. His Involvement with Agyapa Royalties Transaction**

In a response to an article published by the former Special Prosecutor, the nominee refuted claims that he is a surrogate for any law firm and stated that he is not involved in the Agyapa Royalties Transaction in any form or manner or any stretch of imagination, however, fertile. He stated that persons stating that he is a surrogate of a law firm or implicating him in the Agyapa Royalties Transaction do not know him and such claims about him is clearly uninformed.

#### **5.7. Young and Inexperienced for the position of the Special Prosecutor**

The nominee dismissed claims that he is too young to serve as the Special Prosecutor. He stated that he is 43 years old and consequently qualifies for election as President of the Republic. He emphasised that if in the wisdom of the framers of the Constitution, a 40-year-old Ghanaian could occupy the high office of President, then his age cannot define him as unsuitable for the position of the Special Prosecutor. He indicated that he was called to the Bar 18 years ago and therefore qualifies to be nominated as a Justice of the Supreme Court of Ghana and is three years past the qualification for the Supreme Court. Moreover, he has taught Criminal Law at the University of Ghana, Legon for 15 years continuously. These and many other qualifications he stated prepares him for the Office of the Special Prosecutor.

### **5.8. Friction and possible conflict between the Special Prosecutor (OSP) and the Attorney General (AG)**

The nominee informed the Committee that there could be friction between the Office of the Special Prosecutor (OSP) and the Office of the Attorney General. He indicated that article 88 (3) of the Constitution provides that the Attorney General shall be responsible for the initiation and conduct of all prosecutions of criminal offences. According to him, this provision appears not to cede any authority to any other person to initiate criminal prosecutions apart from the Attorney-General. However, in Article 88 (4) the Constitution provides that all offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General or any other person authorised by him in accordance with law. Similarly, Section (3) (1) of Act 959 empowers the Special Prosecutor to initiate criminal prosecutions. In his view, though, the role of the Special Prosecutor is defined in Act 959, there could be a potential turf war and source of conflict between the Special Prosecutor and the AG as who could as of right investigate and prosecute alleged or suspected corruption and corruption related offences if the roles are not properly delineated.

### **5.9. Role and Relevance of the Office of the Special Prosecutor (OSP) in combating Corruption**

In explaining the role of OSP and its relevance, vis-a-vis the provisions under Article 88 of the Constitution, the nominee indicated that the OSP has an expanded mandate which includes the investigation and prosecution of corruption and corruption-related offences, recovering the proceeds of corruption and corruption-related offences, as well as taking steps to prevent corruption. He explained that the relevance of the Office is borne out of its uniqueness as compared to all the other law enforcement State Agencies, adding that the OSP has been carefully thought out to fight corruption. He described the OSP as 'gold standard' under the global efforts to fighting corruption as enshrined in relevant international treaties and conventions such as the United Nations Convention Against Corruption.



In the view of the nominee, the creation of the OSP signify the commitment of Ghana towards achieving national and international expectations relating to the fight against corruption.

Sharing his view on some flaws in Article 88 of the Constitution as far as the fight against corruption is concerned, the nominee indicated that the Attorney General (AG) is a member of Cabinet and the Government, and as a result, the independence of the AG can easily be compromised when persons of the Government are brought before the AG for investigation of corruption and corruption related offences. The OSP on the other hand, is politically neutral and therefore, is well positioned and insulated from any victimisation to prosecute corruption and corruption related offences. He assured the Committee of his loyalty and commitment to meet the expectations of Ghanaians as defined in the Office of the Special Prosecutor Act, 2017 (Act 959) and pledged to guard his independence jealously.

#### **5.10. Reducing the Incidence and Perception of Corruption**

In responding to what practical steps the nominee intends to adopt to raise the image of Ghana relating to perceptions of corruption, the nominee explained that the recent corruption perception index ranking of Ghana by Transparency International, is within the average global ranking, there is therefore the need to improve Ghana's ranking performance. He enumerated a number of initiatives to roll out if the House approves his nomination as the Special Prosecutor. Among the initiatives he outlined include the collaboration with the Civil Society Organisations, Non-governmental Organisations, Investigative Journalists and the institution of Annual Peer Review Programmes to assess efforts towards reducing corruption. He indicated the need to reflect on upholding the integrity of the OSP.

He further disclosed his plans to appeal to the Chief Justice to establish a Special Court dedicated to prosecuting corruption and corruption related offences to ensure timely and expeditious adjudication of cases. Additionally, he intends to liaise with the higher learning institutions to institute academic discipline in anti-corruption.



### **5.11. Nominee's Paper and Comments on 2013 Elections Petition**

In clarifying the basis for describing the Judgment by the Supreme Court on the 2013 Election Petition as erroneous and why his argument was dissimilar from what appears to have been made by Dr. Dominic Ayine on the 2021 Election Petition Judgment which the Chief Justice took exception to and consequently took him to the Disciplinary Committee of the General Legal Council, the nominee explained that it was an academic paper titled, 'The Decision that wasn't the decision: A critique of the Supreme Court decision in the 2013 Election Case' which he presented during a Symposium Organised by the Dankwa Institute for Public Policy and Research. In his opinion, he could not find the ratio of the so called majority decision of the Supreme Court on the two main issues which were brought before the Court for determination.

He stated that one of the issues for determination was whether the second respondent was validly elected as the President and whether the first Petitioner was validly elected as the President. In his view, the main issues brought before the court were not answered, issues such as whether or not there was over voting, and whether or not some people voted without biometric verification were rather determined as opposed to the substantive matter which was brought before the Court for determination.

In a similar invitation by the Centre for Democratic Development on the 2021 Election Petition Judgment, and in particular reference to the comments made by Dr Dominic Ayine, the nominee expressed his reservations on the way and manner the Courts are using the contempt of court charges against individuals who expressed their views on the decisions of the Courts. He threw caution on the possibility of arbitrariness in the use of contempt charges, and consequently, recommended for codification of what constitute contempt and prescription of appropriate sanctions as way of promoting free speech whiles at the same upholding the sanctity and the integrity of the Judiciary.

#### **6.12. Influence of the Board on the work of the Special Prosecutor**

Sharing his view on the boundaries between the Board of the Special Prosecutor and the Special Prosecutor, the nominee argued that the Special Prosecutor, though, is answerable to the Board in terms of administrative functions, the investigative and prosecutorial role of the Special Prosecutor should be clearly delineated and insulated from the control of the Board and sphere of influence. He explained that interference of the Board in such arena pose a risk of potential leakage of information and evidence tempering which could compromise the investigations.

#### **5.13. Position on Judgment Debt**

In reacting to the content of a report by the Centre for Social Justice System in which the centre reported that Ghana has lost up to GHS1.98 billion in judgment debts and what appears to be collusion of Public Officials with the claimers of the judgment debt, the nominee expressed worry in the loss of such colossal monies to the country. He pledged to institute measures such as the conduct of regular risk assessment of anti-corruption compliance of the Ministries, Departments and Agencies, investigate toxic deals and publish anti-corruption barometer reports of State Agencies.

#### **5.14. Accusations of Association with accused persons before OSP**

In responding to accusations by the former Special Prosecutor, Mr. Martin Amidu, of the nominee's association with accused persons currently before the OSP for investigations, the nominee denied the allegations and described it as some flight of fancy. Explaining what might have led to such pronouncement by Mr. Martin Amidu, the nominee informed the Committee that it was in respect of a matter in which his law firm was a legal representative of a company where he accompanied the Chief Executive Officer of the Company on an invitation by the Special Prosecutor to answer charges of some contract breaches. The nominee further explained that the said meeting could not even come off and has still not been called and therefore there could not be any basis for making such allegations.



### **5.15. Definition of Politically Exposed Persons under Act 959**

On the issue of whether the definition of politically exposed persons in Section 79 of Office of the Special Prosecutor Act, 2017 Act 959 is exhaustive enough to curb corruption and corruption-related offences, the nominee stated that the definition is comprehensive. He stated that the use of the word 'includes' in the definition section of Act 959 suggests that the definition is inclusive rather than an exclusionary one.

He believes that the definition does not restrict or limit the categories of persons classified as politically exposed persons but can include other categories when the context requires. Further, the commencement section and the Long Title of the Act indicates that the Act covers Public Officers, Politically Exposed Persons, and persons in the private sector. The nominee maintained that the remit of the Act is all-encompassing to fight corruption.

### **5.16. Power to trace illegally acquired Assets or Wealth**

On whether the Office has the mandate and the capacity to trace illegally acquired assets and wealth, the nominee stated that the Office should be capable of performing that function. He informed the Committee that tracing illegally acquired assets and unexplained wealth is a very difficult venture that requires the cooperation and collaboration of all internal and external stakeholders. He indicated that for the Office to trace illegally acquired assets and unexplained wealth, it must collaborate and cooperate with other sister agencies like the Economic and Organised Crime Office, the Criminal Investigation Departments, Serious Fraud Office and the Financial Intelligence Centre among others.

He further stated that various mechanisms exist under the Anti-Money Laundering Act, 2020 (Act 1044), the Mutual Legal Assistance Act, 2010 (Act 807), the Whistle Blower Act, 2006 (Act 720) and the Witness Protection Act, 2018 (Act 975) that the OSP could rely on and with the cooperation of these agencies concern to trace assets illegally acquired.

He assured the Committee that he would liaise with all the agencies to develop a comprehensive framework and strategy when he is approved by the House.

#### **5.17. External Collaboration in Fighting Corruption**

The nominee acknowledged that it would be very frustrating if the evidence required to prosecute a matter is not forthcoming from another country upon request. He stated that since many countries are state parties to the United Nations Convention against Corruption and the African Union Convention on the Prevention and Combating corruption, they will be reminded of their mandate under the convention for them to collaborate on these matters.

#### **5.18. Relationship with Law Firm**

On his relationship with his law firm, when he is approved as Special Prosecutor, the nominee stated that he has instituted clear rules of succession to ensure a smooth transfer of management of the firm to another person during his tenure as Special Prosecutor. The nominee insisted that although he would divest himself from the firm's day-to-day management, he will not divest his ownership of the firm. He maintained that after his tenure as Special Prosecutor, he would return to the firm as a full-time partner.

When the nominee's attention was drawn to Section 13 (7) of the Office of the Special Prosecutor Act, 2017 Act 959, which provides that "The Special Prosecutor shall not while holding office, hold any other public office or engage in any commercial venture", the nominee assured the Committee that he would not in any shape or form have any relationship with the firm neither would he derive any benefit or profit from its operation during his tenure as Special Prosecutor.



On whether the nominee will consider applying to the Speaker of Parliament for permission to hold Office of profit in accordance with Articles 78 (3) and 98 (2) of the Constitution, the nominee indicated that he would explore the idea.

#### **5.19. The Role of the Nominee in the Ghana National Petroleum Corporation's (GNPC) Liquefied Natural Gas (LNG) Project**

The nominee stated that his firm Cromwell Grey LLP is the external Solicitor for GNPC. He explained that his law firm had prosecuted two cases, one at the High Court and the other in the Supreme Court on behalf of GNPC.

On whether the work with GNPC relates to LNG Regasification project in Tema, the nominee answered in the affirmative and stated that they were advising White & Case LLP regarding its brief with GNPC.

On how the nominee's firm was procured and whether it went through a competitive process, he stated that his firm's services were procured because of their work output when working with White & Case LLP on the LNG project and as a result, GNPC became acquainted with their work. The nominee further stated that to the best of his knowledge, the selection of his law firm as GNPC external counsel went through the procurement process.

On whether the nominee has met of the leading partners at White & Case LLP, he stated that he knows the partners who worked with him as far as the LNG project is concerned. On being asked whether he knows one, Mr Joshua Siaw, he answered yes and stated that Mr Joshua Siaw was his professional colleague working with him on the LNG project.

#### **5.20. Anas Exposé on the Judges**

The nominee informed the Committee that he had been the Solicitor for Mr. Anas Aremeyaw Anas and Tiger Eye PI and that he had represented Mr. Aremeyaw in all his cases. On the Judges issue, he informed the Committee that as the Solicitor, he had access to all the footage and recordings.

He stated that before Anas and Tiger Eye PI would proceed to show a documentary or report to the authorities for any investigation to commence in any of their work, the nominee and his team of solicitors must sign off any legal process. The team goes through the raw footage and recordings before deciding whether to proceed with the matter or not.

On the matter of whether some of the judges caught in the video were spared, the nominee stated that no one was spared.

#### **5.21. The role of the in Electronic Communication Tribunal**

On whether, as Chair of the Electronic Communication Tribunal, he was given the resources to work, the nominee stated that he would have wished for more. He informed the Committee that in his handing over notes, one of the things he would be talking about was the funding arrangement for the Tribunal. According to the nominee, he was faced with an invidious situation where his perpetual respondent is the regulator and at the same time the paymaster. To him, such a situation presents a clear danger of conflict of interest. He recommended that the funding of the Tribunal should be separate from that of the regulator.

On whether the National Communication Authority was highhanded in their treatment of some media houses, the nominee stated that he did not experience it. According to him, what he saw in respect of radio stations was that by the time he assumed Office, the licenses of some of the radio stations had expired, and since the law does not grant the Tribunal the power to issue licences, he advised these stations to go back to the regulator to regularise their licences.

He further stated that the Tribunal would only assume jurisdiction when a station has a license or the license had expired, but the regulator is frustrating the application process.



### **5.21. Strengthening Asset Declaration Regime**

Relating to a proposition for review of the asset declaration regime of the country to make it more biting on some segment of public officials because of seeming unresponsiveness of the existing regime, the nominee subscribed to the review of the current regime to deepen public office accountability. He emphasised that the cardinal principle that must inform the process should be based on setting standards that place an obligation on public officials to reasonably explain inequalities in their wealth and lawful income if found. He further called for a regime that allows full disclosure of the source of wealth of public officials and enforcement of filing of assets. The nominee pledged his support to the review process if approved by the august House.

### **5.22. Bureaucracy and Red Tapeism breeding corruption**

In responding to a question on how he intends to deal with inefficient rules in the public bureaucracy which encourages act of corruption among public officials, the nominee suggested tackling such rules which may be founded either on enactment or convention by strict application or operation of the enactment.

### **5.24. Tackling Corruption in the Natural Resource Sector**

The nominee indicated that acts of corruption permeate all facets of the economy including the natural resource sector. He emphasized that the nature of corruption in the natural resource sector was not different from other sectors. He agreed that because of limited transparency in the governance and management of natural resources, local elite and investors particularly foreign investors tend to undermine the country's law for their benefit, and may even be left of the hook in situations where they incur certain liabilities.

He assured the Committee of employing measures and innovations to check those who might contemplate perpetrating the act of corruption in the sector in order to prevent the abuse of the country's natural resources.

**5.25. Policy on Traditional African Gift and Gift to Corrupt**

The nominee concurred with the view that our cultural norms favour the giving of gifts as tokens to show appreciation to people. The acceptable form of the gesture is when it is carried out in the public. The nominee explained that the Criminal Offences Act, 1960 (Act 29) has made some provisions on how to deal with matters of gift especially those given at public functions. Despite this, he said there are some grey areas such as what form of gift could constitute a token which must be addressed. The nominee proposed the formulation of a new gift policy to regulate gift giving in the country.

**6.0. CONCLUSION AND GENERAL RECOMMENDATION**

The Committee has duly considered the nomination of His Excellency the President for the appointment of the Special Prosecutor in line with the Section 13 (3) and (8) of the Special Prosecutor Act, 2017 (Act 959) and the Standing Orders of Parliament and recommends the nominee, Mr. Kissi Agyebeng, to the House for approval.

Respectfully submitted.



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**HON. JOSEPH OSEI-OWUSU  
FIRST DEPUTY SPEAKER  
& CHAIRMAN, APPOINTMENTS  
COMMITTEE**



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**MRS. JOANA ABENA SAKYI ADJEI  
CLERK, APPOINTMENTS  
COMMITTEE**

**27<sup>TH</sup> JULY, 2021**