

**IN THE FIRST SESSION OF THE SEVENTH PARLIAMENT OF THE  
FOURTH REPUBLIC OF GHANA**

**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL  
AND PARLIAMENTARY AFFAIRS**

**ON THE**

**OFFICE OF THE SPECIAL PROSECUTOR BILL, 2017**

**OCTOBER, 2017**



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PROSECUTOR BILL, 2017**

**1.0 INTRODUCTION**

- 1.1 The Office of Special Prosecutor Bill, 2017 was laid in Parliament on Monday, 31<sup>st</sup> July, 2017 by the Attorney-General and Minister for Justice, Hon. Gloria Akuffo for passage in accordance with Article 106 of the 1992 Constitution.
- 1.2 Consequently, the Bill was referred by the Rt. Hon. Speaker to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to Order 179 of the Standing Orders of the House.

**2.0 CONSIDERATION PROCEDURE**

- 2.1 As part of the programme for the consideration of the Bill, the Committee firstly caused to be published in the electronic and print media requests for written Memoranda from the general public. Subsequently, invitation letters were sent to selected Civil Society Organizations (CSOs), relevant Public Institutions and Anti-Corruption Experts to formally solicit their views and inputs.
- 2.2 After receipt of a number of written Memoranda from some Stakeholders, the Committee proceeded to hold a 2-Day Stakeholders Conference to discuss the received Memoranda and to seek further perspectives in respect of the Bill. The Committee respectfully acknowledges the participation of the First Deputy Speaker, Hon. Joseph Osei-Owusu, Majority Leader, Hon. Osei Kyei-Mensah-Bonsu and Minority Leader, Hon. Haruna Iddrisu in the Conference.
- 2.3 The Committee also acknowledges the participation of some public investigative institutions namely, Economic and Organised Crime Office (EOCO), Commission on Human Rights and Administrative Justice (CHRAJ), Financial Intelligence Center (FIC), and the Auditor-General's Department.
- 2.4 The Committee further acknowledges the participation of Officials from the following CSOs, United States Agency for International Development (USAID), Department for

International Development (DFID), Danish International Development Agency (DANIDA), Strengthening Action Against Corruption (STAAC-Ghana), Rule of Law and Accountability Programme (ARAP), Ghana Anti-Corruption Coalition (GACC), Ghana Integrity Initiative (GII), Centre for Democratic Development (CDD-Ghana), and Ghana Independent Broadcasters Association (GIBA).

- 2.5 Having solicited sufficient views from the Stakeholders, the Committee met with Hon. Deputy Attorney-General and Deputy Minister for Justice, Mr. Joseph Dindiok Kpemka and officials of the Ministry of Justice and Attorney-General's Department to consider the Bill. The Committee also benefited from inputs and technical support from the Majority Leader, Hon. Osei Kyei-Mensah-Bonsu, Professor Henry Kwasi Prempeh, (CDD), Professor Gyimah Boadi, Dr. Kwadwo Asante (CDD) and Ms. Carolyne Lamptey (STAAC) at the Clause by Clause consideration of the Bill.
- 2.6 The Committee is extremely grateful to the participants and Resource Persons for their invaluable contributions that enriched the Committee's deliberations.

### **3.0 REFERENCE DOCUMENTS**

3.1 The Committee referred to the following documents during its deliberations:

- i. The 1992 Constitution;
- ii. The Standing Orders of Parliament;
- iii. The National Anti-Corruption Action Plan (NACAP);
- iv. The United Nations Convention Against Corruption (UNCAC);
- v. The Economic and Organized Crime Office Act, 2010 (Act 804);
- vi. The Anti-Money Laundering Act, 2008 (Act 749);
- vii. The Commission on Human Rights and Administrative Justice Act, 1993 (Act 456);
- viii. The Criminal Offences Act, 1960 (Act 29);
- ix. The Criminal and Other Offences (Procedure) Act, 1960 (Act 30); and
- x. The Public Procurement Act 2003 (Act 663).

## 4.0 BACKGROUND INFORMATION

- 4.1 Corruption is recognized as a key element of economic under-performance and as a major impediment to poverty alleviation and sustainable development across the world with developing countries being mostly affected. It also threatens the stability and security of countries, undermines democratic institutions and the entire justice system. These debilitating effects have triggered international action against the menace and prompted the United Nations and other international bodies to adopt international instruments to oblige member states to take aggressive steps to combat corruption.
- 4.2 The necessity to combat corruption and its cognate offences are well entrenched in the 1992 Constitution and other relevant laws. It enjoins the Country to take steps to eradicate corrupt practices and abuse of power. The Country has also enacted a number of laws to proscribe corrupt practices including the Criminal Offences Act, 1960 (Act 29) and the Public Procurement Act, 2003 (Act 663).
- 4.3 In the exercise of prosecutorial powers in combating corruption, Article 88 of the 1992 Constitution vests exclusive prosecutorial powers in the Attorney-General and empowers the office holder to initiate and conduct all criminal prosecutions. The Office holder is also permitted by the Constitution to authorize other persons to perform those functions.
- 4.4 Again, there are investigative institutions whose mandate includes investigation of corruption and its cognate offences. These institutions include the Commission on Human Rights and Administrative Justice (CHRAJ), the Economic and Organized Crime Office (EOCO), and the Financial Intelligence Centre (FIC).
- 4.5 The existing institutional framework however has been found to be confronted with some bottlenecks which impede the country's fight against corruption. The exclusivity of prosecutorial authority of the Attorney-General and the insecure tenure of the office holder have been identified by governance experts as some of the key factors that have derailed anti-corruption efforts in the country. Additionally, the multi-purpose or mixed mandate nature of the existing investigative agencies have also been found to contribute to the current state of affairs.
- 4.6 It is in view of the above challenges that the Government declared its intention to establish, by legislation, the Office of the Special Prosecutor to investigate and prosecute certain alleged cases of corruption and corruption related offences contained in existing enactments including the Criminal Offences Act, 1960 (Act 29), the Public Procurement Act, 2003 (Act 663) and other enactments.

4.7 It therefore became imperative to introduce in Parliament the Office of the Special Prosecutor Bill, 2017 for its passage in accordance with Article 106 of the Standing Orders of Parliament.

## **5.0 OBJECT OF THE BILL**

5.1 The object of the Bill is to establish the Office of the Special Prosecutor as a specialized agency to investigate specific cases of corruption involving public officers, politically exposed persons, and persons in the private sector involved in the commission of corruption and to prosecute the offences on the authority of the Attorney-General.

## **6.0 SUMMARY OF PROVISIONS**

6.1 The Bill has been arranged into twelve divisions. The first division covers Clauses 1 to 11 and seeks to establish the Office of the Special Prosecutor as an independent entity with perpetual existence. The object and functions, its independence and governing body are set out in this division.

6.2 The second division which relates to administrative and financial provisions of the Office is contained in Clauses 12 to 25. Key provisions in this division are the nomination and appointment as well as removal of the Special Prosecutor, his deputy, Divisions of the Office, its Secretariat and other administrative matters.

6.3 The next division deals with complaints and referrals. It is followed by the division relating to the powers of the Office of the Special Prosecutor. The powers which are found under Clauses 27 to 29 include the exercise of the powers of the police, power to request information from persons subject to investigations, the power to search and the power to seize documents.

6.4 Provisions relating to seizure of tainted property, power to search for tainted property, property tracing, return of seized property are further arranged under the proceeds of corruption and corruption related offences in Clauses 30 to 38.

6.5 The next division contains matters relating to freezing orders and is captured under Clauses 39 to 46. Some of the specific issues under this category are freezing of property, grounds for the grant of freezing orders by the courts, effect, duration and review of the orders. The Bill proceeds to deal with disclosure matters under Clauses 47 to 49.

6.6 Confiscation orders and related matters including their procedure, effect, protection of third party interests and quashing of convictions are contained under Clauses 50 to 61. This is

followed by matters connected with pecuniary penalty orders, their enforcement and discharge as well as lifting the veil which are captured under Clauses 62 to 65.

6.7 Production orders, their application and requirements are set out in Clauses 66 to 67 while realization of property, utilization and matters regarding insolvency and winding up of companies holding realizable property are also captured from clauses 68 to 71. The Bill finally makes provision for miscellaneous provisions including plea bargaining, protection of witnesses, collaboration between the Office and other public agencies, Regulations and transitional provisions.

## **7.0 OBSERVATIONS**

### **7.1 Compliance with Article 88(4) of the 1992 Constitution**

In recognition of the exclusive powers of the Attorney-General to authorize other persons to prosecute cases on behalf of the Office holder, the Committee considered that Clause 4 (2) of the Bill is not compliant with Article 88 (4) of the Constitution. The Clause reads:

*"(2) Subject to Clause 4 of Article 88 of the Constitution, the Office is for the purposes of this Act authorized by the Attorney-General to initiate and conduct prosecution of corruption and corruption related offences specified in this Act."*

The Committee took the view that the provision has the effect of delegating part of the prosecutorial powers of the Attorney-General by means of a legislation, within the parameters provided under Article 88 (4) of the Constitution. However, the current provision as it stands appears inconsistent with the Constitution. The necessary amendments have been proposed to give effect to the Committee's views.

### **7.2 Independence of the Office**

Regarding measures to ensure the independence of the Office, the Committee noted that the Office will not be subject to the direction and control of a person except as provided for by the Constitution. The Committee further observed that the tenure of Office of the Special Prosecutor and the processes for his removal from office are to strengthen and consolidate the independence of the Special Prosecutor. A strong financial regime is also to be created to give meaning to financial independence of the Special Prosecutor.

### **7.3 Mandate of the Office**

It was noted that the Bill limits the scope of corruption and corruption related offences to be investigated and prosecuted by the Office. Per Clause 3(4) of the Bill, only corruption cases involving vast quantity of assets which threaten the political stability or sustainable

development of the country are to be handled by the Office. The Committee however was of the view that corruption cases cannot be predetermined but their nature is ascertainable only upon investigations.

The Committee therefore recommended the deletion of the provision as to give investigative and prosecutorial powers of the Special Prosecutor to deal with all corruption and corruption related matters.

#### **7.4 Referrals from existing Investigative Institutions**

In view of the number of existing public investigative entities whose operations cover corruption and corruption related offences, the Committee is of the view that the functions of the Office must include receipt of referrals from these public institutions. These institutions include the CHRAJ, EOCO, FIC, and the Auditor-General. In pursuit of their investigative work, these institutions uncover corruption matters and same are referred to the Attorney-General for consideration. As the Office is intended to be delegated some aspect of the prosecutorial function of the Attorney-General, it is necessary that corruption and corruption related matters from other public institutions are referred to the Office of the Special Prosecutor.

It is also expected that the establishment of the Office would offer Parliament, the opportunity to refer its investigations and possible recommendations on the Auditor-General's Reports to the Office for consideration. It is therefore recommended that referrals from these public institutions are made integral part of the functions of the Office to help in the expeditious prosecution of corruption cases.

#### **7.5 Transparency Provisions**

The Committee also observed that sufficient provisions have been made in the Bill to ensure that the operations of the Office are carried out in a transparent manner. Apart from the requirement to publish, on quarterly basis, the list of corruption cases investigated or prosecuted as well as the number of convictions, the Office is also obligated to submit annual Reports on its activities and operations to Parliament through the Attorney-General. To further enhance the transparency of the Office, the Committee proposes that the Office should also publish its quarterly reports on its website. It is fervently hoped that such measures will enhance openness in the operations of the Office and make the office more accountable to the public.

#### **7.6 Governing body of the Office**

The provision for a governing body to steer affairs at the Office, generated intense debate at both the Stakeholder Consultation and Clause-by-Clause Consideration stages.



Concerns were raised over the extent of powers that the Bill seeks to vest in the Board on the grounds that such powers could be used to undermine the independence of the Office. The Committee noted for instance that, apart from formulation of policies by the Board the Special Prosecutor is made accountable to the Board in the performance of his or her functions under Clause 13(1) of the Bill.

It is the considered view of the Committee that such provisions run counter to the attempt made by the Bill to ensure that the Office becomes operationally independent in matters of investigations and prosecutions. It is therefore recommended that the board be structured in such a way that it will be used as a platform to achieve institutional collaboration to support the operations of the Office. The Committee has proposed necessary amendments to that effect.

### **7.7 Appointment of Special Prosecutor**

The Committee noted that sufficient provisions have been made in the Bill for the appointment of a highly competent person as the Special prosecutor. Per the appointment process, the person to be nominated by the Attorney-General must be a lawyer of at least twelve (12) years standing at the Bar, be knowledgeable in corruption matters and be of high integrity. The nominated candidate will further be subjected to the approval of majority of all Members of Parliament. When appointed, the Special Prosecutor would be entitled to hold Office for a non-renewable term of seven (7) years and be removed in accordance with a procedure analogous to that of a Justice of the superior courts. The Committee also proposed that some relevant qualifications contained in Article 94 of the Constitution be added to the qualification criteria under the Bill. It is firmly believed that such robust process and regime will ensure that the person to be appointed as the Special Prosecutor would enjoy wider acceptance by all stakeholders.

### **7.8 Appointment of Deputy Special Prosecutor**

It was further noted that the Bill subjects the Deputy Special Prosecutor to the same qualifications as the Special Prosecutor except that the candidate for the position must have at least ten (10) years practicing experience at the Bar. As in the case of the substantive office holder, the Deputy Special Prosecutor when nominated by the Attorney-General will have to be subjected to approval by majority of all Hon. Members of Parliament. The Committee however took the view that the tenure of the Deputy Special Prosecutor should not be made coterminous with that of the Special Prosecutor and his tenure must transcend the term of the superior. It is hoped that such amendments will not only maintain institutional memory but will further adequately prepare the office holder for possible appointment as the Special Prosecutor. The Committee has accordingly proposed amendment to give effect to that view.

## **7.9 Asset Management**

The Committee deems appropriate, the proposal by the Bill to establish a division dedicated to the recovery and management of assets to be seized or confiscated by the Office. This arrangement will help manage seized or confiscated assets more effectively and profitably to preserve the assets in order to maintain their value and to avoid legal liabilities as a result of lapses in the management of assets.

## **7.10 Disclosure of Assets**

The Committee noted with concern that provisions have been made in the Bill to empower the Office to request accused persons to disclose their assets. Accused persons who fail to disclose whether intentionally or negligently are to be penalised.

It is the considered view of the Committee that if the law is allowed to pass as drafted it will contravene some relevant provisions in the Constitution which stipulates, an accused person cannot be compelled to give evidence at his trial. The Committee however recognises that disclosure notices have become one of the modern investigative tools and may be employed as an aid to investigations.

## **7.11 Freezing Orders**

It was further noted that the Bill seeks to empower the Office to freeze assets of persons alleged to have committed corruption offences or property suspected to be tainted to aid the Office's investigations and prosecutions. As presently drafted, the assets of suspects could be seized by the Office administratively for sixty (60) days and the seizure when confirmed by the courts could last for two years. While appreciating the need to empower the Office to gather evidence needed to support prosecutions, this device may be abused. In that regard, the Committee suggests that the Office be enjoined to seek confirmation from the courts within the first sixty days. An amendment has been proffered in that respect.

## **7.12 Seizure of Tainted Property**

It was observed that provisions have been made in the Bill to empower the Office to seize properties suspected to be tainted where reasonable grounds exist that the properties were acquired with proceeds from corruption. The Committee strongly objected to the seizure of properties only on the basis of reasonable suspicion that a property is tainted with corruption. In the view of the Committee, the constitutional rights of persons to own property, should not be taken away without sufficient evidence.

Additionally, the intention to seize property and hold for sixty days without the authority of the courts, may be abused. The Committee therefore recommended additional provisions into the Bill to deal with how seized properties will be treated within the sixty days.

### 7.13 Confiscation Provisions

Finally, it was noted that the Bill makes sufficient arrangements to ensure that tainted properties are confiscated and vested in the State. Tainted properties may be confiscated after conviction of accused persons, and even where convicted persons have disposed of tainted properties or derived benefits from the offence, pecuniary penalty orders may be applied.

### 8.0 PROPOSED AMENDMENTS

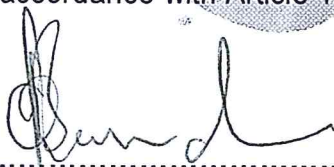
The proposed amendments of the Committee are attached as an Appendix.

### 9.0 CONCLUSION AND RECOMMENDATION

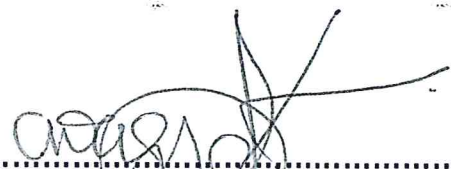
The Committee subjected all the provisions in the Bill to strict scrutiny. The Bill was so scrutinized to ensure that its passage will lead to the establishment of an effective and operationally independent entity that will effectively contribute to ongoing efforts aimed at combating corruption.

It is strongly believed that this giant step will complement the work of existing institutions to curb corruption, to contribute towards poverty reduction and accelerated development. The Office will also help reduce the workload on existing investigative agencies and thereby enhance their effectiveness.

The Committee therefore recommends, subject to its proposed amendments, that the House adopts its Report and pass into law, the Office of the Special Prosecutor Bill, 2017 in accordance with Article 106 of the Constitution.



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**HON. BEN ABDALLAH BANDA**  
**(CHAIRMAN)**



.....  
**AKUA DUROWAA OWUSU AGYEKUM (MRS.)**  
**(CLERK TO THE COMMITTEE)**

