



MEDIA BRIEFING

Good morning members of the media. I warmly welcome you to the Headquarters of the Office of the Special Prosecutor.

You may have noticed as you worked your way up to this room that the Office is still a work in progress. Yet, the current state of the Office is pleasantly unrecognisable compared to what it was when I was sworn in as the Special Prosecutor on 5 August 2021. From a drab three-bedroom house, we moved the Office here in September 2021 and we have been fitting it up and retrofitting it for purpose inch by inch.

Then again, from a situation of a single person on the payroll of the Office when I assumed this position, I am proud to announce that the Office now has its full establishment staff of 249. This recruitment drive is four years behind schedule. However, we are excited that we have our full complement of the foundation staff seated now.

We are ready to branch out into the regions – starting from Kumasi, Tamale and Takoradi. And we will be seeking approval for clearance to hire more personnel.

The Office is resolute as the flagship anti-corruption agency of the Republic in delivering on its mandate of investigating corruption and corruption-related offences, prosecuting

suspected offenders, recovering assets and taking steps to prevent corruption.

Apart from a few interviews we have granted in the course of twenty-two months, our interface with the media has been largely impersonal. We have invited you here for a change to brief you directly on developments in respect of some ongoing investigations and to take questions.

On 22 July 2021, during my approval process before Parliament, I declared my resolve to render corruption a costly adventure on all accounts. And this Office has been doing exactly that.

A major pillar of the fight against corruption is transparency on the part of anti-corruption agencies. Corruption is perpetrated in stealth and secrecy – and it thrives on its shrouded attributes. To firmly tackle corruption, we must fight it openly and bare it out in light for public scrutiny.

At the OSP we uphold transparency, and we inform the public promptly on occurrences and developments in respect of the cases under investigation and before the law courts. We do so where the publication will not endanger national security or compromise an ongoing investigation or unnecessarily impair the reputation of persons under investigation.

In pursuance of transparency, we have adopted the policy that the Office would issue a media release after every major judicial pronouncement or decision by informing the public on our judges' opinions in cases involving the OSP and stating the position of the Office on the opinion in question – as to whether it progresses the fight against corruption or otherwise.

This policy is as novel as the Office itself and much like every aspect and operation of this Office, the policy has generated public debate on its propriety or otherwise.

Those who applaud the policy see it for what it is – public information and assurances of the position of the Office on the fight against corruption and nothing more. Those who decry it see it as an attack on the judiciary. Indeed, I have had several calls from well-meaning lawyers admonishing me that they have heard talk that our friends who have been elevated to the Bench and presiding over cases in court do not take very kindly to criticism, especially of the public-calling-out variety. And that if the Office persists in the media releases, the judges will gang-up against the Office and throw out all our cases. Mind you, the collective admonishing is from very senior and experienced lawyers who are men and women of the world.

Members of the press, my learning the law for the past twenty-five years in three different jurisdictions, my teaching and training of lawyers and law students for the past seventeen years, my twenty-year record at the Bar all bear testimony that I would be the last person to head and lead an institution to attack the judiciary.

It would be absolutely of no good and utility should it be the case that the OSP is set against the judiciary or that the judiciary is against the OSP. That would surely spell disastrous consequences for this Republic especially in the fight against corruption to the unending glee of corrupt persons. The OSP would not countenance for a moment such an impression. What we do is a statement of our position on judicial pronouncements in the context of the fight against corruption and whether it benefits that quest or otherwise. And this so, whether the judicial decision in question is favourable or otherwise to the position of the OSP.

And to the well-meaning lawyers who call to admonish me, I always assure them that I do not believe that our judges see themselves as above criticism. Indeed, I vividly recollect when, years ago, a justice of the Supreme Court softly chastised me in open court that I was not churning out enough published articles in critique of their work. He added that criticism of judicial pronouncements was essential in guiding judges and he fondly recollected the regular publications of old in the University of Ghana Law Journal and the Review of Ghana Law. I reckoned the judge's observation with admiration.

Collectively with the well-meaning lawyers who admonish me, we philosophise and wonder if our judges would do such a thing as gang-up against the flagship public anti-corruption agency to scuttle its work – for whatever reason. Our musings run along the lines of – would that not defeat the fight against corruption – would that not put our young democracy in danger – would the judges not stultify themselves in the process. We always end with an open-ended sigh, that may that not be the case. And personally, I do not believe that our judges would ever adopt such a dystopian stance.

However, there appears to be a developing trend of rather regressive and dismissive judicial decisions in respect of cases involving the OSP, with troubling consequences. And it seems to us that a careful examination of these outcomes portends a disturbing spectre that the fight against corruption is being hampered to the disbenefit of us all. Four instances will suffice.

In one case, the OSP applied to the High Court for a confirmation of a freezing order in respect of a deceased person's estate. The judge refused to confirm the order by, in effect, holding that the OSP had come too late since the person of interest had died and

that his death had extinguished the enquiry commenced after the occurrence of death.

The danger of this outcome is obvious. It is to effect that a person may, in his lifetime, acquire property through corruption and then upon his demise happily pass on the corruptly acquired property to his estate and by so doing, extinguish all scrutiny as to the propriety or otherwise of the acquisition of the property because his corrupt activities were not discovered during his lifetime.

In the second instance, the OSP declared as wanted a person it believed to be a fugitive from justice. The person, through his lawyer, proceeded to the Human Rights Court on an *ex parte* application and the judge, without even an enquiry as to why the OSP believed him to be a fugitive from justice, issued an injunction order that the OSP should not arrest him for a period of ten days.

Again, the danger of this outcome is obvious. It encourages criminal suspects to go before the courts to seek injunction orders against law enforcement agencies from apprehending them. The judge did not advert his mind to the well-founded proposition that no one has the right not to be arrested. And he accorded the suspect a right not to be arrested.

In the third instance, the OSP applied to the High Court for a confirmation of a seizure order and a freezing order in respect of a person who had just resigned from a ministerial position and had reported that large cash sums in foreign denominations had been stolen from her residence. In addition, the OSP subsequently discovered additional large cash sums in foreign denominations and cedis still stashed in her residence.

The judge hastily dismissed the OSP's application and ordered a return of the seized amounts and the defreezing of her property and he proceeded to lash out at the OSP for not doing a thorough investigation – without the slightest consideration that the seizure and freezing orders are designed by law to facilitate investigation into the affairs of suspects and not the other way of requiring thorough investigation before the OSP can seize or freeze.

The judge also completely shut ignored the fact that in almost every jurisdiction, including Ghana, it is extremely unusual and highly suspicious for a public officer to have such large cash sums stashed in their homes. And that that circumstances of the case dictated pause and reflection and the granting of the OSP adequate time to carry out its investigation. The judge was only interested in a return of the money to the person of interest and nothing more and he proceeded to erect non-existent legal barriers to prevent the OSP from investigating the matter.

In the fourth instance, the OSP had issued an investigation report in respect of the grant of a customs advance ruling by the Customs Division of Ghana Revenue Authority. The report opined that there was an institutionalised culture of lighthearted unconcern regarding impropriety of action at the Customs Division of Ghana Revenue Authority – which indicated a high propensity to engender corruption and corruption-related activities. Consequently, the Special Prosecutor directed the opening of a wider investigation in respect of the affairs of the Customs Division. Further, in pursuance of the Office's mandate of taking steps to prevent corruption, the Special Prosecutor directed remedial action by Ghana Revenue Authority. The Authority has instituted processes on the basis of the directive, which has saved the nation substantial revenue.

The affected customs officials proceeded to the High Court to challenge the work of the OSP. The judge accused the OSP of constituting itself into a court and a commission of enquiry by making findings. In doing so, the judge conveniently shut his eyes to an express statutory provision that the OSP has the mandate to publish detected acts of corruption and that was exactly what the OSP had done in the report.

Worse, the judge then proceeded to prohibit the OSP from further investigating the affected persons. The judge fell into the grievous fault of what he accused the OSP of – by outlandishly going beyond his jurisdiction with a purported clothing of the affected persons with immunity from investigation and hence immunity from prosecution.

Members of the press, the duty and mandate of the courts is to apply and enforce the laws of the Republic and not to clothe persons with immunity from criminal investigations and prosecution. A court cannot injunct the OSP from investigating or prosecuting any person. The decision to investigate and prosecute lies with the investigation and prosecution authorities such as the OSP and the OSP has at all material times carried out its power to investigate with candour and professionalism being minded of the rights of suspects under its investigation.

Just as it is essential that anyone accused of a crime should have free access to the courts so that he may be duly acquitted if found not guilty of the offence with which he or she is charged, it is also of the utmost importance that the judiciary should not interfere with investigation and prosecution authorities in respect of matters which are within their statutory powers. It would be gravely inimical to public policy, the fight against corruption, and the administration of justice if the courts stepped into this arena

to decide who should be investigated or prosecuted and who should not.

The danger of this startling decision is once again obvious. A judge has granted two persons immunity from investigation for suspected corruption and corruption-related offences and hence immunity from prosecution.

This decision opens up a calamitous deluge as every person under criminal investigation would be encouraged to take out suits to injunct investigation and prosecution bodies from investigating and prosecuting them. The real and present danger looms largely on the consideration that by so doing, persons under investigation would conscript the judiciary to clothe them with immunity from investigation and prosecution.

Members of the press, I do not intend to sound as though I am predicting doom. However, with this development, it would not be long, a suspected murderer or armed robber would boldly walk to court with the unthinkable prayer that the court should injunct law enforcement agencies from investigating him.

We are not suggesting that the OSP is infallible and that every case brought by the OSP or against the OSP should end in a favourable outcome – no matter how improbable the evidence. However, it seems to us that the flagship public agency created by law to fight corruption should receive better regard and consideration by the courts and not the developing trend of dismissiveness and regression without regard to its governing enactments, and certainly not the erection of non-existent hurdles in its work and operations.

I proceed now to announce the commencement of investigation and corruption risk analysis in respect of the following matters.

Government Payroll

The OSP has commenced corruption risk assessment and investigation into suspected corruption and corruption-related offences in respect of Government of Ghana payroll administration.

The assessment and investigation are especially aimed at isolating and removing non-existent names, recovering wrongful payments, and the prosecution of persons suspected to be culpable for any offence(s).

The Controller and Accountant General's Department is collaborating with the OSP on the investigation and assessment. A joint project team of selected staff of the two institutions has been formed.

The investigation and assessment will cover all banks and employees on government payroll. The exercise will be carried out in two phases. Phase I will cover Ghana Education Service and the health institutions. Phase II will cover all other Metropolitan/Municipal/District Assemblies, Ministries, Departments and Agencies.

Tema Oil Refinery

The OSP has commenced analysis of the risk of corruption in respect of the proposed partnership agreement between Tema Oil Refinery and Tema Energy and Processing Limited.

The Special Prosecutor has directed the Management of Tema Oil Refinery to immediately suspend the proposed partnership agreement, ongoing negotiations, operations, and all other ancillary activities arising out of and consequent upon the proposed partnership agreement until otherwise advised by the Special Prosecutor.

State Lands, Stool Lands, and other Vested Lands

The OSP has commenced investigation into the appropriation, sale and lease of State owned lands and properties to individuals and corporate bodies since the year 1993. The investigation covers all lands and properties that fall under the direct stewardship of the Lands Commission; the Ministry of Works and Housing; all other Ministries; State Housing Company; State Owned Companies; and other State agencies.

The investigation also covers the management of vested lands and all public lands over which the State's ownership or control has been relinquished and the conditions of release.

Cecilia Abena Dapaah

It will be recalled that in July the OSP commenced investigation in respect of suspected corruption and corruption-related offences regarding large amounts of money (mainly in foreign

denominations) and other valuable items involving Ms. Cecilia Abena Dapaah, a former Minister of Sanitation and Water Resources and her spouse.

It will also be recalled that the Office took several steps including freezing Ms. Dapaah's bank accounts and investments and seizing large sums from the residence of Ms. Dapaah and her spouse.

It will further be recalled that upon the refusal by the High Court to confirm the freezing and seizure orders, the Office re-seized the cash sums and re-froze the bank accounts and investments and applied to the court again for confirmation. The matter is still pending.

It will be further recalled that the investigation became cross-border and transboundary upon the claim by the persons of interest that part of the seized cash sums was transported into the jurisdiction from the United States. For that reason, the Federal Bureau of Investigation (FBI) of the United States became involved in a collaborative investigative work with the OSP on the matter.

The investigation has been largely aimed at determining the source(s) of the large cash sums. We have had the benefit of five (5) months of investigation and the circumstances of the case are clearer to us. The investigation shows that parts of the case are in the province of money laundering and structuring. The OSP does not have a direct mandate in respect of money laundering. Therefore, the Office will be inviting in law enforcement agencies that have a direct money laundering mandate for collaborative work in respect of those parts of the case.

Members of the press, almost a year ago, in a radio interview on, I posed the question whether we are ready to fight corruption. This question had nothing to do with the preparedness of the OSP. It had everything to do with all of us – every citizen and resident of Ghana. I proceeded to answer the question with an unhappy outcome. It seemed to me then that we were not ready to fight corruption. And I tabled reasons for my conclusion – chief among them being our collective tendency to largely remain silent or at best render half-hearted commendation when anticorruption agencies proceed against persons we dislike and mercilessly tear to shreds the agencies when they repress corruption in respect of our associates.

We must uphold our institutions and strengthen them, especially our law enforcement agencies. We should not take the relative peace and security we presently enjoy for granted. Globally, we live in very troubling times. And we must guard our small slice of heaven at all cost.

The OSP must be supported in its work. Should the OSP fail, Ghana would utterly lose the fight against corruption – with its attendant erosion of our democracy.

I pose the question again.
Are we ready to fight corruption?
We should all reflect on this.

God bless us all. God bless Ghana.

29 November 2023