



REPUBLIC OF GHANA

# OFFICE OF THE PRESIDENT

SECRETARY TO THE PRESIDENT

Jubilee House, Accra  
Tel: +233 (0) 302 738 600  
Tel: +233 (0) 302 738 601  
Digital Address: GA-000-0288

Ref. No. OPS126/20/2362

17 November, 2020

*Dear Mr Amidu:-*

## **RE: RESIGNATION OF APPOINTMENT AS SPECIAL PROSECUTOR**

I refer to your letter dated 16 November, 2020 pursuant to which you resigned your position as the first Special Prosecutor appointed in accordance with Section 13(3) of the Office of the Special Prosecutor Act, 2017 (Act 959) (hereinafter, the "Letter").

The President has taken note of your resignation per the President's Chief of Staff's letter to you of even date herewith (SCR/DA/96/135/01/A).

We note, however, that, even before the President had been given the opportunity to react to the contents of your four (4) page Letter, it had been put into the public domain prior to receipt by the President. I am directed by the President to respond to correct the errors of fact contained in your Letter in order to provide a complete public record of the issues.

### **Alleged Interference with the Independence and Freedom of Action of the Special Prosecutor**

1. At the outset, it must be made clear that throughout your tenure as Special Prosecutor, neither the President nor any member of his government has interfered or sought to interfere with your work. Indeed, it is noteworthy that in your letter to the President dated 16 October, 2020, (OSP/SCR/20/12/20) you stated, in part, in relation to the novel nature of the report on the analysis of the risk of corruption and anti-corruption assessment of the gold royalties monetisation transaction (hereinafter the "Agyapa Report") as follows: **"This has been made possible by the courage and commitment of H.E. the President of Ghana in redeeming the promise he made to Ghanaians when he was a Presidential candidate of a political party to establish an independent anti-corruption statutory entity to make meaningful any real commitment to prevent and to fight corruption. The Office of the Special Prosecutor Act, 2017 (Act 959) established this Office. The President ensured that in the teeth of strong opposition the Special Prosecutor was able to have his way to have included in the Office of the Special Prosecutor (Operations) Regulations, 2018 (L.I. 2374) the prevention of corruption regulations which to the best of my knowledge may be the first in Africa and meets international standards and best practices"**.
2. Again, in a recent 3 August, 2020 letter (OSP/SCR/24/33/20) from you to the Chief of Staff at the Office of the President, you stated, in part, as follows: **"I have remained in this Office this long out of personal respect for the President's shared commitment with me to fight corruption"**. It is therefore surprising that you



would now make the untenable claim that your resignation is as a result of the President's alleged interference in your work.

3. At page 1 of the Letter, you claim that you had been "*convinced beyond reasonable doubt*" that His Excellency the President had a mistaken belief that you would hold office as his poodle. In substantiation of this allegation, you allude to a request by the President's Chief of Staff, pursuant to a directive by the President, for you to meet the President in the morning of 21 October, 2020, to discuss a "report" you had delivered to the President and which you had described as an analysis of the risk of corruption and anti-corruption assessment of the transaction documents for the Agyapa transaction. Indeed, you also described the "report" as being "in the nature of a compliance audit or an Inspector-General's report". It is instructive that the 13 page document you delivered to the President was in fact not the actual report but a summary which also included information about other investigations.
4. Your accusation of interference with your functions simply on account of the meeting the President held with you is perplexing. In exercise of what you considered to be your powers under Act 959, you had voluntarily proceeded to produce the Agyapa Report. The President had no hand in your work. Without prompting from any quarter within the Executive, you delivered a letter purporting to be a copy of your report to the President. The purpose of presenting a copy of the Agyapa Report to the President is decipherable from paragraph 32 of your letter to the President in which you indicate that you hoped the report will be "**used to improve current and future legislative and executive actions to make corruption and corruption-related offences very high risk enterprises in Ghana.**"
5. It is baffling that you would present a summary report of work, not commissioned by the President or a member of the Executive, to him and expect him not to act on the report, particularly in light of the clear expression by your good self that the report was supposed to guide future executive actions. It should be noted that article 58(1) of the Constitution vests executive authority in the President. The President was thus under a constitutional injunction to take further action and make further enquiries of you in relation to the work you had purportedly carried out and which concerned the exercise of executive discretion. The President's meeting with you on 21 October, 2020 was and should have been understood by you in this spirit.
6. At the meeting of 21 October, 2020, you conceded not having given the appointees of the President affected by your report, a hearing or an opportunity to comment on your observations and conclusions. In accordance with the constitutional standards of fairness, reasonableness and candour, the President requested you to give the public officials in question an opportunity to comment on your findings and conclusions. Fidelity to the principles of fairness is a basic tenet of administrative justice. A request to comply with the rules of natural justice and fair hearing surely cannot be cited as a basis for alleging interference consequent upon which you would resign.
7. In any event, it is pertinent to point out that, without compulsion, you agreed to the President's request to offer the public officers affected by your work an opportunity to



comment on what you now strangely characterise in your Letter as "serious corruption and corruption-related offences". It was pursuant to the clear concession on the need to give the public officers, whose conduct had been impugned by your report, an opportunity to be heard on the matter that the President requested comments from the Ministry of Finance. The assertion by you that you "reluctantly agreed" is neither borne out of facts nor what actually transpired at the meeting between you and the President on 21 October, 2020.

8. At the meeting of 1 November, 2020, the President duly delivered to you the response of the Ministry of Finance to the allegations contained in the "Agyapa Report". In a rather dramatic turnaround, you refused to accept the comments of the Ministry of Finance. This was most disturbing, especially in light of your statement at paragraph 33 of your letter to the President dated 16 October, 2020, that your report "*was in the nature of a compliance audit or an Inspector-General's report which needs to be taken seriously ...*". It is baffling that you would purport to prepare a "*compliance audit*" and yet deny the subjects of the audit a hearing. It is also noteworthy that on 2 November, 2020, you released the actual 64-page "Agyapa Report" which the President had hitherto no knowledge of, to the public. It is extremely important to emphasise that the subject of your discussion with the President on 1 November, 2020, was the delivery to you of comments on your report by the Ministry of Finance. At no point did the President ask you to shelve the report so he could "handle the matter". It is difficult to see in what way and in what context the President would seek to "handle the matter" when the matter was already public knowledge and had led to the Ministry of Finance suspending action on the Agyapa transaction in anticipation of your report. You are clearly aware that the President had accepted the observations you had made in the Agyapa Report and had acted on it by issuing directives to officials of the Ministry of Finance and the Attorney-General's Department. This cannot be the conduct of a person seeking to hamstring your efforts or to avoid the contents of the Report.
9. It is also important to recall that even though your denial of officials of the Ministry of Finance an opportunity to be heard on your report was unreasonable, the President did not resist your refusal to accept the comments. Furthermore, a copy of the Agyapa report as well as a report of what had transpired between yourself and the President found its way to the public domain. As an expression of the President's commitment to the success of your Office, there was no complaint from the Presidency.
10. It must be emphasised that other than in respect of the Agyapa Report, you have never made any claim of interference in your work by the President. Indeed, even when you erroneously and without moral or legal basis decided to confer immunity from investigation and prosecution on the presidential candidate of the National Democratic Congress, His Excellency John Dramani Mahama, in connection with the infamous five million Euro Airbus bribery affair, by refusing to investigate him on the clearly untenable grounds of his being a candidate for President, neither the President nor any member of the Executive challenged that strange exercise of your discretion. Surely this was in furtherance of the protection of the independence of your office. It is stranger still that you would now suggest that the President, who some may argue, would have benefitted politically from the prosecution of John Mahama, has interfered



with your independence by suggesting that you apply the rules of natural justice to officials concerned with the Agyapa assessment.

11. We are constrained to point out that your claim of there being a belief that you "dared to write the Agyapa Report" which consequently led to the alleged interference with your mandate cannot be correct. As noted already, the President welcomed the report and acted on it solely within his mandate, which was the proper thing to do. It is difficult, therefore, to further comment on that particular claim since nothing the President or any official did could be remotely construed as interfering with your mandate as Special Prosecutor.

### **Effect of the Agyapa Report**

12. At page 2 of your Letter, you create an impression that you had uncovered "*serious corruption and corruption-related offences*" regarding the Agyapa transaction in respect of which you "*intended to open full investigations as the Special Prosecutor*". This statement is most disingenuous and is not supported by the facts. You never expressed an intention to the President to open investigations into the matter. Indeed, at paragraph 33 of your letter to the President dated 16 October, 2020, you say:

**"This assessment does not constitute an investigation even though formal investigations for the suspected commission of corruption and corruption-related offences may arise from this corruption risk assessment."**

The real question is what prevented your Office from investigating the alleged corruption-related offences which may have arisen from your assessment of the Agyapa transaction.

13. Having clearly indicated that your report was not a criminal investigation which you are mandated under section 2 of Act 959 to carry out, it is confusing and incomprehensible how you can, in your Letter, claim that your report "*discloses several serious corruption and corruption-related offences*", without you taking any further step in the matter consistent with your mandate.
14. It is difficult to find any tangible basis for the claim of political interference in the performance of your functions from 20 October, 2020 to 1 November, 2020. The President's meetings with you and the request for you to give the public officers a hearing cannot sincerely or properly give rise to such an allegation.

### **Alleged Operational Difficulties Encountered by the Office of Special Prosecutor**

15. At page 3 of your Letter, you allude to various matters in respect of operational challenges encountered by the Office of the Special Prosecutor, which militated against the independence of the Office. The facts are that consequent upon your appointment



as Special Prosecutor, the President instructed the Chief of Staff of the Presidency and the Minister of Finance to ensure that they do their utmost to assist in the expeditious set-up of your Office. Indeed, the records show that in keeping with his resolve to sufficiently equip the Office in the discharge of its mandate under Act 959, the President provided your Office the necessary financial and administrative support. Your Office received more than a sufficient budgetary allocation to assist it in its anti-corruption fight. Remarkably, your letter of resignation alludes to the consistent deprivation of finances and a financial handicap imposed on the Office of the Special Prosecutor. You also bemoan the non-payment of the salaries of yourself and the Deputy Special Prosecutor in a manner that suggests Government's failure to do so. Yet, your Office had been adequately funded to pay for salaries. The impression given by you that there was a deliberate intention to ensure your office didn't function is the more startling.

16. In 2018, an amount of GHC1,000,000.00 was released to your Office to enable it undertake set-up activities. In June 2018, your Office requested and was granted Commencement Authorisation to incur Capital Expenditure of GHC2,790,000.00. You failed to make a request for payment in respect of the related procurement.
17. In 2019, your Office submitted a Budget Proposal of GHC360 million out of which **Gh¢180,160,225** was approved and appropriated for the Office. This amount was higher than the budget of some Ministries in the current Government, and was made up of GHC33.47million for Compensation of Employees, GHC88.01million for Goods and Services and GHC58.68million for Capital Expenditure. Although your Office did not apply for release of funds in 2019, the Ministry of Finance released GHS65.69million and transferred it into the bank account of your Office for your operations. Only a little of over **GHC5.22million** had been utilised by you as head of the Office of the Special Prosecutor. In accordance with administrative practices, the unutilised amount of over GHC60.47million should have been returned to the Consolidated Fund, as happens to all Ministries, Departments and Agencies which do not utilise their budget. However, in the case of your Office, the Ministry of Finance rolled over the excess amount of over GHC60.47million to the following year to be utilised by it. Yet, the funds still remain in the bank account of the Office as at 12 November, 2020.
18. In 2020, the Approved Budget for your Office was **Gh¢188,084,732.00** out of which **GHC39,325,597.17** has so far been released, consisting of GHC36,232,522.00 for Compensation of Employees. Curiously, your Office has **not** accessed the amount on GIFMIS, the Government's payments platform. Your Office has so far spent only **GHC308,751** on compensation of employees. Taking account of the amount that was rolled over from the year 2019, the account of the Office of the Special Prosecutor at Bank of Ghana, as at 12 November 2020, shows a balance of **Gh¢60.47 million**.
19. The Compensation Budget for the Office of Special Prosecutor in 2019 was not utilized because your Office was not able to recruit relevant staff by the end of the year. In 2019 financial clearance was given to your Office to recruit **249** staff. As at the end of the year the staff had **not** been recruited. The failure of your Office to recruit personnel cannot be laid at the doorstep of government. It is imperative to state that your Office, duly established as a procurement entity by law, is clothed with full capacity to engage



in procurement of goods, works and services. Prior to the grant of "procurement entity status" to your Office, you publicly attributed your failure to recruit and engage in proper procurement of goods, works and services to the failure of the Public Procurement Authority (PPA) to consider and grant your application. The PPA has since granted your application but no recruitment has been done. Whilst having the liberty to freely express yourself, it is most unfair of you to misrepresent the nature and degree of support accorded to your Office by Government, when the records suggest otherwise. As already demonstrated, sufficient budgetary allocation and release of funds for recruitment of staff by your Office had been made by Government. Your Office's failure to utilise allocated funds, even though it claimed an urgent need to, is not a question that can be answered by anyone else in Government.

20. The Ministry of Finance subsequently re-issued the clearance to recruit staff in the year 2020. You insisted on being allowed to manage the payroll of your Office because of confidentiality and independence. The Controller and Accountant-General was given approval to make monthly releases to your Office based on its request for funds for payment of salaries for all staff. Information available to the Office of the President indicates that only **two** persons were recruited by your Office and that the rest of the staff of the Office are on secondment from the Ministry of the Interior and the Controller and Accountant-General's Department.
21. It is instructive that with regard to Capital Expenditure (CAPEX), no request has ever been received by Government from the Office of the Special Prosecutor. It is quite apparent that, contrary to the impression you regularly create in public, your Office was solely responsible for the failure to recruit. The Government made the necessary budgetary allocation and followed up with actual release of funds. Your Office failed to utilise same even though it had full capacity as a procurement entity to procure goods, works and services.
22. It must be stated that from the time the Office of Special Prosecutor was established to date, the Office of the President has been making payments for sundry expenses such as utility bills, waste management bills and servicing of air conditioners etc., even when money had been released to the Office of the Special Prosecutor from its approved budget.
23. You sought to blame the housing of the Office of Special Prosecutor in "a three bedroom and boys quarters accommodation" on the Government. Once again, the facts do not bear out your assertions and insinuations. It is evident that responsibility for this situation can be attributable only to your good self. Your Office rejected various allocations of suitable accommodation with the result that you remained at your present accommodation by choice and not some grand design by Government to ensure your office didn't function as it should.
24. On 17 September, 2018, a meeting was held at the Office of the Chief of Staff, at which you were present to explore means of addressing the urgent challenges of the Office of Special Prosecutor, one of which undoubtedly, was accommodation. A



Committee was set up to identify a building suitable for housing the Office. The Committee set out immediately to embark on the search for accommodation for the Office.

25. On 18 September, 2018, a cluster of buildings consisting of one two-storey building and two single-storey buildings were identified opposite the Bank Hospital at Cantonments, Accra.
26. On 20 September, 2018, the Committee, together with the Deputy Chief of Staff, your good self, your Secretary and other staff of your Office, inspected the buildings. After inspection, you expressed satisfaction with the buildings. A team from the Ministry of Works and Housing immediately took measurements and was ready to undertake the necessary alterations to meet the specific demands of your Office.
27. On 21 September, 2018, you invited a team from the Architectural Engineering Services Limited (AESL) to inspect and expedite action on the renovation works.
28. Surprisingly, on 4 October, 2018, you placed a telephone call to the Chief of Staff to indicate preference for another building belonging to the erstwhile Ghana National Trading Corporation (GNTC) close to the British High Commission at Ridge instead of the cluster of buildings opposite the Bank Hospital. On the same 4 October, 2018, the Chief of Staff by letter (SCR/DA96/135/01/A) instructed the Ministry of Trade and Industries (MoTI) to release the said building to your Office.
29. In order to secure that building for your Office, the Office of the President actually constructed a fence wall to ward off encroachers while processes were initiated to award the contract for the renovation of the building.
30. While the renovation of the GNTC building was underway, you halted the works and requested that a ten (10) storey building at Ridge belonging to the GETFund be renovated instead for occupation by your Office. The Office of the President once again obliged this request. It is noteworthy that this particular building had been allocated to the Ghana Investment Promotion Centre, which had actually paid for the place and yet priority was given to your office and GIPC asked to relinquish same.
31. On 2 April, 2019, a meeting was convened at the Office of the President with officers of the GETFund, at which you were present, to discuss the road map for renovation of the building for use by your Office.
32. On 3 April, 2019, representatives of your Office and officers from CONSAR Ltd and Messrs. Evans Anfom and Associates met to conduct a joint inventory and inspection of defects with the facility. You subsequently generated your own list of defects contained in an eight (8) page document. The contractor nonetheless graciously accepted, compared and merged with the defects earlier jointly identified with you.
33. By 14 May, 2020, Messrs. Consar Ltd had carried out all the remedial works on the building and same was certified by GETFund as ready to be handed over to your Office.



34. On 10 July, 2020, you wrote to the Office of the President informing that the procurement plan for your Office for 2020 had been approved and that the award of a single source contract for the conversion of the 10 storey building owned by GETFund into suitable office accommodation with appropriate demarcations was part of the approved plan. The Office of the President granted the Office of the Special Prosecutor permission to initiate procurement processes for the award by single-source procurement, as requested by you, of the contract for the conversion of the building into suitable office accommodation and divisions.
35. GETFund had expressed the intention to offer the building for sale. As you are aware, the Office of the President agreed to acquire it for your Office. Pending conclusion of negotiations for the purchase of the building, the Office of the President agreed to rent the building for three months for immediate occupation of three floors by your Office, since the landlady of the premises currently occupied by your Office had indicated the intention not to renew the tenancy agreement on its expiry. You flatly refused to accept this arrangement on the basis that your Office could not share the building with any other office for security concerns.
36. By letter dated 29 July, 2020 (SCR/DA/287/372/02), the Chief of Staff informed you that the GETFund building was ready for occupation by your Office and requested a convenient date to handover the building to you. You refused to do so, and in your letter dated 3 August, 2020 (OSP/SCR/24/33/20), you stated that **"it is my considered view that if your proposal for handing over the GETFund building to the Office of the Special Prosecutor (OSP) was wittingly made on a settled conviction that you have been able to secure a fitting accommodation with all the divisions for occupation by the OSP, then, the proposal ought to have been made to H.E. the President to fix a date for the public commissioning of the building for the occupation of this Office without any further delay"**.
37. On 11 September, 2020, the Chief of Staff wrote to you indicating receipt of a letter dated 26 August, 2020 from the GETFund confirming release of the entire building to Central Government for occupation by the Office of Special Prosecutor. The Chief of Staff, in this letter, informed you of the release of the keys to the main entrance of the building to your Office and further, that, the keys to other doors in the building had been left in the locks for access. Security had also been deployed to secure the premises until such time as you made your own arrangements for security desired by you. The Chief of Staff's letter and the keys to the GETFund building were delivered to your Office at 2pm of the same day but you instructed your officers not to accept any parcel from the Office of the President.
38. On 14 September, 2020, you wrote to the Chief of Staff conveying your refusal **"to take possession of a bunch of keys disrespectfully sent to your Office in an envelope through a messenger and to ask the messenger to return them to the sender"**. The Chief of Staff by another letter dated 18 September, 2020, explained to you the reason for delivery of the keys to you in an envelope and urged you to reconsider your rejection of the keys.



39. With the greatest respect, your decision not to accept the keys to the 10 storey building identified by you and renovated after rejecting other buildings jointly identified with you, is very troubling and does not reflect a desire to establish an operational office for the Special Prosecutor. Indeed, your behaviour, in connection with the acquisition of suitable accommodation for the Office of Special Prosecutor, remains inexplicable and unwarranted. Suffice to say that it is undeniable and abundantly clear on the facts that every effort was made by Government to assign your Office a suitable premises from which to operate efficiently and effectively.
40. Finally, you also accuse the President of being a judge in his own cause. This is the unkindest cut of all. You did not and have not alleged that the President is, or could be, the subject of adverse findings or investigations arising from your assessment report of the Agyapa transaction. It beggars belief, therefore, that you would insinuate that the President has, himself, something to hide and seeks to be "a judge in his own cause". As a lawyer of many years' standing, there is no doubt that you know that if one is not a party to or has an interest in a matter, one simply cannot be described as a judge in his own cause. That statement is most regrettable.

We hope that the above statement of facts settles the issues and allegations contained in your Letter and that the general public will now have a clearer understanding of the very serious matters you have raised.

Please accept the President's best wishes.



**NANA BEDIATUO ASANTE**  
SECRETARY TO THE PRESIDENT

**MARTIN A. B. K. AMIDU, ESQ.**  
**P.O. BOX AN17010**  
**ACCRA**