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'Judicialization of corruption' in Ghana: an analysis of how Ghanaians view the Office of the Special Prosecutor

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ABSTRACT

Anti-corruption agencies in Ghana have failed over the years to deal with corruption and also take decisive steps in tackling the menace. For this reason inter alia, the New Patriotic Party (NPP) government in 2018 established the Office of the Special Prosecutor as an institutional response to deal assertively with the issue of corruption. This action expanded the scope and discourse on the fight against corruption in Ghana. Following from this, the paper conceptualised the new institutional endeavour to control corruption in Ghana, simply as the 'judicialization of corruption'. By judicialization of corruption, the paper meant to portray a phenomenon where there is the use of judiciary and judicial processes in fighting corruption. Coming on the back of a political campaign promise, the paper seemly tested Ghanaian voters' view on this new anti-corruption arrangement by the government and puts forward a broad-spectrum of views by voters regarding the creation of the OSP. The paper used mixed method to triangulate both qualitative and quantitative data. The result showed majority of voters backing government's idea to create the OSP albeit a sizeable number perceiving the OSP as a mere conduit to 'witch-hunt' erstwhile government officials.

Introduction

Ghana continues to be beseeched with corruption despite its democratic credentials. Empirical studies and reports on corruption in Ghana observe corruption or the sheer perception of it as a factor which accounts for the faintness in the trust citizens have in political institutions (CDD 2015; Transparency International 2017). This observation is corroborated by a survey of 150 highly placed officials from 60 developing countries, comprising Ghana, where overwhelming majority of interviewees engaged rated corruption as the foremost hurdle antagonising developmental agenda in their respective developing countries (Agbodohu and Churchill 2014). The former President of the World Bank, Jim Young Kim, in 2014 labelled corruption as a perilous activity to human race as compared to, for example, terrorism. Justifying this dreadful observation in relation to developing economies, Jim Young Kim held that corruption had the propensity to drain off about one trillion dollars from developing countries through activities like bribery, money laundering, tax evasions, extortion, conflict of interest, abuse of office and other financial malfeasances (Kapeli and Mohamed 2015). These references incarnates corruption as a peril to states across the globe as it upsets the general quality of governance at both the national and local levels (Khayatt 2008; Ledet 2011; Masters and Graycar 2016) even though, its effects could be said to be predominant in developing economies (Gyimah-Boadi 2002; Graycar 2016).

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The control of corruption is an imperative component of governance (Stapenhurst, Jacobs, and Pelizzo 2014). This conventional understanding is known to governments worldwide. Hence, successive governments in Ghana in their bid to clamp-down on corruption and its effects have adopted innumerable Anti-Corruption Schemes (ACS) and crusades. These ACS and crusades extend from legal controls to internal administrative controls like processes for entering into the public service; procedures for conducting the affairs of public service and laws on competency including accountability and transparency measures (Márquez 2014). Again, Ghana prides itself with anti- corruption institutions such as The Commission on Human Right and Administrative Justice (CHRAJ), Economic and Organized Crime Office (EOCO), Public Accounts Committee of Parliament, The National Procurement Authority (NPA), The Office of the Auditor-General, The Office of the Attorney-General and the Ghana Police Service. To fortify the 'corruption legal regime', legislations such as the Anti-Money Laundering Act, 2008 (Act 749) and Financial Administration Act, 2003 (Act 654) were also enacted. Through the *e-Ghana* programme, the government has also started enrolling various E-government programmes in the public sector to combat corruption (Mathapoly-Codjoe 2017).

Despite the numerous laws, institutional arrangements and established controls, corruption continues to have a firm grip on Ghana, particularly, in the public sector. The continuing thriving of corruption in Ghana in the face of ample anti-corruption institutions and laws, *inter alia,* signifies weaknesses in existing anti-corruption institutions and legal schemes. Instead of reinforcing prevailing institutions and augmenting their capabilities to act as operative watchdogs against corruption, successive Ghanaian governments often get themselves busy with the creation of new institutions and strategies for fighting corruption. These actions confirm African governments as competent in only smuggling into anti-corruption discourse, new mockups; but poor in the operational implementation of existing anti-corruption frameworks and their subsequent consolidation (Kapeli and Mohamed 2015).

With a very low 'corruption permissiveness' (Lavena 2013) among the Ghanaian citizenry and a grasp of the unfavourable effects of corruption on development, a more concerted strategy to fighting corruption became the topmost priorities of the Ghanaian voter in the run up to the 2016 general election. As a consequential response to the loud cries of the voters to fight prevalent corruption in the country, the new government which won the 2016 general election (the New Patriotic Party government), created the independent Office of the Special Prosecutor (OSP) from the Office of the Attorney General. The OSP Bill was passed by the Ghanaian Parliament on 14th November 2017 and the President gave its Presidential Assent to it on 2nd January 2018.

The paper argues that the creation of the OSP demonstrates a general lack of faith in existing anti-corruption efforts by the AG' Office, Commission of Human Right and Administrative Justice (CHRAJ) and other well-meaning anti-corruption institutions in Ghana. The Office of the Attorney General, CHRAJ and other existing anti-corruption agencies have together failed in their fight against corruption for multiple reasons. Some of the reasons relate to reactive dealing of corruption cases rather than proactive attack of the root causes of corruption (Asibou 2008). Existing anti-corruption institutions have also failed as a result of intensive systemic reforms which tend to be ambitious, deeper, and more difficult to implement (ibid). In addition, political parties and political players have succeeded in altering anti-corruption strategies by these institutions to

their parochial benefits, not only through a direct and indirect control but also through excessive politicisation of activities of anti-corruption institutions, all in bid to obscure the negative consequences of their corrupt dealings (Gannett and Rector 2015).

From the background, the paper looks at the creation of the OSP as an institutional remedy to the fight against corruption in Ghana whiles conceptualising the creation of OSP as an institutional endeavour to 'judicialize' the fight against corruption. With the creation of the OSP, the fighting of corruption in Ghana is expected to move beyond administrative procedures and processes established to obtain some practical guarantees against corruption. From an institutional rational, the creation of the OSP is understood as an attempt to give a clear mandate and focus to a self-regulating body which can by itself employ various legal and judicial measures to prevent, investigate, prosecute and deal decisively with corruption allegations in the public sector; and to some extent private sector players who are firmly rooted within the corridors of political power.

The missing link in literature on corruption in Ghana

Corruption in Ghana and the fight against corruption is not lacking in scholarship, however majority of the literature on corruption in Ghana are engrossed mostly by cosmic narrations and normative underpinnings. Most of the literature aim at detecting and discussing the root causes and consequences of corruption, either generally or in relation to certain political, social, and economic variables whiles pontificating all manner of cures to undo the menace (Ayee 2016; Agbodohu and Churchill 2014; Yeboah-Assiamah, Asamoah, and Osei-kojo 2014; Osei-Tutu, Badu, and Owusu-Manu 2010; Ephson 2004; Agyeman-Duah 2003; Gyimah-Boadi 2002; Werlin 1972).

Some existing studies have departed from this general 'cause, effect and solution' approach of studying corruption in Ghana. From an anthropological and cultural perspective, some works have attempted to understand the tensions between 'desire and restraint' and how they affect occurrences of corruption and anticorruption in Ghana including the shifting frontiers of class and corruption in Ghana (Hasty 2005; Chalfin 2003). Some studies have also strived to uncover the correlation between certain demographic characteristics of the Ghanaian society and how they in turn influence corruption and the country's quest to fight the canker (Alolo 2007; Yeboah, Adda, and Okai 2017). A number of studies have also looked at political will on the part of policy makers and the various structural and legal reforms made to battle corruption in Ghana (Yeboah-Assiamah and Alesu-Dordzi 2016; Abdul-Gafaru 2009; Abed and Davoodi 2002).

Again, some works have focused specifically on the role of anti-corruption agencies in Ghana and their activities towards the fight against corruption (Asibou 2008; Bonsu 2005; Yeboah-Assiamah and Alesu-Dordzi 2016). These come together with studies on how best Ghana can integrate the various institutional approaches to fighting corruption (Short 1999). Likewise, other groundbreaking studies have been developed to understand anti-corruption frameworks and institutional developments that had been espoused to fortify the fight against corruption in Ghana (Yeboah-Assiamah 2017).

In all these, there seem to be a greater unanimity in scholarship on corruption and anti-corruption in Ghana. This consensus firstly points to the failure of existing anti-corruption institutions (owing to factors like *lack of independence; resource and material constraints; lack of single-mindedness on fighting corruption; politicisation of corruption allegation and*

the lack of political will on the part of policy maker and law enforcement agencies) and the need to clash corruption in a more sustained manner with a comprehensive system and institutional centred remedies (Gyimah-Boadi 2002; Abdul-Gafaru 2009; Ayee 2016; Short 1999; Yeboah-Assiamah and Alesu-Dordzi 2016). Consequently, a potent and a vigorous endeavour to prevent, control or fight corruption would necessitates structural and institutional thinking that ranges from public officers with integrity and personal ethics (strong personalities); administrative rules and procedures as well as governments adopting, applying and monitoring appropriate systems (strong institutions) (Yeboah-Assiamah 2017, 545; Osei-Tutu, Badu, and Owusu-Manu 2010). Another consensus is on the need to have a robust legal and judicial systems playing a foremost role in the fight against corruption (Gyimah-Boadi 2002; Ayee 2016).

Gleaning from above, the paper provides literature on corruption in Ghana with an insight into a practical and hands-on institutional approach to solving the corruption menace. Further, the paper provides literature with an example of Ghana government's resolve to assert a more judicial approach to the fighting of corruption. Thus with the creation of the OSP, the paper submits that government of Ghana intends to create a new institution different from existing ones with a clear proactive and reactive legal mandate. Unlike other existing institution, the OSP is expected to explicitly take steps to ensure the prevention of corruption. This proactive role is a novelty so far as anti-corruption institutional arrangements are concerned in Ghana. But unfortunately the frontiers of this paper would not extend to covering the actual workings of the OSP, how it is using the various new institutional and legal arrangements to control corruption and how the approach differs from existing institutional arrangements. This is because the OSP is not fully functional at the time of developing the paper. The invitation is therefore given to other studies to look at this promising area.

That said, the paper discovered a gap in literature in respect of opinions of Ghanaian populace on key governmental policies and actions towards corruption. The views expressed in literature on how citizens view institutional policies towards corruption are best normative. The paper seizes the opportunity to fill this lacuna by providing views from a broad section of Ghanaian voters on this new institutional approach to combat corruption.

Conceptual framework: revisiting judicialization

Conceptualising 'judicialization of corruption' from the general view of 'judicialization'

The word 'judicialization' is associated and widely applied to politics. This has consequently led to the concept and the wholesale term 'judicialization of politics'. This paper bemoans the blanket and general application of the concept 'judicialization of politics' in analysing the role of the judiciary and/or the application of judicial processes in anything that occurs in a human society. Politics is undoubtedly ubiquitous, and indeed the concept of corruption and the discourse on the fight against corruption falls within the scope of politics. But practically and academically, there are certain undercurrents, connotations and determinants of corruption and the fight against corruption which are purely legal, economic, social and cultural in nature. Also corruption as a

practice and an area of study has produced nuances and shades which goes beyond the arena of politics or what constitute 'the political'. Hence, the unmitigated application of the concept ('judicialization of politics') in analysing the fight against corruption, particularly the creation of the OSP in the case of this paper, would be constricted and cloud the existing nuances. The paper thus deems it crucial to develop a new reading of 'judicialization' – specifically, 'judicialization of corruption'.

Some works (Rios-Figueroa and Taylor 2006) have similarly departed from the general use of 'judicialization of politics' to adopting only 'judicialization'; out of which they have developed new 'judicialization' frameworks. Drawing on 'judicialization of politics' literature and literature on new institutionalism, Rios-Figueroa and Taylor (2006) developed a comparative framework for analysing the 'judicialization of policy' in Latin America. Also Hirschl (2008) expanded the frontiers of judicialization by introducing the concept of 'judicialization of mega-politics' which concerned itself with fundamental political controversies that define and almost frequently divide the whole polities. The development of new spaces and readings of 'judicialization of politics' has led to an enlarged limits of judicial involvement, including judicial processes, in the political sphere further than the traditional realm of constitutional and civil rights protection and has thus taken judicialization of politics to a point that far surpasses any preceding frontier (Hirschl 2004, 257; 2008).

From the traditional perspective, to 'judicialize', implies the handing-over of decision-making mandates and rights from the legislative and administrative bodies to the court of law (Tate and Vallinder 1995, 1–10); or the practices where 'courts and judges come to make or increasingly dominate the making of public policies that had previously been made by other governmental agencies' (Tate 1995, 28). This traditional view of 'judicialization' has proven problematic as it shads the concept simply as the dislodgment of policy decision-making rights and functions to the law courts (Aydın-Çakır 2014).

Hence from a broader and contemporary sense, to 'judicialize' would mean to treat an issue, subject, problem or an action 'judicially' (Vallinder 1994). The word 'judicially' is operationally construed as, 'the eruption of judicial decision-making methods and processes outside the judicial sphere proper' or the 'turning of something into a judicial process' (ibid. p: 91). The broader perspective puts 'judicialization' in a form of a vigorous and dynamic arrangement that is grounded on the calculated collaboration between the judiciary on one hand and other actors at the other hand (Aydın-Çakır 2014; Gauri and Brinks 2008; Hirschl 2006). To Hirschl (2008), therefore, depicting courts and judges as the main and only source of judicialization is simply injudicious.

With 'judicialization', a submission is being made that numerous inter-acting progressions and processes are taking place (Domingo 2004). Accordingly, by 'judicialization', an issue or a phenomenon is not seen as something which exclusively rest with the courts and their final pronouncements, but rather as a phenomenon which entangles an unbroken process consisting of different practices at different levels, with each level and its practice involving a decision making process by one or more strategic player (Aydın-Çakır 2014; Gauri and Brinks 2008). The concept thus only surmises the confidence reposed in judicial processes as a measure for addressing fundamental socio-moral dilemmas, core moral predicaments, public policy questions and political controversies (Hirschl 2006).

Constructing 'judicialization of corruption'?

Armed with the contemporary perspective above, the paper conceptualises 'judicialization of corruption' as:

> an anti-corruption strategy which involves the espousal of the judiciary and judicial decision making practices in preventing and handling corruption related breaches; which in turn has the potency of arriving at a judgment, policy or a decision anchored in law by a judge, a judicial staff, an individual charged by law with the duty of fighting corruption, or a citizen who is concerned with fighting corruption.

In its farthest and undeveloped form, 'judicialization of corruption' may be observed as the 'utilization of legal discourses, jargons, rules and procedures into corruption and anti-corruption discourses'.

From the forgoing, 'judicialization of corruption' is first observed as an anti-corruption approach associated with a judicial means. It involves actors and institutions using judicial means or directly working in partnership with the courts to fight corruption or addressing a corruption related issue at various levels of society.

Making the case for 'judicialization of corruption' in Ghana: putting the Office of the Special Prosecutor in perspective

With the Office of Special Prosecutor's Act, 2017 (Act, 959), the decision to prosecute cases of alleged or suspected corruption related offences has become the solitary prerogative of the Special Prosecutor (see s.4 (2) of the 2017 Act and the accompanied permeable to the Act.). Through an indispensable inference, the Attorney-General of Ghana has reclined some aspect of his prosecutorial powers conferred on it by the 1992 Constitution of Ghana, specifically, Article 88, to the Special Prosecutor (SP) regarding specific cases relating to corruption. Unlike existing anti-corruption institutions in Ghana, the SP is entrusted with power of prosecuting corruption related offences itself, as well as an investigatory powers. This confirms evidence in other jurisdictions that shows the traditional arrangement of detaching investigation and prosecution giving way to a new system where prosecutors have the power to also investigate cases they are to prosecute (Kyprianou 2010).

In the performance of its duties, the Special Prosecutor under the enabling Act is accountable to a Board (see s.14 (1)) and also mandated to report to the AG within thirty days after prosecuting a case; confiscating; or realising a property (s 3(2)). It is strongly submitted that these controls are purely administrative and has no intention to obscure the operational independence of the SP. Sections 4 (1) and 14 (2) of Act 959, makes it clear that the OSP is not to be subjected to the direction or control of a person or an authority in the performance of its functions which per section 2 of the Act includes *(a) investigate and prosecute specific cases of alleged or suspected corruption and corruption related offences (b) recover the proceeds of corruption-related offences and (c) take steps to prevent corruption.*

The creation of the OSP has not only redefined the institutional approach to tackling corruption in Ghana but it has also introduced different and special powers that never existed in other traditional institutions created to deal with corruption. The new powers conferred on the SP by the enabling Act are far-ranging and includes the power to:

request for information (s.29); *search and take possession of documents* (this power can only be effected upon an application, including an ex-parte application, to the Court for the issuance of a warrant to that effect, see s.31); *seize tainted property* (s.32); *search for suspected tainted property* (s.33); *freeze properties* (the SP can only freeze a property for fourteen days after which he needs a confirmation from the Court, see s.38.) and *trace properties* (s.70). Section 28 of Act 959 also gives the SP and its authorised agents the powers of the Police Service as contained in any other relevant enactment in Ghana. This to a stretch would include the power to make an arrest and even detain suspects.

Section 29 of the Office of the Special Prosecutor Act, 2017 (Act 959) enables the SP or its authorised officers to call upon a person whose affairs are being investigated or any person who to the SP can help with investigation to appear before it and give answers to certain questions. This also include furnishing the office with needed information or even document(s) that would support investigation of a related corruption allegation. Upon failure to provide a document as required, the SP can request the person to submit the document (s) or request for the reason for the inability to produce the required document(s) as required. The SP is also enabled by the Act to ask a person providing a document to speak to that document or provide 'better and further particulars' that would help explain the document properly. The SP can also apply to the court under s. 30 of the Act for a production order. This order allows for the production of a document if a person is under an obligation not to disclose an information or assert a disclosure right. Where a person destroys, refuses or conceals a document from the SP upon the request of the SP, that person commits an offence under the Act. The offender becomes liable on a summary conviction to a fine of not less than five hundred penalty units but not more than one thousand penalty units or to a term of one year imprisonment.

Again, upon reasonable suspicion, the SP may make an ex-parte application to court for an order to search or take possession of certain document which to the SP would enhance an investigation of a particular corruption related case. If the order is granted, the SP or any of its authorised agents may enter the premises for the said document (see s.31).

Section 32 of Act 959 also vests powers in the Special Prosecutor to seize a property if he has reasonable grounds to suspect that particularly property is tainted and it is necessary to seize that property to prevent concealment, loss or total destruction of that property. The SP shall however within seven days notify a court of the seizure.

With a proper search warrant, the SP may search a person or enter into any premises to search for properties which may be tainted with corruption (see s.33). The search here includes searching the body of a person or cloths worn by the person being searched. And where the SP believes that the freezing of a property would be important to its investigation or prosecution, he may as well apply to the court for a freezing order under s.38 of the Act.

When a person is successfully convicted by a Court for corruption, s.50 allows the SP to apply for a confiscation order against the property that is believed to be tainted as a result of the convicted person's corruption activities. A pecuniary order penalty may also be applied against a convicted person with regards to benefits derived by that person from corruption.

Judicialization of corruption: triggers, advantages and disadvantages

The general concept of judicialization originates from many influences. The scholarly works of Tate and Vallinder (1995); Hirschl (2004, 2006); Ginsburg (2003); and Gauri and Brinks (2008) have all strained to clarify the institutional, political and governmental triggers that necessitate and sustain the phenomenon (Aydın-Çakır 2014). This paper however associates with the seminal work of Domingo (2004) on the three wide-ranging influences which are at the root of all judicialization process including judicialization of corruption. These factors are categorised as *governmental processes; societal factors* and *international factors*.

Judicialization of corruption as 'governmental processes' riposte fairly to egalitarian rarities which stem from the consequences of a 'crisis of representation', trustworthiness and the rightfulness of existing political institutions charged with fighting corruption and their consequent decision-making processes (ibid). From this view point, Ghana as a State could be said to have found it suitable and fitting to subject corruption, which is an intricate and delicate political matter, to a new independent institution which is to make use of judicial processes as a means of 'depoliticizing' the fight against corruption and totally insulate politicians from the threat of making resolutions on corruption which would be out of favour by the larger society.

The social influence to judicialization in general, according to Domingo (2004), could be attributed to excessive urbanisation and modernisation. Thus judicialization of corruption in Ghana is observed to shadow the shifting urban and modernised outlooks of the Ghanaian society which now prefer the use of the law and the use of the legal processes as a better means of bringing finality to a social tormentor like corruption. Lastly, international factors also affect judicialization processes since it is fast altering the ways in which state actors 'relate to the law and the use of legal mechanisms and contrivances to advance certain interests, protect certain rights or challenge policy decisions' (ibid:210).

One obvious advantage of judicialization relates to its ability to protect the rights of the general Ghanaian society as well as its knack to thwart abuse of power by elected political actors and other unelected but politically exposes persons (Yepes 2007). Judicialization also gives legitimacy to the fight against corruption particularly where in Ghana the political class are caught up in intolerable levels of corruption to deal with it themselves (Domingo 2004). Again, the cumulative use of judicial processes is fast changing how political players contest to attain their policy aims concerning the fight against corruption and the manner of public rationalizations used to support anti-corruption reforms (Rios-Figueroa and Taylor 2006, 740). The process of Judicialization has again augmented the accountability of governments and political decisions and also contributed to the consolidation of democracies (Uprimny 2007, 408). Further, Judicialization of corruption in Ghana could be seen as an endeavour for enforcing anti-corruption regulations (Sberna and Vannucci 2013, 656) which were in abeyance.

In spite of the benefits of judicialization as a concept, utilitarianism questions the application of a judicialization processes that is state-managed by few legal brains to a practices which is engineered and managed by the majority of citizens. (Grant 2010). In essence, the argument puts judicialization of corruption as something that

flatly rebuffs the democratic rights of the citizenry to contribute in the decision-making process regarding the fight against corruption (ibid). Again, with judicialization of corruption there is an increased apprehension that the actions and the actual practice of anti-corruption are intricately being elongated, costly and legally convoluted. By its nature the OSP during his work may receive complaint of alleged corruption with associated lengthy briefs. This would eventually invite him to adopt formal proceedings; having to grant audience to the accused lawyers who are familiar to using arranged briefs and searching for legal intricacies in making or responding to claims and producing awards that resemble detailed common law rules and decisions (Márquez 2014). Further, the process of judicializing corruption may risk the knotty politicisation of the judiciary which could destabilise the application of rule of law (Uprimny 2007). The process of judicializing corruption is also susceptible to overburdening the entire judicial system with all manner of corruption allegation, which can render the judicial system improbable to resolving demands and claims adequately (ibid).

In spite of these shortcomings, the process of judicializing corruption carries with it some innate virtues, consequently making judicialization not inherently problematic (Yepes 2007). It however becomes challenging when the principle is applied disproportionately. An excessive judicialization can overstretch a processes to limits and matters beyond the jurisdiction within which they ought to operate and this can lead to miscarriage of justice and judicial errors (ibid). Yepes (2007) also maintains that too much judicialization can lead to situations where judicial processes are used as mere manipulative gears by political players depending on which parochial political benefits is to be satisfied. Yepes again reasons that over judicialization can stir dispiritedness among citizens towards constitutionally created institutions since the usage of legal and judicial processes to resolving multifaceted and complex socio-political problems may give the impression that the answers to many political problems does not necessarily require democratic institutions and engagements.

Methods

The study used both qualitative and quantitative approaches to obtain both secondary and primary data. The primary data were obtain through the use of interview guide (qualitative) and questionnaires (quantitative). The study made good use of governmental documents (The Office of Special Prosecutor's Act, 2017, (Act 959) and The 1992 Constitution of Ghana) and other secondary data from literature on judicilization and literature on corruption both in Ghana and other part of the world.

Forty (40) in-depth interviews were conducted. Interviewees spanned from civic education activists through anti-corruption campaigners, academics, political party functionaries, to religious leaders, traditional leaders and some politicians. Concurrently, five thousand (5000) respondents were surveyed across the country from 50 constituencies through multi-stage sampling techniques to ensure high representativeness of Ghanaian citizens (voters). The distribution of questionnaires was directed by different team of polling officers in all regions across Ghana, with at least two individuals covering each of the regions.

Selection of constituencies

In total, fifty (50) constituencies were covered out of the total number of 275 constituencies in Ghana. 100 questionnaires were administered in each constituency culminating into 20 questionnaires for each of the 5 electoral areas within a particular constituency.

Procedure for selecting electoral areas within the constituencies

Within each constituency, five electoral areas were randomly selected by the method of 'casting of lot'. Separate pieces of papers numbered up to 50 were folded into a bowl. The polling officers were made to randomly pick from the lots. A number picked by a polling officer was checked with the corresponding number assigned to the electoral areas using Ghana Electoral Commission's list of constituency and their respective electoral areas. Thus if a polling officer picks number '15′ it would be checked with a particular constituency and the corresponding electoral area per the list of the EC becomes an area of focus.

Procedure for selecting respondents

The survey adopted the multi staged random sampling protocol. Basically it was a household survey with one individual from each household randomly picked by the polling officer for the purposes of administering the questionnaire. Unambiguously, the houses are counted at an interval of 5–10, meaning the 5th house from a start point in a particular electoral area within a constituency is picked and after the polling officer counts 10 houses after the 5th house and interview the next respondent. This protocol is followed till all the 20 questionnaires for a particular electoral area is exhausted.

Tritely, to every rule, there is an exception, hence this protocol was relaxed in electoral areas where there were insufficient houses to fit the strict application of this method. Therefore polling officers were allowed to use their discretion to count households instead of houses or physical structures. Again, polling officers were allowed either using the 5–10 interval or 3–6 interval in these exceptional cases to allow for fair representation of respondents in electoral areas that had fewer houses and/or households.

It must be stressed that in situations where there were more than one household within a house, one household is randomly selected within which another random sampling is made to choose either a male or female amongst members of a chosen household. But in situation where there is just a single occupant, polling officer were made to engage that individual without any randomisation.

NB: To this survey, a household was to mean a group of people who eat from the same pot or the same source. Hence there was a tendency for a house to have more than just one household, especially in compound houses.

Ethical considerations

Polling offers that were drawn from the Political Science department and other departments of the University of Ghana, most of whom included Graduate Assistants, Graduate Students and National service personnel were made to be cognizant of the status of ethical issues in social science research. Thankfully, polling officers dispatched to all the

regions observed them thoroughgoing. Upon entry into a community or an electoral area, polling officers made sure they reported themselves to the police station close by (if there was any) and/or the opinion leaders of that community. This was with the purpose of informing them of the nature of the survey and the intended purpose. Their authorisation guaranteed both the safety and right to interview whosoever was willing to respond to polling officers.

Again, respondents were made to understand that the research was for academic purpose and conducted in the best interest of the country, as such there was no any direct benefit such as money if he/she granted an audience to a polling officer. Further, respondents were also informed that they had the right to stop the exercise at any point as they deem fit. Their anonymity were confidently assured also.

Presentation of findings

Support for the creation of the OSP

Ghanaian voters were overwhelmingly in support of the creation of the OSP since there were little to show for in terms of a successful prosecution of government appointees including ex government officials for corruption related offences by existing institutions of state**.** Two out of three (65.3%) respondents were in support of the creation of the OPS with 65.4% giving the current NPP government credit for the creation of the office of the special prosecutor and doing so with the greatest urgency. Interviewees were also in support of the creation of the OSP and were willing to equally give the government credits for the creation of the new corruption outfit. Two interviewees (a member of the opposition party and a traditional leaders), however did not see the need for the OSP in the first place. The reason basically pointed to the fact that the activities of the OSP '*is likely to conflict with that other existing agencies who are equally mandated to deal with corruption*'.

The sustenance of the support enjoyed by the OSP is crucial to the very survival of the OSP and its ability to deal with corruption. An anti-corruption campaigner interviewed stated that '*the support for the creation of the OSP by the citizenry should be sustained by the current government and successive governments because it is only through citizen' support that the OSP can be successful in performing its mandated*'. Another interviewee (a Christian religious leader) said the support given to the OSP would also lead to the '*preservation of public confidence in the fight against corruption*'. The continuous support of the OSP by the Ghanaian citizens can be epitomised equally by political players when they take it upon themselves to set good examples for bureaucrats and citizens to follow - by dissociating themselves from financial, commercial, socio-cultural and political relations which has the intention of undermining the SP and the office (Khoo and Sripathy-Shanaz 2009). A Muslim religious leader interviewed also observed that the showing of direction, conviction, commitment, stamina and tenacity in fighting corruption by the SP himself and policymakers can also go a long way to sustain the support the OSP is currently enjoying. The OSP must also acquiesce itself to inquiry over their h onesty and integrity in order to ensure a continual support by Ghanaian voters. A politician interviewed also observed that the SP should not shillyshally when it comes to prosecuting '*current government officials and civil servants at all levels for corruption*'.

What kind of person should be appointed the Special Prosecutor?

Respondents representing 79% indicated that a courageous independent minded person should be appointed as special prosecutor with 5% stating that he should be a complete foreigner with no interest in Ghanaian politics. Interviewees also agreed that the SP should be someone who is intrepid, '*ethically upright and a person who nobody can smear easily with moral issues of life*' (Interviewee from the ruling NPP party). Apart from being a courageous figure, virtue should also be a cherished feature of his work particularly when it comes to the exercise of the considerable discretionary power with which the enabling Act endowed his office (ibid).

Impartiality of the OSP

Even though majority of voters (respondents) indicated their support and gave government credit for creating the OSP, only one in five (22.3%) of them were of the opinion that the establishment of the OSP is an attempt by Government to hunt down its enemies with 43% respondents stating that the special prosecutor will be impartial and can investigate corrupt incumbent public officials. Interviewees were however divided on this question. While some saw the OSP as an attempt to hunt down political enemies of the government owing to the history of prosecuting corruption cases, some interviewees were however resilient in denouncing this assertion. One of the interviewee observed that '*throughout the history of Ghanaian politics, different regimes have used various public policies as a measure of intimidating and cowing their political competitors into silence*'.

What voters expect from the special prosecutor

Respondents were made to indicate what they expected from the Special Prosecutor and accordingly state the reason(s) for supporting the creation of the OSP. About 40.3% of voters engaged indicated that the sheer creation of the OSP would prevent people from stealing government property or being corrupt. This conclusion was quite simplistic but an interviewee (representative of the opposition NDC party) who was of the same opinion argued that '*the knowledge of an office dedicated to prosecuting corrupt officials would in itself be enough deterrent*'.

Further, voters and interviewees alike expect the OSP to institute measures toward the prevention of corruption rather than the usual curative attempt to prosecute offenders. Speaking on this same point, a civic education activist indicated that '*the inability of the OSP to institute a conscious measure aimed at preventing corruption amongst the citizenry would render the aim of the creation of the OSP unattainable*'.

Moreover, some 37.3% of respondents indicated that they expect the OSP to timeously prosecute corrupt officials (both past and current government officials). But for the OSP to meet the expectation of Ghanaian voters in this regard, an interviewee who doubles as a political party functionary said '*government should ensure that all social, monetary and determinate resources needed for the OSP to function effectively is made available and timely*'.

In addition, some eighteen percent of respondents indicated that they either did not know what to expect from the OSP or they expect nothing new from the OSP. To those who expect nothing new from the OSP, the argument they made was to the effect that

corruption can never be eradicated so far as Ghana remain a developing nation with attendant socio-economic challenges. Respondents also indicated that they expected nothing from the OSP since there were other existing institutions charge with the duty of fighting corruption. They thus see the creation of the OSP as a parallel institution which could collide with other state institutions when discharging its mandated duties.

Analysis and discussions

The paper emphasises the creation of the OSP as an effort to fortify the use of legal and judicial processes in the fight against corruption. Using legal and judicial processes in the fight against corruption by OSP and by extension the courts in Ghana is what the paper terms as the 'judicialization of corruption'. 'Judicialization of corruption' in Ghana, was thus highlighted as an institutional response to salvage the pervasiveness of corruption. Ghanaian voters saw this new institutional arrangement as needful to address the deleterious effects of corruption in the country and were equally thankful to the government for the initiative and show of commitment to the fight against corruption. The high approval rating of the OSP by voters comes on the back of a general recognition of grave indolence by existing anti-corruption institution and their failure to deal decisively with corruption among political actors.

Again the general observation of Ghanaians is to have a SP who is ethically decent, independent minded and not a person who can easily be oscillated by political motivations. Accordingly, the Special Prosecutor must be a personality who endeavours to preserve an upright stance in the tainted manors of Ghana's criminal justice and he must at all times know that the citizenry expect more from him than just being rapt to his public duties of prosecuting corruption (Uviller 1973). With the perception that the creation of the OSP is in furtherance of a 'witch-hunting' circus, the impartiality of the OSP in prosecuting cases of corruption was the greatest desire of most Ghanaians. The Political system of Ghana, which is deeply rooted in the politics of 'winner-takes all', impacts diffusion of power with the Ghanaian society, which in turn accounts for the opinion that the creation of the OSP is an effort by Government to hunt down its enemies. In avoiding the tag of using the OSP as a witch-hunting agency, interviewees admonished the SP to be impartial and fair in his dealings and prosecution of corruption related offences. Though to some extent, prosecution of cases requires favour for the distinguishing physiognomies of a particular corruption, differential justice unquestionably would mark imperfections in the work of the SP (Uviller 1973). If the SP may, and as he must, prioritise his targets according to some system of primacies, ethical problem would inherently come to play in his assumptions that determine the order (ibid). The appropriate discharge of the prosecution function would demand of the SP to be honest, impartial, fair and professional at all material time, to the cases of corrupt that are brought before it or case of corruption that the OSP '*suo moto*' investigates.

Conflicts of interest is seen generally as something which invariably impedes the success of investigating and prosecuting corruption cases (Reicher 1983). To ensure impartiality and fair prosecution of corruption cases, most interviewee cautioned the SP to guard against situations which have the potency to conflict with his personal interest. Again, to remain relevant to fighting corruption in Ghana, the SP must, as a matter of necessity, guard against biased prosecution of corruption cases arising from conflict of interest. The SP purely must avoid possibility of conflict of interest where an outcome of an investigation

would be resulting from his fidelity to, or the pressures he may feel from the administration of which both he and the subject of his investigation are appointees (Reicher 1983).

In Ghana, the decision to prosecute or not to prosecute a corruption related case is often influenced by pressures from 'the powers that be'. The cradles of these pressures are numerous and wide-ranging and often emanate from people in the executive arm of government; parliamentarians; pressures from self-styled political militants parading as vigilante groups; pressures from political parties including pressures from even family members. It is crucial to ensure the independence of the Office of the Special Prosecutor since an 'unconstrained independence' would empower him to pick factually, demonstrably, objectively and in accordance with the law, which cases of corruption he would prosecute or not prosecute (Khoo and Sripathy-Shanaz 2009). Additionally, to maintain impartiality and fairness in prosecuting corruption related cases, an anti-corruption campaigner asked the SP to introduce certain measure that would prevent or minimise corruption on the part of staff of the OSP. Put differently, the interviewee said '*pre-emptive processes should be in place to condense openings for corruption in the OSP itself*'.

Further, in considering the independence of the OSP, the foremost yet critical issue that commonly comes to attention is the likelihood that actions will be brought to the courts in order to advance a parochial aim, often of a political nature. Thus in obliterating this dangerous customary notion and the danger of prosecutions being brought to court in a doubtful case merely because of the defendant's political persuasions, it is surprising that the OSP Act makes no provision that Special Prosecutor must not be aligned to any political party. By its nature, the SP may be a nonpolitical position, however, the lack of an express proviso in the Act requiring the SP not to be from any political party is the ruin and a time bomb awaiting an explosion. This can be contrasted with the Singapore example, where the Attorney-General (who is ex officio Public Prosecutor) is neither a politician nor a member of any political party (Khoo and Sripathy-Shanaz 2009).

The Attorney-General's Chambers of Singapore (Criminal Division) has introduced four keys pillars which are directed towards ensuring impartial prosecution of case. This is to include (1) meritocracy & objective assessment of performance; (2) keeping remuneration competitive; (3) administrative measures to increase transparency and predictability and (4) swift and severe punishments as deterrence (Khoo and Sripathy-Shanaz 2009, 5–10). Learning from the Singapore experience can help the budding OSP to prosecute cases impartially and also purge the office from corruption. Various legislative oversight mechanisms were also suggested by cross section of interviewees to further ensure the impartiality of the SP. And for these legislative and administrative oversight tools to be effective in controlling the overindulgences of the SP, political will becomes the most single needed factor (Pelizzo and Stapenhurst 2014; Stapenhurst, Jacobs, and Pelizzo 2014).

The OSP should not walk the path of existing institution that have failed to deal with corruption. For the OSP to succeed, certain essentials became apparent from the study. First, the decision to prosecute or not to prosecute a corruption case should be impartial, reasonable and objectively justified (Khoo and Sripathy-Shanaz 2009). Among other things, this would entail a full-bodied, non-political system of evaluation of corruption cases by the SP and the resolve to prosecuting culprits regardless of their political shade. It is never unusual for members of a ruling government to be investigated for supposed wrongdoing as evidence abounds in other jurisdiction. For example, in the Reagan administration, Secretary of Labor, Donovan, was investigated by a Special Prosecutor for

an alleged financial misconduct (Reicher 1983). Investigating and subsequent prosecution of officials in a ruling government would be essential in fighting corruption. If such processes are honestly and efficiently conducted, they can extract the genuineness regarding alleged misconduct by important political leaders and personalities and show an administration's pledge to integrity in fighting corruption.

Public interest concerns must also be one of the foremost priority of the SP. Shadowing the public interest in the investigating and prosecuting corruption related offences demands finding and recording the facts copiously and impartially and pursuing criminal sanctions in a nonpartisan manner when necessary (Uviller 1973). The investigation and subsequent prosecution must be steered in a fair and impartial manner and this would require the SP a show of no reflection to the personal or partisan political interests he may have. Again, the SP must and should be able to resist political pressures as he has the freedom to take unpopular actions, provided of course that he is willing to accept the general excoriation involved in his actions (Khoo and Sripathy-Shanaz 2009).

Collaboration between other anti-corruption institutions and law enforcement agencies is also a key step to ensuring the successful performance of the duties of the SP as this would lead to gathering of relevant evidence and bringing about well-organised prosecution of corruption cases. Lastly, the Ghanaian Parliament as a watchdog institution is expected to exercise an independent oversight role in checking the activities of the SP and the OSP in general.

Conclusion

The purpose of this paper was to introduce a new concept (judicialization of corruption) in the general corruption discourse by using OSP in Ghana as a reference point. The concept was generated from the general concept of 'judicialization'. With judicialization of corruption, the paper intended to depict the use of judiciary and judicial processes in fighting corruption. In part the paper argued that the practice of judicializing corruption offers some form of legitimacy to the fight against corruption especially in a Ghanaian society where the political elite who are gatekeepers of corruption are themselves caught up in corruption related activities.

The paper also sought to gauge the views of Ghanaians on creations of OSP. Data generated showed an overwhelmingly in support of the creation of the OSP by Ghanaians partly owing to failures of existing anti-corruption institutions to deal with corruption. The paper argued that the support enjoyed by the OSP is critical in delivering its ability legal mandate of dealing with corruption. The support enjoyed by the OSP would also lead to the safeguarding of public confidence in the fight against corruption. Ghanaians also maintained that a SP must be courageous, independent minded and prosecute corruption cases without fear or favour.

Disclosure statement

We declare that we do not have any material or financial interests that relate to the research we carried. Also the data used in this research are non-proprietary. No data was obtained directly from an institution (firm, government, non-profit organization, etc.) thus, no institution requested to review the results of the study prior to its publication.

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