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To: **Mr. Kissi Agyebeng, The Special Prosecutor**  
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## **Why the Office of the Special Prosecutor MUST Remain Independent and Intact**

### **1. Introduction: A Defining Moment Beyond the Courtroom**

I write to you at a critical juncture—not only in the ongoing proceedings before the Supreme Court of Ghana, but in the broader struggle to preserve the integrity of Ghana’s anti-corruption architecture.

I wish to preface this submission by drawing your attention to a live and unfolding example within Ghana’s enforcement landscape—one that powerfully demonstrates why the OSP must not only survive this constitutional challenge but must retain its independence in its current structure.

This is not merely a legal argument. It is a practical, real-time illustration of institutional necessity.

### **2. The Constitutional Debate: Independence vs. Control**

The current challenge—rooted in Article 88 of the 1992 Constitution—raises a legitimate legal question regarding prosecutorial authority. As has been articulated, the Attorney-General is the constitutional “fountain” of prosecutorial power.

However, the Constitution itself contemplates delegation. The real issue is not whether the OSP can exist, but whether it can function effectively without being reduced to a subordinate arm of the executive.

The risk is clear:

**If independence is stripped, effectiveness is compromised.**

### **3. A Live Case Study: Why Independence is Not Optional**

Consider the recent actions of the Economic and Organised Crime Office (EOCO):

- EOCO has publicly declared a politically exposed individual a fugitive after repeated failure to honour invitations for questioning.
- This follows **multiple ongoing investigations** involving allegations of:
  - Allegedly receiving substantial funds for gold transactions,
  - Partial or non-delivery,
  - Failure to refund millions across multiple complainants.

Despite this:

- Within hours of EOCO's public notice, the individual—using **Council of State letterhead**—issued an ultimatum demanding retraction.
- The executive has remained **silent**, notwithstanding prior public declarations of zero tolerance for scandal.
- EOCO appears to lack institutional support in enforcing compliance, despite the gravity of the allegations.

Further:

- The individual has:
  - Initiated legal action against EOCO,
  - Sued complainants,
  - Attempted to intimidate legal practitioners acting in recovery actions by filing counter-claim suits against them personally and professionally,
  - Leveraged procedural victories (e.g., lifting of a freezing order at the early stages of investigation) as public vindication—despite ongoing investigations.

EOCO itself has publicly indicated **at least three active investigations** involving the same individual.

#### **4. What This Reveals**

This situation exposes a critical institutional vulnerability:

1. **Even a powerful enforcement body like EOCO can be resisted, delayed, and politically pressured.**
2. **Executive silence can materially weaken enforcement.**
3. **Legal counterattacks can be weaponised to intimidate institutions and complainants.**

Now consider the implications:

If EOCO—an established enforcement body—faces these constraints,  
**what would happen if all prosecutorial authority is centralized under the Attorney-General?**

#### **5. The Core Risk: Executive Bottleneck**

If the OSP is subordinated:

- Every prosecution becomes subject to **executive gatekeeping**.
- Politically sensitive cases risk **delay, dilution, or quiet discontinuance**.
- Enforcement agencies may become **investigative shells without prosecutorial teeth**.

The present example already demonstrates:

- Difficulty in securing compliance,
- Lack of coordinated state backing,
- Exposure to political and legal counter-pressure.

**Centralisation would amplify—not solve—these problems.**

## 6. Why the OSP Must Remain Independent

### A. Protection Against Conflict of Interest

The Attorney-General is a political appointee.

The OSP was created precisely to handle cases involving politically exposed persons where conflicts are inherent.

### B. Preservation of Public Confidence

Anti-corruption enforcement is not only legal—it is perceptual.

If prosecutorial decisions appear politically filtered, public trust collapses.

### c. Operational Efficiency

Requiring case-by-case authorisation introduces delay and bureaucratic friction, particularly in urgent or complex financial crimes.

### d. Institutional Balance

The Constitution allows for delegation. The OSP represents a **functional balance** between central authority and specialised enforcement.

### e. International Credibility

Global partners (IMF, World Bank, and others) support independent anti-corruption bodies. Weakening the OSP risks reputational and economic consequences.

## 7. Impact of the Current Case Study on Institutional Design

The unfolding EOCO situation demonstrates:

- **Enforcement resistance at high levels**
- **Use of legal systems to counter enforcement**
- **Potential political shielding—real or perceived**
- **Risk of institutional fatigue or retreat**

If the OSP is weakened:

- Similar cases may never reach prosecution,
- Investigations may stall at the threshold,
- Individuals may become effectively insulated.

## 8. The Broader Danger: State Capture Dynamics

Where:

- Individuals can resist enforcement,
- Institutions lack backing,
- Legal processes are weaponised,

There emerges a risk of **systemic erosion of accountability**.

If such actors succeed—especially where historical links to major financial controversies exist—the signal sent is profound:

**A. Power can outlast law.**

The OSP exists to prevent precisely this outcome.

**B. A Strategic Perspective for the OSP**

This moment calls not only for legal defence but **institutional assertion**.

Consider:

- Public engagement on the constitutional importance of prosecutorial independence,
- Strategic communication reinforcing the OSP's mandate,
- Framing the issue as one of **national accountability, not institutional rivalry**

**9. Conclusion: Independence is the Point**

The constitutional debate is valid.  
But the practical reality is decisive.

The example before us shows that:

- Enforcement alone is not enough,
- Independence is not a luxury—it is a necessity,
- Centralised prosecutorial control risks undermining the very purpose of anti-corruption enforcement.

**10. Final Note**

I wish you strength and clarity in your efforts before the Supreme Court of Ghana.

Your defence of the OSP is not merely institutional—it is foundational to Ghana's rule of law.

This moment, if approached strategically, may not only preserve the OSP—but strengthen its legitimacy, both legally and in the eyes of the public.

**Respectfully submitted.**



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