

OFFICE OF
THE SPECIAL PROSECUTOR

03 SEP 2024

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DATED: TUESDAY 3RD SEPTEMBER, 2024.

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DAMONGO
SAVANNAH REGION, GHANA**

**THE OFFICE OF THE SPECIAL PROSECUTOR
6 HAILE SELASSIE AVENUE
SOUTH RIDGE
ACCRA-GHANA.**

Dear Sir,

**PETITION TO INVESTIGATE THE INVOLVEMENT OF THE VICE PRESIDENT OF THE
REPUBLIC OF GHANA, DR. MAHMOUD BAWUMIA IN THE PDS SCANDAL**

The petitioners are citizens of Ghana with special interest in the fight against corruption, and are, in pursuance of our right as citizens, submitting this petition to the Office of The Special Prosecutor to investigate the above stated subject-matter.

General Overview

The Government of Ghana in or about October 2019 terminated the concession agreement with the Power Distribution Services (PDS) Limited over the take-over of assets of the Electricity Company of Ghana for the distribution of electricity to the Southern part of Ghana. This was informed by the forensic audit conducted by the Millennium Challenge Corporation, in accordance with Articles 2 and 5 of the Programme Implementation Agreement (PIA) under the mother agreement between PDS and the Government.

In order to engineer private sector participation in the power distribution sub-sector for the main objective of overall economic growth and poverty reduction, the Government of Ghana signed a Millennium Challenge Compact on August 4, 2014, with the Millennium Challenge Corporation, acting for and on behalf of the Government of the United States of America.

Under this agreement, the private sector arrangement was to introduce a concessionaire into the power distribution sub-sector for the injection of capital in the retail operations of the Electricity Company of Ghana. Meralco, a company based in the Philippines was finally selected as the concessionaire in an International Competitive Tender Process.

Pursuant to the strict requirements of the agreement and the local content laws of Ghana, a Special Purpose Vehicle, Power Distribution Services (PDS) Limited was incorporated in Ghana to serve as the operator. The PDS has shareholding in Meralco of the Philippines with 30% shares, A Energia S.A (Angola) with 19%, GTS Engineering Services Ghana, Santa Baron Ventures of Ghana and TG Energy of Ghana, all together holding 51% shares.

In executing this agreement, and in accordance with standard International practice, 41 conditions precedent were expected to be fulfilled; five of which were essential and critical to ensure transparency, value for money and the overall benefit to the Ghanaian taxpayer.

As part of these five, conditions precedent number 24, thus the Bulk Supply Agreement (BSA) Payment Security and condition precedent number 31, thus the Lease and Assignment Agreement (LAA) Payment Security were preconditions to the occurrence of the transfer date and the exercise of the rights and obligations of the parties in terms of the transaction agreements. Indeed, these constituted the securities for the PDS obligations under the BSA and LAA, and thus required PDS to furnish ECG with payment securities in the forms of either a Demand Guarantee or a Letter of Credit issued by a Qualified Bank.

Due to the technical nature of this transaction, two key organizations served as the transaction advisors namely, the Millennium Development Authority (MiDA) and the International Financial Corporation (IFC). The report of the forensic audit carried out by MCC revealed that PDS requested MiDA to accept a Demand Guarantee to be issued by an A-rated Insurance Company instead of Demand Guarantee or Letter of Credit issued by a Qualified Bank as required by Conditions Precedent 24 and 31.

It was subsequently reported that the MiDA Board turned down this request, citing a possible breach of the agreement and impropriety which may occasion the termination of the agreement. The report further revealed that upon further engagements, the MiDA Board approved of the request by PDS to allow for the downgrade of the required Bank Guarantee to an Insurance Guarantee.

In the wake of the controversies, a report by MiDA and IFC cited a meeting chaired by the Vice President, Dr. Mahmoud Bawumia, and attended by the Chief of Staff, the Minister of Finance and the Minister of Energy. MiDA and IFC asserted that it was at this meeting that the decision was reached to downgrade the required Bank Guarantee or LOC to an Insurance Guarantee. In effect, the Dr. Bawumia chaired meeting waived the most critical and essential conditions precedent the existence of which was necessary to warrant the formal transfer of the assets of ECG and the exercise of rights and obligations under the agreement.

In consequence of this, PDS allegedly secured an Insurance Guarantee purported to have been issued by Al Koot Insurance and Reinsurance, a Qatari Insurance Company, on or about 27th February, 2019, two days before the transfer date. Further assessment of the Insurance Guarantee on its validity revealed that the signatory to the Guarantee committing Al koot, one Yahaya Al Nouri did not have the authority to bind Al Koot in relation to the Insurance Guarantee and therefore the Guarantee was fabricated and effectively constituted fraud and a misrepresentation perpetrated by the proponents of the false insurance guarantee as far as the PDS transaction was concerned.

Meanwhile, even before this insurance guarantee could be verified, the transfer of the assets of ECG by PDS had been effected. This was a breach of due procedure, of the law and rules of International practice as revealed by the MCC forensic audit report.

In due regard to the provisions and terms of Articles 2.6 and 3.2(1) of the LAA, the existence of a valid payment security is a condition precedent to the occurrence of the transfer of the assets of ECG to PDS, and owing to the fact that PDS failed in this regard, the ECG on 30th July, 2019, suspended the LAA and BSA. Subsequently, the entire PDS agreement was terminated with the Government of Ghana being the ultimate losers.

Financial Loss to Ghana

1. The Audit Report of the Millennium Challenge Corporation and MiDA revealed that, the local shareholders of PDS concession funded the procurement of the "fabricated Insurance Guarantee" with about \$12.25 million, out of which \$4.25 million was taken from the operating accounts of ECG subsequent to the illegal takeover of assets and retail operations of ECG. Meanwhile, PDS at the time had no authority or right over ECG assets and could not draw such funds from the operating accounts of ECG because the takeover was vitiated by the fraudulent acquisition of the Insurance Guarantee.
2. Owing to the botched 20-year concession agreement with PDS, the people of Ghana lost the \$190 million from the Millennium Challenge Corporation. As part of the second tranche of the compact, this money (\$190m) was meant for a long-term investment into key infrastructure and financial recovery in the energy sub-sector. Meanwhile, this was a critical time Ghana's energy sector needed liquidity support to avert the surging debt to Independent Power Producers and indebtedness of the Power Sector SOEs. Effectively, the Government of the United States of America has closed Ghana out of any future financing arrangement as far as the energy sector is concerned.

Our Demands

- i. Pursuant to section 3(1)(a)(b)(c) and (d) of the Office of Special Prosecutor Act, 2017(Act 959), we request the Special Prosecutor to investigate the complicity or otherwise of the Vice President of the Republic of Ghana, H.E. Dr. Mahmoud Bawumia and the he played at the meeting he chaired, which authorized MiDA to accept the downgrade of the required Bank Guarantee to Insurance Guarantee per Conditions Precedents numbers 24 and 31 of the PDS agreement.
- ii. We, the undersigned citizens of Ghana, also, request the Special Prosecutor to investigate and unravel the circumstances leading to such a decision to vary the conditions precedent into conditions subsequent, which effectively led ECG to transfer the assets of ECG to PDS and in consequence, causing Ghana to lose the second tranche of the compact of MCC to the tune of \$190 million.
- iii. Pursuant to sections 2(b) and 3(1)(d) of the Office of Special Prosecutor Act, 2017 (Act 959), we request the special prosecutor to recover the about \$4.25 million of the taxpayer's money PDS sanctioned to be withdrawn from the ECG operating accounts to secure the fabricated Insurance Guarantee, at a time PDS did not have any legitimate

right over the assets of ECG, and as a result PDS could not authorize for any such payments to be made out of the operating account of ECG.

- iv. Finally, we the undersigned citizens of Ghana, request the office of the Special Prosecutor to undertake investigations into any related matter which led to the termination of the PDS deal and the cost to the taxpayers of Ghana.

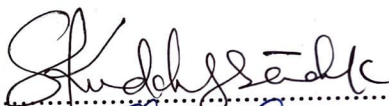


Conclusion

In conclusion, we wish to state that, we the undersigned derive our rights from the 1992 Constitution of Ghana and also specifically, from section 3(1)(g) of the Office of Special Prosecutor Act, 2017 (Act 959) which states that, in order to achieve the object of the Act, the office of special prosecutor shall receive and investigate complaints from a person on a matter that involves or may involve corruption and corruption-related offences. By this petition, we humbly request the Special prosecutor to commence investigation into the complicity or otherwise of the Vice President, Dr, Mahmoud Bawumia, in the PDS Scandal.

Thank you.

Sincerely,

1. Issifu Seidu Kudus Gbeadese
Contact: 0244198031
2. Elikem Kotoko
Contact: 0244705778
3. Stephen Kwabena Attuh
Contact: 0547349026


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