

CSOs Statement on President Akufo Addo's Decision to force the Auditor General to take his 'accumulated leave'

Dated: 7th July, 2020

Members of the press, colleague leaders of Civil Society Organizations (CSOs) in Ghana, democracy and good governance activists and fellow Ghanaians, good morning and welcome to today's press conference. The CSOs gathered here represent close to 500 CSO members across the country. The CSO Platform on the Sustainable Development Goals (SDG) which has signed this statement alone represents 435 CSO members. We also have the Right to Information Coalition and the Ghana Anti-Corruption Coalition all endorsing this statement.

Short Statement on the Impact of Covid-19

Before I proceed with the statement, let me use this opportunity to say a few words about the COVID-19 Pandemic. First, we extend our condolences to the families who have lost loved ones to COVID-19, particularly our frontline health professionals. We pray the good Lord strengthen and comfort you during these difficult times. We must take this virus seriously and strictly observe the preventive protocols. In this regard, we want to wish the President and our leaders God's protection. We need all our leaders to be healthy to lead us through these challenging times. CSOs have been doing their part to support through the CSO COVID-19 Fund. At the appropriate time we will share with citizens our plans for a much stronger citizen involvement in the response to the pandemic.

Statement

Fellow Ghanaians, it is with sadness, disappointment and extreme concern that we come to you today to share our thoughts on the decision taken by the President last Monday, 29th June, 2020, directing the Auditor General, Mr. Daniel Domelevo to take his alleged ‘accumulated leave’ of 123 days, beginning 1st July, 2020. Following the Auditor General’s response to the President’s directive, his annual leave for 2020 has subsequently been added to his leave days; bringing the total leave days to 167. We find the entire episode and the justification for the President’s action regrettable and inconsistent with both the letter and spirit of the 1992 Constitution. In our estimation, such actions only weaken our quest for good democratic governance grounded in the principle of checks and balances, rule of law and the pursuit of public accountability.

In the evening of Monday 29th June, 2020, news started filtering in that President Nana Addo Dankwa Akufo-Addo had directed the Auditor General to take his alleged ‘accumulated leave’ of 123 days effective 1st July, 2020. The statement indicated that the basis of the President’s directive was Sections 20 (1) and 31 of the Labour Act, 2003 (Act 651). These provisions basically provide for a 15-day leave entitlement for a worker in a calendar year. Further, a worker or an employee cannot enter into any agreement to forgo a leave entitlement; such agreement would be void. Mr. Domelevo was said to have taken 9 out of a possible 132 days since his appointment in 2016. To apparently strengthen the justification for such an action, the statement referred to a similar decision taken by the late President Mills in 2009 during the tenure of Mr. Edward Dua Agyeman (then Auditor General), now current Board Chair of the Ghana Audit Service. On the 3rd July, 2020 the Auditor General responded to the President’s directive challenging the legal basis for the decision and expressing concern with what he considered to be an effort to interfere with his constitutional mandate. On the same day, the Presidency followed up with a reply restating and expanding its legal justifications. All the

communication from the Presidency to the Auditor General and vice versa have been shared with the public.

Ladies and Gentlemen, context matters in discussing these issues. It is important to note that this current issue with the Auditor General is not an isolated event but part of an ongoing tussle between the Auditor General and the Audit Service Board led by its Chairman Mr. Edward Dua Agyemang, over the confines of the Auditor General's constitutional independence. The Board's efforts to subjugate the Auditor General under its control has led to several clashes including a matter in 2017 over the purchase of vehicles for the Audit Service which is now a subject of an EOCO investigation. There was an attempt to resolve the impasse through a Committee set up by the President and led by the President's Secretary but it was unsuccessful. Mr. Isaac Wilberforce Mensah has taken the constitutional matters raised by the Board to the Supreme Court for interpretation. It is therefore no surprise that the Board Chairman is reported to have confirmed on several media platforms that it is the Board that referred the matter of the Auditor General's alleged 'accumulated leave' to the President. This context indicates that at the heart of the matter is the independence of the Auditor General and that is what we should pay attention to.

Threats to the Independence of the Auditor General and other Independent Governance Institutions

First, some aspects of the decision of the President on the face of it may be grounded in law, however when examined overall in the context of the 1992 Constitution, particularly in relation to the independence of the Auditor General, it operates to interfere with the mandate of the Auditor General.

The framers of the 1992 Constitution could not have intended to create a simple employer-employee relationship between the appointing authority (in this case the President) and the Auditor General thereby making the President a Human Resource Manager, administering the

leave schedule of heads of Independent Governance Institutions. If this understanding is accepted then it means that the President can direct the Chief Justice, the Commissioners of the Electoral Commission and the Commissioners of the Commission for Human Rights and Administrative Justice (CHRAJ) to proceed on leave when he sees fit. That would be an absurdity and will operate to interfere with the independence of those offices. If this logic was to be extended, then it means the President can presumably direct the Auditor General as to which international conference he can and cannot attend; a matter which ordinarily would be managed as an HR function. Just imagine a situation where a President asks the Chair of the Electoral Commission to go on leave in the middle of her preparations for the voter registration exercise. In a context like that, a fair-minded person is likely to believe that the President is not acting in good faith.

The second letter from the Presidency raises an even more serious constitutional question as to whether or not the President as the appointing authority has the power to unilaterally apply administrative sanctions against heads of independent governance institutions. In essence, can the President suspend the Auditor General or a Chief Justice for insubordination? This reading of Article 297 of the Constitution has to be in error. The President's power of appointment in relation to the Auditor General does not include the power to 'disappoint' as clearly stated in Article 187 (13) and therefore does not give rise to disciplinary powers. Fellow Ghanaians, as democrats, we should heed the warning from what has happened recently in other African jurisdictions. Just last month, a similar incident occurred in Malawi, when the President directed the Chief Justice Andrew Nyirenda to take his accumulated leave ahead of his retirement. The Malawi Law Society, the Association of Magistrates and others sought an injunction in court to stop the President's order from being carried out. They believed the President was interfering with the independence of the Judiciary and rightly so.

The Accumulated Leave Debate

Second, there is a debate as to whether annual leave can or cannot be accumulated. While that may not be an issue we like to spend ink on, we would like to refer to the Court of Appeal's decision in the case of **Samuel M.K Adrah v Electricity Company of Ghana (Civil Appeal No: HI/149/2017)** in which the court indicated that there is no such thing as accumulated leave and workers are enjoined to take their annual leave. The court also stated that any agreement to forgo leave is void with no benefits accruing to the benefit of the employer or employee under such agreement. This position of the law was expressed in simple terms by Deputy Attorney-General, Godfred Yeboah Dame, on Joy FM's Super Morning Show on Monday 6th July, 2020. His statement of a summary of the law was that "[w]e all know that to accumulate leave is wrongful... There is a prohibition of accumulation of leave." Indeed, this position is fully supported by paragraph 4.25 of the binding Human Resource Management Policy Framework and Manual for the Ghana Public Services. It states that unspent leave is forfeited and accrual of leave is prohibited with the only exception that where leave may accrue or accumulated it must not exceed leave periods for two years including the current year, and even so by agreement and approval of management. If indeed the Auditor General was being treated as any civil or public servant would have been treated, the legal basis for forcing the Auditor General to take 'accumulated leave' is non-existent.

Handling Annual Leave as an HR Function

Third, it is curious that a small matter of managing annual leave has escalated to this level. This is unfortunate but as we stated earlier, the context shows that the administration of leave has been added to the basket of actions and inactions being contested by the Audit Service Board. In our view, leave entitlements and schedules are purely an HR function handled within an organization. For many public and private institutions this is handled by an HR manager and often does not lead to directing a person to forcibly take their leave. Most managers at the highest levels hardly exhaust their leave and if they omit to take their leave even when offered,

they lose it and do not ‘accumulate’ it. Therefore, it is disappointing that the President only chose one option once this matter was brought to his attention. For an Auditor General who the President has praised on several occasions for his dedication to work, the President could only see the option of dispensing with his services for six whole months. The President could have taken the view that the entitlement extinguishes each year in accordance with the Public Service HR Manual. The President could have decided to ask him to take some of his 2020 leave. These are all options that recognizes the importance and independence of the Office and consistent with the law. None of these were done. In fact, at the time the Auditor General was receiving the letter from Jubilee House, it was already in the media that he has been asked to proceed on leave. On the whole, there were other options that would have mitigated any potential interference with the work of the Auditor General and none was taken.

Citizens Should Support and Protect the Independence of the Auditor General and His Office

Fourth, we as citizens have to fight for public officers like Mr. Domelevo, not because they are saints and infallible but because they show us that the governance and society we clamour for is possible. We wake up each day complaining about the problems of leadership and the public service. We complain about the lack of accountability, sacrifice, leadership example and effectiveness in the way the public sector is managed. Since Mr. Domelevo took office, he has been exemplary. He has shown leadership and has been extremely productive. His achievements are there for all to see. We need more of such men and women. Unfortunately, many of them have to fight this battle alone and often they lose out. This action is a warning and a huge discouragement to public office holders who desire to stand up and be counted. It is shocking to read some media reports that Mr. Domelevo is serving a political party interest by his actions. This is the same Auditor General who upon the assumption into office of the new NPP government in 2017 conducted an audit of the liabilities accrued by Ministries,

Departments and Agencies in 2016 during the tenure of President Mahama who appointed him and disallowed as much as GHC5.4 Billion; saving the country a lot of money. As citizens, we have to make a choice whether we want an Auditor General who will hold everyone to account without fear or favor; one who will ensure our hard-earned taxpayer's money is used for the benefit of citizens and not go to individual pockets. If that is what we want then we must stand up and make our voices heard. This is not an NPP or NDC matter. This is about Ghana; whether it is an NPP or NDC government, we want an independent Auditor General. When, we get people like Mr. Domelevo who want to work and serve the public interest, we must protect them.

Remedial Action

Ladies and gentlemen, based on the issues we have raised in reaction to the President's decision, first, we believe the decision of the President is not proper and needs to be reconsidered. The action gravely weakens the President's fight against corruption and his standing in the eyes of the international community as someone committed to public accountability. We should not forget that it was the President and the NPP government that set up an Office of the Special Prosecutor with a carefully designed legal framework to ensure that Mr. Martin Amidu was not only formally independent but substantively independent. We believe our President listens and when he re-assesses the case we have made, he will reconsider. In this regard, we are calling on all well-meaning Ghanaians to join us in our campaign to **#BringBackDomelevo** beginning today.

Second, as a result of the gravity of the constitutional issues raised by this action, we have to at some point apply to the Supreme Court for interpretation of the President's powers in respect of independent governance institutions. Third, we are fully aware that one of the issues that deepened the conflict between the Auditor General and the Board is the Kroll Associates case in which the Senior Minister, Mr. Yaw Osafo Marfo and four other officials of the Finance

Ministry have been surcharged by the Auditor General. The Senior Minister has resorted to court action to clear his name. We will all be watching closely how the matter is being handled in the temporary absence of the Auditor General. We are aware per the Supreme Court's instructions the documents requested by the Auditor General has now been inspected and the parties are due to return to court. We will follow the process closely.

Lastly, it is important to acknowledge the diligent work of the Audit Service for many years. It has been one of the performing public institutions over the years. Mr. Domelevo's leadership has taken it to another level. It is our expectation that the Service will continue to serve the public with distinction and professionalism in the temporary absence of the Auditor General.

Always Ghana First!

God bless Ghana!!

Thank you.

Signed:

Coalition of CSOs Against Corruption