Coalition of Civil Society Organisations Against Corruption


Statement on the ‘Constructive Dismissal’ of Auditor General Daniel Domelevo

Good morning, Ladies and Gentlemen of the Media and good morning to colleague CSO leaders. Let me use the opportunity to wish you and Ghanaians a belated 64th Independence anniversary. Our continuous wish is for Ghana to grow as a democratic and prosperous society and nation.

Introduction

1. On March 3, 2021, we learned of a letter issued by the Office of the President purporting to retire the Auditor-General, Mr. Daniel Domelevo. This letter was issued barely a day after Auditor-General Domelevo returned to his post after he had been unconstitutionally compelled by the President, Nana Addo Dankwa Akufo Addo to undertake a purported 'accumulated leave' of 169 days.

2. The Coalition of Civil Society Organisations is extremely disappointed and saddened with this development, and especially with the manner in which the matter has been handled by the Presidency acting in concert with the Chairman of the Audit Service Board, Prof. Edward Dua-Agyemang.

3. In this statement, we shall set out in detail the facts and circumstances surrounding Auditor-General Domelevo’s forced retirement. These facts and circumstances, in our view, give credence to our belief that Mr. Domelevo was unfairly targeted merely for pursuing his constitutional mandate.

Commendation

4. Prior to setting out the facts and circumstances surrounding Auditor-General Domelevo’s forced retirement, we wish to take this opportunity to, on behalf of the nation, commend and congratulate Mr. Daniel Domelevo for his distinguished service to the country as Auditor-General.

5. Today at 4pm, at the Christ the King Catholic Church, all of us, other well-wishers will join Mr. Domelevo and his family to give thanks to God for a life of service. We are doing this to signal to other hardworking public servants and citizens that we appreciate what they do. We however want to use this opportunity to highlight some of Mr. Domelevo’s achievements during his tenure as Auditor-General of Ghana.

Exercise of the Auditor-General’s Surcharge and Disallowance Powers

6. Since his appointment, Auditor-General Domelevo has discharged the responsibilities of his office with exceptional dedication. The powers of Surcharge and Disallowance, which
are attached to the Office of the Auditor General but had never before been exercised in the history of the 4th Republic, was activated during his tenure, thanks to the decision of the Supreme Court in *OccupyGhana v Attorney-General (2017)* and has been applied vigorously.

7. Through his diligence and commitment to protecting the public purse, Auditor-General Domelevo successfully recovered for the State tens of millions of Cedis in unauthorized spending or misappropriated funds. For instance, in 2018, the Office of the Auditor-General, leveraging its surcharge and disallowance powers, successfully recovered a total of GH¢67.32million (about US $11.7million) into government coffers.

**Improvement in asset declaration administration**

8. Under his leadership, the Office of the Auditor General implemented an electronic data system to handle declarations made by public officers with respect to their assets and liabilities, as is required of them by Chapter 24 of the 1992 Constitution and the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550). Through this initiative, the Office of the Auditor-General is able generate and maintain an up-to-date database of eligible public officers and to prompt them to make a declaration. It has additionally simplified the process for declaring assets and liabilities. While the legal regulatory framework for asset declaration of public officers still requires significant reform, Auditor-General Domelevo deserves commendation for this initiative.

**Compliance with timelines for submitting annual audit reports to Parliament**

9. Under Mr. Domelevo’s leadership, the Office of the Auditor-General consistently submitted audited public accounts to Parliament on time, as required by Article 187(5) of the 1992 Constitution. The only time, the discharge of this obligation was delayed was during the emergence of the Covid-19 pandemic in Ghana in 2020. This delay was also occasioned by the President’s directive to Auditor-General Domelevo to proceed on leave at a time when work on public accounts were still uncompleted in June 2020.

10. Auditor-General Domelevo’s exemplary work has not gone unnoticed. The World Bank, in its 2020 Global Report titled ‘Enhancing Government Effectiveness and Transparency: The Fight Against Corruption’ (pp. 308-310) singled out Ghana’s Auditor-General for praise for the positive impact of his work on public accountability efforts in Ghana. It is no surprise, therefore, that in 2019, Auditor-General Domelevo received an award for ‘Integrity Personality of the Year’ at the maiden Ghana Integrity Awards organized by Ghana Integrity Initiative, the local chapter of Transparency International.
11. Generally, we acknowledge Mr. Domelevo’s sense of purpose, determination, discipline and exceptional sense of duty. There are few places within the public service that you can have a meeting that starts on time and ends on time. Mr. Domelevo is always on time and when you are late, he will speak plainly about it. He has inspired all of us and we wish him well in his retirement.

Setting the record straight

The facts and circumstances which led to the forced retirement of Auditor General Domelevo

12. The Coalition believes that the manner in which the questions regarding Mr. Domelevo’s date of birth, which formed the basis of the President’s letter, were not handled in accordance with the constitutional directive in Article 23 that administrative actions should be handled fairly, reasonably and in compliance with the due process of law. The coordinated actions of the Office of the President and the Audit Service Board Chair on this matter further confirms our belief that Mr. Domelevo has been unfairly targeted.

13. To fully appreciate the matter at hand, we wish to take this opportunity to set out in detail the facts and circumstances which led to the forced retirement of Auditor General Domelevo.

Chronology of events

A. Auditor General Domelevo’s petition to President Akufo Addo

14. On or about July 27, 2018, the Auditor-General, Mr. Domelevo petitioned President Akufo-Addo over claims that the Chairman of the Audit Service Board, Prof Edward Dua-Agyemang was undermining his authority and or interfering with his work, contrary to law.¹

15. Amongst the claims Mr. Domelevo made against Prof Dua-Agyemang in his petition to the President were (i) procurement manipulations, (ii) interference with audit processes, and (iii) unlawful circulation of audit findings.

16. With respect to the alleged procurement manipulations, Auditor-General Domelevo indicated in his petition to the President that Board Chairman Prof Dua-Agyemang had

instructed Mr. Johnson Akuamoah Asiedu (a Deputy Auditor General) and Mr. Ebenezer Aglomasa (a procurement Officer) to replace some firms which had been awarded some contracts, with firms of his [Prof Dua-Agyemang’s] choice. This was done without the knowledge and or consent of neither Auditor General Domelevo nor the Public Procurement Authority, according to Auditor General Domelevo.

17. Section 92(2)(b) of the Public Procurement Act, 2003 (Act 663) makes it an offence for a person to directly or indirectly influence in any manner or attempt to influence in any manner a procurement process to obtain an unfair advantage in the award of a procurement contract. According to Auditor General Domelevo, “the Chairman [Prof Dua-Agyemang] admitted to the offence with the excuse that the law did not exist during his tenure of office as Auditor General.”

18. With respect to the Chairman of the Audit Service Board Prof Dua-Agyemang’s alleged interference with audit processes, Auditor General Domelevo indicated in his petition to the President that Prof Dua-Agyemang had sought to commission an audit without his [Auditor General Domelevo’s] knowledge and or consent. When questioned by Auditor General Domelevo, Prof Dua-Agyemang said, “that he [Prof Dua-Agyemang] thought the audit in question was below my [Domelevo’s] level as the Auditor-General.” As you know, by the constitutional architecture of the Office of the Auditor General, ONLY the Auditor General or a person authorized or appointed by the Auditor General has the mandate to audit and report on the public accounts of Ghana (Article 187(2) and (3) of the 1992 Constitution). Therefore, Prof Dua-Agyemang’s attempts to commission an audit without Auditor General Domelevo’s authorization was in breach of the 1992 Constitution.

19. Despite all these indiscretions and alleged breaches of law by Prof Dua-Agyemang, Auditor General Domelevo instead of taking legal action, petitioned that the President seeking his intervention because according to him [Domelevo], he “thought it wise to attempt settling [the matter] administratively”. He said, “[t]his is because I have no reason whatsoever to believe that your [the President’s] administration is behind these infractions and if I should file a suit against the Chairman and his allies, it may be misconstrued to mean your administration is behind these infractions.”

20. Prof Dua-Agyemang denied these claims and accused Auditor General Domelevo of failing to cooperate with the Audit Service Board.²

B. Audit Service Board’s letter to the President

21. On or about August 6, 2018, Prof Dua-Agyeman and some members of the Audit Service Board wrote to the President ostensibly to report the conduct of the Auditor-General to the President. Amongst accusations made against Auditor General Domelevo by the Audit Service Board were (i) Auditor-General Domelevo’s failure or ‘refusal’ to notify the Board of his official trips abroad; (ii) Auditor General Domelevo’s penchant for making public statements that were sometimes embarrassing to the Audit Service and inimical to the safety of Audit Service staff; (iii) publication and distribution of Audit Reports without recourse to the Board (iv) lack of accountability and transparency.3 The Board also accused Auditor General Domelevo of not recognising their role and procuring vehicles for the Audit Service without following due process.

C. President Akufo Addo’s response to Auditor General Domelevo’s petition

22. On or about September 12, 2018, President Akufo Addo instructed his Executive Secretary, Nana Asante Bediatuo to look into Auditor General Domelevo’s petition and report of the outcome.4 Till this day, the public is yet to be informed of the Executive Secretary’s findings and or the outcome of his task to resolve the matter.

D. Conflict of interest allegations against Board Chair Prof Dua-Agyemang

23. All the while, as the impasse between Mr. Domelevo and Prof Dua-Agyemang was going on, Prof Dua-Agyemang was acting as Secretary to a Cabinet Committee conducting investigations (or ‘forensic audits’) into key transactions undertaken by the previous John Mahama Administration. The said Cabinet Committee, in carrying out its investigations contracted some private firms to assist it with the investigations. Amongst these firms was Kroll Associates.

24. It is curious how the Board Chairman of the Audit Service, a State agency responsible for independently auditing all public accounts would act as Secretary to a Cabinet Committee which conducted ‘forensic audits’ into transactions initiated and entered into by a previous administration without being engaged in a conflict of interest and or conflict of duties. It was clear that the prolonged unprofessional entanglement that the Board Chair, Prof Dua-Agyemang, had placed himself in with the Executive was going to lead to a clash.

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4 President directs probe into Auditor-General petition against Board Chair, https://www.myjoyonline.com/president-directs-probe-into-auditor-general-petition-against-board-chair/#!, September 12, 2018
E. Surcharge of Former Senior Minister, Yaw Osafo-Maafo and 4 others in relation to Kroll Associates contract

25. In the same year (2018), the Office of the Auditor General in its report of December 2018 on Ministries, Departments and Agencies indicated that 'during our review of the contract with Kroll Associates, we noted that though there was no evidence of work done, the Finance Ministry in 2018 paid US$1million to the company'. Auditor General Domelevo, therefore, surcharged the Former Senior Minister, Yaw Osafo-Maafo and four (4) other officials of the Finance Ministry over the payment of about US$1million to Kroll Associates, allegedly, for consultancy services.

F. President Akufo-Addo’s constructive dismissal of Auditor General Domelevo

26. On December 20, 2019, Kroll Associates, the Former Senior Minister, Yaw Osafo-Maafo and 4 other officials of the Finance Ministry appealed against the Auditor General’s surcharge against them at the High Court. One of the key issues before the High court was whether or not the services Kroll was contracted for had been rendered. At the High Court, the Kroll Associates contract documents were argued by counsel for the former Senior Minister to be a matter of national security and therefore they had to be inspected privately (rather than in open court) by the Auditor General.

27. The High Court Judge, Justice Afia Serwaa Asare-Botwe referred the matter to the Supreme Court, pursuant to article 135(1) of the 1992 Constitution, as the Supreme Court, by constitutional design has exclusive jurisdiction in matters of national security.

28. The Supreme Court ordered the Former Senior Minister to make available the documents relating to the Kroll Associates contract for inspection by the Auditor General on July 1, 2020. Interestingly, the Supreme did not make any determination on whether or not the documents were indeed a matter of national security.

29. On June 29, 2020, the Director of Communications at the Office of the President issued a press release to the effect that the President had directed the Auditor-General to take his ‘accumulated annual leave’ of some one hundred and twenty-three (123) working days with effect from Wednesday July 1, 2020.5

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30. The President, per the release, further directed the Auditor-General to hand over all matters relating to his office to Mr. Johnson Akuamoah Asiedu, a Deputy Auditor General, to act as Auditor-General until the return of the Auditor-General from his forced leave.

31. It is interesting to note that the directive was made to take effect on the same day, i.e. July 1, 2020 when Auditor General Domelevo was to inspect the documents relating to the Kroll Associates contract in compliance with the relevant order of the Supreme Court.

32. Subsequently, Mr. Johnson Akuamoah Asiedu, acting as Auditor General, inspected the documents, okayed them and on July 2, 2020, wrote to the Office of the Senior Minister that the Audit Service had inspected the documents and, therefore, the case could go back to the High Court for final determination. In the said letter, Mr. Johnson Akuamoah Asiedu said,

"we wish to state that we are satisfied with the process and, therefore, propose that the lawyers inform the Supreme Court accordingly to enable the parties to go back to the High Court to continue with proceedings in that court”.

33. On July 3, 2020, Auditor-General Domelevo responded to the President’s directive, requiring him to proceed on leave. In his reply, the Auditor-General expressed his belief and concern that the directive had the potential to undermine the constitutionally guaranteed independence of the Office of the Auditor-General. He drew the President’s attention to certain duties he was performing at the time in his capacity as Auditor-General and implored the President to reconsider the directive instructing him to proceed on ‘accumulated leave’.6

34. On July 3, 2020, in reaction to the Auditor-General’s letter, the Executive Secretary to the President, Nana Asante Bediatuo, wrote back to inform the Auditor-General that his forced leave had been extended from 123 working days to one hundred and sixty-seven (167) working days. The additional days ostensibly covered leave days for the current year (2020).7

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35. On July 28, 2020, Auditor-General Domelevo, after being on involuntary leave for twenty-one (21) working days, went to his office ‘to pick up some documents’ but to his surprise, the locks to his office had been changed without notice to him.\(^8\)

36. On May 26, 2020, the High Court delivered its judgment in which it indicated that it was satisfied that there were grounds to set aside the findings and surcharge made against Former Senior Minister Osafo Maafo and 4 others. [See Kroll Associated UK Limited v Auditor General (Suit No. MSFT/0022/2020) and Yaw Osafo Marfo & Others v Auditor General (Suit No. CM/MISC/0315) Consolidated suits; unreported]

37. Without commenting on the correctness or lack thereof of the High Court’s decision, we are persuaded that any objective mind and well-meaning Ghanaian, presented with these facts and circumstances will ask questions about the propriety of the President’s actions.

Alleged inconsistencies in date of birth of Auditor General Domelevo

38. On March 3, 2021, a letter issued by the Office of the President constructively, and without legal justification retired Mr. Daniel Domelevo as Auditor-General, on grounds that he had attained the age of retirement based on his alleged date of birth being June 1, 1960.

39. It is important to note that the Audit Service Board has no authority under the laws of Ghana to determine the accuracy of Mr. Domelevo’s date of birth. In addition, given the series of confrontations the Audit Service Board, particularly its Chairman, Prof Dua-Agyamang, had had with Mr. Domelevo, it was only fair and consistent with the rules of natural justice for the matter to have been referred to the appropriate State agency or authority for its determination.

40. The hurriedly orchestrated queries and decision taken by the Audit Service Board, acting in concert with the Office of the President, and the President’s unilateral decision to forcibly retire Auditor General Domelevo, on the same day he returned to post from an equally forced ‘accumulated leave’ confirms our belief that Mr. Domelevo has been unfairly targeted.

Suits challenging the constitutionality of the President’s action still pending at the Supreme Court

41. The Coalition notes with regret that the Supreme Court is yet to determinate two (2) suits relating to the constitutionality of the Auditor General's forced 'accumulated leave' by the President which were filed by Prof Kwaku Asare and 9 CSOs in July and October 2020 respectively. In part, this delay in hearing these time-sensitive cases has rendered some of the issues raised before the court moot and has allowed a grave breach of the Constitution to fester, in our estimation.

Conclusion

42. These two suits pending before the Supreme Court go beyond Auditor General Domelevo and the President’s action. The suits border on the broader issues of whether or not a President could exercise administrative authority over Independent Constitutional Bodies (ICBs). Therefore, it is important for the Supreme Court to deal with these suits expeditiously to prevent any such actions by a future President. In the interest of promoting good governance, constitutionalism and public accountability, we call on the Supreme Court to deal with these two suits as soon as practicable.

43. We also urge Auditor General Domelevo to take action against the Audit Service Board and the Presidency for administrative injustice.

44. The antecedents of the Domelevo matter has left a sour taste in all our mouths and lead us to question the commitment of our leaders to accountable governance. It is a wakeup call to all well-meaning Ghanaians to be citizens and not spectators. To speak up and not stay silent when such manifestly unfair treatment is meted to individuals who are trying to do their job and do it with integrity. If we want social and economic transformation, silence is not an option. After 64 years of independence, we owe it to this generation to chart a true democratic path that is inclusive and meritocratic.

Thank you all for your attention.

God bless Ghana.