

RE: GHANA@50 RULING INFORMED BLACK STARS' COMMISSION OF INQUIRY: BY
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As a foundation (not founding) member of the National Democratic Congress I cannot allow what appears to be the new policy of the current NDC Government to use Commissions of Enquiry merely as Truth Commissions which only make adverse findings against individuals without a right to criminal prosecutions to pass without objection. This policy of the current NDC Government to cover up crimes and particularly bribery and corruption of its partisan political elite and Government appointees is inconsistent with and contravenes not only the Constitution of Ghana but also the letter and spirit of the NDC Constitution and all its manifestos.

The Youth and Sports Minister, Hon. Mahama Ayariga, speaking for the President of Ghana is reported on 14th July 2014 in an interview to have said that the president would rather have a presidential commission whose adverse findings will have the effect of the decision of a High Court and would be punitive enough. "According to him, President John Mahama preferred a Commission which would provide comprehensive information on what went wrong with the Black Stars campaign with the view to changing systems rather than just searching for criminal prosecutions which a committee finding may merely lead to." President John Mahama is said to have come to this policy decision "guided initially by the Court decision in the Ghana@50 case". The President is "... trying to avoid a situation where if there is findings against anybody of a criminal nature no further steps can be taken to deal with that...."

Outlining President Mahama's modus operandi in appointing Commissions of Enquiry Ghanaians are told that: "Right from the beginning you have to decide which punishment you want. Do you want the punishment that comes with an adverse findings being made against that person or you want the punishment that comes with criminal prosecution in the court of law. If you choose the adverse findings you cannot later say again you are going to prosecute the person under the criminal laws. That will be treating the person unfairly...."

I am worried about the declarations of the President conveying to Ghanaians how he sees his onerous responsibility of exercising the executive power which the Constitution entrusted to him for our health and protection because they are not borne out by Chapter Twenty-Three of the 1992 Constitution. Admittedly Mr. Justice Marful-Sau discharged suspects who were put before his Court for criminal prosecution based on the report of the Ghana@50 Commission of Enquiry after the issuance of a white paper but before even the constitutional gestation period of six months to render any adverse finding a decision of the High Court had matured. In arriving at his decision he made certain constitutional observations outside his jurisdictions in which he opined that one could not prosecute a person for adverse findings arising out of a report of a commission of enquiry.

The Government of the NDC immediately appealed to the Court of Appeal against not only the discharge of the suspects but also the unconstitutional observations made by the Judge. The President of Ghana knows or ought to have known that that appeal is still pending at the Court of Appeal. And I dare say that from the reaction of the NDC as a party adhering to its founding principles, and the NDC Government of the day, it was determined to pursue the matter further to the Supreme Court for Constitutional interpretation.

Dr. Dominic Ayine, now Deputy Attorney-General in the current NDC Government in a feature article published on the internet on 30th August 2010 made an argument on “The Ghana@50 Ruling: Why Justice Maarful-Sau is wrong” in which he demonstrated the unconstitutionality of the ruling. Mr. Kofi Ata was also published on 23rd August 2012 to have made the common sense arguments, noting first the fact whether a retired judge and Chairman of the Presidential Commission and his members recommended the prosecution of the accused unaware of their immunity from prosecution? He also pointed out that two previous Presidential Commissions had resulted in prosecution in the High Court.

Nana Ato-Dadzie a leading member of the NDC was published on 11th August 2010 to have said that the suspects “could have been re-arrested immediately the High Court struck out and discharged them on charges of willful causing financial loss to the state”. Mr. Kofi Adams the Deputy General Secretary of the NDC was published on 12th August 2010 as believing that: “some elements within the Attorney-General’s Department have been sabotaging the Attorney-General resulting in the loss of several high-profile court cases.” And this was the case in which the Chairman of the NDC, Dr. Kwabena Adjei, was published widely to have made his famous “there are several ways of killing a cat” statements which arouse indignation for its consequences on the independence of the judiciary and rule of law.

In the meantime it is common knowledge that the decision of one High Court judge does not bind another High Court judge let alone the Court of Appeal or the Supreme Court. And even Justice Maarful-Sau was entitled to change his observations in another criminal prosecution brought before him if he was convinced of the unconstitutionality of his earlier observations. I can find no Supreme Court decision on this matter as alleged by Hon. Mahama Ayariga on behalf of the President in the interview (See “Ghana@50 informed Black Stars’ Commission of Inquiry - Ayariga”).

I am not aware that the NDC has changed its anti-economic crime and corruption agenda as founding principles rooted in the 4th June and 31st December Revolutions to now cover-up crimes by its political elite and government appointees using Commissions of Enquiry as Truth and Reconciliation Commissions. On 4th October 2012 the President, then as transitional President, told the whole world at Ho that he was willing to offer himself for investigations for corruption. My personal challenge to him was widely publicized on 8th October 2012. I stated amongst other things that: “The people infecting this Government with endemic corruption and abuse of office for private gain are alive and in President Mahama’s Government”. I challenged

him to set up a bi-partisan committee of Parliament to investigate corruption in his Government. He cannot and is not in a moral position to take up that challenge!

GOPDC, FIRE SERVICE, GYEEDA, SUBAH, SADA, and a lot more reports of Committees of Enquiry and dockets are awaiting implementation. Political friends and collaborators are being asked to pay restitution for their crimes while enemies even within the NDC are threatened with prosecution. Ghana has gotten to the point where today an NDC President is guided by the type of punishment he prefers in deciding on whether or not to set up a Commission of Enquiry. This is not what I spent my youthful life for in partaking in the ideals of the 4th June and 31st December revolutions of zero tolerance for all forms of bribery, corruption and economic crime which now underpin the 1992 Constitution and the NDC Constitution, both of which I took a leading role in crafting.

The sacrifices we have made and continue to make since 24th July 2012 are needless and self-imposed upon us by the Government's tolerance of mismanagement, economic crimes and corruption by the political elite. Ghana only needed a vision of integrity and incorruptibility from the leadership to have avoided the needless economic punishments called sacrifices. The NDC was not founded to cover up mismanagement, economic crimes, and corruption of its members but rather deal with those more ruthlessly. That is why I think it is time for all senior members of the NDC to oppose this new Presidential policy against criminal prosecution of corruption and economic crime which will definitely affect the fortunes of the NDC in the 2016 elections if left to go without condemnation. The NDC must maintain its founding social democratic philosophy against crime without which it will surely be consigned to the dustbin of history as a fraud once perpetrated on Ghanaians.

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