



14th October, 2020

**JOINT STATEMENT BY LEGAL LINK AND CITIZENS ADVOCACY
NETWORK REGARDING THE OBSTRUCTION OF CORRUPTION
INVESTIGATION BY THE ACC AGAINST THE FORMER PRESIDENT
IN MAKENI CITY, NORTHERN SIERRA LEONE**

BACKGROUND FACTS

Following the conclusion of the Commissions of Inquiry Report and the subsequent adoption of the findings of the Report in the Government White Paper, we note the move by the Anti-Corruption Commission to seize jurisdiction of certain matters referred to it by the COI report.

Against this backdrop, several persons of interest, notably the former President of Sierra Leone have been summoned by the ACC for investigative hearings. After a lot of wrangling's over the appropriate venue to conduct the interviews, it was finally agreed that the interview was to be held on the 8th of October at the residence of the former president in Makeni City, Northern, Sierra Leone.

Unfortunately, however, on the fateful day of the said interview, residents in Makeni came out in their thousands in solidarity with the Ex-President (a son of the soil) and barricaded the roads leading to the residence of the former president thereby giving cause for the cancellation of the scheduled interview by the ACC.

Whilst many critiques have viewed this incident as unfortunate, LEGAL LINK and Citizens Advocacy Network, have jointly decided to issue out this Press Statement condemning not only the act of the protesters on that fateful day, but also sending out an advisory opinion to both the former president of the Republic of Sierra Leone, His Excellency Dr Ernest Bai Koroma as well as the substantive Commissioner of the ACC, Mr Francis Ben Kaifalah.

This opinion piece is done out of good faith and with a deep sense of cosmic responsibility and love for country and people. As leading Civil Society organizations advocating on human rights, rule of law and accountability in Sierra Leone, it puts us in a vantage position with the moral high ground to join the burning conversation regarding ACC's quest to investigating the former president over allegations of corruption during his tenure in office and the current bottlenecks that have eclipsed such investigations.

But before delving into the heart of the matter, let us hasten to put up a disclaimer by emphasizing that we hold no brief for either the former president nor the current ACC Commissioner.

Our opinion therefore on this subject is principally motivated by personal conviction as well as the wealth of knowledge and experiences we have gained serving as Civil Society Advocates promoting rule of law, human rights and accountability in Sierra Leone.

It is also important to emphasize that we are doing this with genuine hearts and we mean well for both offices- the office of the former president and the institution of the Anti- Corruption Commission.

ADVISORY OPINION TO HIS EXCELLENCY, DR ERNEST BAI KOROMA, FORMER PRESIDENT OF THE REPUBLIC OF SIERRA LEONE

We shall premise our advice to you over the current invitation by the ACC to investigate you on allegations of corruption on two fundamental cases that were brought against Nelson Mandela of South Africa while he was president.

Please see if you can learn something from the way he handled the two case situations.

The first case came even before the new constitution had been drafted in South Africa. The premier of the Western Cape, Hennis Kriel, took a matter to the Constitutional Court challenging President Mandela's decision to issue two proclamations dealing with the elections at the Western Cape.

The court found in favor of the Western Cape provincial government and gave Parliament a month to rectify the Act. Within an hour of the court delivering its adverse judgment, President Mandela publicly accepted the ruling and welcomed the fact that it showed that everyone was equal before the law. Later, he wrote:

“During my presidency, Parliament authorized me to issue two proclamations dealing with the elections in the Western Cape province. That provincial government took me to the Constitutional Court, which overruled me in a unanimous judgment. As soon as I was informed of the judgment, I called a press conference and appealed to the general public to respect the decision of the highest court in the land on constitutional matters.”

In a public statement, he went further, announcing that Parliament would be reconvened to deal with the matter and stressing that, “the judgment of the Constitutional Court confirms that our new democracy is taking firm root and that nobody is above the law.”

The other case concerns Mandela's decision to set up a Commission of Inquiry to look into allegations of racism in the South African Rugby Football Union (SARFU).

Facts of the case:

After two years of the iconic victory in the 1995 Rugby World Cup, President Mandela, prompted by reports of maladministration, resistance to change and racism in the sport's governing body, and after consultation with Minister of Sport and Recreation Steve Tshwete, Mandela appointed a

Commission of inquiry, led by Justice Jules Browde, to look into the affairs of the South African Rugby Football Union (SARFU).

This decision prompted the president of SARFU, Louis Luyt, to apply to the Pretoria High Court to quash the appointment of a commission of inquiry into the administration of rugby. Judge William de Villiers summoned Mandela to appear before the court as a witness. Mandela, despite several calls for him to boycott the subpoena did however comply in the interests of justice.

He writes about the episode:

“Judge William de Villiers of the Gauteng High Court subpoenaed me to appear before him to justify my decision to appoint a commission of enquiry into the affairs of the South African Rugby Football Union. Some of my Cabinet colleagues advised me to challenge the subpoena, pointing out that the judge in question was, to say the least, extremely conservative, and that his real aim was to humiliate a black president”.

“My legal adviser as well, Professor Fink Haysom, was equally opposed to my appearance in court. He argued with skill and persuasion that we had sound legal grounds to challenge the subpoena.

“While I did not necessarily challenge any of these views, I felt that at that stage in the transformation of our country, the President had certain obligations to fulfil. I argued that the trial judge was not a final Court of Appeal, and that his decision could be challenged in the Constitutional Court. In a nutshell, I wanted the whole dispute to be resolved solely by the judiciary. This, in my opinion, was another way of promoting respect for law and order and, once again, for the courts of the country”.

“As was expected, the judge had serious reservations about my evidence, and gave judgment in favour of Louis Luyt, the president of the South African Rugby Football Union. But the Constitutional Court later set aside the decision of the lower court. The Constitutional Court was not wrong. In that situation, I obeyed the subpoena out of strength and not weakness.”

Interestingly however, by the time the Constitutional Court set aside the Pretoria High Court ruling, reaction to Louis Luyt’s behaviour – among the public and within the rugby community – had forced his resignation and led to a decision by the SARFU executive to send a delegation to apologise to Mandela.

Your Excellency, we have deliberately cited these two case scenarios so you can learn something from them. And we hope you will. Please do all you can to exceed expectations regarding this ACC investigations. Go beyond yourself and that of your supporters and leave an indelible footprint in the sands of time. Don’t lower the bar and cause a situation where ex-presidents after you may reference your actions as a cover to immunize themselves from accountability after public life.

We admonish you, and where it is practicable, please walk to the office of the ACC in Makeni with your lawyers and respect the institution's invitation and take the interview. Do not settle for the interview to be done in your house. That's a convenient option which might serve as a dangerous precedent in the years to come.

It was a certainly a difficult thing for President Mandela, a sitting president to honor the Subpoena of the judge, but against all odds, he eventually did. And what was meant to humiliate him eventually ended up in his favor and lifting.

Remember, you were the very president that gave the ACC prosecutorial powers under the ACC Act of 2008 making it stand out as one of the most robust corruption institutions in the world. You cannot afford to undermine it now. The costs may be far and wide reaching.

As the only surviving democratically elected ex-president in Sierra Leone, your actions and inactions will set a precedent for future ex-presidents. Raise the bar high and let history judge you as right after you may have left the shores of planet earth.

ADVISORY OPINION TO THE ACC COMMISSIONER - FRANCIS BEN KAIFALA

Let us salute you Mr. Commissioner for the good work you are doing at the ACC. From the international, regional and domestic ratings released every year, it is clear that positive things are indeed happening at the ACC. Congratulations to you and the entire staff of the Commission. While your entrance to the throne may have been eclipsed with controversies, no doubt, by your performance, you have certainly earned legitimacy to the office. Kudoos!

Notwithstanding, however, as leading Civil Society organizations with vast experience in human rights, rule of law and accountability issues in Sierra Leone, we do have a few concerns which we would like to openly share with you for your urgent consideration. These concerns are coming from hearts that mean well and we hope they will be judged from that perspective.

1. Human Rights Based Approach

Our first call is for you to ensure that the ACC embraces a Human Rights based Approach in its work and operations.

Mr Commissioner, before 2005, it was acceptable for states across the world to fight corruption anyhow even if it means going against the fundamental human rights of suspects or accused persons. But when the United Nations Convention against Corruption (UNCAC) entered into force in December 2005, a human rights-based approach automatically kicks in and states are no longer allowed to do business as usual in the name of fighting corruption. The rights of suspects to a fair investigative process, the rights of suspects to be presumed innocent, the rights of suspects to bail and the rights of suspects not to be persecuted before conviction must all be guaranteed and ensured by an Anti- graft institution like ours.

Remember, Sierra Leone is a signatory to both the UNCAC framework and the AU framework on Corruption. This therefore, puts an obligation on the ACC to ensure that the fight against corruption embraces a human rights-based approach.

There is evidence to show that the ACC has been challenged in this regard. For example, the parading of suspects before the Cotton Tree with derogatory placards hung on them was a case in point. Even the issue of granting of stiff bail has also been of immense concern by many suspects that come before you. Please do something about this.

2. Selective Justice

The next issue is for you to ensure that the Commission avoids selective justice in the carrying out of its investigative process and use of prosecutorial discretion.

There's abundant evidence to show that selective justice remains a big challenge in the operations of the ACC. The case involving the Chief Minister, Parliament, controversy surrounding the procurement of COVID -19 SUV's, as well as the rice saga involving the former Minister of Basic Education, Mr Timbo and other government functionaries are good examples to cite.

The entire nation is still in a state of utter bewilderment as to why the ACC, after having charged to Court Mr Timbo based on the strength of the evidence, decided to unilaterally withdraw the public interest matter in court and refused to prefer fresh indictments even after a change of Attorney General and Minister of Justice.

Also, why was the ACC so fast to vindicate the Corruption allegations surrounding the Chief Minister without any attempt to either take a statement from him or from the whistleblower or from the FIU or even subpoena the telephone records of the Chief Minister from his communication company at the very least? This certainly was also a missed opportunity and clearly presents a case of selective justice. We are even yet to hear conclusive reports from the ACC with respect to recent allegations of corruption indicting the Parliament of Sierra Leone.

Mr Commissioner, kindly understand that, at any time the ACC fails to show robustness and impartiality in its handling of corrupt allegations bordering on public servants particularly serving in the current government, it makes it extremely difficult to avoid negative suspicions of selective justice or even get full cooperation from the public and/or opposition party members regarding subsequent ACC investigations. Kindly watch this out too!

3. The use of Bail as a punishment of suspects undergoing investigations at the ACC

Furthermore, you should also ensure that the ACC does not use bail as a punishment on suspects. While we acknowledge that the Commission do have powers on setting bail conditions, it is important to note that the ACC is not a judicial body. It is merely an investigative and prosecutorial agency. It must therefore not be seen to be persecuting suspects but rather to prosecuting them. Bail conditions, therefore, should not be set by the ACC in ways that keeps the suspect behind bars

even before he/she is being charged to court. Let the discretion to grant or not grant bail be the business of the court. Speed of the ACC therefore, in charging suspects to court is desirable.

If suspects come to the Commission with an imminent fear that their bail will be seized or that bail conditions will be set in ways that will keep them behind bars, then something is fundamentally wrong with the Commission's approach. It is possible that a human rights-based approach is lacking in its operations. Please watch it Mr Commissioner!

The purpose of bail is largely to secure the attendance of the suspect and his/her full cooperation to the investigative process or proceedings. Period! And there are many ways the ACC can ensure this without having to lock suspects behind bars.

4. Matters referred to the ACC by the Commissions of Inquiry Report and the White Paper

Another fundamental issue that we would also want to touch on concerns the matters that have been referred to you by the Commission of Inquiry and the White Paper reports for further investigations.

While it is still baffling as to why the COI's refused to conclusively investigate such matters that were within their competence and jurisdiction, it is however vital to pinpoint that adverse findings of the COI's can be appealed against in the Court of Appeal as enshrined in section 149 of the 1991 constitution.

Remember also that even the decision to refer such cases to the ACC for further investigation could be a subject of appeal by persons of interests. Furthermore, there are persons of interests that are currently appealing against the very jurisdiction and legality of the COI's.

It may therefore be prudent on the part of ACC to exercise a little patience and see perhaps what the outcome of these appeals might be in order to determine the next step(s). It is possible that the appeals might go in favor of the person(s) of interest or otherwise. For the ACC not to be caught up in a limbo, it may be wise to maintain a pause and allow the appeals to be heard and concluded before taking fresh steps. After all, that is what is expected of an integrity institution like the ACC.

You must ensure that the Commission acts honorably at all times and avoid the trap of committing double jeopardy on suspects. As for fresh cases not part of the COI, it is ok for the Commission to proceed with investigations.

5. The indiscreet use of Social Media by the ACC Commissioner

Last but not the least, Mr. Commissioner, we admonish you to be a little discreet with the use of social media. No doubt, social media has its positive sides but it also can be a source of distraction when used without discretion. Without prejudice to your tweets and facebook posts on your stance and actions against corrupt suspects, we urge you to show some restraints and allow the established

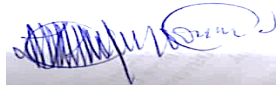
media platforms and communication channels within the Commission to be doing the talking and public awareness raising.

In a polarized society like Sierra Leone, such frequent posts on social media by you may be misconstrued and come back to inadvertently undermine the work of the Commission. Please watch it. Be the last to talk.

In conclusion, Mr. Commissioner and former President, it is a fact that some of what we have stated in this opinion piece might appear offensive, but please take your time to ponder on them and do the needful. We mean well. Our love for the nation, the ACC and the Office of the former President has been the sole motivation. Our consciences are clear.

We wish you all the best in your endeavors. Blessings!

Signed



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Thomas Moore Conteh
Executive Director
Citizens Advocacy Network

Signed



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Legal Link