

GHANA'S JUDGMENT DEBT AND FINANCIAL GOVERNANCE PROBLEMS
RECOMMENDED PRACTICAL SOLUTIONS
(THE AIKINS PLAN)

BY



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INTRODUCTION

The recent revelation that the government of Ghana has paid a total of GHC 642 million in judgment debts to various individuals and institutions has not only tainted the country's public officials, past and present, but has also alarmed the good people of Ghana about the judicious utilization of state resources by those entrusted with the power to govern. While virtually all governments of constitutional democracies do pay some form of judgment debts, Ghana's payment of these huge sums for avoidable mistakes has led to reservations about good governance, public accountability and public officials' sensitivity to the plight of Ghanaians given the many developmental challenges of the nation. Given this situation, many have raised concerns as to:

- The causes of these judgment debts and who the responsible parties are;
- The extent to which the applicable laws of the nation were followed in discharging official responsibilities;
- The circumstances under which these debts were paid, and whether the payments are in the best interest of the nation;
- Whether the nation has a debt management policy and procedural guidelines for handling judgment debts; and if so how they are enforced;
- The kinds of public financial management controls in place to minimize losses to the state;
- Whether the nation's courts are adequately equipped and resourced to verify evidential matter submitted in claims resulting in judgment debt; and
- How the nation addresses this problem to minimize judgment debts going forward.

Several individuals and institutions have called for a non-partisan national commission of inquiry to unravel the problem of judgment debts, identify governance failures and recommend appropriate legal and policy corrective actions. Indeed, a commission of inquiry is appropriate and will serve the nation well. However, given the potential politicization of the commission's findings, the institutional inertia and political paralysis characteristic of an election year, there is the need for timely and practical measures to stop the financial bleeding of our motherland pending the report of any commission that may be set up. Based on my experience in government auditing, public administration and financial management, I believe these judgment debts and financial governance problems are the apparent results of inherent weaknesses in institutional and administrative controls, as well as the failure of some public officials, past and present, to discharge their duties in the best interest of the nation. Therefore, I offer in this document some detailed practical solutions aimed at addressing many of the aforementioned concerns, for consideration by the parliament of Ghana and the ruling government. Considering the multi-faceted nature of judgment debt problems, the recommended solutions call for practical steps to, among others, broaden the role of the Audit Service, improve contract execution and administration, restrict contract abrogation, reform the procurement process, enforce compliance with applicable laws and regulations, and implement a national debt management policy. The detailed recommendations can be implemented to strengthen the nation's financial governance and enforce the controls that may be already in place.

THE SOLUTIONS

- Resource and Expand The Role of Ghana Audit Service:
 - Currently, the Ghana Audit Service has offices in most MDAs in Accra but additional resources should be provided to help broaden the service's reviews;
 - The nation will benefit tremendously if the Audit Service includes non-historical records in its reviews;
 - To minimize financial malfeasance and further drain on the nation's coffers, all MDA contracts should be subject to Audit Service review for evidence of legal compliance before they are executed. The audit reviews should verify whether expert legal opinion supporting the contracts exists;
 - All judgment debt payment requests should be subject to Audit Service review for evidence of proper approval and supporting documentation, including prior existence of legally binding contracts, before the payments are made;
 - All purported contract abrogation should be subject to Audit Service review for evidence of documented expert legal opinion supporting the abrogation before it is effected;
 - The Audit Service should perform annual reviews of the nation's debt management practices with special focus on judgment debt;
 - The above steps should help uncover and rectify control deficiencies prior to loss of funds rather than after the fact;
 - One assumes the Audit Service has the mandate under Section 13(e) of the Audit Service Act of 2000, (Act 584) for the above stated reviews but parliament should provide such mandate if it does not already exist;
 - Parliament should consider, in consultation with the office of the Ghana Auditor General, restructuring the Ghana Audit Service so that each government ministry has its own fully staffed resident Audit Service under the management of a ministerial auditor general who reports directly to the nation's Auditor General;
 - Such a structure can lead to more effective and timely reviews as well as recommendations for corrective actions;
 - The resident ministerial auditor general should have full delegated powers of the nation's Auditor General.

- The Ministry of Finance and Economic Planning Should also Serve Financial Gatekeeper:
 - All payment requests pertaining to judgment debts sent to the ministry of finance should be accompanied by supporting documents, including the original copy of the abrogated contract forming the basis of the judgment, and a summary of the court's ruling in favor of such payments;
 - An appropriate authority at the ministry of finance should review the payment requests for supporting documentation and Audit Service approval before effecting payments;

- The ministry of finance should not honor any judgment debt payment requests without supporting documents and Audit Service approval. In such an instance, the attorney general should be called upon to produce the supporting documents;
 - In the event where the supporting documents are not available, the court which rendered the judgment should be contacted, prior to honoring the payment request, to provide for verification the evidential matter upon which the judgment was based;
 - Payment requests stemming from arbitrations and out of court settlements should be subject to the similar level of scrutiny as above.
- Only Professional Lawyers with Technical Competence Should Handle Legal Matters:
 - Ensure that only experienced, technically competent and knowledgeable professionals in the Attorney General's office review and provide expert opinion as to the legality of all government contracts prior to execution or abrogation;
 - In the absence of experienced, technically competent and knowledgeable government lawyers on the subject matter, the government should seek the services of independent legal consultants;
 - Ensure the technical advice of the expert professional lawyers is adopted and not subjected to political interference;
 - Cases before courts should be defended or tried by only lawyers with experience, technical competence and proven record of success on the subject matter;
 - Enforce continual professional education for all professional lawyers in the attorney general's office. Provide adequate resources for the discharge of their duties;
 - Take prudent steps to address judgment debt cases pending against the state based on well researched, informed and analyzed data and evidential matter in order to defend and protect the nation from unwarranted losses;
 - Perform cost-benefit analysis of proposed out-of-court settlements to determine whether they are in the best interest of the nation.
- Implement Procedures to Make Contract Abrogation a Rare Occurrence:
 - Put in place measures to prevent abrogation of any legally binding government contracts unless there is clear evidence the other party (individual or institution) has failed to fulfill his or her part of contractual obligations;
 - The determination of fulfillment of contractual obligations should be solely the responsibility of professional lawyers with technical competence in the Attorney General's department or appropriate external legal consultants;
 - Contracts entered into by prior governments should only be reviewed in the supreme interest of the nation and under full transparency;
 - Ensure no government contract is abrogated unless it is determined to be in the supreme interest of the state;
 - In the event where the abrogation of a legally binding contract is determined to be in the supreme interest of the nation, the cabinet should, upon consultation with

parliament, order an impact assessment to determine the potential cost and benefit to the state prior to final decision regarding abrogation;

- The abrogation of legally binding contracts above certain amounts should be undertaken only at the highest level of government;
 - Abrogation of Contracts of GHC 250,000 and above should be discussed at the cabinet level and approved only if there is documented supporting evidence of legal expert opinion regarding non-liability of the state;
 - Abrogation of all contracts of GHC 1,000,000 and above should be subject to approval at the presidency with parliamentary consent and documented supporting evidence of legal expert opinion regarding non-liability of the state.
- Review and Enforce Procurement Laws and Properly Administer Contracts to Avoid Liability:
 - Establish a centralized contract administration unit to coordinate the execution and management of government contracts in full compliance with applicable laws;
 - In the light of the judgment debt problems, review existing procurement laws for adequacy and completeness and enact amendments where necessary;
 - Ensure government procurement contracts fully comply with the procurement laws of the nation;
 - Enforce procurement laws by criminalizing non-compliance and prosecuting culprits;
 - Verify all government contracts to ensure they contain clearly written provisions regarding the rights and responsibilities of the parties, the conditions for arbitration and termination as well as the consequences for unlawful termination.
 - Reform Government Procurement Processes and Implement Best Practices:
 - Develop and implement formally documented national procurement policy and procedural guidelines;
 - Enforce compliance with procurement policy and procedural guidelines;
 - Improve the tendering process by making it more competitive;
 - Avoid using sole sourcing in major national, MDA and local government procurement, to minimize corruption and potential lawsuits;
 - Introduce consistency in the evaluation and selection of tenders for contracts;
 - Use reliable and objective data in all tender evaluations;
 - Communicate the criteria for final decision to all vendors who submitted tenders;
 - Document all procurement contract decisions to avoid protests and litigation;
 - Ensure consistency and transparency in all government procurement processes;
 - Train the responsible government personnel on the methodology and best practices of procurement.
 - Create an Environment of Politics-Administration Dichotomy in the MDAs:
 - Avoid using political appointees in the ministries, departments and agencies (MDAs) to provide professional public administration services that require technical expertise;

- MDAs should be staffed with professionals capable of rendering advice to political appointees such as the attorney general based on technical competence, experience, institutional knowledge and loyalty to the state;
 - Political appointees should act on behalf of the state based on the technical advice from public administration professionals in the MDAs;
 - Create an environment where public administrators in the MDAs discharge their professional duties in the supreme interest of the nation without undue political bias or pressure;
 - To ensure institutional knowledge, technical expertise and continuity of governance, avoid dismissal of professional administrators in the event of change of government;
 - Provide periodic seminars to both political appointees and professional administrators on the value of politics-administration dichotomy.
- Implement Judgment Debt Handling Procedures as Part of Debt Management Policy:
 - Formulate and implement a comprehensive debt management policy and procedural guidelines;
 - Implement a formally documented judgment debt handling procedures as part of overall debt management policy;
 - The documented policy should provide guidance for the performance of task and serve as a source of reference in case of staffing changes as well as change of government;
 - As part of its review, the Audit Service should determine compliance with the implemented policy and procedural guidelines;
 - Provide appropriate training and resources for all relevant government employees to ensure efficient and cost-effective judgment debt processing;
 - Formalize accountability procedures and hold people accountable for non-compliance with legal, policy and procedural requirements.
- Review, Improve and Enforce Financial Management Laws and Policy:
 - In the light of judgment debt developments, review the Financial Administration Act of 2003 (FAA) and the Financial Administration Regulations of 2004 and rectify any weaknesses and loophole through amendments;
 - Perform government-wide reviews of existing financial management practices to determine compliance with the FAA, the applicable regulations, and the Accounting Manual published in 2009. Sanctions should be implemented for non-compliance;
 - Ensure public account expenditure figures are consistent with information from the MDAs;
 - Enforce transparency in the presentation of the public accounts (consolidated fund) financial statements to help disclose information such as origins of excess funds for MDA discretionary expenditure above budgetary estimates;
 - Implement and enforce monthly budget to actual comparisons of all government expenditures (including MDAs and local governments), and investigate any unreasonable variances for corrective action.

- Resource The Nation's Courts:
 - Provide the nation's courts with adequate resources, manpower and equipment to facilitate their reviews and verification of submitted documents in support of claims regarding state liability and, indeed, reviews made in all legal proceedings;
 - Based on the evidence in the public domain, it appears inadequate verification of supporting documentation was made in some of the judgments rendered. A case in point is where the directive was given from the court that one third of a plaintiff's claim be made, but it later appeared that the claim was fraudulent;
 - The resourcing should be done in coordination with the judiciary to determine their needs.

- Provide Orientation on Ethics of Governance to Government Officials:
 - All new government officials, including members of parliament and the cabinet, should be required to undergo orientation on Ethics of Governance and Public Service upon assumption of office;
 - This orientation should be provided by the Ghana Institute of Management and Public Administration and should be followed by annual refresher seminars;
 - Contents of the orientation and seminars should focus on the importance of public ethics, continuity of governance, respect for individual rights, prevention of abuse of power, the limits of public authority, civility in governance and other pertinent topics;
 - Hopefully, this will help limit problems pertaining to wrongful dismissal of government employees, unlawful demolition of private properties, abuse of power and contractual issues that result in judgment and settlement debts;
 - Additionally, the security agencies should be made to undergo annual orientation under the auspices of appropriate experts.

- Implement an Integrated Government-Wide Information System:
 - Currently government has the GeGov project underway to modernize the functions of the Ghana Revenue Authority and Registrar General's Department, and to integrate the components of the system with the new GIFMIS Financial Management Application;
 - An expansion of the GeGov project to include other key functional areas will help speed up Ghana's development;
 - A government-wide integrated system can should be implemented in modules based on effective requirement analysis to integrate functional areas of government for operational efficiency;
 - The integration should include procurement, contract management, tax and revenue management, budget development, financial management, debt management, accounting, payroll, and human resources;
 - Such a system should have the capability for inter-ministerial and inter-departmental data sharing for effective and efficient management of all governmental institutions;

- Properly designed, the system can help provide the presidency with comprehensive views of MDA operations for strategic national governance.
- Investigate and Take Legal Action If Needed:
 - Investigate to ascertain whether some individuals have willfully and knowingly caused financial loss to the state;
 - Such investigation should be fair, objective and non-political in the best interest of public accountability
 - If it is determined that some persons have willfully and knowingly caused financial losses to the state, take appropriate legal action to prosecute and have the culprits convicted to serve as a deterrent.

CONCLUSION

Many of the solutions outlined in this document can be implemented fairly quickly without legislation in those instances where the recommended controls do not exist, while a few may require parliamentary action. Using the above solutions as a guide, both the ruling government and the major opposition party should work together to implement reforms that will safeguard the assets of the nation and improve the livelihood of the citizens of our motherland.

The truth of the matter is that neither the New Patriotic Party (NPP) nor the National Democratic Congress (NDC), the two political parties that have ruled Ghana since the inception of the 4th republican constitution, can be exonerated from the judgment debt culpability for two reasons: 1) most of the debts being paid by the current NDC administration were either settled or pending before court when the current government took office, which means they were incurred by previous administrations, including the NPP administration, 2) the office of the attorney general of the current NDC administration has, in some instances, exercised poor judgment in handling the payment of these debts, rather than taking effective steps to defend the interest of the state.

For a country that has many developmental challenges reflected in inadequate infrastructure, poor water supply, unreliable energy system, a failing school system and inadequate healthcare delivery among many others, any action that is perceived as insensitivity on the part of some public officials to the plight of the good people of Ghana, many of who live on less than GHC 5 a day, is unacceptable. Being in government is neither about undue self-interest nor abuse of power but rather, about providing quality and dedicated the good people of Ghana. For this reason, I urge the public officials in both the opposition and the ruling parties, and indeed all political parties, to always put the interest of the nation first. The good people of Ghana, both home and abroad, are appreciative of your service and urge you to make mother Ghana the best and the most respectable nation on the continent.

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