

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA- AD 2020



SUIT NO.....

51/1/2021

**WRIT TO INVOKE ORIGINAL JURISDICTION
(ARTICLE 2(1) AND 130 OF THE CONSTITUTION (1992) &
RULE 45 OF THE SUPREME COURT RULES, 1996
(CI 16))**

BETWEEN

1. **GHANA CENTER FOR DEMOCRATIC DEVELOPMENT**
No 95 Nortei Ababio Loop
North Airport Residential Area, Accra
2. **GHANA INTEGRITY INITIATIVE**
No 21 Abelenkpe Road
Accra
3. **CITIZEN GHANA MOVEMENT**
No. 5 Kinshasa Avenue
East Legon, Accra
4. **AFRICA CENTER FOR ENERGY POLICY**
House. No. 119, Avenue D
North Legon, Accra
5. **PARLIAMENTARY NETWORK AFRICA**
GE185-7537, Bohye Road
New Ashongman Estate, Accra

6. **PENPLUSBYTES**
Number 1 Ostwe Close
Ako Adjei-Osu, Accra
7. **MEDIA FOUNDATION FOR WEST AFRICA**
32 Otele Avenue
East Legon, Accra
8. **SEND GHANA**
A 28 Regimanuel Estate.
Nungua Barrier-Sakumono, Accra
9. **ONE GHANA MOVEMENT**
JB Plaza House No 1 1st Oyarifa Link
Accra

AND

ATTORNEY-GENERAL
Office of the Attorney-General & Ministry of Justice
Accra

IN THE NAME OF THE REBUBLIC OF GHANA you are hereby commanded that within FOURTEEN (14) days after the service on you of the statement of the plaintiff's case, inclusive of the day of service, that you are to file or cause to be filed for you a statement of the defendant's case in an action at the suit of:

BETWEEN

GHANA CENTER FOR DEMOCRATIC DEVELOPMENT

No 95 Nortei Ababio Loop
North Airport Residential Area, Accra

2. **GHANA INTEGRITY INITIATIVE**
No 21 Abelenkpe Road
Accra
3. **CITIZEN GHANA MOVEMENT**
No. 5 Kinshasa Avenue
East Legon, Accra
4. **AFRICA CENTER FOR ENERGY POLICY**
House. No. 119, Avenue D
North Legon, Accra
5. **PARLIAMENTARY NETWORK AFRICA**
GE185-7537, Bohye Road
New Ashongman Estate, Accra
6. **PENPLUSBYTES**
Number 1 Ostwe Close
Ako Adjei-Osu, Accra
7. **MEDIA FOUNDATION FOR WEST AFRICA**
32 Otele Avenue
East Legon, Accra
8. **SEND GHANA**
A 28 Regimanuel Estate.
Nungua Barrier-Sakumono, Accra
9. **ONE GHANA MOVEMENT**
JB Plaza House No 1 1st Oyarifa Link
Accra

PLAINTIFFS

AND

ATTORNEY-GENERAL

Office of the Attorney-General & Ministry of Justice
Accra

THE NATURE OF THE RELIEF SOUGHT IS AS FOLLOWS:

- a. A declaration that, on a true and proper interpretation of Articles 70(1)(b) and 71(1), 187(3), (5), (7)(a), (8), (12), and (13), and Article 297(a) of the 1992 Constitution, the directives issued by or on behalf of the President on or between 29th June, 2020 and 3rd July, 2020, instructing the Auditor-General to proceed on “accumulated” leave with effect from 1st July, 2020 for a prescribed number of days determined by the President, are void and of no legal effect, because the said directives are inconsistent with the letter and spirit of the aforementioned provisions of the Constitution as they improperly interfere with the independence and functions of the Auditor-General.
- b. A declaration that, the purported appointment or designation by or on behalf of the President on 30th June, 2020, of one Mr. Johnson Akuamoah Asiedu as “Acting Auditor-General” is void and of no legal effect, as the said appointment stands contrary to Articles 70(1) (b), 187(3), and (7) of the Constitution as well as the Second Schedule to the Constitution.
- c. A declaration that, on a true and proper interpretation of Articles 70(1)(b) and 187(3) of the Constitution, the power to appoint, authorise or designate a person or persons to exercise a power or perform a function constitutionally assigned to the Auditor-General is vested solely in the Auditor-General; therefore, the purported appointment of a person as ‘Acting Auditor-General,’ and the subsequent performance of the functions of the Auditor-General by such person, without authorization from the Auditor-General violate the letter

and spirit of the aforementioned provisions of the Constitution and are void and without any legal effect whatsoever.

- d. A declaration that, on a true and proper interpretation of Articles, 71(1), 187(12), and 297(a) of the Constitution, the leave entitlement of the Auditor-General is, like his salary, a right associated with his office as an independent constitutional officeholder and does not constitute or give rise to an obligation which the Auditor-General is duty-bound to assume or else be compelled so to do at the instance and insistence of the President.
- e. An order of perpetual injunction to restrain the President or his agents from issuing or seeking to enforce on the Auditor-General any directive that has the purpose or effect of commanding the Auditor-General to take his leave or to surrender any of his powers or functions to another person.
- f. An order of perpetual injunction to restrain the President or his agents from designating or appointing any person as "Acting Auditor-General" to exercise a constitutional power or perform a constitutional function of the Auditor-General without authorisation from the sole duly-appointed Auditor-General; and
- g. Any other consequential orders that this Honourable Court may deem appropriate under the circumstances.

**THE CAPACITIES IN WHICH THE PLAINTIFFS BRING THE ACTION
ARE AS FOLLOWS**

1. The plaintiffs have standing pursuant to article 2(1) and 130 of the Constitution (1992).
2. The plaintiffs are civil society organisations (CSOs) incorporated under the laws of Ghana, and bring this action on their own behalf and on behalf of the people of Ghana generally.
3. The plaintiffs are also interested in upholding respect for and compliance with the Constitution (1992) and the rule of law and in ensuring that public officials do not infringe the letter and spirit of the Constitution (1992).

The address for service of the plaintiffs is as follows:

MARTIN KPEBU, ESQ
GT LEGAL (PRACTITIONERS)
1ST FLOOR, WORLD TRADE CENTRE
ACCRA

The names and addresses for service of the persons affected by this writ is as follows:

ATTORNEY GENERAL
ATTORNEY GENERAL'S DEPARTMENT
MINISTRIES, ACCRA

DATED IN ACCRA THIS 23RD DAY OF OCTOBER, 2020


Martin L. Kpebu Lawyer
G.T Legal
1st Floor World Trade Centre
Accra
SOLICITOR FOR PLAINTIFFS
SOLICITOR'S LICENSE NO. eGAR01332/20

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON:

ATTORNEY GENERAL,
ATTORNEY GENERAL'S DEPARTMENT
MINISTRIES, ACCRA

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA- AD 2020**

SUIT NO.....

BETWEEN

- 1. GHANA CENTER FOR DEMOCRATIC DEVELOPMENT**
No 95 Nortei Ababio Loop
North Airport Residential Area, Accra
- 2. GHANA INTEGRITY INITIATIVE**
No 21 Abelenkpe Road
Accra
- 3. CITIZEN GHANA MOVEMENT**
No. 5 Kinshasa Avenue
East Legon, Accra
- 4. AFRICA CENTER FOR ENERGY POLICY**
House. No. 119, Avenue D
North Legon, Accra
- 5. PARLIAMENTARY NETWORK AFRICA**
GE185-7537, Bohye Road
New Ashongman Estate, Accra
- 6. PENPLUSBYTES**
Number 1 Ostwe Close
Ako Adjei-Osu, Accra
- 7. MEDIA FOUNDATION FOR WEST AFRICA**
32 Otele Avenue
East Legon, Accra
- 8. SEND GHANA**
A 28 Regimanuel Estate.

9. Nungua Barrier-Sakumono, Accra
ONE GHANA MOVEMENT
JB Plaza House No 1 1st Oyarifa Link
Accra

AND

ATTORNEY-GENERAL
Office of the Attorney-General & Ministry of Justice
Accra

STATEMENT OF PLAINTIFFS' CASE

TABLE OF CONTENTS

| | |
|---|----|
| (i) OVERVIEW OF PLAINTIFFS' CASE..... | 4 |
| (ii) PARTIES, CAPACITY AND JURISDICTION..... | 5 |
| (iii) STATEMENT OF RELIEFS..... | 7 |
| (iv) FACTS OF THE CASE..... | 8 |
| (v) QUESTIONS PRESENTED | 13 |
| (vi) LEGAL ARGUMENTS AND ANALYSIS..... | 14 |
| - INDEPENDENT CONSTITUTIONAL OFFICES, SEPARATION OF POWERS & CHECKS AND BALANCES | 14 |
| - CONSTITUTIONAL HISTORY OF THE AUDITOR- GENERAL OF GHANA..... | 19 |
| - CAN THE PRESIDENT DIRECT THE AUDITOR-GENERAL TO PROCEED ON INVOLUNTARY LEAVE WITHOUT OFFENDING THE INDEPENDENCE OF THE OFFICE? | 23 |
| - CAN THE PRESIDENT APPOINT AN ACTING AUDITOR- GENERAL WHILE THE AUDITOR-GENERAL IS IN OFFICE? | 31 |

| | |
|--|----|
| (vii) ACCOUNTABILITY OF THE AUDITOR-GENERAL..... | 37 |
| (viii) INDEX OF AUTHORITIES | 37 |

1. OVERVIEW OF PLAINTIFFS' CASE

- 1.1. Plaintiffs' case is that certain directives issued by the President ordering the Auditor-General to proceed on "accumulated leave", the ensuing appointment or designation of an "Acting Auditor-General" by the President following the Auditor-General's forced leave, and other related and consequential acts, are in breach of the 1992 Constitution. These constitutional breaches, if not repaired, will undermine constitutionalism, defeat anti-corruption efforts, and subvert irreparably the independence of the Auditor-General. Beyond that, the President's actions, if allowed to stand, will have a chilling and emasculating effect on all holders of Independent Constitutional Office ("ICO"), especially those tasked with anti-corruption, accountability, and rule of law-related responsibilities.
- 1.2. Concerned about the effect and implications of the President's actions on the independence of the Office of the Auditor-General and other Independent Constitutional Offices (ICOs), Plaintiffs, comprising nine (9) Civil Society Organisations ("CSOs"), approach this Honourable Court to seek interpretation and enforcement of the applicable provisions and principles of the Constitution. Plaintiffs implore your Lordships, respectfully, to intervene to remedy the damage the President's unfortunate actions have occasioned, and, with that, give positive effect to the nation's efforts to strengthen the institutions of accountability.
- 1.3. Plaintiffs contend that the letter and spirit of the constitutional provisions relating to the Office of the Auditor-General are clear and unequivocal about the independence of the Auditor-General. The history of the Office of the Auditor-General equally reveals that the Framers of each of our antecedent Constitutions, beginning with the 1969 Constitution, and of the present

Constitution intended to secure firmly the independence of the Auditor-General. To achieve that goal, the Framers were careful not to subject the Auditor-General, directly or indirectly, to the control of an external authority, except to the regular jurisdiction of the courts and to Parliament in respect of his reporting obligations and an audit of his office. Plaintiffs pray your Lordships to reject any interpretation or understanding of the Constitution that might have the purpose or effect of detracting from the express intention of the Framers of our Constitution.

- 1.4. Plaintiffs are mindful that independence of an office or officer, as provided under our Constitution, does not mean that such office or officer is above the law or not subject to checks or accountability. However, the fact that the Auditor-General is subject to appropriate checks and accountability does not place the Auditor-General under the administrative supervision or control of the President or any of the President's agents. Our Constitution and related legal architecture provide enough and appropriate accountability mechanisms and avenues to check a wayward Auditor-General. Enforcement of these accountability safeguards, using the appropriate lawful processes, would ensure that the acts and omissions of the Auditor-General, as of any other independent constitutional officeholder, stay within the bounds of the law. Plaintiffs are assured that the jurisprudence of this Court sits well with the reliefs we seek.

2. PARTIES, CAPACITY AND JURISDICTION

PLAINTIFFS

- 2.1. Plaintiffs in this case are nine (9) independent and non-partisan civil society organisations (“CSOs”), each incorporated under the laws of Ghana as a company limited by guarantee.
- 2.2. Plaintiffs are dedicated to promoting and supporting efforts to promote the rule of law, transparency and accountability in the conduct of public affairs and management of public resources in Ghana.
- 2.3. In order to realize their objectives, Plaintiffs have at various times embarked on programmes, projects, and activities, including, in some cases, through recourse to the courts, to promote and defend constitutionalism and to support and strengthen public institutions and public officers tasked with managing or safeguarding public resources.
- 2.4. Plaintiffs’ only interest in this case is to seek interpretation and enforcement of certain relevant provisions of the Fourth Republican Constitution of Ghana, 1992 (hereinafter the ‘Constitution’ or ‘1992 Constitution’). Plaintiffs consider this a sacred civic duty the neglect of which will, in this instance, amount to acquiescing to certain actions that have the effect of undermining a critical pillar upon which our constitutional democracy stands. These acts, if countenanced, will erode the gains and progress Ghana has made in its efforts, since 1993, to establish a system of government based on the rule of law, checks and balances, and the supremacy of the Constitution. In pursuing this course of action, Plaintiffs are indeed answering the call to duty issued by this Honourable Court to civil society organizations in *Amidu (No. 1) v. Attorney-*

General, Waterville Holdings (BVI) Ltd & Woyome [2013-2014] 1 SCGLR 112 at 116.

DEFENDANT

- 2.5 The Attorney-General is, by the terms of **Article 88** of the Constitution, the principal legal adviser to the Government of Ghana and a compulsory defendant in any civil proceedings against the State, including in a suit challenging an action or actions of the President of the Republic.

CAPACITY AND JURISDICTION

- 2.6 Plaintiffs derive capacity to bring this action from **Article 2(1)** of the Constitution, as interpreted by this Honourable Court in **New Patriotic Party v Attorney-General** [1997-98] 1 GLR 378 (CIBA Case) and numerous other cases.
- 2.7 The jurisdiction of this Court to hear and determine this matter derives from **Articles 2(1) and 130** of the Constitution. As this Honourable Court has held in **Adjei-Ampofo v Accra Metropolitan Assembly & Attorney-General (No 1)** [2007-2008] 1 SCGLR 610 and numerous other cases, public interest actions not involving private or personal rights may be properly litigated before this Court in the first instance, pursuant to under Articles 2(1) and 130 of the Constitution. Therefore, Plaintiffs, being corporate citizens of Ghana, invoke the jurisdiction of this Honourable Court under Article 2(1) and 130 of the Constitution to seek interpretation and enforcement of the provision(s) of the Constitution implicated by the facts of this case.

3. **STATEMENT OF RELIEFS**

Your Lordships, Plaintiffs in this suit seek the following reliefs:

- 3.1 A declaration that, on a true and proper interpretation of Articles 70(1)(b) and 71(1), 187(3), (5), (7)(a), (8), (12), and (13), and Article 297(a) of the 1992 Constitution, the directives issued by or on behalf of the President on or between 29th June, 2020 and 3rd July, 2020, instructing the Auditor-General to proceed on "accumulated" leave with effect from 1st July, 2020 for a prescribed number of days determined by the President, are void and of no legal effect, because the said directives are inconsistent with the letter and spirit of the aforementioned provisions of the Constitution as they improperly interfere with the independence and functions of the Auditor-General.
- 3.2 A declaration that, the purported appointment or designation by or on behalf of the President on 30th June, 2020, of one Mr. Johnson Akuamoah Asiedu as "Acting Auditor-General" is void and of no legal effect, as the said appointment stands contrary to Articles 70(1) (b), 187(3), and (7) of the Constitution as well as the Second Schedule to the Constitution.
- 3.3 A declaration that, on a true and proper interpretation of Articles 70(1)(b) and 187(3) of the Constitution, the power to appoint, authorise or designate a person or persons to exercise a power or perform a function constitutionally assigned to the Auditor-General is vested solely in the Auditor-General; therefore, the purported appointment of a person as 'Acting Auditor-General,' and the subsequent performance of the functions of the Auditor-General by such person, without authorization from the Auditor-General violate the letter

and spirit of the aforementioned provisions of the Constitution and are void and without any legal effect whatsoever.

- 3.5 A declaration that, on a true and proper interpretation of Articles, 71(1), 187(12), and 297(a) of the Constitution, the leave entitlement of the Auditor-General is, like his salary, a right associated with his office as an independent constitutional officeholder and does not constitute or give rise to an obligation which the Auditor-General is duty-bound to assume or else be compelled so to do at the instance and insistence of the President.
- 3.7 An order of perpetual injunction to restrain the President or his agents from issuing or seeking to enforce on the Auditor-General any directive that has the purpose or effect of commanding the Auditor-General to take his leave or to surrender any of his powers or functions to another person.
- 3.8. An order of perpetual injunction to restrain the President or his agents from designating or appointing any person as "Acting Auditor-General" to exercise a constitutional power or perform a constitutional function of the Auditor-General without authorisation from the sole duly-appointed Auditor-General; and
- 3.9 Any other consequential orders that this Honourable Court may deem appropriate under the circumstances.

4. FACTS OF THE CASE

Plaintiffs will focus on the aspects of the facts which relate to the reliefs sought in the instant suit as there are other facts which do not relate to this case.

- 4.1 On December 30, 2016, Mr. Daniel Domelevo took and subscribed to the Oath of the Auditor-General set out in the Second Schedule to the Constitution, thereby completing the process of his appointment as Auditor-General of Ghana.
- 4.2 Since his appointment, Auditor-General Domelevo (hereinafter “the Auditor-General”) has discharged the responsibilities of his office with exceptional dedication. The powers of Surcharge and Disallowance, which are attached to his office but had never been exercised, have been activated, and applied consistently and systematically under his tenure, thanks to the decision of this Honourable Court in *Occupy Ghana v Attorney-General* [unreported; Writ No J1/19/2016; 14/06/2017]. Through his diligence and commitment to protecting the public purse, the Auditor-General has successfully recovered for the State tens of millions of Cedis in unauthorised spending or misappropriated funds. His exemplary work has not gone unnoticed. The World Bank, in its recently published Global Report 2020 titled ‘*Enhancing Government Effectiveness and Transparency: The Fight Against Corruption*’ (2020) (pp. 308-310) singled out Ghana’s Auditor-General for praise for the positive impact of his work on public accountability efforts in Ghana.
- 4.3 On 29th June, 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 1st July, 2020. A copy of the press release is annexed to the affidavit accompanying the Statement of Case, Affidavit in Verification as EXHIBIT AUD-GEN ‘A’.
- 4.4 The President, per the release, further directed the Auditor-General to hand over all matters relating to his office to one Mr. Johnson Akuamoah Asiedu,

an officer in the Audit Service, to act as Auditor-General until the return of the Auditor-General from his forced leave.

- 4.5 The release also indicated that the President's decision to instruct Auditor-General Domelevo to proceed on involuntary leave was based on his reading of Sections 20(1) and 31 of the Labour Act, 2003 (Act 651). The release however did not indicate or explain how the Labour Act or any other law empowered or authorised the President to direct the Auditor-General to proceed on leave.
- 4.6 The press release made reference to a supposed precedent in 2009 when then President Mills is said to have directed the then Auditor-General to proceed on 'accumulated leave'.
- 4.7 At the time the President issued his directive, Auditor-General Domelevo was in the process of finalizing his 2019 audit report for submission to Parliament in compliance with Article 187(5) of the Constitution. This report had already been delayed by the COVID-19 outbreak and the ensuing imposition of 'lockdown' restrictions by the Government of Ghana. In addition to the 2019 report, the Auditor-General was engaged in the discharge of other functions entrusted to him under Article 187(2) of the Constitution.
- 4.8 The Auditor-General responded to the President's directive on 3rd July, 2020. 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. In paragraphs 8, 9 and 10 of the Auditor-General's letter, 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”. The letter is annexed to the Affidavit in Verification as EXHIBIT AUD-GEN ‘B’.

4.9 In reaction to the Auditor-General’s letter, the Executive Secretary to the President wrote back on 3rd July, 2020 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 apparently covered leave days for the current year (2020). The letter is annexed to the Affidavit in Verification as EXHIBIT AUD-GEN ‘C’. This letter, just like EXHIBIT AUD-GEN ‘B’, received wide publicity in the media. Both letters have engaged the attention of the nation for several weeks.

4.10 In his 3rd July, 2020 letter, the Executive Secretary to the President stated that:

‘the power to appoint the Auditor-General is vested in the President and the appointment is done in accordance with Article 70 of the Constitution. Per Article 297(a) of the Constitution, that power to appoint includes the power to exercise disciplinary control over persons holding or acting in any such office. Thus, to the extent that you fail to comply with a basic term of your appointment such as taking an annual leave, the President has the power to exercise disciplinary control over you to ensure that you comply with the terms of your appointment. The exercise of that constitutional power vested in the President does not affect the independence of your office, which the Constitution so rightly guarantees.’

- 4.11 Without authorisation from the Auditor-General, Mr. Johnson Akuamoah Asiedu, who was referred to in the press release of 29th June, 2020, proceeded to perform the functions and exercise the powers of the Auditor-General. A letter he purportedly signed in his capacity as the 'Acting Auditor-General' on 2nd July, 2020 evidences this. For ease of reference, we have annexed the letter to the Affidavit in Verification as EXHIBIT AUD-GEN 'D'.
- 4.12 On 28th July, 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.
- 4.14 Concerned that these unprecedented developments threatened constitutionalism and anti-corruption efforts in Ghana, several Ghanaians, both abroad and at home, as well as a coalition of civil society organizations appealed to the President to rescind the directive and recall the Auditor-General. Some citizens also petitioned the President on the matter.
- 4.14 In response, the President, in a letter from his Office dated 13th July, 2020, stated that he was unable to grant the request to rescind his directive. Annexed to the Affidavit in Verification as EXHIBITS AUD-GEN 'E' and 'F' are copies of the petition and the President's response respectively.
- 4.15 The English-Speaking section of the African Organisation of Supreme Audit Institutions ('AFROSAI-E'), a subset of the International Organization of Supreme Audit Institutions (INTOSAI) also submitted a petition to the President urging him to revoke the directive issued to the Auditor-General and expressing concern about the implications of the President's actions for good governance and accountability in Ghana. The petition by AFROSAI-E was

followed by a statement to the same effect from INTOSAI. Annexed as EXHIBITS AUD-GEN 'G' and 'G1' to the Affidavit in Verification.

- 4.16 The petition from AFROSAI-E and the statement by INTOSAI further demonstrate that the facts that have given rise to the instant suit are of grave concern to many, both locally and internationally. This is not surprising, considering that Ghana is frequently lauded, among its peers in Africa and within the community of nations generally, for the steady and exemplary progress it has made in consolidating democracy and good governance. Incidentally, as the World Bank report referred to in paragraph 4.2 above observes, this Court's decision in *Occupy Ghana v Attorney-General*, to the effect that the Surcharge and Disallowance powers conferred on the Auditor-General are mandatory, has served as a template for other African countries that have passed legislation or regulations recently granting similar powers to their Supreme Audit Institution. These latest developments in Ghana concerning the Auditor-General have, therefore, come as a shock to many and represent a major setback in our nation's efforts to build a culture of constitutionalism.

5. QUESTIONS PRESENTED

Your Lordships, this case raises a number of issues for the consideration of the Court. Plaintiffs submit the following key questions that, we believe, help to frame and address the gravamen of Plaintiffs' case:

5.1 EXERCISE OF CONTROL OVER AUDITOR-GENERAL

5.1.1 Whether, other than as provided for in the removal provisions of Article 146 of the Constitution (1992), the President of the Republic of Ghana may exercise control or "discipline" directly or indirectly over the acts or omissions of the Auditor-General pursuant to article 297(a), despite the provisions of the Constitution-article 187 (7) guaranteeing the independence of the Auditor-General?

5.1.2 Whether the President may, as and when he deems fit, lawfully instruct or direct by fiat the Auditor-General to take the leave entitlement guaranteed to him as of right under the Constitution?

5.2 APPOINTMENT OF AN 'ACTING AUDITOR-GENERAL'

Whether under the Constitution, the President or his agents may lawfully appoint or designate any other person to act as Auditor-General or to exercise the powers and perform the functions of the Auditor-General without the express authorization of the Auditor-General while the position of Auditor-General has not been vacated?

6. **LEGAL ARGUMENTS AND ANALYSIS**

6.1 **Independent Constitutional Offices, Separation of Powers, and Checks and Balances in the 1992 Constitution**

As the Auditor-General is one of the Independent Offices established under the 1992 Constitution, Plaintiffs believe a general survey of the place of Independent Constitutional Offices (hereafter “ICOs”) within our constitutional history and architecture will provide necessary context and background to the legal arguments and analysis that support Plaintiffs’ case.

6.1.1 The Constitution of Ghana (1992) is structured and organized in accordance with the doctrine and principles of Separation of Powers and Checks and Balances. The Constitution establishes not only the traditional three Branches of Government (Legislature, Executive, and Judiciary), but also establishes or makes provision for the establishment of a number of special-purpose offices and institutions charged with specialized constitutional functions and mandates to be carried out and administered independently of external control or direction. Notable among these ICOs are the Electoral Commission (EC), established under **Article 43(1)** of the Constitution; the Commission for Human Rights and Administrative Justice (CHRAJ), established pursuant to **Article 216**; the National Media Commission (NMC), established pursuant to **Article 166(1)**; the National Commission on Civic Education (NCCE), established pursuant to **Article 231**; and the Auditor-General, established under **Article 187(1)**.

6.1.2 As underscored by this Court in **Amegatcher (No. 1) v. Attorney-General & Another** [2012] 1 SCGLR 679 @ 684-685 and **Amegatcher (No. 2) v. Attorney-General & Another** [2012] 2 SCGLR 933 @ 959-960, ICOs

constitute a critical component of the Constitution's system of Separation of Powers and Checks and Balances. The Court in **Amegatcher (No. 1)** also emphasized the supreme importance of the doctrine of Separation of Powers and Checks and Balances in understanding and interpreting the Constitution @ 686-689 thus:

"One of the fundamental principles of the 1992 Constitution is that of separation of powers between the Executive, the Legislature and the Judiciary. Although the separation is not absolute, it is one of the cornerstones of the Constitution. Another fundamental principle is that of checks and balances, according to which certain bodies created by the Constitution are given relative autonomy to enable them to maintain oversight responsibility over other organs of State. It follows that the Constitution should be so construed as to preserve and not undermine these fundamental principles." (Emphasis added)

6.1.3 Instructively, the oldest ICO in Ghana's constitutional history is the Office of the Auditor-General. Other than Justices of the Supreme Court, the only other public office that was afforded a measure of independence and protection against political control under the Constitution (1957) was the Auditor-General. Appointed by the Governor-General upon the advice of the Prime Minister, the Auditor-General at Independence enjoyed the standard protections and safeguards of independence granted Supreme Court Justices. His salary, which could not be varied to his disadvantage during his tenure, was treated as a charge on the Consolidated Fund (Article 61(4) of the Constitution (1957)), and he could not be removed from office except "by the Governor-General on an address of the [National] Assembly carried by not

less than two-thirds of the Members thereof" and only on "the ground of stated misbehavior or of infirmity of body or mind." (Article 61(1), Constitution (1957)). Roughly the same protections were afforded the Auditor-General under the Constitution (1960).

- 6.1.4 It is fair to say, however, that ICOs in Ghana gained constitutional prominence and visibility for the first time under the Constitution (1969). Informed by the experience and lessons of Executive excesses and abuse of power under both the 1957 and 1960 constitutional regimes, the Constitution (1969) built enhanced protections of independence around a number of new bodies and offices, in addition to the Auditor-General and the Judiciary. These new ICOs included the Electoral Commissioner, Public Services Commission, and the Ombudsman. The 1979 and 1992 Constitutions continued the trend, each adding to the number of ICOs.
- 6.1.5 The principal motivation for the establishment of these 1COs, both under the 1969 Constitution and in subsequent constitutions, is to guard against unrestrained executive power and protect certain vital "watchdog" functions from political and bureaucratic control. In short, decongesting and limiting Executive power, as a way of promoting responsible and accountable government, is the primary impetus or *raison d'être* for the establishment of ICOs.
- 6.1.6 In this, Ghana has not stood alone. A similar history and rationale accounts for the establishment of ICOs in other modern democratic constitutions, including elsewhere in Africa. Speaking in the context of Kenya, the Supreme Court of Kenya in **Re The Matter of the Interim Independent Electoral and**

Boundaries Commission of Kenya, (2011) eKLR [Application No 2 of 2011, 20th December, 2011, Supreme Court of Kenya]¹ had this to say:

“the real purpose of the ‘independence clause’, with regard to the Commissions and independent offices established under the Constitution, was to provide a safeguard against undue interference with such Commissions and offices, by other persons, or other institutions of government. Such a provision was incorporated in the Constitution as an antidote, in the light of the regrettable memories of an all-powerful Presidency that, since Independence in 1963, had emasculated other arms of government, even as it irreparably trespassed upon the fundamental rights and freedoms of the individual . . . The several independent commissions and offices are intended to serve as ‘people’s watchdogs’ and, to perform this role effectively, they must operate without improper influences, fear or favour; this, indeed, is the purpose of the ‘independence clause.’”

6.1.7 The independence of ICOs is secured under the Constitution of Ghana (1992) in **four** main ways. **First**, ICOs are set up and placed administratively outside the three branches of Government—although they must, of necessity, work with and depend on the cooperation and support of all branches and agencies of Government in order to execute their assigned mandates effectively. **Second**, ICOs are guaranteed a measure of financial autonomy and operational sustainability by having their administrative expenses, including their salaries, allowances, and pensions, treated as a charge on the Consolidated Fund. **Third**, the officeholder(s) appointed under the

¹ Reported online at www.kenyalaw.org as [2011] eKLR (Kenya):

Constitution to head or constitute an ICO are granted security of tenure through having their retiring age and the grounds and procedure for their removal from office fixed in the Constitution and not subject to the pleasure or discretion of the President or any other person. **Lastly**, the independence of ICOs is affirmed and guaranteed by the inclusion of a provision in the relevant portions of the Constitution (the so-called ‘independence clause’) to the effect that, in the exercise of the powers or performance of the functions of their office, such officers are subject only to the Constitution but “**shall not be subject to the direction or control of any other person or authority.**”

- 6.1.8 In short, the independence conferred on ICOs under the Constitution (1992) is modeled after the classical model of constitutional independence commonly associated with the Judiciary.
- 6.1.9 This Honourable Court has had occasion, numerous times, to pronounce on the meaning, content, and limits of the ‘independence clause’ as it applies to various ICOs. See, for example, **Abu Ramadan & Nimako (No 2) v Electoral Commission & Attorney General (No 2)** [2015-2016] 1 SCGLR 1; **Amegatcher v. Attorney General & Anor (No.1)** [2012] 1 SCGLR 679 at 686; **Brown v. Attorney General & Others** [2010] SCGLR 210; **National Media Commission v Attorney General** [1999-2000] 2 GLR 577; **Ahumah-Ocansey v Electoral Commission; Center for Human Rights & Civil Liberties (CHURCIL) v Attorney General & Electoral Commission** [2010] SCGLR 575.
- 6.1.10 A number of important lessons and principles of law emerge from a careful review of the Court’s growing jurisprudence on ICOs. We will focus on two that are most relevant to the instant case. **First**, this Court has explained, notably in **Amegatcher (No. 2)**, that an unconstitutional “direction or control”

of an ICO by a third party or external authority can occur in one of two ways: directly or indirectly. *Direct* control happens where the directive from the third party or external authority seeks to direct or instruct the ICO or constrain its freedom as to the performance of its constitutionally designed function or “core mandate.” A case in point would be where an external authority issued a directive to, say, the Electoral Commission regarding the conduct of a voter registration exercise or an election. But control can also occur indirectly. Indirect control is where a directive from a third party or external authority does not, on its face, purport to direct or instruct an ICO as to the performance of its core function but has the effect or likely effect of impairing the performance of the core function of the ICO. For example, in **Amegatcher (No. 2)** *supra*, Date Bah JSC opined as follows @ 959 that “It could be argued that the independence of the Electoral Commission that is protected relates to electoral matters. On those matters, it is unconstitutional for any direction or control to be exerted over the Commission. However, on non-electoral matters, there could be scope for direction provided for by statute, *so long as such direction does not reduce or imperil the efficacy of the Electoral Commission in the discharge of its electoral responsibilities.*” (emphasis supplied). In **Ghana Independent Broadcasters Association (GIBA) v. Attorney-General & Another** [unreported; Writ No J1/4/2016; 30/11/2016] this Court stated that “any decision . . . *that has the effect* of taking part in fixing the programme content for any media operator will amount to directing or controlling the affairs of the operator”). In other words, a directive issued to an ICO by a third party offends the ‘independence clause’ if it has either the *purpose* of instructing the ICO as to the performance of its core constitutional mandate or the *effect* or likely effect of impairing the ability or effectiveness of the ICO in the discharge of its core mandate. **Second**, this

Court's jurisprudence on ICOs also teaches that the independence guaranteed to ICOs is comprehensive and multifaceted, not one-dimensional. In the words of Georgina Wood CJ, speaking for the Court in **Brown v. Attorney-General & 2 Others** [2010] SCGLR 183, a case which, like the instant suit, involved the independence of the Auditor-General (and the Audit Service): "The constitutional provisions under reference *underpin and secure their independence – political, administrative, and financial – and insulate the service against all forms of external pressures*" (emphasis supplied). Also **Agbevor v Attorney-General** [2000] SCGLR 402 (Kpegah JSC) ("[article 127] completely insulates the Judiciary from the type of directive emanating from the Secretary to the President's letter.").

Your Lordships, we shall return shortly to demonstrate how these sound principles of law drawn from the case law on ICOs render unconstitutional the actions of the President that have given rise to this instant case.

6.2. Constitutional History of the Auditor-General of Ghana

Your Lordships, by way of additional background, we would like to explore in this section the history of the establishment of the Office of Auditor-General, as that office is currently set up under the 1992 Constitution.

- 6.2.1 As earlier indicated, the Office of the Auditor-General enjoys the distinction of being Ghana's first ICO—the first non-judicial constitutional office in Ghana to be established with basic guarantees of independence from outside control. The Auditor-General has been present in every one of Ghana's

constitutions since 1957, enjoying, under each constitution, roughly the same protections of independence extended to the Judiciary.

- 6.2.2 The provisions of the Constitution (1992) on the Auditor-General and the related provisions on the Audit Service are, however, properly traced to **The Proposals of the Constitutional Commission for a Constitution for Ghana (1968)** (hereinafter “the Akufo-Addo Commission Proposals” or “the 1968 Proposals”).
- 6.2.3 The Akufo-Addo Commission addressed itself extensively on the matter of the independence of the Office of the Auditor-General, and we feel compelled to reproduce its comprehensive thinking on the matter:

“The Auditor-General

592. *Before independence the personnel of the Audit Department of this country was recruited by the Colonial Office in London. The advantage of this was the creation of an independent audit service whose report was submitted to the Colonial Office through the Director-General of Audit. At independence the senior expatriate staff and a handful of Ghanaian senior officers formed the nucleus of the present Auditor-General's Department. Recruitment to the Department in the senior grades was either by direct entry of university graduates or advancement on promotion, after the requisite training, from the lower grades. Although in theory the Auditor-General's Department was not supposed to be under any Ministry, during the period of mismanagement of our national affairs, its independence was occasionally usurped through political interference and official control exercised by the Establishment Secretariat and the Ministry of Finance, particularly, in establishment matters.*

593. *The practice was for the Auditor-General's report to be submitted to Parliament for subsequent discussion by the Public Accounts Committee, the Chairman of which was a prominent member*

of the Opposition. Subsequently, however, the Chairman and members of the Public Accounts Committee became exclusively government members. The direct result of this was that the reports of the Public Accounts Committee were not widely read by the public or members of the National Assembly nor was there any effective follow-up action on the reports in the absence of an Opposition Party in the National Assembly. Periodically, the Executive would order an ad hoc auditing of certain organisations, mostly as an instrument of saving the reputation of the political party then in power. Local Authority audit suffered a lot of interference from District Commissioners.

595. *We think that one way of removing the Auditor-General's Department from the traditional control of the Establishment Secretariat and the Minister of Finance is the establishment of an Audit Service with a board whose main duty would be to carry out an impartial examination of the service conditions and the annual leave estimates of the department. We can see that an Audit Service will be able to audit all public accounts. We can see also that it will be in a position to seek the help of private firms whose integrity the Auditor-General himself can vouch for. Where the audit involved is very extensive it could be done jointly by the Auditor-General and a private firm. In cases involving commercial auditing, certain adjustments will have to be made to take account of the flexibility of commercial corporations.*

596. *For these reasons we propose the appointment of a public officer as the Auditor-General of Ghana who will audit the public accounts of Ghana, and of all public offices and officers including the Courts, the central and local government administrations, the universities and public institutions of a like nature, statutory corporations or other bodies established by Acts of Parliament or Statutory Instruments or set up out of public funds.*

597. *This will be done by the Auditor-General himself or any person appointed by him and in the discharge of this very important duty we*

propose that the Auditor-General should have access to all books, records, returns and other documents relating to those accounts. We also propose that the public accounts of Ghana and all other authorities whose accounts we have proposed should be audited by the Auditor-General should be kept in a form prescribed by the Auditor-General.

598. We propose that the Auditor-General should submit his report to Parliament and in doing so draw the attention of Parliament to any irregularity in the accounts audited and to any other matters which in his opinion are to receive attention.

599. We think that the draw-back suffered by the Auditor-General in not being able to deal effectively with people having management of public funds should be done away with and that his hands should be strengthened for purposes of audit. We therefore propose that the Auditor-General should not be subject to the control or direction of any person or authority, and the only, interference that we consider legitimate will be a power for the President, acting in accordance with law and on the advice of the Prime Minister to request the Auditor-General, in the public interest, to audit at any particular time the accounts of any person or organisation to which we have already referred....

601. These proposals make the Auditor-General, as he should be, an important link in the chain financial control in this country. He should therefore be a person who should have freedom of mind and the tenure of office normally granted to a judge, that is, he can only be removed from office like a judge of a superior court of record. We also propose that the salary and allowances of the Auditor-General should be a charge upon the Consolidated Fund, so also would be the salary and allowances payable to members of his administrative staff, including the gratuities and pensions. Finally, we propose that the

accounts of the Auditor-General himself should be audited and reported upon by an auditor appointed by the National Assembly."

602. We have already referred to the creation of an Audit Service which would ensure the independence of the Auditor-General.

603. ...The Audit Service Board should be responsible for the appointments, subject to the approval of the President but in consultation with the Public Services Commission, of officers in the Audit Service other than the Auditor-General himself.

6.2.4 The 1978 Mensah Constitutional Commission followed the trail blazed by the Akufo-Addo Commission and the Constitution (1992) with respect to the Office of the Auditor-General. Accordingly, the Mensah Commission endorsed "the re-enactment of most of the provisions of the 1969 Constitution" pertaining to the Auditor-General. This extract from paragraph 210 of the Mensah Commission Report is particularly relevant and instructive:

210...the need to ensure effective financial control and systematic accountability, can be taken care of by the provisions which buttress the independence of the Auditor-General and the Audit Service not only from the Executive and the Legislature themselves, but also from the bureaucratic control of Government Ministries and Departments. This independence, which we consider to be vital for the effective discharge of the important functions of the Audit Service is provided for by the provisions establishing the Service as a separate 'public service' under the Audit Service Board.

6.2.5 On its part, the S.K.B. Asante Committee of Experts, in making proposals for the drafting of the Constitution (1992), did not appear to have found it necessary to revisit or re-examine the issue of the independence of the Auditor-General. The Asante Committee merely reproduced and adopted as its proposals the provisions of the Constitutions (1969 and 1979) relating to the Auditor-General and the Audit Service. The provisions in relation to the Auditor-General and the Audit Service, as they now appear in the Constitution (1992), are, in fact, a verbatim reproduction of the text proposed by the Asante Committee.

6.2.6 A number of conclusions germane to the instant case may be drawn from this brief survey of the history of the provisions of the Constitution (1992) relating to the office of the Auditor-General. **First**, the history points to a longstanding recognition, dating back to the country's founding constitution, that, like judges, the public officer charged with auditing the accounts of Government might, simply from doing his work diligently, step on some big and powerful toes and, therefore, needed robust constitutional protection and safeguards against external interference or reprisal. **Second**, beginning with the Akufo-Addo Commission, successive Framers have been concerned to limit the ability of and opportunity for the Executive to interfere with the Auditor-General or the audit function. Thus, "*the only interference*" from the Executive that the Akufo-Addo Commission considered "*legitimate*" was the privilege of the President to "*request*" the Auditor-General, in the public interest, to undertake an audit of a specified organization. **Third**, the Framers were keenly aware that in order to "**buttress**" the independence of the Auditor-General it was necessary simultaneously to secure the *administrative* or bureaucratic independence of the audit function from both the political and

the bureaucratic Executive, hence the creation of the Audit Service and its administrative separation or decoupling from the Government. In so doing, the Framers also rightfully determined that the independence of the audit function and the administrative independence of the auditors were intertwined, the latter (administrative) independence being, in the words of the 1978 Mensah Commission, “vital for the effective discharge” of the audit function. **Fourth**, the Framers understood and intended that the audit function would be constitutionally the responsibility of a single-person Auditor-General, but provided for an Audit Service from which the Auditor-General would draw his or her professional and administrative personnel. The Audit Service, then, was created to serve, augment, and support the Auditor-General professionally and administratively in the discharge of his functions; it was not created to supplant or rival the Auditor-General.

6.2.7 Your Lordships, having set the matters before this Court in the appropriate historical and jurisprudential context, we proceed in the next sections to address the specific legal questions at the heart of this case.

6.3 Can the President Direct the Auditor-General to Proceed on Involuntary Leave without Offending the Independence of the Office?

Your Lordships, this question has at least two parts. **First**, there is the threshold question of whether the entitlement to leave gives rise to an obligation on the part of the Auditor-General to take such leave. **Second**, assuming, for the sake of argument, that the Auditor-General is duty-bound to take his leave entitlement, the question arises whether the President of the Republic is clothed with authority summarily to enforce that obligation on the

Auditor-General, notwithstanding the constitutional provisions guaranteeing the independence of the Auditor-General.

We shall proceed to answer these questions seriatim.

A. The Auditor-General's Entitlement to Leave

- 6.3.1 We submit that the Auditor-General's entitlement to leave is in the character of a right—and a **constitutional** right at that—and does not create or give rise to an enforceable legal obligation on the part of the Auditor-General to take or enjoy such leave at all costs.
- 6.3.2 The Auditor-General's "**rights in respect of leave of absence**" are, along with his salary and allowances, retiring award, and retiring age, among the constitutional entitlements associated with his office and personal to him. **Article 187(12).**
- 6.3.3 **Article 187(12)** is clear that, these entitlements, including his "rights in respect of leave" may not be taken away from or diminished or "varied to the disadvantage" of the Auditor-General during his tenure. In other words, these entitlements belong to the Auditor-General as a matter of vested right.
- 6.3.4 Nothing in the Constitution or any other applicable law can be read to imply or suggest that the Auditor-General's constitutional **right** to leave, like his salary or other entitlements, translates into or gives rise to an obligation on his part to take or enjoy such leave at all cost or at the instance or insistence of the President. It is the prerogative of the Auditor-General to take his annual

leave at a time convenient to him or forgo it as he elects, according to the terms and conditions established for his office pursuant to Article 71(c).

B. Enforcement of the Auditor's Leave Entitlement by the President

- 6.3.5 The act that precipitated the series of events leading to this suit is the directive of the President, issued on 29th June, 2020 (as modified on 3rd July, 2020), directing Auditor-General Domelevo to take "accumulated leave" of 167 days, with effective from 1st July, 2020. Plaintiffs, submit, respectfully, that this directive of the President is without lawful warrant.
- 6.3.6 Your Lordships, our Constitution is founded on certain cardinal principles and doctrines. Principal among these are the Supremacy of the Constitution, Rule of Law, Separation of Powers, and Checks and Balances. These cognate principles and doctrines operate together to create a government of limited powers, not of absolute power, and a government of laws, not of men.
- 6.3.7 The President of the Republic of Ghana, in whom is vested the "executive authority of Ghana" (**Article 58(1)**) "takes precedence over all other persons in Ghana." (**Article 57(2)**). He is, at once, "the Head of State and Head of Government and Commander-in-Chief of the Armed Forces of Ghana." (**Article 57(1)**). Yet, your Lordships, even the President of Ghana, powerful as he is, is limited by law as to the scope, scale and reach of his powers. Importantly, in keeping with the doctrine of Separation of Powers, the President superintends over only one arm of government, constituting the "executive authority" of the Republic. Even as to that, his authority is to "be exercised in accordance with the provisions of the Constitution." (**Article**

- 58(1)). Among the Checks and Balances established under the Constitution to restrain and constrain the President's powers are a number of ICOs, including the Auditor-General.
- 6.3.8 It is important to note, at the outset, that the role of the Auditor-General is as the **external** auditor of the State. (*Brown v Attorney-General* [2010] SCGLR 1261). The Auditor-General is not an "internal auditor" of the Government.
- 6.3.9 In his role as the external auditor of the State, the Auditor-General occupies a critical place in the constitutional architecture as "the custodian and protector of the public purse." *Occupy Ghana v. Attorney General* [2017] (Writ No. J1/19/2016) (Dotse JSC). Notably, it is in the Auditor-General, and in him alone, that is reposed the power and duty to audit and report on "**the public accounts of Ghana and of all public offices**; including the courts, the central and local government administrations; of the Universities and public institutions of like manner, of any public corporation or other body or organization established by an Act of Parliament..." (**Article 187(2)**).
- 6.3.10 The Auditor-General's remit is a sweeping one indeed, its tentacles reaching into the financial dealings of every public office in the land. The primary target of the Auditor-General's activities is, of course, the Executive Branch, as the overwhelming majority of public offices, and a correspondingly disproportionate amount of appropriated public funds, are under the Executive Branch headed by the President.
- 6.3.11 This makes the Auditor-General's assignment a weighty and delicate one. As Dotse JSC, observed in his concurring opinion in *Brown v Attorney-General*, supra, at page 254 as follows: "It is possible that in the performance of their duties, the Auditor-General and his staff will step on powerful toes who might not be comfortable with their report, findings and or recommendations."

6.3.12 In recognition of this reality, the Constitution secures the Auditor-General's independence in manifold ways, beginning with **Article 187(7)(a)**:

“In the performance of his functions under this Constitution or any other law the Auditor-General shall not be subject to the direction or control of any other person or authority;”

6.3.13 The Constitution, in fact, confers on the Auditor-General all of the standard protections and safeguards of independence afforded the Judiciary and other ICOs, including the removal provisions of **Article 146**. But the Constitution (1992) goes beyond the standard guarantees of independence enjoyed by all ICOs to provide the Auditor-General additional tools and safeguards to insulate him specifically from Executive control. **First**, the Auditor-General is given additional *administrative* independence from the Executive Branch, including the Ministries, Departments, and Agencies (MDAs), through having its own Audit Service, from which he draws his professional and administrative personnel and which is superintended by an Audit Service Board tasked with recruiting the officers and staff of the Service, determining their terms and conditions of service, and making general regulations for the effective and efficient administration of the Audit Service. (**Articles 188, 189(2), and 189(3)**). **Second**, to ensure that the “chain of command” in the performance of the external audit function begins and ends with the Auditor-General, access to all books, records, returns and other documents needed for the purpose of conducting an audit of public accounts is granted only to the Auditor-General or “any person authorized or appointed for that purpose *by* the Auditor-General.” (**Article 187(3)**). This further reinforces the fact that the Audit Service exists to serve and work for the Auditor-General, not for

any other authority. Thus, while the Audit Service Board *employs* the personnel of the Audit Service, only the Auditor-General has the authority to *deploy* them on particular audit assignments, as the power to audit is vested exclusively in the Auditor-General. **Third**, the Auditor-General's audit reporting obligation is owed exclusively to Parliament, not to the President or anyone in the Executive Branch or any other authority outside Parliament; Parliament being the Branch of Government in whom the power of appropriations—and, for that matter, the power of the purse—is formally located. (Article 187(5)). Relatedly, the audit of the accounts of the office of the Auditor-General is itself undertaken by an auditor appointed by Parliament. (Article 187(15)). **Lastly**, following the recommendation of the 1968 Akufo-Addo Commission, the **only** instance where the President is permitted a say in the work of the Auditor-General is by way of "**requesting the Auditor-General** in the public interest, to audit the accounts of any [office, body or organization established by an Act of Parliament or with public funds]." (Article 187(8)). In making such a request, the President is to act "in accordance with the advice of the Council of State."

6.3.14 This Court's landmark decision in *Occupy Ghana* has further strengthened the Auditor-General's independence. In interpreting the Auditor-General's powers of Surcharge and Disallowance under Article 187(7)(b) as "mandatory", thereby leaving the Auditor-General no discretion in the matter, this Court fortified the Auditor-General's hands in the fight to deepen probity and accountability and check corruption and waste in the management of public funds.

6.3.15 It is instructive that, the elaborate architecture of constitutional independence built around the Auditor-General, and designed to insulate the Auditor-General from the Executive above all, extends beyond the technical task of

“auditing” to cover all aspects of the work of the Auditor-General, including matters that may be considered quintessentially administrative in nature.

6.3.16 This Court’s jurisprudence affirms the holistic independence conferred on the Auditor-General under the Constitution (1992). In **Brown v Attorney-General** supra, this Honourable Court had occasion to deal with the question of the scope of the independence enjoyed by the Auditor-General vis-à-vis both Parliament and the Executive. Writing for the Court, Georgina Wood CJ had this to say about the independence of the Office of the Auditor-General at page 206-207 of the report:

“True, external auditing remains one of the critical blocks of good governance in any democratic system of government. It constitutes a key oversight accountability mechanism in public financial management in respect of or in relation to persons and institutions entrusted with State resources, hence the extensive provisions covering the Office of the Auditor-General and the Audit Service, the constitutional oversight body mandated, under the direction of the Auditor-General, to carry out this important function. *The constitutional provisions underpin and secure their independence – political, administrative, and financial – and insulate the service against all forms of external pressures.*” (Emphasis added).

6.3.17 Wood CJ went on to explain in **Brown** supra at the same page 207 that, “the independence relates more to political and administrative operations,

whilst the financial independence is in a way limited.” The limitation on financial independence was that, while the Executive could not reduce or amend the annual estimates of the Audit Service (in respect of administrative expenses chargeable against the Consolidated Fund) before laying the estimates before Parliament, “Parliament had implied authority under certain circumstances to reject administrative estimates”²—such as, for example, where, Parliament finds the estimates “excessive or patently unreasonable.”³ In other words, only as to Parliament is the Auditor-General’s independence circumscribed—and even then, only as to financial matters. As to the Executive, the Auditor-General’s independence—*political, administrative, and financial*—is complete. Executive interference with any of these elements or strands of independence is bound to undermine the overall independence of the office.

6.3.18 **Brown**, *supra*, reaffirms the keen insight of the 1978 Mensah Commission that administrative independence is “vital for the effective discharge” of the core mandate of the Auditor-General’s office, namely auditing. It is also in line with the holding in **Amegatcher (No. 2)** that, the independence of an ICO is breached not merely by third party directives that seek to control directly the performance of an ICO’s core function but also by acts—such as a directive from the Executive instructing an ICO to proceed on leave—that have the effect or likely effect of impairing the effective performance of the core function of the ICO.

² *Brown v Attorney General* *supra* at page 208.

³ *Ibid.*

6.3.19 The President invokes **Article 297(a)** as the source of his ostensible authority to direct or instruct the Auditor-General to proceed on leave. **Article 297(a)** reads as follows:

“the power to appoint a person to hold or to act in an office in the public service shall include the power to confirm appointments, to exercise disciplinary control over persons holding or acting in any such office and the remove the person from office.”

6.3.20 Respectfully, your Lordships, the President’s reliance on **Article 297(a)** as authority for his “go on leave” directive is fatally misplaced. The proposition advanced by the President, through his Executive Secretary, not only reads **Article 297(a)** literally, it also reads it in complete isolation from the rest of the Constitution, including in complete isolation from all of the manifold provisions and related history and jurisprudence on ICOs and the Auditor-General discussed earlier. This Honourable Court has held time without number that the Constitution may not be read in the manner suggested by the President. For example, **National Media Commission v Attorney-General** [2000] SCGLR 1 @ 11 per Acquah JSC: “... in interpreting the Constitution, 1992, care must be taken to ensure that all the provisions work together as part of a functioning whole. The parts must fit together logically to form a rational, internally consistent framework. And because the framework has a purpose, the parts are also to work together dynamically, each contributing something towards accomplishing the intended goal.”); **Ayine v. Attorney-General** [2020] (Writ No J1/05/2018) (Amegatcher, JSC): “... in interpreting a written constitution such as ours, the document containing the various articles must be read as a whole to sieve the intention of the Framers.

It will be myopic on our part to just concentrate on the solitary article . . . to make a determination in this matter."

- 6.3.21 To seek to extract from the President's role as "the Appointing Authority" a limitless implied power to "exercise disciplinary control" (which ostensibly includes the determination of matters relating to leave) over all persons so appointed would subject practically all holders of public office, with the exception of officers of the Legislative Branch, to the disciplinary control of the President. Such a proposition would obliterate any meaningful distinction between holders of Independent Constitutional Office such as the Auditor-General and Chairperson and Commissioners of the Electoral Commission and political appointees of the President in the Executive Branch, such as Ministers of State, who hold their jobs at the pleasure of the President and as to whom the President rightfully possesses plenary disciplinary or administrative control. Indeed, to accept the President's literal and stand-alone reading of Article 297(a) is to confer on the President the power summarily to discipline even the Chief Justice and the Chairperson of the Electoral Commission by issuing fiats in the name of exercising "disciplinary control" over them as their "Appointing Authority".
- 6.3.22 Your Lordships, Plaintiffs submit that, the President's implied power of "disciplinary control" under Article 297(a), insofar as it relates to holders of Independent Constitutional Office, has no bite outside the framework for the removal of such officeholders established under **Article 146** of the Constitution (relating, first and foremost, to Justices of the Superior Courts). Unless appropriate disciplinary proceedings have commenced against a particular holder of an Independent Constitutional Office whose tenure is protected by Article 146, the President's implied power of "disciplinary control" as to such ICOs must lie fallow, lest the independence of such offices

and officers be unconstitutionally subverted. (**Justice Fred Kwasi Awuah v Chief Justice & Attorney-General** (Writ No J1/9/2018, 19th December 2019)).

6.3.23 In the release dated 29th June, 2020, issued by the Director of Communications at the Presidency, the President also sought to rely on a purported Executive Branch precedent from 2009 to support the President's action. Your Lordships, even if the facts and circumstances of the matter referred to in that communication were identical to the facts in this instant matter—which, of course, is not the case—Plaintiffs' simple answer is that an unchallenged and unlitigated action of a past President does not establish a binding or persuasive precedent in a constitutional matter before this Court.

6.3.24 Your Lordships, not only does the President lack authority to order the Auditor-General to proceed on leave, it is not within the President's authority even to determine unilaterally the number of days to which the Auditor-General is entitled or whether such leave may be accumulated or not. In fact, the determination of the **quantum** of leave to which the Auditor-General is entitled as a matter of right (as well as, arguably, the **accumulation** of such leave) are not matters that lie within the unilateral discretion of the President. As a holder of a constitutional office appointed pursuant to **Article 70(1) (b)** of the Constitution, the Auditor-General's "salaries and allowances payable and the facilities and privileges available to" him are to be determined in accordance with **Article 71(c)** of the Constitution; that is to say, they are to be "determined by the President on the recommendations of a committee of not more than five persons appointed by the President, acting in accordance with the advice of the Council of State." **Article 71(1) (c)**.

6.3.25 The relevant Article 71 Committee Report applicable to the Auditor-General here is the **Prof Ewurama Addy Committee Report (Annexed to the**

Affidavit in Verification as EXHIBIT AUD-GEN “H” is a copy of the Auditor-General’s appointment letter. As the subsequent **Prof Edu-Boandoh Committee Report** of August 2016, relating to the period 2013 to 2017 did not make any changes to the Auditor General’s conditions of service, the Ewurama Addy Committee Report remains the applicable document on his conditions of service. No new Article 71 Committee has made new recommendations.

7 Can the President appoint an Acting Auditor-General While the Auditor-General Is in Office?

- 7.1 Your Lordships, Plaintiffs’ simple and unequivocal answer to this second question is NO. Plaintiffs say so mindful of the fact that, the practice of appointing persons to the position of “Acting Auditor-General” is not new in our country. Thankfully, the constitutionality or otherwise of an act or practice does not turn on how old or common that practice is or has become; it turns on—and must turn on—whether the practice, however old or common, squares with the letter and spirit of the Constitution. Were it otherwise, your Lordships, many perverse and pernicious social or political practices would escape constitutional scrutiny merely on account of their age or the fact of their social or political acceptance. Were it otherwise, your Lordships, longstanding practices, even in our legal system, such as the arrest and jailing of sureties, (**Martin Kpebu (No.1) v. Attorney-General (No.1) [2015-2016] 1 SCGLR 137** and the routine pre-trial denial of bail pursuant to a statute naming certain offences as non-bailable, would have escaped constitutional scrutiny by this Court. (**Martin Kpebu (No.2) v. Attorney-General (No.2)**

[2015-2016] 1 SCGLR 171. It would make a mockery of the cardinal principle of the Supremacy of the Constitution if the steady development of our constitutional law and jurisprudence were to be held hostage by past or longstanding but unchallenged political or social practice.

Your Lordships, it would be a different matter altogether if the Constitution were merely silent or permissive on a disputed matter and sensible conventions that did not subvert the intention of the Framers had simply developed to fill the constitutional lacunae. As Plaintiffs demonstrate in this section, however, this is not the case we face here. The acts we challenge here stand in open defiance of the letter and spirit of the 1992 Constitution. It lies within this Court's awesome power to uphold the Supremacy of the Constitution.

- 7.2 The Auditor-General of Ghana is established under the Constitution (1992), as under the antecedent constitutions, as a **unipersonal** office; the office and its occupant are, in the eyes of the Constitution, one and the same. This fact distinguishes the office of the Auditor-General from the other ICOs, all of which are multi-member bodies with the mandate and functions of the body reposed in the body and its members acting together. Ghana, in effect, follows the "sole commissioner" model when it comes to the office of the Auditor-General.
- 7.3 Under the terms of **Article 187(2)**, the power and duty to audit and report on the public accounts of Ghana is reposed exclusively in that one officeholder called Auditor-General who was appointed pursuant to **Article 70(1) (b)** and who, "before entering the duties of his office," took and subscribed to the Oath of the Auditor-General set out in the Second Schedule to the Constitution." (**Article 187(16)**).

- 7.4 The Constitution appropriately grants the Auditor-General the discretion or prerogative to delegate another person or others persons to perform, or assist him to perform, the duties entrusted to him under **Article 187(2)**. But **Article 187(3)** is clear that, only such person or persons as have been “authorized or appointed for the purpose **by the Auditor-General** shall have access to all books, records, returns, and other documents relating or relevant to those accounts.” (Article 187(3)). This unified “chain of command” is necessary to avoid divided responsibility and accountability for the discharge of the audit function.
- 7.5 The Audit Service, established separately under **Article 188(1)** of the Constitution, exists to provide the Auditor-General with the professional and administrative staffing and support he needs to discharge his duties effectively. Instructively, the Constitution reposes no auditing responsibility or power in the Audit Service or any other person independently of the Auditor-General. The reason is simple: The Audit Service is the instrumentality with and through which the Auditor-General is expected to perform his functions and exercise his powers. Just as the Judicial Service exists to serve the Judiciary in the performance of its functions, so does the Audit Service exist to assist and serve the Auditor-General to ensure the effective and efficient discharge of his constitutional mandate. The Framers were careful to arrange the relationship between the Auditor-General and the Audit Service in such a manner as to avoid divided responsibility or divided accountability for the supreme audit function.
- 7.6 The position of a “Deputy Auditor-General” indeed exists **statutorily** within the administrative hierarchy of the Audit Service. Those Deputy Auditors-General, who are officers of the Audit Service, are, however, **not** Deputy

Auditors-General or Deputies to the Auditor-General in the constitutional sense. An administrative or statutory Deputy Auditor-General in the Audit Service is not appointed to that position in the same manner as, and does not—indeed, cannot—take the “Oath of the Auditor-General” prescribed for the Auditor-General. Logically, such statutory or administrative Deputy Auditors-General do not enjoy the same constitutional protections and associated security of tenure guaranteed the Auditor-General under Article 187, clauses (12) and (13) of the Constitution. Like other employees of the Audit Service, they are recruited and appointed as officers of the Audit Service by the Audit Service Board pursuant to article 189(2). It is also the Audit Service Board that determines the terms and conditions of officers and employees of the Audit Service, in accordance with article 189(3). For the purposes of performing the audit function, however, the power to deploy an officer of the Service, including a Deputy Auditor-General of the Service, resides exclusively with the Auditor-General, pursuant to Article 187(3).

- 7.7 In short, the presence or existence of administrative or statutory Deputy Auditors-General in the Audit Service does not transform the constitutional architecture of the Auditor-General from a unipersonal office into a multi-member or collegial body like CHRAJ or the EC. Notwithstanding the existence of administrative Deputy Auditors-General in the Audit Service, the Auditor-General of Ghana remains constitutionally a one-person office, with all the constitutional powers and prerogatives of the office vested in that one person appointed to the position of Auditor-General in accordance with Article 70(1) (b) of the Constitution.
- 7.8 The unipersonal Auditor-General structure is not a constitutional perversity or a Ghanaian anomaly. To the contrary, it is the structure of the office of

Auditor-General commonly found in countries of the Common Law or Westminster tradition. There are other models. Notably, in contrast to the Westminster model, Supreme Audit Institutions (SAIs) in some other jurisdictions (e.g., Germany, the Netherlands, South Korea, and Indonesia) follow the multi-member or collegial model (similar to the structure of the EC, CHRAJ, or NCCE in Ghana). Ghana has consistently followed the traditional unipersonal Auditor-General model common in the Common Law world.

- 7.9 Flowing from the foregoing, the very idea of an “Acting Auditor-General”, a person so designated or so appointed, not by the Auditor-General but by the President or an agent of the President, to act and exercise the powers of the Auditor-General in the latter’s temporary absence is constitutionally untenable. Pursuant to **Article 187(3)**, it is for the Auditor-General, not some other person or authority, to authorize another person or persons to perform the functions and exercise the powers of his office whenever the Auditor-General is himself or herself unavailable or unable personally to do so, including during his temporary absence on leave.
- 7.10 Your Lordships, where the Constitution intended that a function or duty entrusted to a particular office be performed by another person during the temporary absence or unavailability of the substantive office holder, it has made express provision for that. Examples of such provisions include **Article 60(8)** (Vice President assuming office as President in temporary absence of the President) and **Article 128(3)** (“most senior of the Justices of the Supreme Court” to preside over the Supreme Court in the absence of the Chief Justice). The Framers had very good reason for not extending this arrangement to the

Auditor-General and for leaving the Auditor-General as the only single-person ICO.

- 7.11 The authority granted the Auditor-General under **Article 187(3)**, whereby the Auditor-General may authorize or appoint another person or persons to discharge his audit duties and, in so doing, grant such person or persons access to all books and other materials necessary for the audit, provides adequate coverage for the office of the Auditor-General when the Auditor-General is himself or herself unavailable or unable temporarily to perform that duty.
- 7.12 Unless the incumbent occupant of the office of Auditor-General, being that person duly appointed in accordance with **Article 70(1)(b)** and sworn into office pursuant to the second schedule to the Constitution, has vacated the office by resignation, retirement, death or been removed from office in accordance with Article 146, the President or any person purporting to act on behalf of the President offends the Constitution by designating another person to serve as “Acting Auditor-General” or in any such role, however so called.
- 7.13 Your Lordships, one could indeed also question the constitutionality of the routine practice of the President filling a **vacancy—not just absences**—in the Auditor-General’s position with an “acting” appointment, where the length of the appointee’s tenure is based “on contract” or at the pleasure of the President and, therefore, leaves the appointee without the mandatory constitutional safeguards and protections of independence associated with the office of Auditor-General. This, however, is not the case before this Court. Before this Court, your Lordships, is a case where there is no vacancy in the office of the Auditor-General, where there is a duly appointed Auditor-General, where that Auditor-General is able and willing to perform the duties of his office, where that Auditor-General has not vacated his office or exhausted his constitutional

term, but where that Auditor-General has been sent on leave involuntarily to make way 'temporarily' for another person appointed by the President as "Acting Auditor-General". It is this present case that Plaintiffs contend is constitutionally untenable.

7.14 Your Lordships, a similar attempt to impose an "Acting Auditor-General" on a unipersonal Auditor-General constitutional structure, this time by statute, failed in another Common Law jurisdiction. At issue in **Transparency International v Attorney-General** was the constitutionality of certain provisions of Kenya's Public Audit Act, 2015. Section 12 of the Public Audit Act, 2015, had created the position of "Acting Auditor-General" and authorized the President of Kenya to designate, upon the recommendation of the Public Services Commission, the senior most person in the Auditor-General's office as the "Acting Auditor-General" to exercise the full powers of the Auditor-General in the absence of the Auditor-General. Section 15 of the Act also created a position of "Senior Deputy Auditor-General". Like Ghana's, the Constitution of Kenya (2010) provides for the appointment of an Auditor-General (in accordance with a prescribed constitutional procedure) but purposely makes no provision for a Deputy Auditor-General. Plaintiffs in **Transparency International** challenged as unconstitutional the creation by statute of both the new "Acting Auditor-General" position and the position of Senior Deputy Auditors-General.

7.15 The High Court of Kenya, the superior court clothed with original jurisdiction to hear and determine constitutional suits under the Constitution of Kenya, held in **Transparency International** that, the Constitution of Kenya establishes and recognizes as Auditor-General **only** that one person bearing that designation who is appointed to that office in accordance with the Article

229(1) of the Kenyan Constitution. Consequently, the creation by statute of an "Acting Auditor-General" position to be occupied, in the absence of the Auditor-General, by a person designated as such by the President upon the recommendation of the Public Services Commission, was unconstitutional. In the words of the Court:

"... there cannot be an Acting Auditor-General because the Constitution only recognizes Auditor-General appointed in accordance with Article 229(1). Any attempt to create a substantive position of Acting Auditor General by statute, appoint a person otherwise than as contemplated by the Constitution and allow him/her to exercise constitutional functions and powers of the Auditor General, amounts to an unconstitutional office and unconstitutional exercise of functions and powers of the constitutional independent office."

- 7.16 Instructively, while the Court in **Transparency International** ruled against the statutory position of "Acting Auditor-General", it upheld the provision of the statute creating the position of Senior Deputy Auditor General in the office of the Auditor-General. The Court reasoned that, as long as the person appointed to that position worked under the direction of, and discharged duties assigned by the Auditor-General, their mere statutory existence did not offend the structure and independence of the Auditor-General. In other words, as long as the Auditor-General retained supervisory control over the statutory "Senior Deputy Auditor-General" in the discharge of the audit function, the latter position did not change the unipersonal constitutional structure of the office of Auditor-General.

7.17 Your Lordships, Plaintiffs' submit that the purported appointment or designation of an "Acting Auditor-General" by an authority other than the Auditor-General, ostensibly to exercise the constitutional powers and functions of the Auditor-General while the Auditor-General is ordered on involuntary leave, is patently unconstitutional.

8 Accountability of the Auditor-General

8.1 Your Lordships, nothing in the arguments or analyses we have advanced here in support of our case is meant to suggest that the Auditor-General, as set up under our Constitution, is beyond accountability or above the law. Far from it. To the contrary, the Auditor-General is subject to appropriate accountability and oversight through a multiplicity of avenues. **First**, the Auditor-General owes a regular reporting obligation to Parliament. **Second**, the Auditor-General's own financial administration of his office is subject to audit by an auditor appointed by Parliament. **Third**, the Auditor-General is subject to judicial review for his action in disallowing or surcharging an expenditure against a person. (Article 187(9)). **Fourth**, per this Court's decision in **Brown v. Attorney-General**, supra, the administrative expenses of the office the Auditor-General, while chargeable on the Consolidated Fund, may be reviewed and revised in appropriate circumstances by Parliament. **Fifth**, pursuant to Articles 187(13), the Auditor-General is subject to removal on the same grounds and in same manner as a Justice of the Superior Court of Judicature. **Finally**, the Auditor-General is not immune from suit, and thus may be sued, both in his personal and official capacity, in civil or criminal proceedings for any alleged violation of law, including by means of a suit at the High Court alleging that he has violated a law

applicable to him and must be compelled to comply with the law. In short, the Constitution and laws of Ghana provide ample checks and balances in relation to the office of Auditor-General and the acts or omissions of the Auditor-General, thus ensuring adequate accountability appropriate to the independent watchdog role entrusted to the office.

10. LIST OF AUTHORITIES RELIED UPON BY PLAINTIFFS

1. Constitutional Provisions

Constitution (1992) of the Republic of Ghana Articles
2(1); 43(1); 46; 57 (1); 58 (1); 70 (1), (b); 71 (1), (b); 88; 130; 146; 166 (1);
187 (1), (2), (3), (5), (7) (a) (b), (8), (12), (13), (15), (16); 188 (1); 189(2),
(3); 216; 231; 225; 297(a)

Constitution (1957) Articles 61 (1), (4)

Constitution (1960)

Constitution (1969)

11. Decided Cases

- i. Abu Ramadan & Nimako (No 2) v Electoral Commission & Attorney General (No 2) [2015-2016] 1 SCGLR 1
- ii. Agbevor v Attorney-General [2000] SCGLR 402
- iii. Adjei-Ampofo v Accra Metropolitan Assembly & Attorney-General (No 1) [2007-2008] 1 SCGLR 610
- iv. Ahumah-Ocansey v Electoral Commission; Centre for Human Rights & Civil Liberties (CHURCIL) v Attorney-General & Electoral Commission (Consolidated) [2010] SCGLR 575
- v. Amidu (No. 1) v. Attorney-General, Waterville Holdings (BVI) Ltd & Woyome [2013-2014] 1 SCGLR
- vi. Amegatcher (No. 2) v. Attorney-General & Another [2012] 2 SCGLR 933

- vii. Ayine v. Attorney-General [2020] (Writ No J1/05/2018)
- viii. Brown v. Attorney-General & 2 Others [2010] SCGLR 183
- ix. Ghana Independent Broadcasters Association (GIBA) v Attorney General & Another [unreported; Writ No J1/4/2016; 30/11/2016]
- x. Justice Fred Kwasi Awuah v Chief Justice & Attorney-General (Writ No J1/9/2018, 19th December 2019)
- xi. Martin Kpebu (No.1) v Attorney General (No.1) [2015-2016] 1 SCGLR 137
- xii. Martin Kpebu (No.2) v Attorney General (No.2) [2015-2016] 1 SCGLR 171
- xiii. National Media Commission v. Attorney General [1999-2000] SCGLR 1; 2 GLR 577
- xiv. New Patriotic Party v Attorney-General [1997-98] 1 GLR 378 (CIBA Case)
- xv. Occupy Ghana v Attorney-General [unreported; Writ No J1/19/2016; 14/06/2017]

111. Other authorities

- i. The Proposals of the Constitutional Commission for a Constitution for Ghana (1968)
- ii. The 1978 Mensah Constitutional Commission
- iii. The Committee of Experts Proposals for drafting of the 1992 Constitution
- iv. Edu-Boandoh Committee Report of August 2016,
- v. Kenyan Constitution; Article 229(1)

- vi. Re The Matter of the Interim Independent Electoral and Boundaries Commission of Kenya, (2011) eKLR [Application No 2 of 2011, 20th December, 2011, Supreme Court of Kenya]
- vii. Transparency International v Attorney-General & 2 Others [Petition No 388 of 2016, 16th February, 2018, High Court.

Respectfully submitted.

9. Witnesses:

Number of witnesses: 2.

WHEREFORE plaintiffs pray as per the reliefs endorsed on the writ of summons.

DATED IN ACCRA THIS 23RD DAY OF OCTOBER 2020.


Martin L. Kpebu Lawyer
GT Legal
1st Floor World Trade Centre
Accra

LAWYERS FOR PLAINTIFFS
LIC NO. eGAR 01322/20

THE REGISTRAR
SUPREME COURT
ACCRA

FOR SERVICE ON THE DEFENDANT

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA- AD 2020**

SUIT NO.

BETWEEN

1. **GHANA CENTER FOR DEMOCRATIC DEVELOPMENT**
No 95 Nortei Ababio Loop
North Airport Residential Area, Accra
2. **GHANA INTEGRITY INITIATIVE**
No 21 Abelenkpe Road
Accra
3. **CITIZEN GHANA MOVEMENT**
No. 5 Kinshasa Avenue
East Legon, Accra
4. **AFRICA CENTER FOR ENERGY POLICY**
House. No. 119, Avenue D
North Legon, Accra
5. **PARLIAMENTARY NETWORK AFRICA**
GE185-7537, Bohye Road
New Ashongman Estate, Accra
6. **PENPLUSBYTES**
Number 1 Ostwe Close
Ako Adjei-Osu, Accra

7. **MEDIA FOUNDATION FOR WEST AFRICA**
32 Otele Avenue
East Legon, Accra
8. **SEND GHANA**
A 28 Regimanuel Estate.
Nungua Barrier-Sakumono, Accra
9. **ONE GHANA MOVEMENT**
JB Plaza House No 1 1st Oyarifa Link
Accra

AND

ATTORNEY-GENERAL
Office of the Attorney-General & Ministry of Justice
Accra

AFFIDAVIT IN VERIFICATION

I, **HENRY KWASI PREMPEH** of House No. 96 Nortei Ababio Loop, North Airport Residential Area, Accra make oath and say as follows:

1. That I am the Executive Director of the 1st plaintiff in this suit.
2. That I have the consent of the plaintiffs to depose to this affidavit in verification for and on their joint behalf.

3. That the facts and particulars I have set forth in paragraphs 1 - 8 of the plaintiff's statement of case are true and accurate to the best of my knowledge, information and belief.
4. That the plaintiffs furnished counsel with a number of exhibits which counsel relied on in the plaintiffs' statement of case. I hereby annex same to this affidavit as follow:
 - a. **EXHIBIT "AUD-GEN A"**: June 29, 2020 press release from the Office of the President directing Auditor-General to take his accumulated annual leave.
 - b. **EXHIBIT "AUD-GEN B"**: Letter from Auditor-General to the President to request the latter to reconsider his decision.
 - c. **EXHIBIT "AUD-GEN C"**: Letter of the President extending leave to 167 days.
 - d. **EXHIBIT "AUD-GEN D"**: Letter signed by Johnson Akuamoah Asiedu as acting Auditor-General.
 - e. **EXHIBIT "AUD-GEN E"**: Petition by concerned citizens and CSOs to President to recall the Auditor-General.
SERIES
 - f. **EXHIBIT "AUD-GEN F"**: President's response to petition by concerned citizens.
 - g. **EXHIBIT "AUD-GEN G"**: Petition by AFROSAI-E to the President of Ghana.
 - h. **EXHIBIT "AUD-GEN G1"**: Press release by INTOSAI

WHEREFORE I swear to this affidavit of verification in support of the motion.

SWORN IN ACCRA THIS 26th
DAY OF OCTOBER 2020)

Henry Kyei
.....
DEPONENT



**THE REGISTRAR
SUPREME COURT
ACCRA**

AND FOR SERVICE ON:

**1. ATTORNEY GENERAL
ATTORNEY GENERAL'S DEPARTMENT
MINISTRIES, ACCRA**

EXH. "AUD-GEN A"



COMMUNICATIONS DIRECTORATE
JUBILEE HOUSE - ACCRA



29th June, 2020

For Immediate Release

**PRESIDENT AKUFO-ADDO DIRECTS AUDITOR-GENERAL TO TAKE HIS
ACCUMULATED ANNUAL LEAVE**

The President of the Republic, Nana Addo Dankwa Akufo-Addo, has directed Mr. Daniel Yaw Domelevo, the Auditor-General, to take his accumulated annual leave of one hundred and twenty-three (123) working days, according to records available to the Presidency, with effect from Wednesday, 1st July, 2020.

The President's decision to direct Mr. Domelevo to take his accumulated annual leave is based on sections 20(1) and 31 of the Labour Act, 2003 (Act 651), which apply to all workers, including public office holders such as the Auditor-General. According to the Act, a worker is entitled to annual leave with full pay, in a calendar year of continuous service, which cannot be relinquished or forgone by the worker or the employer.

Since his appointment as Auditor-General on 30th December 2016, Mr. Domelevo has taken only nine (9) working days of his accumulated annual leave of one hundred and thirty-two (132) working days.

It would be recalled that, on 9th April, 2009, the 3rd President of the 4th Republic, His Excellency the late Prof. John Evans Atta Mills, directed the then Auditor-General, Mr. Edward Dua Agyeman, to take his accumulated annual leave of approximately two hundred and sixty-four (264) working days.

President Akufo-Addo paid attention to this precedent in directing the Auditor-General to take his accumulated annual leave of one hundred and twenty-three (123) working days.

The Auditor-General has been further directed to hand over all matters relating to his office to Mr. Johnson Akuamoah Asiedu, the Deputy Auditor-General, to act as Auditor-General, until his return from his well-deserved leave.

Eugene Arhin
Director of Communications
Office of the President

EXH. "AUD-GEN B"



REPUBLIC OF GHANA

THE AUDITOR-GENERAL

Ministry Block D, P. O. Box M 96, Accra, Ghana
Tel: 233 (0) 302 664320 / 676436 Fax: 233 (0) 302 662493
Website: www.ghaudl.org

My Ref. No: **AG/OP/20/8**

Your Ref. No:



**THE SECRETARY TO THE PRESIDENT
JUBILEE HOUSE
ACCRA**

Dear Nana Bediatuo Asante

RE: ACCUMULATED ANNUAL LEAVE
-MR DANIEL YAW DOMELEVO

Your letter dated 29th June 2020 with reference number OPS/9/1/20/853 and the press release issued by the Director of Communications at the Office of the President on the above subject refers.

I write to notify you that, I started my leave for the year 2020 on 1st July 2020 out of deference to the office of His Excellency the President of the Republic of Ghana and also out of the deep-seated respect I have for the office.

I think it necessary, however, to bring to the attention of the high office of the President a few matters relevant to our constitutional governance, due process and the rule of law.

Your letter to which I have referred, justified the directive that I take my "accumulated annual leave of 123 working days" because records available to the office indicate that I have "accumulated annual leave of 123 working days."

My knowledge of recent labour law and practice in the country is that no worker is deemed to have accumulated any leave on account of their having failed, omitted, neglected or even refused to enjoy their

right to annual leave, which the law guarantees for their benefit, not the employer.

To the best of my knowledge therefore, where in any given year a worker fails, omits, neglects or even refuses to take their annual leave, such leave is deemed forfeited with no corresponding obligation on the part of the employer to enforce the worker's right to take their leave by assuming, deeming or declaring the forfeited leave, accumulated.

I am also informed that by law, every person is entitled, save in very limited circumstances to waive what the law has ordained for their benefit, in this case, a worker's leave.

Be that as it may, the directive that I proceed on leave and hand "over all matters relating to the Office to Mr. Johnson Akuamoah" with all due respect has serious implications for the constitutional independence of the office of the Auditor-General.

I have been constrained to make the points above as a result of the following main observations;

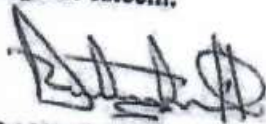
- i. Previous correspondence from the Chairman of the Audit Service Board (who works at the Office of the Senior Minister) together with public pronouncement by Ministers make it clear that the Auditor-General's work is embarrassing the government.
- ii. The office must have been aware also that several appointees of the President, have not, since the year 2017 taken their annual leave to date. The direction therefore that I proceed on leave, oblivious of the other workers similarly circumstanced, gives the impression that the decision is not taken in good faith.
- iii. In the Kroll and Associates Vrs. the Auditor-General, the Supreme Court offered the lawyers 10 days from 24th June 2020, to bring their written submissions and the Auditor-General is to inspect documents or evidence of work done for the Senior Minister before going back to the Supreme Court.



I consider it an honour to be of service to the State and urge that you reconsider the directive in order to protect the sanctity of the labour law, the constitution and the independence of the Auditor-General which is of utmost importance in so far as ensuring that the constitutional principles of probity, transparency and accountability are concerned.

I have copied this letter to the press because of the press release that accompanied your letter.

Please accept, Secretary to the President, the assurances of my highest esteem.



DANIEL YAW DOMELEVO
AUDITOR GENERAL

CC: His Excellency, the Vice, President, Jubilee House, Accra
The Chief of Staff, Jubilee House, Accra
The Hon. Minister, Ministry of Finance, Accra
The Chairman, Public Service Commission, Accra
The Head of Civil Service, Accra
Mr. Johnson Akuamoah Asiedu, DAG, Accra
The Press



REPUBLIC OF GHANA

EXH. "AUD-GEN 'C"

OFFICE OF THE PRESIDENT

SECRETARY TO THE PRESIDENT

Justice House, Accra
Tel: +233 (0) 302 738 600
Tel: +233 (0) 302 738 601
Digital Address: GA-000-0288

Ref. No. ORS1911/20/94
3rd July, 2020

Dear Auditor-General:

20 OCT 2020
HENRY KIP
BEFORE ME
COMMISSIONER

RE: ACCUMULATED ANNUAL LEAVE – MR. DANIEL YAW DOMELEVO

The attention of the Office of the President has been drawn to a letter with reference number AG/OP/20/8 dated 3rd July, 2020, which is yet to be delivered to this Office but has been circulated widely in the media and on social media. We note that the said letter is dated 3rd July, 2020, with an official reference number from the office of the Auditor-General, although you commenced your leave on 1st July, 2020. That, notwithstanding, the contents of the letter have been duly noted.

First of all, for the avoidance of any doubt, your accumulated annual leave of 123 working days, which you were directed to take with effect from Wednesday, 1st July, 2020, was in respect of the period 2017 to 2019, which you had worked without taking any annual leave, and did not include 2020. If, however, you have decided to include your annual leave for the year 2020, then it is expected that you will resume work after a well-deserved leave of 167 working days, with effect from 1st July, 2020.

Secondly, it is necessary to correct the wrong impression you have sought to create in the public domain regarding the President's directive to you to proceed on your accumulated annual leave. The President has at all times acted based on sound legal principles, the rule of law and good governance practices, and the good people of Ghana cannot be misled by your lack of understanding of the position of the law, for which you may be forgiven since you are not a lawyer.

By letter dated 30th December, 2016, signed by the then Secretary to the then President, Ambassador Kwesi Quartey, your appointment to the office of Auditor-General was to take effect from 30th December, 2016, made subject to the conditions of service as well as the rules and regulations governing the post of the Auditor-General, which you accepted and have, ever since, been performing the functions of the office. Under your conditions of service, you are expected to take 44 working days leave with full pay in a calendar year of continuous service. You were, thus, required by the conditions of service of your appointment to take your annual leave in every calendar year of continuous service, that is 2017, 2018 and 2019. As stated above, you have informed us that you have now decided to add 2020 to your accumulated leave, which we have accepted.

As you are well aware, the power to appoint the Auditor-General is vested in the President and the appointment is done in accordance with article 70 of the Constitution. Per article 297 (a) of the Constitution, that power to appoint includes the power to "exercise disciplinary control over persons holding or acting in any such office". Thus, to the extent that you fail to comply with a basic term of your appointment such as taking annual leave, the President has the power to exercise disciplinary control over you to ensure that you comply with the terms of your

appointment. The exercise of that constitutional power vested in the President does not affect the independence of your office, which the Constitution so rightly guarantees.

Article 187 (1) of the Constitution and section 10 (2) of the Audit Service Act, 2000 (Act 584) (**Audit Service Act**) state that the office of the Auditor-General is a public office. The office of the Auditor-General is a public office and is subject to the labour laws of Ghana, and unless there is a specific enactment that applies to the terms of his appointment to the contrary, the provisions of the Labour Act, 2003 (Act 651) (**Labour Act**) applies. Section 1 of the Labour Act, which is headed "Scope of application", provides as follows:

This Act applies to all workers and to all employers except the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies specified under the Security and Intelligence Agencies Act, 1996 (Act 526). [Emphasis added.]

The office of the Auditor-General is not part of the categories of workers excluded from the scope of application of the Labour Act, namely, the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies, specified under the Security and Intelligence Agencies Act, 1996 (Act 526). The provisions of the Labour Act therefore apply to the Auditor-General, subject to the Constitution and the Audit Service Act.

Both the Constitution and the Audit Service Act guarantee the Auditor-General the right to take his annual leave as stipulated in his terms of appointment without it being varied to his disadvantage. See article 187 (12) of the Constitution, which is repeated in section 10 (7) of the Audit Service Act. The Auditor-General's right to leave of absence is spelt out in the Labour Act, which provides that every worker is entitled to annual leave in a year. Section 20 (1) of the Labour Act provides as follows:

In an undertaking every worker is entitled to not less than fifteen working days leave with full pay in a calendar year of continuous service.

As stated earlier, in your case, you are entitled to 44 working days in a calendar year of continuous service. Since your appointment to office, you have taken only 9 working days out of the 132 working days of annual leave that have accumulated over the last three years – 2017, 2018 and 2019. In the case of the 9 working days that you took, you, by letter dated 24th January, 2020, notified the Chief of Staff of your annual leave and stated that in your absence, Mr. Benjamin Cudjoe, Deputy Auditor-General, will act "*except that he cannot represent me at the Board*". As Auditor-General, it is expected that you would be a master of the Audit Service Act and not insert such an exception, contrary to the Audit Service Act, in your letter. Section 6 (5) of the Audit Service Act gives the person acting in your absence the power to attend a meeting of the Board and form part of the quorum for a Board meeting. The Auditor-General has no power to amend that provision of the law to determine whether the person acting on his behalf can or cannot attend the meeting of the Board.

According to the Labour Act, you could not forgo your annual leave and any agreement to relinquish your entitlement to your annual leave shall be void. Section 31 of the Labour Act provides as follows:

An agreement to relinquish the entitlement to annual leave or to forgo the leave is void.

You may therefore not agree with the President (your appointing authority) to relinquish your entitlement to the accumulated leave or to forgo same. You may also not agree to be paid in cash in exchange for the accumulated annual leave. Such an agreement would be void under section 31 of the Labour Act. The courts have held, in interpreting section 31 of the Labour Act, that annual leave is mandatory and that one of the purposes of section 31 is to prevent the worker from converting his accumulated annual leave to cash to the detriment of his health and wellbeing. See **Samuel M. K. Adrah v. Electricity Company of Ghana** [22nd February, 2018] (Civil Appeal No.: H1/149/2017) [2018 DLCA 5153].

Accordingly, you cannot forgo your accumulated annual leave. Furthermore, you cannot offer to take cash in exchange for your accumulated annual leave. Such an offer, if accepted, would amount to an agreement which would be void under section 31 of the Labour Act. Thus, your assertion that you may waive your entitlement to annual leave is unlawful and misconceived. It was for this very reason that section 31 of the Labour Act was enacted. And this is why your annual leave accumulated, and also why the unfortunate convention has developed where accumulated leave is taken as terminal leave by many people in the public service.

Thirdly, it is most unfortunate that you choose to cast aspersions on and impute bad faith, without legal or factual basis, to the President. One would have expected that a person occupying the office of the Auditor-General of the Republic would exercise restraint and circumspection when addressing letters to the Office of the President. The political undertones of your letter are most unfortunate and ought not to be encouraged. I need not remind you that the Auditor-General is an office and not a person such that if the person for the time being occupying same is unavailable the office ceases to exist. Handing over all matters relating to the office of the Auditor-General will not have any implication for its constitutional independence and operation.

As stated above, the constitutional independence of the office of the Auditor-General is guaranteed and rightly so. It does not however give licence for illegal conduct. Contrary to your false belief, the President does not think that your work is embarrassing his government. In fact, the President has ensured that you have been provided with all the necessary resources needed for the efficient running of the office of the Auditor-General and considers your work a critical part of good governance in the Republic.

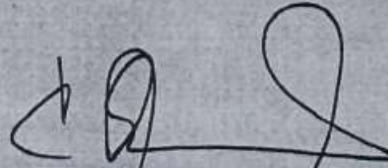
The assertion that the decision for you to take your accumulated annual leave was not taken in good faith is also unfortunate and without any foundation. The Office of the President did not know that part of your duties is to keep a record of appointees of the President who have not taken their annual leave since 2017, such that you can make the false claim of selectivity. You can be assured that the decision for you to take your accumulated annual leave was not taken in bad faith. Rather, given your own publicization of your deteriorated relationship with your Board, which notified you severally of not taking your annual leave, the President was the only person vested with constitutional power to direct you to proceed on your accumulated annual leave.

In line with good governance practice, taking annual leave ensures that the officer has the opportunity to rest and be refreshed to continue performing the functions of his office efficiently. There is also the collateral reason that allows the appointing authority to assess the work of its appointee including financial administration. It is expected that the Deputy Auditor-General, Mr. Johnson Akuamoah Asiedu, to whom you have handed over the office of the Auditor-General, will continue to perform the functions of the office with diligence and utmost professionalism during your period of absence.

Accordingly, the directive of the President stands, as amended above to 167 working days, with effect from 1st July, 2020.

While this letter is being sent to you through normal channels, we have taken the liberty to publish it publicly in the same medium by which your letter came to our attention.

Please accept the President's best wishes.



NANA BEDIATUO ASANTE
SECRETARY TO THE PRESIDENT

MR. DANIEL YAW DOMELEVO
AUDITOR-GENERAL
OFFICE OF THE AUDITOR-GENERAL
ACCRA

Cc: The Vice President
Jubilee House, Accra

The Chief of Staff
Jubilee House, Accra

The Hon. Minister
Ministry of Finance, Accra

The Chairperson
Public Services Commission, Accra

The Head of Civil Service
Office of the Head of Civil Service, Accra

Mr. Johnson Akuamoah Asledu
Deputy Auditor-General, Accra

EXH. "AUD-GEN D"

REPUBLIC OF GHANA

THE AUDITOR-GENERAL

My Ref. No: AG/01/20/32

Ministry Block G, P.O. Box 4176, Accra, Ghana
Tel: 233 (0) 302 664726 / 675495 Fax: 233 (0) 302 663433
Website: www.oga.gov.gh

2 July

Page 20

HONORABLE SENIOR MINISTER
OFFICE OF THE SENIOR MINISTER
OFFICE OF THE PRESIDENT ANNEX
ACCRA



INSPECTION OF DOCUMENTS

Reference to our letter dated 25/6/2020 and yours dated 30/6/2020, and the inspection of the documents in your office on 2/7/2020.

2. 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 go back to the High Court to continue with the proceedings in that court.

JOHNSON AKUAMOAH ASIEDU
AG. AUDITOR-GENERAL

cc: THE CHAIRMAN
AUDIT SERVICE BOARD
ACCRA

EXH. "AUD-GEN E" SERIES

His Excellency The President of the Republic of Ghana
c/o Presidency Secretariat
Office of the President
Jubilee House
Accra

EXH. "AUD-GEN E"



8 July 2020

By email

Dear Mr President,

CONCERNED PERSONS RESPOND TO PRESIDENCY CONCERNING AUDITOR-GENERAL

We, the undersigned, hereby wish to register our deepest concern over the recent steps taken by the Presidency in relation to the Auditor-General of Ghana.

The decision to require the Auditor-General to take *enforced leave of office* based on his accumulated *holiday entitlement* is – with the greatest respect to the Presidency – an unconstitutional and flagrant interference with the independence and mandate of the Office of Auditor-General.

We call on the Presidency to reconsider this decision as a matter of urgency, and allow the Auditor-General to proceed unimpeded in his important work.

The Auditor-General's Independence is Guaranteed by the Constitution

Article 187 (7) (a) of the Constitution states:

In the performance of his functions under this Constitution or any other law the Auditor-General - (a) shall not be subject to the direction or control of any other person or authority; [Emphasis added]

This provision is clear and unambiguous. The framers of our Constitution limited the President's powers over the Auditor General to the power to "**acting in accordance with the advice of the Council of State, request(ing) the Auditor-General in the public interest, to audit, at any particular time, the accounts of any (public) body or organisation as is referred to in clause (2) of this article (187).**"[1]" [Emphasis added].

Furthermore, the Constitution prescribes that the "*The salary and allowances payable to the Auditor-General, his rights in respect of leave of absence, retiring award or retiring age shall not be varied to his disadvantage during his tenure of office*"[2]. This is the only provision in the Constitution that deals with the Auditor General's leave entitlement. The framers of our Constitution correctly described the Auditor General's entitlement to leave as a "right", and as such he is free to exercise that right, or allowed to forfeit it.

Commenting on the independence of the Auditor General in *Appiah-Ofori vs Attorney General* [3], Justice Dotse (in a minority opinion) said:

It should be noted that in view of the very important watchdog role that the Auditor-General plays or is supposed to superintend in the transparent use and accountability of the public purse, any attempt to prejudice and or compromise his position by linking it to the pleasure of a sitting President is untenable. This is because the President is the head of the Executive Branch of Government whose use of monies [sic] entrusted to them the Auditor-General is constitutionally mandated to Audit.

The practical effect of the Presidency's directive is to subject the Auditor-General's ability to perform his important role to an executive decision on when he might or might not take his annual leave.

The framers of the Constitution cannot have envisaged that the Auditor-General could be directed to take his annual leave against his wishes, thereby rendering him entirely incapable of performing his role. With respect to the Presidency, a decision to require him to do so is unconstitutional.

The Constitution takes precedence over the Labour Act

We have seen some of the communications between the Auditor-General and the Presidency, and media statements about this matter, commencing with a statement issued by the President's Director of Communications dated 29 June 2020. By this

statement, the Presidency announced that the Auditor-General had been "directed" to "take his annual leave", with the grounds relied on for this direction being said to be Section 20(1) and 31 of the Labour Act 2003.

The Labour Act is, of course, inferior to the Constitution, which is the supreme applicable law in Ghana. Viewed another way, Acts of Parliament must of course be read so as to ensure consistency with the Constitution. Accordingly, even if the Labour Act contains any provision which might be interpreted as giving the Presidency the power to direct public officers to take leave, such a provision would have to be read in a manner consistent with the Constitution's provisions concerning the Auditor-General. Where there is any conflict, the Constitution's provisions must prevail.

The above said, there is simply no genuine conflict between the Labour Act and the Constitution here. Sections 20(1) and 31 of the Labour Act do not in fact give any power to the President to mandatorily require the Auditor-General to take leave. Section 20(1) sets out that a worker is *entitled* to not less than 15 days leave per year. That provision does not provide any power to *compel* a worker to take leave. Section 31 deals with *agreements* (i.e. between employer and employee) for the worker to *relinquish or forgo their entitlement to leave*. For example, if an employer requires an employee to sign an agreement to give up their legal entitlement to holiday, the Labour Act quite rightly *voids* such an agreement. Those who drafted the Labour Act were concerned to *protect* workers from unfair labour practices of employers who might require them to work against their wishes and forgo their entitlement to leave.

We have also seen a letter of 3 July 2020 from the Presidency to the Auditor-General which refers to the case of *Samuel M. K. Adrah v Electricity Company of Ghana* (22 February 2018). This case is relied upon for the proposition that Section 31 of the Labour Act is to be interpreted as stating that "annual leave is mandatory" and that this is to prevent workers from converting "annual leave to cash to the detriment of [the worker's] health and well-being."

That case sheds no light on the position of the Auditor-General. The case was about a worker with the Electricity Company of Ghana, who is an employee of a state-owned enterprise. Unlike the Auditor-General, the worker concerned was not in the position of a public servant whose independence is guaranteed by any provision akin to Art. 187(7) of the Constitution.

Respectfully, nothing in the Labour Act 2003 or any authority of which we are aware, gives the President the power to compel the Auditor-General to proceed on leave against his wishes, irrespective of whether or not the Auditor-General is in need of an opportunity to "rest and be refreshed".

Why require the Auditor-General to take leave of 167 days?

We wish to point out that since the alleged "mandatory" annual leave entitlement of a worker under the Labour Act is 15 days per annum, it is curious that the Presidency has nevertheless ordered the Auditor-General to take his full accumulated leave *entitlement* under his terms and conditions of employment (which has been variously stated as 123 or 167 days). We question why, if there is genuine concern for the wellbeing of the Auditor-General, and a genuine concern to conform with the Labour Act, that the request for him to take leave has not been limited to the statutory minimum of 15 days per annum.

As important as the health and wellbeing of the Auditor-General is, as a matter of competing public policies, it is more important for Ghana that he chooses to do his work how and when he wishes to do so, than for him to be directed by the Presidency to take an inordinately lengthy period of leave so that he may have the opportunity to "rest and be refreshed".

Finally, we wish to point out the sad irony of the situation that an Auditor-General is compelled to take up to 167 (working) days leave on the basis that he needs an opportunity to "rest and be refreshed", at a time when he is a little over 200 days from retirement from the Audit Service. We question how the public is expected to consider such a decision as made in good faith, in circumstances where the Auditor-General is essentially being asked to make himself well "rested and refreshed" for the commencement of his retirement. Mr. Domelevo's absence during this 167 day period would mean he will not be able to actively execute his Constitutionally-prescribed role as protector of the public purse during the crucial 6 month period before the general election, a period which has historically been characterised by increased risks of misuse of public funds.

The public is ready once again to measure government's commitment to fighting corruption

The government's commitment to waging an unrelenting fight against corruption was one of the key reasons many Ghanaians reposed their trust in the current government.

Indeed, one of the NPP's campaign promises was to "*plug leakages in the administration of public finances*"[4]. The NPP cited "*The Auditor General's Report (which) has indicated that between 2012 and 2014, GH¢5.9 billion of government funds cannot be accounted for,*"[5] as evidence of the leakages in public finances.

We ask what perception the Government expects the public to have of a decision now to send the Auditor-General on 167 days' leave, preventing him from plugging leakages in public finances, while at the same time claiming to uphold that Auditor-General office's important constitutional role of protecting the public purse to identify such leakages in the first place.

Mr President, this directive risks eroding the public's faith in your commitment to fight corruption and destroying the goodwill your administration has enjoyed from Ghanaians throughout your tenure in office.

We urge you to consider our letter, review your decision, and revoke the directive to the Auditor General forthwith. We urge you to do so without requiring this matter to be challenged in Court, which would simply lead to increased concern and uncertainty over this matter and over status of the office of Auditor-General. There is also the prospect of a delay of in excess of 167 days in awaiting a Court ruling, which would render the whole issue academic.

Yours, in service of our motherland Ghana,

[digitally signed]

Korieh Duodu, London, kduodu@gmail.com +44 203 289 5890

Lolan Sagoe-Moses, lesagoemoses@gmail.com +971 58 930 0057

Change.org petition signatories enclosed

[1] Article 187 (8), 1992 Constitution of the Republic of Ghana

[2] Ibid. Article 187 (12)

[3] (Unreported) Writ no J1/4/2007, 2nd June 2010.

[4] NPP Manifesto, 2016, Page 7.

[5] Ibid.

For Immediate Release

**CONCERNED CITIZENS PETITION PRESIDENCY TO WITHDRAW DIRECTIVE
TO PLACE THE AUDITOR GENERAL ON LEAVE**

Accra 9 July 2020: Over 1000 Ghanaians yesterday submitted a petition to the President of Ghana urging him to withdraw his directive requiring Ghana's Auditor-General to take an enforced leave of absence of 167 days.

The President's directive, issued in a letter dated 30 June 2020, renders the Auditor-General, an independent constitutional officer mandated with auditing the accounts of all Ghanaian public institutions, incapable of performing his duties for 10 of the remaining 12 months of his tenure in office.

The petitioners describe the President's directive as "*an unconstitutional and flagrant interference with the independence and mandate of the Office of Auditor-General,*" and call on him to reconsider his decision as a matter of urgency.

They contend that Article 187(7)(a) of the 1992 Constitution of Ghana which states that the Auditor General *shall not be subject to the direction or control of any other person or authority*, provides a "*clear and unambiguous*" constitutional basis for the Auditor General's independence.

The petitioners also challenge the Presidency's position that Ghana's Labour Act requires the Auditor-General to take is annual leave each year. Pointing out that the Labour Act is inferior to Ghana's Constitution, the petitioners clarify that the provisions of the Labour Act cited in the President's letter entitle a worker to take 15 days of annual leave, but do not provide any power to compel a worker to take his or her leave.

In closing, the petitioners remind the President of the ruling New Patriotic Party's 2016 election campaign promise to "*plug leakages in the administration of public finances*". They highlight the contradiction in the President sending the Auditor-General on 167 days' leave, preventing him from plugging leakages in public finances, while at the same time claiming to uphold that Auditor-General's important constitutional role of protecting the public purse to identify such leakages in the first place.

They contend that the President's directive risks eroding the public's faith in your commitment to fight corruption and destroying the goodwill your administration has enjoyed from Ghanaians throughout your tenure in office.

The citizens' petition comes on the heels of a press conference organized by over 400 Civil Society Organizations earlier this week to demand that the President withdraws his directive to the Auditor General. It will add to the mounting public pressure against the President's actions.

The petition remains open for signatures and can be found at: <https://www.change.org/p/dear-mr-president-please-withdraw-the-directive-to-place-the-auditor-general-on-leave>

The petition was drafted by Ghanaian lawyers Korieh Duodu and Lolan Sagoe-Moses. Civil Society Group Odekro Parliamentary Monitoring Organization assisted with its dissemination.

For inquiries contact:

Lolan at lesagoemoses@gmail.com or +971 58 930 0057; or

Korieh at kduodu@gmail.com or +233 23 540 2001.

EXH. 'AUD-GEN E1'



9TH JULY 2020

OCCUPYGHANA® PRESS STATEMENT

OCCUPYGHANA® CALLS FOR THE IMMEDIATE RECALL OF THE AUDITOR-GENERAL FROM LEAVE

1. OccupyGhana® has watched with numbing shock and great disquiet the circumstances leading to and following the President's direction to the Auditor-General to proceed on a so-called 'accumulated leave.' Our view is that the President has no power to issue any direction whatsoever to the Auditor-General in the performance of his functions, which necessarily includes the mundane matter of whether, when and how he takes his leave.
2. This is clear and leaves no room for any penumbra. Even if there was, which we dispute, the circumstances of this matter gave the Executive a great opportunity for exercising restraint of power and the development of the constitutional check and balances inherent in the creation and protection of independent constitutional bodies. Rather, what we have seen is that the presidency has unfortunately been cast as an overbearing depository of unrestrained and angry power, which makes us extremely nervous for what is still a nascent democracy.
3. If left unchecked and unchallenged, what has been done to the Auditor-General (allegedly in reliance upon a single, decade-old, baseless, dubious and dodgy administrative precedent) could be done to any of the Independent constitutional bodies such as the Electoral Commission, CHRAJ and arguably, the Judiciary. This would have dire consequences and Ghana would be the loser.

LEAVE IS A CONSTITUTIONAL RIGHT

4. First, leave is a constitutional right, and not a statutory obligation. With respect to the Auditor-General, article 187(12) of the Constitution specifically mentions, recognises and protects 'his rights in respect of leave of absence.' These words are repeated verbatim in section 10(7) of the Audit Service Act.
5. Further, article 24(2) of the Constitution assures all workers of 'rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays.' These are assurances, not obligations. Thus, if a worker may voluntarily opt to work beyond the normal 'limitation of working hours,' then that worker does nothing wrong in deciding to take less or even no 'periods of holidays with pay,' however personally unhealthy that might be.
6. That is why section 31 of the Labour Act cannot be interpreted or applied to convert the constitutional right into its exact opposite, a statutory obligation. Such an interpretation or application is not only unconstitutional, but does violence to the internal harmony of the Labour Act itself, section 20 of which aligns with the position of the superior provisions of the Constitution, that leave is a right.
7. While we may debate the meaning of the outlawing of an 'agreement' to relinquish or forgo leave under section 31 of the Labour Act, whichever meaning is applied cannot turn or flip the constitutional right on its head into a statutory obligation.
8. Thus, the singling out of the Auditor-General and applying leave to him as an obligation, is a grave error and a regrettable unconstitutional act.

9. Our worries got even more exacerbated when the presidency purported to direct the Auditor-General to also proceed on his 2020, largely unearned leave when 2020 is only about halfway through. While that direction is also unconstitutional by itself, it also breaches section 20 of the same Labour Act that the presidency relies upon, which speaks of the right to leave being *'in any calendar year of continuous service.'*
10. 2020 is not over and every worker, subject to arrangements with the employer, technically has until the last 15 days of the year (the minimum statutory period of leave) to exercise that right. The presidency's direction to the Auditor-General to take his 2020 leave literally in the middle of the year, sets and continues a bad precedent that can only harm our constitutional development.
11. We are further alarmed at the purported reliance on some previous direction to another Auditor-General to proceed on accumulated leave. We are convinced that that alleged administrative precedent was illegal and unconstitutional, and the quiet compliance with, and failure, refusal or neglect of the affected person then to challenge it (reminiscent of the period where successive Auditors-General were too scared to even exercise their constitutional disallowance and surcharge powers), does not convert that illegality and unconstitutionality into a much-desired precedent.
12. We are also not impressed by the purported reliance on the decision of the Court of Appeal in *Adrah v ECG*. That decision was simply that an employer could not provide for commuting leave into cash in its Staff Manual and then assert in court that that was illegal. Dzamefe JA characteristically did not mince his words. He said *'ECG cannot play hot and cold at the same time... It is contradictory. The company's negligence and mistakes cannot be visited on the innocent employee.'*
13. In his concurring opinion, Ofoe JA spent considerable time to analyse and interpret section 31 of the Labour Act and held that what that section did was to deny the worker the right to sell his leave and prevent the employer from buying that leave. However, based on the specific facts of the matter, he held that in equity, it would be unconscionable, grossly unfair, manifestly unjust and fraudulent to allow ECG to rely on this section of the Act. He would not allow ECG to use the law as an engine of fraud and held that it is not every agreement to forgo leave that is void and for which accumulated leave yields no benefits for the worker.
14. Thus, throughout this unanimous decision, the Court was careful to uphold the fact that leave is an entitlement to the worker. For section 31 to apply, it held, there must be an agreement to sell the leave. That is what was outlawed. This case did not provide any general support to compelling any worker to go on so-called accumulated leave.
15. What it rather establishes is that section 31, on which the entire presidential direction was based, outlaws agreements to sell or purchase leave. Thus, where the worker fails or neglects to take or commence leave in the calendar year the worker loses the leave days and cannot be paid for it, unless the court finds grounds to the contrary.
16. Thus, neither the purported administrative precedent nor purported judicial precedent is applicable or of any relevance to this matter.

INDEPENDENCE OF THE AUDITOR-GENERAL

17. The Constitution vests in the Ghanaian presidency, some of the most immense powers in any democracy on earth. The President is the repository and embodiment of executive power and authority, and gets to appoint almost every actor in the public service.
18. But having vested such immense powers in the President, the Constitution puts in place certain checks and balances that, hopefully, would restrain the exercise of those powers and not leave Ghana with the oxymoron or contradiction of a democratic, constitutional dictatorship to replace the dictatorship that we overthrew when we voted to enact this Constitution at a national referendum held throughout Ghana on the 28 April 1992.

19. One way in which the Constitution checks presidential power is the creation of independent constitutional bodies or offices. Although the President appoints persons to those bodies or offices, the President has and exercises absolutely no power over them after they are appointed. As hard as that may be to accept, the President has no political, executive, administrative, financial or even disciplinary power over those offices.
20. Those bodies or offices are the Electoral Commission, CHRAJ, NCCE, National Media Commission, Public Services Commission, Lands Commission, and of course the Auditor-General. By the use of the radical and mandatory words '*shall not be subject to the direction or control of any person or authority*,' the Constitution insulates these from being subjected to any other entity, including the Executive and Parliament. The only other body with similar insulation is the Judiciary.
21. Yet the Constitution did not seek to constitute those offices into demi-gods. It therefore subjects them and their operations to the Constitution and the law, by providing specific, limited instances for calling them to order, such as articles 23, 33, 295(8) and 296 of the Constitution.
22. That is why in the 25 June 2020 ruling of the Supreme Court in **NDC v AG & EC (Consolidated)**, the Court felt constrained to refer to and reiterate its 2016 decision in **Abu Ramadan & Gary Nimako v EC (No 2)**, that an independent body such as the EC in the exercise of its functions, '*cannot be compelled to act in a particular manner unless there is clear evidence that they have acted unconstitutionally*,' and that it was '*necessary to keep the Court itself within its proper limits in order to give effect to the supremacy of the law*.' We commend this exemplary exercise of judicial restraint to the Executive.
23. This constitutional architecture that restrains even the highest court of the land from giving directions to or exercising control over these bodies, in the absence of unconstitutionality, is deliberate. These bodies are expected to counter-balance and check the power of the President, and stand up to all other persons or authorities, if need be. Our Constitution, arguably adopts and then goes beyond aspects of the American doctrinaire separation of powers into providing for separation within powers. It anticipates and expects '*healthy tension*' between these bodies and other persons and authorities, and therefore protects the former from the whims and caprices of the latter, in the expectation that out of that '*equilibrium of tension*,' (to borrow from **Nixon v Sirica**) Ghanaians would be protected from oppression.
24. We believe that, much like separation of powers, our separation within powers is '*not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but by means of the inevitable friction incident to the distribution of the governmental powers... to save the people from autocracy*.' (**Myers v United States**)
25. This is the state of the unique separation within even executive power, meant to hold the otherwise super-powerful executive presidency in check. Thus, although the occupants of the independent office are public officers appointed by the President, the latter shall not direct and control them in any manner whatsoever.
26. Therefore, the argument from the presidency, that article 297(a) subjects these bodies to the President's disciplinary control simply on account of his having appointed them is implausible, is untenable and drives a fleet of *Ayalolo* buses through the carefully constructed constitutional architecture meant to prevent just that.
27. The fact that a past President breached that constitutional architecture and got away with it, sets a bad precedent. Bad precedents are not to be followed. Bad precedents are not justified.
28. If this is not checked and rolled back immediately, we will be setting further bad precedents that will eventually erode the precious little constitutional checks on executive power that exist.

CONCLUDING COMMENTS

29. OccupyGhana® has from its formation been interested in the work of the Auditor-General and a great deal of our time, resources, advocacy and efforts have been directed toward making that office work to protect the national purse. When the occupant of that office and the powers-that-be at the time would not listen to us, we went to the Supreme Court. The victory that we won and the seminal decision in **OccupyGhana v AG**, marked a turning point in the work of that office in the history of this nation. Not only that, we drafted and submitted the bill, which together with changes made by the Rules of Court Committee, was enacted as High Court (Civil Procedure) (Amendment) (No 2) Rules, 2016 (CI 102), to regulate appeals from the Auditor-General's disallowances and surcharges.
30. However, we can never discount the yeoman's role that Mr Domelevo has personally played, in seizing the opportunity offered by judgment by the scruff of the neck and running with it.
31. In the State of the Nation Address delivered on 8 February 2018, the President endorsed the work of OccupyGhana® with the Auditor-General as follows:

'The role of OccupyGhana in increasing awareness of the importance of the work of the Auditor-General should be recognised.'

32. The President made this statement after recounting the huge savings Ghana had made from a blatant attempt by some public officers to swindle the nation, but for the work of Mr Domelevo as Auditor-General. The President said:

'a staggering amount of GH¢5.4 billion has been identified as constituting fictitious claims.'

33. It remains a source of surprise to us that no person involved in making those fictitious claims, which Mr Domelevo's work exposed, has faced prosecution or even compelled to take a leave. Yet in the twilight of Mr Domelevo's unquestionably sterling public service, he gets treated worse than those who had wanted to steal the nation's monies.
34. In a speech delivered by the Vice President at a town hall meeting held on 3 April 2019, he referred to this saving and said of the work of the Auditor-General:

'In addition to this, 112 Certificates have been issued and a total amount of GH¢511,211,239.04 was levied against individuals, companies and institutions who committed financial infractions against the State. Also, GH¢67million had been recovered from disallowances and surcharges. This is protecting the public purse.'

35. We bring these up because we do not think that Mr Domelevo should be subjected to this treatment on account of him losing his leave. Although he has not taken the full complement of his leave, his office has been audited each year by the independent auditing firm appointed by Parliament for that purpose under article 187(15) of the Constitution.
36. The combination of the decision in **OccupyGhana v AG** and Mr Domelevo's sterling work has raised the stature and profile of Ghana in the world of auditors to the extent that some African countries, namely South Africa, Liberia and Sierra Leone (and Zambia, earlier in time), have adopted Ghana's disallowance and surcharge provisions, so that their Auditors-General can do what Mr Domelevo has done in Ghana.
37. When the history of the office of the Auditor-General is written, the appointment (and even the timing and circumstances of it), the work of Mr Domelevo and the phenomenal financial and other support that this government gave to him, should be what is highlighted. That story should not end with a final paragraph that says in the twilight of his public service, he was subjected to an unconstitutional removal from office dressed up as an enforced accumulated leave.

38. The constitutional history of the Fourth Republic is replete with stories of the 'little people' who, with their lawyers, stood up to and stared down at authority, and helped shape our constitutional rule. Key examples are found in the **ex parte Ampong** and **ex parte Adim Odoom** cases where 'ordinary' civil servants and their lawyers refused to be cowed by the might of the presidency. They stood up to the then President, and with the support of the courts, established that the President had no disciplinary powers over civil servants and could not place them on interdiction. The principle that supported their efforts then, should be alive, respected and upheld today.
39. We call on the President to revoke the directive and allow the administrative system in the Auditor-General's office to appropriately evolve, like every other institution, and perfect some of the very basic matters such as leave in order to safeguard the constitutional principles which justified guaranteeing the independence of office. We should do all in our power as a nation not to sour and soil one of the few highlights in the generally and historically stuttering fight against corruption in Ghana.
40. Considering the seriousness of this matter, we also call on the Council of State to intervene, in the exercise of its advisory mandate under article 91(3) of the Constitution to *'upon request or on its own initiative, consider and make recommendations on any matter being considered or dealt with by the President.'*
41. We identify with the unified position of fellow Civil Society Organisations to demand a reversal of this directive.
42. We also commend to all the wisdom and foresight in the enduring and almost prophetic words of Dotse JSC in his powerful and insightful dissent in **Applah-Ofori v AG**:

'It should be noted that in view of the very important watchdog role that the Auditor-General plays or is supposed to superintend in the transparent use and accountability of the public purse, any attempt to prejudice and/or compromise his position by linking it to the pleasure of a sitting President, is untenable. This is because the President is the head of the Executive Branch of Government whose use of monies entrusted to them, the Auditor-General is mandated to audit... Once appointed to that office, the Auditor-General must have his continued stay in office subject only to this Constitution, and no more.'

43. The presidency does not deserve this. Mr Domelevo does not deserve this. More importantly, Ghana does not deserve this.

Yours in the service of God and Country

OccupyGhana®

For further information, please contact Ing. Nana Sarpong Agyeman-Badu, OccupyGhana® Media Relations on +233 264771508 or Kweku Segbefia on +233 572260604 or Info.occupyghana@gmail.com.

ABOUT OCCUPYGHANA®

OccupyGhana® is a socio-political non-partisan pressure group with the vision of engaging Ghanaians in development process and ensuring good and responsible governance. We are passionately committed to ensuring that Ghana develops to its full economic potential and remains a strong democracy.

EXH. "ALL-GEN F"



OFFICE OF
THE PRESIDENT

SECRETARY TO THE PRESIDENT

Jubilee House, Accra
Tel: +233 (0) 302 738 600
Tel: +233 (0) 302 738 601
Digital Address: GA-000-0288

THIS IS EMILY MOORE
MARKET
THE ACCRA
26 OCT 2020
BY HENRY K. P.
BEFORE ME
COMMISSIONER OF JUDICIAL
13th July, 2020

See file/attachment

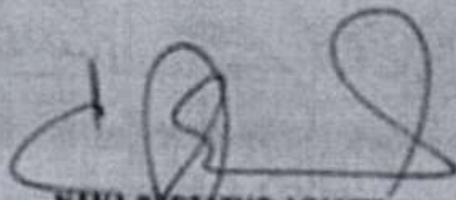
**RE: CONCERNED PERSONS RESPOND TO PRESIDENCY
CONCERNING AUDITOR-GENERAL**

We acknowledge receipt of your petition dated 8th July, 2020, on the above subject matter.

The President encourages people to be citizens and not spectators and therefore, your petition is welcome, and its contents have been duly noted. However, the position of the President as contained in the letter dated 3rd July, 2020 from this Office to the Auditor-General remains the same. The arguments made in your petition were considered prior to the President taking the decision to request Mr. Daniel Domelevo to take his accumulated leave from 1st July, 2020.

Accordingly, the President is unable to grant the request in your petition.

Please accept the President's best wishes.


NANA BEDIATUO ASANTE
SECRETARY TO THE PRESIDENT

KORIEH DUODU
LONDON, U.K.

LOLAN SAGOE-MOSES
ACCRA

CC: The Vice President
Jubilee House, Accra

The Chief of Staff
Jubilee House, Accra



African Organisation of English-speaking Supreme Audit Institutions

Suite 20 M, Private Bag X2, Woodhill, 0076, South Africa
T: +27 (0)10 286 0104 E: info@afrosai-e.org.za
www.afrosai-e.org.za

Mr. Nana Bediatuo Asante
Executive Secretary to the President
Office of the President
Jubilee House
Accra
info@presidency.gov.gh

EXH. "AUD-GEN 'G' SERIES

EXH. "AUD-GEN 'G' "



28 July 2020

Dear Mr Asante,

AFROSAI-E CONCERNS REGARDING INDEPENDENCE OF THE AUDITOR-GENERAL OF GHANA

I write to you with great appreciation for the ongoing efforts of the Office of the President to implement principles of good governance in Ghana.

Ghana is a founding member of AFROSAI-E, which is a regional organisation with the Auditors-General from 26 English-speaking supreme audit institutions (SAIs) as members. I write to you on behalf of the Auditors-General of AFROSAI-E, to express our concern on hearing that the current Auditor-General of Ghana, Mr Daniel Domelevo, was compelled by the Office of the President, to go on immediate leave.

We are deeply concerned about the grave repercussions of the infringement on the independence of the Auditor-General of Ghana. Effective SAIs enshrine principles of good governance and make a difference in the lives of citizens by contributing to accountability, transparency, integrity, staying relevant and leading by example. To deliver these value and benefits, a SAI needs an enabling and conducive institutional framework. This includes independence as a primary requirement. We believe that since its establishment, SAI Ghana has made effective strides to institutionalised these values.

The United Nations General Assembly resolution A/66/209, recognises that supreme audit institutions can accomplish their tasks objectively and effectively only if they —the organisation, its members and officials— are independent of the audited entity and are protected against outside influence. The resolution further encourages member states to continue to apply, in a manner consistent with their national institutional structures, the SAI independence principles let out in the Lima Declaration of Guidelines on Auditing Precepts of 1977 and the Mexico Declaration on Supreme Audit Institutions Independence of 2007. Enclosed with this letter, is a copy of the UN Resolution A/66/209.

AFROSAI-E Members

Angola, Botswana, Eritrea, Eswatini, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Tanzania, Uganda, Zambia, Zimbabwe



African Organisation of English-speaking Supreme Audit Institutions

www.afrosai-e.org.za

On behalf of the Auditors General, we appeal to your Office to consider the ramifications that these actions will have on the effectiveness of the SAI and good governance in Ghana. Especially now, with the severe global economic impact of the COVID-19 pandemic, strong national institutions that work for the betterment of the public service are essential.

We rely on your esteemed understanding regarding this matter.

Yours sincerely

Ms L Taylor-Pearce
AFROSAI-E Chairperson

Ms MMR Nkai
Chief Executive Officer- AFROSAI-E

CC:

The Chief of Staff, Office of the President
INTOSAI General Secretariat
AFROSAI General Secretariat
AFROSAI Chairman
Auditor General of Ghana
INTOSAI Development Initiative

AFROSAI-E Members

Angola, Botswana, Eritrea, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe

EXH.
AUD-GEN 'G1'



**STATEMENT BY THE INTOSAI DEVELOPMENT INITIATIVE ON
THE CURRENT SITUATION AT THE GHANA AUDIT SERVICE**

Mr. Einar Gørriksen, the Director General of the INTOSAI (International Organization of Supreme Audit Institutions) Development Initiative, has stated today a position regarding the recent events surrounding the Ghana Audit Service and the Auditor General of Ghana.

RECALLING:

- The Lima Declaration of Guidelines on Auditing Precepts (INTOSAI-P 1).
- The Mexico Declaration on Supreme Audit Institutions Independence (INTOSAI-P 10)
- The United Nations Resolutions A/66/209 of December 2011 and A/69/228 of December 2014 promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions.
- The Constitution of Ghana articles 187, 188 and 189, which establish and define the roles of the Auditor General, Deputy Auditor General(s), Audit Service and Audit Service Board, as well as the Audit Service Act of 2000.

CONSIDERING THAT:

- Supreme Audit Institutions (SAIs) can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence, as stipulated in the Lima Declaration of Guidelines on Auditing Precepts and the Mexico Declaration on Supreme Audit Institutions Independence.
- SAIs have an important role to play in promoting the efficiency, accountability, effectiveness and transparency of public administration, which is conducive to the achievement of national development objectives and priorities as well as the internationally agreed development goals, including the Sustainable Development Goals.
- The International Organization of Supreme Audit Institutions (INTOSAI), since its establishment in 1953, has played an increasing role in the creation of an international framework for sharing and disseminating knowledge, standards and

good practices to strengthen external control of public finances, and to sustainably improve the independence, professional competence, credibility and influence of SAIs for the benefit of citizens in the respective countries, supported by its autonomous, independent and apolitical character, as well as its special status in the United Nations Economic and Social Council (ECOSOC).

- The Audit Service of Ghana is a member of the International Organization of Supreme Audit Institutions (INTOSAI), of the African Organization of Supreme Audit Institutions (AFROSAI), and the African Organization of English-speaking Supreme Audit Institutions (AFROSAI-E).

AKNOWLEDGING:

- The recent decision by the President of Ghana to place the Auditor General of Ghana on forced administrative leave for one-hundred and sixty-seven (167) days which was accompanied by a direction to hand over all matters related to his office to one of his Deputy Auditor Generals

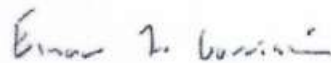
THE INTOSAI DEVELOPMENT INITIATIVE HAS DECIDED TO BRING TO THE ATTENTION OF RELEVANT DECISION MAKERS AND THE GENERAL PUBLIC THAT IT:

1. Expresses concern over recent events surrounding the Ghana Audit Service and the potential negative effects these events can have on its independence, as encapsulated in the Constitution of Ghana, the Audit Service Act and as supported by the Lima and Mexico Declarations and UN Resolutions A/66/209 and A/69/228.
2. Calls on all parties to ensure "the Auditor-General shall not be subject to the direction or control of any other person or authority" as stated in Section 7(a) of Article 187 of the Constitution of Ghana and which is consistent with Principle 1 of the Mexico Declaration, which calls for "the existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework".
3. Encourages all parties to consider Principle 8 of the Mexico Declaration, stating that SAIs should have "financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources". SAIs should have available the necessary and reasonable human, material, and monetary resources. The Executive should not control or direct the access to these resources.
4. Considers the conditions for appointment and removal of the Auditor General as critical for an independent Supreme Audit Institution.

5. Encourages all parties to take fully into account Principle 2 of the Mexico Declaration, which calls for "the independence of SAI Heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties." As the Declaration further elaborates, under Principle 2 "the applicable legislation is expected to specify the conditions for appointments, reappointments, employment, removal and retirement of the head of SAI and members of collegial institutions, who are:
 - a. appointed, reappointed, or removed by a process that ensures their independence from the Executive;
 - b. given appointments with sufficiently long and fixed terms, to allow them to carry out their mandates without fear of retaliation"
6. Reaffirms its strong commitment to initiate and to support all possible actions intended at advocating for the independence of SAIs as supported by the principles recorded in the Lima and Mexico Declarations.
7. Formulates the wish that any future institutional developments in Ghana will be an opportunity, thanks to the determination of the competent authorities in Ghana and the support of their stakeholders, to endow the Ghana Audit Service with institutional, organisational and professional capacities enabling it to accomplish its mission effectively, in order create value and benefits for the citizens of Ghana.
8. Offers its support in cooperation with other stakeholders from the INTOSAI community, in the spirit of the INTOSAI motto "Mutual experience benefits all" and building on the international wealth of expertise, to any initiative geared towards providing the Ghana Audit Service with an appropriate institutional framework that will ensure compliance with Lima and Mexico Declarations.

This is a voluntary and non-binding statement, issued without legal status under the law of the host country of the INTOSAI Development Initiative.

Oslo, Norway
30 July 2020



Mr. Einar Gørissen
Director General
INTOSAI Development Initiative

"EXH. AUD-GEN H"

Answer, reply the number and date of this letter should be quoted

My Ref. No.

OP/COS/96/38

Your Ref. No.



REPUBLIC OF GHANA

OFFICE OF THE PRESIDENT
FLAGSTAFF HOUSE
ACCRA
TEL: 0302-201000

19TH DECEMBER, 2016

26 OCT 2020

HENRY EIP

Dear Sir,

APPOINTMENT AS AUDITOR-GENERAL

His Excellency the President, John Dramani Mahama, acting in consultation with the Council of State, in accordance with Article 70 of the 1992 Constitution, has appointed you as Auditor-General with effect from 23rd December, 2016.

Until the approval of the Report of the Prof. Boandoh Committee on Emoluments the salary and allowances payable and the facilities and privileges available to you shall be as indicated in the Prof. Ewurama Addy Committee Report.

The provisions of Article 146 of the 1992 Constitution relating to the removal from Office of a Justice of the Superior Court of Judicature shall apply to you.

Please confirm by 28th December, 2016 whether or not you accept the appointment.

Accept my congratulations on your appointment.

Yours sincerely,

JULIUS DEBRAH
CHIEF OF STAFF

MR. DANIEL DOMELOVO
ACCRA