WHITE PAPER ON THE REPORT OF THE COMMISSION OF INQUIRY INTO PAYMENTS FROM PUBLIC FUNDS ARISING FROM JUDGMENT DEBTS & AKIN MATTERS (C.I. 79/2012)

CHAPTER ONE

Introduction

His Excellency, President John Dramani Mahama, having satisfied himself that it is in the public interest to appoint a Commission of Inquiry to inquire into payments made from public funds for and on behalf of the State arising from judgment debts, arbitration awards, negotiated settlements and related processes, set up a Commission of Inquiry under the Commission of Inquiry into Payments from Public Funds arising from Judgment Debts and Related Processes Instrument, C.I. 79 of 2012.

The Commission of Inquiry, hereafter referred to as "the Commission", was composed of a Sole Commissioner, Justice Yaw Appau, a Justice of the Court of Appeal.

Terms of Reference

The terms of reference of the Commission as stated in section 7 of C.I. 79 were as follows:

a. to ascertain the causes of any inordinate payments made from public funds in satisfaction of judgment debts since the 1992 Constitution came into force;
b. to ascertain the causes of any inordinate payments from public funds and financial losses arising from arbitration awards, negotiated settlements and akin processes since the 1992 Constitution came into force;
c. to make recommendations to the Government for ensuring that, as far as practicable

i. the instances where public funds are utilized to make payments in satisfaction of judgment debts and public debts arising from akin processes are limited or avoided;
ii. Government does not incur undue financial losses when it does business with private persons or institutions.

The Report

The Commission presented its Report to His Excellency John Dramani Mahama, President of the Republic of Ghana, on May 20, 2015. The Government has studied the Report thoroughly and carefully with a view to issuing a White Paper within the six months period stipulated in Article 280 (3) of the 1992 Constitution.

The White Paper follows the order in which the Commission presented its Report as follows:

1. Selected cases on judgment debts arising out of alleged contractual breaches (1992-2012);
2. Selected cases on judgment debts arising out of compulsory land acquisitions by the State/Government (i.e. compensation payments 1992-2012);
3. Selected cases on judgment debts arising out of alleged tortuous/statutory breaches committed by public officials in the course of their public duties (1992-2012);
4. General findings/observations;
5. General Recommendations;
6. Conclusion and Acknowledgement.

The Commission made certain general findings and observations on the factors that have accounted for or contributed to judgment debts against the State.

The Government accepts, rejects or accepts with modifications the recommendations of the Commission.

CHAPTER TWO

SELECTED CASES ON JUDGMENT DEBTS ARISING OUT OF ALLEGED CONTRACTUAL BREACHES

1. Alfred Agbesi Woyome v. Attorney-General and Another

The Commission reviewed the various documentation submitted to it on this matter and established the following:

i. Either through inadvertence or pure mischief through connivance, both the Chief State Attorney Samuel Nerquaye Tetteh who was charged with the defence of the suit in the trial court, and the trial judge did not scrutinize the processes filed before them with judicious eyes. If the trial judge, particularly, had done so, he would not have granted the application for default judgment in the first place. The bank accounts of the wife of the Chief State Attorney Mrs. Nerquaye Tetteh, was later found by the Economic and Organised Crime Office (EOCO) to have ballooned by the payment into it of the sum of GH₵400,000.00 by Alfred Agbesi Woyome after the deal had become successful. The then Attorney General, in deciding to negotiate with Alfred Agbesi Woyome for the payment of the cedi equivalent of €22,129,501.74 to him as representing 2% of alleged financial engineering costs, was ignorant about the facts of the case Woyome had pleaded in court, but nevertheless went ahead to negotiate and finally ordered for such payment to be made without any scrutiny of his claim and due diligence.

ii. The trial court seriously erred when it granted a default judgment that was procedurally flawed in many aspects. The default judgment was a complete nullity due to the procedural irregularities that completely destroyed its foundation.

- The plaintiff had no mandate under the rules of court to amend his writ of summons twice without leave before pleadings were closed. Order 16 Rule 1(1) gives the plaintiff only one opportunity. He amended his writ of summons twice without leave but the trial court either failed to scrutinise the records before the granting the application or turned a blind eye to it.

- When the plaintiff amended the endorsement on his writ of summons to change completely his cedi claim to a Euro claim with other reliefs, he did not amend his original statement of claim to correspond to the new claim which was completely different from the original claim.
- At the time plaintiff filed the motion for default judgment in default of defence, the defendants had not been served with any Statement of Claim as required under the Rules of Court in support of the amended Writ of Summons to which they could respond by way of a statement of defence.
- On 14th May 2010, just seven (7) days after the service of the amended writ of summons on the 1st defendant, plaintiff caused a motion for judgment in default of defence to be filed. This was contrary to Order 16 Rule 3(2)(b), which provides for a period of fourteen (14) days after the service of an amended statement of claim on the defendant.

iii. Though the parties in the action filed a supposed Terms of Settlement intending it to be adopted as a consent judgment, the State, before the date slated for the adoption of the said terms, had declared its intention not to go by the terms anymore since it had realised it had a defence to the action. That conduct alone served as a caveat to the trial court in treating the terms as Consent Judgment since it had been robbed of its consensual content. The trial court regrettably forced a Consent Judgment on the State. What the trial court described as a "Consent Judgment" was therefore not a Consent Judgment properly so-called. It was a judgment forced on the State by the trial court, which makes it a complete nullity.

iv. There was no basis for the payment of the sum of over GH₵51 million to Alfred Agbesi Woyome. This is because he was not entitled to any such payment as the EOCO rightly found and stated in its interim report.

v. The trial court should have set aside the default judgment it had wrongly entered against the State and allowed the Attorney-General to defend the action as she intimated. The failure of the trial High Court to do so led to the wrong payment of the huge sum of over GH₵51 million to Alfred Agbesi Woyome who did not deserve it in the least.

vi. The payment to Alfred Agbesi Woyome was inordinate and at the same time fraudulent. It therefore constituted a huge financial loss to the State.

The Commission recommends that in line with the review decision of the Supreme Court, the State must take all necessary steps to re-call the money paid to Alfred Agbesi Woyome from him with interest.

Government accepts the recommendation of the Commission.

Government is, however, of the view that the Sole Commissioner went outside his remit in attempting to ascribe reasons for Hon. Martin Amidu's loss of his ministerial job in 2012 when he, the Sole Commissioner, did not have the requisite evidence on the matter.

2. Waterville v. Attorney-General

The Commission found that the amounts claimed by Waterville had in fact been paid to the company through its sub-contractors, Micheletti & Co and Consar Ltd in or around 2006.

The Commission found that the Attorney-General should have contested the matter for it to be determined on its merits, rather than appoint a mediator who recommended that the Government settle the claim for an amount of €25,000,000.00, which amount the Attorney General accepted to pay in five installments of €5,000,000.00 per installment.

The Commission, having noted that the Supreme Court had decreed this payment as "wrongful, unwarranted and null and void *ab initio*" and having ordered the Company to refund the amount to the Government, recommended that the State should take the necessary steps to retrieve the amount from Waterville since Waterville was not entitled to it.

Government accepts the recommendation of the Commission.

Government, however, notes that Waterville has instituted proceedings against the Government of Ghana before the International Court of Arbitration (ICC), challenging Government's attempts to recover the money from Waterville (Waterville Holdings BVI Limited v. the Attorney-General, Republic of Ghana). Government is defending the action.

3. Isofoton S.A. v. Attorney-General

The Commission made the following findings of fact:

i. Isofoton S.A., a Spanish company signed a contract with the Ministry of Energy in 2001, which was subsequently re-assigned to another Spanish company Elecnor. Isofoton further signed a contract with the Ministry of Agriculture in 2005, which was subsequently re-assigned to another Spanish company Incatcma Indema. Both re-assignments were done on the orders of the Office of the President at the time.

ii. The Attorney-General, Hon. Joe Ghartey, wrote to advise the Minister for Finance and Economic Planning that the action by the Office of the President in re-assigning the two contracts amounted to breach of the contracts which would be detrimental to the Government and, in consequence, impose substantial financial burden on the State. He advised an amicable settlement be reached. The Minister for Finance did not reach an amicable settlement.

iii. The company sued the Government. The Attorney General failed to defend the actions and the company obtained a default judgment in the High Court on November 5, 2008.

iv. On November 18, 2008, the Attorney General filed a motion to have the two default judgments set aside. The matter was not concluded when the Fifth Government of the Fourth Republic entered office. The High Court ordered an out-of-court settlement. The Government failed to settle the agreed amounts. The company initiated garnishee proceedings against the State.

v. The new Attorney-General, Hon. Martin Amidu, filed an application to have the garnishee order set aside but failed. On the basis of the pending High Court judgment, the State made a payment of GHC 488,208.00 in March 2011, leaving a balance of US$974,528.00.

vi. Thereafter, Hon. Amidu lost his position as Attorney General but went ahead to initiate a private suit in the Supreme Court for a declaration that the contracts were null and void. The Supreme Court ruled that the two contracts were null, void and without effect whatsoever since they had not been laid before and approved by Parliament in accordance with article 181(5) of the 1992 Constitution.

The court therefore ordered Isofoton S.A. to refund the part-payment of the settlement debt already made by the State.

vii. The Commission considered itself bound by the decision of the Supreme Court and therefore recommended that the State take steps to retrieve, from Isofoton S.A., the moneys paid to them.

Government accepts the recommendation of the Commission.

Government, however, notes that international tribunals have not agreed entirely with our Supreme Court decisions in Balkan, Waterville and Isofoton cases in relation to Article 181(5) of the 1992 Constitution. In particular, in the case of Bankswitch Ghana Limited v. Government of Ghana, the arbitral tribunal established under the auspices of the Permanent Court of Arbitration (PCA), in its award of April 11, 2014, held that based on the customary international law principles of estoppel, the Government of Ghana was precluded from arguing that the Bankswitch Agreement was unenforceable under Article 181(5) of the 1992 Constitution.

4. Latex Foam Rubber Products v. Attorney-General

According to the Commission, Latex Foam alleged that it supplied foam products totaling GhȻ207,365.62 to the Ghana@50 Secretariat.

The Commission found that there was an interminable delay in effecting payment as a result of a blame game between Dr. Charles Yves Wereko-Brobby (Head of the Ghana@50 Secretariat) and Mr. Kwadwo Mpiani (Chief of Staff at the Office of the President and Chairman of the Ghana@50 National Planning Committee). As a result of this blame game, when the Fourth Government of the Fourth Republic was leaving office on 7th January 2009, the amount was still outstanding.

Consequently, the company sued the Government in August 2009. As a result of the transition from the Fourth to the Fifth Government of the Fourth Republic, there was some issue about access to documentation to defend the action.

The action was therefore undefended, enabling the company to obtain a default judgment against the Government.

The Commission, however, formed the opinion that the action could have been defended, given that there was no written contract covering the transaction and that the mattresses were delivered in July 2007, four months after the Ghana@50 event had taken place in March 2007 and in violation of the unwritten agreement which required their delivery in December 2006.

As a result of the Government's delay in paying the default judgment, the Company garnisheed some Government accounts at the Bank of Ghana, forcing the Government to finally pay the amount on 5th May 2010. However, the company claimed and was awarded by the High Court a post-judgment interest of GhȻ12,200.88 as a result of the delayed payment. The Commission was unable to determine whether this additional judgment debt had been paid by the Government as at the time of writing its report.

The Commission's view was that public officials at both the Ghana@50 Secretariat and the National Planning Committee did not perform their duties with the urgency required of them. The Commission felt that it is the lackadaisical attitude of such public officials who should have acted timeously in resolving issues with the contractors that blew the debt out of proportion.

The Commission also made the following findings:

i. the National Planning Committee and the Ghana@50 Secretariat, in deciding on the projects to embark on towards the celebrations, bit more than they could chew. That explains why a lot of the projects earmarked for the celebrations were never implemented; and
ii. the CEO of the Ghana@50 Secretariat appeared to have had too much unfettered rights in his expenditure decisions, irrespective of whether or not the State had money to pay for the planned projects.

The Commission recommended that an independent forensic audit should be undertaken into all the contracts awarded by the Ghana@50 Secretariat, either verbal or written, and the expenditure incurred. It was the Commission's view that this will assist the Government to know whether moneys meant for the celebrations were properly utilized or not and for those who would be found culpable one way or the other to be appropriately sanctioned.

Government does not accept this recommendation of the Commission. Government is of the view that, to the best of its knowledge, all the information regarding the Ghana@50 expenditures is captured in the Report of the Ghana@50 Commission of Inquiry. Government will continue to implement the recommendations of that Commission. However, should any new and relevant information become available, Government will advise itself on the way forward.

Government instead directs the Attorney-General and the Minister for Finance to confirm whether the post-judgment outstanding interest judgment debt of GhȻ12,200.88 is still outstanding. If so, it should be paid off immediately.

5. Margins Group Ltd. and 2 Others v. Attorney-General and Another

According to the Commission, under the 4th Government of the 4th Republic, the Ghana@50 Secretariat after competitive bidding contracted with Margins Group Ltd. for the supply of one million Ghana@50 calendars at a price of GhȻ920,000.00 which later ballooned to GhȻ2,900,000.00 allegedly due to change in specifications. In changing the amount and specifications, procurement procedures were not followed.

The calendars were also contracted for transportation to their destinations to Margins Supplies Company Limited, a subsidiary of Margins Group Limited, at a fee of GhȻ851,215.65, without any competitive bidding.

The contract sums were not paid, leading to a court action against the Secretariat two years later which the companies won, resulting in a judgment debt of GhȻ4,009,401.62. This amount was paid by the 5th Government of the 4th Republic but the CEO of the Ghana@50 Secretariat, Dr. Charles Yves Wereko-Brobby, contended that the amount should never have been paid because the companies were not entitled to it.

He blamed the Office of the President of the 4th Government of the 4th Republic under whose auspices the Ghana@50 National Planning Committee worked for the delay in effecting payment. He also claimed that he was not contacted by the new Government before the judgment debt was paid.

He finally alleged that money had been voted by the outgoing 4th Government of the 4th Republic to effect payment of all debts owed by the Secretariat to its contractors but according to the Commission, he provided no evidence for this.

In the view of the Commission, the change of specifications that ballooned the contract price from GhȻ920,000.00 to GhȻ2,900,000.00 created a contract 'de novo' which should have been re-subjected to competitive bidding. Failure to do this made the second contract illegal.

The handling and execution of the contract, according to the Commission, raised unanswered questions, which require thorough investigations. The Attorney-General's Department was also lackadaisical in its approach to the case as well as other cases involving the Ghana@50 celebrations which were filed in various courts between 2008 and 2011. Public officials were also found to have adopted an "I don't care" attitude in their handling of the Ghana@50 celebration contracts.

Government contests the claim of Dr. Wereko-Brobby before the Commission that he was not contacted before the judgment debt was paid. When President Mills' Government took over the reigns of government, strenuous efforts made to get Dr. Wereko-Brobby to give information were to no avail. He refused to cooperate with Government leaving Government no option but to set up a Commission of Inquiry in the expectation that the details surrounding the workings of the Ghana@50 Secretariat would be brought to light.

Indeed, it proved an uphill task to get Dr. Wereko-Brobbey to return documents of the Ghana@50 Secretariat which were in his custody. All documents relating to work of the Secretariat and various debts owed by the Secretariat were in his home at Ringway Estates. Eventually, after strenuous effort, Government managed to take possession of the files. He presented to the Office of the Chief of Staff a list of persons owed by the Secretariat and Margins Group Ltd. was one of them.

The Commission recommends that since Dr. Charles Yves Wereko-Brobby was emphatic that the companies were not entitled to the judgment debt they obtained against the State, an in-depth forensic audit should be conducted to unearth what actually went on, the Commission having determined that the total amount that the State ended up paying was in the region of GhȻ6.2 million.

Government accepts this recommendation and directs the Auditor-General to conduct the forensic audit.

This case is unlike the *Latex Foam Rubber Products Ltd. v. Attorney-General* case. In the Latex Foam case, there was no dispute about the payments and the only outstanding amount was the post-judgment interest debt of GhȻ12,200.88. Secondly, in the Latex Foam case, the Sole Commissioner recommended that an independent forensic audit be undertaken into ALL the contracts awarded by the Ghana@50 Secretariat, notwithstanding the outcome of the Ghana@50 Commission's work.

6. KAE (Ghana) Ltd. v. The Ministry of Agriculture and Attorney-General

The Commission found that the Ministry of Agriculture in 1984 terminated a contract awarded to KAE (Ghana) Ltd. on an irrigation project in the Northern Region for an amount of GhȻ1,289.76 two months after the Company had commenced work on the project. The Company was not paid for the work it had done in the two-month period. Following a series of petitions to the then PNDC in 1985-86, an amount of GhȻ4,100.00 was paid to the Company but it was not indicated what this was for.

The Company's renewed petitions to the 3rd and 4th Governments of the 4th Republic did not elicit any response. The Company therefore sued the Ministry of Agriculture and the Attorney-General in 2007. Unable to file a credible defence, the Ministries agreed to a Consent Judgment of GhȻ545,870.00 including interest and costs which has been paid.

The Commission further found that the Northern Regional Administration and the Regional AESL (Architectural and Engineering Services Ltd.), which awarded the contract, lacked the authority to do so, not having consulted the Irrigation Department and the Ministry of Agriculture which had the authority to enter into the contract.

The Commission also made the following findings and observations:

- The project which started in 1984 at a cost of GhȻ1,289.75 ended up as a judgment debt of GhȻ545,870.81 in 2008, in addition to the earlier payment of GhȻ4,100.00 made during the era of the PNDC, bringing the total excess payment to GhȻ548,681.06.

- The Northern Regional Administration (now Northern Regional Coordinating Council) should have paid off the contractor on a quantum meruit basis once it terminated the contract in 1985.
- It was the carelessness and gross negligence of the public officials at the Northern Regional Administration and the regional AESL who wrongly awarded the contract that led to the unwarranted payment of the judgment debt, resulting in financial loss to the State.

The Commission recommended that the officials who wrongly awarded the contract must be identified, investigated and possibly sanctioned by surcharging them with the judgment debt that the State was made to incur.

In accepting the recommendation of the Commission, Government is mindful of the fact that the events described happened about thirty-one years ago and any investigation thereof may encounter serious difficulties.

7. Societe Generale (SG) v. Ghana National Petroleum Corporation (GNPC)

The Commission made the following findings of fact:

i. The GNPC entered into a contract involving derivatives or hedging with the SG, a French commodities bank, in 1996 under the NDC Government.
ii. A dispute arose, and SG sued GNPC in a London High Court over payments that SG alleged GNPC owed it.
iii. GNPC denied the claim and counter-claimed against SG through its external lawyers, Bindman & Partners, for negligent advice given by SG.
iv. Subtle attempts by the two parties to settle the matter out of court came to no avail.
v. In 2001, the NPP Government which had replaced the NDC Government wrote to dispense with the services of Bindman & Partners, the GNPC's external lawyers in the case`, and asked Ghana's Attorney-General, Hon. Nana Akuffo Addo, to assume responsibility for the conduct of the case.

vi. The Ghana Government, through the Deputy Minister of Energy, Hon. K. T. Hammond, resumed the settlement talks with SG, but the Government neither appeared to defend SG's action in the London High Court nor informed the Court about the out-of-court settlement attempts.

vii. The London High Court entered a default judgment against the GNPC for US$47 million in June 2001.

viii. At the time of the default judgment, SG had accepted a final out-of-court settlement of US$14 million from the Ghana Government.

ix. Hon. K. T. Hammond was sent by President J. A. Kufuor to Paris and London to amicably resolve the US$47 million default judgment debt with SG by convincing the Company to accept the US$14 million out-of-court settlement instead of insisting on the US$47 million judgment debt. According to the Commission, Hon. K.T. Hammond "who was in the thick of affairs", had this to say "My Lord, I also think partly because after ten (10) years practice at the Bar of England and Wales, my Minister felt confident that I could settle the judgment that had been entered; 'you go and plead your case with those you owe and see what they could do about it', he said. My Lord, so I left. I went to Paris back to London and back to Paris; to and fro". The result of Hon. K. T. Hammond's efforts was a compromise settlement of US$19.5 million.

x. The Government of Ghana then decided to sell one of GNPC's marine assets, the Drillship 'Discoverer 511', a going, profit-making concern, to pay off the compromise settlement amount of US$19.5 million.

xi. The Acting Managing Director of GNPC, Dr. Ofori Quaah, was made to sign a Power of Attorney for and on behalf of GNPC (in the Office of the Attorney-General) empowering Hon. K. T. Hammond to sell the Drillship 'Discoverer 511' while in London and use the proceeds to pay off the debt owed by GNPC.

xii. Hon. K. T. Hammond sold the Drillship for US$24 million, used US$19.5 million to pay off the debt, and gave US$1 million to the London solicitors who had represented Ghana in the Drillship sale negotiations, Constant & Constant, out of which they were to take US$100,000 for their services and keep the balance of US$900,000.00 to cater for the future debts of GNPC to other creditors. He handed over the remaining US$3.5 million to Ghana's High Commissioner in London.

xiii. Ghana's High Commissioner in London, Ambassador Chris Kpodo, handed over the cheque for the amount to the staff of the Treasury Office of the Controller and Accountant-General's Office in London who used it to open a special account at the Ghana International Bank in London.

xiv. This was how money belonging to the Corporation which was alleged to be in a huge financial distress was utilized on the blind side of the Management and Board of the Corporation, contrary to Act 64 that established the Corporation.

On the judgment debt and the sale of the Drillship transactions, the Commission made the following findings and observations:

i. The Attorney-General, Hon. Nana Akuffo Addo, failed to make any appearance in the London High Court after dispensing with the GNPC's external lawyers, Bindman & Partners.

ii. At the time this happened, the Government of Ghana, represented by the Ministry of Energy, had wrongfully taken over the running of the affairs of the GNPC.

iii. The GNPC had all along been contesting SG's claims since 1999 and had put up a strong defence and a counter-claim.

iv. The Acting Managing Director of the GNPC, Dr. Ofori Quaah, was not given room to operate and was coerced into signing a Power of Attorney prepared at the Attorney-General's Office to empower Hon. K. T. Hammond to sell the GNPC's marine asset, the Drillship, 'Discoverer 511'. The Attorney-General, Hon. Nana Akuffo Addo, failed to bring to the attention of the London High Court, the settlement attempts. It was this failure that led to the entry of the US$47 million default judgment against GNPC. It was this failure that made it possible for SG to demand more than the US$14 million dollars that they had earlier on agreed to accept as final settlement of the suit. The payment of US$19.5m instead of US$14 million earlier on agreed constituted financial loss to the Corporation and Ghana.

v. Governmental interference in the running of the affairs of the GNPC accounted to a large extent for that financial loss.

On how the balance of US$3.5 million was utilized, the Commission made the following findings and observations:

i. The cheque for the amount was paid into an account that was opened with the Ghana International Bank in London by the Treasury Office of the Controller and Accountant-General's Department in London.
ii. US$1.657 million out of the amount was used to defray alleged debts owed by the GNPC.
iii. US$169,548.25 was used to pay monthly salaries of staff not properly described in October 2003 and March 2004.
iv. US$141,361.29 was transferred into a different account with the same Bank. The utilization of the transferred money remains a mystery to date.
v. The outstanding balance of US$1,532,090.46 is unaccounted for to date.
vi. The two accounts were closed in December 2005.
vii. There was no justification for paying the amount of US$3.5 million into a new account because as the proceeds were from the sale of a GNPC asset, it belonged to the GNPC and should have been paid into GNPC's account.
viii. Records on the sale of the Drillship 'Discoverer 511' disappeared from the offices of the Attorney-General's Department and the Ministry of Energy only for Hon. K. T. Hammond to present to the Commission a sealed envelope which he claimed contained the alleged relevant documents; his explanation being that a 'Good Samaritan' who he never identified left it in his pigeon hole in Parliament House.
ix. The Commission's conclusion is that: *"The totality of these developments raises strong suspicions that the whole transaction involving the sale of the Drillship 'Discoverer 511' is shrouded in mystery".*

In the light of the established facts and the findings and observations made by the Commission, Government accepts the following recommendations of the Commission:

i. The Minister of Finance and officials of the Controller and Accountant-General's Department at the Ghana High Commission in London at the time in question, (i.e. between 2001 and 2006), should be made to:
    - render proper accounts on how the US$3.5 million that was lodged in the London Bank was disbursed since the money belonged to the GNPC;

- explain what happened to the US$141,361.29 that was transferred into the second account that was also opened at the Ghana International Bank, London;
- explain what happened to the balance of US$1,532,090.46 that was left in the first account that was opened at the Ghana International Bank, London;
- explain how the Law Firm which assisted in the sale negotiations, 'Constant and Constant', disbursed the US$900,000.00 that was paid into an escrow account in London supposed to 'cater for the future debts of GNPC to other creditors'.

ii. The Executive arm of Government should be slow in interfering in the running of State institutions that have independent legal capacities as such interferences do not augur well for good governance and disable the State from holding such institutions accountable for their stewardship.

Government directs the Economic and Organised Crime Office to undertake the assignment in (i) above.

Government further directs EOCO to investigate the mandate, authority and/or basis of Hon. K.T. Hammond's disbursement of the US$900,000.00 to the Law Firm 'Constant and Constant' to **cater for future debts of GNPC** to other creditors.

8. New World Investments Ltd. v. Ghana National Procurement Agency (GNPA)

The Commission established the following facts:

i. New World Investments Ltd., later known as New World Renaissance Securities Ltd. and New World Securities Ltd., granted a 91-day credit facility of GhȻ1 million to the GNPA for the importation of sugar in 2004.

ii. The GNPA (converted into the Ghana National Procurement Company Limited [GNPCL] in 1993), instead, utilized the facility to finance its administrative expenses and was unable to repay.

iii. The GNPCL eventually paid GhȻ550,000.00 of the amount and two years later, in 2007, New World Renaissance Securities Ltd. sued the GNPCL for the entire principal amount of GhȻ1 million.

iv. New World Renaissance Securities Ltd. obtained judgment for the amount less the GhȻ550,000.00 that the GNPCL had paid. GNPCL still did not pay. When the Company threatened to auction the Headquarters of the GNPCL to defray the judgment debt, the Minister of Trade at the time, Hon. Hannah Tetteh, intervened and had the matter settled out of court leaving in its trail a judgment debt of GhȻ2.5 million which was paid by the Government.

The Commission made the following findings and observations:

i. The Minister of Trade's intervention followed the attachment of the Headquarters building of GNPCL by New World Renaissance Securities Ltd. to defray the judgment debt which the Company pegged at GhȻ4.3 million instead of GhȻ1, 127,000.00.
ii. The amount of GhȻ4.3 million was arrived at by calculating the interest on monthly basis at a compound interest of 2.83%.
iii. Court (Award of Interest and Post Judgment Interest) Rules 2005 (C.I. 52) however stipulates that in the absence of agreement to the contrary, interest on such judgment debts is to be calculated at the bank rate prevailing at the time the judgment debt order is made and at simple interest.
iv. The GhȻ2.5 million that the Ministry of Trade settled with the Company was based on the GhȻ4,377,832.28 that the Company had arrived at using the wrong interest rate calculation.
v. This settlement caused the State to incur an extra debt of GHC 876,080.16.
vi. There was misjudgment and wrong actions and/or inactions on the part of some few public officials.
vii. Though set up to function as a viable commercial entity, GNPCL could not perform as such due to interference by officialdom.
viii. According to the Acting Chief Executive of GNPCL, such interference had prevented the Company from making efforts to retrieve a total of GhȻ2,983,160.36 owed to it by 196 companies and individuals.

The Commission formed the view that:

i. Government should redefine its role in matters concerning institutions that have independent legal capacities but are wholly State-owned;

ii. It is not a good practice for the State to always absorb debts incurred by its agencies with legal capacities without the agencies being made to pay back or refund what was spent on them due to mismanagement;
iii. Because of the interference by the Minister of Trade, the Ministry of Finance was made to pay over and above a debt that GNPCL owed without any commitment to pay back same into the consolidated fund;
iv. It is high time public servants were made to pay for their misdeeds and mismanagements that lead to unwarranted financial loss to the State;

Government, however, notes that the so-called Government interference was to prevent the sale of the Headquarters of the GNPCL, which had been attached by the judgment creditor.

The Commission recommended and Government accepts that:

i. State institutions must be given the independence to act and perform under the laws that establish them. This is the only way they could be called upon to account for their stewardship and face the consequences if need be.
ii. The judgment debt that the State paid for and on behalf of GNPCL should be charged to the accounts of the Company.
iii. The officials who took the decision to use the loan meant for the importation of sugar to finance the Company's administrative expenses should be surcharged with the loss incurred by the State.
iv. The same officials should be made to account for how the loan was utilized.
v. The tax authorities should pursue New World Investments Ltd. (now New World Renaissance Securities Ltd.) and carry out a thorough audit on the Company to find out whether the Company declared the judgment debt in its annual Company accounts for the appropriate tax to be levied on the amount received.

Government directs the Ministry of Trade to take necessary action on its decisions in (ii)-(iv) above. Government further directs the Ghana Revenue Authority (GRA) to pursue the necessary action on 'v' above on the recovery of taxes.

9. Rockshell International Ltd. v. The Attorney-General

Rockshell International Ltd. supplied granite stones for construction works to the Keta Sea Defence Project under contract with the Government of Ghana for GhȻ55,305.60 in 1983. The Government failed to pay and the Company sued and obtained judgment for US$70 million in 2006. Again the Government did not pay and after the change of Government for the second time in 2009, the new Attorney-General reached a compromise settlement of USȻ35 million with the Company. The State paid the full amount in installments over a period.

However, following a directive from the Chairman of the Parliamentary Public Accounts Committee, Hon. Kan Dapaah, for the Company to pay tax on the amount received, the Company petitioned the Commission to resile from the settlement and revisit the earlier judgment debt for the payment of the full amount of US$70 million, its reason being that the settlement had never been entered in court as a consent judgment as required by the rules.

The Commission wondered:

i. why the Company was given a judgment expressed in dollar terms when its claim against the Government was in cedis;
ii. why the Government failed to pay on the original contract of GhȻ55,305.00 in 1986 only for the Company to obtain a judgment debt of US$70 million in 2006;
iii. at the outrageousness of the judgment in which the interest component alone far outweighed the principal sum owed at the time, and which outrageous judgment debt was compromised through negotiations to US$35 million.

The Commission found, *inter alia*, that it was not fair for the Chairman of the Parliamentary Public Accounts Committee (PPAC), Mr. Kan Dapaah, to order the Company to pay tax on the compromised judgment debt after the Company had agreed to wipe off half of the judgment debt and if, as alleged, the tax element had been taken into account in arriving at the settlement figure.

Government finds it unacceptable that the issue of whether the tax element was taken into account in arriving at the settlement figure was not determined and settled by either the Parliamentary Public Accounts Committee (PPAC) or the Commission.

It is this seeming lack of thoroughness on the part of the Chairman of the PPAC, that caused him to order the company to pay tax on the settlement amount which the Commission now proclaims as unfair. The Commission also leaves this issue hanging when it had the chance to settle it conclusively.

The Commission made the following recommendations which Government accepts:

i. The tax element, which the Chairman of the Parliamentary Public Accounts Committee ordered the Company to pay, should be wiped off if there is evidence that it was taken into consideration in the course of the negotiated settlement.
ii. The Government must ensure that it has the means and the capacity to pay for public projects before it commits itself on paper for the execution of such projects.

Government directs the Attorney-General to take action on recommendation (i) above and advise the PPAC and the tax authorities accordingly.

10. Delta Foods Ltd. v. Attorney-General

The Commission established the following facts:

i. The Ministry of Food and Agriculture contracted with Delta Foods Ltd. for the supply of 21,000 tons of American white maize in 1997;
ii. The company supplied the maize but the Government failed to pay;
iii. The company sued the Government and in a consent judgment, the Government accepted liability for the payment of GhȻ2,030 million;
iv. When the Government again failed to pay, the company threatened to file for recognition and enforcement of the consent judgment in the US courts as its majority shareholders were US residents;
v. The Solicitor-General wrote to assure the company that the money would be paid;
vi. The Solicitor-General then strangely filed a certiorari application before the Supreme Court to quash the consent judgment on the grounds that the company should have sued the Attorney-General and not the Ministry of Food and Agriculture;

vii. The Supreme Court rightly dismissed the application;

viii. The company was also successful in its action for recognition and enforcement of the Ghanaian consent judgment in the US Court, which ordered the Ghana Government to pay off the judgment debt within 30 days;

ix. The dollar equivalent of the judgment debt at the time of the US Court's order was US$8,526,000.00, exclusive of the pre and post-judgment interests of US$648,005.00 and US$606.01 per diem respectively;

x. The Ministry of Finance directed the Controller and Accountant-General to effect payment of these amounts;

xi. The amounts were paid in March 2000;

xii. Following the change of government in Ghana in 2001, Delta Foods Ltd. demanded interest payment on the amount already paid on grounds of delayed payment;

xiii. The Attorney-General, Hon. Nana Akufo-Addo, advised payment of the amount demanded to the solicitor of Delta Foods Ltd., Hon. Peter Ala Adjetey;

xiv. An additional amount of US$4.9 million was therefore paid to Delta Foods Ltd. through Hon. Peter Ala Adjetey as final settlement in 2002.

The Commission made the following findings and observations:

i. It was the improper and wrong decision of the Office of the Attorney-General to seek a certiorari in the Supreme Court on a mere technicality in proceedings that it had participated in that burdened the Government with the additional US$4.9 million judgment debt payment.

ii. The US$4.9 million payment authorized by Hon. Nana Akuffo Addo and paid to the solicitor for Delta Foods Ltd., Hon. Peter Ala Adjetey, constituted a huge financial loss to the State.

iii. The office of the Attorney-General did not exhibit candour and good faith in seeking the order of certiorari at the Supreme Court.

The Commission recommends that Government should investigate and find out how the ordered maize was distributed or sold and what the proceeds were used for.

It further recommends that any public officer found to have contributed in the mess leading to the payment of the judgment debt must be sanctioned.

Government does not accept this recommendation of the Commission. According to the Commission's own finding, it was the wrongful decision of the office of the Attorney-General to seek an order of certiorari in the Supreme Court after it had agreed to a consent judgment that led to the financial loss of US$4.9 million. If the Attorney-General's Department is not to be sanctioned, there is no need to go back sixteen years to conduct an investigation to identify public officers to be sanctioned. In any case, the Commission itself admitted (at page 97) that it "did not chance upon any facts regarding how the purchased maize from Delta Foods was utilized".

Government, however, accepts the Commission's recommendation that no Ministry, Department or Agency (MDA) should be made to execute any agreement or contract (either international or local) for and on behalf of the Government without the involvement of the Attorney-General.

11. Calf Cocoa International (Ghana) Ltd. v. Attorney-General

The Commission established the following facts:

i. Calf Int. (Gh.) Ltd., a company owned 45% by Caridem Development Co. Ltd. (owned 100% by the 31st December Women's Movement, an NGO established by former 1st lady Nana Konadu Agyeman Rawlings and 55% by China International Cooperation Company for Agricultural Livestock and Fishery (AGRICON) entered into an agreement to process cocoa beans;
ii. It was a joint venture agreement to benefit from a Ghana-Chinese agreement entered into by the Governments of the two countries in October 1998;
iii. Under the joint-venture agreement, Calf was to establish a cocoa processing factory at a total cost of US$10 million;
iv. Calf was to pay US$1,250,000 as equity while the Chinese Government provided the remaining US$8,750,000.00 through the Ghana Government;

v. In compliance with the terms of the agreement, Calf entered into a subsidiary agreement with the Ghana Government for the disbursement of the US$8,750,000;

vi. A total of US$3,488,773.33 was disbursed under the NDC Government and US$3,414,620.00 was disbursed under the NPP Government, leaving US$1,800,000.00 undisbursed;

vii. The company required the disbursement of this outstanding amount to be used as working capital to commence operations but the NPP Government failed to make the disbursements;

viii. The company wrote to the Ministry of Finance and the Attorney-General in July 2005 to disburse or face court action but received no reply;

ix. The company sued the Attorney-General in November 2005;

x. The court ruled in favour of the company and awarded it US$3,550,000.00 made up of US$1,800,000 as the undisbursed facility and US$1,750,000.00 as damages.

On these facts, the Commission made the following findings and observations:

i. The case and the resultant debt arose out of impunity and/or arbitrary or excessive show of power on the part of Government officials or public office holders;

ii. Though the court discounted the allegation made by the former 1st lady that what happened to the company was "largely politically motivated", it still leaves unanswered the question that if there was no ill-motive or perceived political considerations, then what accounted for the failure or refusal to continue with the disbursement after the factory had been constructed and the equipment installed;

iii. The trial judge discounted the allegation of political motivation made by the former 1st lady because almost half of the facility was disbursed under the NPP Government;

iv. What happened could be blamed on "unwise decisions" taken by the scheduled public officers who were responsible for the disbursement of the funds;

v. The Chinese partner (AGRICON) was said to have withdrawn from the partnership claiming there was too much perceived political interference in the progress of the factory;

vi. According to the former 1st lady, the project had come to a standstill as thieves had pilfered some of the equipment due to the long neglect and they were looking for a new entity to partner them;

vii. The project, upon completion, could have provided employment for a lot of the unemployed educated youth and would have added value to the cocoa beans.

Government accepts the recommendation of the Commission that the officials involved in the case must be identified and sanctioned accordingly. According to the Commission, this will be putting to the test the Auditor-General's suggestion that any public officer whose acts and omissions lead to the unwarranted payment by the State of undeserving judgment debts must be identified and surcharged to deter others from acting irresponsibly. Government directs EOCO to take appropriate action.

12. African Automobile Ltd. v. Attorney-General

Three different petitions were presented to the Commission which it investigated and established the facts as hereunder:

a. International Automobile Ltd. v. The Attorney-General

International Automobile Ltd. claimed to have supplied various types of spare parts and undertaken servicing of vehicles belonging to the Office of the President (Chief of Staff), the Department of Urban Roads, Sekondi and Kumasi and the Police Service.

Part of the bill was paid, leaving a balance of GhȻ6,733.01 as at April 2004. Interest calculated on this balance had raised the amount to GhȻ57,544.05 as at October 2008. The interest was calculated on a monthly compound interest rate based on terms of agreement Africa Automobile Ltd (IAL's sister company) claimed it entered into with all MDAs in 1990 and unilaterally revised in 1997.

The four MDAs denied owing the debts claimed by the company and also claimed that the company's action against the Attorney-General in relation to them was never brought to their attention. The Attorney-General did not defend the action. The Attorney-General never contacted the four MDAs concerned for their comments on the company's action.

The court appointed a referee, Mr. Ben Korley of Interlysis, to determine the true indebtedness of the State to the company. The referee, relying only on documents submitted by the company, determined the State's indebtedness to be GhȻ306,585.60 as at 31st December 2008 instead of the GhȻ57,544.05 claimed by the company.

The court accordingly entered an ex parte judgment against the Attorney-General in April 2011 for GhȻ306,585.60 together with a compounded interest of GhȻ494,242.47, bringing the total judgment debt plus interest as at April 2011 to GhȻ800,828.07.

When the company petitioned the Commission, it claimed that accrued interest had ballooned the debt to GhȻ1,548,576.40 as at September 2013.

In other words, a meagre servicing and maintenance debt of just GhȻ6,733.01 as at April 2004 had in a matter of just 9 years miraculously grown into a huge debt of GhȻ1,548,576.50 due to the negligence of some public officials.

b. African Automobile Ltd. v. Ministry of Employment, Manpower and Development

African Automobile Ltd. (AAL) sued the then Ministry of Employment, Manpower and Development in November 2007 for an amount of GhȻ50,279.96, being outstanding sums owed the Plaintiff as at September 30, 2003. Thereafter, the following chronology of events occurred.

i. The Ministry and the Attorney-General did not enter appearance and the company obtained a default judgment for the amount.
ii. The Attorney-General applied for and got the default judgment set aside.
iii. The Attorney-general was ordered to file a defence.
iv. The Statement of Defence, in the words of the Sole Commissioner, "was an apology of a defence".
v. On 24 September 2008, the court appointed a referee, Mr. Ben Korley, to go into the accounts of the parties to determine the indebtedness of the Ministry to the company.
vi. The court, based on the referee's report, gave judgment for the company for GhȻ112.06 with interest at the prevailing commercial lending rate from January 1996 to the date of final payment.

vii. The company appealed against the decision to the Court of Appeal.

viii. The Court of Appeal agreed with the High Court on the principal amount owed (GhȻ112.06) but disagreed with it on the rate of interest used.

ix. The Court of Appeal referred the matter back to the referee to compute interest on the outstanding amount from the date of the default to October 2008.

x. The referee, using the rate of interest used in the *International Automobile Ltd. v. The Attorney-General* case (above) arrived at the amount of GhȻ31,609.45 as the amount owed at the commencement of the action in October 2008. Thus, within the period 1996 to 2008, the Ministry's indebtedness had increased from GhȻ112.06 to GhȻ31,609.45.

xi. The Court of Appeal entered judgment for this amount in February 2011.

xii. The Court of Appeal, however, ordered the referee to re-compute the interest from February 1999 to July 2010 instead of from July 1996 based on the revised terms, and submit same to the Registrar of the Court. This was after the Court of Appeal had delivered its judgment.

xiii. The referee arrived at the colossal figure of GhȻ16,540,596.22 as the accumulated debt plus interest instead of the GHȻ31,609.45 that the Court of Appeal had entered as the judgment debt.

xiv. The Commission found this interest covering a period of just 11 years to be outrageous.

xv. In its petition to the Commission, the company claimed that this outrageous interest had further ballooned to GhȻ618,690,141.79 as at September 2013, i.e., within a period of just 3 years.

xvi. Thus, interest on the debt of GhȻ112.07 in February 1999 was calculated at GhȻ16,540,484.15 in July 2010 and after the Court of Appeal's judgment had jumped to GhȻ602,149,657.04 as at September 2013.

xvii. In his comments on the company's petition to the Commission, the then Minister of Employment, Manpower and Development, Hon. Nii Armah Ashitey, alleged fraud on the part of the company and insisted that the post-judgment interest should have been worked on simple interest and not compound interest.

xviii. The Sole Commissioner, who is a Court of Appeal judge, agreed with the comments of the Minister.

xix. The Court of Appeal had, however, been of the view that since the rate of interest used in the calculation was in the agreement between the parties, it should prevail.

xx. The Commission was of the view that the Attorney-General must revisit the case by forcing the company to the negotiating table as the rate of interest used, which was not disclosed, was highly unconscionable and unacceptable.

xxi. In the words of the Sole Commissioner: *"That rate of interest is against public policy since no bank or financial institution can levy such a rate of interest. This is unheard of and unacceptable under any financial transaction in the whole wide world since the company could not have been given far more than what it actually deserved using the Restituo ad Integrum principle".*

xxii. The Commission wondered how the referee arrived at the figure of GhȻ16,540,596.22 as the post judgment interest only one month after the Court of Appeal had entered judgment for GhȻ31,609.45.

c. African Automobile Limited v. Attorney-General

African Automobile Ltd. sued the Attorney-General in May 2008 for GhȻ657,445.00 and US$318,782.66 being moneys it claimed were owed by eighteen (18) MDAs. The Attorney-General, Hon. Joe Ghartey, entered appearance but did not file a defence. The parties however agreed to a court-appointed referee, the same Mr. Ben Korley of Interlysis, to reconcile the accounting differences between the parties as some of the MDAs were denying the claims and others were disputing them.

The referee, basing himself as usual only on documents submitted to him by the company, reported that the total sum owed by the eighteen (18) MDAs between 1992 and 2005 was GhȻ71,748.37 and GhȻ73,903.94 making a total of GhȻ145,652.33. Applying the same interest rate he had used in the earlier two transactions (i.e. monthly compounded interest rate), he arrived at a figure of GhȻ8,379,124.71 as the total amount owed.

The Ministry of Finance paid this colossal amount to the company upon the directive of the Attorney-General in three installments in 2010. The company returned to court to claim post-judgment interest on the amount because of delayed payment from January 2009 to September 2010.

The Attorney-General did not attend court to dispute the claim, whereupon the court awarded GhȻ4,159,010.38 to the company as post-judgment interest.

On 5th August 2013, when the company petitioned the Commission, the post-judgment interest had not been paid. The company therefore demanded interest upon interest payment of GhȻ5,271,014.05, bringing the total to GhȻ9,430,024.43.

This amount was paid by the Ministry of Finance on the directive of the Deputy Attorney-General, Hon. Barton-Odro, which directive the Attorney-General, Hon. Martin Amidu claimed before the Commission that he did not authorize. The Deputy Attorney-General however explained that the Attorney-General never queried him for directing the payment.

The Commission, noticing the galloping nature of the interest rate used in calculating interest on the outstanding debts, referred the matter to the Auditor-General for assistance.

The Auditor-General made the following findings and observations:

i. Though the company was claiming GhȻ145,652.34 as at December 2006 as the amount owed it by the eighteen MDAs, the published financial statements of the company showed a total debtor figure of GhȻ96,823.51 as at the time for all its customers in Ghana and as against GhȻ154,917.76 filed by the court-appointed referee on behalf of the company. This disparity raised questions on the validity and authenticity of the company's claims against the eighteen MDAs.
ii. The procurement processes established under the then Financial Administration Regulations, 1979 (L.I. 1234) and the Public Procurement Act, 2003 (Act 663) were not followed.
iii. The only outstanding debt of the State to the company as at 31st December 2013 was only GhȻ1,053.09 including interest but not the GhȻ8,379,124.71 that was paid to the company.
iv. The post-judgment interest of GhȻ4,159,101.38 which had been awarded by the court and paid into the sub-consolidated bank account of the Ministry of Employment, Manpower & Development should be returned or refunded to the Consolidated Fund. Unknown to the Auditor-General, however, this amount had been paid to the company on the directive of the Deputy Attorney-General.

The Commission found it strange that the post-judgment debt interest of GhȻ4,159,101.38 was paid to the company through the sub-consolidated account of the Ministry of Employment, Manpower & Development even though the Ministry was not a party in the suit and therefore was not the judgment debtor.

The Commission also found that apart from the Ministry of Employment, Manpower and Development whose Chief Director had signed the agreement with the monthly compound interest clause with the company, there was no evidence that any of the eighteen MDAs named in the suit had signed that agreement.

In the circumstances, the Court (Award of Interest and Post-Judgment Interest) Rules, 2005, C.I. 52, should have applied. Rule 1 of that Instrument states that in the absence of agreement to the contrary, *inter alia*, interest shall be calculated at the Bank rate prevailing and at simple interest.

The Commission further found that Mr. Ben Korley did not perform his functions as a referee with honesty and integrity, and described his reports as skewed in favour of AAL.

Based on the Commission's findings and observations and the Report of the Auditor-General, the Commission made the following recommendations:

i. Notwithstanding the fact that the outrageous judgment debt of GhȻ8,379,124.71 and the bogus post-judgment interest of GhȻ4,159,010.38 have already been paid, the Government should force the company to a negotiated settlement table to determine the actual indebtedness of the State to the company to avoid the State paying moneys that the company does not deserve.
ii. The Government should, as a matter of urgency, conduct investigations into the functions of Heads of Departments including Chief Directors of the various MDAs, Financial Administrators and Transport Officers in all the 18 MDAs to find out who in the 18 MDAs did not perform their duties properly leading to the non-payment of servicing costs upon completion of such servicing, which have led to these unwarranted payments of judgment debts and other judgment debts against the State, several years after such servicing.

iii. Government, through the Office of the Chief of Staff at the Presidency, should circulate a directive to all MDAs and even MMDAs not to enter into any contract or agreement (either written or oral) that would commit the State to the payment of huge sums of money upon default, or any payment at all, without any reference whatsoever to the Office of the Attorney-General or for the Attorney-General's attention.

iv. The Courts should be wary in employing Mr. Ben Korley and his company Interlysis as referees in future when such matters crop up during trials since he is not reliable. Again in the words of the Sole Commissioner: *"To be precise, this Commission thinks he should be blacklisted as a referee for the courts".*

Government accepts all the above recommendations of the Commission and directs the Attorney-General to take action on recommendation (i); the EOCO to take action on recommendation (ii); and the Chief of Staff to take action on recommendation (iii)

Government also requests the Chief Justice to issue a circular to all courts drawing their attention to recommendation (iv).

Government further directs that if African Automobile Ltd. and/or International Automobile Ltd. refuse to negotiate as recommended by the Commission, they should be blacklisted and should not be awarded any Government contracts.

13. Ekafco Furniture Ltd. v. Architects Co-Partners and Ministry of Health

The summary of the facts of this case is repeated here verbatim from the Executive Summary of the Report of the Commission titled: *"Factors that generally account for unwarranted payment of judgment debts and Huge Compensations for compulsorily acquired lands by the State".* The summary is contained at pages (xxxviii) to (xl) and is sub titled: *"Total breakdown of discipline in the public service due to institutional failures".*

> *"... the Commission has noted with great concern that the misconduct or negative attitude of some public officers in the handling of matters of the State lead to judgment debts against the State or its institutions.*

Some of these negative attitudes are not rooted in mere corrupt practices as such as some sections of the civil society have been shouting all along. As for corruption, it has been around since Adam and will be there always. It exists in all societies including the so-called civilized ones. It thrives when the system is unable to control it. What is happening rather is the result of total breakdown of discipline. This has come about due to systemic or institutional failures in the whole public set up.

A clear example of this could be gleaned from a case involving a company by name Ekafco Furniture Company Ltd and the Ministry of Health. This was a case where a company by name ACP Architect Co-Partners contracted Ekafco Company Limited for and on behalf of the Ministry of Health, to supply furniture to the Weija Clinic in Accra. Payment for the furniture was to be sourced from a Saudi Fund for Development that had been made available to the Ministry of Health for that purpose. The Furniture Company duly performed its part of the contract by supplying the furniture to the Clinic.

The contract sum that the Ministry should have paid for the supply at the time was just ₵21,615,075.00 (now GhC2,161.51). This was in the year 2002. This amount was not paid compelling the supplier to sue the agent and the Ministry of Health.

When the Ministry was served with the writ of summons, it entered appearance but failed to file any statement of defence to the action. It again failed to bring the action to the notice of the Attorney-General whose responsibility it was to defend such actions against the State and its institutions. The Company proceeded to obtain a default judgment against the Ministry on 23rd March 2004. The Ministry was not moved by the judgment against it and took no steps to remedy it. The Attorney-General (representative) wrote to the Ministry of Health to brief her office on the matter for her to properly advise the Ministry of Finance for payment to be effected. The Ministry of Health failed to respond to the Attorney-General's letter. The Attorney-General wrote a reminder to the Ministry of Health on 3rd June 2013.

This was after the Plaintiff/J-Creditor had submitted all the processes in court leading to the judgment and the certificate of judgment itself to the Attorney-General's office.

The letter in question reads:

"REMINDER: EKAFCO FURNITURE LIMITED vrs (1) ARCHITECT CO. (2) MINISTRY OF HEALTH

We refer to the above-mentioned matter.

This Office by a letter dated 31st May 2013, requested that you furnish the Attorney-General with the background information as to the genesis of this case in order that the Attorney-General can give an informed advice on the matter.

We have to date not received the required comments. The Plaintiff's counsel in the interim has continuously through letters and his physical presence been reminding us of the judgment due his client. He has presently threatened to take us to the Judgment Debt Commission if the judgment debt is not paid within the shortest possible time. Please note that without the necessary comments from your Ministry, it is impossible for the Attorney-General to advise the payment of the judgment debt.

We are by this letter once again asking you to submit a detailed brief on this case. Kindly also furnish us with any documents that may assist this Office form a reasonable opinion. Please note that time is of essence in this matter and you are being urged to expedite the said detailed brief as soon as possible to enable this Office ably represent your interests and that of the nation. Please contact the undersigned in room 33, Civil Division at 2 p.m. prompt on Friday the 31st of June. Kindly come along with all necessary documents.

We count on your cooperation.

PEARL AKIWUMI SIRIBOE (MRS.)

(PRINCIPAL STATE ATTORNEY)

FOR: ATTORNEY-GENERAL AND MINISTER OF JUSTICE

The letter was addressed to the Minister of Health with the attention of the Director of Administration Mr. Appiah. The Ministry still refused to respond to the letter.

This attitude of the Ministry compelled the Plaintiff-Company to petition this Commission for redress. When the Chief Director of the Ministry of Health was invited to appear before the Commission to provide answers to the petition, he directed his Director of Administration in charge of legal matters to represent him at the Commission. This witness could not provide any answers to the petition as he claimed there were no records at the Ministry on the transaction. He again said the Ministry could not trace any file on the Saudi Fund for Development that was made available to the Ministry for that purpose among others.

When the Commission wanted to know from the witness whether the Ministry was ever served with the writ of summons that was initiated against it by the Plaintiff/Company in 2004, he answered in the affirmative since according to him, there were records at the Ministry confirming this fact.

The witness could not, however, explain why the Ministry failed to make any appearance in Court and again why it failed to make good the judgment debt.

The judgment debt had shot up from GH₵2,161.51 to over GH₵7,000.00 in 2007 and seven (7) years down the ladder, no step has been taken to make good the judgment debt. This means that any interest calculation from that time to date would raise higher the judgment debt.

This conduct of the schedule officer or officers at the Ministry of Health who should have seen to the resolution of the matter is hard to comprehend. It is a question of the failure of a public officer or public officers placed in positions of trust to act when the need arises. The Ministry of Health was unable to explain what had happened to the 'Saudi Fund for Development' from which the payment to Ekafco should have been made as the records alleged".

From these facts reproduced verbatim from the Commission's report, the Commission made the following findings and observations:

i. though the Memo from the State Attorney was dated November 2012, it was first acted on by a Principal State Attorney in the same office six (6) good months afterwards, i.e. in May 2013. In the words of the Sole Commissioner: *"This should not happen"*;

ii. there was as usual failure to respond to requests from the Attorney-General's Department, lackadaisical attitude of public officers in the handling of court suits against their institutions;

iii. for seventeen (17) good years, a State institution like a whole Ministry, has failed to make good its part of a contract entered into between it and a private company after the private company has faithfully executed its part of the contract to the letter and after the private company has obtained a valid judgment. The Commission then asked itself the following rhetorical questions:

- Why should State institutions ignore or refuse to comply with judgments and orders of our courts?
- How can a nation be run successfully with such attitude of public officers who are supposed to know better?

The Commission makes the following recommendations which Government accepts:

i. Public officers should be made to face the consequences when their actions and/or inactions impact negatively on the taxpayers' money meant for the development of the nation.

ii. The Chief Director or whoever at the Ministry of Health whose duty it was to respond to the requests from the Attorney-General's Department at the time but failed to do so must be called to order and sanctioned accordingly.

Government directs the Head of Civil Service to issue a general circular to all MDAs on recommendation (i) above and the Head of Local Government Service should issue a similar circular to all Metropolitan, Municipal and District Assemblies (MMDAs).

Government also directs the Head of Civil Service to take action on recommendation (ii) above and report the outcome to the Office of the President within two (2) months on the following matters:

i. The identity or identities of the officer or officers who failed to respond to the requests from the Attorney-General's Department at the time;
ii. The nature of the sanctions that he has imposed on the officer or officers.

Government directs the Attorney-General to identify and query the Principal State Attorney who took six (6) months to minute on the Memo written by the State Attorney and that contributed to the inordinate delay and therefore the likely increase in interest on the judgment debt.

Government further directs the Attorney-General to initiate processes to have the company Ekafco Furniture Ltd. paid its legitimate judgment debt immediately if it has still not been paid. Interest on the judgment debt should be calculated under the provisions of C.I. 52 of 2005 from the date of judgment to the date of payment.

14. Construction Pioneers (CP) v. Attorney-General

The Commission made the following summarized findings of fact:

Four road contracts awarded by Government, during President Jerry John Rawlings' administration, to Construction Pioneers (CP) became the subject of protracted dispute between the company and the Government of Ghana.

The roads were:

- Biriwa-Takoradi Road overlay
- Yamoransa-Assin Praso Road together with a bridge
- Akim-Oda-Abirem-Akwatia-Nkawkaw Road
- Obuasi Town Roads.

The disputes ended up in arbitration at the International Chamber of Commerce (ICC) in London.

As at October 2002, the total outstanding claim by the company against the Government had been computed at DM 55,092,544.65 and GhȻ 2,747,165.78 which is the total equivalent of €27,547,272. This was additional to an earlier amount of DM117 million which the Government had earlier had to pay to CP as an out-of-arbitration settlement in respect of a different dispute involving the Accra City Roads Project (ACRP).

The third Government of the fourth Republic, suspecting either fraud or corruption or both, refused to settle the amount until it lost power in 2009, by which time the liability had ballooned to an ICC-awarded claim of €162,609,600.89 and which was accruing interest at the rate of €12,787.19 per day.

The new Attorney-General, Mrs. Betty Mould-Iddrisu, successfully and rightly negotiated for a global settlement of the amount down to €94 million which has since been paid in installments, except for some two final installments of undisclosed amounts whose payment, according to the former Solicitor-General, Mrs. Ama Abuakwaa Gaisie, was suspended in 2012 due to the hearings into the payment by the Parliamentary Public Accounts Committee. According to the Commission, the former Solicitor-General's Memo also mentioned that this non-payment had become the subject of another arbitration which CP had initiated and on which it was claiming interest.

The Commission was also notified of another debt in Belgium as a result of enforcement proceedings initiated by CP in that country and which continues to attract interest.

The Commission states in its report that it had contracted the Professional Group to undertake Forensic Audit into the activities of CP in the country but that its report was yet to be completed. The Commission further states that it intends to circulate that report among relevant stakeholders for their comments, after which it would forward the report to the President for directives.

Government therefore takes the view that the Commission's report on CP is unfinished business or an interim report only. However, a section of the report is so damning of Ghanaian politicians and their roles and cost to the State that it is reproduced here verbatim from pages 143-146 of the Report so that all will learn lessons from it:

*"**(b) Politics – Its Role and Cost to the State***

A review of the GOG's role in the resolution of the CP saga between 2001 and 2008 shows that as at 18th October 2002, the total outstanding claim of CP against the State had been computed at DM 55,092,544.65 and GH₵2,747,165.78 which is the total equivalent of Euro 27,547,272 (€27,547,272).

However, as of 28th February 2009, the ICC awarded claim in favour of CP in addition to undisputed but unpaid Certificates had been computed at Euro 162,609,600.89 (€162,609,600.89), which was accruing interest at the rate of €12,787.19 a day.

Most of the feet-dragging in payment and hence the astronomical increase in the debt of both this CP issue and indeed other judgment debts have, in the Commission's view, contributed to the eventual high bill in foreign exchange terms for the State. Most current political incumbents are completely distrustful of the intentions of their predecessors in such matters as contracts that, they cannot see their way out of the debts partially or fully either technically or professionally.

A feeling, albeit perceptive, that some corrupt practices might have gone on before and indeed something might have well gone on, does not make it so until such allegations are proven. Invariably, though not much was proven in a court of competent jurisdiction in these matters, in-coming Governments refused to take the needed steps to liquidate such debts. Meanwhile, the bills kept swelling up higher and higher on account of compounding interests and penalties.

In the opinion of the Commission, if there is no satisfactory evidence that can stand up in court, politicians must learn; "to cut the losses and count the gains". All Governments; past, present and possibly future ones, need to watch this unhealthy practice carefully and put a stop to it. The cost to the country of this pettiness is too high. In the long run, nothing by way of even a small fraction of the debt is reduced. It is rather increased through compounding accrued interest on principal and on loss of profit through effluxion of time to the hurt of the State.

Incumbents in office when confronted with such lapses should allow the professional advisors to give their critical but unbiased opinions and not encourage same to colour their opinions in one direction or the other based on political considerations or other selfish interests. The Commission expects political office holders to heed professional advice of experts and technocrats as their fields and not to take their own counsel and ignore professional advice to the eventual detriment or hurt of the State.

Appeals made to the ICC by previous Government Ministers and Officials availed none, whilst they alleged that wrongful and fraudulent acts had been perpetrated by CP. These allegations could not be backed with facts and figures, hence a relatively small debt ballooned into a gargantuan one, making the CP debt the most expensive debt ever incurred as a result of purported apparent breach of contract based on a few contractual terms.

Forensic Audits in most cases have been carried out with the intent of linking up a targeted public officer to a fraud allegation with great cost to the nation. This should not be the case. CP allegedly committed fraud and succeeded in getting the Government of Ghana (GoG) to pay an amount of DM117 million to cover a so-called "Standstill Costs" and other related claims. The Commission is however surprised that the Forensic Auditors failed to verify if there were indeed a forced stoppage of work just by reviewing CP's audited accounts and checking from the Certificates issued to cover work done in respect of the Accra City Roads Projects (ACRP) between July 1993 and June 1995. In the absence of such verifiable exhibits, which were the ingredients of the alleged fraud raised by Forensic Auditors as well as leading Government Officials, such allegations could not have been sustained in a court of law.

It should be realized that earlier incumbent Attorney-General and Minister of Justice Hon. Paapa Owusu Ankomah, had admitted that the Government had a bad case in the dispute with CP. His successor Hon. Joe Ghartey also held the same view and strongly urged the then Government to arrange an immediate payment of the outstanding debt.

So also had the then Minister for Roads and Transport Dr. Richard Anane added his voice to the immediate payment to CP of this over-hanging debt. These debts were however not paid until there was a change of government in January 2009.

In February 2009, the claims submitted by CP amounted to about €163 million. This was made up of the total outstanding and unpaid award to CP by the ICC Arbitral Tribunal with running interest of €12,878 per day. CP had gone to courts in the United States, France and Belgium to enforce the Tribunal's award. The Attorney-General decided to offer an initial amount of €14 million to show good faith on the part of the Government, which CP accepted. The negotiations however, took about a year and were conducted at different levels.

In March 2010, the then Attorney-General Hon (Mrs.) Betty Mould-Iddrisu, concluded a 'global settlement' of all disputes and claims between the Government of Ghana (GoG) and Construction Pioneers (CP). This decision by the then Attorney-General and Minister of Justice Hon Betty Mould-Iddrisu, which recommended and insisted that the awards which she had managed to negotiate downwards from about 163 million Euros (€163 million) to 94 million Euros (€94) million should be satisfied and paid by the State was, in the opinion of this Commission, one of the best decisions that could be taken in the interest of the State. There is an old English saying that; ***"manhood is foolery when it stands against a falling fabric"*** *– where 'fabric' is translated to mean a 'wall'.*

Though that negotiated amount, to the ordinary Ghanaian could be said to be on a higher side, the Commission thinks it was a better option than leaving the matter to hang on the fraud allegation which was difficult to prove anyway".

Government accepts the following recommendations of the Commission:

i. Government and public officials should themselves begin to initiate agreements on behalf of the State and learn to expunge all inimical clauses, which can creep into agreements to wreck (sic) economic havoc on the State. Such agreements must always receive the blessings of the Attorney-General's Office, which is the legal brain of the Government.

ii. FIDIC (Federation International des Ingenieurs Conseils or Federation of International Council of Engineers) conditions (which had been incorporated into almost all the CP contracts) are not intended to apply to local companies or for jobs restricted to local companies, or where international competitive bid processes are neither used nor required. Government should expunge FIDIC conditions from inapplicable contracts and learn not to use same as much as possible.

iii. The cost in interest charges which arise from unnecessary delays due largely to political reasons in settling judgment debts, costs the country quite dearly. The many years of excessive time lag on these CP payments without any reduction but rather appreciation in the amounts payable, was quite expensive to Ghana eventually for, as the saying goes; "*one cannot dither while Rome burns*". If the Attorney-General has reason to believe that political decisions increase unnecessarily the cost to the State significantly, the cases must be discontinued to save costs. However, if verifiable evidence could be adduced to support the alleged fraud, then action should be instituted to prosecute the offenders under SMCD 140.

iv. Since CP was incorporated as a non-resident company, it is intrinsically a foreign company. All contracts of such nature should have been properly laid before Parliament. This was very necessary especially when contracts operated under FIDIC rules or conditions, made provisions for tax exemptions. Incidentally, this conditionality was in contravention of Ghanaian Tax laws, unless approved by Parliament.

In the words of the Commission, in all the contracts that CP entered into with GoG, CP surprisingly paid no taxes whatsoever. Meanwhile, the Company never benefited from any such tax waivers from Parliament. Excuses could be raised with regard to contracts pre-dating 1992 (sic) but not thereafter when we were under a constitutional dispensation.

v. The Ghana Revenue Authority calculated that between 1997 and 2001, CP owed a total expatriate staff salaries tax liability of GH₵1,767,739.70. This tax was never paid by CP because of the unconstitutional clause that it inserted in all the agreements that it entered into with the GoG.

Since Parliamentary approval is necessary for such contracts and therefore the tax exemptions in those contracts were unlawful, the legally exigible taxes must be deducted from the balance due CP, if any.

Government does not accept the recommendation of the Commission that Ghana Highways Authority, as an autonomous body with a Board, should sign all road contracts for and on behalf of Government so that an independent engineer (private firm) who is not an employee of Government is appointed as engineer to supervise the projects. Government finds these recommendations arguably contentious and of doubtful constitutionality.

15. Sky Consult v. Ghana Post

According to Sky Consult (a private limited liability company), it entered into a contract with Ghana Post (a 100% state-owned company) in 2005 to do the business of "Instant Money Transfer" (IMT) and to share the profit.

In 2008, having earned a total cash revenue of GhȻ6,329,030.00, Ghana Post took GhȻ1,119,000.00 of the profit made and gave GhȻ774,000.00 to Sky Consult, leaving a balance of GhȻ998,000.00 to be paid to Sky Consult.

This amount Sky Consult sued for, in 2009, and obtained a summary judgment with interest of GhȻ1,693,872.56 which Ghana Post has since paid, leaving GhȻ130,000.00 yet to be paid.

Ghana Post's appeal to the Court of Appeal was dismissed.

While the appeal was pending before the Court of Appeal, Ghana Post instituted a fresh action against Sky Consult in another High Court seeking an order to set aside the summary judgment of the trial High Court on grounds that it was obtained through misrepresentation and fraud. This action was dismissed.

Ghana Post disputed Sky Consult's account and alleged that the 5-member joint Board of Sky Consult and Ghana Post staff that was established to manage the business had thoroughly mismanaged the business. There was collusion to steal transfer moneys for which some staff had been convicted and jailed.

Some of the top management personnel of Ghana Post were in league with Sky Consult to subvert the business for which reason they failed to put up a credible defence to the action, mentioning in particular Messrs. Seth Obeng, Ken Ofori Attah and Asare.

The Commission made the following findings and observations:

i. The interest that was computed and added to the principal sum was wrongly computed and the trial court therefore erred in entering summary judgment for the amount claimed;

ii. The summary judgment was applied for and granted before the expiry of the period allowed for entry of appearance, contrary to the provisions of Order 14 rule 1 of the High Court Civil Procedure Rules, C.I. 47 of 2004. In the Commission's own words, "this was an error apparent on the face of the record which should not have escaped the attention of any prudent court";

iii. The trial court did not exercise due diligence in granting the application and the Court of Appeal also did not observe the High Court (Civil Procedure) Rules properly before dismissing the appeal;

iv. These unfortunate developments compelled Ghana Post to pay more money than what Sky Consult deserved;

v. Ghana Post should have proceeded further to the Supreme Court for a final determination of the matter.

Against this background, the Commission made the following recommendations, which Government accepts:

i. Profits were shared when the accounts of the "IMT" business had not been audited and Sky Consult was also not made to pay withholding taxes on the monies paid to it as earned profit. The Ghana Revenue Authority (GRA) must therefore take Sky Consult to task for the payment of withholding tax on the moneys paid to it as earned profit or revenue.

ii. Government, however, notes that this can only be done if those earned profits have as yet not been brought into the accounts of the company and same taxed accordingly, including the taxes that should have been deducted as withholding taxes.

iii. Since the allegations made against the three top officials of Ghana Post Company who served on the 5-man "IMT" Board namely Messrs. Seth Obeng - former General Manager, Financial Services, Ken Ofori Attah - General Manager, Internal Audit, and Asare are very serious, they must be investigated by EOCO.

If any of the three is found culpable, they must be taken to task either in the form of criminal prosecution where criminally culpable, or civil action for the payment of the moneys lost to Ghana Post through their fraudulent deals, or both.

GENERAL OBSERVATIONS ON THE COMMISSION'S FINDINGS IN CHAPTER 2

The Commission, before the section of its report on the individual cases to which Government has reacted above, presented general observations on judgment debts arising out of contractual breaches by the Government and its agencies (i.e. MDAs and MMDAs). These are contained at pages (xxvii) to (xxl) of the report and are reproduced in Government's reaction to the report on *Construction Pioneers (CP) v. Attorney-General.*

Government has taken note of the critical observations made by the Commission on that case and recommends that some of the issues on the management of contractual matters during and after political transitions should be taken up by the National Development Planning Commission (NDPC).

Political Transition Issues

Based on the findings and observations of the Commission in Chapter 2 of its report and the earlier generalized findings and observations in the Executive Summary chapter of the report, Government makes the following observations and issues the directives flowing therefrom.

A common theme that runs through all the judgment debt cases in Chapter 2 of the Commission's report is that without exception, all of them straddle the administration of two different Governments, and especially the transitions of 2001 and 2009, when power passed from one political party to a different political party.

Government finds the following observations of the Sole Commissioner in the case of *Construction Pioneers (CP) v. Attorney-General* particularly distressing and a major indictment of the two major political parties which have been in government during the Fourth Republic, namely the National Democratic Congress and the New Patriotic Party:

> *"Most current political incumbents are completely distrustful of the intentions of their predecessors in such matters as contract that, they cannot see their way out of the debts partially or fully either technically or professionally. A feeling, albeit perceptive, that some corrupt practices might have gone on before and indeed something might have well gone on, does not make it so until such allegations are proven. Invariably, though not much was proven in a court of competent jurisdiction in these matters, in-coming Governments refused to take the needed steps to liquidate such debts. Meanwhile, the bills kept swelling up higher and higher on account of compounding interests and penalties.*
>
> *In the opinion of this Commission, if there is no satisfactory evidence that can stand up in court, politicians must learn; "to cut the losses and count the gains". All Governments - past, present and possibly future ones, need to watch this unhealthy practice carefully and put a stop to it. The cost to the country of this pettiness is too high.*
>
> *In the long run, nothing by way of even a small fraction of the debt is reduced. It is rather increased through compounding accrued interest on principal and on loss of profit through effluxion of time to the hurt of the State.*
>
> *Incumbents in office when confronted with such issues should allow the professional advisors to give their critical but unbiased opinions and not encourage same to colour their opinions in one direction or the other based on political considerations or other selfish interests.*

The Commission expects political office holders to heed professional advice of experts and technocrats in their fields and not to take their own counsel and ignore professional advice to the eventual detriment of the State.

"Appeals made to the ICC by previous Government Ministers and Officials availed none, whilst they alleged that wrongful and fraudulent acts had been perpetrated by CP. These allegations could not be backed with facts and figures; hence a relatively small debt ballooned into a gargantuan one, making the CP debt the most expensive debt ever incurred as a result of purported apparent breach of contract based on a few contractual terms" (pages 144-145 of the Report).

"It should be realized that earlier incumbent Attorney-General and Minister of Justice Hon Paapa Owusu Ankomah, had admitted that the Government had a bad case in the dispute with CP. His successor Hon Joe Ghartey also held the same view and strongly urged the then Government to arrange an immediate payment of the outstanding debt. So also had the then Minister for Roads and Transport Dr. Richard Anane added his voice to the immediate payment to CP of this over-hanging debt. These debts were, however, not paid until there was a change of government in January 2009" (page 145 of the Report).

When this problem of political distrust was identified in the political sphere, the response was an inter-party initiative that culminated in the enactment of the Presidential (Transition) Act 2012, Act 845 as a framework for managing political transitions.

Government is of the view that a similar initiative is required in the area of contract administration and management during and after political transitions.

There is the need for some orientation of political leadership on the principle of continuity of the governance process straddling various governments from the same or different political parties. There is a further need for understanding of the legal position of contracts that are entered into by one Government whose execution are not concluded during the term of the Government that initiated it and that have to be continued and concluded or paid for during the tenure of a Government formed by a different political party.

There is also the need to grasp the legal implications on the handling and management of unpaid judgment debts during such transitions.

Government hereby recommends that the National Planning Development Commission (NDPC) initiates a Roundtable Conference of all registered political parties and, using the information available in the Judgment Debt Commission Report and possibly under the auspices of the Sole Commissioner, Justice Yaw Appau, try and reach agreement on the adherence to the legal framework for the handling of contracts and judgment debts that straddle two different political administration in order to minimize, if not obviate completely, the incidents of judgment debts awarded against the State.

The Size of the Public Purse

Government has formed the view upon studying the Report that some judgment debts have been awarded without due regard to the size of the public purse.

Judges must be made aware that there is a limit to how much the Government can pay and that judgments against the State are invariably judgments against the Ghanaian taxpayer, including the judges themselves.

- The Commission in the case of *Rockshell Int, Ltd. v. The Attorney-General*, for example, referred to then Attorney-General Mrs. Betty Mould-Iddrisu's caution to Cabinet that the totality of the State's indebtedness to the company was so huge that it could collapse the economy (page 86 of the Report).
- The Commission itself in the same case wondered why the company was given a judgment expressed in dollar terms when its claim against the Government was in cedis.

  The Commission went on to describe as "outrageous" the judgment debt of US$70 million awarded to Rockshell in which the interest component far outweighed the principal sum owed at the time (at page 89 of the Report).

These revelations convince Government that it would be in the national interest if the three arms of government learn a bit more about the limitations within which each operates.

Government therefore proposes to discuss with the Heads of the legislative and judicial arms of government the possibility of an annual Executive-Legislature-Judiciary Conference that will enable the three arms of government to learn a bit more about the operations and limitations of each other.

Government directs the National Development Planning Commission to examine the feasibility, appropriateness and acceptability of such an Annual Conference and initiate the necessary steps towards convening the first Conference if it is considered feasible and appropriate.

Government also requests the Chief Justice to create a tight supervisory structure enabling a close monitoring of some of the judgments of the judges to ensure practicability and enforceability.

Mr. Ben Korley

Government takes strong exception to the work and attitude of Mr. Ben Korley said to be a Partner of Messrs Intellisys, a firm of Chartered Accountants. As the Sole Commissioner noted, on page 129 of the Report, "Mr. Ben Korley did not perform his functions as a referee with honesty and integrity". The following three cases in which Mr. Ben Korley features justify this conclusion:

i. International Automobile Ltd v AG

The trial court upon application by counsel for the company ordered a referee by name Ben Korley to go into the accounts of the parties to determine the true indebtedness of the state to the company.

The referee concluded that the defendants owed the company the sum of GHC 306,585.60 instead of GHC 57,544.05 which the company itself had endorsed on the writ of summons. The company itself had stated in its claim that the outstanding debt of the three agencies of Government at the time the action was instituted on May 8, 2008, was GHC 57,544.05. The court entered an ex parte judgment against the Attorney-General on April 7, 2011, for GHC 306,585.60 as stated by the referee and made an order for interest to be calculated on that sum.

ii. African Automobile v Ministry of Employment, Manpower and Development

At the pre trial stage, the court on September 24, 2008, appointed a referee, Mr. Ben Korley, to go into the accounts of the parties to determine the true indebtedness of the defendants to the Plaintiff. The referee came back with an amount of GHC112.06 as the principal outstanding sum due the Plaintiff as at 1996. The High Court Judge Gertrude Torkonoo gave judgment for this amount plus interest at the prevailing commercial lending rate. The company appealed.

The Appeal Court disagreed with the rate of interest ordered by the High Court. The Appeal Court referred the matter again to Mr. Ben Korley to compute the interest from date of default to October 31, 2008. Mr. Korley arrived at the sum of GHC31,609.45. The Court of Appeal entered judgment for the company for this amount.

The Court of Appeal, however, ordered Mr. Korley to re-compute the interest from February 1999 to July 2010 instead of from July 1996. The referee arrived at a colossal figure of GHC16,540,596.22 as the accumulated debt plus interest instead of GHC31,609.45.

Instead of the amount becoming less than the GHC31,609.45 since the interest was to be calculated from February 1999 to July 2010 instead of from July 1996 to July 2010, the amount miraculously jumped from GHC31,609.45 to GHC 16,540,596.22.

iii. African Automobile Ltd v AG

The parties agreed on the appointment of a Judicial Service Auditor to reconcile the accounting differences between the parties. The company later applied to the trial court to vary its order appointing the Judicial Service Auditor since he was delaying in doing so.

The Court accordingly varied the order and appointed the same Mr. Ben Korley to go into the accounts of the parties. Mr. Korley submitted his report to the trial court indicating that as at 2005 the MDAs owed AAL the sum of GHC71,748.37 representing services rendered on vehicles belonging to the 18 MDAs from 1992 to 2005.

In relation to CoS invoices he applied the Bank of Ghana Interbank exchange rates and arrived at the figure of GHC73,903.94 as the outstanding amount on the vehicle account as at 2005. These two put together totaled GHC 145,652.32. Mr. Korley computed the interest and arrived at the figure of GHC 8,379,124.71 as the total indebtedness of the eighteen (18) MDAs as at December 31, 2008.

As the Commission noted, Mr. Korley 'skewed' the results in favour of the company. This is unacceptable and Government reiterates its strong approval of the Commission's recommendation for Mr. Ben Korley to be blacklisted as a referee for the courts. Government accordingly requests the Chief Justice to bring the Commission's findings, observations and recommendations to the attention of all judges.

State-owned Institutions

Government has noted that in several parts of the Commission's Report the issue of governance of state-owned institutions and the relationship between Government and Boards/Management of state-owned enterprises has been raised by the Commission. The following two cases are typical:

i. Societe Generale (SG) v. Ghana National Petroleum Corporation (GNPC)

GNPC entered into a contract with Societe Generale. A dispute arose, and SG sued GNPC in a London High Court over payments that SG alleged GNPC owed it. GNPC denied the claim and counter-claimed against SG through its external lawyers. Subsequently, the third Government of the fourth Republic dispensed with the services of the external solicitors and Hon. K. T. Hammond was sent by President J. A. Kufuor to amicably resolve the situation. This resulted in a compromise settlement of US$19.5 million. GNPC's Drillship was sold to settle the debt. The Commission found that Governmental interference in the running of the affairs of the GNPC accounted to a large extent for that financial loss.

The Commission recommended that the Executive arm of Government should be slow in interfering in the running of State institutions that have independent legal capacities as such interferences do not augur well for good governance and disable the State from holding such institutions accountable for their stewardship.

ii. New World Investments Ltd. v. Ghana National Procurement Agency (GNPA)

New World Investments Ltd. granted a 91-day credit facility of GhȻ1 million to GNPA in 2004. GNPA paid back only part of it. New World sued and obtained judgment. When the Company threatened to auction the Headquarters of the GNPCL to defray the judgment debt, the Minister for Trade intervened and had the matter settled out of court.

The Commission was of the view that Government should redefine its role in matters concerning institutions that have independent legal capacities but are wholly State-owned. It is not a good practice for the State to always absorb debts incurred by its agencies with legal capacities without the agencies being made to pay back or refund what was spent on them due to mismanagement.

The Commission recommended that State institutions must be given the independence to act and perform under the laws that establish them. This is the only way they could be called upon to account for their stewardship and face the consequences if need be.

Government recommends that the State Enterprises Commission should come out with guidelines on the running of the so-called 'independent state-owned institutions', which should be subjected to Cabinet discussion and approval.

Inconclusive assignments of Commissions of Inquiry

From the two Reports of the Brazil 2014 World Cup Commission of Inquiry and this Judgment Debt Commission of Inquiry, including several other reports in the past, Government has noticed a trend where a large number of recommendations are inconclusive and require further investigations to be conducted.

Government finds this trend unsatisfactory. Commissions of Inquiry are set up to investigate specific matters. When they end up recommending investigations into their investigations, the whole process becomes cyclical, unending and indeterminate.

Government realises that the uncompleted investigations are most often on account of the tight time frame given the Commissions to conclude their assignments and submit their reports.

Government therefore proposes, for the guidance of future Commissions of Inquiry, that where a Commission feels that it will not be able to fully complete its assignment within the time frame given it, the Commission may issue an interim report and request the President for extension of time to submit its final report.

It should only be in extraordinary circumstances that a Commission should complete its work and include recommendations for further investigations to be conducted.

CHAPTER 3

SELECTED CASES ON JUDGMENT DEBTS ARISING OUT OF COMPULSORY LAND ACQUISITIONS BY THE STATE/GOVERNMENT (i.e. COMPENSATION PAYMENTS 1992-2012)

1. Nana Owusu Achiaw Prempeh II v. Lands Commission & Attorney-General

In 1944, the Colonial Government acquired a parcel of land in Kumasi for a Combined Hospital Project. The then Asantehene gave the land to the Government 'free of cost'. The State therefore did not pay any compensation for the acquisition. The land was however not used for the intended purpose. The Government gave a smaller portion to the Ghana Police Service for construction of Mobile Police Force Barracks and the larger portion to State Housing Corporation for the development of a housing project for sale to workers. This diversion of the land for commercial purposes infuriated the land owners. They accordingly put in a request for its return to them or alternatively the payment of compensation for its use.

When the petitions failed, the Worakesehene Nana Owusu Akyiaw Prempeh II and trustee of the land for and on behalf of the Worakese Stool took the matter to court for redress. The High Court Kumasi on August 20, 2008, delivered a summary judgment in favour of the Plaintiff and ordered that the sum of GHC 49,425,586.56, arrived at by the Land Valuation Board as the value of the land, be paid to the Plaintiff's Stool as compensation for the land.

The Attorney-General's Office in Kumasi attempted to set aside the summary judgment but failed.

On April 8, 2010, the then Attorney-General, Hon. Betty Mould Iddrisu, and her settlement team, which she formed to revisit judgment debts upon her assumption of duty, met the Plaintiff/Judgment creditor with his lawyer. At the end of the negotiations, both parties agreed on the sum of GHC 27,000,000.00 as the compromised amount to be paid to plaintiff as compensation instead of the GHC 49,425,586.56 entered by the court. This amount was eventually paid to the claimant in two equal installments on May 17, 2010, and August 6, 2010, respectively.

There was an issue with the mode of payment of compensation to stools whose lands have been compulsorily acquired by the State. The Plaintiff's lawyer argued that the amount paid was a repayment of land lost and therefore a 'reinstatement' but not revenue as envisaged under Article 267 of the 1992 Constitution. The amount was therefore for the stool and did not have to go to the Administrator of Stool lands to be disbursed as provided under Article 267. The Administrator of Stool Lands disagreed with this position and prayed the Commission to rectify the anomaly.

The Commission found that:

i. The committee set up by the Attorney-General to negotiate the reduction of the compensation amount did a yeoman's job by saving the State several millions of Ghana Cedis, notwithstanding the fact that the amount was still on a higher side. The committee did well in balancing the stakes in favour of the State when it managed with the kind support of the solicitor of the land owners', Mr. John Kwame Koduah, to slash down the figure by almost half.
ii. The payment of the amount to the stool occupants instead of the Administrator of Stool Land was an anomaly since it was contrary to Article 267 of the 1992 Constitution which provides that stool lands are held by the occupants of the stools on behalf of and in trust for the subjects of the stool. The money therefore belongs to all the subjects collectively as the owner of the incorporeal represented by the Stool. The moneys should therefore be paid to the Administrator of Stool Lands who will disburse it as provided under Article 267(6) of the 1992 Constitution – 25% to the stool through the traditional authority for the maintenance of the stool in keeping with its status; 20% to the traditional authority and 55% to the District Assembly within the area of authority in which the stool lands are situated.

No recommendation was made in this case. Instead, the Commission advised the Lands Commission and the Stool Lands Administrator to pursue the matter in the Supreme Court for a proper interpretation of Article 267 of the Constitution.

Government agrees with the advice of the Commission.

2. Compensation to Barekese Dam Land Owners

In 2008, the Ministry of Finance and Economic Planning authorized the release of GhȻ2,150,781.43 being 50% of total compensation due to the owners of the land acquired for the construction of the Barekese Dam. The payment was to be made out of an account referred to as the Judgment Debt Account No. 0113060014036 with the Bank of Ghana. The amount was paid to twelve stools in the Ashanti Region in April 2008.

The Commission found that the whole compensation of GHC 4,301,562.89 had been paid to the beneficiary stools. The first 50% had been paid through the Land Valuation Board which is the normal procedure. The follow up payments of the remaining 50% were made in two tranches through a different medium, thereby creating uncertainties with regard to how much had actually been paid.

The Commission noted that the beneficiaries or claimants never went to court to obtain any judgment in respect of the payment, yet the amount was charged against an account described as "Judgment Debt Account". The description that it was a Judgment Debt payment was therefore misleading. The payment was for compensation for land acquisition simpliciter. There was therefore no impropriety in the payment, except that it was not paid through the Administrator of Stool Lands as constitutionally required.

3. Nana Sankrankyi Atta II v. Attorney-General

Lawyer Seth Mensah Dumoga attached to the Prudential Law Offices but actually Head of the Legal Department of the Ministry of Agriculture, colluded with one Mr. Emmanuel Ofori to use the name of Nana Sankrankyi Atta II to obtain a spurious default judgment in the Ho High Court against the Attorney-General as compensation for land compulsorily acquired for a District Chief Executive bungalow and staff quarters for the Jasikan District Assembly.

Though the amount claimed was GhȻ42,170.70, some strange calculations brought the amount payable to GhȻ988,000.00 between 2000 when the land was valued and 2013 when the claim was put in.

Following the failure of the Government to pay the amount, the plaintiffs sought to attach properties of the Jasikan District Assembly, even though the Assembly was not a party to the suit. The Assembly then filed a motion in the Ho High Court for an order to stay execution of and to set aside the default judgment to enable it to apply to join and defend the action.

It turned out that even though the land was acquired for the Assembly in 1975, it was not until 2010 that the Ministry of Lands and Natural Resources issued the acquisition E.I. which turned out to cover the whole of the area originally acquired even though at the time of the issuance of the E.I. half of the acquired land had been encroached upon.

The Commission found numerous irregularities in the entire acquisition process as follows:

- The ex-parte judgment in default of appearance was wrong because the defendant State agencies were never served with the writ of summons;
- An interest rate of 30% was used on the judgment debt of GhȻ42,170.40 from 2000 to balloon it to GhȻ988,000.00 in 2013;
- When the Attorney-General applied to have the default judgment set aside to enable the Office file a late appearance and a defence to the action in 2012, it was wrongly dismissed;
- The plaintiff sought to attach the properties of the Jasikan District Assembly to satisfy the judgment debt when the Assembly was not a defendant in the suit;
- Nana Sankrankyi Atta II whose name was used in the suit denied any knowledge of the suit or of lawyer Seth Mensah Dumoga who filed it;
- It appeared one Emmanuel Ofori who had been given a power of attorney in 2000 by Nana Sankrankyi Atta II to pursue the land compensation claim at the Lands Commission fraudulently used the power of attorney to start the court action;
- Officers of the Lands Commission, as part of a general practice at the Lands Commission, used the wrong formula to assess the compensation claim which raised the value of the acquired land in favour of the original owner to the detriment of the State.

Instead of complying with the law by calculating interest on already assessd values of acquired lands, the Land Valuation Division of the Lands Commission keeps on reviewing the assessed values by undertaking current revaluations where the original land owners had long ceased to be owners of the said lands from the date of acquisition by the State;

- Due diligence was not done by the Ministry of Lands and Natural Resources when it purported to pass E.I. 81 in 2010 for the acquisition of the land;
- The default judgment was obtained under bizarre circumstances as the defendant State agencies were not actually served and as no acquisition E.I. had been issued at the time of the judgment;
- If lawyer Seth Mensah Dumoga and his accomplice Mr. Emmanuel Ofori had succeeded in the payment of the sum of GhȻ988,000.00 to them, they would have taken money that they were not entitled to;
- In the words of the Sole Commissioner: *"It is unimaginable that an amount of GhȻ42,000.00 which had been approved as the value of the land in 2000 could shoot up to GhȻ988,000.00 in a period of about 12 years. ----- The interest component alone in this particular case is GhȻ946,000.00 and had it not been for this Commission, the perpetrators of the suit would have succeeded in having it paid due to institutional failures in the public system.*

Against this background, the Commission makes the following recommendations which Government accepts:

i. E.I. 81 of 2010 should be amended to cover the land that is actually occupied by the Jasikan District Assembly, but this should be after the land has been re-surveyed by the Survey Division of the Lands Commission;

ii. Subsequently, the Land Valuation Division should properly assess compensation to be paid to the land owners;

iii. The computation of the compensation should be based on the value of the land as at 1979 when the land owners permitted the Jasikan District Assembly to go into occupation plus interest from that time calculated on an escrow rate till the date of payment;

iv. Government directs the Minister of Lands and Natural Resources to take action on the accepted recommendations in (i) to (iii) above;

v. Government also directs the Attorney-General to report the conduct of lawyer Seth Mensah Dumoga to the General Legal Council;

vi. Government takes this opportunity to commend Nana Sankrankyi Atta II for his honesty and forthrightness in his dealings with the Commission when he could easily have twisted the facts to collect the amount in question.

4. Petition by Nii Sowah Okataban – In re: Nii Sowah Okataban II v. The Attorney-General & State Housing Corporation

One lawyer, Benjamin Badu Quaye, on behalf of one Nii Sowah Okataban who claimed to be the owner of Adenta lands acquired by the State for the State Housing Corporation (SHC), won a default judgment debt of GhȻ75,500.00 in 1994 in respect of unpaid compensation for the said Adenta lands. State Housing Corporation made a part-payment of GhȻ10,000.00 and failed to pay the rest. The plaintiff's petition to the Commission was for redress.

It turned out, however, that the SHC had managed to have the default judgment set aside in 2013 on the grounds that the original land owners who had obtained the judgment debt had themselves encroached on the land and re-sold portions to third parties. This was because the Attorney General who was sued over the acquisition failed to take any steps to defend the action. Had it not been the vigilance of the current Managing Director of the SHC Dr. Nii Akwei Ankrah, who acted quickly to have the default judgment set aside for the proper thing to be done, the State would have been made to pay money into wrong hands – payment that would not be worth the purpose.

It turned out also that Nii Sowah Okataban was not the proper claimant. He was the Mantse of Kplen, which is under Nii Kpobi Asaawa, head of Agbawe Quarter of La and overlord of Adenta lands. Nii Kpobi Asaawa was therefore the rightful person to claim the compensation. This claim Nii Sowah Okataban conceded, alleging that he never instructed lawyer Benjamin Badu Quaye to petition the Commission.

Based on these facts, the Commission made the following findings and observations:

- The State Lands Act, 1962, Act 125, was not strictly complied with;
- Notwithstanding that the land had been encroached upon, Nii Sowah Okataban managed to go to court to obtain an ex-parte judgment against the State over the whole acquisition, because the Attorney-General failed to take any steps to defend the action;
- It was the vigilance of the Managing Director of SHC, Dr. Nii Akwei Ankrah, who acted quickly to have the default judgment set aside that prevented the State being made to pay money into wrong hands;
- Since it had been established that the proper claimant was Nii Kpobi Asaawa, the Commission advised the parties to have the Lands Commission re-survey the acquired land to determine the extent of encroachment before the assessment of compensation;
- Institutional failures were the real cause of the problem leading to the unnecessary litigation.

Based on these findings and recommendations, the Commission made the following recommendations:

i. The Lands Commission should re-survey the whole land in the possession of SHC for a proper assessment of compensation to be paid to the land owners;
ii. The SHC should ensure prompt payment of the compensation after the assessment to avoid any unnecessary increase in the value of the compensation;
iii. The assessment of the compensation should be based on the formula contained in Act 125, i.e., the value of the land at the time of acquisition together with interest it would have yielded if paid into an escrow account. The percentage of that amount in respect of the portion not encroached upon will be the amount the landowners would be entitled to.

Government accepts the above recommendations of the Commission.

Government further directs the Attorney-General to report the conduct of lawyer Benjamin Badu Quaye to the General Legal Council.

5. Land compensation payment to Abadji family of Somanya

In 1999, the Abadji family of Somanya sued the Attorney-General in respect of 5.83 acres of land occupied by the Yilo Krobo District Assembly (YKDA) and the Yilo Krobo Senior High School (YKSHS). YKDA occupied 2.55 acres while YKSHS occupied 3.28 acres. The total land was valued at GhȻ34,100.00.

In the year 2001, the State acquired a larger tract of land measuring 64.57 acres for the expansion of YKSHS, part of which was the 3.28 acres belonging to the plaintiff family. This was done through Executive Instrument 8 (E.I. 8) of 2001.

As part of a consent judgment in 2005, it was agreed that the Yilo Krobo District Assembly should pay for the land it occupied, which was separate from the compulsorily acquired one, whilst the action proceeded against the State in respect of the part occupied by the Senior High School which was part of the section compulsorily acquired under E.I. 8 of 2001.

The Commission found that E.I. 8 of 2001 was not publicised for the owners of the land to be made aware of it in order to put in claims for compensation under Act 125.

The Commission recommended that it is necessary for the State to acquire lands if funds for such acquisitions are readily available since timely payment of compensation will save the State a lot of resources. It will also avoid the re-valuation of the State's land with its enhanced value as the quantum of compensation payable to the original owners. In the Commission's words 'that is the means by which the Lands Commission has continually plunged the country into unnecessary judgment debts".

Government takes note of this recommendation.

The Commission also reminded the Lands Commission that it is enjoined to do a proper publication of compulsory acquisitions to the knowledge of the local people so that persons with interest in the land can come forward to establish that interest. It is when that is done that the Lands Commission could make a proper assessment.

6. Compensation claim by the Carmichael Family *re* Aveyime Livestock Project

One Bates, a foreigner, allegedly married an indigene and through that acquired land in the Aveyime-Battor area where he established a cotton development project. According to the Commission, the Carmichael family who were friends of Bates possibly took over the project when Bates left the country. F.W. Clarke (Gh.) Limited acquired the land for Battor Agricultural Industries Limited (BAIL) and appointed D.A. Carmichael the Managing Director. In 1976, by E.I. 27, the State acquired the land for the Aveyime Livestock Project (ALP). In 1978, BAIL claimed compensation of GhȻ33.00 for the land and structures but BAIL accepted GhȻ20.00 for the structures only in 1981.

In 1987, the Attorney-General requested the then Land Valuation Board to review the valuation placed on the land, but the Land Valuation Board replied that the State Lands Act 1962 (Act 125) did not permit or allow for review of valuation. Under pressure from the Government, however, the Land Valuation Board re-valued the property in 1993 and raised the value to GhȻ4,530.00, which was further reviewed in 2000 to GhȻ77,522.30.

In the view of the Commission, these were all against the law, especially as it appeared that the business had not even taken off at the time the State compulsorily acquired the land, let alone it being a going concern. At the time the State compulsorily acquired the land, the main building to house its production unit had not been completed. This was corroborated by the claimant's own valuation report which he used as the basis of his claim for compensation. The valuation report was also silent on claims for crops and for cultivated or prepared land.

In the 30-year history of this Carmichael claim, three different prominent legal officials of the Attorney-General's Department got involved. Attorney-General Dr. Obed Asamoah in 1994 entreated Cabinet to agree to a compensation payment of GhȻ4,530.00 but when F.W. Clarke (Gh.) Ltd. rejected this, he requested Cabinet to leave the matter to the Ghana Institute of Valuers for final determination.

Attorney-General Nana Addo Dankwa Akufo-Addo in 2001 wrote to the British High Commissioner to Ghana indicating his desire to resolve the impasse between the Government and F.W. Clarke (Gh.) Ltd. represented by the Carmichael Family and requested the Carmichaels to make certain documents available.

He, however, disagreed with the US$20 million being claimed by the Carmichaels and requested a meeting with them over the matter.

Justice V.C.R.A.C. Crabbe of the Attorney-General's office, writing on the instructions of then outgoing President J.A. Kufuor on the eve of his departure from office on 6th January 2009 directed for US$2,400,000.00 to be paid as compensation to the Carmichael Family and US$240,000.00 to be paid to the solicitors in charge of the negotiations.

The British High Commissioner, Ghana's late Presidential Advisor on Governmental Affairs, Mr. P.V. Obeng and Baroness Linda Chalker of the UK all, at one time or the other, got involved in the Carmichael claim.

Based on these facts, the Commission made the following findings and observations:

i. The directive of the Attorney-General to have the land originally valued at GhȻ33.00 re-valued was against the law;
ii. Based on this wrong directive, the land was variously valued at GhȻ4,530.00; GhȻ77,522.30; and GhȻ97,800.00, albeit all wrongly computed and all never paid;
iii. Former President Kufuor's instructions on the eve of his departure from office (January 6, 2009) for the payment of US$2,400,000.00 to the Carmichaels and US$240,000.00 to their solicitor were outside the confines of the law;
iv. The compensation was paid to the Carmichael Family instead of F.W. Clarke (Gh.) Ltd who were the owners of the land;
v. The indigenous owners of the greater portion of the acquired land have never been paid any compensation;
vi. There are 8 conflicting claims over the area claimed by BAIL alone, but these were not resolved before the dollar compensation was paid to the Carmichaels;
vii. There are suggestions in Justice Crabbe's letter of March 31, 2011, that the Carmichaels would like to return to Ghana to invest in the cocoa sub-sector. The letter suggests that the Carmichaels would need 1,800 acres of land for lease in a coco-growing area and were expecting certain favours like lease renewals and tax concessions from Government;

viii. The Carmichaels were not entitled to the amount of compensation paid going by the formula for determining compensation for acquired lands.

In the words of the Sole Commissioner: *"After using the British High Commission to pepper our Government to get what under our laws they did not deserve and would not have been entitled to, the Carmichaels now have the impudence to return to the country with their booty to seek further favours in a so-called investment drive in the cocoa sector to invest what they maneuvered to grab from the State, albeit unjustifiably".*

The Commission hopes that some lessons will be learnt from the Carmichaels claim saga. Those lessons include the following:

i. Governments must ensure that funds are readily available for compensation payment before any compulsory acquisition is embarked on for any public project;

ii. The assessed value of the land at the time of the acquisition was GhȻ20.00. Failure to pay this resulted in the State having to pay US$2,640,000.00 thirty years later at a time when nothing had been paid to the indigenes whose lands were part of the acquisition area. In the view of the Sole Commissioner, this was *insensitive, unconscionable and unfair"*;

iii. The Aveyime Livestock Project is currently a pale shadow of the intended project;

iv. State institutions must be respected by higher authorities. In this case, the professional advice of the Lands Commission was ignored;

v. Presidents must not take unilateral decisions to the detriment of the State. There is no record to show the basis on which former President Kufuor instructed that the State should pay US$2,640,000.00 to the Carmichaels;

vi. The timing of some actions by Presidents must be regulated. In this case, the following events all occurred on 6th January 2009, a day before President Kufuor left office, indeed, his last day in office:

- The instruction by President Kufuor to the Attorney-General to pay the US$2,640,000.00;
- The directive by the Attorney-General to the Minister of Finance to effect payment;

- The request by the Minister of Finance to the Controller & Accountant-General to release the money.

In the view of the Commission, these events and their timing call into question the propriety of the payment.

vii. Governments should be circumspect in dealing with foreign investors. In this case, it appears the British High Commission twisted the arms of the Government.

The Commission makes the following recommendations which Government accepts:

i. Government should pay the locals whose lands form part of the acquisition area as early as possible to avoid any unpleasant situation in the near future.

ii. Government should revive the livestock project currently on the land since reports indicate it is a viable entity. This will achieve two things:
    - It will provide jobs for the people in the area who have been deprived of their farming activities on the land;
    - It will forestall any encroachment by other people.

Government directs the Lands Commission to initiate action on recommendation (i).

Government further directs the Ministry of Finance, Ministry of Food & Agriculture and Ministry of Trade and Industry to take action on recommendation (ii).

7. Compensation claims for land acquired for the Accra Metropolitan Assembly (AMA) at Kwabenya for a landfill site

The Accra Metropolitan Assembly (AMA) identified a site for landfill at Kwabenya which was acquired by the Government under E.I. 1/17 of 2007 but for which no compensation was paid. Following residents' agitations and other negative developments, the AMA decided to abandon the site. The Ministry of Local Government and Rural Development (MLGRD) however insisted on the payment of 'Disturbance Allowance' to the residents since it was required under the World Bank's Urban Environmental Sanitation Project II (UESP II), the Project that was funding the development of the landfill site.

Government accepts the Commission's recommendations:

i. that Government must take a positive decision on the acquisition as soon as possible;
ii. that Government must revisit the whole issue of the payment of compensation and the so-called "Disturbance Allowance" to ensure that good money is not squandered on a purposeless venture.

On (i) above, Government directs the Ministry of Lands and Natural Resources to take steps to have EI 1/17 of 2007 revoked as early as possible.

On (ii) above, and based on Governments directive to revoke the E.I., Government directs that neither compensation nor the so-called Disturbance Allowance is payable.

8. Peter Abbam v. Attorney-General

Peter Abbam's fence wall was affected by the construction of the Kanda Highway. He commenced action in the High Court in 2002. The Attorney-General entered appearance but failed to file a statement of defence. In 2003, he obtained judgment for a total of GHC 264,643.00 even though the structure had been assessed at GhȻ28,320.83. This became possible because the Attorney-General did not file a defence. A year after the judgment, the Attorney-General applied to have the default judgment set aside but the application was refused.

It later emerged that the area in question fell within a road reservation. This meant that the plaintiff had illegally constructed his fence wall in the road reservation area. This was brought to the attention of the High Court judge, but she ignored it and granted a Garnishee Order Absolute for the attachment of the accounts of the Department of Urban Roads at Bank of Ghana.

The Commission found that the judge, Justice Felicity Amoah, did not exercise her discretion judiciously and that she did not give any reasons to support her decision which was wrong. The Commission described this as a complete abuse of her exercise of discretion.

In the view of the Commission, the amount of GhȻ264,643.00 (the interest component alone was GHC226,411.00, almost ten times the actual value of the affected land) paid to Mr. Peter Abbam was undeserved because the Department of Urban Roads and the Attorney-General's Department failed to handle the matter with dispatch, and the trial judge exercised her discretion wrongly.

Unfortunately, the Commission did not make any recommendations. Government requests the Chief Justice to bring the Commission's Report to the attention of all High Court Judges.

9. In *re*: Dansoman Acquisition – Nii Kojo Danso v. Lands Commission

Joshua Atto Quarshie, in his capacity as Head of Otokunor We of Adjumanku Dawurampong Royal Family and clan and the lawful representative of the beneficiary party, the late Nii Kojo Danso I, obtained a default judgment for a total of GhȻ57,433,900.00 against the Attorney-General and the Lands Commission in respect of the Dansoman Housing Estate Land Acquisition under E.I. 27 of 1968 because neither of the two defendants appeared to defend the action or participate in the assessment of damages. A part-payment of GhȻ100,000.00 was made upon approval by the Minister for Finance in 2008.

The Commission, however, found that there were other claimants in respect of the same acquisition. These were the Mpoase Stool of Mamponse and the Allotey Stool of Sempe, James Town. The Mpoase Stool representatives told Joshua Atto Quarshie in his face before the Commission that "*they (Nii Kojo Danso) were imposters who had clandestinely gone to court to claim what did not belong to them".* The Allotey family on its part alleged fraud in the computation and claim process of Nii Kojo Danso.

The Commission made the following findings and observations:

i. process and procedure in respect of the Dansoman acquisition was very doubtful;

ii. The compensation was wrongly computed. It was based on the value of the land as at the time when it was being valued in 2004 instead of basing it on the value of the land as at the time of acquisition in 1968. Interest on that value should then have been assessed at the escrow rate;

iii. The Dansoman acquisition has multiple claimants. The State will lose money if it goes ahead to satisfy Nii Kojo Danso's default judgment.

Having made these findings and observations, the Commission proceeds to make the following recommendations all of which Government accepts:

i. Care must be taken to ensure that compensation is paid only to those whose lands were actually acquired;

ii. The Attorney-General should take steps to set aside the default judgment as everything points to the fact that it was obtained through misrepresentation;

iii. The Lands Valuation Division of the Lands Commission must ensure that a correct computation of the acquired land is made in compliance with the provisions of Act 125 of 1962;

iv. The Division must also identify the real beneficiaries so that money is not paid into the wrong hands;

v. The GhȻ100,000.00 already paid to Nii Kojo Danso's family must be retrieved and refunded to the State until the actual owners of the acquired lands are identified. Government directs the Attorney-General to act accordingly;

vi. The Legal Department of the Lands Commission and the Attorney-General's Department must live up to their legal responsibilities in ensuring that the State is not made to pay good money to undeserved claimants – "The practice of not caring a hoot about what happens to the tax-payers money is too rampant, and it is high time sanctions were applied to public officers whose actions and inactions lead to such unwarranted financial losses".

10. Compensation payment for submerged lands in Volta, Eastern, Brong Ahafo & Northern Regions (Pai, Apaaso, Kete-Krachi, Makango etc.)

a. The case of the Anyinam Royal Family of Tapa

The Anyinam Royal Family of Tapa obtained a default judgment in the Accra High Court for GhȻ92 million as compensation for Akosombo Dam submerged lands in 2008 in the case of Anyinam Royal Family of Tapa v. Attorney-General, Volta River Authority (VRA), Lands Commission and Lands Valuation Board.

The Attorney-General, Lands Commission and land Valuation Board did not respond in any way to the writ. VRA entered appearance and filed process denying the claim. VRA successfully wriggled its way out of the action claiming it was not responsible for the payment of compensation.

The Attorney-General's Department complained that the Lands Commission and Land Valuation Board failed to cooperate with them to defend the case. They failed or refused to appear in court again on the return date. The court was compelled to give judgment in the Plaintiffs favour on the basis of the testimony of a private valuer the plaintiff called as its witness. Damages were assessed at GhȻ92,562,129.00..

Meanwhile, President J. A. Kufuor, on the advice of Cabinet, approved a total of GhȻ138 million out of an original claim of GhȻ198 million for all claimants of the Akosombo Dam submerged lands, including the plaintiffs, and others from the Volta, Eastern, Ashanti, Brong Ahafo and Northern Regions.

b. Volta Basin Flooded Areas; In re Pai, Apaaso, Kete Krachi and Makango Compensation Clams/Payments

Because of poor record keeping and poor archival documentation, plaintiffs were able to use unreliable and fictitious claims to obtain approval for compensation for the Volta Basin submerged lands, especially in election years when claimants took advantage of the political climate to make claims to obtain maximum attention of the Executive. One such claim was successfully made in 2004 but could not be paid. Another approval was obtained in 2008 from President J. A. Kufuor, regrettably with Cabinet support, based on blemished advice from the Land Valuation Board and the then Serious Fraud Office (SFO).

The Ministry of Finance and Economic Planning was consequently directed by Cabinet to pay a total amount of GhȻ138 million, down from the original claim of GhȻ198 million.

According to the Commission, from the available evidence, it was clear that the claim of the so-called private valuer, a defunct, unregistered company by name Messrs. Kodwo Abban & Co. to have surveyed land areas of 102,312 acres and 88,240 acres for the Pai and Makango traditional areas respectively at a time when the areas had been flooded for over 40 years was fraudulent.

In the process of approving this fraudulent claim, the Land Valuation Board also added an area of 788,000 acres to the allegedly surveyed area, said to have been surveyed for the Kete Krachi Traditional area. The total area was valued at GhȻ198 million, using the then current 2005 values, contrary to the Volta River Development Act, 1961 (Act 46). This was the amount that was scaled down to GhȻ138 million and which President Kufuor and his Cabinet approved.

The Government agreed in 2008, an election year, to pay the GHC138m without interest, in eight yearly installments. As at 2013, GhȻ71 million had been paid to the chiefs and other opinion leaders in the area.

The Commission made the following findings and observations:

i. Mr. Samuel Apoh Kuma, the so-called Technical Officer who allegedly conducted the survey of the submerged lands on behalf of the non-existent Kodwo Abban & Co. company, confessed that he did not carry out any surveys but based himself on individual plans submitted by the claimants;
ii. When asked how he was able to check the authenticity or veracity of the plans, Mr. Kuma explained that to confirm what had been submitted to him, he sat in a boat with the claimants on the lake and the claimants showed him their various boundaries while in the boat. *"This is incredible, isn't it?"* was the way the Sole Commissioner expressed his incredulity in his report;
iii. The Chief Valuer of the Lands Valuation Board also confessed that for approval purposes, the Board only adopted what the non-existent company had submitted to it;

iv. The Director of Surveys and Mapping at the Lands Commission denounced the plans for the claims as incapable of being used for claim purposes. Indeed, one of the maps was produced from a topographical map showing Peki in the Volta Region area and not Makango in the North;

v. The claim was based on 2005 land values when by law, they should have been based on either 1957 or 1974/75 land values;

vi. Payment of the claims was not routed through the Office of the Administrator of Stool Lands as required by law;

vii. The Omanhene of the Krachi Traditional Area, Krachiwura Nana Mprah Besemuna, also known as Joe Como Mprah, a retired Commissioner of Police, engaged in the following questionable activities in relation to the fraudulent compensation payments:

   a. He led a group of claimants to form a fictitious Fund named the 'Volta River Re-imbursement Fund', which received 15% of the total claims. The Omanhene was the principal signatory to the account as well as the Chairman of the Fund, which was not registered at the Registrar-General's Department;

   b. He benefited from the compensation payments more than any of the claimants even though he was not one of the claimants by deducting 15% from the moneys received by all the claimants from his Traditional Area as their Omanhene;

   c. He failed to submit a statement of account of the Fund requested by the Commission claiming he was only accountable to the members of the fictitious Volta River Re-imbursement Fund;

viii. The same Krachiwura Nana Mprah Besemuna has been appointed a member of the Board of Directors of the VRA;

ix. The Audit Department of the Ministry of Finance acted negligently and carelessly by failing to undertake proper due diligence in their audit of the GhȻ198 million claim;

x. Withholding tax was not deducted from GhȻ5 million out of the GhȻ71 million paid to Mr. Kodwo Abban;

xi. The Commission stopped an attempted further payment of the claim by the Ministry of Finance to await Government's reaction to the Commission's report;

xii. The Commission noted that fraudulent collaboration between Kwodwo Abban and some senior officers of the Lands Commission and Land Valuation Board, in the claims in which Kwodwo Abban & Co. was described as the surveyor and valuer, was exposed when some traditional rulers challenged in court the rationale behind the deduction of 10% from moneys due them for payment to Kwodwo Abban & Co. Their contention was that they never engaged that company for any services so they did not understand why 10% of their compensation sums had been deducted and paid to Kwodwo Abban & Co.

Against this chequered history and complicated background, the Commission made the following recommendations:

i. Government should engage a Consultant with extensive practical experience of prior survey work of the whole of the Volta Basin to streamline the chaotic Volta Basin compensation problems that have led to monies going into wrong hands;
ii. Government must conduct further investigations into the VRA compensation payments amounting to GhȻ138 million approved in 2008 to establish the level to which the respective acreages of the claim areas have been inflated;
iii. Government should also investigate the level to which the claim amounts have been diverted for personal use by persons who were not entitled to them;
iv. Government must suspend any further payment out of the balance of GhȻ67 million till in-depth investigation is carried out to establish the actual land size and the unit market replacement value of an acre of land in the basin as at 6th March 1957 as stipulated in the Volta River Development Act, 1961 (Act 46) or at best as at the time of the passage of E.I. 98 of 1974 which legally acquired the flooded areas.

Government accepts these recommendations and directs as follows:

i. Any further payment out of the balance of GHC67million should be suspended by the Ministry of Finance;
ii. A committee should be set up to investigate the entire compensation regime for flooded areas from 1965 to date;

iii. The Ministry of Lands and Natural Resources, working together with the Ghana Institution of Surveyors, is directed to set up this committee with the following terms of reference:

- streamline the chaotic Volta Basin compensation problems that have led to monies going into wrong hands;
- investigate the VRA compensation payments amounting to GHC138 million approved in 2008 to establish the level to which the respective acreages of the claim areas have been inflated;
- investigate the level to which the claim amounts have been diverted for personal use by persons who were not entitled to them;
- establish the actual land size and the unit market replacement value of an acre of land in the basin as at March 6, 1957 as stipulated in the Volta River Development Act, 1961 (Act 46) or at best as at the time of the passage of E.I. 98 of 1974 which legally acquired the flooded areas.

Government also accepts the following recommendations of the Commission and directs the Ministry of Lands and Natural Resources to take action on them:

i. Any evaluation of compensation claims must take into account all the relevant statutory laws that have been enacted to establish the parameters within which the land acquisition takes place;
ii. The Ghana Institute of Surveyors and Valuers must ensure that the names of members in good standing are published occasionally for public consumption;
iii. The Lands Valuation Division of the Lands Commission must seek clearance from the Institute of Surveyors & Valuers on private valuers before accepting valuation reports from them;
iv. In future, the Lands Valuation Division of the Lands Commission must make it its duty to vet and verify applications for compensation payments to determine whether the acreages of the land alleged to have been acquired represent the true state of affairs or not before proceeding to process them for payment.

Government further accepts, with modification, the Commission's recommendation that Nana Otieku Amoani Asare, Omanhene of Apaaso, who collected a total of GhȻ185,052.23 of the compensation claim using a fictitious 'Ahamandi' settlement, must refund, with interest, the total amount collected. Government directs the Attorney-General to take action on this recommendation.

Government accepts the Commission's recommendation that it must take all necessary steps to eliminate even the minutest sign of corruption and falsification of facts from the system of compensation payments.

Government directs the Minister for Lands and Natural Resources and the Minister for Finance to take action on this recommendation.

Government notes that the Commission's recommendations for a consultant to be tasked to survey, map and review the current Bui Dam's denuded lands and other compensation issues, determine the level of compensation payable, to whom and how much so that the mistakes of Akosombo are not repeated in the Bui Dam area, has already been taken up by the Board and Management of the Bui Dam Authority.

Government takes a very dim view of the role played by the Omanhene of Krachi Traditional Area, Krachiwura Nana Mprah Besemuna II, also known as Joe Como Mprah, in this whole compensation claims saga. Government has consequently decided to relieve him of his position as a member of the Board of Directors of the Volta River Authority (VRA).

General observations/findings in Chapter 3

The Commission, before the section of its report on the compensation claims for compulsory land acquisition cases to which the Government has reacted above, presented the following as its general observations on judgment debts arising out of compensation claims for compulsorily acquired lands at pages 159-171 of its report:

i. In almost all the cases digested, the relevant statutory provisions were not complied with to the letter by both claimants and the Lands Commission (the State agency that handles compensation payments);

ii. Most of the compensation claims were not properly verified and assessed in compliance with the law;

iii. Compensations in respect of compulsorily acquired lands are not promptly paid for as demanded by the law leading to legal suits against the State. Most of the times the inability of the State to make prompt payments results from conflicting claims that arise after the acquisition;

iv. In all those instances, the State failed to comply with section 4 (6) of Act 125 which states as follows: *Where compensation for land is assessed but cannot be paid owing to a dispute, the Government shall, pending the final determination of the dispute, lodge the accrued amount in an interest yielding escrow account and the amount together with the interest shall be released to the person entitled on the final determination of the dispute"*;

v. Instead of complying with section 4 (6) of Act 125 quoted above, the Lands Commission rather has been re-valuing the land upon the resolution of such conflicts or disputes by the claimants and paying them the current value of the land when such claimants or original owners ceased to be owners from the date of the acquisition by the State. This practice robs the State of huge sums of money which the claimants are normally not entitled to.

vi. Some of the acquired lands have not been properly utilized resulting in massive encroachments by trespassers and even at times by some of the original owners from whom the lands were acquired.

vii. Some of the original owners after their encroachments turn round to claim compensation from the Government in respect of the same lands.

viii. The difficulty of identifying the real owners of acquired lands who are genuinely entitled to compensation payment represents a major difficulty in making these payments. Such developments have negative impact on any project for which the acquisition was intended.

GOVERNMENT'S GENERAL OBSERVATIONS AND DIRECTIVES ON CHAPTER 3

Government observes that institutional failures and individual predilections have been responsible for the payment of these inordinately high compensations for compulsorily acquired lands.

Government is of the view that a re-orientation programme should be organized for the staff of the Ministry of Lands and Natural Resources and its agencies, the Attorney-General's Department and the Ministry of Finance who handle land compensation payments to alert them to the failures, omissions and wrong actions and practices that have led to these payments.

Government directs that the Ministry of Lands and Natural Resources should arrange such a re-orientation programme for the identified staff, utilizing the expertise of the Department of Land Economy of the Kwame Nkrumah University of Science & Technology and the Ghana Institution of Surveyors.

CHAPTER 4

SELECTED CASES ON JUDGMENT DEBTS ARISING OUT OF ALLEGED TORTUOUS/STATUTORY BREACHES COMMITTED BY PUBLIC OFFICIALS IN THE COURSE OF THEIR OFFICIAL DUTIES (1992-2012)

1. M/s EP Ghana Ltd. v. Ministry of Youth and Sports

After M/s EP Ghana Ltd. had done some rehabilitation works on some tennis courts at the Accra Sports Stadium at a cost of GhȻ72,705.79 in 2000, the Ministry of Youth and Sports (MoYS) in 2001 paid GhȻ67,652.58 out of the amount, leaving a balance of GhȻ5,053.21. This was not paid for 8 years until 2009 when the Ministry negotiated and settled it for GhȻ177,664.09 after the complainant had served the Attorney-General with a notice of intention to sue.

The Attorney-General, after consultation with MoYS, set up a committee to settle the issue because MoYS had no defence to put up with regard to its failure to pay the amount for that long. The complainant was demanding the sum of GHC 227,664.00. The committee negotiated it down to GHC 177,644.09 as the final figure to be paid to the complainant for MoYS's failure to pay the GHC 5,053.21 on time.

The Commission was of the view that the settlement was on the high side since the complainant would not have gotten that much if it had gone to court for a proper assessment.

Government accepts the Commission's recommendation that the officials responsible for the delayed payment should be identified and the loss incurred retrieved from them. Government directs the Ministry of Youth and Sports to take the necessary action to identify the official within three (3) months from the publication of this White Paper and subsequently take steps to retrieve the loss.

2. Samuel Adjei v. Inspector General of Police

In March 2006, accident taxi cab belonging to the plaintiff and parked at the Nsawam police station was auctioned by the police for GhȻ20.00 after the plaintiff had failed to collect it despite numerous warnings by the police.

The police alleged that the plaintiff removed vital components from the vehicle while it was parked at the station, reducing it to scrap. The Commission did not believe the police story. When the plaintiff took action in court, neither the Attorney-General nor the police entered appearance. A default judgment of GhȻ4,500 was entered against the Attorney-General and the police, which the Ministry of Finance paid in November 2010.

The Commission recommended a full-scale investigation to be conducted into the alleged sale of the vehicle to unearth the auctioneer who conducted the auction, the purchaser of the vehicle and the actual price at which it was purchased. If it turns out that the facts given by the police are incorrect, then the Nsawam police or whichever police officer was responsible must be made to refund to the State the GHC4,500.00 that the State was compelled to pay in satisfaction of the judgment debt. It is further recommended that such irresponsible and dishonest officers be dismissed from the service.

Government accepts the Commission's recommendation and directs the Inspector General of Police to investigate and determine who the auctioneer was, the purchase price as well as the circumstances of the auction. Persons against whom adverse findings are made should be appropriately sanctioned and the amount refunded to the State with interest. Government directs the IGP to take the necessary investigative action within 3 months from the publication of this White Paper and subsequently take steps to impose sanctions.

3. L/Cpl Baba Bukari v. Attorney-General

In 2006, L/Cpl Baba Bukari was dismissed from the Police Service for misconduct following a Service Enquiry.

In 2010, he sued the Attorney-General for wrongful dismissal by the police but the action was not defended and the court awarded a default judgment in the sum of GhȻ12,000.00. The Attorney-General and the Police Service blamed each other for the failure to defend the action.

The Commission's view was that the police had a credible defence to the action and recommended as follows:

i. there is the need for a proper re-organisation of the Solicitor-General's outfit to equip it to carry out its task of preparing well and appearing in court to defend civil suits against the State and its institutions;
ii. promotion of State Attorneys must be based on their work output.

The Commission further observed that it is not sufficient reason to claim that a public agency or institution has failed to provide information to the Attorney-General's office on account of which it had failed to defend the state. The Attorney-General's Department must show that apart from writing to request the defendant agency or institution to provide it with information, it had taken some other proactive step such as making contact with that agency or institution. Failure by the defendant agency or institution to respond to that request by letter cannot be a valid excuse for failing to file a defence to the action. There must be evidence of successful prosecution or contribution to legal work in the office to merit the elevation of State Attorneys to the next hierarchy in their line of duty.

Government accepts these recommendations and notes that the Attorney-General has already started a comprehensive reform in this direction and encourages the Attorney-General to expedite those reforms.

4. Henry Osei Dankwa v. Amoo Gotfried & 3 Others

Two sets of building structures were demolished to make way for the Asafo Market Interchange Project in Kumasi. The plaintiff-owners of the structures sued for compensation but the action was not defended. In 2008, default judgment was therefore entered for the plaintiffs.

The Deputy Attorney-General, Mr. Barton-Odro, directed the Ministry of Finance to pay the judgment debt which he stated as GhȻ1,829,449.39. After the Ministry of Finance had queried the interest component of the debt, the Bank of Ghana was called in to re-calculate the interest and this reduced the total debt payable to GhȻ1,418,151.76, which has since been paid.

The Commission found that there may have been a defence to the action as the structures had been illegally constructed. It also found that the Deputy Attorney-General did not cross-check to ensure that the correct interest had been factored into the debt. But for the vigilance of the Ministry of Finance officials, an excess of GhȻ411,297.53 would have been wrongfully paid to the plaintiff.

The Commission was of the view that this showed the lackadaisical attitude or culture at the Attorney-General's Department. The Commission observed that the failure of the Attorney-General's office to defend the case stemmed from improper supervision at the Attorney-General's office in Kumasi. The Commission therefore recommended that "the Attorney-General's Department needs a strong fortification so that the interest of the State would always be protected". The Commission also recommends that "drastic measures must be put in place to restructure the Attorney-General's Department to make it more responsive in the discharge of its constitutional mandate".

Government accepts both recommendations of the Commission and directs the Attorney-General accordingly.

5. The family of the late Stephen Danomah v. Inspector General of Police and Another

In 2009, the late Stephen Danomah was killed in a high-speed car chase by the police. When the Attorney-General received notice of intention to sue, it negotiated a settlement with the deceased's representatives after coming to the realization that there could not be any meaningful defence to the action judging from the Police Report on the incident. The Attorney-General settled for a compensation payment of GhȻ42,000.00 and this was paid. The Police Service dismissed the police officer who killed the deceased and he, in turn, sued the Attorney-General for wrongful dismissal.

The Commission found that the settlement was a 'fair one'. The Commission commended the police for the swift action in disciplining the police officer and recommended for the Attorney-General to effectively defend the wrongful dismissal action brought against the police to avoid any ex parte judgment against the State.

Government endorses the findings of the Commission.

6. Engeline Kodzo Alagbo v. Attorney-General

In 2008, the victim of the negligent driving of a driver at the Greater Accra Regional Coordinating Council (GARCC) sued for and obtained a default judgment for GhȻ84,710.00 because the Attorney-General did not defend the action.

At the execution of judgment stage, the Attorney-General applied to the court to have the default judgment set aside for the quantum of damages to be determined through negotiations. This was accepted by the court and the amount was finally settled at GhȻ10,000.00.

The Commission found as follows:

i. public officers who abuse their office are most of the time made to escape punishment and there is therefore no deterrence effect on improper conduct by public officers;
ii. the failure of the Attorney-General's Department to properly defend the State is one of the major reasons behind the numerous judgment debts against the State;
iii. if the Attorney-General's Department had not woken up from its slumber to have the default judgment set aside, the State would have been made to pay the plaintiff an excess amount of GhȻ74,710.00 which he did not deserve.

The Commission did not make any recommendations. Government has taken note of the findings for necessary action.

7. The Petition of John Alex Hamah

In 1974, the petitioner was convicted of attempting to overthrow the Government of the National Redemption Council (NRC) and sentenced to death. When he was convicted, an amount of ¢56,000.00 (GhȻ5.6) that was seized from him, as an amount he had intended to use to finance the coup d'état, was confiscated to the State. He was subsequently released and finally pardoned in 1979.

He petitioned the National Reconciliation Commission when it was set up in 2001 by the Third Government of the Fourth Republic which recommended the return of the amount to him.

When this was not implemented, he petitioned the Fifth Government of the Fourth Republic in 2009 at which point the Attorney-General's Department sought assistance from the Bank of Ghana to help it determine the value at the time of confiscation in 1974.

Using three different scenarios, the Bank of Ghana arrived at amounts of GhȻ7,111.13 (using discount rate and applying compound interest), GhȻ6,677.21 (using 91-day Treasury Bill rate and applying compound interest) and GhȻ74,016.73 (using nominal exchange rate analysis with the assumption that the confiscated money was used to purchase US$ in 1974) respectively.

The Attorney-General selected the first scenario and that amount was paid to the petitioner in addition to an earlier payment of GhȻ3,000.00 which the Attorney-General had authorized on humanitarian grounds as part payment, to enable the Petitioner address some pressing health matters. Not satisfied with the amount, the petitioner petitioned the Commission for the third scenario to be used in effecting payment.

The Commission, whilst acknowledging that this was not a case of a judgment debt *stricto sensu*, was nevertheless of the view that the State would incur a much higher liability if the petitioner went to court to enforce his rights.

Indeed, the Commission, while sitting, addressed a letter to the Attorney-General dated July 9, 2013, advising the Attorney-General to look into the matter and advise the Minister for Finance to settle him by using the third method of calculation.

The Commission recommended that the Attorney-General should direct the Ministry of Finance to use the third scenario created by the Bank of Ghana and pay the petitioner the sum of GhȻ74,016.73 less the total of GhȻ10,311.13 (i.e. GhȻ7,311.13 plus GhȻ3,000.00) that he had already been paid, that is GhȻ64,016.73, to end his ordeals.

Government reluctantly accepts the recommendation of the Commission that the GHC 64,016.73 be paid to Mr. Hamah on humanitarian grounds 'to end his ordeal'. It is not clear why the Commission opted for payment based on the third scenario especially as it does not flow with the Commission's trend on interest payments. Government would, however, like to bring closure to this case.

8. James Manu v. The Attorney-General

In 1999, the plaintiff, a staff member of the Ghana High Commission in the United Kingdom, voluntarily retired from the foreign service after twenty-five (25) years of service.

He was paid an end-of-service benefit of £10,463.17. He protested on the ground that he was entitled to more. He sued in the UK courts for more and won a default judgment of £28,229.21 less the amount already paid, leaving a judgment debt of £18,229.21. The Ministry of Foreign Affairs refused to pay the amount.

Back in Ghana, the plaintiff sued the Ministry of Foreign Affairs to enforce the judgment of the UK court and the Attorney-General entered appearance and filed what the Commission described as a *"sham defence"* which was struck out by the court and the plaintiff was granted judgment on his claim.

When the plaintiff *fi-faed* certain properties of the Ministry of Foreign Affairs to satisfy the judgment debt, the Attorney-General won a stay of execution to have the matter resolved out of court. The matter was resolved and the plaintiff was finally paid the cedi equivalent of £16,663.73.

The Commission found these developments worrisome and raised the following issues:

i. If the Ghana Mission thought the plaintiff had been paid all of his legitimate entitlements, why did it not appear to defend the action in the UK court?

ii. Why did the Mission not assist the Attorney-General to file a deserving defence when the plaintiff came down to Ghana to pursue his claims in the Ghanaian courts?

iii. In other words, if the Ministry of Foreign Affairs' contention that it did not owe the plaintiff any further sum was weighty, why did it fail to contest both cases in the UK and Ghanaian courts?

iv. Was it a question of impunity or arrogance on the part of the schedule officers or was it laxity and lack of care on the part of the public officers concerned?

The Commission found as follows:

i. letters that the Attorney-General's Department wrote to the Ministry of Foreign Affairs drawing the Ministry's attention to the plaintiff's suit and the fact that the Attorney-General needed briefing to enable him handle the case went unheeded;
ii. this accounted for the Attorney-General's inability to file a proper defence to the action resulting in the default judgment that was entered against the State;
iii. the failure on the part of the Mission officials concerned to handle expeditiously the issue involving the plaintiff's entitlements led to the unnecessary litigation, with the State being made to pay more than it should have paid;
iv. it is high time public officials were made to suffer the consequences of their wrong actions and inactions with regard to important matters that seriously affect the interest of the State financially or otherwise.

The Commission recommended that the schedule officers at the Ghana Mission in the UK who were responsible for the lapses that led to the court cases must be made to pay for any excess moneys that the State was made to pay as a result.

Government accepts this recommendation and directs the Ministry of Foreign Affairs to take appropriate action.

9. John Yaw Opoku v. General Legal Council

The plaintiff was appointed by the General Legal Council chaired by the Chief Justice as Deputy Registrar of the Ghana School of Law in 2000 and was dismissed three years later. He petitioned the Chairman of the Legal Council but his petition went unheeded. He proceeded to the High Court.

The Council filed a defence in 2004 but thereafter abandoned the case.

The court entered an ex parte judgment against the Council in 2011. Plaintiff filed entry of judgment and served same on the Council. The Council did not appeal against the judgment, but refused to honour it.

In December 2012, the plaintiff petitioned the Chairperson of the General Legal Council (the Chief Justice) on the failure of the Council to honour the judgment, who referred the petition to the Director of the Ghana School of Law, who also referred it to the Attorney-General and Minister of Justice, after which he petitioned the Commission when he did not hear from the Attorney-General.

The Commission found that all the persons who were at post at the time of the plaintiff's dismissal were no longer at post (Chief Justice George Kingsley Acquah deceased, Director of Ghana Law School Mr. Kwaku Ansah Asare and Judicial Secretary Mr. E.A. Owusu Ansah deceased) and the incumbents could not speak to the subject. Neither could the Council defend its action before the Commission. The Council only pleaded to be allowed time to settle the judgment debt with the plaintiff.

The Commission also found that there was no justifiable basis for the Council to refuse to comply with the judgment of the High Court. In the view of the Commission, from the judgment of the High Court, the conduct of the Council in terminating the appointment of the plaintiff/petitioner was reprehensible. It was the result of arbitrary show of power. In the words of the trial judge:

> *"This case was virtually undefended. ----- It is after reading the eventual evidence that unfolded mainly from the plaintiff's side at the end of the case that I understood why the defendant abandoned the trial. It had a very bad case, and such an embarrassing case the best was to abandon the contest. I would have been surprised if anybody from the defendant office had appeared to defend this action. After all, the defendant was satisfied it did what it had sworn to do; i.e. do away with the Plaintiff and the law could go hang. It is really unfortunate and indeed frightening that such deeds could find their way into a legal institution like the General Legal Council".*

The Commission's own observation on the conduct of the General Legal Council is equally damning. In the words of the Sole Commissioner:

> *"If the Council whose duty it is to ensure high professional standards or conduct in the legal service and ultimately justice in the country, could defy with impunity legal etiquette by refusing to adhere to simple legal norms like the payment of a valid judgment debt, then the country has a long way to go.*

It is not surprising that other state institutions like MDAs, which had nothing to do with the advancement of justice, as has been unearthed by this Commission, are behaving in a like manner. All these ultimately commit the State to the payment of unjustified judgment debts as a result of acts of impunity and arbitrary display of unbridled power. This country really needs institutional cleansing to purge it of this costive character of public officials in the discharge of their public duties before it can exit from this Cimmerian picture of financial doom".

Unfortunately, the Commission did not make any recommendation on this matter.

Government directs that if the judgment debt has still not been paid, it should be paid immediately with interest calculated under C.I. 52 to the date of payment. The Attorney-General and Minister of Justice should take action as appropriate. Also, the General Legal Council's attention should be drawn to this case for appropriate measures to be instituted to forestall a recurrence.

10. Gbewaa Civil Engineering Co. & Yakubu Adam Kasule v. Attorney-General

On the assumption of office of Mrs. Betty Mould-Iddrisu as Attorney-General and Minister for Justice in 2009, she negotiated a settlement of 4 pending court actions involving Gbewaa Civil Engineering Co. and Yakubu Adam Kasule, one of which involved a criminal appeal that the State had initiated against Mr. Kasule in the Court of Appeal for US$5 million and GhȻ1million as full and final settlement of all claims, legal fees and costs. She then requested for payment by the Ministry of Finance.

When Mr. Martin A.B.K. Amidu took over as Attorney-General, he raised issues with some of the terms of settlement, as a result of which payment was stalled. Mr. Kasule and his company then sued to enforce the terms of the settlement. At that time, Mr. Amidu had been removed as Attorney-General and had been succeeded by Dr. Benjamin Kunbour. Judgment was given in favour of Mr. Kasule and his company by Justice S.K.A. Asiedu. Dr. Kunbour appealed against the judgment.

The plaintiff, however, went on to file a motion ex parte for garnishee order nisi against certain bank accounts of the Government.

Dr. Kunbuor therefore sought and obtained Cabinet approval to authorize payment of new terms of settlement which he had negotiated with Mr. Kasule namely US$6,272,514.41 and GhȻ1,630,380.00 respectively. He described the attachment of vital Government of Ghana accounts at the Bank of Ghana as life-threatening to the overall operations of the Government.

The findings of the Commission were as follows:

i. the concerns raised by Mr. Martin Amidu on the settlement terms were justified notwithstanding Justice S.K.A. Asiedu's judgment on the matter;
ii. the Betty Mould-Iddrisu-negotiated terms of settlement, notwithstanding her good intentions, did not follow due process;
iii. though Dr. Benjamin Kunbuor appealed against the judgment given in favour of Mr. Kasule, he nevertheless got Cabinet approval to pay the new terms of settlement in order to release Mr. Kasule's hold on vital Government accounts.

The Commission expressed worry about the increase in the Dr. Kunbuor-brokered settlement figures vis-à-vis the Betty Mould-Iddrisu-brokered settlement figures. Betty Mould Iddrisu's settlement figures were US$5m in full and final settlement of all claims and GHC 1m in full and final settlement of all legal fees and costs. Dr. Kunbour's settlement figures were US$6,272,514.41 and GHC 1,630,380.04. The extra amount was calculated as follows:

- interest on US$5m at the rate of 16% per annum from October 29, 2010, to May 31, 2012;
- interest on GHC 1m at the rate of 28% per annum from October 29, 2010, to May 31, 2012;
- GHC 150,000.00 general damages awarded by Justice Asiedu;
- GHC 35,000.00 costs awarded by Justice Asiedu.

The Commission further found as follows:

i. the Attorney-General should have proceeded further to the Court of Appeal for a post-mortem examination to be conducted on the judgment delivered in favour of Mr. Kasule and his company;

ii. the Executive was convinced or cajoled to succumb to the pressures of Mr. Kasule on the false assumption that with the garnishee order, everything was lost;

iii. the State could have negotiated the judgment debt downwards or at worst maintained the Betty Mould-Iddrisu settlement figures which were lower instead of raising it further astronomically.

Consequently, the Commission made the following recommendations:

i. the excess payment calculated on the wrong interest rates which resulted in increases of more than 50% in the cedi payment and 25% in the dollar payment must be recovered from the Company and Mr. Kasule;

ii. the Attorney-General should always take pains to dissect cases against the State properly and fight to the end instead of easily throwing in the towel with the least pressure when the fight could be won at the last round.

Whilst Government accepts recommendation (ii) and directs the Attorney-General to act accordingly, Government is unable to accept recommendation (i). Government is of the view that attempting to recover any such payment will re-open the matter with attendant legal complications, which could lead to loss to the State. Government therefore prefers to consider it a closed chapter.

11. Divestiture-related judgment debts

The Commission was not satisfied with the way or manner the following divestiture cases were handled:

a. Ghana Consolidated Diamond Limited's (GCDL) indebtedness to Balaji Gemlast Company Limited; in *re*: Balaji Gemlast Company Limited v. Ghana Consolidated Diamond Limited

At the time the GCDL, a limited liability company wholly owned by Government, was put up for divestiture, it was indebted to Balaji Gemlast Co. Ltd. under a court judgment for which some GCDL properties had been attached.

Government felt the need to intervene in the matter to repay the judgment debt otherwise the whole divestiture process would be thrown overboard.

After negotiations, Government paid the entire judgment debt of US$1.8 million after a delayed period of one and a half years. This attracted a further interest of US$268,468.18 and GhȻ57,700.00. These amounts were yet to be paid at the time the Commission was hearing the case.

Meanwhile, GCDL was divested to a private investor, Zoomlion Waste Management Co., under the new name Great Consolidated Diamond Co. Ltd. The private investor was operating the company but had not fully paid for it.

When asked why Government was burdened with the debt when Divestiture Implementation Committee (DIC) should have collected and applied the proceeds of the divestiture to deal with lingering debts, the DIC's position was that after the passage of the Financial Administration Act 2003 (Act 654), the new rule was that the DIC would pay all receipts into the Consolidated Fund and ask for disbursement from Government through Parliament.

According to the Commission, the big question is – "when is Zoomlion, which is now operating the company under a new name of Great Consolidated Diamond Company Ltd, going to pay fully for what it has purchased and has been operating to its benefit at *(sic)* the detriment of the State?"

The Commission formed the view that a proper evaluation based on adequate assessment would have avoided that state of affairs and that the financial arrangements as they stand are clumsy and can be exploited against the State.

b. Subin Timbers Ltd. v. Attorney-General

In 1981, investigations revealed that Subin Timber Co. Ltd. (STCL), in collaboration with the then Ghana Timber Marketing Board (GTMB) and the Takoradi main branch officials of the Ghana Commercial Bank (GCB), was smuggling large quantities of processed timber outside the country.

Officials of both GTMB and GCB were sanctioned but Ivo Fiorini (the Italian investor in charge of STCL) escaped from the country. Parliament ordered the confiscation of the company.

Daniel Adobor, who claimed to be an adopted son of one Ohene Koffie the alleged owner of STCL, fraudulently got the National Reconciliation Commission (NRC) which was set up in 2001, to de-confiscate and allocate the company to him.

According to the Commission, it was clear from PNDC Law 31 that the State had absolute interest in the company. It was therefore not clear how the NRC arrived at its decision to de-confiscate the company and allow Adobor to take possession of 39.59 acres of the factory land acquired with State money.

It was the view of the Commission that the failure of the DIC to follow its own laws and procedures led the State to lose so much money, land and equipment.

c. Compensation claims in respect of Central Horticultural Station at Medie

Government acquired land at Medie for the establishment of the Central Horticultural Station in 1965, regularised by E.I. 104 of 1972 as amended by E.I. 23 of 2000. In 1998, the Divestiture Implementation Committee (DIC) signed an MOU with Ghana Fresh Produce Co. Ltd. (GFPC) on the acquired land to establish the Medie Horticultural Development Co. Ltd. (MHDC) for the cultivation, processing, packaging and export of horticultural products under a 26% (Government of Ghana) and 74% (GFPC) shareholding arrangement. Compensation for the acquired land had been calculated at GhȻ413,841.00.

The Commission found that it did not appear that the DIC acted in the interest of the State for the following reasons:

i. it wrongly accepted only 26% share for the Government when it was entering into the agreement, considering the fact that in addition to the land which appreciates with time, the Government was to provide civil infrastructure, agricultural products and equipment;
ii. the MOU did not specify what types of products the two partners were to provide;

iii. the equipment to be provided by each party was not specified;
iv. a company by name Nexus was mentioned in the scheme of operations but it is not certain whether Nexus was the same as MHDC;
v. the Commission did not sight any agreement between MHDC as a private company and the Government;
vi. the contributions of the two parties was too scanty, considering the assessed compensation value of the land alone;
vii. compensation was yet to be paid to the land owners by the State;
viii. the Joint Venture Company began operation two years before the Joint Venture MOU was signed;
ix. what happened to the proceeds and dividends (if any) in the intervening two years could be anybody's guess;
x. about 50% of the acquisition area has been encroached upon by trespassers but the identity of the encroachers has not been established;
xi. the State is therefore likely to pay compensation to persons who are not entitled to claims.

In the view of the Commission, the DIC completely failed to plan, monitor, coordinate and undertake proper evaluation of the project.

d. Wenchi Tomato Factory, Wenchi, Brong Ahafo

The Wenchi Tomato Factory was divested to a Ghanaian who could neither pay for it nor operate it. The Commission found that the DIC clearly did not follow the requirements of its own laws leading to the failed divestiture of an otherwise viable State venture that could have given employment to the youth of Wenchi and the surrounding towns and villages.

Findings and Observations

The Commission made the following findings and observations in relation to the four divestiture cases that it investigated:

i. the entire divestiture programme has not lived up to expectation;
ii. there is the need to delve into all divestiture cases and programmes to get to the roots of what happened to these State assets;
iii. the programme appears to have rather paved the way for few individuals to service their personal economic recovery programmes instead of that of the State;
iv. the object and functions of the DIC as captured under the Divestiture of State Interests (Implementation) Law, 1993, PNDCL 326, have been completely defeated.

Recommendation

Against the background of these findings and observations, the Commission recommended a forensic auditing of all divestiture related programmes since its inception. According to the Commission, *"This will go a long way to determine the extent to which the programme has either been a success or a failure as far as its contribution to economic development was envisaged".*

Government directs the State Enterprises Audit Corporation to conduct a review and evaluation of all divested state-owned enterprises to guide Government's decision on the fate of the Divestiture Implementation Committee.

CHAPTER 5

GENERAL FINDINGS AND OBSERVATIONS

Before making its general recommendations in Chapter 6, the Commission in Chapter 5 of its report makes certain general findings and observations on the factors that have accounted for or contributed to the numerous judgment debts against the State. These are summarized below:

a. poor record keeping;
b. judgment debt payments between 2009 and 2012 (the decision in 2009 to liquidate most of the Judgment debts hanging around the neck of the State as a result of neglect by previous Governments, to save the economy from collapse);
c. the inability of the Attorney-General to properly defend the State in court in majority of the cases in which the State was sued for acts and omissions of public institutions;
d. findings and observations peculiar to land compensation payments.

a. Poor record keeping

The Commission lamented the difficulty with which it was able to gain access to public records. It observed that almost every witness who appeared before it either pleaded for time to look for records or indicated out-rightly that the records were missing. The Commission's major finding was that the main agency responsible for record keeping, the Public Records Administration and Archival Department (PRAAD), is seriously incapacitated in performing the function satisfactorily. Other findings and observations related to the following:

i. there is a negative public sector attitude to proper record keeping;
ii. records are created at very high cost for public policy making and general governance;
iii. despite the seventeen (17)-year existence of a professional Records Class in the Civil Service, the impact of the PRAAD is yet to be felt on the public records management scene;

iv. the PRAAD is poorly staffed and records being generated by MDAs and MMDAs are not properly managed;

v. the PRAAD is in fact a "buried office", invisible and ineffective.

b. Judgment debt payments between 2009 and 2012

The following quote from the Commission's report summarises the reason for the unusually high judgment debts paid by the Government between 2009 and 2012:

> *"It is an undeniable fact that the huge judgment debts paid between 2009 and 2011 (sic) were not debts contracted by the Government of the day within those years. Majority of them were debts that had been outstanding for several years but which previous governments took no steps to resolve. The said debts had therefore accumulated interests to unimaginable levels that any reasonable mind could comprehend".*

c. The inability of the Attorney-General to properly defend the State in court

The Commission identified some of the causes of the Attorney-General's inability to effectively defend actions against the State resulting in judgment debts against the State to include the following:

i. Article 88 (5) of the Constitution that makes the Attorney-General the sole defendant in all actions against the State. This provision allows for the Attorney-General to be sued without notice to offending MDAs, so the latter become less concerned about the outcome of the suits. The Attorney-General is therefore often incapacitated or finds it difficult in obtaining information from the relevant MDAs to support any meaningful defence of the suits, leading to unwarranted ex parte default judgments against the State.

ii. The position of the Attorney-General should be de-coupled from that of the Minister of Justice because an Attorney-General without ministerial duties would be insulated from political interference and considerations and would have a proper mindset to prosecute and defend all cases without any biases and would also have ample time to properly supervise what goes on in the Department.

d. Findings/Observations peculiar to land compensation payments

The Commission makes the general finding that the State and at times the claimants, do not strictly comply with the provisions of the State Lands Act, 1962, Act 125, when it comes to the assessment and payment of compensation for compulsorily acquired land.

In relation to claimants, the Commission makes the following findings and observations:

i. claimants are unable to properly identify their lands affected by compulsory acquisition;
ii. some land-owners are ignorant of the procedures to be adopted in pursuing claims for compensation;
iii. land owners find the "go and come" attitude of public servants who process the compensation claims so frustrating that they become fed up and feel reluctant to continue to chase or end up losing a chunk of their claims when they are compelled to employ agents to chase their claims.

In relation to the State, the Commission makes the following findings and observations:

i. Government upon Government's delay in the payment of compensation when both the Constitution and Act 125 provide that compensation should be paid "promptly".

ii. It takes years after the State has compulsorily acquired lands and occupied them before the State regularizes the acquisitions by the publication of the enabling Executive Instruments.

iii. The Lands Commission does not comply with section 4 (6) of Act 125, which provides that where the State is unable to pay the compensation due to conflicting interests, the assessed compensation must be paid into an interest yielding account for the accumulated sum to be paid to the rightful owner when determined. Contrary to the law, however, the Lands Commission re-values or reviews the already assessed value of the land on the resolution of the conflict and pays the current value to the claimant.

iv. The State does not comply with Article 20 (6) of the 1992 Constitution, which provides that where compulsorily acquired land is not used in the public interest or for the purpose for which it was acquired, the original owner shall be given the first option for re-acquiring the land.

v. Government agencies involved in judgment debt payments, particularly land compensation payments, do not effectively coordinate with one another. Most guilty in this regard are the Lands Valuation Division of the Lands Commission, Ministry of Finance and Economic Planning, Controller and Accountant-General's Department, Bank of Ghana, Attorney-General's Department and the Office of the Administrator of Stool Lands.

CHAPTER 6

RECOMMENDATIONS

Introduction

The Commission identified the following as some of the major factors leading to the payment of outrageous and inordinate judgment debts:

a. contractual breaches resulting mostly from unlawful abrogation of government contracts;
b. inadequate legal knowledge, expertise and appreciation of the drafting of agreements binding public sector institutions and other multilateral, bilateral and private organisations, especially international agreements;
c. abuse of power by State officials during the execution or performance of their duties;
d. inadequate action or inaction by state attorneys to defend the Republic when there are cases against it;
e. lack of specialized Alternative Dispute Resolution (ADR) mechanisms or department that could have helped the State to resolve some of the judgment debt cases;
f. ill-intent of corrupt State officials, civil servants, citizens of Ghana and expatriates to milk the State by taking advantage of the loopholes in Ghana's legal and administrative systems;
g. lack of oversight responsibility by State officials;
h. weaknesses in the institutional and administrative structures of the State;
i. improper record keeping by public institutions;
j. undue political interferences within the public sector by powerful politicians and their cronies;
k. failure of Governments to recognize, identify and tap talents in the country due to political colourisation;
l. unnecessary compensation payments in respect of lands acquired by Government for public projects and other public purposes.

The Commission then proceeded to make:

a. general recommendations; and
b. recommendations specific to payments of compensation arising from compulsory land acquisitions by the State.

A. General Recommendations

The general recommendations are under three headings – Prevention, Strong Defence and Sanctions. Government accepts, rejects or accepts with modifications the recommendations of the Commission as follows:

i. Prevention

Government accepts the following recommendations made by the Commission under 'Prevention':

a. State contracts should be 'ring-fenced' with sufficient funding and time frame. These should be captured in the national budget and appropriation bill on annual basis;
b. The Audit Service should be well resourced country-wide to enable it uncover dubious financial actions by State officials before they generate into judgment debts;
c. A comprehensive debt management policy and procedural guidelines for the management of national debts must be formulated;
d. In advance of Public-Private Partnerships (PPP) implementation, there is the need to address key issues including the regulatory and institutional role of the various MDAs in the PPP process, contracting, negotiation, risk-sharing, management framework and guiding principles;
e. The situation in which any time there is a change of Government, there are changes of the top level personnel in the civil and public services must cease as things get mixed up, records get lost or are misplaced or are deliberately destroyed. The identification of national policy and the continuity of national policy are key to the development of the nation. Kaleidoscopic changes of top level personnel of the civil and public services do not augur well for good governance.

Government accepts the following recommendations with modifications:

a. Parliament should pass a 'Political Campaign Funding Bill' to prevent the situation in which the funding of political activities and election campaigns has become a major source of corruption in public office.
   Government accepts this recommendation but is of the view that this is to prevent corruption in political activities generally (both ruling and opposition parties), and not just corruption in public office.

b. A specialized Alternative Dispute Resolution (ADR) Centre or Unit should be established within the Attorney-General's Department to assist in the management of national debts. The Centre or Unit should be adequately equipped and resourced to be able to effectively verify evidential matter submitted in claims resulting in judgment debts against the State.
   Government does not wholly accept the recommendation of an Alternative Dispute Resolution Centre or Unit, solely for the stated purpose, at the Attorney-General's Department. The Attorney-General is not a neutral party in the issue of the management of national debt as it relates to judgment debts or potential judgment debts. Government is of the view that a more workable alternative is to establish a team of attorneys and non-attorneys at the Attorney-General's Department, properly trained in dispute resolution. This team will form an adhoc committee that will advise on out-of-court settlements where necessary.

c. A critical look should be taken at Records Management at all levels. The Head of Civil Service as Chairman of the Records Advisory Committee must create a Departmental Records Sub-Committee to oversee the proper functioning of the record keeping units of all MDAs.
   Government accepts the recommendation that a critical look be taken at records management in the country but is, however, of the view that the Records Advisory Committee under the Public Records and Archival Administration Act 1997 (Act 535) must be re-constituted and made to oversee the proper functioning and modernisation of all record keeping departments of the MDAs.

d. The frequent changes in the nomenclature of ministerial portfolios any time a different political party assumes the reins of government must also cease as these carry with them unreasonable financial burdens as a result of movement of departments and units and even staff within a previous ministry to a new ministry carved out of the old ministry.

   Government is of the view that frequent re-alignment of ministerial portfolios and associated changes in nomenclature must be reduced to the barest minimum. Government further notes that this is not limited to governmental transitions from one political party to another as such changes may also occur in the tenure of the same government.

Government does not accept the following recommendations:

a. A legal instrument should be put in place to ensure that the procurement law is religiously followed in the award of contracts, a breach of which will otherwise render the contract invalid.

   Government is of the opinion that there are enough sanctions in the existing Public Procurement Act 2003 (Act 663). The revised Public Procurement Act in the pipeline has tightened the sanctions even further.

b. A legal regime should be developed to ensure continuity of contracts that transcend out-going and in-coming governments.

   Government notes that article 35(7) of the 1992 Constitution provides that "as far as practicable, a government shall continue and execute projects and programmes commenced by the previous Government". It is the expectation that Governments of Ghana will comply with this constitutional provision.

c. The role of the Audit Service should be broadened to minimize financial malfeasance in the execution and abrogation of contracts. All contracts of MDAs and MMDAs should be subject to Audit Service review for legal compliance before execution and abrogation.

Government notes that advice on the execution and abrogation of contracts is the responsibility of the Attorney-General and not the Auditor-General. Government therefore advises the Attorney-General to take note of this recommendation.

ii. Strong Defence

Government accepts the following recommendations of the Commission under 'Strong Defence':

i. Greater attention should be given to the Attorney-General's Department through training, having recourse to well-qualified and experienced persons as well as people with strong moral foundations and personal integrity to head the Department and its Units;

ii. Government should recruit into the Attorney-General's Department experienced, technically competent and committed lawyers and professionals who are in a position to review and provide expert opinion on international contract negotiations, arbitration processes and legality of all government contracts prior to execution and abrogation;

iii. There is urgent need to give quality professional training to public servants, including regular training on civil service ethics, financial administration laws, procurement laws, etc. to assist them perform their duties with professionalism, patriotism, honesty, integrity and responsibility.

Government accepts the following recommendations of the Commission with modification:

i. The Attorney-General should contract seasoned financial teams to undertake forensic investigations into judgment debt cases whenever they are brought to the Attorney-General's attention to be defended.

Government is of the view that the Attorney-General should work with the Auditor-General and other seasoned financial teams to execute these tasks.

ii. Legal Departments of MDAs and MMDAs should be resourced with competent legal professionals to complement the Attorney-General's Department.

Government's decision is that henceforth, as far as practicable, staff of the Legal Departments of the MDAs (Ministries, Departments and Agencies) should be staff of the Attorney-General's Department seconded to the MDAs.

Government further notes that the MMDAs (Metropolitan, Municipal and District Assemblies) are set up as corporate entities who can sued and can be sued, and therefore are not under the control of the Attorney-General's Department. The Attorney-General's Department neither acts for them nor defends them in court except as a matter of courtesy. However, Government directs MMDAs not to hesitate to seek the assistance of the Attorney-General's Department where necessary.

iii. A legal instrument should be put in place to oblige all MMDAs and RCC attorneys to respond to queries and other requests for information from the Attorney-General's office within strict timelines.

Government is of the view that all MDAs, RCCs and MMDAs should respond to queries from the Attorney-General's office in a timely manner and vice versa.

Government does not accept the following recommendations of the Commission:

i. There should be established a permanent institution to play oversight role in the handling of judgment debt cases. The institution will coordinate all government institutions that are involved in the handling of judgment debt to ensure efficiency and transparency in the payment of genuine judgment debts by the State and its agencies and institutions.

ii. It will investigate all default judgments, consent judgments and judgments on admission entered against State institutions via the Attorney-General to verify their authenticity before payments are made.

Government is of the view that there are existing institutions of state that are responsible for different aspects of these matters. These institutions should be empowered to do their work efficiently and effectively. The Attorney-General should be empowered to play oversight role in the handling of judgment debt cases. The Attorney-General should coordinate all government institutions that are involved in the handling of judgment debts.

iii. The Commission recommends the separation of the roles of Minister of Justice and Attorney-General to protect the prosecutor's office from undue political interference.

This is a problem created by Article 88(1) of the 1992 Constitution which makes the Attorney-General a Minister of State. Whether the Attorney-General is a stand-alone Attorney-General or whether the position is coupled with Justice or any other portfolio for that matter, the Attorney-General still remains a Minister of State who will be subject to all the peccadilloes of political interference (perceived or real) and considerations that the Commission is concerned about.

Government notes that the Commission's recommendation is actually akin to a recommendation to establish an independent prosecutor's office, and that would also require amendments to Articles 88 (3) and (4) of the Constitution.

Article 88 (3) states that: *"The Attorney-General shall be responsible for the initiation and conduct of all prosecutions of criminal offences"*, and Article 88 (4) states that: *"All offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General or any other person authorized by him in accordance with any law".*

The Commission makes a specific recommendation for Article 88 (5) to be amended to read as follows in order to deal with the problem posed by civil litigation:

> *"The Attorney-General shall be responsible for the institution and conduct of all civil cases on behalf of the State; and in all civil proceedings against the State or any of its institutions or Ministries, Departments and Agencies, the Attorney-General shall be made a party to enable him/her perform this role".*

Government takes note of the work of the Constitutional Review Commission's Report and Government's White Paper thereon and of the work of the Constitutional Review Implementation Committee (CRIC) on this subject, and refers the matter to the latter for consideration.

iii. Sanctions

Government accepts the following recommendations of the Commission:

i. The Civil Service should emphasise high ethical values to make it more responsive, proactive, accountable and transparent to stakeholders;
ii. Heads of public institutions should apprise themselves of the Civil Service Act, Local Government Act, Labour Act, Financial Administration Act, Public Procurement Act and the law governing the Fair Wages and Salaries Commission;
iii. Heads of Departments and other government officials must be held accountable for their actions and/or inactions that lead to payment of judgment debts;
iv. Deadlines for responding to administrative requests for advice and clearance should be accompanied by sanctions for failure to respond on time, especially where it leads to financial loss to the State;
v. In situations where the actions and/or inactions of public officials lead to unwarranted debts to the State, the officials must be made to refund the debts paid to the State failing which the assets of the main offenders, collaborators, accomplices and beneficiaries should be confiscated to the State to recover the losses to the State.

Government notes the existence of the Public Property Protection Decree, 1977 (SMCD 140) under which such persons may be prosecuted.

B. Recommendations specific to payment of compensation arising from compulsory land acquisitions by the State

Government accepts the following recommendations of the Commission:

i. The Lands Commission must comply with Article 258 (1) (d) of the Constitution which charges it to advise on and assist in the execution of a comprehensive programme for the registration of title to land throughout the country;
ii. The Lands Commission must follow the proper procedure for assessing compensation for delayed payment in line with section 4 (6) of Act 125;
iii. The Lands Commission must comply with Article 267 of the Constitution which requires the payment of all rents, dues, royalties, revenues or other payments whether in the nature of income or capital from stool lands (which includes compensation for State acquired stool lands) to be made into stool land accounts established by the Office of the Administrator of Stool Lands.

Recommendations specific to payments to claimants in respect of (VRA) Akosombo flooded or submerged lands:

Government has earlier summarized the facts, findings and observations of the Commission under this heading and has decided to relieve Nana Krachiwura of his position as a member of the Board of Directors of the Volta River Authority as a result of his questionable conduct in relation to these compensation payments.

Government has reviewed the specific recommendations made by the Commission under the present heading and in accepting those recommendations directs as follows:

i. Nana Krachiwura should render accounts on how the monies deducted and paid into the Volta River Reimbursement Fund were disbursed. The Attorney-General is to take action on this.
ii. The outstanding amount of GhȻ67 million out of the GhȻ138 million approved for payment by the Government in 2008 is not to be disbursed until the investigations recommended by the Commission have been concluded. The Lands Commission is to take action on this.

iii. The Chief of Apaaso, Nana Otieku Amoani Asare, should account for all the monies he collected personally as compensation since he admitted that the flooded areas in his traditional area were stool lands and not his personal lands. The Administrator of Stool Lands is to take action on this.

iv. Mr. Kodwo Abban and his wife who received all the payments made to the defunct Kodwo Abban & Co. should pay tax and penalties on the monies they collected as the non-existent company's professional fees for work allegedly done for and on behalf of the claimants. The Domestic Tax Division of the Ghana Revenue Authority is to take action on this.

v. The Lands Commission and its Valuation Division should account for the shoddy work they did by accepting faked and inadmissible maps that led to the payment of the total sum of GhȻ71 million mostly into wrong hands. The Ministry of Lands and Natural Resources and EOCO are to take action on this.

vi. Government must re-visit the issue involving compensation payments to all the claimants in the submerged area stretching from the Volta Region through Eastern, Ashanti, Brong Ahafo to Makango in the Northern Region. Government directs the Ministry of Lands and Natural Resources, working together with the Ghana Institution of Surveyors, to undertake this exercise The Ghana Institution of Surveyors, working together with the Ministry of Lands and Mineral Resources, is requested to set up this committee from among.

Government further directs that appropriate feedback on all these assignments should be provided to the Attorney-General within six months of the publication of this White Paper.

APPENDIX (A)

PENDING CASES AGAINST SOME STATE INSTITUTIONS, i.e.

(POTENTIAL JUDGMENT DEBTS AGAINST THE STATE)

In Appendix (A) of its report, the Commission lists a number of cases against MDAs and State institutions covering cases actually initiated against them in the courts from the inception of constitutional rule in 1992 (sic) to date or which are likely to be initiated in the courts, including:

- cases that were still pending in the courts for determination;
- cases that had already been determined against them; and
- cases for which the judgment debts had not yet been paid within the period in question.

The list of the affected institutions and the number of cases against them are reproduced below. Government notes that the Commission has offered advice to the State institutions involved in most of the cases.

Government directs the institutions to study the advice given by the Commission and take steps to ensure that the cases are dealt with in such manner as not to develop into judgment debts or to exacerbate the judgment debts if they have already accrued.

Government further directs the affected institutions to provide, to the Attorney-General, feedback on actions they have taken on the cases within six months of the publication of this White Paper.

No.	Name of Institution	No. of cases
1.	Ministry of Education (and subsidiary agencies)	3
a.	Ghana Education Service	9
b.	Ghana Academy of Arts and Sciences	3
c.	Ghana Library Authority	2
d.	National Service Scheme Secretariat	1
e.	Non-Formal Education Division	3

f.	GETFund Secretariat *	2,903
g.	Ghana Book Development Council	1
h.	Council for Technical and Vocational Education and Training	1
2.	Ministry of Justice and Attorney-General	1
3.	Ministry of Local Government and Rural Development	2
4.	Ghana Police Service	7
5.	Bureau of National Investigations	3
6.	Ghana Prisons Service	4
7.	Ghana Armed Forces	7
8.	Ghana National Fire Service	3
9.	Controller and Accountant-General's Department	7
10.	Ministry of Finance and Economic Planning	52
11.	Ministry of Health	3
12.	Ministry of Agriculture	12
13.	Land Valuation Division of the Lands Commission & The Lands Commission	412

* The Commission found that GETFund's creditors were 2,903. These are not necessarily cases pending in court, cases already determined or judgment debts not yet paid.

CONCLUSION

Government acknowledges the good work done by the Commission and on behalf of the people of Ghana expresses gratitude to the Sole Commissioner Justice Yaw Appau and his support staff.

Dated this day of November 2015.

JOHN DRAMANI MAHAMA

President of the Republic of Ghana