



REPUBLIC OF GHANA

OFFICE
OF
THE ATTORNEY-GENERAL
AND MINISTRY OF JUSTICE

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Date. 15th February 2023

PRESS RELEASE

**RE: PRESS STATEMENT BY CDD-GHANA ENTITLED “The Akuffo Addo
Government must cease its continuous assault on the Office of the
Auditor-General”**

The attention of the Office of the Attorney-General and Ministry of Justice has been drawn to a press statement issued by the Ghana Center for Democratic Development (CDD-Ghana) dated February 10, 2023 and entitled “*The Akuffo Addo (sic) Government must cease its continuous assault on the Office of the Auditor-General*”. In the said press statement, CDD-Ghana, takes issue with an opinion by the Attorney-General and Minister for Justice regarding the publication on the website of the Auditor Service of an audit into the Government’s Covid-19 transactions before the said audit report has been debated by Parliament and referred to an appropriate committee of Parliament in accordance with article 187(6) of the Constitution.

In addition to various wrong propositions of law, CDD-Ghana characterises the opinion of the Attorney-General as part of “*a domineering superior posture that the Akuffo-Addo (sic) administration has adopted in dealing with the constitutionally independent office of the Auditor-General*”. CDD-Ghana perceives the Attorney-General’s letter as an effort to “*undermine the independence of the office of the Auditor-General and other independent constitutional bodies*”. Quite bizarrely and in tune with the fundamentally incorrect constitutional theories bandied about by CDD-Ghana, a Vice-chair of the Board of CDD-Ghana stated on a radio programme, “*Newsfile*” on **Joy FM**, that, the Auditor-General is not part of the Audit Service of Ghana but a separate creation.

The Attorney-General considers it imperative to correct the palpable errors contained in and implied by the press release of CDD-Ghana, as same distort the relationship between the Attorney-General and the Auditor-General in the constitutional architecture of the Republic and have far-reaching implications for Ghana’s record in rooting out corruption.

1. Contrary to the strange view of CDD-Ghana, the letter and spirit of laws governing the work of the Auditor-General make him part of the Audit Service of Ghana and, therefore, a regular member of the public services of Ghana to whom the Attorney-General can give advice pursuant to his mandate under article 88 of the Constitution. **Article 189(2)** of the Constitution provides a clue when it stipulates thus “*The appointment of officers and other employees in the Audit Service, other than the Auditor-General, shall be made by the Audit Service Board, acting in consultation with the Public Services Commission*”. This provision

deals with the appointment of officers and all employees in the Audit Service, including the Auditor-General, and clearly provides that, with the exception of the Auditor-General, all have to be appointed by the Audit Service Board acting in consultation with the Public Services Commission. With the clear cue provided by **article 189(2)**, a contention that the Auditor-General is not part of the Audit Service or a member of the Public Services is pointless and absurd.

2. Section 2 of the **Audit Service Act, 2000 (Act 584)** lays the issue to rest when it lists the Auditor-General as the first member of the Audit Service in these terms: “*The members of the Audit Service are (a) the Auditor-General, and (b) the other persons employed in the Service.*”

It is thus clear that the propositions of CDD-Ghana and its board members can only result from an inadequate reading of the laws of Ghana, including the Constitution and the Audit Service Act.

Can the Attorney-General advise a member of the Public Services of Ghana, including the Auditor-General?

3. It is astonishing that CDD-Ghana disputes the propriety of the Attorney-General rendering legal advice to the Auditor-General, and construes same as “*an interference with the independence of the Auditor-General*”. A proper reading of the Constitution, especially the provisions on the Public Services of Ghana, leads to the inescapable conclusion that the Attorney-General is fully vested with the constitutional function of giving legal advice to all the Public Services specifically listed in **article 190(1)** of the Constitution, including the Audit Service, and such other public services as will be established by law. **Article 295** indicates that the public services listed in article 190 and other public services established by Parliament pursuant to its legislative powers, are part of the civil offices of Government. In the face of the explicit constitutional mandate of the Attorney-General under **article 88** of the Constitution as principal legal adviser to the Government, it is incomprehensible and rather illogical how an assertion may be made that the Attorney-General has no capacity to render legal advice to the Auditor-General. Such an assertion can only be as a result of a simplistic and limited view of relevant provisions of the Constitution of Ghana.

Does rendering legal advice amount to interference with the independence of the Auditor-General?

4. It ought to be pointed out that the functional independence of the Auditor-General under **article 187(7)(a)** of the Constitution does not confer immunity from legal advice. Legal advice to a constitutional body cannot under any circumstance be construed to amount to interference with the performance of its constitutional functions. A view to the contrary implies that an “independent constitutional body” has absolute freedom to act in any manner it desires, except when a court of law has ordered, even when its legal adviser (whether public or

private) is of the opinion that its actions are in conflict with the law. This sounds in absurdity and is the product of unbridled sensationalism.

5. The imputation conveyed by the third paragraph of CDD-Ghana's press release that Parliament has no power to deliberate on findings contained in the Auditor-General's reports and that such an effort "*offends the general principle of auditing*", does violence to the letter and spirit of **article 187(6)** of the Constitution, which provides that "*Parliament shall debate the report of the Auditor-General and appoint where necessary, in the public interest, a committee to deal with any matters arising from it*". Implicit in the constitutional duty of Parliament to debate the Auditor-General's reports and appoint a committee to deal with any matters arising from it is the duty to deliberate and probe the reports. This constitutional function of Parliament cannot be wished away by a narrow, simplistic and erroneous reading of the Constitution by CDD-Ghana or any civil society organisation.
6. The Office of the Attorney-General and Ministry of Justice implores civil society organisations to carefully examine the position of Ghana law on a relevant matter before raising unjustified public alarm over a violation by the Attorney-General or any public institution at all. The default in doing so affects the image of the nation in the eyes of the international community, particularly its anti-corruption ratings.

END!!!

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