

## **PROF. ERNEST ARYEETEEY'S ATTACKS AGAINST THE COMMITTEE ON AFRICA INTEGRAS: SETTING THE RECORD STRAIGHT**

The former Vice-Chancellor ("VC") of the University of Ghana ("UG"), Prof. Ernest Aryeetey, has repeatedly attacked the Committee set up by UG in March 2017 to review the Africa Integras Concession Agreement ("Agreement"). The latest of these attacks is contained in his widely circulated "I Have Found Justice," which celebrates his victory in a defamation suit against his immediate successor, Prof. Ebenezer Oduro Owusu. This write-up is a response by some members of the Committee ("Committee") to Prof. Aryeetey's latest attacks, to set the record straight.

Since Prof. Aryeetey gave the impression that the court judgement in the defamation suit ("judgment") was a vindication of his handling of the Africa Integras Project ("Project") and an indictment of the Committee's work, the Committee thought it prudent to delay a response until it had received and studied a copy of the judgment.

### **Background**

1. On 8<sup>th</sup> July 2014 the then VC of UG, Prof. Ernest Aryeetey, signed an Agreement with a US-based firm called Africa Integras for the construction of academic facilities and a hostel on UG campus. The Project was estimated to cost sixty-four million US dollars (USD64m). UG was to rent (in dollars) the completed facilities for 25 years after which the facilities would become UG property.
2. Amendments and a restatement of the 8th July 2014 Agreement culminated in a new Agreement dated 26th June 2015. The 26th June Agreement was also amended and restated as a new Agreement dated 15th September 2015. This last superseded the earlier Agreements. So by "Agreement" we shall mean the Agreement dated 15th September 2015.
3. In the Agreement, Africa Integras was replaced by CPA 18 Integras Ghana Investor Limited as the new concessionaire ("Concessionaire").
4. Prof. Aryeetey was VC of UG from 1<sup>st</sup> August 2010 to 31<sup>st</sup> July 2016. He was succeeded by Prof. Ebenezer Oduro Owusu, whose tenure covered the period 1<sup>st</sup> August 2016 to 31<sup>st</sup> July 2021.
5. In March 2017, Prof. Oduro Owusu set up an eight-member Committee to study the Agreement and to advise UG Senior Management on the affordability of the Project and on the legal ramifications of the Agreement for UG.

### **Prof. Aryeetey's attacks against the Committee**

6. In "I Have Found Justice," Prof. Aryeetey describes the Committee as a "witch-hunt," the qualification for membership being to have "a grievance against [him]." He also says that the Committee's "report reflected an extremely poor appreciation of corporate finance, law and University management"; that the report "failed to consult easily available material on the project and presented pre-determined conclusions to make a case for termination of the agreement"; that it "was a very unintellectual document, characterised by a strong hatred for [him]"; and that "the Committee simply gave [Prof. Oduro Owusu] what he was looking for: a reason to terminate the project and embarrass Ernest Aryeetey."
7. For the avoidance of doubt, Prof. Aryeetey is entitled to express his opinion on the Committee and its work, especially as the Committee's findings were generally not favourable to him. However, he is not entitled to denigrate and defame the Committee and its members in order to justify his handling of the Agreement the Committee was asked to review.

### **Setting the record straight**

8. In "I Have Found Justice," Prof. Aryeetey reveals his motives for going to court, one of which was "to force an independent assessment of the processes...to develop the three concession agreements which [he] signed for the project." The impression this creates is that the court is the "independent assessor" and that its favourable judgment vindicates his handling of the Agreement and also constitutes an indictment against the Committee, whose members are, in his mind, "Aryeetey-haters."
9. A reading of the judgment reveals that it is limited to the determination of whether certain comments made by Prof. Oduro Owusu on the Agreement were defamatory of Prof. Aryeetey. The judgment says absolutely nothing about the merits of the Project and Agreement or about the Committee, its composition and report.
10. Prof. Aryeetey's attacks against the Committee and its members are malicious and without any justification. However, the Committee does not intend to engage in a full-scale defence of its work. In particular, the Committee will ignore Prof. Aryeetey's insults and limit itself to questioning just two of his claims. The first is the claim that the Committee gave a reason to terminate or made a case for terminating the Project to embarrass him. We shall briefly refer to this as "the Termination Claim." The second claim is his implied comment that he correctly handled the processes leading to the development of the Project and Agreement. We shall refer to this briefly as "the Processes Claim."

*UG did not terminate the Agreement*

11. Contrary to Prof. Aryeetey's claim, the Committee's report offered no reasons and made no case for the termination of the Project. It was the Concessionaire, not UG, that terminated the agreement. The Concessionaire served a Termination Notice on UG on 1<sup>st</sup> May 2018, providing only one reason for terminating the Project, namely, UG's inability to secure a letter of credit in favour of the Concessionaire. Here is an excerpt from the Termination Notice:

By way of reminder, the Concessionaire wrote to UG on 4<sup>th</sup> March 2016 that UG deliver a letter of credit in accordance with the terms set out in the Concession Agreement on or before 3<sup>rd</sup> April 2016...On May 3<sup>rd</sup> 2016 the Concessionaire wrote to UG to explain that the Concessionaire had not received the letter of credit and that it would be a UG event of default if UG did not provide the letter of credit within seven days...The Concessionaire therefore served a notice on 24<sup>th</sup> May 2016 requesting that the letter of credit be delivered within 90 days of such notice. The notice clearly stated that a failure to comply would result in the exercise of the right of the Concessionaire to initiate the termination of concession agreement...This letter is a notice of termination pursuant to clause 3.4c of the concession agreement. The concession agreement is therefore hereby terminated with immediate effect.

It is pertinent to note that Prof. Aryeetey was the one who initiated the Project and Agreement and was the VC during whose tenure the Concessionaire served UG the default notices.

12. UG was to fund its rent payments under the Agreement from its internally generated funds (IGFs); and the Concessionaire needed bank guarantees (including the said letter of credit) to ensure that UG would not default in its rent payments. The banks which UG approached for the letter of credit did their due diligence and saw no assurance that UG could generate sufficient IGF to meet its rent payments. In a letter of January 2016 declining to grant UG the letter of credit, Barclays Bank (now ABSA) gave the following reason:

Financial information provided on the University of Ghana [shows] that the University has reflected losses for 2013/2014 and management accounts for 2015 indicate that this trend is likely to continue.

13. Prof. Aryeetey appealed for a review of Barclays' decision with additional information. The following excerpt from the letter of appeal, dated 1<sup>st</sup> April 2016, shows that Prof. Aryeetey was aware of "severe financial consequences," in the event of the termination of the Agreement, if UG defaulted in securing the letter of credit in favour of the Lender of the Project, namely, the US agency called Overseas Private Investment Corporation

(OPIC), renamed since 2019 as International Development Finance Corporation (IDFC):

Under the concession agreement that we have entered into with Africa Integras, we are required to produce an LC [i.e., Letter of Credit] within 30 days of notice of financial close with OPIC. A couple of weeks ago I informed you that we have indeed received such notification. This means that if we are unable to produce an LC from you by 8<sup>th</sup> April (one week from today) 2016, we would be in default of the agreement with very severe financial consequences for the University. I need to bring this to your notice.

14. On 5<sup>th</sup> April 2016, just four months to the end of his tenure as VC, Barclays delivered its second decision:

Having reviewed and analysed the additional information you provided some few weeks ago in addition to the earlier data shared with us on the transaction, we did not obtain the level of comfort that we require to enable us to support the University of Ghana with this transaction.

15. Therefore, the Committee set up in March 2017 had absolutely nothing to do with the Concessionaire's stated reason for terminating the Project. The fact of the matter is that UG was unable to secure the letter of credit, a material condition of the Agreement, despite Prof. Aryeetey's efforts.

*Prof. Aryeetey's Processes Claim fails to accept that mistakes were made in his handling of the Project.*

16. The Committee found that serious mistakes were made, including but not limited to Prof. Aryeetey signing the 8<sup>th</sup> July 2014 Agreement before the UG Council's authorisation, and the Project's non-compliance with the Public Procurement Act of 2003 (Act 663).

*Signing the Agreement before authorisation by UG Council*

17. Prof Aryeetey's own written response to the Committee dated 10<sup>th</sup> April 2017 establishes that he signed the Agreement before the UG Council's authorisation. In his own words:

The project was approved by University of Ghana Council at its meeting held at 10am on July 11, 2014. Council approved it upon the recommendation of the Finance and General Purposes Committee (FGPC) and authorised me as Vice Chancellor to sign the Concession Agreement on behalf of UG. This was done on an agreement dated 8<sup>th</sup> July 2014.

18. The UG Council conditionally approved the Agreement on 11<sup>th</sup> July 2014 while Prof. Aryeetey signed the said Agreement on 8<sup>th</sup> July 2014. Thus, Prof. Aryeetey signed the Agreement three days before it was authorised by Council.

*Non-Compliance with the Procurement Law*

19. The Committee in its sittings invited Prof. Aryeetey to answer the following question: “Do you know if the project in the Agreement was initially offered for competitive bidding?” The following is an excerpt from Prof. Aryeetey’s written answer:

The [Africa Integras] project was in response to an open invitation from UG for Expressions of Interest (EoI) to participate in PPP projects for infrastructure development... The call for EoI in eight (8) identified projects was organised by the Registrar through the Procurement Office.

20. The impression created by Prof. Aryeetey’s answer to the Committee’s question is contradicted by the fact that the eight (8) Public Private Partnerships (PPPs) referred to in the above quote, advertised in the *Daily Graphic* on 26th March 2012, did not include the USD64m Africa Integras Project, which was never advertised.

**Conclusion**

21. In conclusion, Prof. Aryeetey’s efforts to convert his victory in a defamation suit into a wholesale vindication of his handling of the Agreement and the Project and an indictment of the Committee cannot stand in the face of the facts of the matter. We are confident that the evidence we have offered, although limited in scope and purpose, will enable the public to draw their own informed conclusions about Prof. Aryeetey’s claims.

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