

A 20 YEAR REVIEW OF JUDGMENT DEBT PAYMENTS IN GHANA:

IMPACT, CAUSES & REMEDIES



A REPORT BY THE
CENTRE FOR SOCIAL JUSTICE



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Foreword

The Policy Action Platform (PAP) of the Centre for Social Justice (CSJ) is the Centre's mechanism for deep engagement with leaders, policy analysts and decision makers on intractable problems that plague the Ghanaian society. It aims to achieve fundamental policy shifts rooted in thorough analysis, reflection and practical recommendations to ultimately impact the lives of ordinary Ghanaians.

This maiden Policy Action Platform is dedicated to the scourge of judgment debts in Ghana. At this point, we know that judgment debts –how they come about, how they are decided, often in the absence of legal counsel for the people, how astronomical interests accrue, and how they are eventually settled – is one vicious cycle. We know that almost 80% of the time, these judgment debts are arising simply out of contractual breaches by governments and agencies mainly following democratic political transitions.

Six years after Justice Yaw Appau's sole judgment debt commission's report, the people of Ghana continue to bleed and suffocate from reckless stewardship of our national resources. The most recent award of a judgment debt of \$170M against the government of Ghana by the Arbitration Tribunal in the GPGC Ltd versus Government of Ghana case, and the spurious reasons adduced by Ghana's legal counsel for

non-compliance with timelines stipulated by the Court, are particularly emblematic of how lightly the problem continues to be viewed. Clearly, the phenomenon of judgment debts is entrenched only because of negligence, blatant disregard for public procurement laws, illegal abrogation of contracts, and corrupt activities by public officials in their line of duty. Judgement debts are thus a tedious combination of weak and corrupt political leadership and bureaucracy and wanton disregard for the scarce resources of the people of Ghana, resources that could have built countless hospitals, affordable housing and schools.

Ironically, a country that continues to rely so heavily on donor funds appears able, ready and so willing to waste so much, thus raising questions of whether Ghana really needs aid. In the presence of funding gaps and within the context of the rising public debt and high interest costs of the country's public debt, all of which limit our ability as a country to provide the much-needed amenities and support for the vulnerable in our society, donor assistance in the form of grants has been valuable to the Ghanaian economy. However, the extent of wasteful resources on judgment debt provides no moral justification for donor assistance.

Among other recommendations, the Centre for Social Justice is making a strong call for the Special Prosecutor and relevant anti-corruption agencies to commence a full investigation into judgment debt awards and payments, effective 1992 at the start of the Fourth Republic to date. Further we ask that investigations be followed by robust prosecutions of culpable political and public office holders. We complement this with other recommendations targeting systemic changes in the contracting, abrogation and delayed payment processes that inevitably lead to the award of mind-boggling judgment debts. We intend to engage directly with the Presidency, relevant agencies and leadership of the major political parties on these recommendations.

On behalf of the CSJ Council, we highly commend Dr. Theresa Mannah-Blankson, Haruna Alhassan, Prisca Atogsiyah, Theodore Albright Esq., and Rosemary Seneadza, being members of the joint Finance and Legal teams that led this detailed analysis.



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Introduction

Introduction

Judgment debt payments in Ghana continue to be a recurring issue in an economy currently saddled with rising public debt, persistent fiscal deficits, a high youth unemployment rate, and over 30 percent of its population living in poverty. Relative to the Sub-Saharan African (SSA) region and lower-middle-income group, Ghana has made strides in most socio-economic indicators when the decadal averages over 2000-2009 and 2010-2019 are compared. The country, however, lags behind in several other indicators, including health expenditures, under-5 mortality rate, maternal mortality ratio, secondary school enrollment, and gender parity index for secondary school enrollment when compared with the lower-middle-income group averages (Tables A1 and A2 in Appendix). As a result, the country cannot afford to waste its limited public resources on judgment debts when faced with enormous development challenges.

This report provides a brief review of judgment debt payments made from public funds on behalf of the State from 2000 to 2019. These judgment debts arose from alleged contractual breaches, failure to promptly pay compensations for compulsory land acquisitions by the State/Government, and alleged tortuous/statutory breaches committed by public officials in the course of their public duties.

The following are the general findings of the review:

- In equivalent 2019 Cedi terms, the total judgment debts paid from 2000 – 2019 amounted to GH¢1,893.7 million, equivalent to about 135 percent of new multilateral loans contracted by the government in 2019, 112

percent of total central government grants received in 2019, and about 30 percent of total health expenditures in 2019;

- Of the total, judgment debt payments arising from contractual breaches was GH¢1,384.7 million (73 percent), GH¢479.2 million from failure to promptly pay compensation for compulsory land acquisition by the State/Government million (25 percent), and GH¢29.9 million (about 1.5 percent) from tortuous/statutory breaches by public officials;

- Judgment debts has occurred under every Government;

- Evidence from the Sole Commissioner's report shows that illegal abrogation of contracts involving huge amounts of money, which is part of judgment debts arising from contractual breaches, have mostly followed political transitions; and

- Most judgment debts occur due to negligence, blatant disregard for public procurement laws, illegal abrogation of contracts, corrupt activities by public officials in their line of duty, all of which have resulted in the payment of huge sums from the public coffers.

It is important to note that while these findings were based on actual payments made between 2000 and 2019, our review of the Auditor-General's reports from 2013 to 2019 also showed that staggering amounts of judgment debts awarded against the State remain outstanding. For example, in 2017 alone, the amount outstanding as shown in the Auditor-General's report was GH¢411.6 million.

With government revenue failing to keep pace with expenditures, which has contributed to the persistent fiscal deficit, and the incredibly enormous development challenges the country faces, it becomes imperative to address the underlying issues of the recurring judgment debts, close the loopholes of these inordinate payments from public funds, and avert excessive financial losses of a financially hemorrhaging economy.

The report is organized as follows: Following this introduction, the next section reviews the total judgment debt payments made over the past two decades, their composition, and the total payments made in terms of relevant 2019 economic indicators. Section 3 presents a

review of selected cases. Section 4 presents highlights of the recent judgment debt: Ghana Power Generation Company (GPGC) Limited vs. the Government of Ghana. Section 5 examines how delays in the execution of government business contribute to judgment debt amounts. Section 6 presents the legal reflections on selected cases. Section 7 gives the limitations of the study. Section 8 concludes with recommendations.

¹Table A1 in the Appendix.

²Based on the World Bank income-level classifications. The World Bank assigns the world's economies to four income groups—low, lower-middle, upper-middle, and high-income countries. The classifications are updated each year on July 1 and are based on GNI per capita in current USD (Fantom, 2020).

³Report of the Auditor-General on the Public Accounts Of Ghana (General Government) for the Financial Year Ended 31 December 2019.

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2. Judgment Debts Payment Over The Past Two Decades

2.1. Judgment Debt in Ghana: Totals

According to the 2015 Sole Commissioner's report, a 'judgment debt' is "a debt for the payment of which a judgment has been given," and the judgment "arises on account of a decision by a court of competent jurisdiction or an authoritative pronouncement of an umpire or an arbiter as a result of arbitral proceedings or through mediation and negotiated settlement as agreed upon between the parties in litigation."

Ghana's judgment debt payments often fall in one of three main categories:

- . **Category 1:** Judgment debts arising from alleged contractual breaches by the Government and its agencies (Ministries, Departments and Agencies (MDAs) and the Metropolitan, Municipal and District Assemblies (MMDAs);
- . **Category 2:** Judgment debts arising due to the Government's failure to promptly pay compensations for its compulsory land acquisitions;
- . **Category 3:** Judgment debts arising from alleged tortuous or statutory breaches committed by public officials in the course of their official duties.

⁴{Ghana Audit Service, 2013 - 2019 #245}

⁵{Appau, 2015 #244}

Over the past two decades, the payment of judgment debts has occurred under every Government, but with varying degrees (Table 1). Judgment debt payments arising from alleged contractual breaches by the Government and its agencies (i.e., Category 1) comprise about 73 percent of the total payments made over the past two decades in 2019 equivalent cedi terms and it is a recurring feature of judgment debt payments.

Evidence from the Sole Commissioner's report suggests that illegal abrogation of contracts, part of the category of judgment debt arising from contractual breaches, have mostly followed political transitions. Judgment debt payments arising due to the Government's failure to promptly pay compensation for land acquisitions (i.e., Category 2) comprise about 25 percent of the total payments made over the past two decades and are least frequent.

Table 1:
Judgment Debt Payments⁷ (2000 – 2019)

Political Regime	Year	Contract Breaches	Land Acquisition	Statutory Breaches	Total	Total (In 2019 GH¢'million) ⁸
		In Million GH¢				
NDC Government	2000	6.32	-	-	6.3	80.3
NPP Government	2001	14.87	-	-	14.9	142.2
	2003	-	0.26	-	0.3	1.7
	2004	0.01	-	-	0.0	0.1
	2005	6.80	0.03	-	6.8	34.7
	2008	0.55	2.26	-	2.8	10.0
NDC Government	2010	200.23	146.36	10.02	356.6	957.0
	2011	191.41	30.28	0.37	222.1	548.1
	2012	-	0.76	-	0.8	1.8
	2013	-	-	0.50	0.5	1.0
	2014	-	-	0.02	0.0	0.0
	2015	67.40	-	-	67.4	102.8
	2016	1.97	-	-	2.0	2.6
NPP Government	2017	0.85	-	0.44	1.3	1.5
	2018	8.08	-	0.46	8.5	9.2
	2019	0.94	-	-	0.9	0.9
	Total (2019 GH¢'million)	1,384.7	479.2	29.9		1,893.7

Source: Calculations based on 2015 Sole Commissioner's and Auditor-General's Reports

⁶The total judgment debt payments referred here is based on 2019 Ghana Cedis.

⁷Exchange rate data used to convert dollar values from the Bank of Ghana.

⁸Consumer price index series used to convert values to 2019 cedis were from the World Bank

To date, the largest amount of judgment debt payments made in a given year was GH¢356.6 million paid in 2010 (Table 1), equivalent to about 20 percent of the total education expenditures for that year alone. In 2019 terms, that amount was GH¢957.0 million (Table 1). Of this amount, judgment debt payments due to contractual breaches constituted 56 percent of the total, 41 percent comprised payments resulting from the Government's failure to promptly pay compensation for compulsory land acquisitions, and 3 percent due to alleged tortuous or statutory breaches committed by public officials in the course of their official duties.

Similarly, in 2011, GH¢222.1 million from the public coffers were used to settle judgment debts awarded against the State (Table 1). For 2011, contractual judgment debt payment comprised 86 percent of the total payments, with amounts due to statutory breaches comprising 14 percent. Relative to the total public education expenditures for 2011, total judgment debt payments were about 9 percent.

The payments of these colossal sums in 2010 and 2011 towards judgment debts triggered the public outcry for an inquiry of judgment debts against the State and led to His Excellency President John Mahama's setting up of a Commission of Enquiry with the appointment of Justice Yaw Appau, Justice of the Court of Appeal in October 2012 as the Sole Commissioner to carry out an inquiry of these payments. The details of the report may be accessed in the Sole Commissioner's report submitted to the Government in 2015.

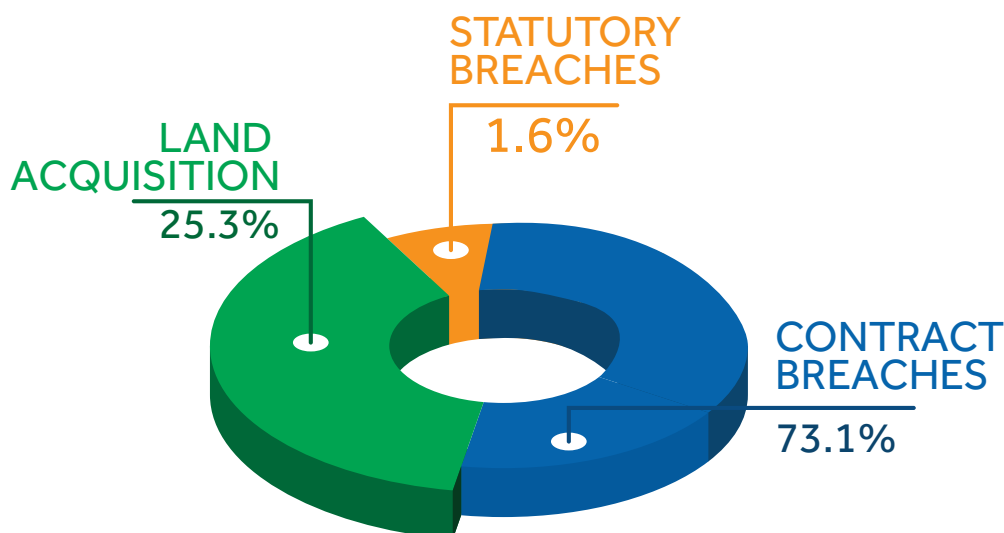
2.2. Judgment Debt in Ghana: Composition

As shown in Figure 1, judgment debt due to contractual breaches accounted for 73 percent of the total judgment debt payments made over the period from 2000 - 2019. Judgment debt due to failure to promptly pay compensations for land acquisitions accounted for 25 percent of the total, while those due to statutory breaches accounted for 1.6 percent of the total (Figure 1).

Figure 1. Composition of Total Judgment Payment (2000 – 2019)

⁹Total education expenditure for 2010 was GH¢1,825.8 million (Source: <https://data.gov.gh/dataset/education-costs>).

¹⁰Total education expenditure for 2011 was GH¢2,563.4 million.



Source: Calculations based on 2015 Sole Commissioner's and Auditor-General's Reports, using 2019 cedi equivalent terms.

2.3. Judgment Debt Payments in Perspective

Digging deeper into the judgment debt payment dynamics, we examined the totals for each decade in 2019 cedi equivalent terms and relative to relevant 2019 economic indicators, with and without judgment debts due to the failure of the State to promptly pay compensations due to compulsory land acquisitions. We began this analysis by first converting the cedi values for each year into 2019 cedi equivalent terms using the consumer price index and summing for each decade. It is important to note that we are only able to sum across years after conversion into 2019 purchasing power terms. The 2019 equivalent cedi values for each decade are shown in Table 2 and Figure 2.

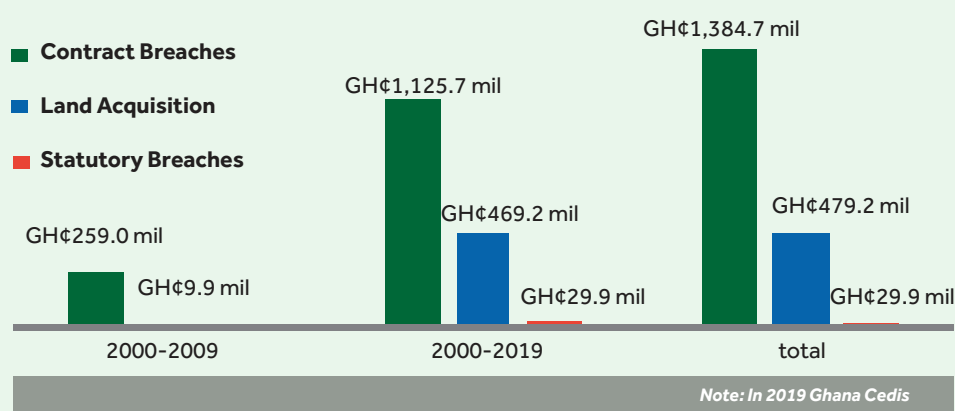
The analysis shows that over the period 2000 – 2009, an equivalent of GH¢268.9 million judgment debts were paid (or GH¢258.97 million without land acquisitions) by the State from the public coffers. However, over the 2010 – 2019 period, a staggering 2019 equivalent total of GH¢1,624.81 million (or GH¢1,155.56 million without land acquisitions) judgment debts were paid by the State from the public coffers.

Table 2. Total Judgment Debt Payment: A Summary
(In 2019 GH¢ - Millions)

	2000-2009	2010-2019	Total
1. Contract Breaches	258.97	1,125.70	1,384.67
2. Land Acquisition	9.92	469.25	479.17
3. Statutory Breaches	-	29.86	29.86
Total with Land Acquisition	268.89	1,624.81	1,893.70
Total without Land Acquisition	258.97	1,155.56	1,414.53

Source: Calculations based on 2015 Sole Commissioner's and Auditor-General's Reports

Figure 2: Total Judgment Debt Payment: A Summary



Source: Calculations based on 2015 Sole Commissioner's and Auditor-General's Reports.

An analysis of the total judgment debt payments relative to some relevant economic indicators for the year 2019 shows the extent to which our scarce public resources are wasted due to the observed inefficiencies exhibited by some public officials in their line of duty. Specifically, in relative terms, in relation to the size of the economy, the total judgment debt payments over the past two decades ranged between 0.4 percent (excluding land acquisition) and 0.6 percent (including land acquisition) of our Gross Domestic Product (GDP) for 2019 (Table 3). Relative to new multilateral and bilateral loans contracted in 2019, the total judgment debts paid over the period 2000 – 2019 were 134.6 percent (or 100.5 percent excluding land acquisition) and 63.7 percent (or 47.6 percent excluding land acquisition), respectively (Table 3 and Figure 3). Relative to total expenditures for 2019, the total judgment debts ranged between 2.1 percent (excluding land acquisition) and 2.8 percent (including land acquisition).

Relative to the 2019 education and health expenditures, the total judgment debts paid over the period 2000 – 2019 were 14.6 percent (or 10.9 percent excluding land acquisition) and 30 percent (or 22 percent excluding land acquisition), respectively (Table 3 and Figure 3).

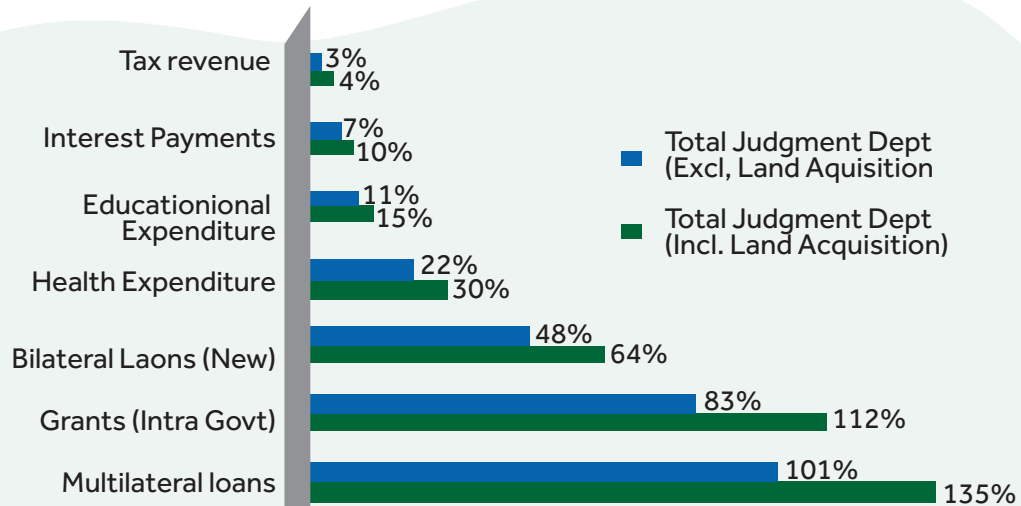
In terms of interest payments on public debt and tax revenue for 2019, the total payments over the past two decades were 9.6 percent (or 7.2 percent excluding land acquisition) and 4.5 percent (or 3.34 percent excluding land acquisition), respectively (Table 3 and Figure 3). It is worth noting that relative to grants received by the central government in 2019, total judgment debt payments over the past two decades was a staggering 112 percent (or 83.4 percent excluding land acquisition).

Table 3. Total Judgment Debt Payment from 2000 – 2019
(In Percent of 2019 Key Indicators)

<i>Key Economic Indicators</i>	Total Judgment Debt (incl. Land Acquisition)	Total Judgment Debt (excl. Land Acquisition)
GDP	0.55	
Public Debt Stock	0.87	
Domestic Debt Stock	1.80	
External Debt Stock	1.68	
External Debt (Inflow)	9.18	0.41
Bilateral Loans (New)	63.68	40.66
Multilateral Loans (New)	134.59	100.34
External Commercial Institution (New)	11.66	1.25
Domestic Loans (New Issues)	8.67	8.86
Total Expenditures	2.80	
Capital Expenditures	30.78	22.99
Education Expenditures	14.61	10.92
Health Expenditures	29.66	26.47
Interest Payments on Public Debt	9.59	2.09
		7.16
Tax Revenue	4.47	
Grants (General Government)	82.5	
Grants (Central Government)	111.66	83.40

Source: Calculations based on 2015 Sole Commissioner's and Auditor-General's Reports.
Other data from World Bank's WDI, Ministry of Finance, and Bank of Ghana.

Figure 3. Total Judgment Debt Payments from 2000 – 2019 as a Percent of 2019 Indicators



Source: Calculations based on 2015 Sole Commissioner's and Auditor-General's Reports.

In the presence of funding gaps and within the context of the rising public debt and high interest costs of the country's public debt, all of which limit our ability as a country to provide the much-needed amenities and support for the vulnerable in our society, donor assistance in the form of grants has been valuable to the Ghanaian economy. However, the extent of wasteful resources on judgment debt provides no moral justification for donor assistance.

3. A Review of Selected Cases – Contractual Breaches, Land Acquisition, and Statutory Breaches

In this section, we highlight selected cases of judgment debts to illustrate the extent to which negligence, blatant disregard for public procurement laws, and illegal abrogation of contracts by public officials in their line of duty leads to judgment debt awards against the State and results in the payment of huge sums from the public coffers. Table 4 provides a summary of the cases described in the sub-sections below and other selected cases.

3.1. Judgment Debt Payments due to Contractual Breaches

Rockshell International Ltd vs. Attorney General

How GH¢55,305.60 Contractual obligation became US\$35,000,000.00 Judgment Debt Payment. The Report of the Sole Commissioner for Judgment Debt Enquiry contained the payment of US\$35 million, equivalent to GH¢51,047,500 (using 2010 \$/GH¢ rate) to Rockshell International Ltd as negotiated settlement payment for performance under a contract to supply stones to the Keta Sea Defence Project. The facts as captured in the above report are summarized below.

In December 1983, the Government of Ghana awarded Rockshell International Ltd a contract to supply Stones for the construction of the Keta Sea Defence Project.

Rockshell performed its obligations under the contract and on 28 January 1986, issued a certificate for payment of five hundred and fifty-three million and fifty-six thousand old cedis (¢553,056,000.00), or in Ghana cedis terms, fifty-five thousand, three hundred and five cedis, sixty pesewas (GH¢55,305.60). After several unsuccessful demand notices and follow-ups, the company instituted legal action against the State and obtained a favorable judgment on 20th November 2006. A total of Seventy million United States Dollars (US\$70 million) was awarded by the court in favor of Rockshell International. The government at the time could not settle its indebtedness to the company.

Following a change in government in January 2009, the new government was faced with mounting cases of outstanding judgment debt payments suffocating the government. The government decided to re-negotiate with significant judgment creditors, one of which was Rockshell International Ltd.

The negotiations teams were led by Mr. Philip Addison, who was Counsel for Rockshell International and on the Government side by the Attorney General at the time, Mrs. Betty-Mould Iddrisu. The two parties, on 12th June 2009, agreed on the payment in installments totaling US\$35 million as full and final settlement of the liability of the state to the company. Payments commenced on 22nd June 2009 with US\$10.00 million, US\$15.00 million was paid in March 2010, US\$5.00 million in July 2010, and ended with the final payment of US\$5.00 million on 5th August 2010, thus bringing the case between Rockshell International and the Government of Ghana to a close.

Bank of Africa vs. Ghana Post & Messrs Brick House

An unauthorized contract involving a GH¢45,000 loan cost taxpayers GH¢215,168.23. The Auditor-General's report on public boards, corporations, and other statutory institutions for the period ended 31 December 2019 revealed that Management of Ghana Post Company Ltd awarded a contract to Messrs Brick House (GH) Ltd to renovate the Kaneshie Post office at the cost of GH¢125,022.15 in March 2009. Aside from the fact that Messrs Brick House lacked the financial capacity to execute the contract as prescribed by the Public Procurement Act of 2003, the following pre-qualification documents were also not provided:

- . Tax clearance certificate
- . Business registration certificate
- . Ministry of Works and Housing Certificate of classification
- . Letters of Credit/ Bid Security/Performance Bond and
- . SSNIT Clearance

Messrs Brick House, jointly with Ghana Post, contracted a GH¢45,000 loan from Amalgamated Bank Ltd (now Bank of Africa) to finance the project. Upon completing the project, Ghana Post failed to pay Messrs Brick House the certificate amount of GH¢95,883.63 for work done. The bank filed a suit in court against Messrs Brick House and Ghana Post for failure to pay the loan.

Judgment was entered against Ghana Post for a sum of GH¢169,168.23, constituting interests accrued on the GH¢45,000 loan. An additional GH¢46,000.00 was claimed by Messrs Brick House. In this particular case, the Auditor-General recommended that the Board and Managing Director of Ghana Post be held liable for the loss and made to refund GH¢90,146.08 (the difference between the contract sum and the total debt incurred).

Sky Consult vs. Ghana Post
GH¢1.7 million judgment debt alleged to have been obtained through fraud
One judgment debt case in the Sole Commissioner's report provides an example of judgment debt payment based

on alleged misrepresentation and fraud. In this case, Ghana Post Ltd entered into a contract with Sky Consult in 2005 to conduct an "Instant Money Transfer" (IMT) business and share the profits. According to Sky Consult, after the business earned total revenue of GH¢6,329,030.00 by 2008, Ghana Post took out of the profit an amount of Gh¢1,119,000.0 and gave Gh¢774,000.00 to Sky Consult, with an outstanding balance of Gh¢998,000.00 to be paid to Sky Consult later.

Sky Consult decided to sue in 2009 for the remaining balance and obtained a summary judgment with interest in the amount of Gh¢1,693,872.56, which Ghana Post paid, leaving Gh¢130,000.00. However, at the Court of Appeal and in another High Court, its appeals to set aside the summary judgment on the grounds that they were obtained through misrepresentation and fraud were dismissed. Contrary to the accounts by Sky Consult, Ghana Post argued that some top management personnel of Ghana Post colluded with Sky Consult to steal transfer funds, and for that reason, some staff had been convicted and jailed.

The Commission reported that profits were shared when the account of the IMT business had not been audited and both parties failed to pay taxes on the profit. It was also reported that, at the trial court, the interest on the principal sum was also wrongly computed, and the summary judgment was applied for and granted even 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 conclusion, Ghana Post paid money that Sky Consult did not deserve because the trial court did not exercise due diligence in granting the application, and the Court of Appeal did not follow proper civil procedures before dismissing the appeal by Ghana Post.

3.2. Judgment Debt Payment due to Compulsory Land Acquisition

Compensation claim by the Carmichael Family re Aveyime Livestock Project

Payment of US\$2,640,000.00 instead of GH¢33 In the Auditor-General's Annual Report of 2011 to the parliament of Ghana, it was stated that the Government of Ghana paid an amount of US\$ 2,400,000.00 to a family called Carmichael family as compensation for a piece of land acquired by the State in 1976. The report also stated that a further \$240,000.00 was paid by the Government to the solicitors of the Carmichael family.

By Executive Instrument (EI) 27 on 21st February 1976, the State acquired approximately 24,790 acres of land at Aveyime-Battor in the Volta Region for the Aveyime Livestock Project. After the State had acquired these lands, the solicitors of the establishment by name Korah Chambers of Accra, in 1978 wrote to the then Chief Lands Officer and requested for a compensation of three hundred and thirty thousand old cedis (330,000) now thirty-three Ghana cedis (GH¢33) to be paid to their clients for both land and buildings lost as a result of state acquisition.

There was no record that the Chief Lands Officer responded to the solicitor's letter. However, there was evidence that the solicitors wrote again to the chief lands officer on 15th July 1981. The Chief Land Officer replied to this second letter on 27th July 1981 to make an offer that was unconditionally accepted, yet no payment was made.

The Government carried out a revaluation of the property in 1993. The re-valuation showed an increase in the value of the structures from 200,040 to 45,300,000 old Ghana cedis. A further re-valuation of the same land was made in the year 2000, raising the value of the structures to GH¢775,522.30.

The raging battle over the compensations spanned thirty (30) years. During that period, several attempts were made to resolve the matter. Successive Attorney-Generals were not left out in the negotiations. In January 2009, former President, His excellency John Agyekum Kufuor allegedly instructed that the sum of US\$2,400,000 be paid as compensation to the Carmichael family in respect of the Aveyime Livestock Project.

There was a further directive to pay US\$240,000.00 to the solicitors in charge of negotiations of the payment of the required compensation for and on behalf of the Carmichael family. In essence, the Government paid a total of US\$2,640,000.00 for land, which at the time of acquisition was only GH¢33.00. A timely settlement would have made all the difference.



3.3. Judgment Debt Payments due to Statutory Breaches

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

Failure to settle GH¢5,053 outstanding debt for 8 years cost taxpayers GH¢ 177,664.09. The Ministry of Youth and Sports contracted M/s EP Ghana Limited in 2000 to complete rehabilitation works on some tennis courts at the Accra Sports Stadium at the cost of GH¢72,705.79. The Ministry of Youth and Sports (MoYS) paid GH¢67,652.58 out of the total amount in 2001, leaving a balance of GH¢5,053.21. The GH¢5,053.21 balance was left unpaid for eight years until 2009 when the Ministry negotiated and settled it for GH¢177,664.09.

The settlement followed a notice of intention to sue served by the complainant with the Attorney-General. The Attorney-General set up a committee to resolve the issue after consultation with MoYS because MoYS had no defence to put up regarding its failure to pay the amount over that period.

The amount initially demanded by the complainant was GH¢227,664.00. However, the committee negotiated it down to GH¢177,644.09 as the final figure to be paid to the complainant for MoYS's failure to pay the GH¢5,053.21 on time.

In the Sole Commissioner's report, the Commission noted that this settlement was excessive, and a court arbitration would have provided a proper assessment with a much lower amount paid to close the issue.



Table 4. Selected Cases of Judgment Debt: 2000 - 2019

Category	Case	Amount Paid	Year of Payment	Reason for Judgment Debt
Contractual Breaches	Bank of Africa vs. Ghana Post & Messrs Brick House	GH¢215,168.23	2019	An unauthorized contract involving a GH¢45,000 loan cost taxpayers GH¢215,168.23
	Rockshell International Ltd vs. Attorney General	GH¢51,047,500.00	2010	Failure to pay GH¢55,305.60 for stones supplied for construction of the Keta Sea Defence Project in 1986 resulted in the payment of US\$35 million in 2010.
	Sky Consult vs. Ghana Post	Gh¢1,693,872.56	2009	Claim of outstanding share of profit relating to Instant Money Transfer partnership
	Kae Ghana Ltd vs MOFA	GH¢549,970.81	2008	Termination of a GH¢1,289.76 contract awarded in 1984 and failing to compensate the contractor for 24 years
	Delta foods	GH¢9,174,611.01	2000	Additional payments for delays in settlement of judgment debt
Land Acquisitions	Carmichael Family and Attorney General	US\$ 2,640,000.00	2011	The government paid a total of US\$ 2,640,000.00 to the Carmichael family for land which at the time of acquisition was only GH¢20.00.
	Peter Abbam vs Attorney General	GH¢264,643.00	2003	Additional amounts paid as a result of interest payment from 1993 to the date of the judgment and cost of the Judgment debt
Statutory Breaches	William Jackson Etundi vs UG	GH¢1,412,06.00	2018	Wrongful demolition of property valued at US\$288,488
	Henry Osei Dankwa vs. Amoo Godfried & Three Others v. AG	GH¢1,418,15.00	2010	Failure of AG's Office in Kumasi to appear in Court to defend a writ by plaintiff claiming losses from a legal and lawful demolition exercise.
	M/s EP Ghana Ltd vs. Min. of Youth & Sports & AG	GH¢177,664.00	2010	Failure to settle GH¢5,053 outstanding debt for 8 years resulted in the payment of GH¢177,664.00

Source: 2015 Sole Commissioner's and Auditor-General's Reports

4. Highlights of the Recent Judgment Debt: Ghana Power Generation Company (GPGC) Limited vs. the Government of Ghana

Despite public outcry, the issue of judgment debts continues unabated with no measures currently in place to address this recurring issue facing the country. In this section, we highlight the recent judgment debt, approximately US\$170 million, awarded against the government of Ghana (GoG) by the London-based United Nations Commission on International Trade Law (UNCITRAL) tribunal this year. It is important to note that this recent judgment debt is yet to be paid by the State and it falls under the category of judgment debts arising from alleged contractual breaches. The reader is hereby encouraged to read the Final Award by the Arbitral Tribunal: PCA Case No. 2019-05 for the details of the ruling on this case.

Summary of the GPGC Limited vs. GoG Case

Source: Final Award - GPGC Ltd vs. The Government of the Republic of Ghana (Arbitral Tribunal: PCA Case No. 2019-05).

Early this year, Ghanaians were alerted by news agencies about a US\$137.9 million judgment debt awarded against the GoG over the cancellation of its Emergency Power Agreement with GCGP Limited. In this particular case, the ruling, made by the International Court of Arbitration, included a US\$30 million interest cost.

The case follows the power shortage crisis experienced by the country in early 2015, which necessitated several Power Purchase Agreements (PPAs) between the GoG and private companies, including GPGC Ltd. The PPA between GoG and GPGC Ltd involved the relocation of two existing GE LM 6000 aeroderivative gas turbine combined-cycle power plants from Italy to Ghana by GPGC Ltd for the provision of a fast-track power generation solution to help address the power shortage crisis.

Following the identification of the potential site for the power plants, the GoG entered into a four-year Emergency Purchase Agreement (EPA) contract with GPGC Ltd, with the agreement being signed in June 2015 and ratified by Parliament in July 2015. The total amount to be paid over the four years was US\$99.6 million.

However, around December 2016, well

before the change of Government that occurred in January 2017 and unknown to GPGC Ltd, the Ministry of Energy set up a PPA Committee to review all of the Government's PPAs, due to concerns raised by the incoming Government that these commitments would result in excess supply to the National Grid. The PPA Committee's final report was completed and submitted to the Ministry of Energy in April 2017. The Attorney-General also followed with a report of her review of the PPAs to the Ministry of Energy for the Cabinet's consideration.

In November 2017, the Minister of Energy reported to Parliament with the following recommendations, which he argued was based on the PPA Committee report:

- Four PPAs with a combined capacity of 1,810 megawatts be deferred until 2018-2025;
- Three PPAs with a combined capacity of 1,150 megawatts be deferred beyond 2025; and
- Eleven PPAs, including GPGC Ltd, with a combined capacity of 2,808 megawatts, be terminated.

The Minister, in his submission to Parliament noted that, “the Government stands to make significant savings from the deferment and (or) termination of the reviewed PPAs. The estimated cost for the terminations is US\$402.39 million, compared to an average annual capacity cost of US\$586 million each year or a cumulative cost of US\$7.619 billion from 2018 to 2030.”(Arbitral Tribunal Ruling, PCA Case No. 2019-05, p. 43).

Regarding GPGC Ltd, the Attorney-General, it was reported, had argued that its project would result in a US\$115.48 million cost to

the GoG if it were implemented, given its attendant high tariff. Further, the Attorney-General alleged illegality related to GPGC Ltd’s construction activities in view of its failure to obtain a license to embark on the project and a breach of Energy Commission policy by GPGC Ltd given that the power plants were not new.

¹²**Source:** <https://www.graphic.com.gh/news.html> (Ghana slapped with \$137.9 million judgement debt over power purchase contract): Published on February 15, 2021.

Subsequently, the Attorney-General advised the GoG to terminate the contract on the following grounds:

- Illegality for want of capacity of GPGC Ltd to enter into a PPA;
- Failure to obtain Siting and Construction permits;
- Installation of used plant contrary to policy; and
- Failure on the part of GPGC to fulfill its Conditions Precedent as well as Conditions Subsequent.

The Attorney-General further added, “if GoG were to terminate the EPA on the last of the four grounds, it (GoG) would be entitled to the Early Termination Fee.” The notice of termination, which was first issued to GPGC Ltd in February 2018, took effect in August 2018, after inconclusive exchanges between the GoG and GPGC Ltd had occurred over the period following the initial notice. GPGC Ltd disagreed with the basis for the termination and proceeded to the Arbitration

Tribunal as contained in its agreement with the GoG, culminating in the stated award in favour of GPGC.

GPGC Ltd alleged that the GoG failed to honor its obligation under the EPA signed in June 2015. The following are some of the GoG failures related to the EPA alleged by GPGC Ltd:

- Failure of GoG to appoint of an Authorized Representative;
- Failure to allocate a Site after 19 months following the execution of the EPA;
- Failure to exempt GPGC Ltd from any tax liability;
- Failure to assist GPGC Ltd with the conclusion of a “Water Supply Agreement” with Ghana Water;
- Failure to supply gas or assist GPGC Ltd with the procurement of gas supply from Ghana Gas;

- Failure to assist GPGC Ltd with the conclusion of a “Grid Connection Agreement” with Ghana Grid Company; and

- Failure to assist GPGC Ltd with the procurement of a generation license from the Ghana Energy Commission.

Based on termination of the EPA, GPGC Ltd maintains it incurred substantial losses and, therefore, seeks a total compensation of US\$134,348,661, comprising four components of the Early Termination Payment:

- Early Termination Fee: US\$69,361,680;

- Mobilization Costs: US\$58,492,005;

- Maintenance and Preservation Costs: US\$32,448;

“the events surrounding the non-fulfilment of the Conditions Precedent and Conditions Subsequent were beyond the remit and control of the Respondent and not envisaged under the EPA.” (Arbitral Tribunal Ruling, PCA Case No. 2019-05, p. 89).

The award by the Arbitral Tribunal against the GoG, based on the submissions, facts and matters presented to it, states categorically that:

- The EPA has been validly terminated by GPGC on account of GoG’s repudiatory conduct;

- GoG is ordered to pay to GPGC the full value of the Early Termination Payment together with Mobilization, Demobilization and preservation and maintenance costs in the amount of US\$134,348,661, together also with interest thereon from 12 November 2018 until the date of payment, accruing daily and compounded monthly, at the rate of LIBOR for six-month US dollar deposits plus six percent (6%).

- Demobilization Costs: US\$6,462,528.

A review of the ruling by the Arbitral Tribunal reveals that despite the GoG’s rejection of GPGC Ltd’s allegation that it failed to perform nearly all of its obligations under the EPA, the GoG concedes that it failed to honor some of its obligations, arguing among others that:

- GoG to pay US\$309,877.74 in respect of the Costs of the Arbitration, together with US\$3,000,000 in respect of GPGC’s legal representation and the fees and expenses of its expert witness, together with interest on the aggregate amount of US\$3,309,877.74 at the rate of LIBOR for three-month US dollar deposits, compounded quarterly.

- GoG’s counterclaim for an Early Termination Payment in its entirety is dismissed.

- All and any other claims and counterclaims of whatsoever nature are hereby dismissed.

5. How Delays in Execution of Government Business Magnify Judgment Debt Amount

Begging to pay US\$35 million instead of GH¢55,305.60.

Time indeed is money, and lack of accountability, it should be added, is a massive financial loss to the State. It is safe to say that this complete disregard to the timeliness of execution and lack of accountability are bedfellows in the

governance of our country, and it comes at great costs to the taxpayer and results in the deprivation of vital social services to the vulnerable and the underserved.

Nowhere is the above more amply supported than a walk through the judgment debt records of Ghana. You could attribute this sorry happening to negligence at best or something more sinister. The Sole Commissioner on Judgment Debts Report is so awash with instances of outrageous judgment debts payments arising out of failure on the part of public officers to act expeditiously that it is a herculean task to settle on a particular case for illustration. Nonetheless, the payment of US\$35 million to Rockshell International in judgment debt between 2009 and 2010 for contractual breaches is difficult to ignore.

Rockshell International supplied stones for construction works on the Keta Sea Defence Project under a 1983 contract with the Government of Ghana and issued a certificate to be paid Five hundred and fifty-three million and fifty-six thousand old cedis (now GH¢53,305.60) in 1986. The Government failed to pay as per the terms of the contract and after numerous follow-ups and demands to be paid for work done, the company went to court in 2005 for recovery of the said amount with interest and obtained a judgment in the sum of US\$70 million in November 2006.

Ignoring how a Ghana Cedi claim led to a United States Dollar judgment debt, the transformation of fifty-five thousand Ghana Cedis to a whopping US\$70 million in precisely two decades is mind-boggling. The Government of the day neither appealed the court ruling nor took any action to settle its indebtedness to Rockshell until it left power in January 2009. The new Government that

took office in 2009 renegotiated this judgment debt amongst others and successfully reduced the amount by fifty percent to US\$35 million, which was paid by the Government between July 2009 and August 2010.

And so, because of delays in the payment of the amount of GH¢55,305.60 owed Rockshell International in 1986, Ghana became poorer by US\$35 million which could have been as high as US\$70 million.

But for this judgment debt, US\$35 million could have built a couple of district hospitals in deprived rural communities or purchased hospital beds to reduce the ever-present "no bed syndrome" in health delivery in Ghana. If invested into education could have eliminated schools under trees in their hundreds or provide computers for pupils whose only means of acquiring computing knowledge is by drawings on blackboards.

While similar cases are all over the place, there are hardly any sanctions for public officers whose acts due to omissions or commissions gave rise to these avoidable wastage of our scarce financial resources. Consequently, such behaviors abound in our public institutions. The starting point to fixing this serious dereliction of duty is to ensure public officers who cause the state avoidable judgment debts are severely punished.

GH¢20 turned US\$2,640,000 with the passage of Time

As the adage goes, "a cedi today is worth more than a cedi tomorrow." So does a stitch in time save nine? For countless times, the Government could have saved millions of Ghana cedis regarding judgment debt payment but for its failure to settle promptly.

The Government must be mindful of the fact that as much as the constitution permits or allows the State to acquire lands in the public interest and for public purposes, the same constitution enjoins the State to pay prompt, fair, and adequate compensation to landowners whose lands are compulsorily acquired, to contractors whose services are employed or organizations from which the State procures. Therefore, it is incumbent on every Government to ensure that funds are readily available before any compulsory acquisition is embarked on for any public project or any goods and services are employed. This will prevent the State from being dragged to court years later to pay unwarranted judgment debts that would defeat the purpose of the acquisition, as has happened countless times.

For instance, in the case of Compensation Claim by The Carmichael Family, when the land was acquired in 1976, the assessed value of compensation for the portion measuring about 1,800 acres which the company accepted was 200,040 old Ghana cedis (now GH¢20.00) this amount was however not paid. About 30 years down the line, the State was made to cough out US\$2,640,000 for the piece of land.

The State and its institutions should understand that bureaucracy does not mean time-wasting. Bureaucracy is to streamline procedures and allow for transparency. Procedures for payment of compensations and debts should not take decades to complete. This bureaucratic tendency has caused the State to pay US\$2,640,000.00 as compensation to the Carmichaels instead of GH¢20.00 if paid 30 years earlier.

We also note how the failure to settle GH¢5,053 outstanding debt for eight years also cost taxpayers a whopping GH¢177,664.09. Not to mention the recent judgment debt awarded to GPGC Ltd against the GoG and many others like these examples that continues to accrue interest until they are paid. In the GPGC Ltd vs. GoG case, the interest accrual on the total judgment debt began on 12 November 2018, and it will continue until the date of payment, accruing daily and compounded monthly, at the LIBOR rate for six-month US dollar deposits plus six percent (6%).

6. Legal Reflections: A Review of Selected Cases

Those who forget history are doomed to repeat its mistakes. The recent judgment debt cases have raised alarm, especially at the amounts at which the country seems to be haemorrhaging. Every country at some point will incur a modicum of judgment debts, an experience from which it is hoped that such a country will learn pertinent lessons. Not so with Ghana. It appears we as a nation are not heeding the very harsh lessons or are simply impervious to the pain of the loss. Or worse, a prospect which does not bear thinking that all of this is orchestrated for gain. Surely that cannot be the case. And yet, law report after report shows that Sisyphus may indeed inhabit the Attorney General Office.

Sadly, a cursory review of the law reports reveals a range of issues from “feigned” ineptitude to mischief and then to fraud. Truthfully the matter is endemic and a stain on the conscience of the country. Reform will require leadership and a significant attitudinal

change if the nation is to benefit from any of the recommendations given. Below are a few cases that illustrate the malaise.

At a very fundamental level, what was always missing from the cases was clear. The basic three-step process of having:

1. Controls and processes with which to address all matters;
2. Accountability in respect of who it is who will handle the case and be responsible should anything go wrong. A point of contact person;

3. Consequence management for failing to adhere to the process and allowing significant cost against the Government.

It appears that at every given point, one or more of the steps listed above are either ignored or did not operate as they should.



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The Delta Foods Case

The Delta Foods Case

The Ministry of Agriculture entered into the contract and it seems that it did so without confirming that payment would be made by the Ministry of Finance. Perhaps, payment should have been arranged and made when the contract was executed.

The Government's side was in disarray in terms of who was responsible for addressing the ensuing breach of contract. The Solicitor General's office and, by extension, the Attorney General's office failed in communication, or it seems woke up too late to take any proper action on the matter. Having accepted liability, the Government reneged on its undertaking and proceeded to seek to quash the earlier consent.

The question is, what advice did the Government obtain before going to Court on the matter, seeing as the action in the Supreme Court was dismissed. Notwithstanding its loss in the Supreme Court, Delta Foods had to bring an action in the US Courts to enforce payment. The Government did not exercise good faith in its dealings on the matter, especially as it had agreed to a settlement, then changed its mind seeking to rely on a technicality.

Recommendations

Clearly, there are lessons to be learned by the Government in its approach and process. One questions whether the Ministry of Agriculture should have sought the appropriate approvals for payment beforehand. The Government's posture suggests that it did not seek legal advice or did so at a very late stage of the case. The steps below would have gone a long way to ameliorate the mistakes made by the Government.

- Seeking consent for the purchase.
- Ensuring payment was made on time.
- Requesting a report on the matter to ensure all sides had clarity.
- Seeking legal advice of its options at every stage of the transaction and during the action.

▪ Having consented to a settlement, making sure it honoured its undertaking with the Company.

▪ Not waiting for the Company to enforce judgment outside of the country.

▪ Following the laid down "legal" process- assuming there is one- to protect the Government's purse. .

Etundi Case

The Plaintiff was apparently given no warning of the demolition exercise, and there was no cogent documentary evidence of the University's ownership provided to the Plaintiff. Having conducted an oral search at the Lands Commission, whose records suggested that the land belonged to the Nungua Chief, the Plaintiff proceeded to acquire the land from the Chief. However, a subsequent search at the Land Commission did not provide evidence of the University's ownership but rather that of the Ministry of Agriculture. The Plaintiff had owned the land for a significant period without being challenged or disturbed by the University. Apparently, the University did not lead any credible evidence in support of its claim in Court, nor did it appeal against the dismissal for a declaration of its claim of ownership.

Recommendations

A demolition drive to raze and destroy houses cannot be undertaken lightly. However, the University's posture suggests that it did not seek legal advice before conducting the exercise. The steps below would have gone a long way to ameliorate the mistakes made by the University.

- Requesting a report on the matter at hand for the sake of clarity
- Seeking legal advice on its options.
- Marshalling all the relevant paperwork and evidence of ownership, including searches from the Lands Commission.
- Ensuring the accuracy of its survey documentation.
- Engaging where possible with those whom it deemed to be trespassing on its lands.
- Following due legal process by commencing action and obtaining the necessary court orders.
- Engaging those whose houses it intended to demolish and giving notice of its intent.

Peter Abbam Case

Sadly, even though the Government entered appearance (i.e., made an initial response), it failed to file a defence. As a consequence, Peter Abbam was able to obtain a judgment against the Government. However, it took one year before the Government sought to file a defence or respond. It later emerged that Peter Abbam's wall had been constructed illegally, as it fell within a road reservation. Peter Abbam was not therefore entitled to any compensation. The Government brought this information to the judge, who ignored it and proceeded to grant an order to attach the Urban Roads accounts.

Recommendations

One question is why the Government delayed in responding to the court action. Are there systemic or process issues preventing or hindering the Government -Attorney General's Office from taking

action expeditiously? Yet again, the Government's position suggests that it did not seek legal advice or did so at a very late stage of the case. Further, it appears there was no real coordination between the Attorney General's Office and that of Urban Roads. The steps below would have gone a long way to ameliorate the mistakes made by the Government.

- Requesting a report on those who were going to be affected.
- A thorough investigation by the department of Urban Roads into the matter having been contacted by Peter Abbam
- Liaison between Urban Roads and the Attorney General's Office.
- Seeking legal advice of its options at every stage of the matter and during the action.
- Assigning personnel to act on the matter and thereafter acting within the court's timelines or seeking an extension of time.
- Not waiting for one whole year before reacting to the judgment
- Following the laid down "legal" process - assuming there is one - to protect the Government's purse.

Rockshell International Case

Having contracted with Rockshell, the Government failed to make payment, and the Company had to sue. However, the then Government ignored the judgment forcing the Company to negotiate with the subsequent Government. It would have been clear on the face of the papers filed that significant interest would swell the debt if action were not taken to address the suit, and yet no action was taken from 2006, when the judgment was obtained, until 2009.

Recommendations

Here again, there are lessons, the same lessons pronounced elsewhere to be learned by the Government in its approach and process to contracts and suits brought against it. The same question of why the delay in responding to the court actions and judgments.

Are there systemic or process issues preventing or hindering the Government, specifically, the Attorney General's Office from taking action expeditiously? Sadly, the Government's position suggests that it does not care to seek legal advice or does so at a very late stage of a case. Or worse that the posture is an indication of ineptitude prevailing at the office of the Attorney General.

The same basic steps set out below would have gone a long way to ameliorate the mistakes made by the Government.

- . Requesting a report following a thorough investigation on the matter.
- . Liaison between the requisite Ministry and the Attorney General's Office.
- . Seeking legal advice of its options at every stage of the matter and during the action.
- . Assigning personnel to act on the matter and thereafter acting within the court's timelines or seeking an extension of time.
- . Not waiting for three whole years before reacting to the judgment.
- . Having a laid down "legal" process - assuming there is one - to protect the Government's purse.

Margins Group Ltd Case

Having engaged in the contract, the Secretariat of Ghana@50 (Government) failed to make payment, forcing the Company to sue. Unfortunately, the "lackadaisical" approach adopted by the AG to this and other cases meant that public officials adopted an "I don't care attitude." As a result, according to the CEO, the Government ended up paying significantly more than it should have, Dr. Charles Yves Wereko-Brobby, who led Ghana@50. For a contract of GH¢920,000.00 the Government paid more than GH¢6,000,000.

Recommendations

The very basic steps set out below would have gone a long way to ameliorate the mistakes made by the Secretariat of Ghana@50 Government.

- . Requesting a report following a thorough investigation on the matter.

- . Liaison between the requisite Secretariat of Ghana@50 and the Attorney-General's Office.

- . Seeking legal advice of its options at every stage of the matter and during the action.

- . Negotiating for a lower payout.

- . Assigning personnel from the AG to act on the matter and thereafter acting within the courts timelines or seeking an extension of time to ascertain the veracity of the claim.

- . Liaison with the CEO Dr. Charles Yves Wereko-Brobby.

Societe Generale (SG) Case

SG sued GNPC in London over unmet payments. The attempt by the parties to settle out of Court came to naught. GNPC had managed to handle the matter by putting up a robust defence and counterclaim. The Government intervened and then dismissed the external lawyers acting on the matter. Instead, the Attorney-General at the time was asked to assume responsibility for the conduct of the matter. Further attempts were made to settle the matter.

Surprisingly, the Government neither informed the courts in London of its attempt at settlement nor did it deign to attend Court and defend the matter. The result was a judgment of US\$47 million against the Government. Though the judgment was compromised, it still left the Government with a debt of US\$19.5 million. Tragically, SG had previously indicated that it would settle for US\$14 million and only changed its mind after the judgment against the Government.

Ultimately, the Government had to sell one of GNPC's assets, the Drillship "Discovery 511," to defray the cost. A significant part of the debacle was the Government's interference in the affairs of the GNPC, which contributed to the financial loss. Worse still, the utilization of the balance of the proceeds of the sale of the Drillship amounting to some US\$3.5 million requires proper reconciliation.

Recommendations

- Requesting a report following a thorough investigation on the matter.
- Liaison between the Attorney General's Office and the lawyers in London would have been useful.
- Seeking legal advice of its options at every stage of the matter and during the action from the lawyers handling the case in London.
- Informing the Court of its intent to negotiate out of Court and perhaps seeking an adjournment to the matter to facilitate the negotiations.
- In the alternative and at a very fundamental level, ensuring that the Government had representation in Court during the proceedings.
- Aside from the Attorney General, assigning personnel from the Attorney General's Office to act on the matter and thereafter acting within the court's timelines or seeking an extension of time to ascertain the veracity of the claim.
- While acknowledging the state ownership of GNPC, the Government should, in this case, have been less hasty to interfere in the affairs of the Company.
- Further, the recommendations regarding an audit of the use of the balance of the proceeds of the sale of the Drillship should be carried out.

Calf Cocoa International Ghana Limited Case Calf Int.

(GH) Ltd entered into a joint venture agreement to establish a cocoa processing factory at a total of \$10million. The Company was affiliated with the 31 December Women's Movement.

A total of \$8,750,000.00 was to be disbursed by the Government. While most of the funds were disbursed, there remained an outstanding balance of US\$1.8 million, which the then NPP left undisbursed, having previously disbursed \$3,414,620.00. The Company sued the Government for the balance in November 2005. It had previously threatened action in July 2005, which the Attorney General had ignored.

The resultant judgment left the Government \$3,550,000.00 out of pocket. The award was made up of the outstanding \$1,800,000 and damages \$1,750,000.

Recommendations

- It would seem that the case and the resultant debt arose from the sheer impunity and capriciousness on the part of the Government, which could have been ameliorated by seeking legal advice of its options. Rather than bury its head in the sand and ignore the request, the Ministry of Finance should have sought legal assistance. At the very least, the Attorney General who was in copy of the request should have directed or given its opinion of the possible consequence of inaction.
- Here again, we see a department arrogating power that affects the state coffers, with nary a blush or murmur from the state apparatus. Where is the consequence management to check that such action is not repeated?

The GPGC Case

The Commercial Court in London has refused to allow Ghana to bring a belated challenge to a United Nations Commission International Trade Law (UNCITRAL) award of US\$170 million in favour of Ghana Power Generation Company. Here again, the Government wrongfully repudiated a contract for fast-track power generation. The Company commenced action against the Government and then it seems the State Attorney went to sleep on the matter.

The consequence was that the Government failed to meet a 28-day deadline, resulting in paying \$170million in damages. Attempts by the Government to use Covid and the elections as a shield were rebuffed. The Court refused to grant the Government a further extension of time having previously granted such a request. The Court added that the state's ground for challenging the case was "intrinsically weak." Further, the Government's delay was significant and substantial.

Key Observations of the Attorney General's Office

- Paper-heavy administrative process means everything has to be by hard copy in files with memos which need to be signed from department to department.
- A general aversion to or lack of the use of technology to create efficiencies.
- A culture of reacting rather than being proactive in terms of actual and contingent liability.
- Very long turnaround times are due to inefficiency, ineptitude, lack of joined up thinking, lack of coordination between the AG's office and various state entities.
- The use of inexperienced lawyers on matters where the Chief State Attorney is too busy to attend the Court.

- Lack of preparation on the part of the Attorney General's lawyers often because they don't have all the papers or don't have a full grasp of the case. In such instances, the lawyers will put in a "sham defence" a weak defence to buy time.

- Lawyers are left to their devices to get on with cases. Often some Chief State Attorney have no clue as to the matters for consideration or the progress of such matters which sit within their purview.

- A general lack of coordination across the Attorney General Office as a whole. That is between State Attorneys and the Solicitor General's office.

- There is an air of bureaucracy that pervades the Attorney General Office. No joined-up thinking, with most departments acting in silos.

- At the extreme, the culture breeds and has bred the canker of corruption.

7. Limitations of the Study

The following are the main limitations of this study:

1. In the absence of a readily available database on judgment debts, the study relies heavily on the report of the Sole Commissioner (2015) and the Auditor-General's annual reports.

2. As a result of severe data gaps, the analysis focused on judgment debts paid. Ideally, using judgment debts awarded would have been preferred because that shows the extent of the State's liabilities. However, for most judgment debt cases reviewed, the available information does not include the award date and the amount of the judgment debt initially awarded.



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Conclusion and General Recommendations

8. Conclusion and General Recommendations

This report reviewed judgment debts payments made from public funds on behalf of the State from 2000 to 2019. These judgment debts arose from alleged contractual breaches, failure to promptly pay compensations due to compulsory land acquisitions by the State/Government, and alleged tortuous/statutory breaches committed by public officials in the course of their public duties.

Indeed, the analysis shows that judgment debts awarded against the State continue to persist. The judgment debts occur due to negligence, blatant disregard for public procurement laws, and illegal abrogation of contracts by public officials in their line of duty. It is important to note that the issue of judgment debts has occurred under every Government. While the other categories of judgment debts (i.e., failure to promptly pay compensations due to compulsory land acquisitions by the State/Government, and alleged tortuous/statutory breaches committed by public officials in the course of their public duties) occur less frequently and in total accounts for about 27 percent of the total in 2019 equivalent terms, major judgment debts arising from contractual breaches usually tend to follow political transitions and account for about 73 percent of the total in 2019 equivalent terms.

The evidence from the review clearly shows that contractual breaches that occur due to political transitions and sheer negligence or non-adherence to timely execution of government business account for most of the colossal sums the State has had to pay in regards to judgment debts. These identified inefficiencies require immediate attention.

Addressing the recurring issue of judgment debts would require a combination of strategies geared towards improvement in the State's efficiency in executing its business on behalf of the public. We identify contracting as an integral part of doing business in the public sector that could involve private parties and other public agencies. However, unlike contracting among two private parties, contracts involving the government and its agencies differ because of political transitions that are likely to occur over the term of the contract. Thus, contracts involving government and agencies present different sets of issues that stakeholders must consider before they are awarded. Since no blueprint currently exists for enhancing the State's efficiency in the execution of its business, the following approaches and strategies that are based on standard practices are recommended:

1. Reforms of key institutional arrangements in the execution of government business:

- Enforce strict compliance to the National Procurement Laws. Unauthorized deviations at all levels should carry hefty consequences for the responsible public official(s).
- Ensuring that qualified legal experts who understand the murky nature of contracting involving governments are engaged when committing to contractual obligations;
- Review, enhance, and enforce international best practices in Public Financial Management.
- The involvement of key stakeholders before any government enters into a contract with a private party on behalf of the State. In particular, ensuring all key stakeholders have oversight and input before execution of contracts.

- Establishing an inter-party framework for managing contractual obligations of government during and after political transitions. It is crucial that all stakeholders, regardless of political party affiliations, commit to minimizing contractual breaches resulting from political transitions. In particular, the framework must ensure that stakeholders act in the collective interest and not in their self-interests.

- Maintenance of a government-wide database for all major contracts and the Audit Service must review these contracts for evidence of sound legal advice prior to entering into the contract and the status of implementation of each contract as part of the entity audit process. Triggers on the database should allow stakeholders to manage the high value contracts.

- Empower the Audit Service to review the systems and processes pertaining to contract management across the government sector.

- Ensuring that institutional mechanisms exist for recovery of public funds when financial losses occur due to negligence, blatant disregard for public procurement laws, illegal abrogation of contracts, corrupt activities by public officials in their line of duty. For example, in all of the Auditor-General's reports reviewed from 2013 - 2019, we identified that the Auditor-General made several recommendations for the recovery of millions of Ghana cedis lost to the State by public officials.

The question is, which institutional mechanisms exist to ensure that the lost public funds are recovered, or the public officials causing financial losses to the State are held accountable for their actions? In that regard, we recommend that:

- The Auditor-General's Annual Reports should contain a review of the progress of implementation of previous audit reports. Outstanding and repeated comments should be highlighted and the rate of audit recommendation resolution scored. Such rate of resolution score should be a key performance measure for Heads of Government entities.

- Individuals who are found to have deliberately embarked on a mission to defraud the state or through whose carelessness or negligence cause financial loss should be made to account for the loss. Such persons should suffer criminal and or civil action.

- Adoption of human resource management practices that ensure hired public officials adhere to the ethics of governance;

2. A judgment debt management policy should be formulated with an inter-ministerial unit comprising the Ministry of Finance and the Ministry of Justice & Attorney General formed to oversee the effective management of judgment debts. The judgment debt management policy should provide guidelines including oversight approval for the abrogation of government contracts where such abrogations are thought to be in the supreme interest of the state. A documented cost-benefit analysis of such abrogation should be done prior to the final decision to terminate.

3. Introduction of results-oriented approaches to budgeting and management in the execution of business by the Government and its agencies;

4. Reforming/strengthening governance with an emphasis on increasing transparency and accountability of the Government and its agencies to the State around spending;

Generic Solutions - Legal Dimensions

1. The Special Prosecutor should independently investigate all the cases of judgment debts in the fourth republic with the intent of establishing criminal liability of political office holders and public office holders and proceeding accordingly to prosecute offenders in courts of competent jurisdiction.

2. Ensure that only trained or expert lawyers are allowed to prosecute cases. The practice of sending lawyers who are either not aware of the case or ill prepared should cease. In the instance of lack of experienced lawyers the office could outsource some of the work to those who have the competence to address the matter. A medium to long term plan to recruit and train more lawyers to support the Attorney General's Office should be considered.

3. The Attorney General's Office should:

A. Embark on wholesale reform which should look at the overall vision and mission while addressing matters such as strategy structure systems and processes across board.

B. Have a strategic project with clearly defined outcomes regarding the reduction of judgment debt. A dedicated department whose singular aim is to arrest errant contracts and where necessary be empowered to negotiate or renegotiate on behalf of the Government.

C. Have a government department wide case management system which is plugged into the court system to inform lawyers of their impending cases.

D. Clearly set out and be measured by Key Performance Indicators which touch and concern judgment debt among other things.

E. Have a performance appraisal which measures and punishes loss to the state.

F. Be subject to a systems review and audit by an external party, such as the Audit Service which holds departments and individuals accountable for loss.

The recent judgment debts awarded against the State provide enough grounds for the State to give careful consideration to reforms around the conduct of government business. At a time where the country is saddled with a high level of public debt, public health crisis, persistent fiscal deficits, a high youth unemployment rate, and over 30 percent of its population living in poverty, we cannot afford to allow these huge financial losses to continue.

Nobody goes into law thinking that they wish to become diffident, removed, ineffectual, unresponsive, and down-right inept. However, a culture lacking in controls, accountability and consequence management will undoubtedly and inevitably breed an ecosystem proximate to the picture painted above. The tragedy is that there are outstanding and competent lawyers employed in the Attorney General's office. For the most part, they have been rendered ineffectual by an ecosystem and bureaucratic cultural norms that do nothing to promote excellence, efficiency, and effectiveness. Let alone accountability and its twin consequence management.

Until the philosophy which holds no one accountable for their individual performance is rectified; until the policies and procedures which exist but are never implemented are resurrected; until the Attorney General is held personally and professionally responsible for the operation and management of their team; until there are systemic and structuring changes; and until there is collective and cultural buy-in on seeking to create a world-class legal office to represent the Government we the nation of Ghana will continue to hemorrhage the limited funds we have which is needed to support the development and advancement of the Ghanaians. What a waste. What a travesty. It begs the question:

Are the state apparatus responsible for preventing this hemorrhage actually benefiting from this state of affairs as they stand now?

As a matter of urgency, the State must address the underlying issues of the recurring judgment debt, close the loopholes of these inordinate payments from public funds, and avert excessive financial losses of a financially hemorrhaging economy.

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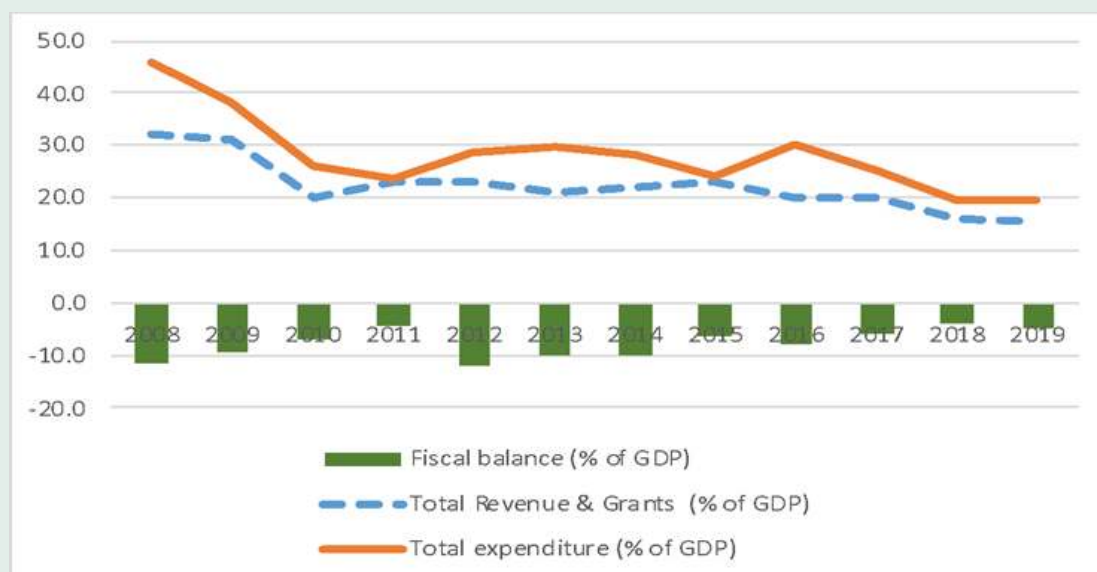


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Appendix

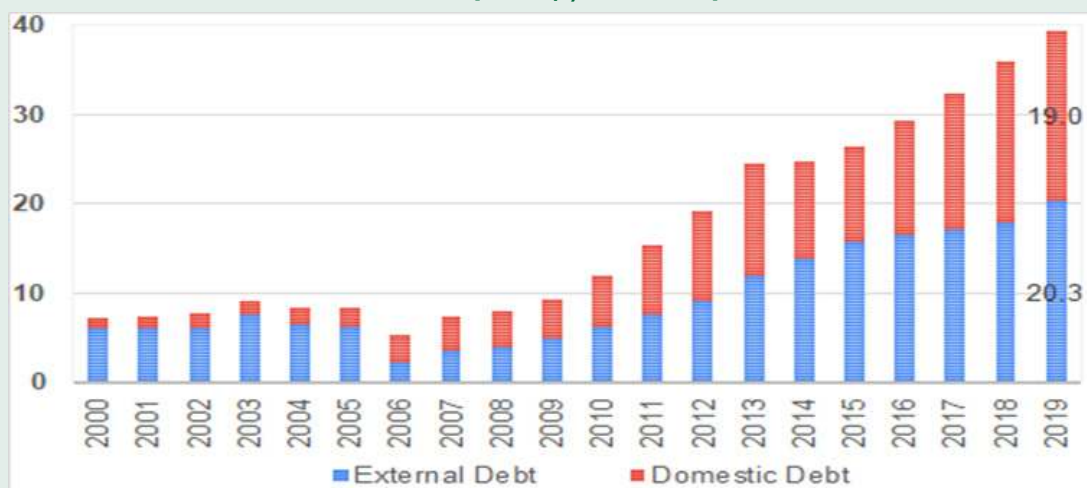
Appendix: Additional Figures and Tables

Figure A1. Ghana: Fiscal performance: 2008-2019



Source: Ndikumana, Mannah-Blankson, Njuguna (2020), "Looming Debt Crisis in Sub-Saharan Africa: Drivers, Implications and Policy Options." Political Economy Research Institute, UMass, Amherst.

Figure A2. Ghana's public debt:
2000–2019 (US\$, billion)



Source: Ministry of Finance and Bank of Ghana

Table A1. Health and Poverty Indicators

Category	Country/Region	Poverty and Other Social Sector Indicators	Averages	
			2000-2009	2010-2019
Health Indicators	Ghana	Current health expenditure (% of GDP)	3.6	4.1
	SSA	Current health expenditure (% of GDP)	5.2	5.1
	Low & middle income	Current health expenditure (% of GDP)	5.0	5.2
	Ghana	Maternal mortality ratio (national estimate, per 100,000 live births)	516.0	309.0
	SSA	Maternal mortality ratio (modeled estimate, per 100,000 live births)	759.9	577.6
	Low & middle income	Maternal mortality ratio (modeled estimate, per 100,000 live births)	332.1	250.0
	Ghana	Mortality rate, under-5 (per 1,000 live births)	84.9	56.6
	SSA	Mortality rate, under-5 (per 1,000 live births)	127.3	87.5
	Low & middle income	Mortality rate, under-5 (per 1,000 live births)	70.3	47.7
Poverty Indicators	Ghana	Poverty gap at \$3.20 a day (2011 PPP) (%)	19.2	10.8
	SSA	Poverty gap at \$3.20 a day (2011 PPP) (%)	40.6	33.2
	Low & middle income	Poverty gap at \$3.20 a day (2011 PPP) (%)	21.7	12.5
	Ghana	Poverty headcount ratio at \$3.20 a day (2011 PPP) (% of population)	48.0	30.1
	SSA	Poverty headcount ratio at \$3.20 a day (2011 PPP) (% of population)	76.1	68.9
	Low & middle income	Poverty headcount ratio at \$3.20 a day (2011 PPP) (% of population)	52.5	34.8

Source: World Bank (World Development Indicators).

Table A2. Education Indicators

Category	Country/Region	Poverty and Other Social Sector Indicators	Averages	
			2000-2009	2010-2019
Education Indicators	Ghana	Government expenditure on education, total (% of GDP)	6.0	5.3
	SSA	Government expenditure on education, total (% of GDP)	3.3	3.7
	Low & middle income	Government expenditure on education, total (% of GDP)	3.6	3.9
	Ghana	Government expenditure on education, total (% of government expenditure)	22.1	24.0
	SSA	Government expenditure on education, total (% of government expenditure)	17.2	16.7
	Low & middle income	Government expenditure on education, total (% of government expenditure)	15.6	15.8
	Ghana	School enrollment, secondary (% gross)	40.0	66.2
	SSA	School enrollment, secondary (% gross)	31.5	42.6
	Low & middle income	School enrollment, secondary (% gross)	59.2	70.6
	Ghana	School enrollment, secondary (gross), gender parity index (GPI)	0.9	0.9
	SSA	School enrollment, secondary (gross), gender parity index (GPI)	0.8	0.9
	Low & middle income	School enrollment, secondary (gross), gender parity index (GPI)	0.9	1.0

SOURCE: World Bank (World Development Indicators).

Table A3: Unemployment Indicators

Country/Region	Unemployment (All & Youth) by Gender	<i>Averages</i>	
		2000-2009	2010-2019
Ghana ¹	Unemployment, female (% of female labor force)	7.7	4.8
SSA ²	Unemployment, female (% of female labor force)	6.5	6.4
Low & middle income	Unemployment, female (% of female labor force)	5.8	5.5
Ghana	Unemployment, male (% of male labor force)	7.3	4.5
Sub-Saharan Africa	Unemployment, male (% of male labor force)	5.9	5.6
Low & middle income	Unemployment, male (% of male labor force)	5.6	5.3
Ghana	Unemployment, total (% of total labor force)	7.5	4.6
Sub-Saharan Africa	Unemployment, total (% of total labor force)	6.2	6.0
Low & middle income ³	Unemployment, total (% of total labor force)	5.1	5.1
Ghana	Unemployment, youth female (% of female labor force ages 15-24)	13.0	10.1
Sub-Saharan Africa	Unemployment, youth female (% of female labor force ages 15-24)	12.5	12.9
Low & middle income	Unemployment, youth female (% of female labor force ages 15-24)	15.0	16.5
Ghana	Unemployment, youth male (% of male labor force ages 15-24)	13.0	9.9
Sub-Saharan Africa	Unemployment, youth male (% of male labor force ages 15-24)	11.8	11.0
Low & middle income	Unemployment, youth male (% of male labor force ages 15-24)	13.5	14.4
Ghana	Unemployment, youth total (% of total labor force ages 15-24)	13.0	10.0
Sub-Saharan Africa	Unemployment, youth total (% of total labor force ages 15-24)	12.1	11.7
Low & middle income	Unemployment, youth total (% of total labor force ages 15-24)	13.9	14.9

¹ Ghana's unemployment data are based on national estimates.

² SSA unemployment data based on International Labor Organization (ILO) modeled estimates.

³ All the indicators for the Lower & middle income group are also based ILO modeled estimates, except the Unemployment, total (% of total labor force) which is based on national estimates.

Table A4: Relevant 2019 Economic Indicators

Key Economic Indicators	2019 (GH¢'Million)
GDP	344,455.34
Public Debt Stock	218,228.90
Domestic Debt Stock	105,481.20
External Debt Stock	112,747.70
External Debt (Inflow)	20,621.00
Bilateral Loans (New)	2,974.00
Multilateral Loans (New)	1,407.00
External Commercial Institution (New)	16,240.00
Domestic Debt (New Issues)	21,854.00
Total Expenditures	67,670.90
Interest Payments	19,756.10
Education Expenditures	12,959.20
Health Expenditures	6,384.32
Capital Expenditures	6,151.80
Tax Revenue	42,355.50
Grants (General Government)	2,294.79
Grants (Central Government)	1,696.00

Source: Bank of Ghana, WDI, and Auditor-General's Report



THANK YOU



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