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SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – A.D. 2025

SUIT NO.

WRIT

TO INVOKE THE ORIGINAL JURISDICTION OF THE SUPREME COURT OF GHANA

UNDER 31/11/2026

ARTICLES 2(1)(b) AND 130(1) OF THE CONSTITUTION, 1992

AND UNDER

RULE 45 OF THE SUPREME COURT RULES, 1996 (C.I. 16)

BETWEEN

DEMOCRACY HUB — **PLAINTIFF**
Suite 4, Morocco House
No. 195/10 Otinkorang Street,
North Kaneshie, Industrial Area
Accra

AND

THE ATTORNEY GENERAL — **1ST DEFENDANT**
Office of the Attorney General
Ministries, Accra

THE MINISTER FOR FOREIGN AFFAIRS — **2ND DEFENDANT**
Ministry of Foreign Affairs & Regional Integration
Flat 5, Agostinho Neto Rd,
Accra, Ghana

IN THE NAME OF THE REPUBLIC OF GHANA you are hereby commanded within FOURTEEN (14) days after the service on you of the Statement of the Plaintiff's Case, inclusive of the day of service, that you are to file or cause to be filed for you a Statement of the Defendant's Case in an action at the Suit of:

DEMOCRACY HUB — **PLAINTIFF**
Suite 4, Morocco House
No. 195/10 Otinkorang Street,

North Kaneshie, Industrial Area
Accra

The nature of the reliefs sought are as follows:

1. A declaration that, on a true and proper interpretation of Article 75 of the 1992 Constitution of Ghana, any agreement entered into by the President of the Republic of Ghana to receive or facilitate the transfer of West African nationals from the United States of America into the Republic of Ghana constitutes an international agreement within the meaning of Article 75, and as such, required prior ratification by an Act of Parliament or by a resolution of Parliament supported by the votes of more than one-half of all the Members of Parliament.

2. A declaration that, on a true and proper interpretation of Article 75 of the 1992 Constitution of the Republic of Ghana, the purported Memorandum of Understanding (MOU), or any similar agreement or arrangement between the Republic of Ghana and the United States of America concerning the reception, detention, or transfer of involuntarily repatriated persons, constitutes an international agreement within the meaning of Article 75 of the Constitution, and that, not having been ratified by Parliament in accordance with Article 75(2), such agreement is void and of no legal effect.

3. A declaration that, on a true and proper interpretation of Article 75 of the 1992 Constitution of Ghana, the President of the Republic of Ghana acted unconstitutionally by implementing, giving effect to, or otherwise acting upon an agreement with the Government of the United States of America relating to the reception, detention, and onward transfer of involuntarily repatriated West African nationals into the Republic of Ghana, without first obtaining ratification of that agreement by an Act of Parliament or by a resolution of Parliament supported by the votes of more than one-half of all the Members of Parliament.

4. A declaration that the reception, detention, and transfer of involuntarily repatriated persons into the Republic of Ghana by the President of the Republic, pursuant to a Memorandum of Understanding or similar arrangement with the Government of the United States of America which has not been ratified by Parliament in accordance with Article 75 of the 1992 Constitution, is ultra vires the powers of the President and is therefore unconstitutional.

5. A declaration that, on a true and proper interpretation of Article 58(2) of the 1992 Constitution of Ghana, the President of the Republic is under a constitutional obligation to uphold, execute, and maintain the Constitution of Ghana and to ensure compliance with the Immigration Act, 2000 (Act 573).

6. A declaration that the President of the Republic of Ghana breached Article 58(2) of the 1992 Constitution and the Immigration Act, 2000 (Act 573) by implementing the purported Memorandum of Understanding with the Government of the United States of America to facilitate the reception and transfer of involuntarily repatriated persons into the Republic of Ghana, without complying with the constitutional and statutory procedures governing such actions.

7. A declaration that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America, by providing for the reception, detention and onward deportation of persons in need of international protection, including those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, constitutes a violation of Ghana's obligations under customary international law, including the peremptory norm (jus cogens) of non-refoulement, and is to that extent void and in contravention of Articles 40 and 73 of the 1992 Constitution.

8. A declaration that, to the extent that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America requires Ghana to facilitate or undertake the onward deportation of persons in need of international protection, including those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, such conduct constitutes participation in chain refoulement, in violation of the peremptory norm (jus cogens) of non-refoulement, and is to that extent unconstitutional and void for contravening Articles 40 and 73 of the 1992 Constitution.

9. A declaration that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America, by providing for the reception, detention and onward deportation of persons in need of international protection, including, those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, violates Ghana's binding treaty obligations under the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and is to that extent unconstitutional for contravening Article 40, Article 73 and Article 75(2) of the 1992 Constitution.

10. A declaration that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America, and its implementation resulting in the refoulement or onward deportation of persons in need of international protection,

including, those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, violates the express provisions of the Ghana Refugee Act, 1992 (PNDCL 305D), particularly Sections 1 and 11, and is to that extent unconstitutional and void for contravening Article 1(2), Article 40, Article 74(1), and Article 75(2) of the 1992 Constitution.

11. A declaration that, on a true and proper interpretation of Articles 11, 40, 73, 74 and 75 of the 1992 Constitution, the President of the Republic of Ghana acts ultra vires and in breach of the Constitution by concluding or implementing any agreement that violates peremptory norms of international law (jus cogens), including the absolute and non-derogable prohibition against refoulement; and that Parliament lacks the legal competence to ratify or otherwise give legal effect to such an agreement, as no act of ratification can cure the fundamental illegality or validate a treaty or arrangement that is void ab initio for being contrary to Ghana's international legal obligations and entrenched constitutional protections.

12. A declaration that the reception and detention in the Republic of Ghana of involuntarily repatriated persons pursuant to the purported Memorandum of Understanding with the Government of the United States of America is unlawful and unconstitutional, where such persons have not been charged with any offence, are held for prolonged periods without being presented before a court of competent jurisdiction, and are denied access to legal counsel, contrary to the provisions of Articles 14 and 19 of the 1992 Constitution of Ghana.

13. A declaration that the detention of involuntarily repatriated persons in deplorable, inhumane, and degrading conditions, including, the refusal to take ill detainees to hospital despite the presence of an ill-equipped infirmary, and the failure to provide female hygiene products to women detainees, exposure to psychological harm, and the failure to provide female hygiene products to women detainees, violates Article 15 of the 1992 Constitution of Ghana and Ghana's binding obligations under international human rights law, including the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

14. A declaration that the detention of civilian deportees in military custody or facilities, pursuant to the purported Memorandum of Understanding with the Government of the United States of

America, is unlawful and unconstitutional, as it effectively subjects civilians to military jurisdiction, contrary to the fundamental constitutional principle that military authority shall not be exercised over civilians, and in violation of Articles 14 and 19 of the 1992 Constitution of Ghana.

15. A Declaration that the reception, detention in Ghana, and onward transfer to their countries of origin of persons in need of international protection involuntarily repatriated from the United States of America, including individuals who have been granted deferral or withholding of removal under the United States' implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, constitutes a violation of Ghana's binding international legal obligations under Article 3 of the said Convention.

16. A Declaration that, the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment which has been ratified by Ghana pursuant to Article 75 of the 1992 Constitution, does not authorise or require the reception, detention or onward transfer of involuntarily repatriated ECOWAS nationals from third countries such as the United States of America.

17. A Declaration that, on a true and proper interpretation of the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment in light of Articles 14 and 15 of the 1992 Constitution, the Protocol guarantees the voluntary movement, residence and establishment of ECOWAS nationals and does not permit involuntary deportations or forced returns from non-ECOWAS states.

18. A Declaration that the implementation of any agreement or arrangement between the Government of Ghana and the United States of America that relies on the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment to facilitate the reception or onward transfer of involuntarily repatriated ECOWAS nationals is inconsistent with the rights to personal liberty and human dignity under Articles 14 and 15 of the 1992 Constitution.

19. A Declaration that the application of the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment to justify the involuntary reception and military detention of ECOWAS nationals involuntarily repatriated from the United States is inconsistent with Ghana's obligations under international human rights law, including the jus cogens norm of non-refoulement and Article 3 of the Convention Against Torture.

20. A Declaration that, even where ratified under Article 75 of the Constitution, international agreements such as the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment must be implemented in accordance with the Constitution and cannot be construed or applied in a manner that derogates from entrenched rights or *jus cogens* norms.

21. A Declaration that the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment does not permit a Member State to act as a transit, reception, or detention site for nationals of other ECOWAS States who have been involuntarily repatriated by a non-ECOWAS State, and that the Protocol does not override the requirements under Ghanaian law for lawful entry, valid documentation, or national security screening, as required by the Immigration Act, 2000 (Act 573), and the 1992 Constitution.

22. A Declaration that the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment regulates only the voluntary rights of entry, residence, and establishment of ECOWAS nationals between Member States, and does not provide any lawful basis for the Government of Ghana to conclude or implement an agreement with a non-Member State, such as the United States of America, for the reception, detention, or onward transfer of involuntarily repatriated ECOWAS nationals; and that any reliance on the said Protocol to justify such state conduct constitutes a violation of Articles 11(1)(b), 12(2), 14, and 75 of the 1992 Constitution.

23. A Declaration that the reception and continued detention in Ghana of involuntarily repatriated ECOWAS nationals without valid travel documents or international health certificates, pursuant to an agreement with a non-ECOWAS country, violates Article 3(1) of the ECOWAS Protocol A/P.1/5/79, and is inconsistent with Articles 11(1)(b), 12(2), 14, 40, 73 and 75 of the 1992 Constitution of Ghana.

24. A Declaration that the use of military detention facilities to hold the involuntarily repatriated ECOWAS nationals under colour of implementing the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment violates the civilian character of law enforcement and amounts to unlawful subjection of civilians to military jurisdiction, in breach of the 1992 Constitution.

25. An Order directing the Defendants herein to forthwith cease and desist from receiving, detaining, transferring, or otherwise facilitating the reception of any persons in need of international protection, whether or not such persons are nationals of West African or ECOWAS Member States, pursuant to the purported

Memorandum of Understanding between the Republic of Ghana and the Government of the United States of America, on the grounds that the said agreement and its implementation are unconstitutional, ultra vires, and in contravention of the 1992 Constitution of Ghana, the Immigration Act, 2000 (Act 573), Refugee Act, 1992 (PNDCL 305D), and Ghana's binding international obligations under the 1951 Refugee Convention, the 1967 Protocol, and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

26. An Order restraining the Defendants, their agents, assigns, privies, or any other persons acting under their authority or instruction from relying on or seeking to give effect to the said Memorandum of Understanding or any similar agreement or arrangement for the reception, detention, or onward transfer of persons in need of international protection, on the grounds that the agreement violates the peremptory norm (*jus cogens*) of non-refoulement and binding treaty obligations of the Republic of Ghana, and is therefore unconstitutional, null, void, and incapable of ratification under Article 75 of the 1992 Constitution.

27. An Order that the Defendants, their agents, assigns, privies, or any other persons acting under their authority or instruction, are restrained and prohibited from effecting, facilitating, or in any manner carrying out the removal, transfer, deportation, or repatriation of any persons currently within the territory of the Republic of Ghana who were involuntarily repatriated from the United States of America and are in need of international protection, including those who have been granted deferral or withholding of removal under the United States' implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, to their countries of origin or any other destination.

28. Any further or other orders as this Honourable Court may deem meet.

The capacity in which the Plaintiff is bringing the action is as follows:

The Plaintiff is a non-partisan civil society platform and social movement duly established under the laws of Ghana and brings this action pursuant to Article 2 of the 1992 Constitution which vests in it a right to bring an action in the Supreme Court alleging that an enactment or anything contained in or done under the authority of that or any other enactment; or any act or omission of any person, is inconsistent with, or is in contravention of a provision of the Constitution.

The address for service of the Plaintiff is as follows:

DEMOCRACY HUB **PLAINTIFF**
Suite 4, Morocco House
No. 195/10 Otinkorang Street,
North Kaneshie, Industrial Area
Accra

The address for service of Counsel for the Plaintiff is as follows:

Oliver Barker-Vormawor
Merton & Everett
94 Swaniker Street
Abelemkpe
Tel: 034-229-5174
secretariat@mertoneverett.com

The names and addresses of persons affected by this writ are as follows

THE ATTORNEY GENERAL **1ST DEFENDANT**
Office of the Attorney General
Ministries, Accra

THE MINISTER FOR FOREIGN AFFAIRS **2ND DEFENDANT**
Ministry of Foreign Affairs & Regional Integration
Flat 5, Agostinho Neto Rd,
Accra, Ghana

DATED AT MERTON & EVERETT LLP., AQUATEC PLACE, 2ND FLOOR, 94 SWANIKER STREET, ABELEMKPE, ACCRA THIS 13TH DAY OF OCTOBER 2025.

Oliver Barker-Vormawor
Merton & Everett
Chamber Registration No: ePP00812/23
Partnership TIN: C0063476185
Solicitors License No: eGAR23074/25
Solicitors BP Number: 3000003173
Solicitors TIN: P0001564978
Tel: 034-229-5174
secretariat@mertoneverett.com

THE REGISTRAR
SUPREME COURT
ACCRA.

AND FOR SERVICE ON THE ABOVE NAMED DEFENDANTS

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
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SUIT NO.

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Ministry of Foreign Affairs & Regional Integration
Flat 5, Agostinho Neto Rd,
Accra, Ghana

STATEMENT OF PLAINTIFF'S CASE

(Rule 46, Supreme Court Rules, 1996, C.I. 16 (As Amended by C.I. 24, 1999))

If it pleases your Lordships, this Statement of Case is made on behalf of the Plaintiff:

I. INTRODUCTION AND JURISDICTION

1. This Statement of Case is presented for and on behalf of the Plaintiff in support of the Writ brought under Articles 2 and 130 of the Constitution which invokes the original jurisdiction of this Honourable Court to interpret and enforce the Constitution.

2. Particularly, the Plaintiff's action prays the Court for the following reliefs:

    a. A declaration that, on a true and proper interpretation of Article 75 of the 1992 Constitution of Ghana, any agreement entered into by the President of the Republic of Ghana to receive or facilitate the transfer of West African nationals from the United States of America into the Republic of Ghana constitutes an international agreement within the meaning of Article 75, and as such, required prior ratification by an Act of Parliament or by a resolution of Parliament supported by the votes of more than one-half of all the Members of Parliament.

    b. A declaration that, on a true and proper interpretation of Article 75 of the 1992 Constitution of the Republic of Ghana, the purported Memorandum of Understanding (MOU), or any similar agreement or arrangement between the Republic of Ghana and the United States of America concerning the reception, detention, or transfer of involuntarily repatriated persons, constitutes an international agreement within the meaning of Article 75 of the Constitution, and that, not having been ratified by Parliament in accordance with Article 75(2), such agreement is void and of no legal effect.

    c. A declaration that, on a true and proper interpretation of Article 75 of the 1992 Constitution of Ghana, the President of the Republic of Ghana acted unconstitutionally by implementing, giving effect to, or otherwise acting upon an agreement with the Government of the United States of America relating to the reception, detention, and onward transfer of involuntarily repatriated West African nationals into the Republic of Ghana, without first obtaining ratification of that agreement by an Act of Parliament or by a resolution of Parliament supported by the votes of more than one-half of all the Members of Parliament.

    d. A declaration that the reception, detention, and transfer of involuntarily repatriated persons into the Republic of Ghana by the President of the Republic, pursuant to a Memorandum of Understanding or similar arrangement with the Government of the United States of America which has not been ratified by Parliament in accordance with Article 75 of the 1992 Constitution, is ultra vires the powers of the President and is therefore unconstitutional.

e. A declaration that, on a true and proper interpretation of Article 58(2) of the 1992 Constitution of Ghana, the President of the Republic is under a constitutional obligation to uphold, execute, and maintain the Constitution of Ghana and to ensure compliance with the Immigration Act, 2000 (Act 573).

f. A declaration that the President of the Republic of Ghana breached Article 58(2) of the 1992 Constitution and the Immigration Act, 2000 (Act 573) by implementing the purported Memorandum of Understanding with the Government of the United States of America to facilitate the reception and transfer of involuntarily repatriated persons into the Republic of Ghana, without complying with the constitutional and statutory procedures governing such actions.

g. A declaration that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America, by providing for the reception, detention and onward deportation of persons in need of international protection, including those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, constitutes a violation of Ghana's obligations under customary international law, including the peremptory norm (jus cogens) of non-refoulement, and is to that extent void and in contravention of Articles 40 and 74(1) of the 1992 Constitution.

h. A declaration that, to the extent that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America requires Ghana to facilitate or undertake the onward deportation of persons in need of international protection, including those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, such conduct constitutes participation in chain refoulement, in violation of the peremptory norm (jus cogens) of non-refoulement, and is to that extent unconstitutional and void for contravening Articles 40 and 74(1) of the 1992 Constitution.

i. A declaration that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America, by providing for the reception, detention and onward deportation of persons in need of international protection, including, those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, violates Ghana's binding treaty obligations under the 1951

Convention Relating to the Status of Refugees, its 1967 Protocol, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and is to that extent unconstitutional for contravening Article 40, Article 75(2) and Article 74(1) of the 1992 Constitution.

j. A declaration that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America, and its implementation resulting in the refoulement or onward deportation of persons in need of international protection, including, those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, violates the express provisions of the Ghana Refugee Act, 1992 (PNDCL 305D), particularly Sections 1 and 11, and is to that extent unconstitutional and void for contravening Article 1(2), Article 40, Article 74(1), and Article 75(2) of the 1992 Constitution.

k. A declaration that, on a true and proper interpretation of Articles 11, 40, 74 and 75 of the 1992 Constitution, the President of the Republic of Ghana acts ultra vires and in breach of the Constitution by concluding or implementing any agreement that violates peremptory norms of international law (jus cogens), including the absolute and non-derogable prohibition against refoulement; and that Parliament lacks the legal competence to ratify or otherwise give legal effect to such an agreement, as no act of ratification can cure the fundamental illegality or validate a treaty or arrangement that is void ab initio for being contrary to Ghana's international legal obligations and entrenched constitutional protections.

l. A declaration that the reception and detention in the Republic of Ghana of involuntarily repatriated persons pursuant to the purported Memorandum of Understanding with the Government of the United States of America is unlawful and unconstitutional, where such persons have not been charged with any offence, are held for prolonged periods without being presented before a court of competent jurisdiction, and are denied access to legal counsel, contrary to the provisions of Articles 14 and 19 of the 1992 Constitution of Ghana.

m. A Declaration that the reception, detention in Ghana, and onward transfer to their countries of origin of persons in need of international protection involuntarily repatriated from the United States of America, including individuals who have been granted deferral or withholding of removal under the United States' implementation of the Convention against Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, constitutes a violation of Ghana's binding international legal obligations under Article 3 of the said Convention.

n. A declaration that the detention of involuntarily repatriated persons in deplorable, inhumane, and degrading conditions, including, the refusal to take ill detainees to hospital despite the presence of an ill-equipped infirmary, and the failure to provide female hygiene products to women detainees, exposure to psychological harm, and the failure to provide female hygiene products to women detainees, violates Article 15 of the 1992 Constitution of Ghana and Ghana's binding obligations under international human rights law, including the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

o. A declaration that the detention of civilian deportees in military custody or facilities, pursuant to the purported Memorandum of Understanding with the Government of the United States of America, is unlawful and unconstitutional, as it effectively subjects civilians to military jurisdiction, contrary to the fundamental constitutional principle that military authority shall not be exercised over civilians, and in violation of Articles 14 and 19 of the 1992 Constitution of Ghana.

p. A Declaration that, the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment which has been ratified by Ghana pursuant to Article 75 of the 1992 Constitution, does not authorise or require the reception, detention or onward transfer of involuntarily repatriated ECOWAS nationals from third countries such as the United States of America.

q. A Declaration that, on a true and proper interpretation of the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment in light of Articles 14 and 15 of the 1992 Constitution, the Protocol guarantees the voluntary movement, residence and establishment of ECOWAS nationals and does not permit involuntary deportations or forced returns from non-ECOWAS States.

r. A Declaration that the implementation of any agreement or arrangement between the Government of Ghana and the United States of America that relies on the ECOWAS Protocol

A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment to facilitate the reception or onward transfer of involuntarily repatriated ECOWAS nationals is inconsistent with the rights to personal liberty and human dignity under Articles 14 and 15 of the 1992 Constitution.

s. A Declaration that the application of the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment to justify the involuntary reception and military detention of ECOWAS nationals involuntarily repatriated from the United States is inconsistent with Ghana's obligations under international human rights law, including the jus cogens norm of non-refoulement and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

t. A Declaration that, even where ratified under Article 75 of the Constitution, international agreements such as the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment must be implemented in accordance with the Constitution and cannot be construed or applied in a manner that derogates from entrenched rights or *jus cogens* norms.

u. A Declaration that the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment does not permit a Member State to act as a transit, reception, or detention site for nationals of other ECOWAS States who have been involuntarily repatriated by a non-ECOWAS State, and that the Protocol does not override the requirements under Ghanaian law for lawful entry, valid documentation, or national security screening, as required by the Immigration Act, 2000 (Act 573), and the 1992 Constitution.

v. A Declaration that the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment regulates only the voluntary rights of entry, residence, and establishment of ECOWAS nationals between Member States, and does not provide any lawful basis for the Government of Ghana to conclude or implement an agreement with a non-Member State, such as the United States of America, for the reception, detention, or onward transfer of involuntarily repatriated ECOWAS nationals; and that any reliance on the said Protocol to justify such state conduct constitutes a violation of Articles 11(1)(b), 12(2), 14, and 75 of the 1992 Constitution.

w. A Declaration that the reception and continued detention in Ghana of involuntarily repatriated ECOWAS nationals

without valid travel documents or international health certificates, pursuant to an agreement with a non-ECOWAS country, violates Article 3(1) of the ECOWAS Protocol A/P.1/5/79, and is inconsistent with Articles 11(1)(b), 12(2), 14, 40, 74 and 75 of the 1992 Constitution of Ghana.

x. A Declaration that the use of military detention facilities to hold involuntarily repatriated ECOWAS nationals under colour of implementing the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment violates the civilian character of law enforcement and amounts to unlawful subjection of civilians to military jurisdiction, in breach of the 1992 Constitution.

y. An Order directing the Defendants herein to forthwith cease and desist from receiving, detaining, transferring, or otherwise facilitating the reception of any persons in need of international protection, whether or not such persons are nationals of West African or ECOWAS Member States, pursuant to the purported Memorandum of Understanding between the Republic of Ghana and the Government of the United States of America, on the grounds that the said agreement and its implementation are unconstitutional, ultra vires, and in contravention of the 1992 Constitution of Ghana, the Immigration Act, 2000 (Act 573), Refugee Act, 1992 (PNDCL 305D), and Ghana's binding international obligations under the 1951 Refugee Convention, the 1967 Protocol, and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

z. An Order restraining the Defendants, their agents, assigns, privies, or any other persons acting under their authority or instruction from relying on or seeking to give effect to the said Memorandum of Understanding or any similar agreement or arrangement for the reception, detention, or onward transfer of persons in need of international protection, on the grounds that the agreement violates the peremptory norm (*jus cogens*) of non-refoulement and binding treaty obligations of the Republic of Ghana, and is therefore unconstitutional, null, void, and incapable of ratification under Article 75 of the 1992 Constitution.

aa. An order that the Defendants, their agents, assigns, privies, or any other persons acting under their authority or instruction, are restrained and prohibited from effecting, facilitating, or in any manner carrying out the removal, transfer, deportation, or repatriation of any persons currently within the territory of the Republic of Ghana who were involuntarily repatriated from the United States of America

and are in need of international protection, including those who have been granted deferral or withholding of removal under the United States' implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, to their countries of origin or any other destination.

bb. Any further or other orders as this Honourable Court may deem meet.

3. This Honourable Court has consistently affirmed the right of public-spirited citizens to invoke its original jurisdiction for the enforcement of the Constitution. In *Adjei-Ampofo v. Accra Metropolitan Assembly & Attorney-General (No. 1) [2007-2008] 1 SCGLR 610*, this Court established that Article 2(1) empowers any such citizen to enforce constitutional mandates for the collective public good. This principle, distinguishing between public interest actions under Article 2(1) and the enforcement of personal fundamental human rights under Article 33 (which requires a demonstration of personal interest), has been reiterated in numerous authoritative decisions, including *Sam (No. 2) v. Attorney-General [2000] SCGLR 305* and *Federation of Youth Association of Ghana v. Public Universities of Ghana & Others [2010] SCGLR 265*.

4. The Plaintiff contends that the purported Memorandum of Understanding concluded between the Republic of Ghana and the United States of America, as well as the associated acts and omissions of the State, are inconsistent with and in contravention of the 1992 Constitution of Ghana, raising issues of grave constitutional significance and profound public interest.

5. This Honourable Court is vested with exclusive original jurisdiction under Articles 2(1) and 130(1)(a) of the 1992 Constitution to hear and determine all matters relating to the enforcement or interpretation of the Constitution.

6. The Plaintiff avers that the purported Memorandum of Understanding between the Republic of Ghana and the United States of America, as well as the actions of officials of the Ghana Armed Forces, the Ghana Immigration Service in receiving removed persons in need of international protection pursuant to the said MOU, are inconsistent with and in contravention of specific provisions of the Constitution.

7. It is well established that the exercise of this Court's jurisdiction under Article 2(1) is not contingent only upon the existence of ambiguity in the constitutional provisions invoked, as affirmed in *National Media Commission v. Attorney-General [2000] SCGLR 1*. The Court is also constitutionally mandated to pronounce on all matters involving allegations of constitutional infractions, regardless

of whether the relevant provisions are clear or contested, a position that was further reinforced in *Bomfeh v. Attorney-General [2017] Writ No. J1/14/2017*.

8. This Honourable Court also has jurisdiction to entertain an action invoking its interpretative authority where the Plaintiff does not seek to vindicate a personal violation of fundamental rights, but rather challenges the constitutionality of a systemic or widespread governmental practice. In such cases, where the relief sought is a declaratory pronouncement that the practice or omission is inconsistent with or in contravention of the Constitution, the proper forum is the Supreme Court under Articles 2(1)(b) and 130(1)(a) of the 1992 Constitution. This remains true even where the impugned conduct implicates rights guaranteed under Chapter 5 of the Constitution. The principle was affirmed in *Federation of Youth Associations of Ghana (FEDYAG) v. Public Universities of Ghana & Ors; Minister of Education, National Council for Tertiary Education and Attorney-General [2010] DLSC4150*, where the Supreme Court held that systemic or generalised practices by public authorities that raise constitutional issues fall squarely within the exclusive original jurisdiction of this Court.

9. It is further well established that the exclusive original jurisdiction of this Honourable Court is not ousted merely because some of the reliefs sought do not, on their face, directly invoke specific provisions of the Constitution. Where the principal or dominant claim raises issues of constitutional enforcement or interpretation, the Court retains jurisdiction to determine the entire action, including ancillary or consequential reliefs.

10. As the Supreme Court has consistently held, a plaintiff cannot be denied access to this Court simply because one or more of the reliefs sought may be framed in non-constitutional terms. What matters is whether the cause of action, taken as a whole, implicates the Constitution. Accordingly, the inclusion of non-constitutional or ancillary claims does not derogate from the Court's jurisdiction under Articles 2(1) and 130(1)(a) of the 1992 Constitution.

11. In effect, it is the dominant purpose or the real issue in the action that determines the forum. If the real issue raises constitutional interpretation or enforcement, the mere presence of non-constitutional claims does not defeat the Supreme Court's original jurisdiction under Article 2(1)

12. To meet the ends of this action, this Statement of case is divided into the following parts:

    a. The particulars of the parties
    b. The facts of the case

c. The Plaintiff's legal arguments, and
d. The Plaintiff's concluding prayer

II. THE PARTICULARS OF THE PARTIES

13. The Plaintiff is a non-partisan civil society platform and social movement duly established under the laws of Ghana. It is a recognised civic movement engaged in constitutional advocacy, public interest litigation, environmental protection and the promotion of democratic governance and the rule of law.

14. The 1st Defendant is the Attorney-General, the principal legal advisor to the Government of Ghana and the proper party to be sued in all civil proceedings against the State, in accordance with Article 88(5) of the Constitution.

15. The 2nd Defendant is a public officer appointed under Article 78 of the 1992 Constitution and the political head of the Ministry of Foreign Affairs and Regional Integration, which is the principal organ of state responsible administratively and executively for the initiation, formulation, co-ordination and management of Ghana's Foreign Policy.

III. FACTS OF THE CASE

16. In or about September 2025, the Minister for Foreign Affairs and Regional Integration (2nd Defendant) informed the public that the Government of Ghana had reached an understanding with the Government of the United States of America (USA) as part of wider negotiations aimed at easing U.S.-imposed tariffs and immigration restrictions against Ghana.

17. The said understanding involved Ghana's agreement to receive and facilitate the onward deportation of West African nationals removed from the United States to their respective countries. According to the 2nd Defendant, this arrangement was embodied in what he described as a "Memorandum of Understanding" (MOU) - and not a "full agreement" - between the two governments. Pursuant to this MOU, the Government of Ghana agreed to receive at least 40 West African nationals involuntarily repatriated from the USA into Ghana for onward transfer to their countries of origin.

18. The 2nd Defendant, in his public remarks, further stated that the 1st Defendant, the Attorney-General and Minister for Justice, had advised Cabinet that the said Memorandum of Understanding did not constitute a "full agreement" within the meaning of Article 75 of the 1992 Constitution of Ghana, and thus did not require ratification

by Parliament. This position was cited to justify the implementation of the MOU without parliamentary approval.

19. Consequently, on 6th September 2025, fourteen (14) West African immigrants - all of whom had previously been detained in U.S. Immigration and Customs Enforcement (ICE) facilities - were involuntarily repatriated to Ghana and received at Kotoka International Airport by officers of the Ghana Immigration Service and the Ghana Armed Forces. Of the 14, three (3) individuals were involuntarily repatriated that same night to The Gambia and Nigeria respectively, while the remaining eleven (11) were transferred to Bundase Military Camp, where they were placed under armed military custody.

20. At the time of their removal from the United States, the deportees (11) individuals had *various forms of protection against removal to their countries of origin* under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, or other forms of international protection. They had been issued with temporary protection or stay of removal orders by competent U.S. immigration authorities. Upon arrival in Ghana, they were received by officials of the Ghana Immigration Service and the Ghana Armed Forces and were subsequently detained at the Bundase military facility without being presented before any court of law or provided the opportunity to challenge their removal or continued detention.

21. The Bundase Military Training Camp, where the 11 deportees were detained under the supervision of armed personnel, is the same location identified in the official records of the Special Investigation Board established in 1982 as the site where three High Court judges and a retired army officer were taken and killed on 30th June 1982.

22. According to the 2nd Defendant, the purpose of the reception of these deportees was to detain, deport, and facilitate their involuntary transfer to their respective countries of origin, without their consent and contrary to their express wishes.

23. Despite the fact that the individuals had been ***granted protection against removal to their countries of origin by the US courts under the Convention Against Torture, and had expressed fear of threat to their lives if returned to their countries of origin***, officials of the Ghana Immigration Service arranged for consular representatives from the respective countries of origin of the deportees to meet with them at the detention facility. During these encounters, the consular representatives collected the personal details of the individuals, including names, birthplaces, and other identifying information.

24. A second batch of approximately fourteen (14) deportees arrived in Ghana on 19th September 2025 and were subjected to similar treatment. These individuals who were also civilians were detained at the same military installation at Bundase under heavy military guard.

25. During their detention in Ghana, the deportees were not formally charged or brought before any court of law, directly violating their right to personal liberty, procedural fairness and judicial oversight guaranteed under both Ghanaian law and international human rights law.

26. The individuals detained at the Bundase Military Training Camp were housed in a large hall that had not been cleaned prior to their arrival. The facility was visibly dusty and unkempt, with cobwebs across the walls and ceilings, and lacked basic hygiene standards. Detainees were not provided with bed sheets, pillows, or other bedding materials till after persistent demand, and access to running water was limited. The environment was not conducive to safe or humane habitation.

27. Several of the detainees fell ill during their detention, including cases of suspected malaria. Despite repeated requests, they were not transported to any medical facility outside the camp. Instead, the military authorities compelled them to seek treatment at a poorly equipped infirmary located within the detention site. The infirmary lacked essential medical supplies and was insufficient to meet the needs of the sick detainees.

28. Female detainees were not provided with appropriate hygiene products during their stay. None of the detainees were allowed to contact their families, and no arrangements were made for access to legal counsel.

29. Throughout the period of detention, the facility was heavily guarded by armed soldiers, some of whom reportedly taunted the deportees repeatedly that they would shoot the deportees if they attempted to leave the premises.

IV. PLAINTIFF'S LEGAL ARGUMENTS

30. The crux of the Plaintiff's argument is

    a. That on a true and proper interpretation of Articles 73 and 75 of the 1992 Constitution, the power of the President to negotiate and enter into international agreements, and the power of Parliament to ratify such agreements, do not extend to agreements that are contrary to peremptory norms of international law (*jus cogens*). Accordingly, no act of the Executive or Legislature can validate an international

agreement that facilitates or results in violations of non-derogable principles such as the prohibition against torture, arbitrary detention, and refoulement. Such agreements are unconstitutional, null, and void ab initio.

b. That in the alternative, and without prejudice to the foregoing, if this Honourable Court were to find that Article 75 of the 1992 Constitution does not, in and of itself, preclude the conclusion or ratification of agreements that violate *jus cogens* norms, the Plaintiff contends that the Memorandum of Understanding (MOU) in question nonetheless constitutes an "international agreement" within the meaning of Article 75. Consequently, it required prior parliamentary approval to be valid and enforceable. The failure of the Executive to lay the said MOU before Parliament for approval renders its implementation unconstitutional, inoperative, and of no legal effect.

c. That the implementation of the purported Memorandum of Understanding (MOU) between the Government of Ghana and the Government of the United States of America has resulted in clear and continuing violations of fundamental human rights guaranteed under the 1992 Constitution. In particular, it violates:

    i. Article 14 – by subjecting individuals to arbitrary arrest and detention without charge or judicial oversight;

    ii. Article 15 – by exposing individuals to inhumane and degrading treatment, including detention in unsanitary and overcrowded military facilities, denial of medical care, and verbal threats of violence;

    iii. Article 17 – by subjecting a particular group of individuals, namely involuntarily repatriated ECOWAS nationals, to discriminatory treatment and exclusion from the protection of law; and

    iv. Article 19 – by denying these individuals access to legal counsel, the right to be heard, and other elements of fair trial and due process protections.

d. That the implementation of the purported Memorandum of Understanding (MOU) between the Government of Ghana and the Government of the United States of America violates Ghana's binding obligations under international law, including:

i. Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which prohibits torture and cruel, inhuman or degrading treatment or punishment;

ii. Article 9(1) and (4) of the ICCPR, which guarantee the right to liberty and security of person, and the right to challenge the lawfulness of detention before a court;

iii. Article 13 of the ICCPR, which provides that an alien lawfully in the territory of a State Party may be expelled only pursuant to a decision reached in accordance with law and shall be allowed to submit reasons against his expulsion and to have his case reviewed by a competent authority;

iv. Article 3(1) of the Convention Against Torture (CAT), which provides that no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture;

v. Article 33(1) of the 1951 Convention Relating to the Status of Refugees, which prohibits States from expelling or returning ("refouler") a refugee in any manner whatsoever to a territory where their life or freedom would be threatened;

vi. Ghana's domestic obligations under the Refugee Act, 1992 (PNDCL 305D), which incorporates the principle of non-refoulement into national law and guarantees the right to seek protection and be protected from return to territories where there is risk of persecution; and

vii. Article II(3) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) which expressly provides:

"No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened…"

e. That the Government's reliance on the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment as justification for the reception of involuntarily repatriated persons from third-countries is constitutionally and legally untenable. The said Protocol is designed to facilitate voluntary, lawful movement of ECOWAS nationals among Member States, subject to conditions

including valid travel documentation, health certification, and national security considerations, as provided under Article 3(1) of the Protocol. It does not authorise involuntary removals or forced transfers of persons from non-ECOWAS countries, nor does it provide any legal basis for a Member State, such as Ghana, to serve as a transit, detention, or holding site for such individuals at the request of third countries. Moreover, nothing in the Protocol or its supplementary texts derogates from the requirement under Article 75 of the 1992 Constitution for parliamentary approval of international agreements, or Ghana's binding obligations under international human rights and refugee law. Accordingly, the invocation of the ECOWAS Protocol to validate the reception, detention and forced return of involuntarily repatriated persons from third-countries is inconsistent with both the letter and spirit of the Protocol and violates the constitutional limits on executive power under Articles 11, 40, and 75 of the Constitution.

f. That the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment, even if ratified and domesticated, cannot be interpreted or applied in a manner that justifies the violation of peremptory norms of international law (jus cogens). The Protocol does not displace or override Ghana's binding obligations under international human rights and humanitarian law, particularly the principle of non-refoulement, the prohibition of torture, and the right to liberty and due process, all of which enjoy jus cogens status.

g. Accordingly, any interpretation of the ECOWAS Protocol that would authorise the involuntary transfer, detention, and forced return or exposure to ill-treatment of individuals in need of international protection, especially without judicial safeguards, would be legally impermissible. Under Articles 1(2), 40(d), and 75(2) of the 1992 Constitution of Ghana, the Republic is bound to conduct its international relations in accordance with international law, and no protocol or agreement may be used as a shield to justify acts that are inherently unlawful or which violate non-derogable rights protected under international and domestic law.

h. That the use of military facilities and personnel to detain civilian deportees, including persons in need of international protection, and individuals entitled to international protection, constitutes an unlawful extension of military jurisdiction over civilians, contrary to Ghana's constitutional framework and well-established principles of human rights law. Under Article 210(3) of the 1992 Constitution, the Armed Forces of Ghana are restricted in their operations to the defence of the nation

and shall not exercise any power of arrest or detention of civilians except as expressly provided by law. The detention of civilians, without charge, trial, or access to legal counsel, in a military installation such as the Bundase military training camp, under the guard of armed soldiers, violates Articles 14 and 19 of the Constitution, which guarantee the right to personal liberty and due process. It also offends the principle of civilian supremacy over the military, a foundational tenet of Ghana's democratic constitutional order. Such use of military custody for immigration or deportation enforcement purposes is inconsistent with international human rights standards, including Article 9 of the International Covenant on Civil and Political Rights (ICCPR), and undermines the rule of law and civilian protection.

i. That there is no constitutional basis under Articles 14, 19, and 23 of the 1992 Constitution for the detention of individuals who have neither violated any provision of Ghanaian law nor been accused or convicted of any crime. Article 14 permits deprivation of liberty only in specific and limited circumstances, such as following a conviction by a court of competent jurisdiction, or for the purpose of bringing a person before a court on reasonable suspicion of having committed a criminal offence. In the absence of any such lawful justification, the detention of persons solely on the basis of an executive arrangement with a foreign government, without judicial warrant, charge, or trial, constitutes arbitrary and unlawful detention. It also breaches Article 19, which guarantees the presumption of innocence and the right to a fair trial, and Article 23, which requires that administrative bodies act fairly, reasonably, and in accordance with law. The detention regime imposed under the said MOU thus falls afoul of constitutional guarantees of liberty, legality, and due process.

The Constitution Does Not Permit the Conclusion or Ratification of International Agreements That Violate Peremptory Norms of International Law (Jus Cogens)

31. Peremptory norms of international law, also known as *jus cogens*, are universally recognised principles from which no derogation is permitted. These norms reflect the fundamental values of the international community and include prohibitions against torture, arbitrary detention, slavery, genocide, crimes against humanity, and the principle of *non-refoulement* under refugee law. Additionally peremptory norms such as the prohibition from cruel, inhuman or degrading treatment are reflected in the International Covenant on Civil and Political Rights (ICCPR), to which Ghana is a State Party.

The ICCPR is therefore legally binding on the Government of Ghana under International law.

32. Furthermore, this principle finds echo in and has been enshrined in the 1992 constitution of Ghana, particularly under Article 15, which guarantees the inviolability of human dignity and expressly prohibits any cruel, inhuman or degrading treatment or punishment.

33. Article 53 of the Vienna Convention on the Law of Treaties (VCLT), which Ghana has ratified, makes clear that:

> *"A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law."*

34. Hence, any treaty or agreement concluded by Ghana that conflicts with *jus cogens* is void *ab initio* and cannot be validated, even by parliamentary ratification. This means that any agreement, even if it has undergone parliamentary ratification under Ghanaian law, is void if it purports to permit, condone, or facilitate actions that violate peremptory norms. The legal incapacity to derogate from these norms cannot be cured by any internal constitutional or statutory process. The bar is absolute.

35. Article 75(2) of the Constitution provides:

> *"A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by—*
> (a) *Act of Parliament; or*
> (b) *a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament."*

36. This provision regulates the *procedural legitimacy* of international agreements. However, it does not license the executive or Parliament to ratify agreements that are substantively illegal or unconstitutional.

37. If Article 75 is construed as allowing such an agreement to be lawfully ratified, it would have the absurd consequence of allowing the Executive and Parliament to contract Ghana out of its constitutional and international human rights obligations. Such an interpretation violates the basic structure of the Constitution, which is grounded in the rule of law, human dignity, and constitutionalism. Also, this interpretation would render the Constitution internally contradictory and enable the State to contract out of its core human rights obligations, an outcome that is legally and morally untenable.

38. In line with Article 11(1)(e) of the Constitution, which incorporates customary international law and international treaties duly ratified by Parliament into the laws of Ghana, the Constitution must be interpreted in harmony with Ghana's international legal

obligations, including those prohibiting derogation from *jus cogens* norms.

39. It is trite law that the Constitution should be interpreted in a manner that is consistent with Ghana's international obligations. In *Tuffuor v. Attorney-General [1980] GLR 637*, the Supreme Court of Ghana laid down the rule that the Constitution must be given a broad and purposive interpretation that furthers its values and the rights it enshrines. See also *CHRAJ v. Attorney General and Others [2011] GHASC 19 (6 April 2011).*

40. Section 10 of the Interpretation Act, 2009 (Act 959) provides in this connection that a Court shall construe or interpret a provision of the Constitution or any other law in a manner:

    a. that promotes the rule of law and the values of good governance,
    b. that advances human rights and fundamental freedoms,
    c. that permits the creative development of the provisions of the Constitution and the laws of Ghana, and
    d. that avoids technicalities and recourse to niceties of form and language which defeat the purpose and spirit of the Constitution and of the laws of Ghana.

41. Further, the same provision, requires the Court to take into account as an aid of construction, a relevant treaty, agreement, convention or any other international instrument which has been ratified by Parliament or is referred to in the enactment of which copies have been presented to Parliament or where the Government is a signatory to the treaty or the other international agreement; and the *travaux preparatoires* or preparatory work relating to the treaty or the agreement

42. In effect, Article 75 must be interpreted in harmony with the Constitution's foundational values. A treaty that undermines constitutional rights, violates peremptory norms, and imposes obligations in breach of binding international law, cannot be legitimised through Article 75. The Constitution is not a suicide pact; its procedures must be read as subject to its substantive principles, not as overrides of those principles.

43. Ghana is bound under international law by the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the 1951 Refugee Convention, all of which prohibit the return of persons to countries where they may be subjected to torture or persecution. These obligations are reflected in Ghanaian law and must inform the interpretation and application of Article 75.

44. Therefore:
    a. Article 75 cannot validly be used to ratify a treaty that violates jus cogens norms.
    b. Even if Parliament were to ratify such a treaty, it would remain void for illegality and unconstitutionality.
    c. Implementation of such an agreement is unconstitutional and must be struck down by this Honourable Court.

Non-Refoulement as a Peremptory Norm of International Law

45. The principle of non-refoulement prohibits States from extraditing, deporting, expelling or otherwise returning a person to a country where their life or freedom would be threatened, or where there are substantial grounds for believing that they would risk torture, cruel, inhuman or degrading treatment, enforced disappearance, or other irreparable harm

46. The principle is enshrined in Article 33(1) of the 1951 Refugee Convention, which states:

> *"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"*

47. The principle is similarly reaffirmed in Article II(3) of the 1969 OAU Refugee Convention, which applies even more broadly and without limitation on security grounds.

48. Non-refoulement obligations are also explicitly provided for under:
    a. Article 3(1) of the Convention Against Torture (CAT): prohibits expelling, returning or extraditing a person to another State where there are substantial grounds for believing they would be in danger of torture.
    b. Article 16 of the International Convention on the Protection of All Persons from Enforced Disappearance (ICPPED).
    c. Articles 6 and 7 of the ICCPR (Right to Life and Freedom from Torture): read together by the Human Rights Committee to impose an obligation not to deport, involuntarily repatriate, extradite or otherwise transfer a person to a country where there is a real risk of irreparable harm.

49. The principle is reflected in Article 3 of the European Convention on Human Rights (ECHR), Article 22(8) of the American Convention on Human Rights, Article 28 of the Arab Charter on Human Rights and Article 19(2) of the EU Charter of Fundamental Rights. The African Commission on Human and Peoples' Rights has also urged States to respect the principle for all individuals regardless of status.

50. Because of its consistent and widespread inclusion in universal and regional instruments, and its application by treaty bodies and courts, the principle of non-refoulement is widely recognised as a rule of customary international law. The UNHCR Executive Committee stated that it is a "fundamental humanitarian principle" accepted generally by States.

51. Scholarly authority and international jurisprudence have gone further, recognising non-refoulement - especially where linked to the prohibition of torture and arbitrary deprivation of life - as a peremptory norm (jus cogens).

    a. J. Allain, *The Jus Cogens Nature of Non-Refoulement*, International Journal of Refugee Law (2001), p. 533.
    b. G.S. Goodwin-Gill, *The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement*, International Journal of Refugee Law (2011), pp. 443–444.
    c. The Inter-American Court of Human Rights has affirmed that non-refoulement has attained this character, especially in the context of torture and ill-treatment (Advisory Opinion OC-18/03, Concurring Opinion of Judge Cançado Trindade)

52. The peremptory status of *non-refoulement* has also been confirmed by various international boodies:
    a. The UN General Assembly A/RES/52/132 (1998) recalled "that the principle of non-refoulement is not subject to derogation"
    b. The International Law Commission (ILC), in its 2022 conclusions on peremptory norms (*jus cogens*), specifically identified *non-refoulement* in the context of torture and ill-treatment as a rule of *jus cogens*.
    c. In the Prosecutor v. Katanga, Case No. ICC-01/04-01/07-34-05-tENg, Decision on the Application for the Interim Release of Detained Witnesses of 1 October 2013, Trial Chamber II, International Criminal Court, at para. 30 stated that the "peremptoriness [of the principle of non-refoulement] finds increasing recognition among States".
    d. The Human Rights Committee (HRC) has stated in *General Comment No. 20* (1992) that States must not expose individuals to the danger of torture or ill-treatment through return or expulsion.
    e. The European Court of Human Rights (e.g., Soering v. UK, 1989) and African Commission on Human and Peoples' Rights (e.g., Huri-Laws v. Nigeria, 2000) have affirmed non-refoulement as an absolute right.
    f. The Committee Against Torture has ruled in numerous communications (e.g., Agiza v. Sweden, CAT/C/34/D/233/2003) that deporting persons to countries where they risk torture violates peremptory obligations.

g. In his 2005 report to the United Nations General Assembly, the Special Rapporteur on Torture, Manfred Nowak, underscored that the *principle of non-refoulement* has repeatedly been violated in cases involving transfers to countries where individuals are at risk of torture. He described the obligation as absolute and non-derogable, emphasising that the prohibition against torture is non-negotiable and cannot be justified under any circumstances. He affirmed that this includes "an absolute ban, in accordance with Article 3 of the Convention [Against Torture], on transferring any person to another jurisdiction where there are reasonable grounds to believe that the person is at risk of torture." In support of this view, he referenced the European Court of Human Rights' decision in *Soering v. United Kingdom*, which held that *non-refoulement* is encompassed within the absolute prohibition of torture under Article 3 of the European Convention on Human Rights. This interpretation has been consistently reaffirmed by the United Nations General Assembly, which, in Resolution 52/132, declared unequivocally that "the principle of non-refoulement is not subject to derogation."
h. The Office of the United Nations High Commissioner for Refugees in its 2007 Advisory Opinion, states that non-refoulement is "a fundamental and inherent component" of the jus cogens prohibition of torture. As such, it imposes "an absolute ban on any form of forcible return to a danger of torture" that is binding on all states, including those not party to the relevant treaties.

53. Together, these sources create a firm normative consensus that *non-refoulement* particularly where there is a risk of torture or cruel, inhuman, or degrading treatment has attained the status of jus cogens. Ghana, as a party to the CAT, ICCPR, and the Refugee Convention, and a member of the African Union and United Nations, as well as by its own Constitution is bound by these obligations.

54. Therefore, no executive agreement, no parliamentary ratification, and no internal national security justification can override this prohibition. Any agreement under Article 75 of the Constitution that enables such transfers offends both international and Ghanaian constitutional law, and is null and void for inconsistency with Ghana's legal obligations under both systems.

Alternative Argument: Unconstitutionality of the MOU under Article 75 of the 1992 Constitution

55. Article 75 of the 1992 Constitution, provides as follows:

"(1) The President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana.

(2) A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by –

(a) Act of Parliament; or

(b) a resolution of Parliament supported by the votes of more than one-half of the members of Parliament.

56. On its plain and ordinary meaning, Article 75 imposes a mandatory dual process for all international agreements: execution by the President and ratification by Parliament. Unless and until ratified by Parliament, such agreements have no force of law in Ghana.

57. This provision does not grant discretion to the Executive to determine which agreements require ratification. To interpret Article 75 otherwise would impermissibly usurp Parliament's constitutional role and undermine the doctrine of separation of powers.

58. Article 75(2) is cast in mandatory terms. It does not merely give Parliament an option to ratify but imposes a constitutional condition precedent to the validity of any treaty, agreement or convention executed by or under the authority of the President. Unless and until the agreement is ratified in accordance with Article 75(2), it has no legal force within Ghana. See *Margaret Banful & Henry Nana Boakye v. Attorney-General & Minister for the Interior* (J1/7/2016, unreported), per Akuffo CJ (as she then was), where this Honourable Court emphasised that any international agreement entered into without parliamentary ratification is unconstitutional.

59. The Defendants have sought to avoid Article 75 by designating the instrument in question as a "Memorandum of Understanding" (MOU), suggesting it does not rise to the level of a formal treaty.

60. This argument is misplaced. As defined in Article 1 of the Vienna Convention on the Law of Treaties, 1969 defines a treaty as:

an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

61. It can therefore be logically inferred that an agreement, regardless of the form it takes or the nomenclature given to it, once concluded between States and governed by international law, falls within the meaning of an international agreement contemplated under Article 75 of the 1992 Constitution.

62. Despite the attempt by the Defendants to dress the agreement as a Memorandum of Understanding which has not been elevated to a full agreement, the MOU meets the legal requirement under the Article 75 of the Constitution and consequently requires parliamentary ratification, contrary to the Defendants' assertions.

63. In *Margaret Banful & Henry Nana Boakye v. Attorney-General & Minister for the Interior* (J1/7/2016, unreported), Akuffo CJ (as she then was) stated as follows:

"It is also clear that the instruments referred to relate to Ghana's international relations with other countries or groups of countries and the Article requires that such instruments must be ratified by Parliament. The Constitution makes no mention of any formal distinctions that are dependent on the formality with which such an instrument is formatted or brought into being…there is no doubt that where, by various forms of documentation, the Government of Ghana binds the Republic of Ghana to certain obligations in relation to another country or group of countries, an international agreement comes into existence…despite the form in which it has been drafted and the text couched, it is intended to create an obligation on the part of Ghana to the USA whereby, inter alia, Ghana binds herself to 'receive' and 'resettle' the said two persons…"

64. The purported Memorandum of Understanding between the Governments of Ghana and the United States of America, despite its nomenclature or the form it takes, seeks to bind the Republic of Ghana to certain obligations in relation to the USA in respect of receiving, detaining and deporting deportees, thereby bringing into existence an international agreement within the meaning of Article 75, requiring parliamentary ratification. The lack of ratification making it void and of no effect, and any action taken thereunder consequently becoming unconstitutional and ultra vires the powers of the executive.

65. The 2nd Defendant also states that Cabinet had received advice from the 1st Defendant to the effect that since the agreement was an MOU, it did not require ratification. In *Tuffour v. Attorney General [1980] GLR 637,* this Honourable Court stated through Sowah J as follows:

"No person can make lawful what the constitution says is unlawful. No person can make unlawful what the constitution says is lawful. The conduct must conform to due process of law as laid down in the fundamental law of the land or it is unlawful and invalid."

66. The mere fact that the 1st Defendant purportedly makes the assertion that the MOU does not require ratification does not make the MOU lawful and constitutional. Article 75 of the Constitution is clear on the ratification of international agreements, and the

Margaret Banful decision makes it expressly clear that no matter the form an agreement takes, once it is an international agreement, it requires ratification by Parliament.

67. It is further respectfully submitted that the Executive cannot by its own unilateral action derogate from Parliament's ratificatory function. To hold otherwise would render Article 75(2) nugatory and undermine the separation of powers envisaged by the 1992 Constitution. As this Court stated in *Margaret Banful & Henry Nana Boakye v. Attorney-General & Minister for the Interior* (J1/7/2016, unreported), the arrangement to resettle former Guantánamo detainees in Ghana was an "international agreement" requiring ratification. Without such ratification, the arrangement was deemed unconstitutional, and thus, unlawful.

68. The Plaintiff also submits that the notion of "Executive discretion" cannot override express constitutional text. Article 58(1) vests executive authority in the President, but Article 58(2) obliges him to "uphold and execute" the Constitution. That obligation necessarily includes compliance with Article 75. Accordingly, any advice from the Attorney-General purporting to authorise the President or Minister for Foreign Affairs to enter into an international agreement without parliamentary ratification is unconstitutional and void.

69. Furthermore, Article 75 is intended to serve as a check on the Executive to ensure democratic accountability in the making of international obligations which may affect Ghanaian sovereignty, finances, or the fundamental rights of persons within its jurisdiction. The reception, detention and deportation of foreign nationals under an unratified MOU directly implicates the liberty guarantees in Article 14(1) and the equality provisions of Article 17. This underscores the need for parliamentary scrutiny.

70. In *Tsatsu Tsikata v The Republic [19/01/2011] Criminal Appeal No.J3/3/10, unreported,* the Supreme Court per Atuguba JSC, reasoned that to ensure the national interest is paramount, *salus populi suprema lex*, Article 75 incorporates a dualist principle … designed to prevent the effects of the over concentration of the President on foreign or international policy perceived to have occurred under the otherwise outstanding President Nkrumah of the First Republic of Ghana.

71. The intention of the framers of the Constitution was to curtail unrestrained executive action in foreign affairs, particularly given the experience under the First Republic. As Atuguba JSC observed in *Tsatsu Tsikata v. The Republic [2011]*, the Article 75 procedure reflects a deliberate dualist model, ensuring that Parliament has

oversight over international commitments affecting Ghana's sovereignty and rights of individuals.

72. By sidestepping Parliament, the Executive violates both the spirit and letter of the Constitution and defeats the democratic purpose of Article 75.

73. The purported MOU affects core constitutional rights, including the right to personal liberty (Article 14) and equality before the law (Article 17), as it governs the detention and processing of foreign nationals on Ghanaian soil. These implications underscore the need for parliamentary scrutiny and public accountability, as contemplated by Article 75. The failure to obtain ratification denies the people of Ghana their right to have such decisions debated and approved by their elected representatives.

74. Finally, it is submitted that under Article 2(1) of the Constitution, any act or omission that contravenes the Constitution is null and void. Consequently, the purported MOU between the Republic of Ghana and the Government of the United States of America, not having been ratified by Parliament as required by Article 75, is of no legal effect within Ghana and cannot confer any lawful authority on the Defendants to detain, receive, or deport persons pursuant to its terms.

75. The Plaintiff therefore invites this Honourable Court to declare and to grant the consequential orders endorsed on the Writ to give full effect to the supremacy of the Constitution under Article 1(2).

Misapplication of the ECOWAS Protocol on Free Movement of Persons

76. The Plaintiff contends that the Government of Ghana's reliance on ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment as a legal basis for the reception, detention, and onward transfer of deportees from non-ECOWAS countries is constitutionally flawed, legally unfounded, and normatively untenable.

77. The said Protocol is an instrument of regional economic integration adopted under the auspices of the Economic Community of West African States (ECOWAS), whose primary object and purpose is to promote the voluntary and lawful movement of ECOWAS nationals among Member States for the purposes of residence, establishment, and employment. This is expressly recognised under Article 3(1) of the Protocol, which provides that:

> *"The right of entry, residence and establishment which shall be established in the community shall apply only to citizens of the Member States."*

78. Furthermore, the modalities for the exercise of this right are conditional upon the possession of valid travel documents, health certification, and compliance with national security laws. Nowhere in the Protocol, nor its supplementary texts (including Supplementary Protocols A/SP.1/7/85, A/SP.1/6/89, and A/SP.2/5/90), is there any authority or framework for the involuntary or forced transfer of individuals from non-Member States to the territory of an ECOWAS Member State, particularly as part of a third country's immigration enforcement policy.

79. It is therefore misleading and legally inaccurate to invoke the ECOWAS Free Movement Protocol as a legal basis for accepting deportees from the United States, particularly where such individuals are not Ghanaian nationals and have no lawful right of residence in Ghana under ECOWAS or domestic law. The ECOWAS Protocol neither permits Ghana to act as a holding site for such persons nor legalises their arbitrary detention in military or immigration facilities.

80. Even assuming that the ECOWAS Protocol had any application in the present context, which is denied, nothing in the Protocol derogates from the mandatory constitutional requirement under Article 75(2) of the 1992 Constitution of Ghana, which provides that:

> *"An agreement executed by or under the authority of the President shall be of no effect until it is ratified by an Act of Parliament or by a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament."*

81. Any reliance on the ECOWAS Protocol or any regional instrument to justify the reception and detention of third-country nationals must be subordinate to Ghana's constitutional framework, particularly the provisions of Articles 11 (sources of law), 40 (foreign policy obligations), and 75 (treaty-making power). In the absence of parliamentary ratification, no such arrangement can acquire legal force within the domestic legal order.

82. Moreover, Article 40(d) of the Constitution requires Ghana to conduct its international affairs in accordance with international law and treaty obligations. Thus, even domesticated treaties such as the ECOWAS Protocol must be interpreted consistently with Ghana's other international commitments, particularly those under the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the 1951 Refugee Convention, all of which prohibit arbitrary detention, torture, and refoulement.

83. The Plaintiff further submits that the ECOWAS Protocol, even if validly ratified and domesticated, cannot be interpreted or applied in a manner that justifies or legitimises the violation of peremptory norms of international law (jus cogens). These norms include, among others:
    a. The prohibition of torture and cruel, inhuman or degrading treatment;
    b. The right to liberty and security of the person;
    c. The principle of non-refoulement, especially where there is a risk of torture, persecution, or serious harm.

84. The principle of non-refoulement, codified in Article 33(1) of the 1951 Refugee Convention and reaffirmed in Article 3 of CAT and Article 7 of the ICCPR, has been recognised by international courts, UN treaty bodies, and Special Rapporteurs as a peremptory norm of international law. It admits of no derogation, even in times of war, emergency, or national security threats.

85. The Honourable Court is called upon to give effect to the doctrine of consistent interpretation, whereby domestic laws and treaty instruments (including regional protocols) must be interpreted in a manner consistent with Ghana's binding international obligations. An interpretation of the ECOWAS Protocol that would allow Ghana to serve as a transit site for third-country deportees in ways that expose them to arbitrary detention, torture, or unlawful return would violate this interpretive principle.

86. The Plaintiff further submits that the Government of Ghana's invocation of the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment as justification for the reception and detention of third-country deportees is not only misplaced in law, but also represents an unconstitutional attempt to bypass the clear and mandatory requirements of the 1992 Constitution.

87. On the Government's own account, no formal bilateral agreement with the United States has been laid before Parliament for approval under Article 75(2) of the Constitution. Instead, the Government seeks to characterise its participation in the scheme for receiving the involuntarily repatriated persons as falling within the broader framework of the ECOWAS Protocol, a pre-existing regional treaty ratified decades ago for wholly unrelated purposes.

88. This legal maneuver, if accepted, would create a dangerous precedent: it would allow the Executive to cloak new and substantively distinct international arrangements in the language of existing regional protocols, thereby evading the democratic safeguards of parliamentary ratification and judicial review that Article 75 was designed to ensure.

89. Article 75 establishes a dual-key mechanism: first, the President may negotiate and execute treaties or agreements, but second, such instruments must be subject to parliamentary scrutiny and approval before acquiring domestic validity. This requirement is a constitutional firewall against unilateral executive commitments that may compromise the sovereignty, rights, or legal obligations of the Republic.

90. The Government's attempt to stretch the ECOWAS Protocol beyond its purpose - to justify participation in a U.S.-led deportation scheme - amounts to a reclassification of a new agreement as part of an old one. In doing so, it evades the scrutiny of the elected representatives of the people of Ghana, and denies Parliament the opportunity to assess the legal, humanitarian, and constitutional implications of such an undertaking.

91. In effect, the Executive is asserting that by virtue of Ghana's membership in ECOWAS, it may unilaterally assume new obligations or practices without satisfying the requirements of Article 75(2). This argument, if accepted, would allow regional membership to operate as a backdoor for foreign policy commitments that circumvent Ghana's own constitutional procedures. It would render nugatory the careful balance struck by the Constitution between the Executive's power to engage internationally and Parliament's responsibility to preserve national sovereignty and fundamental rights.

92. Finally, the Government's argument risks constitutional absurdity: it would imply that Ghana's adherence to an ECOWAS Protocol - a treaty meant to promote voluntary regional integration among Member States - somehow trumps its own Constitution, permits derogation from peremptory norms, and allows the Executive to commit the Republic to foreign detention schemes outside the control of Parliament. This cannot be the law.

93. The Plaintiff respectfully urges the Honourable Court to reject this construction and affirm that no international protocol, whether ECOWAS or otherwise, may be used as a licence to circumvent the Constitution or violate rights guaranteed thereunder. Where new international arrangements, particularly those with serious human rights consequences, are proposed, they must be submitted to Parliament for approval. Anything less is constitutionally impermissible.

Unlawful Extension of Military Jurisdiction over Civilian Deportees

94. The 1992 Constitution of Ghana establishes a clear separation between the civilian and military spheres, affirming that the Armed

Forces exist to serve the Republic, not to supplant or perform the functions of civil authority. This is a foundational tenet of Ghana's post-authoritarian constitutional order, intended to prevent a return to the culture of military rule and unchecked executive power that characterised earlier eras of governance. The Constitution, therefore, imposes both functional and institutional limits on the role of the military, which must be strictly observed.

95. Article 210(3) of the 1992 Constitution of Ghana provides that: "The Armed Forces shall be equipped and maintained to perform their role of defence of the Republic as well as such other functions for the development of Ghana as the President may determine."

96. The constitutional design of this provision is deliberate. It articulates two core mandates for the Armed Forces: (i) a primary function of defending the territorial integrity and sovereignty of the Republic; and (ii) a secondary and conditional mandate of contributing to national development, but only insofar as such functions are specifically determined by the President and are within constitutional bounds.

97. The provision does not authorise the use of the Armed Forces to carry out civilian law enforcement or immigration functions, much less to detain civilians. To interpret the phrase "such other functions for the development of Ghana" as permitting the Armed Forces to assume custodial control over non-combatant, non-offending civilians would stretch the constitutional text beyond its permissible meaning and defeat the spirit and purpose of the 1992 Constitution.

98. Indeed, such an interpretation would subvert the principle of civilian supremacy and erode the safeguards against arbitrary detention enshrined in Chapter 5 of the Constitution. It would also violate the long-established constitutional norm that only civilian police and other legally authorised institutions may detain individuals, and even then, only in accordance with due process and judicial oversight as prescribed under Article 14.

99. The interpretation of "such other functions" cannot be read so broadly as to undermine the rights guaranteed under Chapter 5 of the Constitution or to permit military encroachment into the domain of civilian justice administration.

100. Therefore, the phrase "such other functions for the development of Ghana" must be interpreted narrowly, in harmony with the Constitution's commitment to democracy, human rights, and civilian governance. It cannot be used as a carte blanche for the Executive to convert military installations into secret detention sites or to bypass the protections of the legal system.

101. In effect, the use of military personnel and facilities for the detention of civilians particularly in matters relating to immigration control or the reception of deportees falls well outside the constitutionally permitted scope of military functions.

102. Nowhere in the Constitution is the Armed Forces authorised to exercise law enforcement powers over civilians, such as arrest, detention, or custodial supervision, except where expressly provided by law in narrowly circumscribed circumstances, such as under emergency powers duly declared in accordance with the Constitution.

103. There is no provision in the 1992 Constitution, the Armed Forces Act, 1962 (Act 105), or its Regulations that permits the Armed Forces to arrest, detain, or exercise custodial control over civilians in peacetime. Military jurisdiction is limited to disciplinary authority over members of the armed forces and those subject to military law.

104. Civilian law enforcement functions are expressly reserved to institutions such as the Ghana Police Service and the Ghana Immigration Service under relevant statutes and constitutional provisions (e.g., Articles 190–200).

105. Articles 19(19) and 19(20) of the 1992 Constitution clearly delineate the jurisdictional limits of military justice and the permissible scope of military authority over civilians. They provide as follows:

> Article 19(19) authorises the establishment of military courts or tribunals strictly "for the trial of offences against military law committed by persons subject to military law."
>
> Article 19(20) further reinforces this limitation by stipulating that: "Where a person subject to military law, who is not in active service, commits an offence which is within the jurisdiction of a civil court, he shall not be tried by a court-martial or military tribunal for the offence unless the offence is within the jurisdiction of a court-martial or other military tribunal under any law for the enforcement of military discipline."

106. These provisions embody the fundamental principle that the military justice system is exceptional and strictly reserved for members of the Armed Forces or persons subject to military law, and even then, only within the defined scope of military discipline. They emphatically exclude civilians from the jurisdiction of military courts, tribunals, or military custodial authority.

107. It follows that civilians, whether Ghanaian nationals or foreign deportees, who have not committed any offence under Ghanaian law

and are not subject to military law, cannot lawfully be detained by the Armed Forces or held at military facilities such as the Bundase Military Training Camp. To do so constitutes a grave violation of the Constitution, including Article 14 (right to personal liberty), Article 12 (respect for fundamental human rights), and Article 19(1) (right to a fair trial before an independent and impartial court).

108. Any attempt to detain such individuals without charge, outside the framework of judicial oversight, and under armed military supervision is not only unconstitutional but also repugnant to the foundational values of democratic governance and civilian supremacy that underpin the 1992 Constitution.

109. Ghana's constitutional order explicitly rejects any form of military rule over civilians, whether de jure or de facto. Moreover, the use of the Armed Forces in this manner subverts both Article 210(3) and Chapter 5 of the Constitution, by allowing the Executive to effectively bypass civilian legal processes and institutional safeguards through informal arrangements, such as the impugned MOU, and subject individuals to unaccountable and secretive military control.

110. The decision thus to place non-Ghanaian deportees, many of whom are vulnerable, undocumented, or persons in need of international protection, under military custody in installations such as the Bundase Military Training Camp, without lawful arrest, judicial oversight, or access to legal safeguards, therefore amounts to an *ultra vires* exercise of power by the Executive and Armed Forces.

111. The detention of civilian deportees many of whom may be persons in need of international protection or entitled to international protection at military installations such as the Bundase Military Training Camp, and under the custody or supervision of armed soldiers, directly contravenes:

a. Article 14 of the Constitution, which guarantees the right to personal liberty and prohibits arbitrary arrest or detention.
b. Article 19, which guarantees the right to fair trial, including the right to be informed of charges, the right to legal counsel, and the right to be tried by a competent court.

112. These constitutional protections are not suspended or diluted by the mere fact that an individual has been involuntarily repatriated into Ghana or lacks documentation. Indeed, any person physically present within the territory of Ghana, regardless of nationality or immigration status, is entitled to the full protection of the Constitution.

113. Further to the above, the Armed Forces Act, 1962 (Act 105) and the Armed Forces Regulations (Discipline) make it clear that the

jurisdiction of the military is limited to its members and does not extend to civilians. The disciplinary and custodial provisions of these instruments apply to persons subject to military law, and do not confer any power upon the Ghana Armed Forces to detain, guard, or supervise civilians. In particular:

a. Section 1 and 2 of Act 105 establish the armed forces for national defence, and do not mention civilian detention.
b. The regulations under the Armed Forces Act provide for military detention barracks, but only in the context of military personnel discipline, not for the detention of civilians. Therefore, there is no legal authority for the Government of Ghana to detain foreign deportees in military custody, or to authorise the Armed Forces to supervise or enforce such detention.

114. A core principle of constitutional democracies is that the military must remain subordinate to civilian authority, and must not exercise coercive power over civilians except in narrow, exceptional circumstances clearly grounded in law and authorised by civilian institutions. The arbitrary or discretionary use of military facilities to detain individuals, particularly where done in secrecy, outside of judicial scrutiny, and without a declared emergency, violates this principle and undermines democratic accountability.

115. Indeed, the use of military personnel and infrastructure to detain persons who have committed no offence under Ghanaian law represents a profound erosion of the constitutional order. It creates an unlawful parallel system of detention, outside of the judicial and statutory frameworks governing arrest, bail, custody, and trial. This practice also significantly increases the risk of torture, ill-treatment, and other forms of abuse that are more likely to occur in environments lacking civilian oversight.

116. The use of military facilities for civilian detention sets a dangerous precedent that risks normalising military involvement in law enforcement, undermining the authority of the civilian judiciary and the Ghana Police Service, and fostering impunity. It breaches both the letter and spirit of the Constitution, which was crafted to reverse Ghana's history of military interventionism and to guarantee civilian rights, due process, and the supremacy of the rule of law.

117. This practice also violates the constitutional principle of civilian supremacy over the military, which is a foundational norm of Ghana's democratic governance framework. The Constitution was designed to prevent the arbitrary and unchecked use of military force in civilian affairs, given Ghana's history of military rule and the abuses that accompanied it. The decision to detain civilians in a military training ground is a regression to an era of

authoritarianism and offends the post-1992 constitutional order.

118. The Supreme Court of Ghana has repeatedly emphasised the need to safeguard fundamental human rights and uphold the rule of law. In *New Patriotic Party v. Attorney General* [1993-94] 2 GLR 35, the Court stressed that "no organ of government can act in contravention of the Constitution." Thus, the Executive cannot invoke national security or administrative convenience as a justification for subjecting civilians to unconstitutional detention in military custody.

119. In addition to domestic constitutional violations, this practice contravenes international human rights norms to which Ghana is bound. Notably:

A. Article 9 of the International Covenant on Civil and Political Rights (ICCPR) prohibits arbitrary arrest and detention and requires that all persons deprived of liberty be brought promptly before a judge and allowed to challenge the lawfulness of their detention.

B. Article 5 of the African Charter on Human and Peoples' Rights, ratified by Ghana, prohibits all forms of cruel, inhuman, and degrading treatment and reinforces the right to personal liberty and security of the person.

120. International jurisprudence, including the Human Rights Committee's General Comment No. 35 on Article 9 ICCPR, has underscored that civilian detainees must be held in facilities that are civilian in nature, with proper judicial oversight, and that the use of military facilities for civilian detention is permissible only in exceptional, time-bound, and legally prescribed circumstances—none of which apply in the present case.

121. The fact that the Bundase facility is a military shooting range, historically associated with grave human rights violations, including the extrajudicial execution of three High Court judges and a retired army officer during the 1980s, heightens the illegality and psychological trauma associated with the current detentions. The continued use of such a site as a holding centre for civilians compounds the violation and deepens the stigma, fear, and symbolic violence inflicted on those detained.

122. In conclusion, the detention of civilians at the Bundase military facility is a grave violation of constitutional, statutory, and international legal standards. It amounts to an unlawful extension of military jurisdiction into the civilian realm, undermines the rule

of law, and cannot be justified under any lawful or democratic interpretation of Ghana's Constitution or obligations under international human rights law. This Honourable Court is respectfully urged to declare such conduct unconstitutional, null and void, and to prohibit its continuation forthwith.

Violations of Constitutional Rights Arising from Conditions of Detention and Denial of Due Process

123. The detention of individuals under the Memorandum of Understanding (MOU), particularly ECOWAS nationals involuntarily repatriated from third countries, has occurred without any lawful arrest, charge, or judicial authorisation, in clear violation of Article 14(1) of the 1992 Constitution.

124. Article 14(1) of the 1992 Constitution guarantees the right to personal liberty, and provides that: "Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in accordance with a procedure permitted by law."

125. The Constitution does not contemplate indefinite, extra-judicial, or preventive detention of individuals who have not committed an offence under Ghanaian law, particularly outside the bounds of declared emergencies or public health necessity. Yet, under the implementation of the MOU, detainees were held for extended periods at the Bundase Military Camp without recourse to any legal process or judicial supervision.

126. This constitutes a clear case of arbitrary detention, which is prohibited both under Ghana's Constitution and under Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Ghana is a party.

127. Reports from the detained persons indicate that they were held in unsanitary, overcrowded, and degrading conditions. The hall in which they were kept was dirty, infested with cobwebs, lacked running water, and had no bedding, pillows, or basic hygiene provisions. A number of detainees contracted malaria and other illnesses and were denied access to proper medical treatment, with the military compelling them to receive rudimentary care from an ill-equipped infirmary.

128. Female detainees were particularly affected, having been denied female hygiene products, in violation of their privacy, dignity, and gender-specific health needs. This discriminatory neglect constitutes a form of gender-based inhuman treatment, contrary to Ghana's obligations under CEDAW, the Maputo Protocol, and Article 17 of the Constitution, which guarantees equality before the law and freedom from discrimination.

129. These conditions are incompatible with human dignity, and violate Article 15(1) of the Constitution, which affirms the inviolability of human dignity and prohibits torture and *"any other cruel, inhuman or degrading treatment or punishment."*

130. The detainees were also denied access to legal representation, the ability to contact family, or any form of external oversight. At no point during their detention were they informed of the legal basis for their confinement, nor were they brought before a court or provided with an opportunity to challenge their detention.

131. This violates the due process guarantees under Article 19(2) of the Constitution, including:
    a. the right to be informed promptly of the reasons for one's detention;
    b. the right to legal counsel;
    c. the right to a fair and public hearing;
    d. the presumption of innocence; and
    e. the right to challenge the lawfulness of detention before an independent court.

132. Moreover, these denials offend Article 7(1)(c) and (d) of the African Charter on Human and Peoples' Rights, which guarantee the right to be heard and the right to legal defence, as well as Article 14 of the ICCPR, which guarantees the right to a fair trial and access to legal remedies.

133. The combined effect of these violations demonstrates a pattern of systemic disregard for the rule of law, due process, and constitutional safeguards under Ghanaian and international law.

Constitutional Illegitimacy of Detaining Persons in Need of International Protection and Non-Offenders at the Request of a Foreign Government.

134. Under the 1992 Constitution of Ghana, the power to deprive a person of liberty is strictly circumscribed. Article 14(1) provides that: "Every person shall be entitled to his personal liberty and no person shall be deprived of his liberty except in accordance with a procedure permitted by law."

135. This clause lists limited exceptions, including lawful detention pursuant to a court order, reasonable suspicion of having committed a criminal offence, or detention for the purposes of extradition. Nowhere does the Constitution contemplate the detention of individuals solely on the basis that they have violated the immigration laws of another country, or because their presence in

Ghana serves the political, diplomatic, or strategic interests of a foreign power.

136. The individuals detained under the implementation of the Memorandum of Understanding (MOU) - many of whom were persons in need of international protection, and migrants in need of international protection in the United States - were not accused of violating any Ghanaian law.

137. There was no warrant issued by a Ghanaian court, no charge or complaint lodged by any Ghanaian authority, and no pending legal process justifying their detention. As such, there is no constitutional or statutory authority supporting their detention in Ghana merely because the United States government sought to remove them from its territory and offered diplomatic incentives in return.

138. It is a foundational principle of international refugee law that the act of seeking international protection even if it involves the violation of immigration laws of the host country does not render the person in need of international protection a criminal. Both the 1951 Refugee Convention (Article 31) and the OAU Refugee Convention explicitly prohibit penalising persons in need of international protection for illegal entry or presence if they present themselves without delay to the authorities and show good cause.

139. The detention of persons outside lawful judicial process offends Article 19(1), which guarantees that: "A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court"; and Article 19(2)(c) which provides that every person shall be presumed innocent until proven guilty in accordance with law. These provisions cannot be suspended by executive discretion or replaced with international diplomacy.

140. Furthermore, Article 23 requires that: "Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law."

141. By holding individuals in military facilities without court orders, statutory justification, or legal procedures established under Ghanaian law, the Executive has acted outside the bounds of lawful administrative authority. This amounts to arbitrary detention in violation of both the Constitution and Ghana's obligations under international human rights law, including Article 9 of the International Covenant on Civil and Political Rights (ICCPR).

142. Further, international law prohibits the use of individuals as bargaining chips in diplomatic negotiations. The idea that Ghana may detain individuals especially vulnerable migrants or persons in need of international protection in exchange for foreign policy

concessions, such as the lifting of visa restrictions or increased aid, is incompatible with the principle of human dignity enshrined in Article 15(1) of the Constitution and reflected in customary international human rights norms.

143. Such practice would violate the duty of the State to act in good faith under international law, and would amount to a form of instrumentalisation of human beings, treating persons as means to an end rather than rights-bearing individuals entitled to liberty, protection, and due process.

144. In addition, the Constitution of Ghana does not permit the executive warehousing of prisoners or deportees from other countries, particularly not outside an extradition framework or formal treaty procedure approved under Article 75.

145. No part of Chapter 5 (Fundamental Human Rights and Freedoms) of the Constitution authorises the hosting or detention of foreign deportees on the basis of diplomatic arrangements. Indeed, such detention is ultra vires the powers of the Executive and amounts to a constitutional usurpation of the judicial function.

146. In addition, Articles 19(5) and 19(11) of the 1992 Constitution underscore the principle that criminal jurisdiction is territorial and personal, and that deprivation of liberty in Ghana must arise solely from violations of Ghanaian law adjudicated in Ghanaian courts.

147. Article 19(5) of the Constitution provides that:

> *"No person shall be charged with or held to be guilty of a criminal offence which is founded on an act or omission that did not at the time it took place constitute an offence."*

148. This provision enshrines the principle of nullum crimen sine lege, a fundamental rule of legality that prohibits the retrospective or extraterritorial creation of offences. In essence, only conduct defined as a criminal offence under Ghanaian law at the time it occurred can lawfully form the basis for detention, prosecution, or penal consequence in Ghana.

149. Article 19(11) reinforces this principle by providing that:

> *"No penalty shall be imposed for a criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed."*

150. The intendment of Article 19(11) is to ensure that individuals within Ghana's jurisdiction cannot suffer deprivation of liberty or other penalties unless and until they have been convicted for a crime

committed under Ghanaian law, and in accordance with the procedural and substantive guarantees enshrined in the Constitution.

151. Together, these provisions impose an inviolable constitutional limitation on the power of the State to detain or penalise any person for conduct not criminalised by Ghanaian law. The Constitution does not recognise or authorise the penal detention of individuals in Ghana based solely on violations of foreign law or the policy preferences of other States.

152. Accordingly, persons in need of international protection or deportees who have not committed any offence under the laws of Ghana cannot be subjected to detention merely because they may have breached immigration laws in the United States or any other third country. Such detention, particularly where it is executed without charge, judicial oversight, or lawful Ghanaian process, is an unconstitutional extension of executive authority.

153. Article 14(1) of the Constitution lists the only lawful bases upon which a person's liberty may be curtailed. These include detention following conviction by a court of competent jurisdiction, or reasonable suspicion of having committed a criminal offence under Ghanaian law. The detentions contemplated and effected under the Memorandum of Understanding (MOU) fall outside these permitted grounds.

154. The executive cannot, under the guise of a foreign policy arrangement, use Ghana's territory and facilities to warehouse individuals who have committed no offence in Ghana, solely to advance the migration policy of another State. This practice is not only ultra vires the powers of the executive but is constitutionally impermissible under the combined reading of Articles 14, 19(5), 19(11), and 23 of the Constitution.

155. Furthermore, international human rights law, particularly the *principle of non-penalisation of refugees* under Article 31 of the 1951 Refugee Convention, affirms that individuals in need of international protection must not be punished for unlawful entry or presence. Their detention, particularly in military facilities, cannot be justified under Ghanaian constitutional law or under Ghana's international obligations.

156. It is therefore respectfully submitted that no constitutional authority exists to detain individuals who are not criminal offenders under Ghanaian law, and that the MOU, in authorising such detention, offends core constitutional principles of legality, liberty, and due process. Ghana cannot, and must not, be used as a penal colony for the enforcement of another State's immigration policy.

Embedded and Incurable Unconstitutionality of the Implementation of the MOU

157. Your Lordships, the Plaintiff contends that the implementation of the purported Memorandum of Understanding (MOU) between the Government of Ghana and the Government of the United States of America has been marred by fundamental and structural violations of Ghana's 1992 Constitution and international legal obligations. These violations are not peripheral or isolated incidents, they are inherent, operational features of the MOU itself and have become defining elements of its execution.

158. First, the MOU operates as a mechanism of chain refoulement, whereby individuals, including migrants and persons in need of international protection, are forcibly removed from the United States to Ghana, despite not being Ghanaian nationals, residents, or having any lawful status in the country. These persons are not afforded access to legal remedies, refugee status determination procedures, or non-refoulement protections in Ghana.

159. Instead, they are held without due process and later dispersed or transferred onward, often to third countries, without any judicial oversight. This chain of transfers, rooted in extraterritorial immigration enforcement and bilateral power asymmetry, violates the absolute and non-derogable principle of non-refoulement, which prohibits returning any person to a place where they face a real risk of torture, persecution, or other serious human rights violations.

160. Second, the implementation of the MOU has led to the routine and systematic use of military installations and personnel to detain civilians, including deportees and persons in need of international protection. Detainees are held in facilities such as the Bundase military camp, under the watch of armed military personnel, without lawful charge, judicial authorisation, or access to legal counsel.

161. This practice is not merely incidental. Rather it is a central and recurring feature of the MOU's implementation. Such detention is in direct contravention of Article 210(3) of the Constitution, which limits the functions of the Armed Forces to the defence of Ghana, and prohibits the exercise of police or custodial powers over civilians except as expressly authorised by law. The use of military force and infrastructure to achieve immigration or diplomatic objectives violates the foundational principle of civilian supremacy over the military and undermines Ghana's democratic constitutional order.

162. Third, the implementation of the MOU has systematically violated the rights of detainees under Articles 14, 15, 17, and 19 of the Constitution, including:

a. Arbitrary arrest and detention without charge or trial; •
b. Inhuman and degrading treatment in overcrowded, unsanitary facilities;
c. Discriminatory treatment of ECOWAS nationals and persons in need of international protection;
d. Denial of access to legal counsel and fair hearing rights;
e. Lack of any lawful basis under Ghanaian law for such detention, as required by Articles 14 and 19(11) of the Constitution.

163. These rights are not aspirational, they are constitutionally entrenched and immediately enforceable. They bind all organs of state and cannot be set aside by executive action, bilateral arrangements, or administrative practice

164. Crucially, the violations described above are not remediable through better implementation, administrative oversight, or future procedural reforms. They are not aberrations. Rather, they emanate from the very nature, structure, and operational logic of the MOU, which is designed to facilitate an informal, extra-legal process of offshore detention and processing at the request of a third state. The arrangement is predicated on executive discretion without legislative scrutiny, and on military enforcement without legal safeguards. As such, the MOU is inherently incapable of being implemented in a manner consistent with the Constitution.

165. Moreover, the Government's implementation of the MOU has effectively permitted Ghana to be used as a carceral extension of another country's immigration enforcement regime, with no regard for Ghanaian legal standards or constitutional constraints. This includes the detention of individuals who have committed no crime under Ghanaian law, as prohibited under Articles 14(1)(g), 19(5), and 19(11) of the Constitution. Ghanaian law does not permit the use of its facilities or institutions to detain, process, or house individuals merely because they have violated the laws of a foreign state. The Constitution prohibits the use of administrative discretion as a substitute for parliamentary legislation, judicial oversight, and constitutional compliance.

166. In this regard, the MOU does not merely violate individual rights. It fundamentally subverts the structure and supremacy of the Constitution by allowing the Executive to exercise detention powers in the absence of a lawful framework; to use military force for civilian enforcement functions; and to override Ghana's international obligations, such as the duty of non-refoulement under the 1951 Refugee Convention, the ICCPR, the Convention Against Torture, and customary international law.

167. These practices are constitutionally incurable because they reflect the deliberate intention and design of the MOU, rather than implementation failure or policy misjudgement. As such, the MOU must be deemed void ab initio, both under domestic constitutional law and under Ghana's international legal obligations.

168. Ghana is a state governed by the rule of law. It cannot lawfully implement an agreement that is premised on disregard for constitutional due process, international refugee protection, and democratic oversight. The Government's continued reliance on and implementation of the MOU constitutes a permanent and systemic constitutional breach, and any continued enforcement of its terms must be declared unconstitutional, null, and void.

WHEREFORE THE PLAINTIFF PRAYS FOR THE FOLLOWING RELIEFS AS INDORSED ON THE WRIT OF SUMMONS:

A. A declaration that, on a true and proper interpretation of Article 75 of the 1992 Constitution of Ghana, any agreement entered into by the President of the Republic of Ghana to receive or facilitate the transfer of West African nationals from the United States of America into the Republic of Ghana constitutes an international agreement within the meaning of Article 75, and as such, required prior ratification by an Act of Parliament or by a resolution of Parliament supported by the votes of more than one-half of all the Members of Parliament.

B. A declaration that, on a true and proper interpretation of Article 75 of the 1992 Constitution of the Republic of Ghana, the purported Memorandum of Understanding (MOU), or any similar agreement or arrangement between the Republic of Ghana and the United States of America concerning the reception, detention, or transfer of involuntarily repatriated persons, constitutes an international agreement within the meaning of Article 75 of the Constitution, and that, not having been ratified by Parliament in accordance with Article 75(2), such agreement is void and of no legal effect.

C. A declaration that, on a true and proper interpretation of Article 75 of the 1992 Constitution of Ghana, the President of the Republic of Ghana acted unconstitutionally by implementing, giving effect to, or otherwise acting upon an agreement with the Government of the United States of America relating to the reception, detention, and onward transfer of involuntarily repatriated West African nationals into the Republic of Ghana, without first obtaining ratification of that agreement by an Act of Parliament or by a resolution of Parliament supported by the votes of more than one-half of all the Members of Parliament.

D. A declaration that the reception, detention, and transfer of involuntarily repatriated persons into the Republic of Ghana by the President of the Republic, pursuant to a Memorandum of Understanding or similar arrangement with the Government of the United States of America which has not been ratified by Parliament in accordance with Article 75 of the 1992 Constitution, is ultra vires the powers of the President and is therefore unconstitutional.

E. A declaration that, on a true and proper interpretation of Article 58(2) of the 1992 Constitution of Ghana, the President of the Republic is under a constitutional obligation to uphold, execute, and maintain the Constitution of Ghana and to ensure compliance with the Immigration Act, 2000 (Act 573).

F. A declaration that the President of the Republic of Ghana breached Article 58(2) of the 1992 Constitution and the Immigration Act, 2000 (Act 573) by implementing the purported Memorandum of Understanding with the Government of the United States of America to facilitate the reception and transfer of involuntarily repatriated persons into the Republic of Ghana, without complying with the constitutional and statutory procedures governing such actions.

G. A declaration that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America, by providing for the reception, detention and onward deportation of persons in need of international protection, including those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, constitutes a violation of Ghana's obligations under customary international law, including the peremptory norm (jus cogens) of non-refoulement, and is to that extent void and in contravention of Articles 40 and 73 of the 1992 Constitution.

H. A declaration that, to the extent that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America requires Ghana to facilitate or undertake the onward deportation of persons in need of international protection, including those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, such conduct constitutes participation in chain refoulement, in violation of the peremptory norm (jus cogens) of non-refoulement, and is to that extent unconstitutional and void for contravening Articles 40 and 73 of the 1992 Constitution.

I. A declaration that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America, by providing for the reception, detention and onward

deportation of persons in need of international protection, including, those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, violates Ghana's binding treaty obligations under the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and is to that extent unconstitutional for contravening Article 40, Article 73, and Article 75(2) of the 1992 Constitution.

J. A declaration that the purported Memorandum of Understanding (MOU) between the Republic of Ghana and the United States of America, and its implementation resulting in the refoulement or onward deportation of persons in need of international protection, including, those who have been granted deferral or withholding of removal under the United States' implementation of the Convention Against Torture, violates the express provisions of the Ghana Refugee Act, 1992 (PNDCL 305D), particularly Sections 1 and 11, and is to that extent unconstitutional and void for contravening Article 1(2), Article 40, Article 73, and Article 75(2) of the 1992 Constitution.

K. A declaration that, on a true and proper interpretation of Articles 11, 40, 73 and 75 of the 1992 Constitution, the President of the Republic of Ghana acts ultra vires and in breach of the Constitution by concluding or implementing any agreement that violates peremptory norms of international law (jus cogens), including the absolute and non-derogable prohibition against refoulement; and that Parliament lacks the legal competence to ratify or otherwise give legal effect to such an agreement, as no act of ratification can cure the fundamental illegality or validate a treaty or arrangement that is void ab initio for being contrary to Ghana's international legal obligations and entrenched constitutional protections.

L. A declaration that the reception and detention in the Republic of Ghana of involuntarily repatriated persons pursuant to the purported Memorandum of Understanding with the Government of the United States of America is unlawful and unconstitutional, where such persons have not been charged with any offence, are held for prolonged periods without being presented before a court of competent jurisdiction, and are denied access to legal counsel, contrary to the provisions of Articles 14 and 19 of the 1992 Constitution of Ghana.

M. A Declaration that the reception, detention in Ghana, and onward transfer to their countries of origin of persons in need of international protection involuntarily repatriated from the United States of America, including individuals who have been granted deferral or withholding of removal under the United States'

implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, constitutes a violation of Ghana's binding international legal obligations under Article 3 of the said Convention.

N. A declaration that the detention of involuntarily repatriated persons in deplorable, inhumane, and degrading conditions, including, the refusal to take ill detainees to hospital despite the presence of an ill-equipped infirmary, and the failure to provide female hygiene products to women detainees, exposure to psychological harm, and the failure to provide female hygiene products to women detainees, violates Article 15 of the 1992 Constitution of Ghana and Ghana's binding obligations under international human rights law, including the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

O. A declaration that the detention of civilian deportees in military custody or facilities, pursuant to the purported Memorandum of Understanding with the Government of the United States of America, is unlawful and unconstitutional, as it effectively subjects civilians to military jurisdiction, contrary to the fundamental constitutional principle that military authority shall not be exercised over civilians, and in violation of Articles 14 and 19 of the 1992 Constitution of Ghana.

P. A Declaration that, the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment which has been ratified by Ghana pursuant to Article 75 of the 1992 Constitution, does not authorise or require the reception, detention or onward transfer of involuntarily repatriated ECOWAS nationals from third countries such as the United States of America.

Q. A Declaration that, on a true and proper interpretation of the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment in light of Articles 14 and 15 of the 1992 Constitution, the Protocol guarantees the voluntary movement, residence and establishment of ECOWAS nationals and does not permit involuntary deportations or forced returns from non-ECOWAS states.

R. A Declaration that the implementation of any agreement or arrangement between the Government of Ghana and the United States of America that relies on the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment to facilitate the reception or onward transfer of involuntarily

repatriated ECOWAS nationals is inconsistent with the rights to personal liberty and human dignity under Articles 14 and 15 of the 1992 Constitution.

S. A Declaration that the application of the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment to justify the involuntary reception and military detention of ECOWAS nationals involuntarily repatriated from the United States is inconsistent with Ghana's obligations under international human rights law, including the jus cogens norm of non-refoulement and Article 3 of the Convention Against Torture.

T. A Declaration that, even where ratified under Article 75 of the Constitution, international agreements such as the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment must be implemented in accordance with the Constitution and cannot be construed or applied in a manner that derogates from entrenched rights or *jus cogens* norms.

U. A Declaration that the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment does not permit a Member State to act as a transit, reception, or detention site for nationals of other ECOWAS States who have been involuntarily repatriated by a non-ECOWAS State, and that the Protocol does not override the requirements under Ghanaian law for lawful entry, valid documentation, or national security screening, as required by the Immigration Act, 2000 (Act 573), and the 1992 Constitution.

V. A Declaration that the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment regulates only the voluntary rights of entry, residence, and establishment of ECOWAS nationals between Member States, and does not provide any lawful basis for the Government of Ghana to conclude or implement an agreement with a non-Member State, such as the United States of America, for the reception, detention, or onward transfer of involuntarily repatriated ECOWAS nationals; and that any reliance on the said Protocol to justify such state conduct constitutes a violation of Articles 11(1)(b), 12(2), 14, and 75 of the 1992 Constitution.

W. A Declaration that the reception and continued detention in Ghana of involuntarily repatriated ECOWAS nationals without valid travel documents or international health certificates, pursuant to an agreement with a non-ECOWAS country, violates Article 3(1) of the ECOWAS Protocol A/P.1/5/79, and is inconsistent with Articles 11(1)(b), 12(2), 14, 40, 73 and 75 of the 1992 Constitution of Ghana.

X. A Declaration that the use of military detention facilities to hold involuntarily repatriated ECOWAS nationals under colour of

implementing the ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment violates the civilian character of law enforcement and amounts to unlawful subjection of civilians to military jurisdiction, in breach of the 1992 Constitution.

Y. An Order directing the Defendants herein to forthwith cease and desist from receiving, detaining, transferring, or otherwise facilitating the reception of any persons in need of international protection, whether or not such persons are nationals of West African or ECOWAS Member States, pursuant to the purported Memorandum of Understanding between the Republic of Ghana and the Government of the United States of America, on the grounds that the said agreement and its implementation are unconstitutional, ultra vires, and in contravention of the 1992 Constitution of Ghana, the Immigration Act, 2000 (Act 573), the Refugee Act, 1992 (PNDCL 305D), and Ghana's binding international obligations under the 1951 Refugee Convention, the 1967 Protocol, and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

Z. An Order restraining the Defendants, their agents, assigns, privies, or any other persons acting under their authority or instruction from relying on or seeking to give effect to the said Memorandum of Understanding or any similar agreement or arrangement for the reception, detention, or onward transfer of persons in need of international protection, on the grounds that the agreement violates the peremptory norm (*jus cogens*) of non-refoulement and binding treaty obligations of the Republic of Ghana, and is therefore unconstitutional, null, void, and incapable of ratification under Article 75 of the 1992 Constitution.

AA. An order that the Defendants, their agents, assigns, privies, or any other persons acting under their authority or instruction, are restrained and prohibited from effecting, facilitating, or in any manner carrying out the removal, transfer, deportation, or repatriation of any persons currently within the territory of the Republic of Ghana who were involuntarily repatriated from the United States of America and are in need of international protection, including those who have been granted deferral or withholding of removal under the United States' implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, to their countries of origin or any other destination.

BB. Any further or other orders as this Honourable Court may deem meet.

LIST OF AUTHORITIES

1. The Constitution of the Republic of Ghana, 1992.
2. Ghana Immigration Act, 2000 (Act 573)
3. Ghana Refugee Act, 1992 (PNDCL 305D)
4. ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment.
5. International Covenant on Civil and Political Rights (ICCPR), 1966.
6. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
7. UN Convention Relating to the Status of Refugees, 1951
8. UN General Assembly Resolution A/RES/52/132 (1998)
9. UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992.
10. Vienna Convention on the Law of Treaties, 1969
11. J. Allain, *The Jus Cogens Nature of Non-Refoulement*, International Journal of Refugee Law (2001), p. 533.
12. G.S. Goodwin-Gill, *The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement*, International Journal of Refugee Law (2011), pp. 443–444.
13. *Adjei-Ampofo v. Accra Metropolitan Assembly & Attorney-General (No. 1) [2007-2008] 1 SCGLR 610.*
14. *Agiza v. Sweden, Communication No. 233/2003, U.N. Doc. CAT/C/34/D/233/2003 (2005)*
15. *Bomfeh v. Attorney General [2017] Writ No. JI/14/2017 (SC).*
16. *CHRAJ Vrs Attorney General and Others [2011] GHASC 19 (6 April 2011)*
17. *Gyamfi Vrs Attorney General 2020 GHASC 24 (5 May 2020)*
18. *Federation of Youth Association of Ghana v. Public Universities of Ghana & Others [2010] SCGLR 265.*
19. *Huri-Laws v. Nig., Comm. 225/98, 14th ACHPR AAR Annex V (2000-2001)*
20. *Margaret Banful & Henry Nana Boakye v. Attorney-General & Minister for the Interior (J1/7/2016, unreported)*
21. *National Media Commission v. Attorney-General [2000] SCGLR 1.*
22. *NPP v. IGP [1993-4] 2GLR 495*
23. *Republic v. High Court (Commercial Division), Accra; Ex Parte Attorney-General (NML Capital LTD & Republic of Argentina Interested Parties) (2013-2014) 2 SCGLR 990*
24. *Sam (No. 2) v. Attorney-General [2000] SCGLR 305.*
25. *The Prosecutor v. Katanga, Case No. ICC-01/04-01/07-34-05-tENg*
26. *Tsatsu Tsikata v The Republic [19/01/2011] Criminal Appeal No.J3/3/10, unreported*
27. *Tuffour v. Attorney General [1980] GLR 637*

DATED AT MERTON & EVERETT, AQUATEC PLACE, 2ND FLOOR, 94 SWANIKER STREET, ABELEMKPE, ACCRA THIS 13TH DAY OF OCTOBER 2025.

The address for service of the Plaintiff is as follows:

DEMOCRACY HUB **PLAINTIFF**
Suite 4, Morocco House
No. 195/10 Otinkorang Street,
North Kaneshie, Industrial Area
Accra

The address for service of Counsel for the Plaintiff is as follows:

Oliver Barker-Vormawor
Merton & Everett
94 Swaniker Street
Abelemkpe
Tel: 034-229-5174
secretariat@mertoneverett.com

The names and addresses of persons affected by this writ are as follows

THE ATTORNEY GENERAL **1ST DEFENDANT**
Office of the Attorney General
Ministries, Accra

THE MINISTER FOR FOREIGN AFFAIRS **2ND DEFENDANT**
Ministry of Foreign Affairs & Regional Integration
Flat 5, Agostinho Neto Rd,
Accra, Ghana

DATED AT MERTON & EVERETT, AQUATEC PLACE, 2ND FLOOR, 94 SWANIKER STREET, ABELEMKPE, ACCRA THIS 13TH DAY OF OCTOBER 2025.

Oliver Barker-Vormawor
Merton & Everett
Chamber Registration No: ePP00812/23
Partnership TIN: C0063476185
Solicitors License No: eGAR23074/25

Solicitors BP Number: 3000003173
Solicitors TIN: P0001564978
Tel: 034-229-5174
secretariat@mertoneverett

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE ABOVE NAMED DEFENDANTS