**MEMORANDUM**

**TO:** The Honourable Chairman and Members

Committee on Education

**FROM:** Ghana Center for Democratic Development (CDD-Ghana)

**SUBJECT:** Public University Bill, 2020

**DATE:** May 15, 2020

**CC:** Office of the Attorney General

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We are grateful to your Committee for the invitation and opportunity to submit this memorandum to assist the Committee in its review and consideration of the Public University Bill, 2020.

## Objects of the Bill

Two reasons have been provided as the justification for this bill:

(i) That 'public universities have veered away from their core discipline', even though their roles and objectives were clearly defined at the time of their establishment. (paragraph 3 of memorandum)

(ii) That 'almost every year, reports from the Auditor-General reveal grave improprieties in the utilisation of resources'. (paragraph 4 of memorandum)

The bill is therefore to 'provide for the establishment of a public university and also spell out the governance structure, finance, administration and regulation of the activities of a public university in a structured, harmonious and co-ordinated manner'. (paragraph 5 of memorandum)

**Comments on Objects of the Bill (Memorandum)**

1. The claim that public universities have been cited for 'grave improprieties in the utilisation of resources' almost every year by the Auditor General is hardly supported with evidence. It is also hardly enough basis for the enactment of a new law to regulate public universities. Assuming without admitting that this claim is true, there is sufficient existing law to punish and or deter the offending officials who have mismanaged public funds or continue to perpetrate same. The Criminal Offences Act, 1960 (Act 29) contains a number of offences including causing financial loss to the State. The Attorney General under Article 88(3) of the 1992 Constitution is vested with prosecutorial powers to prosecute persons for stated financial impropriety. The Auditor General is also clothed with powers under Article 187(7) of the 1992 Constitution to disallow expenditure which is contrary to law and surcharge persons responsible for incurring or authorizing the expenditure. In addition, the Minister of Finance under Section 5 of the Public Financial Management Act, 2016 (Act 921) is clothed with powers to control and or regulate financial management of the public sector. The solution to the alleged 'grave improprieties in the utilisation of resources' is to enforce existing laws and make the prosecutorial and accountability systems work. If any of these existing laws—including those establishing the various public universities—are problematic, the relevant sections must the amended. The availability of the aforementioned existing laws practically render the objective of this bill redundant.

2. Further, no justification or evidence has been supplied by government, the proponents of the bill to support the claim that public universities have 'veered away' from their roles or objectives. Assuming without admitting that this claim is true, it speaks to the abdication of the responsibility of the regulators in ensuring that public universities stick to their objectives and roles. There is no indication that the existing law establishing various public universities is the root cause of this to justify the need for a new law. If the existing law is not the problem, there is no need to replace it. The regulators in the education sector must therefore perform their mandate instead of seeking to enact a new law which vests excessive powers in the management of universities in the executive arm of government.

3. In Paragraph 1 of the memorandum, proponents of the bill appear to suggest that government invests financially in public universities, therefore it must have a say in the management of same. Though there is justification for this position, Government already has a say in the governing structure of universities. Perhaps what Government wants is more say. However, it is for good reason that the Constitution of Ghana has provided these arrangements. Similar to the situation where government funds the Electoral Commission, the Judiciary, National Commission on Civic Education, Commission for Human Rights and Administrative Justice, the Audit Service of Ghana, but does not dictate how these institutions are run, universities fall in the same categories. All over the world, governments fund public universities but they do not dictate how these universities operate. There are many emerging challenges to university education which require a conscious effort to decentralize, empower and give more autonomy to universities to ensure that they are able to adapt to the ever-changing environment of learning.

**Establishment, Composition and Powers of the University Council**

4. Clauses 5-12 provide for the composition and powers of a University Council which is the central governing body of a public university. The University Council is a 13-member body. Its chairperson is appointed by the President in accordance with Article 70 of the 1992 Constitution. The President also appoints 5 other members in accordance with Article 70 of the Constitution. The other members include representatives of 3 State institutions under the supervision of the Minister of Education: one person each from the Ghana Education Service, the Technical and Vocational Education and Training Service and the Ghana Tertiary Education Commission. In effect, 9 out of the 13 members of the Council are nominated and or appointed by the executive arm of government. This practically hands the management and control of public universities to an Executive President. With a majority vote on the University Council, a President can have his way with the management of public universities with limited or no checks. There is an implicit suggestion that more accountability would be achieved with politically appointed council members. This suggestion is flawed because political appointment in itself does not guarantee accountability. Control by the executive will be counter-productive to academic freedom protected under Article 21 (1) (b) of the 1992 Constitution as almost all the activities and decisions of academic institutions would have to be subjected to prior executive approval.

5. The mode of appointment to the Council of a public university outlined in Clauses 5-12 is inconsistent with Article 195 (3) of the 1992 Constitution:

> *'The power to appoint persons to hold or act in an office in a body of higher education, research or professional training, shall vest in the council or other governing body of that institution or body.'*

Vesting the power of appointing the council chair of a public university, an institution of higher learning, research and professional training in an executive President is a direct violation of the letter and spirit of Article 195(3).

6. Clause 5(5) provides that 'the President may dissolve and reconstitute the Council in a case of emergency and appoint an interim Council to operate for a stated period.' Incidents at some public universities in the recent past may appear to be the justification for this clause. In October 2018, violent protests by Kwame Nkrumah University for Science and Technology (KNUST) students over the decision of the university authorities to convert male halls of residence into unisex halls necessitated the intervention of the State. This incident and several others in the past show a certain challenge that the government has had with universities. In the KNUST incident for instance, government saw the need to intervene. But it was criticized as having overstepped its boundaries. Some argued that government should have allowed the university authorities to resolve the matter internally without any interference. We are minded to side with the latter view. After all, institutions should have business continuity plans and arrangements during emergencies. In the KNUST case what if the rioting was as result of opposition to a government policy, government would not have solved the problem by changing the leadership of the Council

or taking over the management of the school. Institutions must show the resilience in dealing with issues like this and government should play its role by protecting the peace and supporting the institution to remedy any issues it has. Even if these proposals were suitable for addressing such problem, there is no definition of what constitutes or qualifies as an 'emergency'. Leaving the definition of an 'emergency' open to the interpretation of the Executive President is dangerous and could be abused. A President may simply invoke this provision to replace the Council whenever he deems fit. A definition of 'emergency' consistent with the constitutional framework under Articles 31 and 32 must be provided.

7. Clauses 6 vests excessive discretionary powers in an executive-controlled university council. Under Clause 6, 'the Council shall have power to do or provide for ***any matter*** in relation to the public university which the Council considers necessary or expedient.' The bill provides no definition or scope of 'any matter'. An executive-controlled university council cannot be handed such excessive discretionary powers to act in any manner it deems 'necessary or expedient'. Such excessive discretion creates room for potential abuse of the Council's powers. Particularly, when such matters include the promotion and appointment of academic heads of departments and institutions, unfortunately, it opens the door for the exercise of politicization and personalization of universities.

8. The composition of the university council under Clauses 5-12 leaves out student representation. The current arrangement in the existing law establishing public universities allow for the students, who are directly affected by the decisions of the council to have a say by way of having the student leadership (SRCs) represented on the university council.

No justification has been provided in the current bill for the exclusion of the student body on the university council. This is a governance model used across the world.

9. Clause 8(1) provides that 'a member of the Council other than the Vice-Chancellor shall hold office for a term of three years and is eligible for re-appointment for another term only.' It is not clear whether this provision is applicable to ex-officio representatives. For example, can a representative of students (SRC President or otherwise) on the council continue to represent students if he or she is no longer a student?

10. Clause 8(4) provides that 'the President may revoke the appointment of a [council] member for inability to perform the functions of that member, for stated misconduct or for any other just cause.' This provision needs further elaboration. There is no definition of what constitutes 'inability to perform the functions [of a member] or what constitutes 'stated misconduct'. The scope of 'inability to perform functions' must be clearly outlined. Another concern here is whether or not it is constitutional for the President to 'revoke' an appointment s/he did not make, especially as some members of the Council are not appointed by the President.

11. Clause 10(2), on disclosure of interest, provides that 'where a member contravenes subsection (1), the chairperson shall notify the Minister who shall inform the President in writing to revoke the appointment of that member.' What if the person who contravenes subsection (1) is the Chairperson?

12. Clause 39 provides for the establishment of Students' Representative Council (SRCs). It indicates that 'the constitution and other governing instruments of the Students' Representative Council shall be drawn up by the students subject to the approval of the Academic Board'. Students generally have freedoms of association and assembly under the 1992 Constitution. The university can have its own statutes (eg. Students handbook) which regulate the conduct of students on the university campus. The bill can make provision for a constitution of the SRC to be complaint with the university statutes. But the suggestion that the constitution of the SRCs must be approved by the Academic Board is constitutionally flawed.

13. Clause 40 provides that 'there is established by this Act, a Centralised Applications Processing Service for the processing of applications for admissions for all public universities.' This clause is problematic because it takes away the freedom of the universities to independently determine admissions based on their criteria. In countries such as the United Kingdom where universities are also funded by the State, the universities maintain the autonomy to determine admissions despite the Universities and Colleges Admissions Service (UCAS) which centralises all applications.

14. Clause 43(2): Academic freedom includes the right to challenge the law through the expression of ideas. No idea when put forward should be contrary to law. What is the purpose of the qualifier "within the law"?

## Conclusion

It is the considered view of CDD-Ghana that government has not made a case for this bill. If there are concerns about the governance of public universities there are existing structures for dealing with them. The autonomy of public universities must be guarded to enable them meet their objectives and adapt to the ever-changing environment of learning.