Memo

To: H. Kwasi Prempeh (Chairman, CSO Platform on Kelni GVG matters)
From: Franklin Cudjoe (Executive Director, IMANI)
CC: All CSO Platform Members
Date: 21 October 2018
Re: Kelni GVG Contract Lawsuits & Matters Arising

Dear Friends & Partners,

On May 28th, 2018, IMANI's executives participated in a meeting of the Ghana Anti-Corruption Coalition (GACC) CSO platform members ("CSO Platform") during which we discussed the contract between the Ministry of Communications and the Ministry of Finance, on one hand, and Kelni GVG, a Haitian-Ghanaian company, on the other hand.

At that time, we decided as partners in the common fight against administrative abuse to solicit more information from the Minister of Communications.

Unfortunately, the Minister refused to treat our correspondence with the necessary seriousness when her office responded on June 11th, 2018, that it could not immediately provide access to the requisite information.

Consequently, a suit was filed at the High Court (human rights division) by Sara Asafo-Adjaye and Maximus Ametorgoh on 11th June 2018 against NCA, the Minister of Communications, the GRA, the Attorney General, the Ghana Chamber of Telecoms, and the four main telecom operators then active in the Ghanaian market. The suit alleged breach of the privacy rights of the plaintiffs and the court was put on notice that a motion for injunctive relief would be filed on 22nd June 2018.

A similar suit was filed at the Supreme Court on 14th June 2018 to pursue the constitutional dimension of the privacy claims on behalf of all potentially affected Ghanaians. The plaintiffs were IMANI and Citizen Ghana, and the defendants this time were the Ministry of Communications and the Attorney General of Ghana.

Another suit was filed by three affiliates of IMANI on the 18th of June 2018 at the High Court against the Ministry of Communications, the Attorney General and Kelni GVG Limited citing

breach of the Public Procurement Act (Act 663) and the Public Financial Management Act (Act 921).

On July 3rd, 2018, the High Court ordered the release, by July 9th 2018, of all documents relevant to the matter in the possession of the Ministry of Communications.

The Ministry refused to comply by this deadline. The same court, however, dismissed the application for injunction on July 10th, 2018. Following this development, the only obstacle in the way of the contract became a July 5th injunction secured from the Court of Appeal by Subah Infosolutions in connection with its lawsuit on December 27th, 2017, against the NCA and the GRA for the abrogation of its contract with the two government agencies without the requisite notice.

Sensing an opening, lawyers acting for Kelni GVG made an initial approach to the solicitors acting for the plaintiffs in all three suits, Lexis Praxis, asking to settle the cases out of Court. Naturally IMANI was disinclined to entertain the offer.

However, with the two-month legal holiday imminent, IMANI was anxious about the status of the suits. In various discussions with Lexis Praxis, a picture emerged of serious complications.

When the two privacy protection lawsuits were filed, the assumption was that we would have our pick of engineering talent in Ghana to choose from as expert witnesses. Proving that the "real-time" traffic monitoring procedure could not be viable without also endangering private communications required that we establish the concern as one of "capability" not of "intent".

We needed to show that by virtue of plugging into any other nodes in the live network except those that deliver billing records, the defendants were not merely exceeding their allowances under the Act but were also placing themselves in a position where they could access private communications if they chose to.

For a Court to be swayed by this argument, technical experts with direct knowledge of the systems being deployed were needed. We could not merely present persons with a working knowledge of telecoms in general even though these abounded in our circles.

Unfortunately, despite all our entreaties, no Ghanaian engineer we approached was willing to testify. Virtually all those we could identify work in the various telecom companies or for contractors to those companies and their reticence in testifying against the government's position appeared to be based on a fear of commercial retribution.

Expert testimony was not relevant to only the two privacy protection suits. A part of our procurement-related suit was also hinged on establishing the abuse of the "restricted tendering" clauses of the Procurement Act by showing rampant misspecification and mismatch of capability between what the process entailed and the kind of companies that were selected to tender.

We had no choice but to look overseas. Our network was helpful in helping us identify a number of highly credible telecom experts that would be willing to testify. These experts would have to fly into Ghana, undergo pre-trial briefing and prepping, and stay put during what could be extensive evidence-in-chief and cross-examination. At least three such experts were required, in billing, signals processing and packet analysis since the domains are substantially different.

When the costs were tallied, IMANI and Lexis Praxis were looking at a bill well over 300,000 GHS, made up of fees, tickets, accommodation bills and contingencies. Lexis Praxis is a new firm with very limited pro bono capacity. IMANI had assured the firm that it will seek the necessary resources to sustain what had become a highly complex legal battle.

IMANI approached Star-Ghana and was duly informed about the intricacies of the grant-making process. Other potential donors also highlighted similar due process requirements. No donor could expedite a grant application considering the sums involved. Finally, a public appeal for resources was made on social media.

By this time the legal vacation was almost over, and a little less than 5% of the required legal support budget seemed likely to be realised. In early September, Lexis Praxis reopened discussions about a potential resolution of the matters through direct negotiations. Whilst the Ministry and the government agencies involved (NCA & GRA) were still unwilling to engage with our concerns, Kelni GVG, understandably, seemed keener. We felt, under the circumstances, that direct negotiations were reasonable and consented to same.

In early October, we were told of the imminent settlement of the lawsuit between Subah and the GRA that would have the effect of lifting the injunction. Meanwhile, we still did not have the necessary resources available to get our witnesses ready and primed to fully pursue the court case.

In light of all these developments, Lexis Praxis advised that the settlement route be considered seriously. Unfortunately, the Ministries and their agencies were not willing to concede on the procurement and public financial management matters. Kelni GVG could only address the technical concerns about potential snooping, and they were willing to allow independent

monitoring of an architectural redesign to address the privacy concerns but only if all proceedings in the courts were summarily ended.

Faced with a choice between the potential collapse of all three cases due to resource constraints and the certainty of some progress on one aspect of the dispute, we decided on a strategic manoeuvre of accepting concessions on the privacy issue whilst retaining our right to pursue the procurement matters in other forums. Thus, on 10th October 20118, the three cases were withdrawn completely. There was no court-adopted settlement.

Our partners in the CSO Platform would rightly wonder why we had not engaged prior to these manoeuvres. The truth is that our initial meeting had not succeeded in establishing a common strategy forward beyond the decision to solicit for more information. The Ministry's delay tactics and the legal vacation also interfered. In hindsight, a brief like this one at some point prior to October 10th was warranted.

All the above notwithstanding, the CSO Platform does have an opportunity at this stage to take a concrete decision on the way forward. As far as IMANI is concerned, the advocacy and the lawsuits have brought the following benefits:

A. Detailed information about the processes and developments leading up to the signing of the contract.
B. A more comprehensive and nuanced understanding of the full risks confronting the nation as a result of this contract.
C. A concession on the part of the private contractor to allow for independent oversight and governance in respect of the data and privacy protection aspects of their work.

Sadly, the public financial management and procurement issues remain unresolved because the relevant government bodies, who alone can remedy that abuse, refuse to engage.

IMANI recommends the following actions:

A. The CSO Platform should consider a meeting with Kelni GVG's representatives to weigh the utility and desirability of the independent monitoring committee.

B. The CSO Platform needs to convene to decide whether the courts remain a viable channel for seeking redress bearing in mind the resource requirements we have indicated above.

C. The possibility of invoking CHRAJ's investigative powers should be considered seriously.

With respect to (C) above, we are aware that CHRAJ's mandate is not necessarily designed to make investigations into procurement abuse and public financial management (PFM) malfeasance seamless, especially where evidence against officials establishing direct conflict of interest or bribery is not immediately available.

We are however of the opinion that a complaint to CHRAJ could be justified by the following provisions in the CHRAJ Act:

> (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, **abuse of power** and unfair treatment of any person by a public officer in the exercise of his official duties;
>
> (b) to investigate complaints concerning the functioning of the Public Services Commission, the **administrative organs of the State**, the offices of the Regional Co-ordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the **failure to achieve** a balanced structuring of those services or **fair administration** in relation to those services;
>
> (d) (iii) **bringing proceedings in a competent court for a remedy** to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and

The complaint to CHRAJ or a similar body should involve not just the Ministry and NCA, but also the Center Tender Review Committee and the Public Procurement Authority, and should be grounded primarily on the following statutory provisions:

> **<u>Public Financial Management Act (Act 921) Section 25(7)</u>**
>
> Subject to **Parliamentary approval** granted under section 21, the Minister shall grant clearance before a covered entity signs a multiyear contract.
>
> **<u>Public Procurement Act (Act 663) Section 38</u>**
> *(a)* if goods, works or services are available **only from a limited number of suppliers or contractors**; or
> *(b)* if the time and cost required to examine and evaluate a large number of tenders is **disproportionate to the value** of the goods, works or services to be

procured.

The refusal of the Minister of Communications, whose Chief Director entered into the agreement on her Ministry's behalf and on behalf of the Ministry of Finance based on a tender conducted by the NCA without Ministry of Finance involvement, to comply with the relevant laws in the execution of this manifestly illegal agreement, and her failure to heed clear warnings that the contract infringed on an existing contract and could thus expose the country to financial liability amounts to clear abuse of power and unfair administration.

It is important for the CSO Platform to bear in mind that the financial losses emanating from these actions are already evident: Subah is to be pacified with $25 million of taxpayers' funds in an out of court settlement. Whilst $22 million of this amount is described in the settlement as arrears for services already rendered, the truth is that those services were frustrated due to the dogged determination of the Ministry to ram through the Kelni contract at all cost.

Whilst most of the damage has now already been inflicted on the State, there is the need to seek Judicial precedent on the vexed issue of "restricted tendering". The most cost-effective means to do so would be to persuade CHRAJ to use its constitutional and statutory (Article 287(2) of the constitution and Section 7(d) of Act 456) powers to seek the necessary declarations from the law courts.

The ultimate benefit should be the reduction in the liability to the State now, or at least in the future.

Our preliminary investigations support the basis for a continued pursuit of the value for money concerns arising as a result of the procurement and PFM breaches. We have established:

A. The absence of parliamentary approval for the multi-year contract entered into by covered entities, contrary to law;
B. The ineligibility of the shortlist used in the restricted tendering process, contrary to law; and
C. The very high likelihood of cost inflation due to the weak and tenuous administrative processes above and the total and reckless misspecification of the technical design of the Common Monitoring Platform (see annexures one and two).

Annexed to this memorandum is a published account of these investigations.

We look forward to further deliberations on the contents of this letter.

Thank you.

Yours faithfully

Franklin Cudjoe

Executive Director, IMANI Center for Policy Education

Annex 1

Extract from the technical proposal of Kelni GVG to the Entity Tender Committee

IP load-sharing servers	8C HD 100GB RAM 32 GB	1	$5,000	$5,000
CNMP Probes SIMON Series 2000	8C HD 15k 4x250GB RAM 32GB	3	$7,000	$21,000
Processing cluster	8C HD 4x250GB RAM 120GB	1	$10,000	$10,000
NAS server and Local processing server	64C HD 136TB 128GB	2	$54,000	$108,000
		7		**$144,000**
Remote Site Operating SW	Description	Total	Price/Unit	Total Price
Camel/Diameter monitoring Engine	For the probes SIMON Series 2000	3	$62,000	$186,000
Sigtran monitoring Engine	For the probes SIMON Series 2000	3	$65,000	$195,000
USSD monitoring and filtering Engine	For the probes SIMON Series 2000	3	$68,000	$204,000
SMS classification and filtering Engine	For the probes SIMON Series 2000	3	$52,000	$156,000
Monitor push online update SW	For all the servers	3	$28,000	$84,000
Proprietary MSUs Filtering management SW	For the NAS server	1	$28,000	$28,000
Proprietary alarm check/reporting engine	For all the servers	6	$35,000	$210,000
				$1,063,000
Total Remote HW+SW for remote sites				**$9,656,000**
TRMS Central e HW	Description	Total	Price/Unit	Total Price
Database servers	16C HD 10TB 256GB	4	$15,000	$60,000

Annex 2

IMANI ALERT:

HOW MOC RAPED GHANA THROUGH THE KELNI-GVG SHAM

In May of this year (2008), IMANI began issuing a series of alerts and reports on the decision by the Ministry of Communications (MOC), acting in concert with its technical agency, the National Communications Authority (NCA), to award a 10-year contract worth nearly $180 million to an entity known as Kelni GVG.

In June of the same year, a Principal of IMANI, Kofi Bentil, acting as a public interest lawyer, commenced multiple lawsuits, on behalf of Maximus Amertogoh and Sara Asafu-Adjaye against the Ministry of Communications on grounds of financial maladministration and threats to privacy. A totally separate legal action was also underway by a company called, Subah, meant to injunct the take-off of the Kelni-GVG contract on the grounds that the contract infringed on Subah's existing contract with the government which, to its mind, had been unlawfully abrogated.

IMANI supported the actions of Kofi Bentil, and was indifferent to the case of Subah since we had different perceptions about the whole approach to "telecom taxation revenue assurance" that Subah believed in. In short, IMANI does not accept this whole notion of paying millions of dollars to companies to prevent tax evasion by telecom operators because the whole technology model is questionable and the evidence over more than a decade shows that Ghana has never been able to use these systems to improve revenue collection from telcos, despite their costing millions of dollars. The whole enterprise has become a wicked gravy train that needs to be stopped.

Kofi Bentil's lawsuits were met with a remarkable degree of resistance, evasiveness, delay tactics, and verbal aggression by the Ministry of Communications. It has become clear over the last four months, that the Ministry has absolutely no intent of behaving with the high ethical standards and decorum expected of a public office, and that pursuing this matter through the courts would likely take years.

Unfortunately, Kofi Bentil has limited pro bono capacity, and IMANI's attempts to solicit donations from the public to minimise his costs have not been successful. In the absence of conditions favouring public interest litigation in Ghana, especially when the issue at stake involves multiple layers of bureaucratic misconduct, we were not surprised to hear from Kofi Bentil that, under the circumstances, a settlement was the most efficient end to the court proceedings. IMANI congratulates Kofi, Maximus and Sara for the remarkable success of securing concessions on privacy protection from Kelni-GVG and its enablers, the MOC.

IMANI views the value-for-money issues it raised against the contract as unresolved. In this brief report, we shall therefore catalogue the key problems with the entire process that led to the award of the contract; and show how the chronology, the procedures adopted, the evaluation of tenders, and the final outcome all point to a SHAM ARRANGEMENT DESIGNED SOLELY TO RAPE GHANA. We will then outline our strategy to compel an improvement in the value for money content of the current situation. Whilst the legal case is being settled, the ethical-financial administration case against Kelni shall continue to gather momentum until a comprehensive settlement is reached.

Here is the main chronology of events.

August 15th, 2012

- Agreement between Global Voice Group, a Seychelles-registered company, and Subah Info-solutions is executed.
- GVG assigned its rights, title and interest in a contract signed with the National Communications Authority (NCA) on March 11, 2009, for the implementation of a "Consolidated International Gateway Project Management" service.
- Through this agreement GVG assigned or "sold" the contract they had with the Republic of Ghana to Subah for $12 million.

2nd February 2015

In 2015, GRA renews the subsisting contract with Subah but NCA writes soon thereafter to GRA explaining that the necessary "legal regime is not in place" even though Subah has already commenced operations under the "new dispensation". NCA provides a "supplementary agreement" to give "legal effect" to the engagement between Subah and NCA, thereby regularising a tripartite arrangement between Subah, GRA and NCA.

In the supplementary agreement, Subah was to build a common monitoring platform for the NCA and GRA using an "out of bound signal transfer point architecture".

NCA was to bill network operators, collect monies due to government in respect of international, inbound, electronic communications traffic, and then pay a portion of the amount collected to Subah as monthly fees against invoices issued by the latter.

August 7, 2017

Letter from Ministry of Communications to the Director-General (DG) of the NCA, Joe Anokye, signed by Minister Ursula Owusu-Ekuful reminding the DG that in March 2017 a decision had been taken at a stakeholders' consultation forum chaired by the Senior Minister to implement a common platform for NCA and GRA, but with the NCA taking the lead in the establishment of the platform because of its technical capacity. In the letter, the Minister of Communications said the participants at the meeting had agreed that the responsibility for this platform should be removed from both Afriwave and Subah. Recall that in 2015, the NDC had introduced Afriwave into the picture, thereby splitting the telecom tax assurance program into two, one administered by the GRA and operated by Subah, and the other administered by the NCA and operated by Afriwave.

11th August 2017

Joe Anokye writes to Minister Owusu-Ekuful accepting the responsibility to procure the "Common Monitoring Platform" from a vendor by a "selective tender process". We presume "selective" here was intended to mean "restrictive" or "restricted".

31st August 2017

NCA seeks approval from the Public Procurement Authority (PPA) to use restricted tendering for the purpose of procuring this "Common Monitoring Platform" (CMP). The use of "restricted tendering" was proposed as the only viable path forward as the CMP is a highly specialised endeavour **and only a few companies in Ghana can hope to build and manage it.** In the same letter to the PPA, the NCA DG claims that the Authority had conducted an extensive background search on the 4 companies it was recommending to the PPA for approval based on their track record **offering similar services as those which it intends to solicit through the tender.** This is a very **crucial point,** and the reader is asked to bear it in mind as the entirety of IMANI's case rests substantially on it.

11th September

PPA issues approval for ONLY the 4 companies to be invited by the NCA for restricted tendering.

15th November 2017

NCA issues bidding documents to the four tendering companies, which are

- 3D TV Properties Limited/Opertech Solutions
- Aeon Logistics/SGS
- Kelni Ltd/GVG
- Atlantic Assets Limited/Telsig

Notice that the "subcontractors" of these companies are mentioned after the slash, but not as joint venture partners. We will explain why that point matters later in this report.

30th November

The four lucky companies sent the following representatives to the opening of bids at the NCA:

Rouba Habboushi – Kelni Ltd. (this representative is also associated with the Yellow Butterfly Company, which we have been investigating in relation to allied matters)

Frederick Yemoh – 3D TV Properties Limited

George Tagoe – Aeon Logistics Limited

Peter Hoyah – Atlantic Assets Limited

The NCA had constituted an entity tendering committee comprising of the following persons:

Kofi Datsa – IT Lawyer

Kofi Ntim Yeboah-Kordieh – Electronic Engineer

Roland Kudozia – Core Network Engineer

Mohamed Amin Suleman – IT Engineer

David Gyapanin – legal procurement specialist

The evaluation of the bids by the committee yielded the following results:

Technical

No.	Name of Firm	Scores
1	Messrs Atlantic Assets Ltd/ TELSIG	81.63
2	Messrs 3D TV Properties Ltd/ Opertech Solutions	85.25
3	Messrs Kelni Ltd/ Global Voice Group (GVG)	92.38

Financial

TENDERER	TOTAL TENDER PRICE USD	RANK
Messrs Kelni Ltd/ Global Voice Group (GVG)	191,080,629,.16	1st
Messrs Atlantic Assets Ltd/ TELSIG	208,084,473.03	2nd
Messrs 3D TV Properties Ltd/ Opertech Solutions	223, 903,300.00	3rd

4th December (Monday)

Following a Meeting of the Entity Tender Committee held at the NCA Boardroom, Joe Anokye and Abena Asafu Agyei, Head of Procurement at the NCA, moved to advance the process.

5th December 2017 (Tuesday)

George Andah, Deputy Minister of Communications, writes to Charles Taylor of the Central Tender Review Committee (CTRC) with copies of the "Evaluation Report" of the tender held pursuant to the "concurrent approval" issued by the CTRC and solicits ratification for the process.

X December 2017

On a letter with a tampered date (our analysis show that the letter was written sometime between 4th December and 14th December) that appears to be a cross between 4th, 13th and 14th December,

David Quist, Secretary to the CTRC wrote to Minister Owusu-Ekuful to inform her that an emergency meeting had been held on the 11th of December 2017 to approve the evaluation report and therefore that approval to enter into an agreement with the selected vendor was therewith issued.

CTRC asked for a Ministry of Finance approval since the contract was multi-year and also demanded to see results of negotiations with the vendor prior to final approval.

14th December 2017 (Thursday)

MOC is purported to have written a letter to the Ministry of Finance (essentially the same day that the letter from the CTRC letter is supposedly dated) asking for approval.

19th December 2017 (Tuesday)

Minister of Finance writes to grant approval. Not a single explanatory memorandum was annexed to the request for approval. One wonders how the decision was made.

20th December 2017 (Wednesday)

MOC writes to CTRC with its assurances that the Ministry of Finance had granted approval. No information whatsoever about the results of the negotiations were provided.

22nd December 2017 (Friday)

David Quist writes to inform the MOC that at a meeting of the CTRC the day before, during which the "outcome of negotiations" and the Ministry of Finance's approval had been reviewed, the committee was disposed to issue approval. Even though a pending petition showing that the Ministry is acting illegally had also been sighted, the CTRC was nevertheless of the mind that the process needed to progress.

27th December 2017 (Wednesday)

Right after boxing day, the contract with Kelni-GVG is signed.

Abuses & Concerns

1. The first thing noticeable about the chronology outlined above is the haste with which very complex evaluations of a $179 million dollar contract were supposedly conducted. In virtually all cases, no real due diligence information was available to the authority making the decision to approve or reject. For example, the Ministry of Finance received a letter on Friday asking it to consent to a multi-year contract valued at nearly $180 million, with ABSOLUTELY NO financial due diligence of the proposed EPC structure, and yet two working days later the Minister had been able to take a decision to sign. Anyone with

even the barest notion of how government works in Ghana would appreciate the job queue in the average ministerial office, not to talk of the Finance Ministry of all places. Clearly, there was no intent to conduct due diligence. This problem is rampant across the chronology.

2. Despite a pending petition from Subah alleging in very strong terms the illegality of the entire proceedings, the CRTC does not bother even once to invite comments on the matter even as the process is rammed through from emergency sitting to emergency sitting (note that the CRTC would normally meet once or twice a month and by law must meet at least once every three months).

3. On 16th January 2018, barely three weeks (less than 14 working days) later, the Attorney General was compelled to write to Kofi Nti, Commissioner General of the GRA, regarding a petition received from Mercer & Company on behalf of Subah in respect of a purported termination of its contract and award of the same contrat to a foreign company. This letter was ignored even though the Attorney General had clearly advised that the letter of termination sent on 25th April, 2017 and meant to take effect on 5th May 2017, did not satisfy the 3-month notice indicated in the contract, and that the 11-day notice was clearly in breach of the contract. The notice from the AG was very clear that should Subah decide to exercise its rights at law, **financial liability to the state could not be averted**. Yet, this was ignored even as the MOC, with the connivance of the CTRC, rammed through the process. Any settlement with Subah today would have financial implications for the project.

4. Above everything else, however, is the actual conduct of the "restricted tender". Our checks at the Registrar General confirmed our fears when we originally reviewed the documentation available on the Kelni case. None of the four companies deliberately invited to the tender had any track record in the field of telecom revenue and traffic monitoring **for which reason a restricted tender was warranted**. Not surprisingly, in section II 5.5(b) of the restricted tender guidelines, the NCA mischievously relaxed the requirement that the successful tenderer should have at least 3 years minimum track record. Luckily, for this country, they were unable to remove the 5.5(e) requirement that the successful tenderer shows evidence that they have 10% of the contract price in the form of liquid assets or credit facilities. Despite this requirement forming part of the evaluation criteria, as per section v (qualification information) clause 1.8 of the guidelines, no evidence was collected to confirm that any of the four obscure companies met this **very clear stipulation**.

5. Further evidence that the purported "background research" used to justify the selection of ONLY the four companies to participate in the sham tender was completely inept came to the fore when the purported technical partner of Aeon Logistics – SGS – disclaimed any association and refused to participate in the sham proceedings. The principle here is that: in a tender evaluation of this kind, it is not purported subcontractors or alleged "partners" that matter, but rather the tendering companies whose incorporation, tax, and other identification documents/information have entitled them to participate in the bid. The informal use of the names of alleged "partners" or potential/future subcontractors to bolster the credibility of weak tenderers is heavily

open to abuse and thus in contravention of all norms of public procurement. We have been exhaustive in past commentary about Kelni Ltd, so we will in this report only focus on the other three companies invited to the tender:

A. Aeon Logistics was incorporated in 2014 to provide services in general logistics and ICT consultancy with paid-in capital of 5000 GHS. It says its principal place of doing business is Hse No. E249, Tumu Avenue in Kanda (picture below).



Two days after Minister Owusu-Ekuful's letter to the NCA asking for the procurement of the CMP, the founders of Aeon Logistics sold their non-trading enterprise to Ms. Awura Adwoa Anie-Budu, a fresh law graduate and friend of Fritz Salewa, an Obafemi Awolowo grad working as a supporting paralegal at Integrated Legal Consultants, who became the second director. **The total amount paid in the transaction was a grand total of 5000 GHS**. That was how much the company was worth on the eve of the tender, and yet Aeon was selected as one of only four companies in Ghana suitable to bid for the project. Let that sink in. Checks at SSNIT leads us to conclude that at this time Aeon Logistics had no full-time employees, and still doesn't. So who is it that found Aeon and decided that they needed to be invited to participate in a restricted tender for a $179 million project to monitor sophisticated telecom companies in Ghana?

B. 3D TV Properties was incorporated in 1995 and is authorised to trade in the construction, general merchandise, telecoms and broadcasting sectors. It has never acquired any licenses in the telecom and broadcasting industries, a regulated sector where licenses are prerequisites of business, and has indeed been comatose for many years. Its only shareholder is Yvonne Yemoh, who contributed the 10,000 GHS share capital during the formation. The second Director is Christopher Amanortey of Akosombo Chambers. 3D TV also has no full-time employees. What is even more fascinating, it was only AFTER the PPA had approved the inclusion of the company's name in the list of pre-qualified tenderers that, on 26th September 2017, the company modified its objects to include telecoms. Who did the research that turned up 3D TV Properties as one of the few companies in Ghana that could undertake this $179 million contract?

C. Atlantic Assets Limited was represented during the tender, if you would recall, by Peter Hoyah, another paralegal at Integrated Legal Consultants, the same entity whose paralegal serves as a Director at Aeon. It was founded in 2011 with share capital of 15000 GHS by Isaac Emmil Osei Bonsu and Laura Anastasia Akuoko for the primary purpose of investing in real estate. Isaac Osei Bonsu is a well-known

lawyer with Minkah-Premo, who has investments in various properties in Ghana. "Atlantic Assets Limited" nevertheless had no background whatsoever in the telecoms industry, much less in signals processing, and could not have surfaced in an objective search for companies with the capacity to deliver a $179 million project.

6. None of the GRA officials purported to have been part of the evaluation panel actually participated. This was strange indeed considering that the CMP was justified as a means to unify GRA and NCA revenue assurance processes and practices.

7. Mohamed Amin Suleman, a former employee of Global Voice Group, continued to participate as an evaluator in these proceedings when he should have had the professional sense to recuse himself. The question is: why was he empanelled in the first place by the NCA?

8. The technical proposal from Kelni Ltd, which was adjudged as most superior by the compromised entity tender committee was replete with sheer technical skulduggery. Multi-protocol packet analysers were deliberately obfuscated and renamed as multiple, separate, hardware and software packages in order to bamboozle and confuse, thereby justifying millions of dollars for capital investment that simply cannot survive even the most rudimentary of technical audits. Some of the most egregious entries include:

    CNMP Probes Simon Series 2000

    USSD Filtering & Monitoring Engine

    SMS Classification & Monitoring Engine

    CAMEL/DIAMETER Filtering & Monitoring Engine

    SigTran Monitoring Engine

    These redundant, mis-specified, facilities were listed as costing over $700,000 for each site.

9. As IMANI has demonstrated severally in the past through our written and oral commentary, the proposed infrastructure plan for the SS7 and sigtran monitoring, which undergirds the whole CMP effort, was bloated and inflated by several millions of dollars, as was the operational and management plan. This was done with the full connivance of the Entity Tendering Committee, which is why it produced no technical report to justify any of the planned expenditure given the task at hand. Not a single technical opinion was written to show any effort at all to review the proposed architectural design and topology. Ghana's money was just poured down the drain.

10. At the CRTC level, unconscionable failures compounded the farce. The restricted tender awarded to Kelni Ltd was not published in the Public Procurement Bulletin contrary to section 39(2) of the Public Procurement Act (the electronic version of the PPB is available for anyone to check: https://www.ppaghana.org/rt-contracts_results.asp?Agency=%25&ppb_date=356&Submit=Search&offset=50). None of the serious questions that should have been asked were asked. And nearly $180 million of the country's precious resources were allowed to sink down the drain of ineptitude.

IMANI has decided, therefore, to refer this whole matter to CHRAJ.

Given the challenges with the court system we outlined at the beginning of this report, going to CHRAJ is the most cost-effective route in these circumstances.

Our **primary complaint** is that a "restricted tendering" process presupposes extensive due diligence before the public tenderer can conclude that only the companies being invited possess the rare combination of capacity and experience to undertake a particular assignment. Without that safeguard, the process is heavily open to abuse.

We insist, based on our research, a part of which we have summarised in this report, that the decision to restrict such a major tender, valued at such a huge sum, and one that had no restrictions on the nationality of tendering entitie, to four companies with no background in the operation of programs of similar technical complexity as the assignment in view was part of a deliberate effort to conduct sham proceedings just to favour preferred vendors.

This conduct amounts to abuse of office and administrative malfeasance. We do not believe that any objective assessment of the obscure companies invited to tender was conducted. Their selection was a ruse meant to facilitate a preconceived conclusion.

It is very important to bear in mind the words of the law on this issue. A restricted tender is only justified under the following conditions:

(a) if goods, works or services are available **only from a limited number of suppliers or contractors**; or
(b) if the time and cost required to examine and evaluate a large number of tenders is **disproportionate to the value** of the goods, works or services to be procured. (Section 38, Act 663).

A CHRAJ investigation is thus warranted.

If however the MOC, NCA and Kelni-GVG are open to further negotiations with a view to improving the **value for money** situation, the remedy we intend to seek from CHRAJ can be obtainable from a comprehensive settlement now that Kofi Bentil has made progress on the privacy front. The whole point of sound public procurement, after all, is to arrive at the best value for money decision.

We shall update the public in due course.