



9 May 2024

Dear Old Boys,

GCU LAND RECOVERY REPORT - RESPONSE FROM FEDT BOARD OF TRUSTEES

The FEDT Board of Trustees has recently received a copy of the 'GCU LAND RECOVERY REPORT' and has taken time to study it. It contains lots of false and misleading allegations.

Seeing the gravity of the allegations, the FEDT Board of Trustees deemed it necessary to respond to the issues – at least for the sake of posterity. We have therefore taken time to provide the facts and set the records straight in the attached document.

We implore everyone to make out time to read the document in its entirety.

We have walked a long hard road in the GCU Restoration Project. It is therefore important that we exercise due caution in all we do to preserve what we have collectively accomplished and protect the hard-earned image of our dear Alma Mater.

May we continue to shine as one.

Thank you.

Dr. Okwesilieze Nwodo
Chairman

FEDT Board of Trustees response

re: Final Report of the Chukwukere Committee for GCU Land Recovery dated 28 October 2023

1. Background

1.1 Following the various acts of trespass/encroachment on the land on which Government College Umuahia (“GCU” or “School”) exists, which land is known as Government College Umuahia, Kilometer 6, Ikot Ekpene Road, Umuahia (“GCU land”), the Chukwukere Committee for GCU Land Recovery (“Committee”) was established for the purpose of recovering the parts of the GCU land occupied by encroachers (“land under encroachment”). The Committee’s terms of reference are as follows:

- (a) “To identify areas of GCU property not fully controlled by ‘FEDT’ (i.e. by the Trustee of FEDT).”
- (b) “To reestablish the survey pillars of the GCU land as contained in the Certificate of Occupancy showing a GCU land area of 89.13 hectares.”
- (c) “To recommend/devise immediate and long term plan/steps/strategies to discourage present and future encroachers.”
- (d) “To use drones where necessary to show the extent of encroachment and activate stoppage of land grabbing.”
- (e) “To use expedient methods including dialogue for recovery of the 89.13 hectares of GCU land.”
- (f) “To raise money from the GCU community for effecting the GCU land recovery schemes.”

1.2 Further to the foregoing, the Committee produced a final report dated 28 October 2023 (“Report”), which, according to the Committee, contains an “account of both individual and collective endeavour on the continuous dynamic activities of the Committee to recover GCU lands from unknown encroachers”.

1.3 However, the Report also contains sundry misinformation, misrepresentation facts and law, and unwarranted allegations against the Board of Trustees of the Fisher Educational Development Trust (“FEDT Board”), some of the members of the FEDT Board, and some well-meaning old boys of the School (“Old Boys”), including His Excellency Dr. Okwesilieze Nwodo, the Chairman of the FEDT Board, Dr. Okechukwu Enelamah, a former Chairman of the FEDT Board, Mr. Reginald Ihejiahi, Mr. Emeka Ifezulike, and Mr. Chuma Onwudiwe. These allegations include (a) that the FEDT Board (i) refused to take action to recover the land under encroachment for 6 years, and (ii) deliberately instituted *The Incorporated Trustees of Fisher Educational Trust v. Occupiers* (Suit No. HU/144/2023) (“FEDT suit”) subsequently to shield the encroachers on GCU land (“encroachers”); (b) that the Ministry of Education (“Ministry”), and specifically Dr. (Mrs.) M.O Philips, the Abia State Commissioner for Education at the time, forged the Memorandum of Understanding dated 21 July 2014 between the Abia State Government (“Government”) and Government College Umuahia Old Boys Association (“MoU”); and (c) that Government College Umuahia Old Boys Association

(“GCUOBA”) – not the Incorporated Trustees of Fisher Educational Trust (“FEDT”)¹ – is the trustee of the GCU Trust created by the Deed of Trust made on 22 December 2014 between the Government, GCUOBA and FEDT (“Trust Deed”).

- 1.4 Based on the foregoing, it has become necessary for the FEDT Board to respond to the material misinformation, misrepresentations, and allegations in the Report as presented below.

2. FEDT Board’s response

Allegation that the FEDT Board failed to take action against encroachers on the GCU land for 6 years

- 2.1 In the Report, the Committee alleged that the FEDT Board, for 6 years commencing from 2017, merely watched the unknown encroachers trespass on the GCU land (p. 5 of the Report). According to the Committee, in 2017 the FEDT Board refused to take the unknown encroachers to court after Chief Uche Ihediwa, SAN, who at the time was the Abia State Commissioner of Lands, Survey and Urban Development, informed Mr. Chuma Onwudiwe about Chief O.O Onyemachi’s complaint to the Deputy Governor of Abia State at the time (“Deputy Governor”) regarding the encroachment on the GCU land. (Chief Onyemachi was at that time the principal of the School.) The Committee further alleged that in 2019 the FEDT Board also ignored a similar complaint by Elder Okoronkwo, the last principal of the School. It also claimed that the FEDT Board, following the advice it received from its legal adviser, wrongly refused to file a joint suit with GCUOBA against the unknown encroachers on GCU land (p. 22 – 25 of the Report).
- 2.2 In response, we say that these allegations are false and/or misleading. It is not true that the FEDT Board stood by for 6 years and watched the unknown encroachers encroach on GCU land. Indeed, in 2017 Chief Onyemachi wrote a letter to the Deputy Governor in which he, among others, (a) expressed his disapproval of the management of GCU by the Old Boys of the School (not just FEDT), and (b) alleged that the Old Boys who were involved in the GCU restoration project (but whose names he did not mention) were selling parts of GCU land. Chief Onyemachi therefore did not allege that GCU land was being encroached upon by unknown encroachers. Rather, his allegation, as aforesaid, was against the well-meaning Old Boys who were rigorously working hard to actualise the GCU restoration project. It is also true that he did not substantiate the allegations with actionable facts and did not write to GCUOBA or FEDT regarding the matter or any encroachment on GCU land. (We have attached hereto Chief Onyemachi’s letter as “Annexure A”.)
- 2.3 Nevertheless, following Chief Onyemachi’s letter to the Deputy Governor, Surv. (Hon.) D. A. Nzenwa, who at the time was GCUOBA’s National Chairman, and His Excellency Dr. Okwesilieze Nwodo, the FEDT Board Chairman, each wrote a rejoinder to the Commissioner of Education (a) expressing their rejection of the unwarranted and blanket allegations in Chief Onyemachi’s aforesaid

¹ We note the attempt to confuse or conflate the present FEDT, which is the Trustee of the GCU Trust, with the bequest Rev. Robert Fisher made in favour of GCU in, and the related trust he created in his will which the Committee has described as “Rev. Fisher Educational Development Trust” (see p. 34 of the Report). The FEDT, the trustees of which are registered at the Corporate Affairs Commission, is different from “Rev. Fisher Educational Development Trust”, which the Committee has described at p. 34 of the Report. Without receiving legal opinion on Rev. Robert Fisher’s will, we cannot speculate on whether GCUOBA is “The Trustee” of any bequest or trust created in Rev. Robert Fisher’s will.

letter, (b) explaining why the allegations were false, and (c) stating, among others, the achievements of the Old Boys in the actualisation of the restoration project. (We have attached hereto the letters written by Surv. (Hon.) Nzenwa and His Excellency Dr. Nwodo “Annexure B” and “Annexure C”, respectively.)

- 2.4 The truth however is that when the FEDT Board became aware of the encroachment on GCU land, the FEDT Board considered immediately the use of force to evict the encroachers and recover the land under encroachment. But the FEDT Board took legal advice to follow the due process of the law to recover the land. Subsequently, in various meetings of the FEDT Board, Chief Ihediwa SAN, who was at the time a Commissioner in Abia State, undertook to instruct a lawyer in Umuahia to file a suit for the recovery of the land under encroachment. The FEDT Board had however wanted to engage its legal adviser for the same purpose. But given Chief Ihediwa’s intervention, the FEDT Board stayed action on its plan to engage its legal adviser.
- 2.5 Accordingly, when in June 2020 Chief Ihediwa notified the FEDT Board that he had engaged A. O. Uwa, Esq., an Old Boy, to file the suit, the FEDT Board issued a letter of instruction dated 9 June 2020 to A.O. Ugwa, Esq.. By the said letter, FEDT Board (a) instructed Mr. Ugwa to initiate the legal process for recovering the land under encroachment from the encroachers, and (b) provided to him (through Chief Ihediwa) all the documents he needed to execute the instructions. The letter of instruction, which was issued upon Chief Ihediwas’ request, was also delivered to him (Chief Ihediwa) for onward delivery to Mr. Ugwa. (We have attached hereto the letter of instruction dated 9 June 2020 as “Annexure D”.) But Mr. Ugwa did not file the suit notwithstanding that the FEDT Board followed up with him and Chief Ihediwa countless times.
- 2.6 For the foregoing reasons, the FEDT Board eventually engaged its legal adviser who advised the FEDT Board on the legal procedure for the recovery of the land under encroachment, and subsequently filed the FEDT suit (i.e, *The Incorporated Trustees of Fisher Educational Trust v. Occupiers* (Suit No. HU/144/2023)) on behalf of FEDT at the High Court of Abia State, Umuahia Judicial Division (“High Court”) on 24 March 2023. The FEDT suit was filed pursuant to Order 54 of the Abia State High Court (Practice and Procedure) Rules (“Rules”), which provides for “summary proceedings for recovery of landed property occupied by squatters or without the owner’s consent”. The procedure therefore enables the owner of land to quickly recover the property from unknown persons, including a person who is not (a) the owner’s tenant, or (b) the owner’s tenant holding over after termination of his tenancy, or (c) the owner’s licensee or person entitled to possession, or (d) a person who had the consent of the predecessor in title of the person who is entitled to possession. The procedure is also consistent with the case law. In *Anthony v Elias & anor*² the Court of Appeal explained the procedure as follows:

“Let me now say a word or two on the procedure for possession of land under Order 53 of the High Cort of Lagos State (Civil Procedure) Rules 2012 [similar to Order 54 of the Rules] pursuant to which the 1st and 2nd respondents commenced their action for possession by originating summons. That procedure is a summary one for possession and it is so titled in the rules. Like all summary procedures, it is a fast-track one entitling the High Court to order possession of land once the claimant is able to make out his interest in the land and

² (2017) LPELR-45027 (CA) 27.

show that the defendant or defendants are squatters or trespassers on it.” (Emphasis supplied.)

2.7 The FEDT suit is pending in the High Court and has been adjourned to 22 May 2024 for judgment.

Refusal of the FEDT Board to file a joint suit with GCUOBA

2.8 The Committee also alleged that the FEDT Board (a) refused to file a joint suit with GCUOBA following the FEDT Board’s legal adviser’s advice to the FEDT Board not to file the joint suit, and (b) deliberately filed the FEDT suit to shield the encroachers. The Committee further alleged that the FEDT Board’s legal adviser made Mr. Chuma Onwudiwe to swear to an affidavit in support of the originating summons in the FEDT suit falsely stating that he is a current member/secretary of the FEDT Board, and that the Government transferred GCU to FEDT.

2.9 In proof of these allegations, the Committee attached to the Report a draft of the originating processes (comprising the originating summons, affidavit, and written address) in the suit the Committee claimed to have filed on behalf of GCUOBA, and a draft of the originating processes (comprising the originating summons, and affidavit) in the FEDT suit (pp. 13, 14, and 24 of the Report, and Annexures 3(c) and 3(d) attached to the Report).

2.10 What happened was that following the directive of the Chairman of the FEDT Board, GCUOBA’s lawyer, Mr. G.U. Akobueze, shared with our legal adviser the draft originating processes he (Mr. Akobueze) prepared in respect of a proposed suit by GCUOBA and FEDT (“proposed suit”) against the encroachers on GCU land. The proposed suit was intended to be brought pursuant the said Order 54 of the Rules, which, as aforesaid, provides for “summary proceedings for possession of landed property occupied by squatters or without the owner’s consent”. The FEDT Board’s legal adviser however reviewed the said draft originating processes prepared by Mr. Akobueze and produced a memorandum in respect thereof. The memorandum is titled “Memorandum on the adequacy of the draft originating processes prepared by G. U. Akobueze & Co. re proposed suit against squatters on the Government College Umuahia land”. (The said memorandum together with the email of 9 March 2023 by which the FEDT Board’s legal adviser sent the memorandum to the FEDT Board are attached hereto as “Annexure E”).

2.11 In the memorandum, the legal adviser explained, among others, that the proposed claimants specified on the draft originating processes were incapable of instituting the proposed suit because none of them was a juristic person capable of suing or being sued in its name. The proposed claimants are “Government College Umuahia Old Boys Association” and “Fisher Educational Development Trust”. The FEDT Board’s legal adviser explained that the whilst the trustees of each of the proposed claimants were registered as a corporate body under the law with the legal capacity to, amongst others, sue and be sued in the corporate name of the body, the proposed claimants themselves (as expressed on the originating processes) were not registered corporate entities. It is therefore the registered or incorporated trustees of the proposed claimants (i.e., the registered or incorporated trustees of FEDT or the registered or incorporated trustees GCUOBA) that have the legal capacity to sue and be sued as contemplated by law – and not the claimants simpliciter. This may sound simplistic; but it has profound legal implications.

- 2.12 Notwithstanding the foregoing, the legal adviser also advised that that neither “Government College Umuahia Old Boys Association” (as specified on the draft originating processes) nor the incorporated trustees of GCUOBA would be able to maintain the proposed suit. He explained that the incorporated trustees of GCUOBA as a corporate body had no sufficient interest or legal standing to sue in respect of GCU land the subject matter of the proposed suit because GCOUBA does not have legal or equitable title over the land. The FEDT Board’s legal adviser also explained that the existence of sufficient interest or legal standing to sue is a condition precedent for the court to hear and determine a lawsuit on the merits. According to the legal adviser, the Government, by the Trust Deed, irrevocably assigned/transferred the entire legal interest and rights over GCU land to the incorporated trustees of FEDT, which is a body corporate. (A reference to “FEDT” in the subsequent paragraphs of this response would mean “incorporated trustees of FEDT” where the context so admits or requires.)
- 2.13 The legal adviser further explained in the memorandum that by the Rules, the proposed suit might be commenced only against a person occupying GCU land, excluding (a) a tenant, (b) a tenant holding over after termination of his tenancy, (c) a licensee of the owner of the Land, or (d) a person who had the consent of the predecessor in title of the person who is entitled to possession of the GCU land. Therefore, except the first proposed defendant in the proposed suit wrongly described as “unknown encroachers” (contrary to the term used in Form 38 of the Rules requiring an unknown defendant to be described as “the occupier”), none of the other proposed defendants specified on the draft originating processes is on GCU land as an “occupier”. This means that none of them is within the category of persons against whom the proposed suit could be commenced under Order 54 of the Rules. (Form 38 of the Rules is attached hereto as “Annexure F”).
- 2.14 The FEDT Board’s legal adviser also explained that the reliefs stated on the draft originating summons are not grantable, and that the draft originating processes did not comply with the provisions of the law for the purpose of the proposed suit. (A photocopy of Order 54 of the Rules is attached hereto as “Annexure G”).
- 2.15 Following the advice of the FEDT Board’s legal adviser, the FEDT Board decided not to participate in the proposed suit with GCUOBA. GCUOBA therefore filed the proposed suit alone as the claimant (“GCUOBA suit”).
- 2.16 On 19 April 2023 the FEDT Board’s legal adviser met with Hon. Justice Obisike Orji and Mr. Akobueze to discuss how to “harmonise” the FEDT suit and the GCUOBA suit following the decision reached at a reconciliation meeting convened by Mr. O. E. Ukaonu. In the meeting, our legal adviser proposed that the way to “harmonise” the two lawsuits was for Mr. Akobueze and the lawyers who filed the GCUOBA suit to join in the prosecution of the FEDT suit, since the relevant substantive law (trust law and land law) and procedural law (Order 54 of the Rules) did not permit either the joinder of GCUOBA as co-plaintiff or the joinder of the Honourable Attorney General of Abia State as a defendant in the suit (the Honourable Attorney General of Abia State not being an “occupier” on GCU land). He explained that to apply to join any of them as parties in the FEDT suit would be contrary to law. He also added that, having been an attorney general himself,³ he knew that an affidavit filed by the Honourable Attorney General of Abia State (assuming it was possible

³ The FEDT legal adviser was the Honourable Attorney General of Enugu State between 2007 and 2011.

under the relevant procedural law) would be premature and not achieve the intended “instant” effect, and that the matter would still go to trial notwithstanding the affidavit filed by the Honourable Attorney General (if the “occupiers” provided evidence of adverse title to the land). (We have attached hereto another memorandum by which our legal adviser communicated the outcome of the meeting to the FEDT Board together with the email of 22 April 2023 by which the legal adviser sent the memorandum to the FEDT Board as “Annexure H”).

- 2.17 Based on the foregoing, a compromise was reached with Justice Obisike’s approval for GCU (not GCUOBA) to be joined in the FEDT suit as a claimant. Based on this, our legal adviser applied for the joinder of GCU as a claimant in the FEDT suit, which was granted by the High Court. He also filed an amended originating processes in the suit following the joinder of GCU as a party to the suit. (We have attached hereto (a) the email trail which shows Justice Obisike’s approval of the joinder of GCU as a party to the FEDT suit, (b) FEDT’s originating processes in the FEDT suit, and (c) FEDT’s amended originating processes in the FEDT suit as “Annexure I”, “Annexure J”, and “Annexure J1” respectively.)
- 2.18 Meanwhile, it is not true that Mr. Onwudiwe swore to the affidavit in support of the originating summons by which FEDT commenced the FEDT suit – either as a member of the FEDT Board or at all. He also did not swear to the affidavit, which forms part of the amended originating processes. The affidavits in support of FEDT’s originating summons and amended originating summons were indeed sworn to by His Excellency Dr. Nwodo, the FEDT Board’s Chairman, as can be seen from Annexure J and Annexure J1. The court processes the Committee relied upon to assert that Mr. Onwudiwe swore to the said affidavit were draft court processes, which (a) required FEDT to confirm the facts therein, and (b) were never filed in court. What was filed in court were Annexure J and Annexure J1. But it is however curious that the Committee chose to rely on draft court processes when it had in its possession the processes that were filed in court.
- 2.19 It is also not true that the FEDT Board’s legal adviser advised the FEDT Board not to proceed with the joint suit following Mr. Onwudiwe advice to the legal adviser. The FEDT legal adviser who (a) had been an attorney general, and (b) until 2019 taught trust law as a senior lecturer at the Faculty of Law, University of Nigeria, could not have taken advice on a legal matter from Mr. Onwudiwe who is not a lawyer. The FEDT Board did not proceed with the joint suit because the FEDT Board believed that it received sound legal advice from its legal adviser (as shown in Annexure E). We acted on the advice that, following basic principles of trust law, GCUOBA, not being the trustee of the GCU Trust, has no legal standing to bring an action against a third party regarding the GCU Trust or any property of the GCU Trust. A similar conclusion was also reached at the reconciliation meeting convened and chaired by Mr. O. E. Ukaonu.
- 2.20 The general rule is that a trustee of a trust has the exclusive right to bring or defend an action on behalf of the trust. A beneficiary of the trust may however be allowed to bring or defend an action on behalf of a trust in exceptional circumstances, which show a failure of the trustee to perform the duty he owes to the beneficiary to protect the trust property or the interest of the beneficiary in the

trust property. In *Hayim v. Citibank NA*⁴ (“*Hayim case*”), which was cited with approval in *TAAN v. SCOA (Nig) Plc. & ors*,⁵ the Supreme Court of the United Kingdom explained this rule as follows:

“...when a trustee commits a breach of trust or is involved in a conflict of interest or duty or in other exceptional circumstances a beneficiary may be allowed to sue a third party in the place of the trustee... the authorities demonstrate that a beneficiary has no cause of action against a third party save in special circumstances which embrace a failure, excusable or inexcusable, by the trustees in the performance of the duty owed by the trustees to the beneficiary to protect the trust estate or to protect the interest of the beneficiary in the trust estate. (Underlining supplied.)

- 2.21 The GCU Trust is a charitable trust (i.e., a trust created for objects or purposes permitted by law), with the objects, which are set out in clause 3 of the Trust Deed, namely –
- (a) to ensure the corporate continuance, proper management, physical development and academic excellence of the School⁶;
 - (b) to finance the operation of the School; and
 - (c) to establish and maintain any scholarship or bursary scheme for indigent students with proven academic records or promising potential.
- 2.22 By the Trust Deed, the Government created the GCU Trust and appointed FEDT as the Trustee of the Trust. The Government also irrevocably assigned/transferred the entire legal interest and rights over the GCU land to the “Trustee” (clause 2.3(a) of the Trust Deed), which, as defined in the Trust Deed, means “Incorporated Trustees of Fisher Educational Development Trust duly registered with the Corporate Affairs Commission” (clause 1.1 of the Trust Deed).
- 2.23 As explained by our legal adviser, no interest over the GCU land was or is vested in GCUOBA under the Trust Deed notwithstanding that it is a party to the Trust Deed.⁷ GCUOBA was also not appointed the Trustee of the GCU Trust. (We will say more on this later.) Based on these considerations, GCUOBA, which is just a nominal party to the Trust Deed, has no basis in law to join FEDT as co-plaintiff in the FEDT suit. GCUOBA is also not a beneficiary of the GCU Trust because the GCU Trust is a charitable trust. Although the implementation of the objects of a charitable trust will ultimately benefit persons, a charitable trust does not have beneficiaries. Instead of beneficiaries, a charitable trust has objects. And the objects of the GCU Trust are focused on the restoration and management of GCU to restore it to its old glory.

Allegation of forgery of the MoU

⁴ (1987) AC 730.

⁵ (2018) LPELR-51169 (CA).

⁶ Defined in the Deed of Trust as “Government College Umuahia”.

⁷ Indeed reference to GCUOBA in the Trust Deed is limited to the historical narrative in the recitals to affirm GCUOBA’s commitment to the creation of the GCU Trust for the benefit of the School – not for the benefit of GCUOBA (Trust Deed, recitals C). It is also true that recitals do not form part of the substantive or enforceable part of an agreement unless it is expressly provided in the substantive part of the agreement that the recitals form part of the substantive agreement and are enforceable (*Ogbonna v AG, Imo State* (1989) 5 NWLR (Pt 121) 312).

- 2.24 The Committee also alleged that the Ministry forged the MoU (i.e., the Memorandum of Understanding dated 21 July 2014 between Government and GCUOBA), and that GCUOBA's witnesses to the execution of the MoU signed the MoU 4 days after Dr. (Mrs.) M.O Philips as the Commissioner of Education signed the MoU. Indeed, the Committee makes specific allegation of forgery against Dr. Philips. The Committee alleged that paragraphs E and F of the recitals in the Trust Deed were omitted in the MoU (pp. 20, 21, 27 and 37 of the Report).
- 2.25 The above allegations are also false and/or misleading. It is not true that the MoU was forged by the Ministry or by Dr. Philips. First, there is only one MoU based on which the Trust Deed was made and executed. The said MoU, which was referenced in the Trust Deed, is attached to the Report as Annexure 12. This is the MoU the Committee has alleged to be fake. But the Committee did not provide the "authentic" memorandum of understanding to support its claim that the MoU attached to the Report is fake. If the MoU, which is attached to the Report, is the only MoU in existence on this subject, then it cannot be fake.
- 2.26 Contrary to the Committee's claim, the MoU was clearly executed between the Government (as the settlor) and GCUOBA (as the trustee). Dr. (Mrs) M. O Philips, who was the Commissioner for Education in Abia State at that time, signed the MoU on behalf of the Government as a representative of the Government; and she signed the MoU in the office of the Honourable Attorney General of Abia State. Chief Umeh Kalu, the Honourable Attorney General of Abia State at the time also signed the MoU as a witness to the execution of the MoU by Dr. (Mrs.) M. O Philips. Chief D.A. Nzenwa, GCUOBA's National President at the time, together with Mr. Emeka Ifezulike and Chuma Onwudiwe, signed the MoU on behalf of GCUOBA. It is also not true that the Old Boys who represented GCUOBA signed the MoU 4 days after the Commissioner of Education signed the MoU on behalf of the Government. The Old Boys signed the MoU on the same day Dr. Philips signed it and in the presence of the Honourable Attorney General of the State in whose office the MoU was signed. The date 25 July 2014, which appears on the stamp on the last page of the MoU, is the date the Government certified GCUOBA's copy of the MoU as a counterpart or duplicate of the original MoU in the custody of the Government, thereby confirming that the MoU in the custody of GCUOBA is the same MoU in the custody of the Government. As can be seen from the last page of the MoU, the certification was done by one Eke Bridget O (Mrs), following which the MoU was registered as "UMU RV 1420621747 of 25/07/2014".
- 2.27 Further, the allegation that paragraphs E and F of the recital in the Trust Deed were omitted in the MoU is a deliberate misrepresentation. First, the MoU was made and signed before the Trust Deed: it is therefore impossible to omit the said paragraphs E and F in the MoU, since the Trust Deed had not been made or had not come into existence at the time the MoU was made. Secondly, paragraphs E and F of the recital in the Trust Deed were only added to explain why FEDT was eventually made the Trustee of the GCU Trust and not GCUOBA – notwithstanding the understanding in the MoU that GCUOBA would be appointed the trustee of the GCU Trust (i.e., to segregate the sundry activities of GCUOBA from its duties as the trustee of the GCU trust). This is also the reason FEDT was incorporated in the first place.
- 2.28 Also, except for the representatives of FEDT, the same parties signed the MoU and the Trust Deed. The Trust Deed was signed by the then Governor of Abia State His Excellency Chief T.A Orji, for and on behalf the Government; and his signature was also witnessed by Chief Umeh Kalu, the then

Honourable Attorney General of Abia State (who also witnessed the execution of the MoU by Dr. Philips). Meanwhile, the Governor signed the Trust Deed for the Government and not for himself, which makes the Government the settlor both in the MoU and in the Trust Deed. It is also true that Surv. (Hon.) Nzenwa and Mr. Ifezulike, who signed the MoU on behalf of GCUOBA, also signed the Trust Deed on behalf of GCUOBA. Dr. Okechukwu Enelamah and Mr. Reginald Ihejiahi signed the Trust Deed on behalf of FEDT, the Trustee of the GCU Trust.

- 2.29 Based on the foregoing, the MoU is not a fake document. Indeed, a document the execution of which by an officer of the Government of Abia State at the material time was witnessed by the Honourable Attorney General of the State at that time cannot be a forgery. And it is elementary law that a commissioner who has due authority can bind the Government in which he is a commissioner. The Report appears to conflate two issues on the point, namely (a) forgery, and (b) lack of authority by the Commissioner of Education to sign the MoU. But none of these exists in this case. If Dr. Philips signed the MoU without due authority, the MoU would not have been recited in the Trust Deed. There is also no evidence that the Committee, which felt so strongly about the issue of forgery of the MoU, has reported the matter to either the Government or the police.

Allegation that FEDT is not the Trustee of the GCU Trust

- 2.30 The Committee also alleged that the GCUOBA is the trustee of the GCU Trust and not FEDT (pp. 11, 15, 34, and 45 of the Report). The Committee also alleged that FEDT is not a legal person but is only a “monetised property of Rev. Robert Fisher” (pp. 11, 24, 27, 30 and 44 of the Report”).
- 2.31 The provisions of the Trust Deed are very clear on who is the Trustee of the GCU Trust. (“Annexure K” attached hereto is the Trust Deed.) The starting point is clause 1.1 of the Trust Deed in which “Trustee” is defined as “Incorporated Trustees of the Fisher Educational Development Trust duly registered with the Corporate Affairs Commission, Abuja”. No reference is made to GCUOBA in the definition of “Trustee” in the Trust Deed. Clause 2.2 of the Trust Deed specifically provides that the GCU Trust shall be administered by the Trustee (i.e. FEDT by virtue of the definition of “Trustee” in clause 1.1 of the Trust Deed). The ownership, management, and control of the GCU (i.e., School as defined in clause 1.1 of the Trust Deed) also became vested in FEDT pursuant to clause 2.2. Clauses 2.3 and 2.4 also speak to the transfer and vesting of the property of the GCU Trust in FEDT. Curiously, the Committee chose to amend the Trust Deed by substituting “FEDT” with “GCUOBA” wherever the Trust Deed read “Trustee”. But no principle or rule of trust law permits that. The GCU Trust is an irrevocable trust; and assuming the Trust Deed could be amended, only the Government (as settlor) can amend it.
- 2.32 The FEDT, although created at the instance of GCUOBA, is a duly incorporated body, separate and distinct from GCUOBA and was appointed in that capacity as Trustee by the Government. Accordingly, only FEDT as the Trustee of the GCU Trust (and its organ, including the FEDT Board created under clause 5 of the Trust Deed) is empowered to administer the Trust, including the Trust Fund (clauses 2 and 4 of the Trust Deed). In addition to the duties imposed on FEDT as Trustee under the Trust Deed, FEDT also owes the common law duties of a fiduciary,⁸ amongst other duties. It is also a basic principle of trust law that a trustee does not take instructions from any third party in

⁸ *Paragon Finance v. D.B Thakerar Co.* (1999) 1 All E.R 400.

the discharge of his duties; but is required to act strictly in accordance with the terms of the trust deed by which he is appointed (*Re Walker, Walker v Duncombe* (1901) 1 CH 879; *Re New* (1901) 2 CH 534). It is therefore inconsistent with these duties for FEDT to be made an organ of GCUOBA or to be seen to be acting on behalf of GCUOBA in the discharge of its duties as Trustee of the GCU Trust. These duties also attach to the trustees of the FEDT Trust, who in substance discharge the duties of the Trustees in the administration of the School.

- 2.33 To ensure very direct personal accountability in and for the GCU Trust, the Trust Deed specifically and expressly vests the power of FEDT to administer the School in the FEDT Board. (And the “FEDT Board” is defined in clause 1.1 of the Trust Deed as “The board of trustees of the Trustee”.) The members of FEDT Board (and not the trustees of GCUOBA) are in substance trustees of the GCU Trust, being persons charged with the responsibility for discharging the key duty of FEDT as Trustee of the GCU Trust, i.e., the power to administer the School. Being trustees, FEDT or the FEDT Board cannot in relation to the GCU Trust lawfully function or be seen to be intended to function as an “organ” of GCUOBA as aforesaid. If the Government had intended to appoint GCUOBA or its trustees as the Trustee of the GCU Trust, it would have done so expressly. But the reason the Government chose not to do this is explained in recital E of the Trust Deed.
- 2.34 Notwithstanding the foregoing, the FEDT Board has a duty of feedback and accountability to all members of FEDT and members of GCUOBA who have become members of FEDT pursuant to the FEDT constitution. In the exercise of its powers and duties, FEDT is required to keep true accounts relating to the GCU Trust, which shall contain particulars of the money received and expended by FEDT, the FEDT Board or GCU, and the matters in respect of which such receipts and expenditures took place, including such other particulars as may be usual in the account of a like nature (clause 6.1 of the Trust Deed).
- 2.35 Although a party to the Trust Deed, GCUOBA is merely a nominal party (intended to establish a connection between the MoU and the Trust Deed), as it has no rights or obligations under the Trust Deed.

Allegations against specific individuals

His Excellency Dr. Okwesilieze Nwodo

- 2.36 The Committee further alleged that His Excellency Dr. Nwodo (a) confirmed that Chief Onyemachi notified FEDT of the encroachment, which Mr. Onwudiwe and Dr. Enelamah allegedly denied; and (b) reneged on his agreement with the Committee’s Chairman that the GCUOBA suit and the FEDT suit would be withdrawn from court following the Governor’s response to the Committee Chairman’s appeal to him to recover GCU land (pp. 42 and 57 of the Report).
- 2.37 In response, we say that these allegations are also false. First, it is not true that Dr. Nwodo confirmed that Chief Onyemachi notified FEDT of the encroachment of GCU land. In fact, in his rejoinder letter to the Commissioner for Education (i.e., Annexure C), Dr. Nwodo clearly stated that “despite promises to inform the FEDT Board of any infraction on the premises, the Principal has never written nor called the FEDT Board once to complain or draw attention. Chief Onyemachi has always been carried along in what the Old Boys are doing to restore the College. He attends our

annual Homecomings at the College and interact with Old Boys. He has the phone numbers and contacts of officers of the Trust and the implementor on ground, Dr. Eugene C. Ibe who he sees every other week. We do not interfere with his work or the functioning of the school as it is. Instead, the Old Boys assist with whatever they can even now”. Dr. Nwodo went further to say that “it is a grievous act of mischief to attempt to impugn the integrity of officers of GCUOBA and Fisher Trust [i.e., FEDT] who are not just distinguished Old Boys but accomplished personalities and first class Nigerians in every material particular”.

- 2.38 On the allegation that Dr. Nwodo reneged on his agreement with the Committee’s Chairman to have the GCUOBA suit and the FEDT suit withdrawn from court, we say that Dr. Nwodo did not reach any such agreement with Chairman of the Committee. Indeed, FEDT determined that it was a dangerous gamble to withdraw the suit at a time the Government had not issued a white paper on the report of the tribunal of enquiry. It would be safe to withdraw the suit only after the Government has issued a white paper with express and unequivocal directives to (a) the encroachers to vacate the land, and (b) the appropriate agency of government to take steps to recover the land from the encroachers.

Dr. Okechukwu Enelamah

- 2.39 The Committee made the following specific allegations against Dr. Enelamah:

- (a) He claimed that by the MoU, “Dr. Mrs. M.O. Philips, the Commissioner for Education, who posed as the “Settlor” of ABSG, privatized GCU to his private Company, Capital Alliance, with two of his senior employees: Chuma Onwudiwe and C. Ifezulike” (p. 26 of the Report).
- (b) He hijacked and adopted a fake MoU, and failed to note that an MoU is never a formal agreement (pp. 26 and 17 of the Report).
- (c) “[A]fter trying but failing to raise funds – its main duty for the rehabilitation of our School (vide: clause E of the preamble of the deed of trust, page 1), he misled our generous and highly dedicated GCUOBA-US Diaspora by telling them to send him funds for same purpose claiming that ABSG [i.e., the Government] had transferred (sic) ownership of our School to him which was false, because Dr. Enelamah had already incorporated himself and his two employees at CAC as private owners of our School and ABSG never transferred (sic) GCU to him, but to GCUOBA on 22nd December, 2014. In 2019, six months after Dr. Philips transferred (sic) ownership of GCU to GCUOBA’s one Trustees on the same day” (p. 26 of the Report);
- (d) Based on (c) above, he called upon GCUOBA – US to donate funds for the rehabilitation of the kitchen/dining hall.
- (e) He overstayed his tenure as Chairman of the FEDT Board.
- (f) He incorporated himself and two of his employees, namely Mr. C. Ifezulike and Mr. Chuma Onwudiwe as “GCUOBA – Incorporated Trustees” on 8 July 2014 with the effect that he incorporated himself and Mr. Ifezulike twice as “GCUOBA – Incorporated Trustees” (pp. 27 and 28 of the Report).
- (g) He “never sent any of his aides to Abuja to Incorporate and register the individual Trustees of GCUOBA. The CAC Registrar – General was not in town and possibly was out of the

country. Dr. Enelamah, a well-known guru in the financial business world, obviously ordered him to WhatsApp his signature to his men in Abuja to Incorporate and register his already Incorporated men” (p. 28 of the Report).

- (h) He saw the Trust Deed as a veritable tool to borrow funds at 3%, lend it at 9%, and transfer the 6% made on it to GCU after deducting costs incurred by Capital Alliance, and he got approval for such loan from an SA bank or finance group in concert with ADB, and hired an S.A principal (pp. 29, 47, and 48 of the Report).
- (i) “[He] repudiated the perfectly unified Memorandum which I sent to the Judicial Panel of Inquiry on the recovery of Government 57 properties. Some of his friends, relatives and others who gained from his company financially or through award of contracts from GCUOBA funds, joined him in denouncing me for always insisting on a unified action in the spirit of Rev. Fisher’s gospel of in unum luceant” (p. 56 of the Report).

2.40 Allegations (a), (b) and (c) above are false. It is not true that the Dr. Enelamah claimed that the Government “privatized GCU to his private Company, Capital Alliance, with two of his senior employees: Chuma Onwudiwe and C. Ifezulike” as alleged by the Committee or at all. This allegation is baseless and unwarranted, especially in view of the clear provisions of the MoU and the Trust Deed. It is also not true that the MoU is fake as we have already explained. The MoU, which is the understanding of the Government and GCUOBA regarding the GCU Trust, is also the foundation of the Trust Deed. Hence, the reference of the MoU in the Trust Deed. Chuma Onwudiwe and Chukwuemeka Ifezulike were never employees of Africa Capital Alliance (or “Capital Alliance” as it is called by the Committee).

2.41 Further, allegations (d) and (e) above are false and/or misleading. Dr. Enelamah did not fail to raise funds for the restoration project. He also did not mislead our generous and well-meaning GCUOBA – US as alleged or at all. First, Dr. Enelamah never undertook any personal responsibility to raise funds for the restoration project. Fundraising for the restoration project remained the responsibility of all well-meaning Old Boys. All the money generated from the Old Boys, including the GCUOBA – US, was used for the purpose for which it was generated. Although the FEDT Board faced a few challenges, we are glad that we have achieved the first phase of the GCU restoration project by accomplishing the following projects: (a) school house, (b) new house, (c) dining hall, (d) classroom block A, (e) classroom block B, (f) classroom block C, (g) laboratory, (h) library, (i) clinic, (j) new admin building, (k) old principals house, (l) new principal’s house, (m) power yard, (n) gate house, (o) tarring of School main drive, (p) water reticulation, (q) landscaping, (r) fence wall on Ikot Ekpene road, (s) internal wire mesh fence, (t) new teachers’ quarters, (u) furnishing of the buildings, (v) admission of students, (w) employment of teachers, (x) provision of teaching aids, (y) provision of vehicle for the principal and staff, and (z) provision of armed security services.

2.42 As of today, GCU is functioning and has been given a high pass mark by the relevant authorities that inspected the School. The milestones we have achieved stand as a monument to the success of the GCU restoration project. Indeed, none of these would have been possible without the overwhelming support and contributions of many committed and well-meaning Old Boys.

2.43 It is also not true that Dr. Enelamah overstayed his tenure as Chairman of the FEDT Board. First, Dr. Enelamah’s tenure as Chairman of the FEDT Board could be determined by members of the

FEDT Board. However, Dr. Enelamah resigned as Chairman of the FEDT Board following his assumption of office as a Minister of the Federal Republic of Nigeria in November 2015.

- 2.44 Allegation (f), which is to the effect that Dr. Enelamah incorporated himself and two of his employees as “GCUOBA – Incorporated Trustees” is misleading. The truth is that following the execution of the MoU and the need to incorporate FEDT as a body corporate at the Corporate Affairs Commission (“CAC”), on 8 July 2014 without delay, Dr. Enelamah, Mr. Onwudiwe, and Mr. Ifezulike took immediate steps to incorporate FEDT and became the temporary trustees thereof until other trustees were appointed and registered at the CAC. FEDT was therefore established in good time to be appointed Trustee of the GCU Trust in the Trust Deed, which was made on 22 December 2014. And subsequently, on 17 June 2015 the following persons became additional trustees of FEDT: Mr. Reginald Ihejiahi, Chief Chamberlain Oyibo, Surv. (Hon.) Damian Anaekperechi Nzenwa, Chief (Engr.) Callistus Nwonwu Nweke, Dr. Okwesilieze Emmanuel Nwodo, Onyemachi Nkele, Dr. Monica Obiageri Philips, and Micah Eze Onyebuchi.⁹ Mr. Onwudiwe also ceased to be a trustee of FEDT by that date. It is therefore not true as alleged by the Committee that Mr. Onwudiwe remains a trustee of FEDT till date. (We have attached hereto the certificate of incorporation of the present FEDT trustees as “Annexure L”.)
- 2.45 Allegation (g) is simply baseless and speculative. First, Dr. Enelamah had no business with the registration of trustees of GCUOBA. Further, Dr. Enelamah did not know the Registrar-General of the CAC, and had not become a Minister, at the time FEDT was registered in July 2014; and FEDT did not register any trustees at the CAC during his tenure as the Minister for Industry, Trade and Investment.
- 2.46 Allegation (h) is preposterous. At no time did Dr. Enelamah plan to or obtain any loan from any lender at 3% with intent that Africa Capital Alliance or any other entity with which he is connected would on-lend the funds to any third party at 9%, and thereafter transfer any profits made on the on-lending (less costs) to GCU. This allegation is simply malicious.
- 2.47 On allegation (i), at no time did Dr. Enelamah “repudiate” any memorandum that the Chairman of the Committee prepared as alleged or at all. This allegation is therefore unfounded.

Mr. Chuma Onwudiwe

- 2.48 The Committee alleged that Mr. Onwudiwe dismissed as “terrible tale” the complaint by Chief O.O Onyemachi that GCU land had been encroached upon, when Chief Ihediwa communicated the complaint to him (p. 22 of the Report). However, this accusation is not true in any way. As we have already explained in this response, Chief Onyemachi never made any complaint to FEDT or GCU that GCU land had been encroached upon; and Chief Ihediwa did not communicate any such complaint to Mr. Onwudiwe.

Mr. Chukwuemeka Ifezulike, Mr. Reginald Ihejiahi, and Mr. Onyema Nkele

- 2.49 The Committee also alleged that having signed the Trust Deed in various capacities, Mr. Ifezulike, Mr. Ihejiahi, and Mr. Nkele knew that the Government transferred GCU land and the School to

⁹ Dr. Monica Obiageri Philips and Micah Eze Onyebuchi were registered as trustees of FEDT as representatives of the Government of Abia State pursuant to clause 5.2 of the Trust Deed.

GCUOBA but failed to insist on this or press it on Dr. Enelamah (pp. 41 and 55). Our response is that whilst Mr. Ifezulike, Mr. Ihejiahi, and Mr. Nkele signed the Trust Deed, it is not true that they knew that the Government transferred GCU land and the School to GCUOBA. This is because it is clear on the face of the Trust Deed that the Government transferred GCU land and the School to FEDT – not to GCUOBA. There was, and remains, no basis upon which they could say to Dr. Enelamah, or any person at all, that the Government transferred the School and GCU land to GCUOBA.

Other allegations/Sundry issues

Audit of FEDT accounts

2.50 The Committee alleged that the FEDT suit was filed “to spin out the case” until Dr. Enelamah leaves office without an audit of GCU Trust Fund (p. 25 of the Report). But this allegation, like the other allegations in the Report, is also not true. There is no connection with the recovery of GCU land, Mr. Enelamah’s term of office as a member of the FEDT Board, and the audit of FEDT accounts. In any event, the accounts of FEDT from inception to the end of the 2022 financial year have been audited by KPMG, a leading audit firm in the world, and presented by the FEDT Board. And the audit of the accounts for the 2023 financial year is ongoing.

FEDT’s contradictory constitutions

2.51 The Committee also alleged that FEDT has contradictory constitutions (pp. 30 and 36 of the Report). In proof of this, the Committee attached to the Report Annexure 13(a) and Annexure 13(c), which are respectively the former constitution of FEDT signed in 2014, and an unsigned draft FEDT amended constitution prepared in 2020. However, neither the said Annexure 13(a) nor Annexure 13(c) is the constitution of FEDT. This is because whilst the unsigned draft constitution (i.e., Annexure 13(c)) was never at any time the constitution of FEDT, FEDT had since amended the constitution of FEDT, which was signed in 2014 (i.e., Annexure 13(a)). Hence, the current and only constitution of FEDT is the FEDT amended constitution dated and signed on 13 February 2015. (We have attached hereto the FEDT amended constitution dated 13 February 2015 as “Annexure M”.)

Power to sack members of the FEDT Board

2.52 The Committee alleged that by clause 5.9 of the Trust Deed, GCOUBA can sack any or all members of the FEDT Board (p. 57 of the Report). This is indeed not correct. The provision of the Trust Deed in question indeed enables the Trustee, which is FEDT as we have explained, to remove any governor it has appointed for misconduct. This is also consistent with the law, which enables FEDT as an association to appoint a governing body and assign to it such administrative and management functions as it deems fit (section 836 of the Companies and Allied Matters Act 2020).

Special clause

2.53 Further, at p. 30 of the Report, the Committee alleged that the effect of the special clause in the draft FEDT constitution, which the Committee attached to the Report (Annexure 13(c) to the Report), is that “in the event of winding up or dissolution of FEDT Trustees, its liabilities will be borne and met

by GCUOBA, and any credit or asset left over will belong to Enelamah' private company". But this information is false and misleading.

- 2.54 The special clause, which is also contained in the extant FEDT Constitution (Annexure M hereto) is to ensure that the income and property of FEDT is applied solely to the promotion of the objects of FEDT and that no part of the profit or property is paid or transferred directly or indirectly to any member of FEDT, including Dr. Enelamah. It also ensures that if FEDT is dissolved (a) FEDT's property cannot be transferred to any member of FEDT (directly or indirectly), and (b) whatever remains of FEDT's property, after the satisfaction of its debt and liabilities, will be transferred to some other institution having the same objects as FEDT. This is a requirement of the law. FEDT is a not-for-profit organisation whereas Dr. Enelamah's company, Africa Capital Alliance or any other private company with which Dr. Enelamah is associated, is a business enterprise. The two, therefore, do not share the same objectives. Thus, it is legally impossible for the special clause in FEDT constitution to have been included with the intent to transfer FEDT's "credit or asset" to Dr. Enelamah's company as alleged or at all.

FEDT is not a party to the Trust Deed

- 2.55 The Committee also claimed that FEDT is not a party to the Trust Deed (p. 33 of the Report). This allegation is also false because, as we have shown in this response, FEDT is a party to the Trust Deed.

Allegations by Class of '71

- 2.56 The Committee included the letter written by the Class of '71 dated 16 November 2021 in its Report (p. 71 – 74 of the Report) in which various allegations (which have nothing to do with the recovery of GCU land) were made against the FEDT Board. The allegations include that (a) estimates for works were bloated, and (b) the bidding exercise for the award of contracts by FEDT did not meet international standard as "touted" by the FEDT Board. None of these allegations is true. Classroom Block B, which Class of '71 claimed should cost ₦20,000,000 was eventually funded by the late Lucius Nwosu and executed by a contractor he appointed; and he tracked every payment that was made to the contractor. The late Lucius Nwosu also reviewed and confirmed the project estimate, i.e., ₦59,000,000 plus, before he undertook to fund the project. The members of the USA/UK team that funded the dining hall project will also attest that the estimates provided by the FEDT Board were not bloated. And the fact that the FEDT Board accommodates project sponsors who choose to nominate contractors to execute the specific projects that they fund does not mean that the bidding process implemented by the FEDT Board does not meet international standards. It is indeed evidence of the transparency implemented by the FEDT Board in implementing projects that its process enables project sponsors to appoint their contractors and monitor payments made to the contractors.

Transfer of ownership of GCU to individual trustees of GCUOBA

- 2.57 It is also not true Dr. (Mrs.) M.O Philips transferred the "ownership, management, control and funding of GCU to the individual trustees of GCUOBA" (p. 37 of the Report). By the MoU, Dr. (Mrs.) Philips, on behalf of the Government, merely undertook to appoint GCUOBA as the trustee of the GCU Trust, which was yet to be created at that time. It was based on this that the Trust Deed

was subsequently made under which the Trust was created. However, as we have explained, FEDT was subsequently appointed the Trustee of the GCU Trust under the Trust Deed.

Registration of FEDT as a private trust

2.58 The Committee also alleged that Mr. Ifezulike, Mr. Onwudiwe, and Dr. Enelamah registered FEDT as a private trust (p. 47). But like the others, this allegation is also not true. The objects of FEDT show that FEDT is not a private trust.

“Multiple transfers”

2.59 The Committee also alleged that Dr. Enelamah claimed that there were “multiple transfers” of ownership of GCU (p. 45 of the Report). Dr. Enelamah did not make any such claim and there were no “multiple transfers” of ownership of GCU. There was only one transfer of ownership of GCU, i.e., which happened pursuant to the Trust Deed.

Purchase of FEDT land by Rev. Robert Fisher

2.60 The narrative that Rev. Robert Fisher purchased the land on which GCU exists from Ndume Ibeku/Umuana, Olokoro, and Amaba Oboro/Umidike (p. 9 of the Report) is also false. The British Colonial Government acquired GCU land in 1927 under the Public Lands Acquisition Ordinance (Vol. 1, Cap. 88) (now the Public Lands Acquisition Act). (A copy of the public notice of the British Colonial Government’s acquisition of the GCU land and other parcels of land within the same vicinity of the GCU land is attached hereto as “Annexure N”.) The larger expanse of land of which GCU land is a part therefore became government land upon its acquisition by the British Colonial Government in 1927.

2.61 Following the acquisition of the land, the British Colonial Government took full possession of the GCU land and built the African Teachers Training College on it. The African Teachers Training College later became GCU in 1929. Rev. Robert Fisher (who worked in the education department of the Colonial Government) became the principal of the School in December 1930. (A memorandum dated 15 December 1930 written by Rev. Robert Fisher to the Resident, Owerri Province, informing the Resident that he had returned to Umuahia to take over the duties of principal of the School from Mr. C. H. Baynes is attached hereto as “Annexure O”).

The Committee’s recommendations

2.62 In the Report, the Committee made the following recommendations:

- (a) The President of GCUOBA should direct Dr. Enelamah and Dr. Nwodo to observe forthwith the first duty of the FEDT Board to GCUOBA, which, according to the Committee, is to administer the School on behalf of GCUOBA as the trustee of the GCU Trust (p. 59 of the Report).
- (b) The President of GCUOBA should direct Dr. Enelamah to discharge his basic and mandatory duty, which, according to the Committee, is contained in clause 6.2 of the Trust Deed, namely that “the accounts of the Trust shall be audited every year by an auditor appointed by the Trustee for that purpose and shall be placed before the Trustee within three months of the expiration of the official year of the Trust as determined by the Trustee” (p. 59 of the Report).

- (c) The President of GCUOBA should exercise the disciplinary power vested in it in clause 5.9 of the Trust Deed (p. 59 of the Report).
 - (d) GCUOBA should appoint a replacement to complete the unexpired term of any governor who is removed or vacates his office before the completion of their term of office (p. 59 of the Report).
 - (e) All the members of the FEDT Board who were not present at the execution of the Trust Deed should not be held liable for any wrong or offence (p. 59 of the Report).
 - (f) All donations and gifts, which form part of the Trust Fund, should be paid directly into GCUOBA's account (p. 59 of the Report).
 - (g) GCUOBA should seek partnership with the Government on all matters pertaining to the security of the integrity and maintenance of the ground and roads of the GCU (p. 60 of the Report).
 - (h) The setting up of a standing committee or board of directors of about seven persons, which would be put in place by GCUOBA and the FEDT Board. The office of the committee should be located at GCU campus or elsewhere at Umuahia Capital Development Authority. The President of GCUOBA should be the chairman of the committee and the Principal of the School a member of the committee (p. 60 of the Report).
- 2.63 The Committee's recommendations are misconceived and fundamentally flawed. Regarding (a), the duty of the FEDT Board to administer the School is provided in clause 5.1 of the Trust Deed, which provides that the "FEDT Board shall administer the School on behalf of the "Trustee". The FEDT Board therefore administers the School on behalf of the Trustee. We have also shown that "Trustee" means FEDT as contemplated in clause 1.1 of the Trust Deed – not GCUOBA. It therefore follows that the FEDT Board cannot legally administer the School on behalf of GCUOBA. The recommendation is therefore a legal impossibility.
- 2.64 Regarding recommendations (b), it is not the responsibility of GCUOBA to direct the audit of FEDT's accounts. Clause 6.2 of the Trust Deed provides that FEDT's accounts shall be audited by an auditor to be appointed by the Trustee (i.e., FEDT); and that the audited accounts shall be placed before the Trustee (i.e., FEDT) within 3 months of the expiration of the official year of the Trust as determined by the Trustee. From the foregoing, the auditor shall be appointed by FEDT, and FEDT is empowered to fix the official year of the Trust in order to determine when such audited accounts will be presented to FEDT. This is also consistent with article X(C) of the FEDT amended constitution (i.e., Annexure M). Accordingly, GCUOBA has nothing to do with the exercise of the power or execution of the duties set out in clause 6.2 of the Trust Deed. Meanwhile, FEDT, has engaged the services of KPMG to audit its accounts from inception of the restoration project.
- 2.65 Contrary to recommendations (c) and (d), GCUOBA cannot also exercise the powers conferred on FEDT as the Trustee of the Trust in clauses 5.9 and 5.10 of the Trust Deed. By these provisions, FEDT is empowered to (a) make binding protocols for the meetings of the Board, (b) provide for code of conduct of the governors of the School, and (c) appoint a replacement to complete the unexpired term of any governor who was removed or who vacated his office before the completion of his term of office. These powers are exercisable only by FEDT.

- 2.66 It will also be against the provisions of the Trust Deed to pay the Trust Fund into GCUOBA's account. Indeed, the Trust Fund is vested in the Trustee. Clause 1.1 of the Trust Deed defines "Trust Fund" to mean "the entire body of assets and monies vested in the Trustee under clause 2.4 and to be applied towards achieving the Objects of the Trust".
- 2.67 Further, the implementation by GCUOBA of recommendations (g) and (h) will be inconsistent with the Trust Deed.
- 2.68 Indeed, the Committee's recommendations purports to transform FEDT or the FEDT Board into an organ of GCUOBA. But this will amount to a breach of the Trust. It was to avoid a situation like this that FEDT was incorporated and made the Trustee of the Trust in the first place. As we have already explained, it is inconsistent with the Trust Deed for FEDT to be made an organ of GCUOBA or to be seen to be acting on behalf of GCUOBA in the discharge of its duties as Trustee of the GCU Trust.
- 2.69 Meanwhile, we note that none of the recommendations addresses any of the Committee's terms of reference. The recommendations suggest in effect that the Government has transferred the ownership of GCU to either FEDT or GCUOBA.
- 2.70 The recommendations rather suggest failure by the Committee to understand the nature of ownership created by a trust arrangement. Although a trustee is the legal owner of the property comprised in, and controls, the trust, the trustee is not the beneficial owner of the trust property. For this reason, a trustee cannot be described as the owner of the trust property in the general sense in which the word "ownership" is used or understood. The ownership exercised by a trustee is strictly limited to the purpose of performing the terms of the trust as set out in the trust deed. FEDT is therefore not the owner of GCU as the Committee alleges. Accordingly, any action to be taken by FEDT relative to the GCU Trust must be consistent with the provisions of the Trust Deed.

3. Conclusion

In conclusion, we have by this response rebutted the material allegations and the sundry material misrepresentations and misinformation in the Report. Although, there may be other minor allegations in the Report that are false or misleading, which are not covered in this response, those allegations are also denied.