IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2026

CORAM: BAFFOE-BONNIE CJ (PRESIDING)
PWAMANG JSC
AMADU JSC
ASIEDU JSC
GAEWU JSC
DZAMEFE JSC
SUURBAAREH JSC

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WRIT
NO. J1/5/2026

29TH JULY, 2026

1. PROF. KWABENA FRIMPONG BOATENG	**.....**	**1ST PLAINTIFF**
2. DR. NYAHO NYAHO-TAMAKLOE	**.....**	**2ND PLAINTIFF**
3. DR. CHRISTINE AMOAKO-NUAMAH	**.....**	**3RD PLAINTIFF**

VRS

1. NEW PATRIOTIC PARTY	**.....**	**1ST DEFENDANT**
2. NATIONAL DEMOCRATIC CONGRESS	**.....**	**2ND DEFENDANT**
3. CONVENTION PEOPLE'S PARTY	**.....**	**3RD DEFENDANT**
4. ELECTORAL COMMISSION OF GHANA	**.....**	**4TH DEFENDANT**
5. THE ATTORNEY-GENERAL	**.....**	**5TH DEFENDANT**

JUDGEMENT

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MAJORITY OPINION

BAFFOE-BONNIE CJ:

PLAINTIFFS' CASE

1. By writ dated 26th January 2026, the Plaintiffs invoked the original jurisdiction of this Court seeking the following reliefs against the Defendants:

   i. A declaration that upon a true and proper interpretation of the Preamble and Articles 1(1) and (2), 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution the election of a political party's presidential and parliamentary candidate(s) constitutes a core element of the party's internal organisation within the meaning of Article 55(5) of the Constitution.

   ii. A declaration that upon a true and proper interpretation of the Preamble and Articles 1(1) and (2), 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution, the internal organisation of a political party must be structured in a manner that ensures equal political participation and equal voting rights of its members in the selection of the party's presidential and parliamentary candidate(s).

   iii. A declaration that, on a true and proper interpretation of the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42, 55(2), 55(5), 63 and 93 of the 1992 Constitution, democratic principles governing the internal organisation of political parties require political equality, meaningful and broad participation of members in decision-making, accountability of leadership to the membership, and substantially equal and direct voting rights for members in good standing in the election of the party's presidential and parliamentary candidates.

   iv. A declaration that the delegate-based Electoral College system established under Article 13 of the Constitution of the 1st Defendant for the election of its presidential candidate, which confines or restricts voting to specified executives, office holders and delegates to the exclusion or material disenfranchisement of members in good

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standing of the party, contravenes the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.

v. A declaration that the Extraordinary Constituency Delegates Conference system established under Article 7 of the Constitution of the 1st Defendant for the selection or election of its parliamentary candidates, which confines voting to specified constituency executives, coordinators, polling station officers, elders, patrons and other delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.

vi. A declaration that the Electoral College system established under Articles 43 and 44 of the Constitution of the 2nd Defendant for the election of its presidential and parliamentary candidates, which confines or restricts voting to specified executives, office holders and delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 33(5), 17, 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.

vii. A declaration that the Constituency Branch Party Conference system and the National Delegates Congress system established under Articles 53, 96 and 77 of the Constitution of the 3rd Defendant for the election of its presidential and parliamentary candidate(s), which confines voting to specified executives, elders, officers and delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.

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viii. A consequential order striking down and declaring unconstitutional, null, void and of no effect all provisions of the constitutions, rules, regulations or electoral arrangements of the 1st, 2nd and 3rd Defendants, to the extent that they restrict or confine the election of their presidential and parliamentary candidates to limited Electoral Colleges, delegate bodies or similar structures, or otherwise exclude or materially disenfranchise members in good standing of the parties from voting in elections for their presidential candidates.

ix. An order directing the 1st, 2nd and 3rd Defendants to amend their respective constitutions, rules and electoral arrangements to adopt procedures for the election of their presidential candidates or flagbearers that conform to the democratic principles required under Article 55(5) of the 1992 Constitution and ensure the equal, direct and meaningful participation of members in good standing in such elections.

x. An order directed at the 4th Defendant, in the exercise of its supervisory and regulatory mandate under the Constitution and Act 574, to ensure and enforce the 1st, 2nd, and 3rd Defendant's compliance with the Preamble and Article 55(5) of the Constitution and Section 9(a) of Act 574 in respect of their internal elections.

xi. Such further or consequential orders as this Honourable Court may deem just.

2. The 1992 Constitution places a sacred duty upon every political party to ensure that its internal organization is democratic. It provides in Article 55(5) that *"[t]he internal organization of a political party shall conform to democratic principles and its actions and purposes shall not contravene or be inconsistent with this Constitution or any other law."* The Plaintiffs are of the view that the 1st, 2nd and 3rd Defendants have failed to do this.

3. The basis of the Plaintiffs' contention is that the constitutions of the 1st, 2nd and 3rd Defendants currently employ delegate-based systems for selecting their presidential and

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parliamentary candidates. And although the Defendants differ in the composition of their respective electoral bodies and in certain procedural details, the Plaintiffs contend that they all share one common characteristic: the final decision on who becomes each party's presidential or parliamentary candidate is made by a limited class of delegates as opposed to the general membership of the party.

4. With respect to the 1st Defendant, the Plaintiffs state that Article 13 of its Constitution governs the nomination and election of the party's presidential candidate. While any eligible member may seek nomination, the final election is conducted through a body of delegates and not by the universal participation of all members. The delegates comprise specified categories of party officials and functionaries, including the party's national, regional, constituency and polling station executives, past national officers, Members of Parliament, members of the Council of Elders, founding members, patrons, recognised representatives of party organs, and other designated persons. According to the Plaintiffs, only these delegates are entitled to vote, with the result that ordinary members who do not hold any designated office or delegate position, play no direct role in choosing the party's presidential candidate.

5. The Plaintiffs further state that the 1st Defendant adopts a similar approach in selecting parliamentary candidates. Under Article 7 of its Constitution, parliamentary candidates are elected at a Constituency Delegates Conference attended only by specified delegates, including constituency executives, electoral area coordinators, polling station executives, representatives of the Constituency Council of Elders, patrons and founding members. Ordinary party members who fall outside these categories are excluded from voting.

6. Regarding the 2nd Defendant, the Plaintiffs explain that its constitutional arrangements have evolved over time. When the party's Constitution was first adopted in 1992, both presidential and parliamentary candidates were selected through delegate-based electoral colleges comprising national, regional and constituency executives, office holders, Members of Parliament, Ministers, members of the Council of Elders, founding members, representatives

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of affiliated organizations and other designated delegates. Voting rights were therefore confined to a limited body of party functionaries. The Plaintiffs state that this position changed in 2015 when the 2nd Defendant amended its Constitution to introduce universal suffrage for presidential primaries. Under the amended Article 44, every member registered in the party's biometric register became entitled to vote directly in the election of the party's presidential candidate. The amendment therefore replaced the delegate-based system with direct participation by the wider membership.

7. However, the party subsequently amended its constitution in 2019, through which the party abandoned universal suffrage and restored the delegate-based Electoral College. As matters presently stand, the Plaintiffs contend that the party has returned to a system in which presidential candidates are chosen by a restricted body of delegates rather than by all members. They further state that under Article 41 of the 2nd Defendant's Constitution, the selection of parliamentary candidates likewise remains the responsibility of a delegate-based Electoral College composed of designated party officials and representatives.

8. With respect to the 3rd Defendant, the Plaintiffs state that its Constitution also adopts a delegate-based approach to selecting candidates for public office. Under Article 96, the party's presidential candidate is elected by the National Delegates Congress following a vetting process. The National Delegates Congress is the party's highest decision-making body and is composed of specified categories of party officials and representatives, including members of the National Executive Council, the Council of Elders, founding members, constituency officers and representatives from tertiary institutions and overseas branches. Only these delegates are entitled to vote in the presidential primary, while ordinary party members who do not hold any designated office or delegate position are excluded.

9. The Plaintiffs further state that the 3rd Defendant employs an equally restricted process for selecting parliamentary candidates. Under Article 53 of its Constitution, parliamentary candidates are elected by the Constituency Branch Party Conference, whose membership is limited to constituency executives and other designated representatives. The party's Central

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Committee retains an oversight role in approving the selected candidate. As with the presidential primary, ordinary members of the party do not vote directly in the selection of parliamentary candidates.

10. The plaintiffs contend that the delegates system is fundamentally inconsistent with democratic principles because it excludes the overwhelming majority of party members from directly participating in the selection of presidential and parliamentary candidates. In their submission, democracy within a political party necessarily demands equal voting rights for every member, arguing that universal adult suffrage is sacrosanct in our constitutional dispensation.

DEFENDANTS' CASE

1st Defendant

11. The 1st Defendant submits that its internal electoral arrangements fully comply with the democratic principles required by Article 55(5) of the Constitution. It argues that democratic principles should not be narrowly equated with universal suffrage or a system in which every member of a political party votes directly in every internal election. In its view, democratic principles encompass broader values such as the rule of law, accountability, free and fair elections, transparency, representation and participation, all of which, it contends, are reflected in its Constitution.

12. According to the 1st Defendant, the Plaintiffs' case is founded on the mistaken assumption that Article 55(5) constitutionally mandates direct democracy within political parties. It argues that democracy exists in different forms and that representative democracy is as legitimate a democratic model as direct democracy. It argues that representative democracy permits members to elect representatives who, in turn, make decisions on their behalf. It contends that this is the same model adopted by Ghana's constitutional system, where citizens elect Members of Parliament to legislate on their behalf, and that such a system has never been regarded as either undemocratic or unconstitutional.

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13. The 1st Defendant explains that its internal organisational structure is itself representative and democratic. All members in good standing are entitled to participate in polling station elections, where they elect their polling station executives. Those executives subsequently elect representatives at successive levels of the party's hierarchy, culminating in the Electoral College responsible for electing the party's presidential and parliamentary candidates. It therefore submits that every delegate ultimately derives his or her mandate from the party membership and that no member of the Electoral College assumes office by imposition or appointment outside this representative process.

14. The 1st Defendant further argues that article 55(5) must be interpreted purposively, in accordance with the well-established jurisprudence of this Court. It submits that constitutional provisions must be construed in light of their text, context, spirit and underlying values rather than through a narrow or literal approach. Read within the broader framework of Chapter 7 of the Constitution, the Defendant contends that article 55(5) was intended to guarantee democratic governance within political parties while preserving their autonomy to determine how members participate in internal decision-making. It maintains that the Constitution deliberately refrains from prescribing any single model of internal democracy, thereby leaving political parties free to adopt structures suited to their own organisational needs, provided those structures remain democratic.

15. The 1st Defendant also contends that the interpretation advanced by the Plaintiffs would effectively compel every political party in Ghana to adopt direct democracy, thereby denying political parties the constitutional freedom to organise themselves in accordance with their own constitutions. It argues that such an approach would undermine the associational autonomy of political parties and would amount to the Court imposing one particular model of democracy in circumstances where Article 55(5) recognises a broader range of democratic arrangements.

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16. The 1st Defendant finally argues that the delegate system is itself an accepted form of representative democracy, promotes broad participation through elected representatives, preserves accountability to the membership, and therefore fully satisfies the constitutional requirement that the internal organisation of political parties conforms to democratic principles. It concludes that the Plaintiffs' claims should therefore be dismissed.

2nd Defendant

17. The 2nd Defendant substantially agrees with the Plaintiffs' challenge and concedes that its existing delegate-based system for electing presidential and parliamentary candidates is inconsistent with the democratic principles required by Article 55(5) of the Constitution. It submits that universal adult suffrage and equal voting are indispensable features of Ghana's constitutional democracy and are essential to preserving the sovereign will of the people. In its view, a political party that restricts voting in its presidential and parliamentary primaries to a limited class of delegates undermines these constitutional values and acts contrary to both the letter and spirit of Article 55(5). It therefore agrees with the Plaintiffs that all members of the party in good standing should be entitled to participate directly in the election of the party's presidential and parliamentary candidates.

18. Accordingly, it contends that Articles 43 and 44 of its Constitution, which establish the delegate-based electoral college for presidential and parliamentary primaries, are inconsistent with Article 55(5) of the Constitution, and asks this Court to so declare.

19. The 2nd Defendant nevertheless urges the Court not to invalidate or nullify the decisions previously taken under the impugned constitutional provisions. It submits that such an order would have serious consequences not only for the party but also for the governance of the country. It argues that a finding of constitutional inconsistency does not invariably render all actions taken under the impugned provisions null and void. On the contrary, the legal consequences of a constitutional breach depend on the language, purpose and context of the constitutional provision, as well as broader considerations of public policy.

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3rd Defendant

20. The 3rd Defendant takes a rather interesting position on this matter. It accepts that Article 55(5) of the Constitution requires the internal organisation of political parties to conform to democratic principles and maintains that it has consistently sought to organise its affairs in accordance with that constitutional obligation. It argues that the concept of "democratic principles" should be understood within Ghana's historical and constitutional context rather than by reference to a single prescribed model of internal democracy.

21. To support this position, the 3rd Defendant traces its own historical evolution. It explains that, during the struggle for independence between 1949 and 1951, it employed a system of direct participation under which all dues-paying branch members voted directly in internal elections. It further states that, between 1951 and 1966, during the period of national consolidation under the leadership of Osagyefo Dr. Kwame Nkrumah, it adopted a delegate conference system based on the principle of democratic centralism, whereby delegates elected at lower levels constituted constituency, regional and national conferences. According to the 3rd Defendant, both systems were regarded by its founder as legitimate democratic methods suited to the particular historical circumstances of the time and reflected his broader conception of the Party as a vanguard organisation.

22. Against that historical background, the 3rd Defendant contends that its present National Delegates Congress system cannot, without more, be regarded as inconsistent with the democratic principles required by article 55(5). It argues that the Constitution does not prescribe any single electoral model for internal party democracy and that political parties enjoy considerable latitude in determining their own internal procedures. In its view, the Plaintiffs' invitation to the Court to prescribe a particular method of selecting party candidates risks intruding into the internal autonomy of political parties.

23. Notwithstanding those submissions, the 3rd Defendant adopts a conciliatory position. It states that it does not seek to contest the Plaintiffs' interpretation of Article 55(5), nor does it oppose the reliefs sought against it. Rather, it states that it is prepared to implement

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whatever electoral model this Court ultimately determines to be consistent with the democratic principles required by the Constitution.

24. Accordingly, the 3rd Defendant requests that, should the Court grant the Plaintiffs' reliefs, it be afforded a reasonable transitional period of not less than twenty-four months within which to amend its Constitution, compile a credible national register of members in good standing, and establish the technological and administrative systems necessary to implement any new electoral model, including direct universal suffrage if so ordered.

4th Defendant

25. The 4th Defendant does not advance any substantive arguments either in support of or in opposition to the Plaintiffs' constitutional challenge. Its case is confined to an objection that no substantive relief has been sought against it in the Plaintiffs' writ, nor has any specific claim been particularised against it in the Statement of Case. It accordingly contends that it has been improperly joined to the proceedings and prays that the action against it be dismissed.

5th Defendant

26. The 5th Defendant, the Attorney-General, supports the Plaintiffs' interpretation of Article 55(5) and contends that the internal elections of political parties must conform to the same democratic principles that govern the broader constitutional order. It argues that political parties are not merely private voluntary associations but public constitutional institutions through which public power is ultimately conferred. Because political parties perform the indispensable function of selecting candidates for the offices of President and Member of Parliament, their internal elections are matters of public constitutional importance and must therefore comply with constitutional standards of democracy.

27. Proceeding from that premise, the 5th Defendant submits that every member in good standing of a political party is constitutionally entitled to participate in the election of the party's presidential and parliamentary candidates. Relying on Article 42 of the Constitution,

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it argues that the right to vote is a fundamental constitutional right which extends to all public elections. It further invokes Article 35(6)(d) of the Constitution, which obliges the State to afford citizens every possible opportunity to participate in decision-making at all levels of national life. According to the 5th Defendant, internal party elections constitute an important level of national decision-making because they determine who may ultimately contest for public office and exercise governmental power. Consequently, a delegate-based system that excludes the overwhelming majority of party members from voting falls short of the constitutional commitment to participatory democracy and universal adult suffrage.

28. The 5th Defendant also draws support from the constitutional jurisprudence of Germany, South Africa, Kenya and Nigeria. It submits that these jurisdictions consistently recognise political parties as constitutional actors whose internal arrangements are subject to constitutional regulation because they serve as the gateway through which citizens gain access to public office.

29. The 5th Defendant further relies on international and regional standards to illuminate the content of Article 55(5). It refers to the Venice Commission's Code of Good Practice in the Field of Political Parties, the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee's General Comment No. 25, and the African Charter on Democracy, Elections and Governance. According to the 5th Defendant, these instruments consistently affirm that members of political parties should enjoy meaningful opportunities to participate in selecting party leaders and candidates and that political processes should not be dominated by narrow groups to the exclusion of the wider membership. While acknowledging that these instruments are not themselves binding, the 5th Defendant submits that they provide persuasive guidance consistent with this Court's established approach of interpreting the Constitution, where possible, in harmony with Ghana's international obligations.

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ISSUES

30. The parties have identified the following issues for determination:

(1) Whether, upon a true and proper interpretation of Article 55(5) of the 1992 Constitution, read with the Preamble and Articles 1(1), 1(2), 17, 33(5), 35(6)(d), 42, 63 and 93, the delegate-based Electoral College established under Article 13 of the Constitution of the 1st Defendant for the election of its presidential candidate, which confines voting rights to specified categories of executives, office holders, Members of Parliament, Ministers and Deputy Ministers, past national officers, patrons, founding members and other designated delegates, and excludes members in good standing who do not fall within those categories, constitutes part of the "internal organisation" of the 1st Defendant and conforms to the "democratic principles" mandated by Article 55(5).

(2) Whether, upon a true and proper interpretation of Article 55(5) of the 1992 Constitution, read with the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 93, the Extraordinary Constituency Delegates Conference established under Article 7 of the Constitution of the 1st Defendant for the selection of its parliamentary candidates, which confines voting rights to Constituency Executive Committee members, Electoral Area Coordinators, Polling Station Executives, five members of the Constituency Council of Elders, five Constituency Patrons and specified founding members, and excludes members in good standing of the constituency who do not fall within those categories, conforms to the democratic principles required of the internal organisation of a political party.

(3) Whether, upon a true and proper interpretation of Article 55(5) of the 1992 Constitution, read with the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 63, the Electoral College system established under Articles 43 and 44 of the Constitution of the 2nd Defendant for the election of its presidential candidate, which confines voting rights to a defined body of branch, constituency, regional and national executive committee members, Ministers and Deputy Ministers, Metropolitan, Municipal and District Chief Executives, the Party's parliamentary group, members of the Council of Elders, founding members, ambassadors and other designated delegates, and excludes ordinary members

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in good standing from direct participation, conforms to the democratic principles required of the internal organisation of a political party.

(4) Whether, upon a true and proper interpretation of Article 55(5) of the 1992 Constitution, read with the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 93, the constituency electoral college established under Article 41 (as then framed) of the Constitution of the 2nd Defendant for the election of its parliamentary candidates, which confines voting rights to branch, constituency and regional executives, serving and former public office holders and other designated functionaries who are members of a branch in the constituency, conforms to the democratic principles required of the internal organisation of a political party.

(5) Whether, upon a true and proper interpretation of Article 55(5) of the 1992 Constitution, read with the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 63, the election of the presidential candidate of the 3rd Defendant by the National Delegates Congress constituted under Articles 77 and 96 of the Constitution of the 3rd Defendant, which confines voting rights to members of the National Executive Council, founding members, members of the Council of Elders, specified constituency officers, two representatives from each constituency, tertiary institution branch representatives and approved overseas branch representatives, and excludes members in good standing at large, conforms to the democratic principles required of the internal organisation of a political party.

(6) Whether, upon a true and proper interpretation of Article 55(5) of the 1992 Constitution, read with the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 93, the Constituency Branch Party Conference established under Articles 52 and 53 of the Constitution of the 3rd Defendant for the election of its parliamentary candidates, which confines voting rights to members of the Constituency Branch Executive Committee, specified Polling Station and Electoral Area Branch Executive Committee members and tertiary institution branch representatives, and further subjects the outcome to approval by the Central

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Committee, conforms to the democratic principles required of the internal organisation of a political party.

(7) Whether, upon a true and proper interpretation of Articles 17, 42 and 55(5) of the 1992 Constitution, the delegate-based mechanisms adopted under Article 13 and Article 7 of the Constitution of the 1st Defendant, Articles 43, 44 and 41 of the Constitution of the 2nd Defendant, and Articles 77, 96, 52 and 53 of the Constitution of the 3rd Defendant for the selection of their presidential and parliamentary candidates, by conferring decisive voting power on defined classes of office holders and delegates while denying members in good standing any vote in those elections, operate as mechanisms of vote dilution inconsistent with the constitutional guarantee of political equality and the democratic principles required of the internal organisation of a political party.

(8) Whether, upon a true and proper interpretation of Articles 45 and 55 of the 1992 Constitution read with section 9(a) of the Political Parties Act, 2000 (Act 574), the 4th Defendant is under a continuing constitutional and statutory duty to vet, supervise and ensure that the constitutions, rules and internal electoral arrangements of the 1st, 2nd and 3rd Defendants conform to democratic principles, and whether the 4th Defendant has failed, refused or neglected properly to discharge that duty in respect of the impugned provisions identified in Issues 1 to 6.

(9) Whether it is within the province of this Honourable Court to intervene in the internal affairs of the 2nd Defendant (and by extension, the 1st and 3rd Defendants) in terms of the processes and procedures used in electing/selecting its presidential and parliamentary candidates.

(10) Whether or not political parties are public (rather than private) interest organisations.

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(11) Whether every registered member in good standing of a political party is entitled to vote in internal elections of that party.

RESOLUTION OF ISSUES

31. Despite the litany of issues that the parties have identified for determination, this Court thinks that only two issues are germane to the resolution of this case, namely:

(1) Whether the delegates system, by which a relatively limited body of elected delegates selects presidential and parliamentary candidates on behalf of the wider membership of a political party, satisfies the constitutional command in article 55(5) that *"the internal organization of a political party shall conform to democratic principles."*

(2) Whether the Electoral Commission is under a continuing constitutional and statutory duty to vet, supervise and ensure that the constitutions, rules and internal electoral arrangements of political parties conform to the democratic principles required by Article 55(5) of the Constitution and, if so, whether it has discharged that duty in relation to the impugned provisions of the Constitutions of the 1st, 2nd and 3rd Defendants.

ISSUE 1:

32. This issue invites us to determine whether the delegates system, by which a relatively limited body of elected delegates selects presidential and parliamentary candidates on behalf of the wider membership of a political party, satisfies the constitutional command in article 55(5) that *"the internal organization of a political party shall conform to democratic principles."*

33. It is difficult to deny the force of either position in this case. The Plaintiffs are undoubtedly correct in asserting that the participation of all eligible voters lies at the heart of democratic governance. Equally, the 1st and 3rd Defendants are right to remind this Court that constitutional democracies throughout the world have long accepted representative systems of democracy as legitimate expressions of popular sovereignty. Indeed, constitutional scholarship has long recognised that democratic governance admits of multiple institutional forms. Direct democracy, representative democracy, participatory democracy, deliberative

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democracy, consociational democracy, and delegate democracy each represents different attempts to reconcile popular sovereignty with the practical demands of governing complex societies. None of these forms of democracy can properly be dismissed as undemocratic merely because it differs from another.

34. It is worth noting that our Constitution speaks of democracy in several respects. It proclaims Ghana to be a democratic State (Article 35(1)), vests sovereignty in the people (Article 1(1)), guarantees political participation of all qualified citizens (Article 21(3)), protects the right to vote (Article 42), and commands that political parties organize themselves in accordance with democratic principles (Article 55(5)). Despite the frequency with which the Constitution invokes democracy or its ideals, it leaves the concept itself largely undefined. This case presents one of those occasions on which this Court is invited to define the content of a constitutional concept, in this case, democracy.

35. And so, we begin our analysis by first acknowledging that the delegates system is not, by its very nature, undemocratic. A contrary conclusion would accord with neither constitutional theory nor democratic practice across the world. Democracies speak in many voices. Some permit citizens to participate directly in important political decisions; other models permit citizens to speak through mediated voices, such as the delegate system in issue in this case. Neither model is inherently superior to the other. The delegate system is no less democratic because it entrusts decision-making as regards who becomes a presidential or parliamentary candidate to those elected to act on behalf of the others. Democracy has long evolved beyond its earliest and simplest conception. It now accommodates a variety of institutional arrangements through which the people's will may be expressed. It would, therefore, be a mistake to conclude that the delegates system offends democratic principles merely because it does not embrace the elementary idea of one woman, one vote.

36. This broader understanding of democracy raises an important constitutional question concerning the role of party constitutions themselves. Political parties are voluntary associations governed by constitutions, as required by law. Article 55(7) of our Constitution

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requires that "For purposes of registration, a prospective political party shall furnish the Electoral Commission with a copy of its Constitution...". These party constitutions regulate their internal affairs, including the selection of leaders and candidates for elections. Those constitutions are not imposed upon members without their consent; they are adopted, amended, and maintained through procedures accepted by the membership of the party. If party members, acting collectively and democratically, choose to adopt a constitution establishing a delegate system, can it truly be said that the resulting nomination process is undemocratic?

37. That the delegates system is democratic, however, is not the end of the matter. The primary issue before this Court is not so much whether the delegate system is capable of satisfying democratic ideals in the abstract. The real question is much narrower, but far more important. It is whether the Constitution of Ghana, properly understood, has chosen one democratic model in preference to another.

38. Constitutions are not textbooks in political philosophy. They do not seek to resolve every theoretical debate about democracy. Rather, they make practical constitutional choices about how democratic government should operate within a particular society. Thus, although several democratic models may each possess equal intellectual legitimacy, the Constitution may nevertheless adopt one as the organising principle of the State. The duty of this Court is, therefore, not to decide which model of democracy political scientists or philosophers find most attractive. Its duty is to discover the democratic vision that the framers embedded in our constitutional text.

39. To discover the model of democracy that the Constitution envisions, a reading of Article 55(5) in isolation would not do. As this Court has consistently held, the Constitution is *sui generis* and must be interpreted in such light as to ensure internal harmony, so that all of its provisions can work together as parts of a functioning whole. In so doing, every provision must be interpreted such as to be in perfect keeping with the fitness of the entire constitutional scheme. **See: National Media Commission v Attorney General [1999-**

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2000] 2 GLR 577, 585-586; and New Patriotic Party v Attorney General [1993-1994] 2 GLR 35, 78-79.

40. In that stead, when one reads the Constitution as a whole, a remarkably consistent pattern emerges. At every important point where political power is constituted, the Constitution places its confidence in the people themselves. It begins with the Preamble, where the people of Ghana proclaim their commitment to establish a constitutional order founded upon, among others, the principle of universal adult suffrage. That declaration is not a decorative or ornamental introduction. It is the constitutional philosophy upon which the Fourth Republic rests. Indeed, this Court has had occasion to pronounce on the force of the Constitution's preambular language. In **Asare v Attorney-General [2015-2016] 2 SCGLR 902,** this Court noted that the Preamble to the Constitution gives us "*a full understanding of the philosophical underpinnings upon which the framers of the Constitution 1992 fashioned it.*"

41. Thus, the Preamble tells us that political authority derives from the equal participation of citizens and that the legitimacy of public office rests upon the widest possible democratic mandate. This choice of political philosophy rests upon the idea expressed in the opening article of the Constitution that "*[t]he Sovereignty of Ghana resides in the people of Ghana*". Article 35(6)(d) also enjoins the government to afford "*all possible opportunities to the people to participate in decision-making at every level in national life and in government.*" Taken together, these provisions inevitably enjoin us to embrace the constitutional vision that every eligible citizen is entitled to participate in constituting political power.

42. The same philosophy runs through the operative provisions of the Constitution. Article 42 guarantees every citizen of age and sound mind the right to vote. On that, this Court has held in many instances that the right to vote is non-derogable, except in lawful circumstances. See: **Tehn-Addy v Electoral Commissioner [1996-1997] SCGLR 589; Apaloo v Electoral Commission [2001-2002] SCGLR 1; Ahumah-Ocansey v Electoral Commission; Centre for Human Rights and Civil Liberties (CHURCIL) v Attorney-General (Consolidated) [2010] SCGLR 575.**

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43. In **Abu Ramadan v Electoral Commission, Consolidated Writs Nos. J1/11/2014 and J1/9/2014**, this Court emphasized that *"[e]lectoral justice is legitimately the most effective medium for the protection and preservation of the sovereign will of the people, a democratic principle explicitly captured in the preamble to the 1992 constitution and implicitly reinforced under its article (1). The critical role universal adult suffrage and equal voting play in the democratic process cannot therefore be overlooked (sic)."*

44. Again, Article 63(2) requires that the President be elected through universal adult suffrage. Members of District Assemblies likewise derive their mandate from the direct votes of the people, under Article 242, through universal adult suffrage.

45. Clearly, therefore, whenever the Constitution addresses the creation of public authority, it returns to the same democratic instinct: political power should flow as directly as possible from the people themselves. This is not accidental. It reveals a constitutional preference for broad participation as the ordinary method through which democratic legitimacy is secured.

46. Political parties occupy a unique place within our constitutional architecture. While they may be private associations in form, they are public institutions in function. As this Court would have us understand in the **Republic v Yebbi & Avalifo [1999-2000] 2 GLR 50**, matters affecting political parties are matters of public interest, because they are "*an essential part of the framework of government.*" It is through political parties that those who eventually govern the Republic are identified and presented to the electorate. For many constituencies, particularly within Ghana's dominant political parties, the decisive political contest often occurs long before the national election. The selection of a party's presidential or parliamentary candidate may effectively determine who will ultimately hold public office. Internal party elections cannot, therefore, be viewed as matters of purely private concern. They form an integral part of the country's democratic process.

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47. Seen from this perspective, Article 55(5) assumes greater significance. The framers could simply have guaranteed the freedom to establish political parties and left their internal affairs entirely to their members. They chose not to do so. Instead, they imposed a constitutional obligation that the internal organization of every political party shall conform to democratic principles. That command must mean something. It cannot be interpreted so broadly that every conceivable system of internal governance satisfies it, merely because some democratic theorist can defend it. The provision must instead be understood in light of the Constitution's own democratic commitments. If the Constitution repeatedly embraces universal participation whenever public authority is constituted, it is not unreasonable to conclude that the same constitutional philosophy should inform the internal processes through which parties select those who seek to exercise that authority.

48. Our conclusion may sit uneasily with the representative character of Ghana's constitutional democracy. It may be argued that, since Members of Parliament, for example, exercise legislative power on behalf of the people rather than the people exercising it themselves, the Constitution necessarily embraces representative democracy in the form of the delegate system, and not just the model of "one woman, one vote" to which we have referred. Indeed, the 1st Defendant impresses that argument upon us.

49. There is, in our respectful view, no inconsistency between representative democracy and universal adult suffrage. In our constitutional framework, they point, respectively, to who ultimately exercises public power and how those representatives derive their democratic mandate. There can be no dispute that the 1992 Constitution establishes a representative democracy. The sovereign will of the people is ordinarily exercised through elected representatives and not through direct popular decision-making. But that does not answer the separate constitutional question of how those representatives are themselves to be chosen. On that question, the Constitution speaks with consistency, that representatives derive their mandate through the equal participation of all citizens constitutionally entitled to take part in the relevant electoral process, as we have demonstrated.

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50. There is yet another consideration which, in our respectful view, deserves attention. The Supreme Court is not merely an interpreter of constitutional language. It is also the guardian of our constitutional democracy. In performing that responsibility, it cannot ignore the realities within which the Constitution operates. One of those realities is the growing influence of money in Ghanaian politics, particularly during internal party elections. This is no longer a matter of speculation. It has become part of our national political conversation. Allegations of vote-buying, delegate inducements, and the commercialisation of party primaries have become recurring features of almost every major internal election, of which this Court takes judicial notice. **See, for example: Kojo Asante and George Kunnath (eds), *The Cost of Politics in Ghana* (Ghana Center for Democratic Development (CDD-Ghana) and Westminster Foundation for Democracy 2018); William Nyarko, *Understanding How Dirty Money Fuels Campaign Financing in Ghana: An Exploratory Study* (Ghana Center for Democratic Development (CDD-Ghana) and Adam Smith International 2021).** The latter study estimates that the average cost of contesting a parliamentary election in Ghana is approximately GHS 4 million, with nearly GHS 2 million spent at the party primary stage alone. That such enormous sums are expended in elections determined by a relatively small number of delegates suggests that the high cost of party primaries is driven, in significant measure, by the need for aspirants to influence a limited and identifiable pool of delegates. The concentration of voting power in a small number of individuals thus creates fertile conditions for the monetisation of internal party elections.

51. True, opening party primaries to every party member is no guarantee that money politics will disappear. Corruption is remarkably adaptable. It often changes its form rather than vanish altogether. Yet constitutional adjudication rarely offers perfect solutions. The Court is often required to choose the course that best promotes constitutional values in imperfect circumstances. Concentrating decisive electoral power in a relatively small body of delegates inevitably increases the value of each delegate's vote. It creates a smaller market, a more identifiable electorate, and therefore a more attractive environment for targeted inducements. A broader electorate may increase campaign costs, but it also disperses political power among thousands of ordinary members, making it considerably more difficult

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for electoral outcomes to be shaped by a relatively small number of transactions. For that reason, this Court may legitimately conclude that, at this stage of Ghana's democratic development, fidelity to the Constitution requires political parties to embrace the model of democracy that the Constitution itself consistently prefers for the purpose of constituting political authority.

52. Before concluding on this issue, we consider it necessary to address one matter that may arise as a consequence of our decision. While we do not purport to anticipate or resolve every practical implication that may flow from opening party primaries to all registered members of a political party, one concern that immediately presents itself is the possibility of gerrymandering, or what is known in American jurisprudence as "party raiding". That is to say, it has the real possibility of occasioning the political strategy in which supporters of one political party deliberately register and participate in another party's nomination process to influence its outcome, usually by helping nominate a weaker or less electable candidate. While this possibility is a real one, it is not sufficient to displace the Constitution's own ideal form of democracy. Besides, jurisdictions where primaries are open to all party members have confronted this challenge and responded by adopting measures to curb it, including requiring individuals to have been members of a political party for a specified reasonable period of time before becoming eligible to participate in that party's primaries. The Supreme Court of the United States has held this to be constitutional, albeit that the set timeframes must be reasonable.

53. In **Rosario et al. v. Rockefeller, 410 U.S. 752 (1973)**, the United States Supreme Court considered the constitutionality of a New York election law requiring voters to enroll in a political party several months before a primary election in order to be eligible to participate in that party's primary. The plaintiffs contended that the requirement violated their constitutional rights to vote, to political association, and to equal protection by excluding otherwise qualified voters who had failed to enroll before the statutory deadline. The State, however, justified the requirement as a necessary safeguard against "party raiding".

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54. The Supreme Court upheld the legislation. It held that the enrollment requirement did not deny the right to vote but merely regulated the timing of the exercise of that right in the context of party primaries. The Court further held that the State had a legitimate and substantial interest in preserving the integrity of the electoral process, protecting political parties from strategic manipulation, and promoting the orderly administration of primary elections. Since eligible voters remained free to enroll in advance and participate in subsequent primaries, the Court concluded that the statute imposed a reasonable and constitutionally permissible regulation, and not an undue burden on the exercise of constitutional rights.

55. In contrast, in **Kusper v. Pontikes, 414 U.S. 51 (1973),** the United States Supreme Court examined the constitutionality of an Illinois election law that prohibited a voter from participating in the primary of one political party if the voter had participated in another party's primary within the preceding twenty-three months. The plaintiff had voted in the Republican primary in 1971 but later sought to participate in the Democratic primary in 1972. She challenged the statute on the ground that it impermissibly restricted her freedom of political association by effectively preventing her from changing her party affiliation and participating in the candidate-selection process of the political party she wished to support.

56. The Supreme Court declared the statute unconstitutional. It held that the twenty-three-month timeframe imposed a substantial burden on the rights of political association guaranteed by the First and Fourteenth Amendments by effectively confining voters to a prior party affiliation for an unreasonably prolonged period. Although the Court recognised that the State had a legitimate interest in preventing "party raiding" and preserving the integrity of party primaries, it concluded that the restriction was not sufficiently tailored to advance those objectives. Distinguishing its earlier decision in *Rosario v. Rockefeller*, the Court observed that, unlike a reasonable advance enrollment requirement, the Illinois statute unnecessarily curtailed voters' ability to realign their political affiliations and participate meaningfully in the primary elections of the party of their choice. Accordingly, the Court held

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that the State's interest in safeguarding the integrity of the primary process could not justify a restriction that imposed an undue burden on fundamental associational freedoms.

57. We have discussed these highly persuasive decisions because, when applied to Ghana, the State, or political parties acting pursuant to their constitutions and electoral regulations, may legitimately prescribe minimum periods of party membership as a condition for participating in party primaries. Such requirements would serve the important objective of deterring opportunistic party switching and preventing external actors from influencing the candidate-selection processes of rival political parties.

ISSUE 2:

58. The final issue concerns the role of the Electoral Commission in ensuring compliance with the constitutional requirement that the internal organisation of political parties conform to democratic principles. The Plaintiffs contend that the Electoral Commission bears a continuing constitutional and statutory obligation to scrutinise, supervise and ensure that the constitutions and internal electoral arrangements of registered political parties comply with Article 55(5) of the Constitution. The Commission, on the other hand, rejects the claims of the Plaintiffs in their entirety and urges this Court to find that it has been improperly joined to the suit.

59. In resolving this issue, we start by revisiting Article 55(5) of the Constitution, which commands that "*the internal organisation of a political party shall conform to democratic principles.*" This provision is cast in mandatory language and imposes a constitutional obligation upon every political party registered under the Constitution. The question is whether the Electoral Commission bears any responsibility in ensuring continuing observance of that obligation.

60. In our view, the answer must be in the affirmative. Article 45 of the Constitution entrusts the Electoral Commission with the regulation and supervision of the electoral process, while Article 55 assigns to it the responsibility for registering political parties. That constitutional

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mandate is reinforced by section 9(a) of the Political Parties Act, 2000 (Act 574), which requires the Commission to ensure that a political party's constitution and organisational arrangements comply with the Constitution and the laws of Ghana before registration is granted. It states that "*the Commission shall not register a political party under [the Political Parties] Act, unless (a) the internal organisation of the party conforms with democratic principles and its actions and purposes are not contrary to or inconsistent with the Constitution".* That obligation is mandatory, by the Constitution's use of the operative word "shall." See **Interpretation Act, 2009, (Act 792).** Indeed, this Court has held that "*the use of the word 'shall', invoke[s] a mandatory obligation on the part of the applicable duty bearer to comply with the prescription of law.*" **Gyedu Frimpong and Others v Joana Gyan Cudjoe [2024] DLSC 17894.**

61. Having established that the Electoral Commission has an obligation to ensure that political parties are registered only if their internal arrangements conform to democratic principles, that obligation cannot reasonably be understood as arising only at the moment of registration. The constitutional requirement contained in Article 55(5) is a continuing one, and the Commission's supervisory responsibility must necessarily endure for as long as the political party remains registered.

62. To construe the Commission's role as exhausted upon registration would substantially undermine the effectiveness of Article 55(5). A political party could initially submit a constitution that conforms to democratic principles, secure registration, and thereafter amend its constitution in a manner fundamentally inconsistent with those principles, without any constitutional oversight by the very body entrusted with regulating political parties. Such an interpretation would deprive Article 55(5) of much of its practical force and defeat its evident constitutional purpose.

63. This is not to suggest that the Electoral Commission may dictate the internal policies or political choices of political parties. Political parties retain considerable autonomy in determining their internal affairs. The Commission's supervisory function extends only to

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ensuring that those internal arrangements remain within the constitutional limits imposed by Article 55. It must be concerned here not with the wisdom of political choices but with their constitutional validity.

64. Accordingly, we answer Issue 2 in the affirmative. We hold that the Electoral Commission bears a continuing constitutional and statutory duty to supervise and ensure that the constitutions, rules and internal electoral arrangements of registered political parties conform to the democratic principles mandated by Article 55(5) of the Constitution. Where those arrangements depart from that constitutional standard, the Commission is under an obligation to take appropriate steps, consistent with its constitutional and statutory powers, to secure compliance.

CONCLUSION

65. For the foregoing reasons, all the reliefs sought by the Plaintiffs are granted.

66. All political parties registered with the 4th Defendant are hereby ordered to desist from selecting Presidential and Parliamentary Candidates through any form of electoral college system and shall, not later than one year from today, establish a system for selecting Presidential and Parliamentary Candidates that enables all registered members of the party in good standing, as determined by the party's Constitution, to directly vote for the Presidential and Parliamentary Candidates.

67. Meanwhile, having found that the impugned internal arrangements of the 1st, 2nd and 3rd Defendants are inconsistent with the 1992 Constitution and are therefore void to the extent of their inconsistency, this Court is impelled to determine the effect of that declaration on decisions previously taken pursuant to those arrangements.

68. The Court is mindful that constitutional supremacy demands that unconstitutional provisions cannot be permitted to remain operative. Equally, the Court cannot ignore the practical reality that the affairs of the 1st, 2nd and 3rd Defendants have, over a period of time, been

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conducted on the footing that the impugned provisions were valid. To invalidate, retrospectively, every decision taken under those provisions would not only unsettle vested rights and legitimate expectations, but may also occasion considerable uncertainty in the administration of the affairs of the 1st, 2nd and 3rd Defendants and affect the broader public interest. We are of the view that a declaration of constitutional invalidity does not invariably require the nullification of every act previously performed under the impugned internal arrangements of the Defendants. Indeed, this Court's position has long been that the declaration of unconstitutionality of an action or omission does not automatically lead to the nullification of that action or omission. **See Justice Dery v Tiger Eye PI and Others [2015-2016] 2 SCGLR 812 and In Re Presidential Election Petition; Akufo-Addo and Others v Mahama and Others [2013] SCGLR (Special Edition) 73.** Thus, notwithstanding our decision herein, all decisions, appointments, elections, directives and other official acts lawfully undertaken in good faith pursuant to the impugned internal arrangements of the 1st, 2nd and 3rd Defendants before the date of this judgment shall remain valid and shall not be invalidated solely by reason of this judgment.

ORDERS OF THE COURT

True, opening party primaries to every party member is no guarantee that money politics will disappear. Corruption is remarkably adaptable. It often changes its form rather than vanish altogether. Yet constitutional adjudication rarely offers perfect solutions. The Court is often required to choose the course that best promotes constitutional values in imperfect circumstances. Concentrating decisive electoral power in a relatively small body of delegates inevitably increases the value of each delegate's vote. It creates a smaller market, a more identifiable electorate, and therefore a more attractive environment for targeted inducements. A broader electorate may increase campaign costs, but it also disperses political power among thousands of ordinary members, making it considerably more difficult for electoral outcomes to be shaped by a relatively small number of transactions. For that reason, this Court may legitimately conclude that, at this stage of Ghana's democratic development, fidelity to the Constitution requires political parties to embrace the model of

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democracy that the Constitution itself consistently prefers for the purpose of constituting political authority.

Accordingly, we answer Issue 2 in the affirmative. We hold that the Electoral Commission bears a continuing constitutional and statutory duty to supervise and ensure that the constitutions, rules and internal electoral arrangements of registered political parties conform to the democratic principles mandated by Article 55(5) of the Constitution. Where those arrangements depart from that constitutional standard, the Commission is under an obligation to take appropriate steps, consistent with its constitutional and statutory powers to secure compliance.

For the reasons outlined in the full judgment, all the reliefs sought by the Plaintiffs are hereby granted. It is hereby ordered that all political parties registered with the 4th Defendant are restrained from selecting Presidential and Parliamentary Candidates through any form of electoral college system and shall, not later than one year from today, establish a system for selecting Presidential and Parliamentary Candidates that enables all registered members of the party in good standing, as determined by the party's Constitution, to directly vote for the Presidential and Parliamentary Candidates. Notwithstanding our decision herein, all decisions, appointments, elections, directives and other official acts lawfully undertaken in good faith pursuant to the impugned internal arrangements of the 1st, 2nd and 3rd Defendants before the date of this judgment shall remain valid and shall not be invalidated solely by reason of this judgment.

(SGD.) **P. BAFFOE-BONNIE**
(CHIEF JUSTICE)

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(SGD.) **G. PWAMANG**
(JUSTICE OF THE SUPREME COURT)

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(SGD.) S. DZAMEFE
(JUSTICE OF THE SUPREME COURT)

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(SGD.) G. S. SUURBAAREH
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

TANKO AMADU JSC:

PREAMBLE

1. I have read in draft the opinion of my Lord the Honourable Chief Justice, and taken into account the positions of my two distinguished brothers in the minority who refused to grant the reliefs the Plaintiffs seek. I agree with the orders made by the Honourable Chief Justice and with the reasoning by which His Lordship reaches them. I shall also grant all the reliefs in the terms he has set out. But I add an opinion of my own, and hereby articulate my reasons.

2. Article 55(5) of the Constitution, 1992 provides that the internal organisation of a political party shall conform to ***democratic principles***. Those two words, or words indistinguishable from them, have been part of our fundamental law since 1979. In all the years since, through several general elections under this Republic and the whole life of our political party system, no court has been asked what they mean. We are asked now, and we are the first. Whatever we say will stand until this Court unsays it, and it will bind not only the three parties who are Defendants in this action but every political

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party in Ghana and every political party yet to be formed. A provision that comes before this Court once in a generation deserves more than one mind brought to bear upon it.

3. What the case is about should not be lost in the language of the pleadings before the court. Somewhere in this country there is a man and woman who have carried their party cards for several years. They have paid their dues. They have sat through branch meetings in the heat, walked their neighbourhood at election time, defended their party to neighbours who had no patience for it, and turned out on every polling day it has asked of them. When the party comes to choose the man or woman it will put forward to govern the Republic, or to represent their constituency in Parliament, they have no vote. Others vote in their names. They learn the result as the rest of the country and the world learn it. The question in this case is whether, the Constitution permits that, and I do not think the question is a casual and inconsequential one.

4. It is neither casual nor inconsequential because of what political parties are under the 1992 Constitution. By article 55(3) of the Constitution, 1992, they are the gates through which nearly every elective office in the land is reached. In a great many of our constituencies the contest that matters is not the one held in December but the one held months earlier within a party, and by the time the ballot papers are printed the real choice has been made. To decide how a party may make that choice is to decide a good deal about how Ghana is governed. I would not wish this question decided in a single voice. That is why I add my own to the opinion ably articulated by the Honourable Chief Justice on behalf of the majority.

5. Further, this action did not come to us in the ordinary adversarial way. Of the five Defendants, only one fought it to the end. Two supported the Plaintiffs. One stood aside. And the Attorney-General, who had filed a case supporting the Plaintiffs, at the hearing through the Honourable Deputy Attorney-General in addressing the court, submitted that, the delegate system is not unconstitutional after all, and that what he sought was a choice of policy between two lawful courses. When a Court is urged by nearly everyone before

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it to do a particular thing, the danger is not that it will be argued into error. It is that, it will not be argued with at all. What the Bar has not supplied, the Bench must.

6. That danger is not lessened by the fact that, we are divided. It is sharpened. Two of my very revered brothers refused to grant all the reliefs, and they have given reasons of real weight. With all due respect, I have taken the contrary view and I shall explain why in detail, shortly. A judicial outcome of a majority of five to two on the meaning of a constitutional provision requires an exhaustive reasoning. Numbers do not settle constitutional questions; reasons do. An opinion carried by a majority but resting on one statement of grounds is more fragile than one whose grounds have been arrived at diversely and set down separately, and it ought to be. So I have not passed the minority by. Their reasoning will not persuade me to qualify my own and I have explained why. In my view, the best case against this judgment has been made from inside this Court, and a judgment on a question of this order should be able to meet it.

7. Let me sound one caution more. What we decide today is not written for the parties alone. It will be read in all party offices, in the Electoral Commission, in Parliament, and by citizens who will want to know what has become of their rights. We are requiring institutions to change arrangements they have lived by for more than thirty years. Those who must comply are entitled to understand not merely what is asked of them, but why. That is easier to convey when the reasons are given in more than one voice.

8. I therefore set out my own reasons in full, and I have not avoided any ground my Lord the Honourable Chief Justice has covered. Where I repeat it, it is because the argument needs it; where I go further, or take another route, I have said so with conviction having fully subscribed to the lead judgment of the court which is the judgment of my Lord the Honourable Chief Justice and of the majority.

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INTRODUCTION

9. My Lords, the key question for our determination in this action is deceptively simple to state, yet, uncommonly difficult to answer. **Article 55(5) of the 1992 Constitution** provides that the internal organisation of a political party shall conform to democratic principles. The 1st, 2nd and 3rd Defendants each choose their Presidential and Parliamentary Candidates not by a vote of their members at large but through electoral colleges made up of officeholders and delegates. The Plaintiffs' grievance is that, such an arrangement cannot conform to democratic principles, and that the Constitution requires that every member of political parties in good standing be entitled to vote.

10. While the **2nd Defendant National Democratic Congress, (NDC)** and the **5th Defendant (Attorney General)** substantially concede the Plaintiffs' claims, the **3rd Defendant Convention Peoples' Party, (CPP)** took an indifferent position to the reliefs sought by the Plaintiffs, urging the court to grant if it may, the reliefs sought by the Plaintiffs subject to any consequential directions the court may deem fit to order. In effect, only the **1st Defendant New Patriotic Party, (NPP)** contested the Plaintiffs' action contending that, the 1992 Constitution prescribes no method of selection at all, and therefore, leaves the matter wholly to each political party.

11. The Plaintiffs are three prominent citizens of Ghana and of admirable long public service. The 1st Plaintiff is a cardiothoracic surgeon, founding Chief Executive of the National Cardiothoracic Centre and a former Minister of State. The 2nd Plaintiff is a medical practitioner and a former Ambassador. The 3rd Plaintiff is a scientist and public administrator who has held several senior ministerial offices. The 1st and 2nd Plaintiffs are members of the 1st Defendant; the 3rd Plaintiff is a member of the 2nd Defendant. They sue both in their personal capacities and in the public interest under Article 2(1) of the 1992 Constitution. Their standing has not been contested, and upon **TUFFUOR VS. ATTORNEY-GENERAL [1980] GLR 637** and the settled learning since, it could not usefully have been.

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12. The grievance which prompted this action is neither novel nor confined to the Plaintiffs. It is that, the choice of those who will govern the Republic has come to rest with a body small enough to be canvassed and, it is said, small enough to be bought; while the member who pays his dues, carries the party's message and bears its fortunes at the polls is a spectator at the moment when the decision is taken in his name. Further that, a party governed by the few, will in time deliver a Republic governed by the few. **The question provoked for our answer therefore becomes: *whether a party which selects its candidates in that manner has an internal organisation which conforms to democratic principles?***

13. It must be observed from the outset that, this matter is not a case about whether ***the one member, one vote*** formula would improve the quality of our politics or reduce the influence of money and other items of value to influence the electoral colleges. Upon those questions reasonable citizens differ, and this Court has no special competence to resolve them. The question is narrower and harder: **Whether the arrangements complained of by the Plaintiffs truly fall below the standard which Article 55(5) of the 1992 Constitution imposes ?.**

II. THE BACKGROUND

14. By writ issued on 23rd January 2026, invoking the original jurisdiction of this court under **Articles 2(1) and (2) and 130(1) of the 1992 Constitution and Rule 45 of the Supreme Court Rules, 1996 (C.I. 16),** the Plaintiffs seek eleven reliefs set out as follows:

i. *A declaration that upon a true and proper interpretation of the Preamble and Articles 1(1) and (2), 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution the election of a political party's presidential and parliamentary candidate(s) constitutes a core element of the party's internal organisation within the meaning of Article 55(5) of the Constitution.*

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ii. *A declaration that upon a true and proper interpretation of the Preamble and Articles 1(1) and (2), 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution, the internal organisation of a political party must be structured in a manner that ensures equal political participation and equal voting rights of its members in the selection of the party's presidential and parliamentary candidate(s).*

iii. *A declaration that, on a true and proper interpretation of the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42, 55(2), 55(5), 63 and 93 of the 1992 Constitution, democratic principles governing the internal organisation of political parties require political equality, meaningful and broad participation of members in decision-making, accountability of leadership to the membership, and substantially equal and direct voting rights for members in good standing in the election of the party's presidential and parliamentary candidates.*

iv. *A declaration that the delegate-based Electoral College system established under Article 13 of the Constitution of the 1st Defendant for the election of its presidential candidate, which confines or restricts voting to specified executives, office holders and delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.*

v. *A declaration that the Extraordinary Constituency Delegates Conference system established under Article 7 of the Constitution of the 1st Defendant for the selection or election of its parliamentary candidates, which confines voting to specified constituency executives, coordinators, polling station officers, elders, patrons and other delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.*

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vi. *A declaration that the Electoral College system established under Articles 43 and 44 of the Constitution of the 2nd Defendant for the election of its presidential and parliamentary candidate, which confines or restricts voting to specified executives, office holders and delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 33(5), 17, 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.*

vii. *A declaration that the Constituency Branch Party Conference system and the National Delegates Congress system established under Articles 53, 96 and 77 of the Constitution of the 3rd Defendant for the election of its presidential and parliamentary candidate(s), which confines voting to specified executives, elders, officers and delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.*

viii. *A consequential order striking down and declaring unconstitutional, null, void and of no effect all provisions of the constitutions, rules, regulations or electoral arrangements of the 1st, 2nd and 3rd Defendants, to the extent that they restrict or confine the election of their presidential and parliamentary candidates to limited Electoral Colleges, delegate bodies or similar structures, or otherwise exclude or materially disenfranchise members in good standing of the parties from voting in elections for their presidential candidates.*

ix. *An order directing the 1st, 2nd and 3rd Defendants to amend their respective constitutions, rules and electoral arrangements to adopt procedures for the election of their presidential candidates or flagbearers that conform to the democratic principles required under Article 55(5) of the 1992 Constitution and ensure the equal, direct and meaningful participation of members in good standing in such elections.*

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x. *An order directed at the 4th Defendant, in the exercise of its supervisory and regulatory mandate under the Constitution and Act 574, to ensure and enforce the 1st, 2nd, and 3rd Defendant's compliance with the Preamble Article 55(5) of the Constitution and Section 9(a) of Act 574 in respect of their internal elections.*

xi. *Such further or consequential orders as this Honourable Court may deem just.*

15. When grouped by their character, reliefs (i) to (iii) are interpretative; reliefs (iv) to (vii) are specific and destructive, being directed at identified provisions of the constitutions of the 1st, 2nd and 3rd Defendants; while reliefs (viii) to (xi) are consequential and remedial.

16. Three features of the endorsement should be noticed at once, since each bears upon the disposition. The first is that relief (i) does not allege a contravention of anything; it asks us to declare a proposition which, on its face, restates what Article 55(5) already provides. The second is that reliefs (viii) and (ix), although their opening words embrace both Presidential and Parliamentary Candidates, are in their operative parts confined to the presidential office: relief (viii) closes by referring to voting ***"in elections for their presidential candidates,"*** and relief (ix) seeks amendment only of the procedures ***"for the election of their presidential candidates or flagbearers."*** The Parliamentary Candidatures which reliefs (v), (vi) and (vii) impugn are thus left without any consequential order to follow the declarations sought. The third is that relief (x), alone among the eleven, is directed at the 4th Defendant, which has nevertheless pleaded that no relief is sought against it. I shall return to each of these in their place.

17. On 29th April 2026 each of the Defendants was granted fourteen days to file a statement of case. On 19th May 2026, the 5th Defendant was granted leave to withdraw the process he had filed on 15th May 2026, and seven days in which to file a statement of case in its place.

18. On 10th June 2026, the Liberal Party of Ghana applied under Rule 45(4) of C.I. 16 to be joined as a 6th Defendant, contending that, a determination in favour of the Plaintiffs upon the declaratory reliefs would directly affect it as a registered political party. The writ

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having issued in January 2026 and having been in the public domain since, and the application having been filed only on 29th May 2026, we held that, the Applicant had not acted timeously and that, while it was an interested party, it was not a necessary party. The court dismissed the application and proceeded to hear the substantive matter the same day.

19. I have referred to that ruling here, for a reason which will become material. It illustrates the difficulty which attends an action of this kind, in which three parties are sued but the declarations sought would bind every registered political party in the Republic. That difficulty is not cured by joinder, for the alternative, admitting every party which conceives itself affected, at whatever stage would make an end of the proceedings impossible. It is, however, a reason for caution before laying down a rule of universal application upon a record confined to the arrangements of three parties.

III. THE CASE FOR THE PLAINTIFFS

(a) THE CONSTITUTIONAL STATUS OF POLITICAL PARTIES

20. Learned counsel for the Plaintiffs, has eruditely and eloquently advanced a case of considerable ambition and sustained argument as follows: The Plaintiffs reject the characterisation of political parties as ordinary voluntary associations. The Constitution accords them a unique and elevated status: it guarantees the right to form and to join them; it recognises that they exist to shape the political will of the people and to sponsor candidates for public office; and it regulates their internal structure. If parties were purely private associations, the Constitution would have had no reason to regulate them. They rely upon **REPUBLIC VS. YEBBI AND AVALIFO [2000] SCGLR 149**, in which this Court, construing the expression ***"offences against the State and public interest"*** in Article 295(1), held that, the theft of money belonging to a political party fell within it, notwithstanding that political parties are not State institutions, because parties form an essential part of the framework of democratic government and their organisation, operations and finances are regulated by law and accountable to the public.

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(b) THE MANDATORY CHARACTER OF ARTICLE 55(5)

21. Article 55(5) provides that, internal organisation ***"shall"*** conform to democratic principles. A party cannot contract out of the obligation, redefine it, or dilute it by its own rules. **Section 9(a) of Act 574** translates that, mandate into an operational requirement by making conformity a condition of registration, that is, of lawful existence. The Plaintiffs add that, the obligation is self-executing and continuous, and rests directly upon each party independently of whether the Electoral Commission has discharged its vetting function.

(c) THE DERIVATION OF "DEMOCRATIC PRINCIPLES"

22. Upon the central question the Plaintiffs advance an argument of real elegance. They accept that the phrase is open-textured. But its content is not to be found at large in political philosophy, where conceptions of democracy vary widely, some emphasising elite decision-making, others indirect representation, others broad participatory suffrage, because a standard drawn from such contested sources would be incapable of consistent judicial application. Nor may its content be left to the parties themselves, for that would render the obligation nugatory. It must therefore be derived internally, from the text, structure and values of the Constitution. Democracy under Article 55(5) of the Constitution must mean democracy as the Constitution understands it.

23. So derived, the Constitution's conception comprises: popular sovereignty and the accountability of leadership **(Preamble and Article 1); political equality (Preamble and Article 17); universal and equal suffrage (Preamble, Article 42 read with Articles 63 and 93); broad and meaningful participation in decision-making at every level of national life (Article 35(6)(d)); and representative legitimacy conferred through elections. These constitute the minimum content of Article 55(5): political equality, meaningful participation, accountability of leadership to members, non-oligarchic structures, and universal or near-universal suffrage in the selection of executive leadership.**

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24. They anticipate the objection founded upon the Constitution's own use of an electoral college. Article 89 of the 1992 Constitution, it is contended is an express and narrowly confined departure from the model of universal participation, permitted because the Council of State performs advisory functions and exercises no executive or legislative authority. Departures are exceptional, expressly stated, and limited to bodies which do not wield sovereign power. No comparable derogation exists for political parties, and in its absence the constitutional default of broad and equal participation prevails.

(d) THE PASS-THROUGH THEORY

25. The Plaintiffs' central structural submission is what they refer to as the constitutional pass-through effect. Where a party's internal process determines in a legally consequential way, who may present himself to the Republic as a candidate for constitutional office, that process forms part of the pathway through which constitutional power is accessed. The democratic principle guarantees applicable at the national election cannot logically be severed from the antecedent mechanisms which control entry to it. It would be constitutionally incoherent, they assert, to demand equality and universality at the final election while tolerating exclusion and hierarchy at the decisive internal stage.

26. They confine the argument. They do not contend that every internal decision must replicate national electoral procedure, and they accept that parties require administrative hierarchies for routine affairs. Their case is that the closer an internal process lies to the conferment of public power, the more strictly it must conform; and that, candidate selection lies closest of all.

(e) THE ARGUMENT FROM VOTE DILUTION

27. The Plaintiffs advance a distinct argument founded upon equality of political weight. Arrangements which debase or nullify some votes while amplifying others deny equal political representation. The delegate systems operate as vote dilution in an extreme

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form: ***one office-holder, one vote; many members, no vote at all.*** They create two classes of political citizen within the same party. In support they cite **MOBILE VS. BOLDEN, 446 U.S. 55 (1980)**, **DAVIS VS. BANDEMER, 478 U.S. 109 (1986)**, the apportionment cases, and, candidly, **VIETH VS. JUBELIRER, 541 U.S. 267 (2004)** and **RUCHO VS. COMMON CAUSE, 588 U.S. 684 (2019)**, which they acknowledge declined relief for want of manageable standards while leaving the normative commitment intact.

(F) <u>THE JURISPRUDENCE OF THIS COURT</u>

28. The Plaintiffs submit that, this Court has for two decades treated universal adult suffrage not as a mere procedural device but as a foundational constitutional value. They rely upon **OCCUPY GHANA VS. ATTORNEY-GENERAL (2017) JELR 68817 (SC)**, for the proposition that the Fourth Republican Constitution is anchored upon the principle that the powers of government spring from the sovereign will of the people based on universal adult suffrage; upon **APALOO VS. ELECTORAL COMMISSION [2001-2002] SCGLR 1**, where the right of suffrage was described as the pre-eminent right under the Constitution; and upon **TEHN-ADDY VS. ELECTORAL COMMISSION [1996-97] SCGLR 589** and **AHUMAH-OCANSEY VS. ELECTORAL COMMISSION; CHURCIL VS. ATTORNEY-GENERAL [2010] SCGLR 575**. They further rely upon **REPUBLIC VS. HIGH COURT (GENERAL JURISDICTION), ACCRA; EX PARTE DR. ZANETOR AGYEMAN-RAWLINGS (2017)**.

(f) <u>COMPARATIVE AND INTERNATIONAL MATERIAL</u>

29. The Plaintiffs rely upon **RAMAKATSA VS. MAGASHULE (CCT 109/12) [2012] ZACC 31**, in which the Constitutional Court of South Africa rejected the contention that internal party matters were non-justiciable and invalidated leadership outcomes flowing from defective delegate processes; and upon **MY VOTE COUNTS NPC VS. SPEAKER OF THE NATIONAL ASSEMBLY [2015] ZACC 31**, in which parties were described as the

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indispensable conduits through which the right to vote is exercised, for the *a fortiori* submission that if funding transparency is constitutionally required because it affects the context of choice, candidate selection, which determines whether a choice exists at all must attract constitutional norms even more directly. They rely also upon Article 25 of the International Covenant on Civil and Political Rights and General Comment No.25, and upon Article 13 of the African Charter on Human and Peoples' Rights.

(g) THE APPLICATION, AND AN IMPORTANT QUALIFICATION

30. Applying that standard, the Plaintiffs assert that, the 1st Defendant's Electoral College is oligarchic in design: composed primarily of office holders, executives and insiders, including persons who hold positions either internally elected through prior delegate processes or acquired through public office, and reproducing itself by ensuring that those who already possess institutional power retain decisive control over future leadership selection. They allege the same of the 3rd Defendant.

31. As to the 2nd Defendant they add an argument of a different order, which anticipates any objection founded upon practicability. In or about 2015, they assert that, the 2nd Defendant adopted a universal suffrage model extending the vote in its presidential primary to all members registered upon its biometric register; that arrangement demonstrated that broad-based participation by the membership was both administratively feasible and institutionally practicable within a party of that size. That the subsequent decision, after the 2016 Elections, to abandon it and revert to a restricted delegate system was taken for the express purpose of restoring influence to executives and traditional power brokers. A deliberate contraction of the franchise, they submit, cannot be reconciled with an obligation that internal organisation shall conform to democratic principles: it moves the party away from democratic participation rather than towards it.

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32. I must, however, draw attention to a qualification in the Plaintiffs' own formulation. In stating the principle they contend for, they assert that, the selection of leadership must be conducted on the basis of universal or near-universal suffrage of members in good standing, or by an equivalently broad, proportionate and representative mechanism that preserves substantially equal voting power among members. They add that, internal party democracy does not require the mechanical reproduction of the national electoral register. That qualification is not a slip; it is repeated, and it is consistent with their acknowledgement that, indirect representation is among the recognised models of democratic organisation. I shall return to it, for it materially narrows the issue for determination.

(h) THE CLAIM AGAINST THE 4TH DEFENDANT

33. Finally, the Plaintiffs submit that the Electoral Commission is under a continuing legal duty to ensure that party constitutions and internal electoral processes comply with Article 55(5) of the Constitution. They assert that, it supervises internal party elections and possesses investigative and enforcement powers. However, and that it has failed, refused or neglected to discharge that duty.

IV. THE CASE FOR THE 1ST DEFENDANT

34. As aforesaid, the 1st Defendant alone resists the action, and it has placed before the court its Constitution as amended on 4th July 2025, together with the Rules and Regulations and the Guidelines and Timelines for 2026 Membership Registration and Internal Party Elections adopted by its National Executive Committee and National Council on 17th February 2026. Because those instruments furnish the only detailed evidence before the court of how any of the impugned colleges is in fact composed, I shall set out their material provisions when I come to apply the constitutional standard.

35. Its argument is as follows. First, it submits that the Plaintiffs' case rests upon a conceptual error: the assumption that there is a single model of democratic principles, whereby every

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member must directly vote at every internal election, so that any system in which voting is confined to a defined electoral college is *ipso facto* undemocratic. That assumption, it contends is supported neither by the text of the Constitution, nor by the history of Article 55(5) of the Constitution: Further that, it is neither supported by the jurisprudence of this Court, the practice of comparable democracies, nor by democratic theory itself.

36. Secondly, and centrally, it submits that, two distinct democratic models are recognised the world over: direct or plebiscitary democracy, in which every member votes directly on every decision; and representative or indirect democracy, in which members elect representatives at lower tiers who take collective decisions on their behalf at higher tiers. It cites the definition of democracy in Black's Law Dictionary as government by the people, either directly or through representatives elected by them, and submits that representative democracy is the predominant mode in every mature constitutional order, including those upon which our framers drew.

37. Thirdly, it makes a specific factual assertion which lies at the heart of the case. It asserts that, all members in good standing vote in the Polling Station elections and that, those elected at the polling station in turn elect the Electoral Area Executive Committees, and upward through the constituency and regional tiers. That in consequence of this structured scheme, no person is imposed in the electoral college of the 1st Defendant. Its structure, it contends demonstrably reflects representation from below rather than appointment from above.

38. Fourthly, it relies upon a structural reading of Chapter 7 of the Constitution, which it divides into three parts: ***the right to vote (Article 42), the Electoral Commission (Articles 43 to 54), and the organisation of political parties (Articles 55 and 56). Read together.*** It submits that, these disclose an intention that parties organise their internal structures so that representation at all levels is free, fair and transparent and not that they replicate the national franchise. It contends that, there is no lacuna in Article 55(5) of the Constitution requiring to be filled, and that the parties themselves are best placed to determine how members participate in internal activities.

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39. Fifthly, it relies upon this Court's own words in **AHUMAH-OCANSEY [2010] SCGR 575**, where the Court, in the course of vindicating the right to vote at public elections, observed that, a core value of any democratic system is the sovereignty of the people as expressed through the right to choose representatives, through whom the sovereign will of the people shall be exercised. That, it asserts is precisely the system it operates.

40. Sixthly, the 1st Defendant relies upon comparative authority. It cites **THURANIRA & 4 OTHERS VS. ATTORNEY-GENERAL & 2 OTHERS; REGISTRAR OF POLITICAL PARTIES & 3 OTHERS (INTERESTED PARTIES) (Petition E043, E057 & E109 of 2022) [2022] KEHC 482 (KLR) (20 April 2022)**, in which the High Court of Kenya upheld against constitutional challenge of the indirect nomination of candidates by delegates introduced by the Political Parties (Amendment) Act, 2022. The complaint there was that Section 24 of that Act did not require the participation of registered party members in the selection of delegates. Therefore, the members might have no say in who became a delegate and a delegate need not be accountable to them. The Court held that indirect nomination under the new Section 38A(b) was not unconstitutional, each party being required to have its own delegate system entrenched in its own constitution, and the selection of delegates being governed by the party's own nomination rules. Further, cites **HARPER VS. CANADA (ATTORNEY-GENERAL) [2004] 1 SCR 827** for the proposition that, democracy does not require that, every person participate directly or equally in every political process and that courts should respect institutional choices about how democratic systems are organised. It also cites **DEMOCRATIC PARTY OF THE UNITED STATES VS. WISCONSIN, 450 U.S. 107 (1981)**, observing that in the United States neither the President nor either major party's nominee is chosen by direct universal vote, both being chosen through electoral colleges and delegate conventions.

41. Seventhly, it relies upon **MAGASHULE VS. RAMAPHOSA (2021/23795) [2021] ZAGPJHC 88; [2021] 3 All SA 887 (GJ)**, in which the High Court of South Africa, applying *Ramakatsa*, held that a party is entitled to regulate internally the participation of its membership in accordance with its objectives; that this is the essence of what

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associational rights and organisational autonomy require; and further that, a court must take care not to second-guess the intention of the parties to the unique contract which represents the relationship between a party and its members. The 1st Defendant's contends further that, provided the party's constitution does not conflict with that of the country and the party complies with its own constitution, how the right to participate is internally regulated is largely an internal matter best left to the party and its members.

42. Finally, it submits that to accept the Plaintiffs' interpretation would be to impose direct democracy upon all political parties in Ghana, a model which not even the most advanced democracies have judicially imposed upon their own parties, and that the imposition of a particular kind of democracy upon a party against the wishes of its members would itself be undemocratic.

V. THE CASE FOR THE 2ND DEFENDANT

43. The 2nd Defendant filed its statement of case on 13th May 2026. Its position is one of qualified concession: it defends in principle the autonomy of a party to regulate its internal affairs and resists the suggestion that its arrangements were adopted otherwise than by its own constitutional processes, but it accepts that its Electoral College arrangements do not fully realise the democratic principles contemplated by the Article 55(5) provision in the Constitution, and invites the court to affirm that members in good standing should be entitled to participate directly.

44. When deeply analyzed that process filed by the 2nd Defendant is difficult to characterise. In form it is a defence; but in substance, it is a submission in support of the Plaintiffs' case. It does not join issue upon the meaning of Article 55(5); it simply adopts it. It does not defend the impugned provisions of its own constitution. Rather, it concedes their inadequacy. I intend no criticism. However, a party which has come to believe that its arrangements should be reformed is entitled to boldly say so without equivocation. But the consequence must be faced.

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VI. THE CASE FOR THE 3RD DEFENDANT

45. By paragraph 7 of the 3rd Defendant's statement of case, it denies that its National Delegates Congress system is *per se* inconsistent with democratic principles under Article 55(5) of the 1992 Constitution on the ground that the Constitution does not prescribe a single electoral model for internal party democracy; it relies upon **NEW PATRIOTIC PARTY VS. ATTORNEY-GENERAL [1997-98] GLR 378** for the proposition that political parties enjoy a wide latitude in determining their internal procedures. The 3rd Defendant then invites the court to view the Plaintiffs' prayer with suspicion as an attempt to have this Court determine for it how its internal affairs should be managed, without any public funding or financing. By paragraph 8, however, it states that ***"notwithstanding paragraph 7"*** it does not seek to contest the Plaintiffs' interpretation of Article 55(5) nor the reliefs sought.

46. I am bound to observe that, these two paragraphs cannot both stand. A denial that one's arrangements are unconstitutional is not consistent with a statement that one does not contest the interpretation upon which their unconstitutionality depends. I take the 3rd Defendant's position to be this. It maintains, as a matter of law that, its system is not *per se* unconstitutional, but it does not wish to be heard in opposition, The 3rd Defendant thus stands ready to implement whatever this Court determines.

47. It is right to point out that the legal proposition advanced in the 3rd Defendant's paragraph 7 is one which I accept. I should however add that, the report to which the 3rd Defendant referred us appears to be that of the *CIBA* case, which was concerned with the justiciability of the Directive Principles of State policy, rather than with the internal procedures of political parties, and I do not read it as deciding the point for which it was cited. It is also pertinent to observe that the 3rd Defendant has given to this court no account whatever of how its Constituency Branch Party Conference or its National Delegates Congress is in fact composed, or by whom their members are chosen.

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48. The 3rd Defendant gives a historical account of its own practice which I have found illuminating. It asserts that, since its founding in 1949, it has employed different democratic methods according to the exigencies of each period: from 1949 to 1951, during the independence struggle, mass direct participation in which all dues-paying members voted at branch level, a system consistent with one member, one vote; and from 1951 to 1966 a delegate conference system grounded in democratic centralism, in which elected branch delegates constituted the Constituency, Regional and National Conferences. It contends that, both systems were adopted by its founder as democratic methods appropriate to their time.

49. Finally, and importantly, the 3rd Defendant prays that if the reliefs are granted it be allowed a transitional period of not less than twenty-four months in which to amend its constitution, to compile a credible national register of members in good standing, and to deploy the technological and administrative systems necessary to implement direct universal suffrage.

VII. THE CASE OF THE 4TH DEFENDANT

50. The Electoral Commission filed a short statement of case dated 10th February 2026, verified by the affidavit of Mr. Samuel Tettey, a Deputy Chairperson. It denies the allegations of fact; asserts that no reliefs are sought against it. It however contends that, it has been wrongly sued and prays to be non-suited.

51. I have no hesitation in rejecting the second of those propositions at once. Relief (x) is expressly and exclusively directed at the 4th Defendant and seeks a mandatory order against it. A party against whom a mandatory order is sought is a proper and necessary party and cannot be heard to say that it has been wrongly joined. Whether the order should go is a question of merits, not of joinder.

52. Beyond that objection, the 4th Defendant has not assisted this court at all. The reason is not farfetched. I appreciate the institutional prudence which counsels an election

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management body to avoid partisanship in a dispute involving political parties. But it is the statutory registrar and manager of all registered political parties. Section 9(a) of Act 574 is the provision upon which relief (x) is founded; and the Plaintiffs assert against it a continuing supervisory duty which it is uniquely placed to address. Its assistance would have been of real value, and regrettably the court has been denied that benefit.

VIII. THE CASE FOR THE 5TH DEFENDANT

53. The Attorney-General filed a statement of case on 15th May 2026. On 19th May 2026 he applied for, and was granted leave to withdraw that process, together with seven days in which to file another. The statement of case upon which he has argued before this court, settled by the Learned Deputy Attorney-General, is the replacement. It supports the Plaintiffs and prays that the court declare that every registered member in good standing of a political party is entitled to vote in the party's internal elections.

54. Where a law officer concludes upon reflection that a view earlier taken was wrong, the proper course is precisely the one he adopted: to seek leave, to withdraw, and to state so openly rather than to argue in a direction his pleading does not support.

55. Two consequences follow. The first is that upon a question of constitutional construction of the first importance the Republic has, within the life of this action, occupied more than one position, and this Court has had the benefit of a settled view from its principal legal adviser for a period considerably shorter than the proceedings themselves.

56. The second is that, the position taken in the replacement process is not readily reconciled with the position taken at the Bar. In stating his case, the Attorney-General asks the court to declare an entitlement in every member in good standing to vote. Orally he advocated twice and without qualification that, the delegate system is not unconstitutional, and that, what he invites is a policy choice between two legalities. Those two things can be held together only by reading the written prayer as an invitation to legislate rather than to adjudicate, which is how, in the end, I have been driven to read and understand it.

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57. Where the principal legal advisor to the Government has moved between positions upon a question of construction, the independence of this Court's own scrutiny becomes correspondingly more important. Therefore, I have not treated the Attorney-General's support for the Plaintiffs as adding weight to their case. At the same time, I shall not treat it as detracting from it. The question is what Article 55(5) of the Constitution means, and that question is answered by construing it.

58. The Attorney-General through his Distinguished Deputy traces the historical re-characterisation of political parties: the Report of the 1968 Constitutional Commission, which regarded parties as private bodies of individuals no different in kind from trade unions or churches; the rejection of that view; Article 35(1) of the 1969 Constitution, which subjected organisations formed to secure the return of members at public elections to restrictions upon membership, leadership and symbols; and Article 42(2) of the 1979 Constitution, which first imposed the requirement that internal organisation conform to democratic principles, carried forward in materially identical terms into Article 55(5) of the 1992 Constitution.

59. He reasons from the public character of parties to the applicability of Article 42 of the Constitution where parties are characterized as public organisations. To that extent, their internal affairs are public affairs; while their internal elections are matters of public interest. It is Article 42 of the Constitution which prescribes how public elections are held.

60. He then advances the most substantial part of his case. The closest textual analogue to Article 55(5) is Article 21(1) of the German Basic Law, and the identity is not coincidental. German law operationalises Article 21(1) through the *Parteiengesetz*, section 17 of which requires nomination of parliamentary candidates by secret ballot, and section 9 of which prescribes the composition of party assemblies as ***'members'*** or ***'delegates'*** assemblies and caps ex officio delegates, being members of the executive committee and of other organs of a regional branch who belong to a delegates' assembly by virtue of the party's own statutes, at not more than one-fifth of the total number of assembly members

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entitled to vote. That cap, he submits, is the operational expression of the constitutional command.

61. He supplements this with the South African line; with Article 91(1) of the Constitution of Kenya, 2010; and with Article 228 of the Constitution of Nigeria, 1999 together with Section 87 of the Electoral Act, 2022, which requires primaries to be held in accordance with prescribed direct or indirect models, with members or delegates respectively constituting the electorate. He answers the objection that the more elaborate Kenyan text shows ours to be thinner by submitting that the Kenyan framers merely made explicit what comparative experience had shown to be the operational content of the same standard.

62. He engages candidly with the American authorities. He accepts that the case of **CALIFORNIA DEMOCRATIC PARTY VS. JONES, 530 U.S. 567 (2000)** treats candidate selection as core associational activity, but submits that, it rests upon a peculiar premise while the United States Constitution imposes no affirmative democratic-principles requirement, so that in associational autonomy there is the residue of constitutional silence. The relevant American authorities, he submits, are **SMITH VS. ALLWRIGHT, 321 U.S. 649 (1944)** and **TERRY VS. ADAMS, 345 U.S. 461 (1953)**, which establish an anti-evasion principle.

63. He relies upon the Venice Commission's Code of Good Practice in the Field of Political Parties, CDL-AD(2009)002, paragraphs 35 and 36; upon Article 25 of the Covenant and General Comment No. 25; upon Article 10(3) of the African Charter on Democracy, Elections and Governance; and upon **APDH VS. CÔTE D'IVOIRE** (Application No. 001/2014, 18 November 2016).

64. He proposes a minimum content: a substantial membership electorate; substantially equal voting power; secret ballot with fair and transparent administration; and the absence of material disenfranchisement of members in good standing. As to remedy, he proposes a declaration, a six-month transitional period, a clarification of the supervisory

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authority of the Electoral Commission, and the preservation of Parliament's authority to elaborate by amendment of Act 574.

65. I must now point out what occurred when the Learned Deputy Attorney-General came to address the court orally, for it significantly altered the shape of this case. When pressed from the Bench at the hearing the Learned Deputy Attorney-General submitted that, the argument of the Republic is directed at the policy direction of the country rather than at the legality of the delegate system. He argued that, this Court, is the policy court of the Republic; and that the question for the court is which of two systems, the delegate system or universal adult suffrage, better advances the democracy the country have chosen. When it was put to him directly whether the delegate system is after all not unconstitutional, he answered: ***"not at all."*** When the question was repeated whether by asking delegates to vote a party acts unconstitutionally, he answered in the negative. He added that, nowhere had the Republic submitted that, it was dealing with an illegality, and that its written case was premised upon the proposition that this Court may choose between two legalities.

66. I must place on record that, I intend no criticism of the Learned Deputy Attorney-General. His candour was proper and I applaud it as I observed at the hearing.He demonstrated the professional attribute of an officer of the law willing to assist the Court. Much of his submission I accept. It has corrected the historical account with which we began, and it has supplied the comparative material upon which the decision principally turns, though not in the manner for which the Attorney-General contends.

IX. THE POSTURE OF THE PARTIES AND THE DUTY OF THIS COURT

67. Of the five Defendants, the 2nd and the 5th support the Plaintiffs; the 3rd resists in law but declines to be heard in opposition; the 4th abides the event; and only the 1st contests. Four propositions govern the consequences.

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68. First, the meaning of the Constitution is not a matter of agreement among litigants. Our jurisdiction is to determine what the Constitution means. That is a question of law, and upon a question of law the concession of a party binds neither the party nor the Court. Consent however justified, cannot confer a jurisdiction which does not exist. It follows from the same principle that consent cannot supply a construction which the instrument will not bear. A declaration under Article 2(1) of the 1992 Constitution operates *in rem*. It binds every citizen, every party and every organ of State, including those who were not before the court and could not be heard.

69. Secondly, the 2nd Defendant's concession that its Electoral College does not fully conform to Article 55(5) of the Constitution, does not assist the Plaintiffs. It is an admission of a conclusion of law, not of fact. Admissions of fact may bind the party who makes them. The opinion of a litigant upon the meaning of the Constitution is not a source of law. The same applies, in the opposite direction, to the 3rd Defendant's denial.

70. Thirdly, where the adversarial process is attenuated, the vigilance of the Court must be heightened. That is so here for two reasons which compound one another: only one Defendant contests the action, and the Republic, which would ordinarily be the contradictor, has itself moved between positions in the manner described in subsequent parts of this opinion. The adversarial system is not a courtesy to litigants; it is the principal instrument by which courts are protected from error. When a court is told by most of those before it that it should do a particular thing, the risk is not that it will be misled by argument, but that it will not be argued with at all.

71. Fourthly, I am vigilantly mindful to a feature of the case which requires care. The 2nd Defendant invites us to declare its own rules unconstitutional, and those rules were made by its own congress and may be unmade by it. A court asked by a party to condemn what that party may itself repeal must satisfy itself that it is deciding a question of law and not ratifying a political preference. I have therefore diligently examined the arrangements of the 2nd Defendant upon the material, and by the standard this court would have applied,

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had they been defended to the utmost. My conclusion upon them therefore rests upon that examination and not upon the concession.

72. Fifthly, a declaration under Article 2(1) of the Constitution operates *in rem*. It binds every political party in the Republic, registered and unregistered, present and future, including many which are small, poorly resourced and not before us. The point is not academic. The Liberal Party of Ghana sought to be joined because it apprehended that these declarations would affect it, and the court refused it for want of timeousness. There is absolutely no regret for that ruling, for litigation must end. But the consequence must be faced, and it has shaped this opinion throughout. It is why I decline to prescribe a single method of selection; why I refuse to fix a numerical threshold; and why my holding is confined to a requirement which any party, however small or poor, is able to satisfy that those who cast the decisive vote shall be persons whom the members have chosen to cast it. A requirement of that character may safely be laid down for a whole class of associations. A detailed scheme of internal suffrage may not.

73. I must also place on record, and give effect to the position taken for the Attorney-General from the bar. As aforesaid, having supported the Plaintiffs in writing, the Hon. Deputy Attorney-General conceded twice that, the delegate system is not unconstitutional, and that what he invited us to make was a policy choice between two legalities. Had that been the case advanced by the Plaintiffs it would have been fatal to it. Our jurisdiction under Article 2(1) is engaged by an allegation that an act is inconsistent with the Constitution. It is not a jurisdiction to choose between two courses each of which is lawful, and this Court does not sit to pronounce which of two constitutional arrangements is the wiser or the better.

74. But that is not the case the Plaintiffs advanced, and theirs is the case this court must decide. They maintained throughout that these arrangements contravene Article 55(5) of the Constitution. Article 2(1) therefore has something upon which to operate. I may add that, the Attorney-General's concession, being a concession upon a question of construction, binds the court no more than his written support would have done. Where

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the principal legal advisor to the Government has advanced two positions within a single action, the independence of this Court's own scrutiny becomes the more important and critical.

X. THE ISSUES

75. The parties did not file a joint memorandum of issues. The Plaintiffs filed issues on 24th April 2026; the 1st Defendant set out its issues in its statement of case of 12th May 2026; and the 2nd and 5th Defendants formulated their own.

76. Of the issues filed by the Plaintiffs, (d) and (e) subsume the remainder and touch the 1st, 2nd, 3rd and 4th Defendants alike. They are as follows:-

(d) Whether, upon a true and proper interpretation of Articles 17, 42 and 55(5) of the 1992 Constitution, the delegate-based mechanisms adopted under Article 13 and Article 7 of the Constitution of the 1st Defendant, Articles 41, 43 and 44 of the Constitution of the 2nd Defendant, and Article 52, 53, 77 and 96 of the Constitution of the 3rd Defendant for the selection of their presidential and parliamentary candidates, by conferring decisive voting power on defined classes of office holders and delegates while denying members in good standing any vote in those elections, operate as mechanisms of vote dilution inconsistent with the constitutional guarantee of political equality and the democratic principles required of the internal organisation of a political party.

(e) Whether, upon a true and proper interpretation of Articles 45 and 55 of the 1992 Constitution read with section 9(a) of the Political Parties Act, 2000 (Act 574), the 4th Defendant is under a continuing constitutional and statutory duty to vet, supervise and ensure that the Constitutions, rules and internal electoral arrangements of the 1st, 2nd and 3rd Defendants conform to democratic principles, and whether the 4th Defendant has failed, refused or neglected properly to discharge that duty in respect of the impugned provisions.

77. The 1st Defendant, by its statement of case filed on 12th May 2026, formulated two issues as follows:-

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(i) Whether or not Article 55(5) of the 1992 Constitution implies a right to vote by all members of a Political Party in the selection of its Leaders including their Parliamentary and Presidential Candidates.

(ii) Whether or not the Delegate-based method and procedure by which the 1st Defendant elects its leaders including its Presidential and Parliamentary Candidates is in line with the true and proper meaning of Article 55(5) of the 1992 Constitution or is inconsistent with same.

78. The 2nd Defendant set out the following:

(a) Whether it is within the province of this Honourable Court to intervene in the internal affairs of the 2nd Defendant in terms of the process and procedures used in electing/selecting its presidential and parliamentary candidates.

(b) Whether the Electoral College system established under Articles 43 and 44 of the Constitution of the 2nd Defendant for the election of its presidential and parliamentary candidates is compliant with Article 55(5) of the 1992 Constitution.

79. The 5th Defendant stated two matters for deliberation: first, whether political parties are public rather than private interest organisations; and secondly, whether every registered member of a political party in good standing is entitled to vote in the internal election of that party.

80. Two observations emerge upon the issues as filed. The first is that the absence of an agreed memorandum has obliged the court to distil for itself the questions upon which the action turns. In a cause of this importance and consequence in which five Defendants have taken four distinct positions, an agreed memorandum of issues would have been of real assistance, and the practice of settling one is to be encouraged rather than allowed to fall away.

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81. The second is that the Plaintiffs' issue (d) travels beyond the writ. It impugns Article 41 of the constitution of the 2nd Defendant and Article 52 of the constitution of the 3rd Defendant, neither of which is mentioned in reliefs (vi) and (vii) as endorsed. A memorandum of issues is a means of identifying what the pleadings have put in dispute; it is not a means of enlarging the relief claimed. The jurisdiction invoked is defined by the writ. There is therefore no proper ground to announce upon the provisions which the Plaintiffs have not asked the court to declare unconstitutional.

82. From the issues formulated by the parties, the pertinent ones may be reformulated as follows:

(1) Whether this Court has jurisdiction to entertain the action, and in particular whether it may declare provisions of the constitution of a political party null and void. This takes up the first limb of the 2nd Defendant's issue (a).

(2) Whether the selection by a party of its presidential and parliamentary candidates falls within its "internal organisation" for the purposes of article 55(5). This takes up the 5th Defendant's first issue and the remaining limb of the 2nd Defendant's issue (a).

(3) Whether the "democratic principles" to which article 55(5) requires internal organisation to conform mandate substantially equal and direct voting rights for all members in good standing. This takes up the 1st Defendant's issue (i), the 5th Defendant's second issue, and the first limb of the Plaintiffs' issue (d).

(4) Whether the impugned provisions of the constitutions of the 1st, 2nd and 3rd Defendants conform to article 55(5) so construed. This takes up the 1st Defendant's issue (ii), the 2nd Defendant's issue (b), and the remaining limb of the Plaintiffs' issue (d).

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(5) Whether the 4th Defendant is under a continuing duty of the kind alleged, and whether any order should go against it. This takes up the Plaintiffs' issue (e).

XI. QUESTION ONE: JURISDICTION

83. The test is that which **REPUBLIC VS. SPECIAL TRIBUNAL; EX PARTE AKOSAH [1980] GLR 592**, provides as applied since in **J. H. MENSAH VS. ATTORNEY-GENERAL [1996-97] SCGLR 320**. The phrase ***"democratic principles"*** has never been construed by this Court; it is of the highest generality; and the parties have pressed upon it constructions which are opposed. Jurisdiction is undoubtedly engaged.

84. A further question arises upon the form of reliefs (iv) to (viii), which invite this court to declare provisions of the constitutions of political parties null, void and of no effect. It was suggested in argument that the constitution of a political party, being the instrument of a voluntary association, is not among the laws of Ghana enumerated in Article 11(1), and cannot therefore be struck down under Article 1(2). I do not find it necessary to resolve that question, and I would prefer not to rest anything upon it, for in my view the point is beside the mark.

85. The reason is this. Article 55(5) is itself a provision of the Constitution, and it speaks directly to the internal organisation of a political party. It commands that such organisation shall conform to democratic principles. A party constitution is the instrument by which that internal organisation is established and governed. When this court measures a party's constitution against Article 55(5), it is not treating that constitution as though it were an enactment of Parliament requiring to be tested for validity under Article 1(2). It is doing what Article 55(5) requires of it, namely determining whether the internal organisation which the instrument establishes meets the threshold which the Constitution has prescribed for it.

86. If so framed, the analysis is straightforward, and the reliefs are not misconceived at all. Where the constitution of a political party establishes an internal organisation which does

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not meet the threshold of democratic principles within the meaning of Article 55(5), that constitution is to that extent in conflict with the Constitution of the Republic, and the provisions which produce the conflict are void to the extent of it. That conclusion follows from Article 55(5) read with Article 1(2), and it requires no inquiry into whether a party constitution is an enactment. Nothing turns upon the juridical classification of the instrument. What turns upon the matter is the character of the organisation it establishes, which is precisely what Article 55(5) makes the court's concern.

87. I would add, for completeness, that the jurisdiction of this court is in any event engaged under Article 2(1)(b), which empowers any person to seek a declaration that an act or omission of any person is inconsistent with the Constitution, and Article 2(2) empowers the court to make such orders as are appropriate to give it effect. The conduct of a candidate selection process under a party's rules is plainly an act of the party. Whether the matter is approached through Article 1(2) or through Article 2(1)(b), this court has power to declare the inconsistency and to strike down the offending provisions, and I would grant the reliefs accordingly.

XII. THE APPROACH TO CONSTITUTIONAL INTERPRETATION

88. All parties are agreed, and it is affirmed that, the approach is purposive. The Constitution is not to be read as a conveyance or a penal statute. It is, in the language of **TUFFUOR (supra)**, a living organism capable of growth and development; a broad and liberal spirit is required for its interpretation and it does not admit of a narrow or doctrinaire approach. The same was said in **SALLAH VS. ATTORNEY-GENERAL (1970) 2 G & G 493**, that the best guide is the letter and spirit of the Constitution; in **KUENYEHIA VS. ARCHER [1993-94] 2 GLR 525**, that a liberal and generous rather than a narrow legalistic interpretation is required; and in **ASARE VS. ATTORNEY-GENERAL [2003-2004] SCGLR 823**, that the ***"spirit"*** is another way of describing the unspoken core underlying values of the Constitution. The principle was restated in **APPIAH-OFORI VS. ATTORNEY-GENERAL [2010] SCGLR 484**, that the literal construction of

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constitutional provisions in isolation, without reference to related provisions or to the Constitution's underlying core values, cannot be the proper approach.

89. Two corollaries matter here. First, where the framers used precise language in one place and general language in another, the difference is presumed deliberate. Secondly, a construction of one provision which places it at war with the architecture of the instrument as a whole is, for that reason, suspect. As Acquah JSC put it in **NATIONAL MEDIA COMMISSION VS. ATTORNEY-GENERAL [2000] SCGLR 1 at 17**, care must be taken to ensure that all the provisions work together as parts of a functioning whole, fitting together to form a rational and internally consistent framework. To these I add the caution in **TUFFUOR** that, a construction leading to absurdity is to be avoided, and that where an interpretation yields inconsistent results the more reasonable is to be preferred.

90. Against these I set an equally important limit, and it is one this Court has stated more than once. In **ATTORNEY-GENERAL (NO.2) VS. TSATSU TSIKATA (NO.2) [2001-2002] SCGLR 620**, Acquah JSC (as he then was) cautioned that courts must avoid importing into written constitutions words which are not found in them. The caution was repeated, in terms we cannot improve, in **REPUBLIC VS FAST TRACK HIGH COURT, ACCRA; EX PARTE DANIEL [2003-2004] SCGLR 364 at 370**, where Kludze JSC said that the court cannot, under the cloak of constitutional interpretation, rewrite the Constitution of Ghana; that even in statutory interpretation a court may not amend legislation because it dislikes its terms or supposes the lawgiver mistaken or unwise; that our responsibility is greater when the court is invited to interpret the Constitution, for the court cannot substitute its own wisdom for the collective wisdom of the framers; and that the court must not insert its own words, or remove words, in order to arrive at a conclusion the court considers desirable or socially acceptable. To do so is to usurp the legislative function and is a prescription for tyranny of the judicial branch. I adopt that warning without qualification. It marks the boundary of the purposive approach rather than contradicting it. Purposive interpretation is a method of ascertaining meaning, not a licence to supply what the framers omitted. That limit forbids the importation of words which the framers did not write. It does not excuse a court from giving meaning to words

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which they did write. To decline to construe ***"democratic principles"*** because the phrase is general would not be to refrain from rewriting the Constitution. It would be to delete a clause from it.

91. Further, the purposive enquiry has been analysed, in a formulation this Court has found useful, as having a subjective and an objective limb: the goals and values which the framers sought to achieve at the time of enactment, and the goals and values which the text is designed to serve in a modern democracy at the time of interpretation, the two being synthesised to yield the ultimate purpose. I have engaged and conducted both. The subjective limb I address in Part XIV(b), where the Committee of Experts which generated the constitution declared its objective to be the establishment of minimum standards of internal democracy, and required that, those who hold power within a party should hold it by periodic election. The objective limb I address in Part XIV(c) and (h), where the settled content of the same formula in the jurisdiction from which it was drawn, and the position of the Venice Commission, alike require that a body which selects on behalf of members be composed of persons whom the members have chosen. The two limbs converge, and this is not a case in which I have an obligation to choose between them.

XIII. QUESTION TWO: CANDIDATE SELECTION, AND THE PUBLIC CHARACTER OF PARTIES

92. The 1st Defendant's argument, at its widest, would dispose of the action without any inquiry into the meaning of ***"democratic principles."*** The historical account is correct and important. The 1968 Commission regarded political parties as private bodies of individuals, no different in kind from trade unions or churches. That view did not survive. The 1969 Constitution subjected organisations formed to secure the return of members at public elections to express restrictions. The 1979 Constitution imposed for the first time the requirement that internal organisation conform to democratic principles, and the 1992 framers carried it forward.

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93. This disposes of any suggestion that political parties enjoy the immunity of private associations. They do not. In **REPUBLIC VS. YEBBI AND AVALIFO (supra)**, Acquah JSC (as he then was) held that the theft of a political party's money is an offence against the State and the public interest within Article 295(1) of the 1992 Constitution, notwithstanding that a party is not a State institution, because the organisation, operations and finances of parties are regulated by law and their activities bear directly upon the governance of the State. I am in agreement with that reasoning and affirm same. Political parties in Ghana do not enjoy the immunity of the private club. Any suggestion that party affairs are shielded by their political character is equally untenable.

94. I further accept the Plaintiffs' submission that the obligation in Article 55(5) is self-executing and continuous, binding each party directly, and is not contingent upon registration, certification or enforcement by the Electoral Commission.

95. As to the scope of ***"internal organisation,"*** candidate selection is not merely part of it; it is among the most consequential things a party's internal organisation does. Having made parties the gatekeepers of national elective office, the Constitution cannot be construed to have intended the manner of that function's exercise to lie beyond the only provision addressed to their internal life.

96. I hold therefore that, the election by a political party of its presidential and parliamentary candidates constitutes a core element of the party's internal organisation within the meaning of the Article 55(5) provision, and is subject to the requirement that such internal organisation conform to democratic principles. To that extent the proposition asserted in relief (i) is correct and I affirm it. However, I do not make a declaration in its terms. The reason is that, a declaration is a remedy, not an ornament; it issues to settle a matter genuinely in doubt or in dispute. Relief (i) reproduces the substance of Article 55(5) provision, and asserts what the Constitution has already said. As was observed at the hearing, Relief (i) repeats the Constitution and cannot for that reason be granted; and learned counsel for the Plaintiffs, with characteristic realism, indicated that if the Court were with him upon the point he would not press it. The proposition stands affirmed in

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these reasons and requires no order to give it effect. As a constitutional provision it is self-executing and effective for compliance.

97. I have so held deliberately, and not because the point is uncontested. Article 55(5) is not a counsel of perfection addressed to the consciences of party executives. It is law. It applies to the most significant decision a political party takes, and a party which departs from democratic principles in selecting its candidates acts unconstitutionally and may be restrained at the instance of any citizen. To the extent that, the 1st and 3rd Defendants suggest that these are matters wholly internal and best left to the parties. I refuse to accept the proposition. Though they are internal, they are not beyond the Constitution.

XIV. QUESTION THREE: THE MEANING OF "DEMOCRATIC PRINCIPLES"

(a) THE COMMAND, AND ITS TWO LIMBS

98. Article 55(5) of the 1992 Constitution provides that ***"the internal organisation of a political party shall conform to democratic principles and its actions and purposes shall not contravene, or be inconsistent with, this Constitution or any other law."*** This provision has two limbs, and the relation between them is the beginning of the answer. A party's actions and purposes must not contravene the Constitution or any other law. Its internal organisation must conform to democratic principles. The framers thus applied two different measures to two different aspects of a party's life, and the difference is not one of degree but of kind.

99. The measure applied to actions and purposes is negative and it is a test of legality which must not be contravened. The measure applied to internal organisation is positive and it is a test of quality in conforming with democratic principles. Had the framers intended no more of a party's structure than that it should break no law, the second limb would have sufficed for both, for an unlawful structure is an unlawful action. They required something further. They required that the way a party is organised be ***democratic,*** and they used a word which carries its own content and cannot be satisfied by mere legality.

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100. It follows that the 1st Defendant's submission, that a party complies with Article 55(5) so long as it observes its own constitution and breaks no law, cannot be right. It would collapse the first limb into the second and leave the word ***"democratic"*** with no work to do. The presumption against superfluity, which this Court applied in **EDUSEI VS. ATTORNEY-GENERAL [1997-98] 2 GLR 1** adopting **DITCHER VS. DENISON (1857) 11 MOO PC 324** , forbids that reading.

101. I am equally unable to accept the submission, pressed upon the court with some force that, because the framers did not write ***"universal adult suffrage"*** into Article 55(5) they must have intended to leave the method of selection wholly at large. A constitutional standard is not a blank. Terms such as "***natural justice," "reasonable," "public interest"*** and ***"fair hearing"*** are not rendered empty by their generality. In every democratic jurisdiction, courts give them content, case by case, from the instrument in which they appear and the purposes it serves. ***"Democratic principles"*** is such a term. The framers' choice of a standard rather than a rule left the mode of compliance open. It did not leave open whether there must be compliance, nor what democracy at its irreducible minimum requires.

102. The question, then, is not whether Article 55(5) prescribes a single model. It plainly does not, and I do not hold that it does. The question is whether the arrangements before the court fall below the floor which the words impose. To that, I shall now turn.

(b) <u>THE DRAFTING HISTORY</u>

103. The Report of the Committee of Experts (Constitution) on Proposals for a Draft Constitution of Ghana (1991) is the immediate antecedent of the text. Chapter Eight, at pages 107 to 114, is devoted to political parties, and two passages are of moment here.At paragraph 237 the Committee, having explained that it had ***"decided to amplify and add to the provisions on political parties in the 1979 Constitution,"*** set out the objectives it sought to achieve. Two of the five are these:

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(b) establishing minimum standards of internal democracy in the organization and operations of a political party;

(e) ensuring that political parties operate as genuine intermediate participatory organizations between the people and the process of democratic government.

104. Every word of sub-paragraph (b) is revealing. The Committee was *establishing* standards, not commending them. They were standards of *internal democracy*, not of internal regularity. And they were *minimum* standards, which is to say a floor which binds and below which no party may go. A minimum standard that forbids nothing is a contradiction in terms.Sub-paragraph (e) is more revealing still. A party is to operate as a *genuine* and *participatory* organisation intermediate between the people and the process of democratic government. The adjective ***"genuine"*** was not idly chosen. It marks the distinction between a structure which permits participation in form and one which permits it in fact. An organisation in which the overwhelming majority of members have no voice whatever in the most consequential decision the organisation takes is participatory in name and not in substance.

105. The Committee then descended to particulars. Among the twelve recommendations at paragraph 239 is the fifth:

The Executive Committee of every political party must be democratically elected at regular intervals not exceeding four years.And among the miscellaneous recommendations at paragraph 247 is the eighth:

The Executive and Steering Committees of the national office of a political party should not impose executive members on any local branch of the party.

106. These two recommendations disclose the Committee's conception of internal democracy with precision. Those who hold power within a party are to hold it by periodic election,

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and authority is to run upward from the membership rather than downward from the national office. That is the principle. It is not a principle confined to executive committees as executive committees are simply the instance the Committee had before it.

107. And it yields an argument *a fortiori* which I regard as unanswerable. If the Constitution requires that the body which administers a party be democratically elected by its members, it cannot be indifferent to the manner in which the party chooses the person it will present to the Republic as its candidate for the highest office in the land. The lesser office is protected. It would be an odd constitution which protected the lesser and abandoned the greater.

108. I am entitled to deal here with the argument founded upon Chapter Seven of the Report, which is entitled ***"Representation of the People: Majoritarian or Consensus Democracy?"*** It was said that the Committee there canvassed the contention that the plurality system is exclusionary and undemocratic, concluded at paragraph 220 that proportional representation ***"would require further study,"*** and that the Constitution retained plurality for parliamentary elections; from which it was argued that the framers did not treat the most inclusive method as compulsory even for the election of Parliament.

109. The argument fails upon a distinction which is fundamental. The debate in Chapter Seven was about **how votes are counted**, not about **who may cast one**. Under the plurality system every registered voter votes. Once the contest is over, what is to be done with the votes once cast, and whether the candidate with the largest minority should take the seat. Under the delegate systems the Plaintiffs have challenged in this action, the question is anterior and altogether different: whether the member may vote at all. The framers' retention of a particular counting rule for public elections provides nothing whatsoever about their tolerance of a rule which excludes the great body of members from the franchise. Every debate in Chapter Seven proceeded upon the unstated assumption that all electors vote, or will vote.

(c) <u>THE GERMAN PROVENANCE, AND ITS SETTLED CONTENT</u>

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110. The formula in Article 55(5) is not original to our Constitution. It appears in materially identical terms in Article 21(1) of the German Basic Law of 1949, which provides that the internal organisation of political parties must conform to democratic principles. That, the resemblance is not coincidental was accepted by all who addressed the court. The Committee of Experts, drafting in 1991, worked with the developed constitutional models of the post-war world before it, and the 1979 formula which it carried forward bears the German imprint.

111. What is instructive is the content which that formula has been given in the jurisdiction of its origin. The Federal Constitutional Court has treated political parties not as private associations free to arrange themselves as they please but as integrative components of the constitutional structure, subject to constitutional discipline. And the *Parteiengesetz* of 1967, enacted under the authority which Article 21 confers, gives the command operational form. Section 17 requires that candidates for parliamentary elections be nominated by secret ballot. Section 9(2) provides that members of the executive committee and of other organs of a regional branch may belong to a delegates' assembly by virtue of the party's own statutes, **but that no more than one-fifth of the total number of assembly members entitled to vote may be so constituted**.

112. Section 17 of the *Parteiengesetz* permits the nomination of candidates either by an assembly of members or by an assembly of delegates. German law therefore does not require that members vote in person, and I do not pretend otherwise. What Section 9(2) establishes is narrower but, for present purposes, of the first importance: that the command **that internal organisation conform to democratic principles is a command about who may hold the vote, and** that it is capable of being enforced as such. Even where the delegates' assembly is permitted, the law insists that the assembly be genuinely representative and confines officeholders sitting by right of office to a fifth. The formula is not empty, and it is not exhausted by a requirement that a party observe its own rules.

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113. It has been urged upon the court that, the one-fifth cap is a provision of a statute and not a holding upon the meaning of Article 21(1), and that its existence therefore shows that the operational content of such a clause is for the legislature and not for a court. Having weighed that submission carefully, I do not accept it. It is rejected.

114. I go further than the German statute. The German position is the product of legislation. Section 17 represents a choice made by the Bundestag from among the arrangements which Article 21(1) permits, and a court reviewing it would be reviewing a legislative judgment to which deference is owed. In our case, the position is different. Parliament has not legislated upon the manner in which parties shall select their candidates. Section 9(a) of Act 574 does no more than reproduce the constitutional standard as a condition of registration. In the absence of a legislative choice there is no legislative judgment to defer to, and the question falls to be answered by construing Article 55(5) itself, in the light of our own text, our own history and the objectives which the Committee of Experts declared. Should Parliament hereafter legislate upon the subject, as the Committee recommended that it should, the position may fall to be reconsidered in future in the light of whatever it enacts.

115. That distinction between principle and specification runs through this judgment. This Court will not fix a fraction. To hold that a college of one proportion is lawful and another unlawful is legislation, and this court has neither the mandate nor the material for it. But the court can and must declare what the principle is; and where a body departs from the principle not marginally but fundamentally, the court can and must say so unequivocally. The absence of a numerical threshold is a reason for judicial restraint in marginal cases. It is not a licence for unlimited departure.

(d) **THE PUBLIC CHARACTER OF THE PARTY, AND THE PASS-THROUGH EFFECT**

116. It has been held in accordance with the Constitution that, political parties in Ghana are not private associations. That holding now does substantial work. Article 55(3) reserves to political parties the sponsorship of candidates for election to every public

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office save the District Assemblies and lower units of local government. The Constitution has thus made parties the gatekeepers of national elective office. It is through them, and in the ordinary case only through them, that the citizen's choice at a general election is constituted. The ballot paper which the elector receives on polling day is, in substance, a list of decisions already taken inside political parties.

117. In many of the two hundred and seventy-six constituencies of this Republic the electoral allegiance is settled and has been settled for a generation. In such a constituency, the party primary is not a preliminary to the election. It is the election. The public poll which follows ratifies a choice which was effectively made when a few hundred delegates cast their votes.

118. That is not a novel observation and it is not peculiar to Ghana. It was the foundation of the decisions of the Supreme Court of the United States in **SMITH VS. ALLWRIGHT, 321 U.S. 649 (1944)** and **TERRY VS. ADAMS, 345 U.S. 461 (1953)**, the White Primary Cases. In a State where the Democratic primary was in practice determinative, the party excluded Black citizens from participation and defended itself upon the ground that it was a private body. The defence failed. The principle those cases establish, and which I find to be part of our law by force of Article 55(5) read together with Articles 17 and 42, is one of anti-evasion: where the internal process of a party effectively determines access to public office. That process may not be used to accomplish an exclusion which the Constitution would forbid the State to accomplish directly.

119. I am mindful of the fact that, the exclusion in those cases was racial while the exclusion in our context is not. That difference bears upon the gravity of the case, not upon the principle. The defect which the anti-evasion doctrine addresses is the use of the private form to escape the public standard. A party which says, ***"we are a voluntary association and may organise as we please,"*** while exercising a gatekeeping function which the Constitution has conferred upon it and no one else, invokes exactly the immunity which that doctrine denies.

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120. It was answered that a defeated aspirant may stand as an independent candidate, so that the party is not the sole route to office. Independent candidature is indeed open under our Constitution, and I have taken it into account. But the answer proves less than it appears. The Constitution did not confer the sponsorship function upon parties in order that the excluded might go elsewhere. A right to leave is not a substitute for a right to participate, and a rule which told the disenfranchised member that his remedy was to abandon the party he had built and stand alone would be a hollow one. That is not what the provision in Article 55(5) of the fundamental law offers him. It offers him a party whose internal organisation conforms to democratic principles.

(e) ARTICLES 42, 55(10) AND 17

121. I do not intend to rest upon Article 42 of the Constitution. That article confers the right to vote ***"for the purposes of public elections and referenda,"*** and a party primary is not a public election in the strictest sense within the meaning of the Constitution. The Electoral Commission does not conduct it (unless specifically requested by the party), and no public office is filled by it. Nor could Article 42 supply the right contended for, since it belongs to every citizen and not to members alone. If it governed primaries, the members of one party would be entitled to vote in the primaries of another. The right which the Plaintiffs assert is a right of members, and its source must be a provision which speaks to membership.

122. Article 55(10) is such a provision. It secures to every citizen of voting age the right to participate in political activity intended to influence the composition and policies of the Government. Joining a political party is the paradigm of such activity; and the activity by which a party's members influence the composition of the Government is, above all others, the selection of the candidates it will present. A construction which allows a citizen to join a party, pay dues, campaign in the sun and be bound by its discipline, while denying him any voice in the decision through which the party influences the composition of the Government, empties the right of the content which makes it worth having.

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123. Article 17 reinforces the conclusion though it does not, by itself, establish it. I accept that the differentiation between delegate and member is not made upon a ground proscribed by Article 17(2) of the Constitution and that classification is in principle legitimate. But equality before the law is not exhausted by the prohibited grounds. Where the differentiation determines who shall have a voice in the choice of those who will govern the Republic, it engages the constitutional commitment to political equality which the Preamble affirms and which Article 55(5) carries into the internal life of parties.

(f) FREEDOM OF ASSOCIATION, PROPERLY UNDERSTOOD

124. The 1st Defendant's most substantial answer is the freedom of association guaranteed by Article 21(1)(e) of the Constitution, 1992. An association whose rules are written for it by the State is not free, and there is a real danger in a jurisprudence which permits courts to redesign voluntary bodies according to their own notions of good governance. In fairness, I am alive to it.

125. But two things must be said. The first is that the Constitution has itself qualified the associational freedom of political parties, and did so deliberately. Article 55 subjects them to requirements of national character, of non-sectional membership, of regional distribution of the national executive committee, of public accounts and of internal organisation conforming to democratic principles. A party which invokes freedom of association against Article 55(5) invokes a freedom which Article 55(5) has already limited. The question is not whether the freedom exists but what remains of it after the limitation, and the answer is: the choice among arrangements which conform.

126. The second is that the freedom is not the party's alone. It belongs to the members. The Constitutional Court of South Africa put the point in **RAMAKATSA VS. MAGASHULE [2012] ZACC 31**, holding that the right of a member to participate in the activities of a political party must be genuine and effective, and not merely formal; and it vindicated that right against the party's own officeholders. The 1st Defendant speaks of the associational rights of its members. So do the Plaintiffs, who are its members. When a

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party's structure is challenged from within by those it excludes, the language of associational freedom does not resolve the dispute. It states it.

(g) THE ARGUMENT FROM REPRESENTATIVE GOVERNMENT

127. It was said that the Constitution is itself an instrument of representative rather than plebiscitary government, and that a mediated choice cannot therefore be repugnant to democratic principles. Article 89(2)(c) was relied upon, by which one member of the Council of State from each region is elected by an electoral college of district representatives; and the National House of Chiefs and the appointment of District Chief Executives were also cited.

128. Without any hesitation, I accept that, representative government is a democratic form and that delegation is not, as such, undemocratic. I do not however hold that, a party must submit every question to a plebiscite of its members, and nothing in this judgment requires it. Parties must have executives, committees and conferences, and those bodies must decide.

129. However, Article 89 does not carry the weight placed upon it, for three reasons. First, it is an express provision. Where the framers intended that a body be constituted by an electoral college they created the college in terms and defined its composition. Article 55(5) contains no such provision; it imposes instead a requirement of conformity to democratic principles. The express creation of a college in one place, and its omission in another where a democratic standard is imposed instead, is not an argument that colleges are everywhere permissible.

130. Secondly, the Council of State is a body which advises. It exercises no executive or legislative power. It commands no public office, and no member of it is presented to the electorate as a candidate for the government of the Republic. The comparison is between a consultative organ and the choice of a President.

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131. Thirdly, and most importantly, the objection mistakes what is complained of. The Plaintiffs do not complain that the 1st Defendant acts through representatives. They complain that the persons who cast the decisive vote are not, in any meaningful sense, representatives of anybody. A delegate, properly so called, is chosen *as a delegate*, for the purpose of exercising a judgment on behalf of those who chose him, and is answerable to them for it. It is sufficient here to say that a structure in which a substantial part of the decisive electorate sits by virtue of an office to which it was appointed, or of an office it once held and holds no longer, is not a system of representation at all. It is a system of entitlement.

(h) <u>THE COMPARATIVE AUTHORITY</u>

132. The Kenyan decision is **THURANIRA & 4 OTHERS VS. ATTORNEY-GENERAL & 2 OTHERS (Petition E043, E057 & E109 of 2022) [2022] KEHC 482 (KLR)**, in which the High Court of Kenya upheld indirect nomination by delegates against a challenge founded upon the exclusion of ordinary members has been urged on this court. The decision requires attention, and when it is given the case is seen to support the Plaintiffs and not the Defendants.

133. The decision is distinguishable, and upon a ground which goes to the heart of it. What the Kenyan court was reviewing was an Act of the Kenyan Parliament. Section 24 of the Political Parties (Amendment) Act, 2022 had expressly authorised nomination by delegates, and the question was whether that legislative choice offended the Constitution. The court held that it did not, reasoning that the delegate system must be entrenched in each party's own constitution and that it is the members who select the delegates. That is a decision about the validity of a statute permitting indirect nomination. It is not a decision that a constitutional standard, unaided by legislation, permits a party to withhold the vote from its members. No comparable enactment exists in Ghana, and there is accordingly no legislative choice before us to which deference could be owed.

134. I take notice that, the case of **MAGASHULE VS. RAMAPHOSA [2021] ZAGPJHC 88** was cited for the proposition that internal regulation is best left to a party and its

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members. The passage relied upon is expressly conditioned: the court spoke of a party which complies with its own constitution and whose constitution does not conflict with that of the country. The condition is the whole question here. And **HARPER VS. CANADA (ATTORNEY-GENERAL) [2004] 1 SCR 827**, which was cited for the proposition that, democracy does not require equal participation in every political process, was concerned with limits upon third-party election advertising and not with the franchise of members within a party.

135. Against these stands the position of the Venice Commission, in its Code of Good Practice in the Field of Political Parties, CDL-AD(2009)002. Paragraph 35 provides that, whether directly or indirectly, party leaders must be democratically chosen at any given level, and that **members must be able to vote for their selection**; and paragraph 36 that candidates must equally be democratically chosen. It was urged that the words ***"directly or indirectly"*** sanction the delegate system. They sanction indirect selection. They do not sanction a body which no member selected, for the very same paragraph requires that members be able to vote for the selection of those who are chosen.

(i) <u>THE LIVING INSTRUMENT</u>

136. Finally, let me recall that this Constitution is, in the enduring language of **TUFFUOR VS. ATTORNEY-GENERAL (supra)**, a living organism capable of growth and development. The language of the Constitution is to be considered as capable of growth and the provisions are to be brought into conformity with the needs of the time.

137. When the Fourth Republic began, the electoral colleges of the major parties numbered in the low thousands. The membership of those parties now numbers in the millions, and the machinery of registration, verification and balloting has been transformed beyond anything available in 1992. A standard which asks whether the connection between a membership and the choice made in its name has been preserved must be applied to the party as it now is. What may have been an acceptable approximation of internal democracy when a party was small and communications were poor is not necessarily acceptable when the party is vast and the means of consultation lie ready to hand.

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138. I have not decided this case upon that ground alone. I have mentioned it because it answers the suggestion that arrangements long tolerated must for that reason be lawful. Article 55(5) was not satisfied once and for all in 1993. It speaks continuously, and it speaks to the present.

XV. THE MINIMUM CONTENT OF ARTICLE 55(5)

139. Unhesitatingly, I am now in a position to state what Article 55(5) requires. And I do so as narrowly as the case permits, conscious that whatever I say will bind every registered party in the Republic, including many which are small, poorly resourced and not represented before us. The following are, in my judgment, the minimum requirements of the command that the internal organisation of a political party shall conform to democratic principles:

140. **First**, ultimate authority within the party must reside in its membership, and every organ which exercises decisive power must derive its authority, mediately or immediately, from the members by periodic election. Power held by hereditary right, by self-appointment, by co-option in perpetuity or by the fiat of a founder does not conform, however elaborate the formal machinery.

141. **Secondly**, the rules governing the selection of candidates and officers must be written, publicly ascertainable within the party, prospective in operation and applied equally to all who fall within their terms.

142. **Thirdly**, no member in good standing may be excluded from participation, or from eligibility for office or delegate status, upon any ground proscribed by Article 17 or upon any ground unrelated to a legitimate requirement of membership. This is the domestic embodiment of the anti-evasion principle of **SMITH VS. ALLWRIGHT 321 US 649 (1944).**

143. **Fourthly**, the selection must be by secret ballot, fairly and transparently administered.

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144. **Fifthly**, those who hold office and those who cast the decisive vote must be accountable to the membership and subject to renewal or removal at defined and reasonable intervals.

145. **Sixthly**, and this is the requirement upon which the present case turns: **every member of a political party in good standing is entitled to vote in the selection of the party's presidential and parliamentary candidates.** The entitlement arises from the character of the decision. Selection is the act by which a party discharges the public function which article 55(3) confers upon it and upon no one else, and the members are those in whose name it is discharged. A structure which reserves that vote to a class of officeholders does not regulate the participation of the members. It extinguishes it, and substitutes the will of a few for the will of the many on whose behalf they purport to act. That is the antithesis of the minimum standard of internal democracy which the Committee of Experts set out to establish, and of the genuine participatory character which it required of a political party.

146. **Seventhly**, the entitlement is to vote; it is not an entitlement to vote upon whatever terms the member may please. A party may regulate the exercise of the right, and must do so if it is to be exercised orderly at all. It may require that a member be entered upon a register kept for the purpose; that he shall have been a member, and shall have paid such dues as the rules require, for a reasonable period before the ballot; that he votes at the branch or polling station to which he is assigned; that the ballot be held upon a stated day or days; and that disputes as to entitlement be determined by a stated and impartial procedure. Conditions of that character regulate the right. They do not deny it. The line between regulation and denial is not difficult to draw: a party may say how and when its members shall vote; it may not say that they shall not.

147. **Eighthly**, no condition upon the exercise of the right may be imposed which is arbitrary, which is applied unequally, which is altered after the contest has begun, or which is in truth a device for excluding a class of members from the ballot. The requirements as to dues and length of membership must be such as a member of ordinary means can satisfy.

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148. **Ninthly**, the entitlement is that of a member **in good standing**, and something must be said of that expression, for the whole of the right depends upon it.

149. Good standing is a term of a party's own constitution and not of ours. The Constitution does not define it and I need not. In its ordinary acceptation, it connotes that a person has been admitted to membership, that he has paid such dues as the rules require, and that he stands neither suspended nor expelled. The prescription of those conditions is for each party. They touch its own composition, they are peculiarly within its knowledge, and a court will not lightly interfere with them.

150. It does not follow that the matter is at large, and it is important to say why. If a party were free to define good standing as it pleased, the right this court has declared would be worth nothing. A party minded to preserve the present position could define good standing to comprise only those who presently hold the vote, and the entitlement would be extinguished by a definition. A right which the duty-bearer may define out of existence is not a right at all.

151. The conditions a party prescribes must accordingly satisfy three requirements:

First, they must be genuine incidents of membership: admission, dues, observance of the rules, amenability to discipline. They may not be related to a member's opinions upon candidature, to his support for any aspirant or faction, or to any matter which is in substance a test of how he may be expected to vote.

Secondly, they must be capable of being satisfied by a member of ordinary means and ordinary diligence. A condition which the generality of the membership cannot meet is not a condition of good standing but a disqualification of the many.

Thirdly, they must be prescribed in advance, published within the party, not altered after a contest has begun, and applied equally to all.

152. The question whether a particular member is in good standing is in the first instance for the party, and it must be determined by a stated procedure which affords the member

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notice and an opportunity to be heard before his name is removed or withheld. A member aggrieved must have a remedy within the party. Where that remedy is exhausted, or is illusory, the appropriate jurisdiction of the courts or the relevant internal appellate procedures of the party in question , as the case may be, remains to be invoked. This court will not sit in appeal from a party's disciplinary tribunals nor anticipate it. However, this court has a duty to ensure that, the constitutional right is not defeated by the manner of their working.

153. I may add that, a party which keeps an accurate register of its members, open to inspection by them and subject to a published procedure for correction, will rarely find the question difficult. Much of the litigation which this subject has generated elsewhere has arisen from the absence of such registers rather than from any obscurity in the concept of good standing itself.

154. These are minimum requirements and not a code. A party may do a great deal more, and many will. Nothing in this opinion prevents a party from adopting universal member suffrage, and nothing in it compels a party to do so. What is compelled is that the body which chooses, shall be a body which the members have chosen.

155. This holding does not require a party to assemble its members at a single national venue. Members may vote where they are, at the branch or polling station to which they belong, and the results may be aggregated. That is how the Republic conducts its own elections, and each of the Defendant parties already maintains a structure at every polling station in the country. Nor does it require a party to bear the cost of bringing any member to a place of voting. It is not suggested that the parties bear that cost for delegates, and the court will not impose any greater burden.

156. It does not govern the election of party officers which falls outside the purview of the reliefs sought by the Plaintiffs in this action. The holding is confined to the selection of presidential and parliamentary candidates, which is the subject of this writ. A party

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remains free to elect its executives, and to conduct its conferences and congresses, by delegates.

157. Nor does the holding preclude a party from vetting aspirants, from prescribing qualifications for candidature, from requiring a filing fee, from setting a threshold for election, or from providing for a second ballot. It does not preclude a party from entrusting the conduct of the ballot to any body it chooses, including the 4th Defendant if that Defendant consents. The right so declared is a right to cast a vote. Everything else touching the manner of its exercise remains where the Constitution leaves it, with the party and its members.

158. Finally, I observe that, the assumption that a members' ballot must cost more than a delegates' congress was asserted before us rather than demonstrated. The Electoral Colleges of the 1st and 2nd Defendants are said to number in the hundreds of thousands, and those persons must be convened, transported and accommodated. A ballot conducted at the polling stations where the members already live may well prove less costly than a congress, not more. I do not decide that question. However I do note only that it was never investigated, and that an objection of impracticability which rests upon an uninvestigated premise cannot defeat a constitutional entitlement.

XVI. QUESTION FOUR: APPLICATION TO THE IMPUGNED ARRANGEMENTS

159. I now turn to the arrangements before us. The burden of establishing a contravention rests upon the Plaintiffs, and I have examined the material with that in mind.

(a) THE 1ST DEFENDANT

160. The 1st Defendant alone contested the action, and it alone placed its constituent instruments before the court. I have examined its Constitution as amended on 4th July 2025 and its Rules and Regulations of 17th February 2026, and I am grateful for their production.

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161. It is right to begin with what tells in its favour, and it is not inconsiderable. Article 6 of its Constitution provides that in Polling Station Executive elections all card-bearing members in good standing in the polling station area shall vote. The Rules of February 2026 require a comprehensive registration of members before those elections and confine the vote to those on the polling station register. The Electoral Area Executive Committees are elected by the Polling Station Executives, and the Constituency Delegates Conference includes all Polling Station Executives in the constituency. There is, therefore, a chain which begins with the ordinary member.

162. However, the presidential Electoral College established by article 13 is not constituted by that chain alone. Upon the 1st Defendant's own Constitution it comprises, in addition to the voting members of the Constituency and Regional Delegates Conferences: the National Council of Elders; thirty National Patrons; five members of the Council of Elders and five Patrons for each constituency; ten of each for each region; all sitting Members of Parliament; **all former Members of Parliament**; **all former parliamentary candidates**; all card-bearing Ministers, Deputy Ministers and Metropolitan, Municipal and District Chief Executives; **all card-bearing former Ministers, former Deputy Ministers and former Chief Executives**; **all former National Officers**; **all former Regional Executive Committee members**; **all former Constituency Executive Committee members**; founding members; all External Branch Executives and **all former External Branch Executives**; and representatives of Special Organs.

163. The character of these categories must be confronted. The Councils of Elders and the Patrons are not elected at all: article 7 provides that the Constituency Executive Committee shall appoint five members each to the Council of Elders and to the Patrons. Eight constituency officers, including the Financial Secretary and several deputies, are appointed and not elected. Founding members sit by historical status. Ministers, Deputy Ministers and Chief Executives sit by virtue of appointment to public office by the President. And a very long list of persons sit by virtue of offices they formerly held and hold no longer, owing their votes to a past which no present member can revisit.

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164. In these circumstances the 1st Defendant's submission that ***"no person is imposed in the electoral college"*** cannot be accepted, and I do not accept it. Its own Constitution refutes it. A substantial part of the body which selects its presidential candidate holds that entitlement otherwise than by any grant of the present membership.

165. The court has been invited to hold that the categories which are referred to are numerically small beside the Polling Station Executives, and that the college is therefore in substance an elective body. Upon this record, I could not resolve that question if it arose, for no figures were placed before the court and the categories provided without the numbers.

166. Having so observed, the question does not arise at all. The mischief lies in the exclusion of the members. Whether those who vote are many or few, appointed or elected, the member in good standing who is denied a vote is denied it, and no arithmetic about the body which votes in his stead can supply what he has lost. I should add that, since the point was touched upon in argument, that the court is not concerned here with the different question whether a member may himself authorise another to cast his vote for him. No party before the court has adopted such a scheme, and the court expresses no opinion upon it.

167. It is right to acknowledge what the 1st Defendant's structure achieves. Article 6 secures to every card-bearing member in good standing a vote in the election of the Polling Station Executives, and the Rules of February 2026 provide for a comprehensive registration of members before those elections are held. The party therefore already possesses, or is in the course of compiling, the very register which the exercise of the wider right requires, and it already convenes its members at every polling station in the Republic. The machinery of compliance is in place. What is absent is the entitlement.

168. Thus,when the selection of the presidential candidate is reached, the member's voice stops. Article 13 confines the vote to the Electoral College, and the member who elected his Polling Station Executive has no vote in it. The College is composed of officeholders

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and former officeholders: the Councils of Elders and the Patrons, appointed under Article 7 by the very executives whose successors they help to choose; eight constituency officers who are appointed and not elected; founding members, sitting by historical status; card-bearing Ministers, Deputy Ministers and Metropolitan, Municipal and District Chief Executives, sitting by virtue of appointment to public office; and every former Member of Parliament, former parliamentary candidate, former Minister, former Deputy Minister, former Chief Executive, former National Officer, former Regional and Constituency Executive Committee member and former External Branch Executive. Not one of them holds the vote because a member conferred it upon him for that purpose, and the member himself holds no vote at all.

169. The last of those classes deserves a word of its own, for it is the most numerous and the least defensible. A person who votes in an electoral college by virtue of an office he no longer holds answers to nobody. He cannot be removed, for there is no office to remove him from; he cannot be called to account at the next internal election, for he does not stand at it. His vote is not a trust but a freehold, held for life by reason of a position long since vacated. Whatever else the democratic principles of Article 55(5) require, they cannot accommodate a permanent and unaccountable electorate created out of a party's own past.

170. I must add an observation which illustrates the principle although I do not rest my decision upon it. Ministers, Deputy Ministers and Chief Executives hold their public offices at the pleasure of the President. Where the President is himself a candidate for re-selection, or has an interest in the outcome, the college contains a body of electors who owe their positions to the person whose selection they are to determine. That is difficult to reconcile with any conception of internal democracy, and it shows why the entitlement to vote must rest upon the choice of the members and upon nothing else.

171. I accordingly hold that, the Electoral College established under article 13 of the Constitution of the 1st Defendant, and the Extraordinary Constituency Delegates Conference established under Article 7 thereof, do not conform to democratic principles

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within the meaning of Article 55(5) and are inconsistent with the Constitution, in so far as they deny to members of the party in good standing the right to vote in the selection of its presidential and parliamentary candidates.

(b) THE 2ND DEFENDANT

172. The 2nd Defendant did not defend its arrangements. It accepted in its statement of case that its Electoral College under Articles 43 and 44 does not fully realise the democratic principles contemplated by Article 55(5), and invited the court to affirm that members in good standing should be entitled to participate directly.

173. As I have said earlier, a concession upon a question of constitutional construction does not bind this Court, and I adhere to that. I do not grant the relief because the 2nd Defendant consents to it. But the 2nd Defendant's own conduct supplies the evidence which its concession could not. In or about 2015 it adopted a universal suffrage model for its presidential primary, extending the vote to all members upon its biometric register. After 2016 it abandoned that model and returned to a restricted electoral college.

174. That history is doubly instructive. It establishes, as no argument could, that broad participation is administratively achievable within a party of that size. And a deliberate contraction of an internal franchise, made by those whose own influence the contraction restored, calls for justification. None was offered to the court in this proceedings.. I therefore hold that, the Electoral College established under Articles 43 and 44 of the Constitution of the 2nd Defendant does not conform to democratic principles.

(c) **THE 3RD DEFENDANT**

175. The position of the 3rd Defendant is different and I deal with it separately. It denied in its paragraph 7 that its National Delegates Congress is *per se* inconsistent with Article 55(5), while stating in its paragraph 8 that it does not contest the Plaintiffs' interpretation nor the reliefs sought.

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176. The 3rd Defendant gave the court no account of how its Constituency Branch Party Conference or its National Delegates Congress is composed, and had this case turned upon composition I should have been unable to determine it. But upon the construction I have adopted the case does not turn upon composition. It turns upon whether the member in good standing has a vote, and that appears from the instrument itself: Articles 53, 77 and 96 of the 3rd Defendant's constitution confine the selection of its candidates to conferences and congresses of delegates.

177. The 3rd Defendant has never asserted that its members at large vote in that selection. Its statement of case proceeds throughout upon the footing that they do not, and its prayer for a transitional period of twenty-four months within which to compile a register of members in good standing is intelligible only upon that footing. The contravention is therefore disclosed by the party's own constitution and by its own pleading, and requires no further proof. I accordingly hold that the Constituency Branch Party Conference system and the National Delegates Congress system established under Articles 53, 77 and 96 of the Constitution of the 3rd Defendant do not conform to democratic principles within the meaning of Article 55(5), in so far as they deny to members of the party in good standing the right to vote in the selection of its presidential and parliamentary candidates.

XVII. REMEDY

178. There remains the question of remedy, upon which this court has had the least assistance and which has given me the most difficulty.

(a) THE OBJECTIONS OF COST AND PRACTICABILITY

179. It was urged that the relief sought imposes a positive and resource-dependent obligation upon bodies which receive no public funding. That the Committee of Experts considered state funding of parties, divided upon it, referred the question to the Consultative Assembly and recorded at paragraph 244 that ***"in the absence of state funding, the political parties would have to depend largely on membership dues and donations";*** and that this Court should not impose by order a burden whose incidence

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and financing nobody has examined.I have considered these objections with care and they are not without force. But they do not answer the case, for the following reasons.

180. First, what this court has been invited to order in place of the delegate system is what I call the *universal member suffrage*. My answer to that request is that, the person chosen as candidate must be, in the main, chosen by the members of the party and not by a delegate system. Given the structure of the political party from the unit to the national level, that is not unsurmountable by reason only of cost.

181. Secondly, cost cannot of itself defeat a constitutional command. I accept, as counsel for the Plaintiffs submitted, that the Constitution does not privilege expense over compliance. Were it otherwise the obligations of the supreme law would bind only the wealthy.

182. Thirdly, the argument that compliance is impracticable is contradicted by the conduct of the parties themselves. The 2nd Defendant conducted a universal ballot in 2015. The 1st Defendant is at this moment engaged in a comprehensive registration of its members at polling station level. What is said to be impossible is being done.

183. Fourthly, I am unable to grant the 2nd Defendant's prayer for an order that funding of internal party elections under Article 2(2). Article 2(2) authorises consequential orders to give effect to a declaration; it does not authorise this Court to appropriate public money, which by article 178 may be withdrawn from the Consolidated Fund only by appropriation made by Parliament. Whether parties should be publicly funded is a question the framers left to the Consultative Assembly, which did not adopt it, and it remains a question for Parliament.

(b) <u>THE ORDERS</u>

184. It is acknowledged that, the parties must conduct internal elections upon a settled timetable, and that an order taking effect at once would disrupt arrangements presently in train and might imperil the orderly presentation of candidates at the next general

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election. That is a consideration of real weight, for the remedy must not injure the very democratic process it is designed to protect.

(c) THE LIMITS OF THE RELIEFS GRANTED

185. It is right that I must state, compendiously, what I have granted and why. A judgment which vindicates a constitutional right but leaves those bound by it unable to know what compliance requires, or the courts unable to enforce it without perpetual supervision, has done the Constitution no service.

186. Without equivocation, I do uphold the entitlement of every member in good standing to vote, and I have already said what that entails. What I will not do is to prescribe the machinery by which the vote is to be taken. Neither do I direct where, when or by whom the ballot shall be conducted, what register shall be kept, what dues or period of membership shall be required, or how disputes shall be resolved. Those are matters for each party, subject only to the limits hereinbefore stated.

187. However expedient and desirable, I will refrain from ordering the 4th Defendant to superintend the internal elections of political parties unless upon a request and acceptance, for Parliament has not given it that jurisdiction. Neither do I grant an order that the cost of internal elections be met from public funds, for that is appropriation and it belongs to Parliament exclusively.

188. What remains is a single requirement, already stated,which every political party in the Republic is able to satisfy whatever its size or its means: that every member in good standing shall be entitled to vote in the selection of the party's presidential and parliamentary candidates, the party remaining free to regulate the exercise of that right but not to deny it. I have confined myself to that because it is what Article 55(5) requires, and because it is what can be enforced.

XVIII. QUESTION FIVE: THE RELIEFS AGAINST THE 4TH DEFENDANT

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189. The Plaintiffs seek an order directed at the Electoral Commission to ensure and enforce compliance by the 1st, 2nd and 3rd Defendants with Article 55(5) and Section 9(a) of Act 574.I have already disposed of the 4th Defendant's contention that no relief is sought against it. Relief (x) is expressly and exclusively directed at the 4th Defendant. The contention is not made out upon the face of the writ and it fails.

190. Upon the substance, Section 9 of Act 574 is headed ***"Conditions for registration"*** and provides that the Commission shall not register a political party unless, among other things, the internal organisation of the party conforms with democratic principles. Its temporal locus is the application to register. Where Parliament intended to confer continuing powers it did so in limited terms, as in Section 22, which permits the Commission upon stated grounds and in writing to request records for inspection. Neither Section 9 nor Article 45 confers upon the Commission a general jurisdiction to superintend the internal elections of registered parties cannot confer what Parliament withheld.

191. Having said that however, in granting Relief (x) against the 4th Defendant I am able to declare the extent of the Commission's existing duty, and it is right that I should, since the point was fully argued. Section 9(a) obliges the Commission to satisfy itself, before registering a political party, that the internal organisation of the party conforms with democratic principles; and that obligation, being a condition of registration, attaches equally to the renewal of registration where renewal is required. In discharging it the Commission is bound to apply the requirements hereinbefore stated in this opinion. To that extent, and to that extent only, relief (x) succeeds.

192. I am compelled to add, adopting the eleventh and twelfth recommendations of the Committee of Experts that, it remains open to the Commission to make regulations by legislative instrument giving fuller effect to Article 55, and to Parliament to legislate upon the functioning of political parties. Nothing in this delivery forecloses either course, and much in it invites both. Were Parliament to prescribe a maximum proportion of ex officio members in a party's selecting body, as the German legislature has done, it would be

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acting well within its competence and would relieve this Court of a task for which a legislature is far better equipped.

XIX. CONCLUSION

193. I summarise my conclusions as follows:

(i) Article 55(5) of the Constitution is a binding and justiciable command. Political parties in Ghana are not private associations but constitutional actors performing a public function which the Constitution has entrusted to them and to no one else. The selection by a party of its presidential and parliamentary candidates lies at the centre of its internal organisation, and is subject to the requirement that such organisation conform to democratic principles.

(ii) Those principles require that every member of a political party in good standing be entitled to vote in the selection of the party's presidential and parliamentary candidates. A party may regulate the exercise of that right in the manner described in this delivery. It may not deny the right, and it may not so define good standing as to deny it by definition.

(iii) Applying that standard, the delegate-based mechanisms of the 1st, 2nd and 3rd Defendants, which confine the decisive vote to electoral colleges of officeholders and delegates and withhold it from the general membership, do not conform with the requirement of Article 55(5) of the 1992 Constitution.

(iv) I have considered whether the position of the 3rd Defendant is distinguishable, and I have concluded that it is not. It is true that the 3rd Defendant gave us no account of the composition of its Constituency Branch Party Conference or of its National Delegates Congress. But the reliefs sought against it do not depend upon composition. Upon the construction I have adopted, the defect is the exclusion of the member, and the 3rd Defendant's own constitution discloses that exclusion upon its face: articles 53, 77 and 96 confine the selection of its candidates to conferences and congresses of delegates. The 3rd

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Defendant has not asserted that its members at large vote in the selection of its candidates, and its statement of case proceeds throughout upon the footing that they do not. The contravention appears from the instrument itself and requires no further evidence.

(v) I now turn to a matter of general importance which requires to be stated before I pronounce my orders. Only three political parties are Defendants to this action, and the impugned provisions are theirs. It must not be supposed on that account that what is decided is confined to them. It is not, and it cannot be.

(vi) The reason lies in the character of the jurisdiction which has been invoked. An action under article 2(1) of the Constitution is not an action between the parties who happen to appear in it. It is an action to determine the meaning of the supreme law, and a declaration made under that article operates in rem. It binds the Republic. It binds every person, every authority and every organ of State, whether or not represented before this Court, and by article 2(2) and Article 2(4) it is enforceable against all of them. The construction I place upon Article 55(5) is therefore the construction which that Article bears for every political party in Ghana, and for every political party which may hereafter be formed in Ghana, from the date of this judgment.

(vii) It follows that no party may hereafter be heard to say that its own arrangements were not before this Court, or that its constitution was not among those impugned, or that it was not a Defendant to this action. Article 55(5) has one meaning and not several. A party which today confines the selection of its presidential or parliamentary candidates to an electoral college, a **'delegates'** congress, a conference or any similar body, and withholds the vote from its members in good standing, stands in the same position as the 1st, 2nd and 3rd Defendants, and its arrangements are to the same extent

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inconsistent with the Constitution. It is expected to conform without waiting to be sued.

(viii) The Liberal Party of Ghana, which applied to be joined and was refused for want of timeliness, is a case in point. Its apprehension that these proceedings would affect it was well founded. It is affected, as is every other registered party, not because it was joined but because the Constitution means what this judgment declares it to mean.

(ix) Before pronouncing my orders I should say a word about the first relief. It asks us to declare that the election of a political party's presidential and parliamentary candidates constitutes a core element of the party's internal organisation within the meaning of article 55(5). That proposition reproduces, in substance, what article 55(5) itself provides, and a declaration which repeats the Constitution ordinarily decides nothing and is ordinarily unnecessary. I was at one stage minded to say so and to go no further.

(x) I have concluded otherwise, and for a reason which the course of this litigation has made obvious. The proposition was not common ground. It was denied. The 1st Defendant's case, at its widest, was that the selection of candidates is a matter of internal party administration lying beyond the reach of the Constitution altogether; the 3rd Defendant invited us to view the action with suspicion as an attempt to determine for it how its internal affairs should be managed while the Attorney-General, having supported the Plaintiffs in writing, told us from the Bar that the delegate system is not unconstitutional and that what this court has been invited to do was a policy choice between two legalities. A proposition which three parties to an action deny, doubt or qualify is not one which may safely be left to inference. It requires a declaration, and it shall have one.

194. As expressed by the Honourable Chief Justice in the lead judgment, I also grant relief (i), and I grant it in full measure. Nothing in this judgment is to be read as treating that relief

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as superfluous, as formal, or as subordinate to the reliefs which follow. It states the foundation upon which every other order in this judgment rests, and it binds all parties before us and every political party in the Republic. That the declaration restates the Constitution is not a reason to withhold it. It is the reason it is unanswerable.

195. Accordingly, and for the reasons set out above,consistent with the position of the majority, I grant all the reliefs sought and I make the following orders:

(a) **Upon relief (i), I declare that upon a true and proper interpretation of the Preamble and Articles 1(1) and (2), 17, 33(5), 35(6)(d), 42 and 55(5) of the Constitution, the election of a political party's presidential and parliamentary candidates constitutes a core element of the party's internal organisation within the meaning of Article 55(5), and is at all times subject to the requirement that such internal organisation shall conform to democratic principles. This declaration is not to be understood as adding to the Constitution but as affirming it; and it is to be observed and upheld at all times by the 1st, 2nd and 3rd Defendants, by every other political party registered or hereafter to be registered in Ghana, and by the 4th Defendant in the discharge of its functions under the Constitution and the Political Parties Act, 2000 (Act 574).**

(b) **Upon relief (ii), I further declare that, upon a true and proper interpretation of the said provisions, the internal organisation of a political party must be structured in a manner which ensures the equal political participation and the equal voting rights of its members in the selection of the party's presidential and parliamentary candidates.**

(c) **Upon relief (iii), I declare that the democratic principles governing the internal organisation of a political party require political equality, the meaningful and broad participation of members in decision-making, the accountability of the leadership to the membership, and substantially equal and direct voting rights for members in good standing in the election of the**

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party's presidential and parliamentary candidates; and that every member in good standing is accordingly entitled to vote in that election, subject only to such regulation of the exercise of the right as is described in this judgment.

(d) Upon relief (iv), I declare that, the delegate-based Electoral College system established under Article 13 of the Constitution of the 1st Defendant for the election of its presidential candidate contravenes the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 55(5) of the Constitution and is, to the extent of that inconsistency, unconstitutional, null, void and of no effect.

(e) Upon relief (v), I declare that the Extraordinary Constituency Delegates Conference system established under article 7 of the Constitution of the 1st Defendant for the selection of its parliamentary candidates contravenes the said provisions of the Constitution and is, to the extent of that inconsistency, unconstitutional, null, void and of no effect.

(f) Upon relief (vi), I declare that, the Electoral College system established under Articles 43 and 44 of the Constitution of the 2nd Defendant for the election of its presidential and parliamentary candidates contravenes the said provisions of the Constitution and is, to the extent of that inconsistency, unconstitutional, null, void and of no effect.

(g) Upon relief (vii), I declare that, the Constituency Branch Party Conference system and the National Delegates Congress system established under Articles 53, 77 and 96 of the Constitution of the 3rd Defendant for the election of its presidential and parliamentary candidates contravene the said provisions of the Constitution and are, to the extent of that inconsistency, unconstitutional, null, void and of no effect.

(h) Upon relief (viii), I order that all provisions of the constitutions, rules, regulations and electoral arrangements of the 1st, 2nd and 3rd Defendants are struck down to the extent, and only to the extent, that they restrict or

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confine the election of presidential or parliamentary candidates to electoral colleges, delegate bodies or similar structures, or otherwise exclude or materially disenfranchise members in good standing from voting in those elections; and I declare that the like provisions in the constitution, rules, regulations or electoral arrangements of any other political party in Ghana, whether presently registered or hereafter to be registered, are to the like extent inconsistent with article 55(5) of the Constitution and void. Save to that extent the constitutions, rules and regulations of the said Defendants and of every other political party stand, and nothing in this order affects the election of party officers, the conduct of party conferences or congresses, or any other aspect of the internal organisation of a political party.

(i) Upon relief (ix), I order the 1st, 2nd and 3rd Defendants to amend their respective constitutions, rules and electoral arrangements so as to adopt procedures for the election of their presidential and parliamentary candidates which conform to the democratic principles required under Article 55(5) of the Constitution and ensure the equal, direct and meaningful participation of members in good standing in those elections; and I direct that every other political party in Ghana, whether presently registered or hereafter to be registered, shall likewise bring its constitution, rules and electoral arrangements into conformity with this judgment.

(j) The operation of the declarations at (d), (e), (f) and (g), and of the orders and directions at (h) and (i), is suspended for a period of one year as already proclaimed in the lead opinion by the Honourable Chief Justice from the date of this judgment, to afford the 1st, 2nd and 3rd Defendants, and every other political party affected by this judgment, shall abide the all the orders an directions contained in the lead judgment of the Honourable Chief Justice.

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(k) For the avoidance of doubt as already expressed in the lead opinion of the Honourable Chief Justice, nothing in this judgment invalidates any selection of a presidential or parliamentary candidate by any political party completed before the date hereof, or completed during the period of suspension; and no such selection, and no candidature or office derived from it, shall be impeached by reason of this judgment.

(l) Upon relief (x), I declare that the 4th Defendant is obliged, in the exercise of its supervisory and regulatory mandate under the Constitution and the Political Parties Act, 2000 (Act 574), and in particular under Section 9(a) thereof, to satisfy itself upon the registration of a political party, and upon any renewal of registration for which that Act provides, that the internal organisation of the party conforms to democratic principles as explained in this judgment; and I order the 4th Defendant to give effect to this judgment in the discharge of that mandate in respect of every political party in Ghana, and to bring this judgment to the notice of every registered political party and of every applicant for registration hereafter.

(SGD.) I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

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DISSENTING OPINION

ASIEDU JSC:

1. INTRODUCTION:

My lords, by a writ issued on the 26th January 2026, the Plaintiffs herein invoked the original jurisdiction of this Court under articles 2(1) and (2) and 130(1) of the Constitution of Ghana and also under rule 45 of the Supreme Court Rules, 1996, CI.16 for the following reliefs against the within named defendants, to wit:

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"i. A declaration that upon a true and proper interpretation of the Preamble and Articles 1(1) and (2), 17, 33(5), 35(6)d, 42 and 55(5) of the 1992 Constitution the election of a political party's presidential and parliamentary candidate(s) constitutes a core element of the party's internal organization within the meaning of Article 55(5) of the Constitution.

ii. A declaration that upon a true and proper interpretation of the Preamble and Articles 1(1) and (2), 17, 33(5), 35(6)d, 42 and 55(5) of the 1992 Constitution, the internal organization of a political party must be structured in a manner that ensures equal political participation and equal voting rights of its members in the selection of the party's presidential and parliamentary candidate(s)

iii. A declaration that, on a true and proper interpretation of the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42, 55(2), 55(5), 63 and 93 of the 1992 Constitution, democratic principles governing the internal organisation of political parties require political equality, meaningful and broad participation of members in decision-making, accountability of leadership to the membership, and substantially equal and direct voting rights for members in good standing in the election of the party's presidential and parliamentary candidates

iv. A declaration that the delegate-based Electoral College system established under Article 13 of the Constitution of the 1st Defendant for the election of its presidential candidate, which confines or restricts voting to specified executives, office holders and delegates to the exclusion or material disenfranchisement of members in good standing of the party contravenes the Preamble and Articles 1, 17, 33(5), 35(6)|(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.

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v. A declaration that the Extraordinary Constituency Delegates Conference system established under Article 7 of the Constitution of the 1st Defendant for the selection or election of its parliamentary candidates, which confines voting to specified constituency executives, coordinators, polling station officers, elders, patrons and other delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.

vi. A declaration that the Electoral College system established under Articles 43 and 44 of the Constitution of the 2nd Defendant for the election of its presidential and parliamentary candidate, which confines or restricts voting to specified executives, office holders and delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 33(5), 17, 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.

vii. A declaration that the Constituency Branch Party Conference system and the National Delegates Congress system established under Articles 53, 96 and 77 of the Constitution of the 3rd Defendant for the election of its presidential and parliamentary candidate(s), which confines voting to specified executives, elders, officers and delegates to the exclusion or material disenfranchisement of members in good standing of the party, contravenes the Preamble and Articles 1, 17, 33(5), 35(6)(d), 42 and 55(5) of the 1992 Constitution and is therefore unconstitutional, null, void and of no effect.

viii. A consequential order striking down and declaring unconstitutional , null, void and of no effect all provisions of the constitutions, rules, regulations or electoral arrangements of the 1st, 2nd and 3rd Defendants, to the extent that they restrict or confine the election of their presidential and parliamentary candidates to limited

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Electoral Colleges delegate bodies or similar structures, or otherwise exclude or materially disenfranchise members in good standing of the parties from voting in elections for their presidential candidates.

ix. An order directing the 1st, 2nd and 3rd Defendants to amend their respective constitutions, rules and electoral arrangements to adopt procedures for the election of their presidential candidates or flagbearers that conform to the democratic principles required under Article 55(5) of the 1992 Constitution and ensure the equal, direct and meaningful participation of members in good standing in such elections.

x. An order directed at the 4th Defendant, in the exercise of its supervisory and regulatory mandate under the Constitution and Act 574, to ensure and enforce the 1st, 2nd, and 3rd Defendant's compliance with the Preamble Article 55(5) of the Constitution and Section 9(a) of Act 574 in respect of their internal elections.

xi. Such further or consequential orders as this Honourable Court may deem just".

In accordance with rule 46 of CI. 16, the Plaintiffs filed a statement of case together with their writ. Upon service of the writ, all the Defendants filed their respective statements of case.

2. FACTS OF THE CASE:

The facts of the case are that the 1st and 2nd Plaintiffs who are Ghanaians are also members of the 1st Defendant, the New Patriotic Party (NPP), a political party registered under the laws of Ghana. The 3rd Plaintiff is also a Ghanaian and a member of the 2nd Defendant, the National Democratic Congress (NDC), a political party registered under the laws of Ghana. The 3rd Defendant is also a political party registered under the laws of Ghana. The 4th Defendant, the Electoral Commission of Ghana, is a body established under the Constitution of Ghana and charged with the duty to organize and oversee

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elections and other related activities. The 5th Defendant, the Attorney General, is the Chief Legal Adviser to the Government established under the Constitution against whom all actions against the Government are to be brought. The Plaintiffs claim that the 1st, 2nd and 3rd Defendants being political parties, registered under the Political Parties Act, 2000, Act 574, regularly nominate persons to stand elections as Presidential and Parliamentary candidates. The Plaintiffs state that the 1st to 3rd Defendants being constitutionally recognised vehicles for the exercise of political power, their internal structures and electoral processes are subject to the mandatory requirements set out under article 55(5) of the Constitution, 1992. According to the Plaintiffs, article 55 of the Constitution, 1992 regulates the formation, operation and organisation of political parties and that under the law, political parties are required to structure their internal organisation to conform with democratic principles. In the words of the Plaintiffs, compliance with democratic principles is a constitutional obligation imposed and binding on every registered political party. The Plaintiffs assert that the 1st to 3rd Defendants do not organize their internal affairs and governance in accordance with democratic principles and that in particular, the 1st, 2nd and 3rd Defendants in their selection of their Presidential and Parliamentary candidates do not permit all their registered members to vote in order to ensure a broad participation and achieve equitable outcomes. The Plaintiffs allege that the selection of the Presidential and Parliamentary candidates of the 1st to 3rd Defendants is limited to a privileged few of the members of these political parties with the effect that the result is not truly representative of the wishes of all the members of these political parties. The Plaintiffs say that they have carefully reviewed the constitutions, rules and the internal organisation arrangements of the 1st, 2nd and 3rd Defendants and contend that in significant and material respects the said parties' systems for the selection of their leadership and candidates fall short of the democratic principles mandated by article 55(5) of the 1992 Constitution and are therefore inconsistent with their constitutional obligations, and accordingly bring this action to seek the interpretation and enforcement of article 55(5) and related constitutional guarantees so as to assess and determine the compliance of the 1st , 2nd and 3rd Defendants with those obligations. On the other hand, the Plaintiffs

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seek to find out whether or not the 4th Defendant has failed in its duty to ensure that democratic principles are observed by the 1st, 2nd and 3rd Defendants.

3. The 1st and 3rd Defendants deny the Plaintiffs' allegations in their statements of case. The 1st Defendant says that in forming their political party, they chose for themselves a type of democracy that does not conflict with the Constitution of Ghana or any statutory provision in the country. The 1st Defendant says that their constitution confers on its members rights and duties including the right to participate in all activities of the party subject to the rules and regulations governing such activity. The 1st Defendant also outlined in their constitution how the right to elect their leaders and candidates of the party for public elections are to be exercised by the members of the party in line with the structure and organisation of the party as set out in the constitution of the 1st Defendant. The 1st Defendant contends that, "the position taken by the Plaintiffs is rather contrary to the true meaning of article 55(5) of the 1992 Constitution". According to the 1st Defendant, "the Plaintiffs effectively wants this Court to define article 55(5) of the 1992 Constitution to imply a right to vote and a universal suffrage within the 1st Defendant political party, where every member directly votes in the selection of leaders, including Presidential and Parliamentary candidates. The 1st Defendant states that this position taken by the Plaintiffs is inconsistent with representative democracy which has been adopted and is practiced in the 1st Defendant political party as well as the election of members of parliament in Ghana.

4. The 2nd Defendant herein agrees with and concedes that the reliefs sought by the Plaintiffs herein to the effect that its internal organisation with respect to the selection of its Presidential and Parliamentary candidates do not accord with democratic principles outlined in article 55(5) of the 1992 Constitution.

5. The Convention People's Party, 3rd Defendant herein, says in its statement of case filed on the 14th May 2026 that the reliefs sought by the Plaintiffs are "noble and achievable with time and are therefore objectives that can be achieved within reasonable timelines".

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The 3rd Defendant states that since it was founded in 1949, it has "employed different democratic methods for internal elections depending on the objective exigencies of each historical period." According to the 3rd Defendant, between 1949 and 1951, it "employed mass direct participation whereby all dues paying members at branch level voted directly". Between 1951 and 1966, the 3rd Defendant "employed a delegate conference system grounded in the principle of democratic centralism – elected branch delegates constituted constituency, Regional and National Conferences".

6. The 4th Defendant, the Electoral Commission of Ghana, denies the reliefs sought by the Plaintiffs and states that it has been wrongly sued and made a party to the suit by the Plaintiffs, and prays the Court to dismiss the action against the 4th Defendant.

7. The Attorney General, 5th Defendant herein, states that political parties are public as opposed to private organisations and that being the case, their internal affairs, including their elections, are a public matter and that their internal elections are public elections. According to the 5th Defendant, the provisions of the Constitution "makes it imperative that the delegate mechanism for decision making in political parties does not sufficiently reflect the constitutional requirement. This is because the mechanism is no longer a reflection of democratic principle of national politics".

8. THE CAPACITY OF THE PLAINTIFFS TO SUE:

From the statements of case filed, the capacity of the Plaintiffs to sue has not been challenged or disputed by any of the Defendants. The Defendants have also not challenged the Plaintiffs as to whether or not the suit mounted by them raises an issue for the interpretation and or enforcement of the Constitution. Indeed, articles 2(1) and 130(1) of the Constitution, 1992, vest capacity and power in all Ghanaians where a person alleges a violation of the Constitution to bring actions before the Supreme Court to seek interpretation or otherwise the enforcement of the Constitution. These articles provide in specific terms that:

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"2. Enforcement of the Constitution

(1) A person who alleges that

(a) an enactment or anything contained in or done under the authority of that or any other enactment, or

(b) any act or omission of any person,

is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect".

"130. Original jurisdiction of the Supreme Court

(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in

(a) all matters relating to the enforcement or interpretation of this Constitution;

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution".

Thus, under these constitutional provisions, the Supreme Court exercises power and original jurisdiction to ensure that the acts of persons and institutions, public and private alike, within the boundaries of Ghana conform to the provisions of the Constitution which is the ultimate law of the land, in order to ensure that human rights and freedoms, the liberties of individuals and democratic norms are duly observed for the welfare of Ghanaians. See Abu Ramadan & Nimako (No.2) vs. Electoral Commission & Attorney General (No.2) [2015-2016]1SCGLR 1.

It is of utmost importance also for Plaintiffs invoking the original jurisdiction of the Supreme Court to interpret various provisions of the Constitution, to show that indeed those provisions of the Constitution pose genuine questions for interpretation as

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recognised by this Court in the case of Republic vs. Special Tribunal; Ex parte Akosah [1980] GLR 592. Further, a Plaintiff who seeks to enforce a provision of the Constitution must also show that the issues raise genuine questions for enforcement.

9. The plaintiffs concede that article 55(5) of the 1992 Constitution does not define the expression 'democratic principles' when it demands that the internal organisation of political parties conform to democratic principles. The plaintiffs however contend with respect to the provisions of article 55(5) that "precisely because the Constitution does not define the expression 'democratic principles' nor does it expressly prescribe an exhaustive code of internal party governance, the phrase is open textured and requires judicial construction. However, that indeterminacy does not imply that its content is left to the discretion or subjective judgment of political parties themselves. On the contrary, article 55(5) employs the language of obligation and command. It provides that the internal organisation of political parties shall conform to democratic principles. The use of mandatory language indicates that the provision establishes an objective constitutional standard capable of legal determination and enforcement, and not a matter of internal preference or political convenience." Ultimately, the Plaintiffs' contention is that article 55(5) of the Constitution, when properly and truly construed, requires that in selecting the leaders of political parties, including the selection of the Presidential and Parliamentary candidates of political parties, all the members of the political parties shall have the right to vote directly and state their choice as to which candidate shall stand.

10. The New Patriotic Party, 1st Defendant in this matter, and to some extent the Convention People's Party, the 3rd Defendant herein, disagree with the meaning given by the Plaintiff to the phrase 'democratic principles' as used in article 55(5) of the 1992 Constitution. At paragraph 18 of its statement of case, the 1st Defendant submits that:

"Respectfully my Lords, the 1st Defendant contends that the position taken by the Plaintiffs is rather contrary to the true meaning of Article 55(5). The plaintiffs effectively want this Court to define Article 55(5) of the 1992 Constitution to imply a right to vote

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and a universal suffrage within the 1st Defendant Political party, where every member directly votes in the selection of leaders, including Presidential and Parliamentary Candidates. It is our respectful view that this position of the Plaintiffs is inconsistent with representative democracy which has been adopted and is practiced in the 1st Defendant political party as well as the election of members of parliament in Ghana".

11. For the 2nd Defendant, National Democratic Congress, it was submitted at paragraph 22 of its statement of case that:

"22. Indeed, a reading of Article 55(5) of the Constitution demonstrates that in terms of both letter and spirit, it places an injunction on a political party such as the 2nd Defendant to ensure that its actions do not contravene the Constitution. Therefore, where a person such as the Plaintiffs are of the view that the conduct of the 2nd Defendant in deploying the electoral college system limited to a selected group of persons to elect presidential and parliamentary candidates contravenes the 1992 Constitution, they are entitled to approach this Court as the sole arbiter of the constitutionality or otherwise of acts, omissions and enactments for a remedy".

12. Thus, to the extent that rival meanings have been ascribed to the provisions contained in article 55(5) of the 1992 Constitution, a genuine case of interpretation has been made by the parties herein which calls for the intervention of this court by the exercise of the original jurisdiction given to the Supreme Court under articles 2(1) and 130(1) of the Constitution. See Martin Alamisi Amidu vs President Kuffuor and the Attorney General [2001-2002] SCGLR 138 where Acquah JSC (as he was) stated in plain language that:

"Where it is alleged before the Supreme Court that any organ of Government or an institution is acting in violation of a provision of the Constitution, the Supreme Court is duty bound by articles 2(1) and 130(1) to exercise jurisdiction, unless the Constitution has provided a specific remedy... no individual nor creature of the Constitution is exempted from the enforcement provision of article 2 thereof. No one is above the law.

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And no action of any individual or institution under the Constitution is immune from judicial scrutiny if the constitutionality of such an action is challenged."

13. MEMORANDUM OF ISSUES:

Rule 50(1) of the Supreme Court Rules, 1996, CI.16 directs the parties to file memorandum of issues to be tried by the Court if the triable issues are agreed by the parties; otherwise, the parties may each file their memorandum of issues for the consideration of the court under rule 50(3). The parties in the instant matter did not file a joint memorandum of issues. The Plaintiffs filed a number of issues on the 24th April 2026. Issue (d) and (e) summarize the other issues and affect the 1st, 2nd, 3rd and 4th Defendants alike. It states that:

"(d) Whether, upon a true and proper interpretation of Articles 17, 42 and 55(5) of the 1992 Constitution, the delegate-based mechanisms adopted under Article 13 and Article 7 of the Constitution of the 1st Defendant, Articles 41, 43 and 44 of the Constitution of the 2nd Defendant, and Article 52, 53, 77 and 96, of the Constitution of the 3rd Defendant for the selection of their presidential and parliamentary candidates, by conferring decisive voting power on defined classes of office holders and delegates while denying members in good standing any vote in those elections, operate as mechanisms of vote dilution inconsistent with the constitutional guarantee of political equality and the democratic principles required of the internal organisation of a political party.

(e) Whether, upon a true and proper interpretation of Articles 45 and 55 of the 1992 Constitution read with section 9(a) of the Political Parties Act, 2000 (Act 574), the 4th Defendant is under a continuing constitutional and statutory duty to vet, supervise and ensure that the constitutions, rules and internal electoral arrangements of the 1st, 2nd and 3rd Defendants conform to democratic principles, and whether the 4th Defendant has failed, refused or neglected properly to discharge that duty in respect of the impugned provisions".

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The 1st Defendant set out two key issues in its statement of case filed on the 12th May 2026. These are:

"(i). Whether or not Article 55(5) of the 1992 Constitution implies a right to vote by all members of a Political Party in the selection of its Leaders including their Parliamentary and Presidential Candidates.

(ii). Whether or not the Delegate-based method and procedure by which the 1st Defendant elects its leaders including its Presidential and Parliamentary Candidates is in line with the true and proper meaning of Article 55(5) of the 1992 Constitution or is inconsistent with the same".

For the 2nd Defendant, these questions were raised:

"(a)Whether it is within the province of this Honourable Court to intervene in the internal affairs of the 2nd Defendant in terms of the process and procedures used in electing/selecting its presidential and parliamentary candidates.

(b) Whether the Electoral College system established under Articles 43 and 44 of the Constitution of the 2nd Defendant for the election of its presidential and parliamentary candidates is compliant with Article 55(5) of the 1992 Constitution".

Notwithstanding the denial by the 3rd Defendant that its internal organisation is inconsistent with democratic principles as contended by the Plaintiffs, the 3rd Defendant states that it does not seek to contest the reliefs sought by the Plaintiffs.

For the 5th Defendant, it was stated as issues for deliberation (a) whether political parties are public (rather than private) interest organisations, and (b) whether every registered member in good standing of a political party is entitled to vote in the internal election of that party.

14. PLAINTIFFS' LEGAL ARGUMENTS:

It has been submitted on behalf of the Plaintiffs herein that the 1st to 3rd Defendants being political parties are the vehicles through which the citizens of Ghana organize

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political power, formulate public policy alternatives, and contest for the control of the State.

The plaintiffs argue that article 55(1) of the Constitution of Ghana guarantees the right to form political parties, while article 55(2) guarantees the right of every citizen of voting age to join a political party of his choice. According to the plaintiffs, the right guaranteed under article 55 of the Constitution to join political parties will be illusory if members, having joined a political party, could be excluded from meaningful involvement in its most important decisions. Plaintiffs argue that to the extent that political parties exercise power to shape the political will of the citizenry with respect to social and economic programmes and ultimately the development of the country, whoever controls the selection of candidates within a party to contest various positions and offices in the country influences in a large measure who may govern the country. For that reason, the internal organisation of a political party is not merely an affair that should be left in the hands of the political party alone but that it is a matter in which every member of the public should be interested. Internal party democracy, it was submitted, is part of the constitutional design of the Republic.

Counsel submits that when article 55(5) of the Constitution is read together with section 9(a) of the Political Parties Act, 2000, Act 574 it becomes clear that political parties may only be established and remain operational only if their internal structures meet minimum democratic standards. The Plaintiffs argue that where the internal rules of political parties fall materially short of democratic principles, those rules are unconstitutional and unenforceable.

While agreeing that the 1992 Constitution did not define the phrase 'internal organisation' and 'democratic principles' in article 55(5) thereof, the Plaintiffs submit that the phrase 'internal organisation' and 'democratic principles' should be interpreted by giving them their ordinary meaning and read purposively in the light of the structure and design of the Constitution as a whole. In the view of the Plaintiffs, ***'internal organisation'***

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naturally refers to the structures, procedures and the decision-making mechanisms through which political parties regulate their affairs. Counsel says that the ***'evident object of article 55(5) is to ensure that the exercise of power within political parties is itself democratic'***. In the words of counsel, 'internal organisation' must extend to all arrangements that determine how power is constituted and exercised within a party, including the selection of its officers, leaders and candidates for public office.

The Plaintiffs further submit that the phrase 'democratic principles' imports minimum constitutional standards of participatory and accountable governance rather than discretionary or symbolic practices. Counsel says that those who seek to govern the Republic are themselves chosen through democratic means. According to counsel, the constitutional provision would be rendered ineffectual if political parties were free to adopt exclusionary or oligarchic systems for selecting their leaders and candidates. Counsel asserts that the purpose of article 55(5) of the Constitution is "to subject political parties to constitutional discipline and to prevent the concentration of political power in undemocratic internal structures". According to the Plaintiffs, executive and legislative authority is ordinarily conferred through universal suffrage under article 63 and 93 and therefore there should be no departure from that model.

The Plaintiffs submit further that "in the contest of how political parties are organized internally, "democratic principles" required by article 55(5) are not abstract or discretionary, but derive their minimum content from both the Preamble and substantive provisions of the Constitution. The Preamble affirms, as foundational commitment of the Republic, that all powers of Government spring from the sovereign will of the people, that the State is founded on freedom, justice, probity and accountability, and that the principle of universal adult suffrage shall govern the conferment of political authority. These declarations entrench popular sovereignty, political equality, accountability of leadership, and universal participation as organizing norms of Ghana's constitutional democracy.

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The plaintiffs say that "broad and meaningful participation requires that members be given a genuine opportunity to take part directly in leadership choices rather than being confined to indirect or symbolic involvement. Political equality requires that no class of members enjoy privileged or superior voting power by reason only of office, status or appointment. Universal suffrage and representative legitimacy require that authority flow upward from the widest possible base members, and not downward from a narrow or self-selecting elite".

At paragraphs 102 and 103 of their statement of case, the Plaintiffs submitted that:

"102. Properly understood, therefore, democratic principles within the meaning of article 55(5) require at a minimum that members of a political party in good standing be afforded real, meaningful and substantially equal opportunities to participate in the election of the party's leadership and candidates for public office and that internal governance structures must not concentrate decisive electoral power in a limited privileged class to the exclusion or material disenfranchisement of the general membership. Any arrangement that materially restricts participation to a small group or accords disproportionate influence to office-holders and delegates, is inconsistent with these minimum constitutional standards.

103. The Plaintiffs say that the electoral college and delegate-based mechanisms adopted by the 1st to 3rd Defendants offend these requirements in both design and effect. By confirming voting rights to specified categories of executives, ministers, Members of Parliament, past officers, patrons or selected delegates, while excluding the overwhelming majority of ordinary members from participating directly in the choice of candidates, such systems substitute indirect and oligarchic selection for broad and equal participation. They create unequal classes of political influence within the party, insulate leadership from the direct control of the membership, and sever the chain of accountability which the Constitution seeks to preserve. In substance and effect, these

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arrangements deny members the equal democratic voice guaranteed by articles 1, 17, 35(6)(d), 42, 33(5) and 55(5) and are therefore inconsistent with the democratic principles mandated by the Constitution".

15. 1ST DEFENDANT'S LEGAL ARGUMENTS:

For the 1st Defendant, it was submitted that democratic principles are fundamental beliefs and norms that underpin the operation of a democratic system. The key principles being: rule of law, protection of human rights, separation of powers, free and fair elections and accountability of Government officials.

The 1st Defendant stated that it practices representative government in the organisation of its internal affairs. The 1st Defendant submitted that by the representative government, its members in good standing elect their representatives at the polling station level to make decisions on their behalf. According to the 1st Defendant, "its structure of allowing all the members in good standing to vote in the Polling Station Elections to Elect the Electoral Area Coordinators all the way to the top is consistent with article 55(5) of the 1992 Constitution and the structures reflect the democratic principles envisaged under article 55(5) of the 1992 Constitution and therefore consistent with the Constitution. The process of representation within the party demonstrably shows that no person is imposed in the electoral college of the 1st Defendant".

It was submitted by Counsel on behalf of the 1st Defendant that in interpreting article 55(5), this Court should adopt the purposive approach by taking into consideration not only the text of article 55(5) but also the spirit behind that provision which implies that the core values behind the provision must hold sway in arriving at the meaning of the provision.

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In the words of 1st Defendant, "a careful review of the mode of democratic principles as they exist in the 1st Defendant's constitution, makes it manifestly clear that it is consistent with article 55(5) of the 1992 Constitution. To say that if all good standing members do not vote amounts to a violation of article 55(5) is an overstretch. Article 55(5) does not equate voting rights of all good standing members as a yardstick to achieving or satisfying the democratic principles that must be adhered to by the 1st Defendant. As a matter of law, the legal regime by which the 1st Defendant political party is structured and organized are part of the democratic principles envisaged by article 55(5) of the 1992 Constitution".

16. 2ND DEFENDANT'S LEGAL ARGUMENT:

It was submitted on behalf of the 2nd Defendant that the Plaintiffs' action seeks to question the constitutionality of the Electoral College system established under articles 43 and 44 of the 2nd Defendant's constitution for the election of its Presidential and Parliamentary candidates for national elections. The 2nd Defendant says that "the case of the Plaintiffs is that the Electoral College System which limits voting to specified executives, office holders and delegates to the exclusion of other members in good standing of the 2nd Defendant contravenes article 55(5) of the 1992 Constitution which enjoins the internal organisation of a political party to conform to democratic principles".

The 2nd Defendant concedes to the Plaintiffs' claim when it stated at paragraphs 27 and 31 of its statement of case that:

"27. We entirely agree with the Plaintiffs that the electoral college system adopted by the 2nd Defendant in its Constitution which limits voting rights to a selected group of individuals to elect presidential and parliamentary candidates contravenes the letter and spirit of Article 55(5) of the 1992 Constitution which enjoins political parties to organize their internal affairs in a manner that conform to democratic principles. Universal adult suffrage and equal voting are cornerstones of Ghana's democratic principles. Therefore, in a situation where a political party such as the 2nd Defendant which is supposed to be

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the foundation of a democratic government conducts itself in a manner that seeks to undermine universal adult suffrage and equal voting, then such a conduct should be declared unconstitutional so that all members of the 2nd Defendant in good standing are allowed to participate in electing presidential and parliamentary candidates.

31. In the circumstances, we submit that Articles 43 and 44 of the Constitution of the 2nd Defendant for the election of its presidential and parliamentary candidates is not compliant with Article 55(5) of the 1992 Constitution of the 2nd Defendant, should not be nullified since it will have a seismic resultant effect not only on the 2nd Defendant but the governance of the country. The settled principle of law is that where an enactment provides for a condition to be complied with in mandatory language without stating the legal consequences of non-compliance with the mandatory condition, it is up to a court with jurisdiction to construe the enactment and determine the legal consequences that shall flow from such non-compliance. This was held in the case of R. v. Sonje and another [2005]4 All ER 321".

17. 3RD and 4TH DEFENDANTS' LEGAL ARGUMENT:

The 3rd Defendant concedes that it also practices the delegates system in the selection of its Presidential and Parliamentary candidates to contest national elections. However, the 3rd Defendant denies the Plaintiffs' assertion that its internal organisation is undemocratic and inconsistent with the provisions in article 55(5) of the 1992 Constitution. Notwithstanding, its denial, the 3rd Defendant says that "it does not seek to contest the Plaintiffs' interpretation of article 55(5) nor the reliefs sought in the Plaintiffs' writ.

It seems to me, with the greatest respect, that the 3rd Defendant does not seem to have any concrete position on the issues under consideration. The same can be said about the 4th Defendant, the Electoral Commission of Ghana.

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18. 5TH DEFENDANT'S LEGAL ARGUMENTS:

It has been submitted on behalf of the 5th Defendant that the proper construction of article 55(5) of the 1992 Constitution requires that the internal organisation of every political party with respect to the processes by which the Presidential and Parliamentary candidates are selected should conform with the democratic principles by which the Constitution itself confers on those offices. The 5th Defendant says that the selection of the Presidential and Parliamentary candidates requires a substantial membership selectorate, substantially equal voting power, secret ballot, fair and transparent administration, and the absence of material disenfranchisement of members in good standing. The 5th Defendant argues that the present arrangements by the 1st, 2nd and 3rd Defendants in the selection of their Presidential and Parliamentary candidates fall short of the constitutional requirement stated in article 55(5) of the 1992 Constitution. According to the 5th Defendant, the present practice by the 1st to the 3rd Defendant disenfranchises the general membership and does not satisfy the substantive content of article 55(5).

19. CONSIDERATION BY THE COURT:

[a]. I have given a deep reflection to the views expressed by the 2nd Defendant in their statement of case to the extent that the 2nd Defendant expresses dissatisfaction with the provisions of its own constitution with respect to its internal organisation by which its Presidential and Parliamentary candidates are selected by resort to the delegate system of governance. The 2nd Defendant says that the delegate system which it practices is not constitutional and so the Plaintiffs' reliefs should be granted by this court. I am very surprised at this argument because the constitution of the 2nd Defendant was formulated, reviewed, voted and accepted by the members of the 2nd Defendant party before it came into being. Therefore, if the 2nd Defendant is not satisfied with what its members have agreed and voted upon, why not go ahead and effect an amendment? In my opinion, the 2nd Defendant does not need a pronouncement by way of the interpretation of article 55(5) of the 1992 Constitution from the apex court on the constitutionality or otherwise of its internal

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governance structure and practice before it amends its constitution just as it did not require the Supreme Court to formulate and vote upon its constitution.

[b]. The main issue which this Court is called upon to determine in this matter is whether or not upon a true and proper interpretation of article 55(5) of the 1992 Constitution, the internal organisation of political parties requires that in the selection of their Presidential and Parliamentary candidates, the political parties in Ghana shall permit each and every member in good standing to vote directly. Consequently, whether or not the delegate system practiced by the political parties in Ghana in the selection of their Presidential and Parliamentary candidates does not conform to democratic principles as stated in article 55(5) of the 1992 Constitution and therefore contrary to and inconsistent with the Constitution.

Article 55(5) of the 1992 Constitution states that:

"(5) The internal organisation of a political party shall conform to democratic principles and its actions and purposes shall not contravene or be inconsistent with this Constitution or any other law".

[c]. In interpreting article 55(5) of the Constitution, it will be beneficial for this court to pay regard to the words of caution which was stated in Tuffuor vs Attorney General [1980] GLR 637, where the Court of Appeal then sitting as the Supreme Court stated that:

"The duty of the court in interpreting the provisions of article 127 (8) and (9) was to take the words as they stood and to give them their true construction having regard to the language of the provisions of the Constitution, always preferring the natural meaning of the words involved, but nonetheless giving the words their appropriate construction according to the context".

At pages 647 to 648 of the report, the court further admonished that:

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"The Constitution has its letter of the law. Equally, the Constitution has its spirit. ... A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do. We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time".

"And so, a construction should be avoided which leads to absurdity. And when a particular interpretation leads to two, shall we say "inconsistent" results, the spirit of the Constitution would demand that the more reasonable of the two should be adhered to. We must have recourse to the Constitution as a whole".

As to what constitutes the spirit of the Constitution, it was held in Asare vs Attorney General [2003-2004] SCGLR 823 at page 836, that "the 'spirit' of the constitution is another way of describing the unspoken core underlying values and principles of the Constitution". Thus, in the process of giving meaning to any provision of the Constitution, a judge and the court shall have regard not only to the written text expressed in the statute but attention must also be paid to the unwritten text of the statute. This unwritten text shall be deciphered from the written text of the Constitution or the statute which is the subject of the interpretation. The unwritten text is expressed in the core values of the society for which the law was made; it is also expressed in the purpose or the reason why the statute was enacted. Questions like why the provision was enacted; the mischief which was to be cured; the aspirations of the society for which reason the people enacted the law to serve as a guide and many more are all very important considerations if one were to arrive at the true meaning of a provision.

As pointed out in the Asare case at page 830 of the report, "in interpreting the relevant text, we need to remind ourselves that contextual analysis is crucial to the interpretation of the legal instruments. An important part of this contextual analysis is the determination of the purpose of the provision under construction. Modern judicial

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technique in the English courts, for instance, has tended away from simple literalism towards a purposive approach to interpretation". The purposive approach has been described as "a flexible approach which enables the judge to determine the meaning of a provision, taking into account the actual text of the provision and the broader legislative policy underpinnings and purpose of the text. Judicial interpretation should never be mechanical."

The purposive approach to interpretation thus, allows the judge to look not only at the text of the provision to be interpreted, but also to consider the reasons for the enactment of the provision in question. It combines, in an extensive detail, the literal meaning of the provision as well as the reasons for the enactment of the provision. The purposive approach allows a court to adopt the literal meaning of the provision under construction if that meaning accords with the legislative intent. On the other hand, the judge is enabled to adopt a strained meaning if the literal meaning does not accord with the legislative intent.

"Statutory construction requires us to 'choose from among the range of possible meanings the meaning which Parliament should be taken to have intended." Having regard to purpose assists this task in two ways. First, it recognises that the "task of construing ... is not accomplished by simply taking the text of the statute in one hand and a dictionary in the other". Like all legal instruments, the statute is created to communicate an object or design. Part of understanding written text is to have regard to that object. Regard to purpose, like the notion of context, therefore accords with ordinary conventions about understanding language. It helps guide the preferred meaning to be given to the words being construed... But the purpose of legislation must always be balanced against other factors, and the extent to which purpose guides the choice of preferred meaning may be dependent on that balancing. If there are two plausible constructions of the text available and one is consistent with the statutory purpose and one is not, then the purpose will provide a strong reason for the former to be chosen. It is the duty of the court to avoid, so far as the text of the Act permits, a

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construction inconsistent with the purpose of a provision and instead, look to see whether any other meaning produces a more reasonable result". See Jeffrey Barnes et al. Modern Statutory Interpretation (Cambridge University Press) page 102.

The purpose of a provision is to be found by the 'ordinary processes of construction'. See Liberty Works Inc. vs Commonwealth (2021) 85 ALJR 490 at 532. In Lacey vs Attorney General (Queensland) (2011) 242 CLR 573, the High Court of Australia stated that the statutory purpose "may appear from an express statement in the relevant statute, by inference from its terms and by appropriate reference to extrinsic materials. The purpose of a statute is not something that exists outside the statute. It resides in its text and structure, albeit it may be identified by reference to common law and statutory rules of construction".

[d]. Article 55(5) of the Constitution, 1992, bears two composite phrases: The "internal organisation of a political party" and its "conformity with democratic principles". It is these two phrases that control the meaning to be assigned to the provision in the article. Apart from the requirement of the provision in the article that the internal organisation of a political party conforms to democratic principles, the article also demands that the **actions** and **purposes** of political parties "shall not contravene or be inconsistent with the Constitution or any other law". It follows therefore that the quest for the meaning of the provision in article 55(5) of the Constitution cannot be confined to only the demand for the internal organisation of a political party to conform to democratic principles but must in addition be expanded to cover the broad actions and purposes of a political party, the 1st, 2nd and 3rd Defendants herein and their conformity to the provisions of the Constitution and other relevant laws of the land.

[e]. The sum total of the submission by Counsel for the Plaintiffs is that the meaning that should be ascribed to the provision in article 55(5) is that in their internal decision making process in selecting their Presidential and Parliamentary candidates, all the members of a political party in good standing be afforded real, meaningful and

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substantially equal opportunities to directly participate in the election of the parties' leadership, particularly, the Presidential and Parliamentary candidates and that internal governance structures must not concentrate decisive electoral power in a limited or privileged class of people to the exclusion or material disenfranchisement of the general membership. According to Counsel, any arrangement that falls short of his proposal negates the democratic principles that must exist in the internal organisation of political parties and hence inconsistent with the provisions in article 55(5) of the Constitution and must therefore be declared as such by this Court. Specifically, the Plaintiffs say that the Electoral College system and the Delegate-based mechanisms by which the 1st to the 3rd Defendants select their Parliamentary and Presidential candidates are not participatory enough and that in substance and effect, these systems deny members the equal democratic voice guaranteed by articles 1, 17, 35(6)(d), 42, 33(5) and 55(5).

[f]. Clearly, the argument by the Plaintiffs and their lawyer, in effect, equates the existence of "democratic principles" in the internal affairs and organisation of political parties as demanded by the provision in article 55(5) to the existence and presence of the right to participate and vote in the selection of the leadership of political parties, especially, the Presidential and Parliamentary candidates, by all the members in good standing of the political party. The Plaintiffs' proposition, in effect, regards any other system of internal governance by political parties other than direct participation as undemocratic, unconstitutional and inconsistent with democratic principles. Democracy, is therefore, the existence of direct voting opportunity to all members in good standing according to the Plaintiffs.

Indeed, the delegate system of choosing party leadership is recognised and accepted by courts even outside our jurisdiction. Thus, in Thuranira & 4 others v Attorney General & 2 others; Registrar of Political Parties & 3 others (Interested Parties) (Petition E043, E057 & E109 of 2022) [2022] KEHC 482 (KLR) (Constitutional and Human Rights) (20 April 2022), the Plaintiffs therein sought a declaration that the delegate system introduced by the Political Parties (Amendment), Act 2022 was unconstitutional as it curtailed the

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enjoyment of citizens' political rights under article 38 of the Kenyan Constitution. The court held that "The indirect nomination under section 38A(b) of the Political Parties Act was not unconstitutional for reasons that each political party had to have its own delegate system entrenched in its own constitution as required in Schedule II of the Political Parties Act. It was expected that it was members of political parties who would select the delegates. In that way they would have exercised their political rights under article 38 of the Constitution".

[g]. One of the cardinal principles of interpretation of a Constitution or a statute is to ensure that the various parts of the Constitution or statute fit together as one document and promote harmony within the various provisions of the statute. Thus, in National Media Commission vs. Attorney-General [2000] SCGLR 1, this Court stated in clear language that "in interpreting the Constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form rational, internally consistent frame work. And because the framework has a purpose, the parts are also to work dynamically, each working accomplishing the intended goal."

It must be pointed out that the delegate system of governance practiced by the 1st to the 3rd Defendants in the selection of their Presidential and Parliamentary candidates is not unknown to the Constitution of Ghana. The democracy which is practiced in this country is ultimately about representative government by which persons described as Parliamentarians are elected to represent various constituencies into which the country has been divided in order to deliberate, formulate and sometimes monitor the implementations of various policies on behalf of the constituencies which they represent and ultimately the country as a whole to ensure development and a better life for Ghanaians. For that reason, article 47(1) of the Constitution states that:

"Ghana shall be divided into as many constituencies for the purpose of election of members of Parliament as the Electoral Commission may prescribe, and each constituency shall be represented by one member of Parliament".

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Can it therefore be correctly argued that because policies are formulated or decisions are made by Members of Parliament who make up an infinitesimal percentage as opposed to the totality of the population, the system of governance being practiced is undemocratic? In my opinion, the very idea of electing persons to Parliament as the people's representative abridges the right of the population to vote directly on matters or issues of policy that affect them and yet this system is almost seen as sacrosanct and adorable. For the reason that it is not possible for the whole population to converge at Parliament House to vote directly on national policies and programs, the parliamentary system of decision making is accepted for whatever it is worth.

My lords, another example of representative governance, by which persons are appointed by the President and also elected by an electoral college, is found in article 89(2) of the 1992 Constitution. This article states that:

> "(2) The Council of State shall consist of
>
> (a) the following persons appointed by the President in consultation with Parliament:
>
> (i) one person who has previously held the office of Chief Justice,
>
> (ii) one person who has previously held the office of Chief of Defence Staff of the Armed Forces of Ghana,
>
> (iii) one person who has previously held the office of Inspector-General of Police,
>
> (b) the President of the National House of Chiefs,
>
> (c) one representative from each region of Ghana elected, in accordance with Regulations made by the Electoral Commission under article 51 of this Constitution, by an electoral college comprising two representatives from each of the districts in the region nominated by the District Assemblies in the region, and
>
> (d) eleven other members appointed by the President".

My lords, if the argument is made and accepted that the delegate system of selecting people to act in various offices is undemocratic and therefore unconstitutional, then, as a nation, we must amend the Constitution and repeal the provisions of article 89(2) among other provisions of the Constitution. Indeed, the fact that the Constitution itself recognises the delegate system as a means by which people may be elected or appointed

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to discharge varying constitutional duties, is an acknowledgement that the delegate system of governance is not unconstitutional as the Plaintiffs, the 2nd and the 5th Defendants would have us believe.

Further to the above, our constitutional arrangement for the election of the Vice President is such that, the Vice President is not directly voted upon at the general election before he becomes elected as such. Article 60(2)(4) speaks to this. It states that:

> "(2) A candidate for the office of Vice-President shall be designated by the candidate for the office of President before the election of the President.
>
> (4) A candidate shall be deemed to be duly elected as Vice-President if the candidate who designated him as candidate for election to the office of Vice-President has been duly elected as President in accordance with the provisions of article 63 of this Constitution".

The argument proffered by the Plaintiffs means, in relation to the Vice President, that because Ghanaians do not directly vote to elect the Vice President, the election of the Vice President by virtue of the election of the Presidential candidate is also unconstitutional. This argument, in my respectful view, cannot be correct. The Constitution itself recognises the delegate system of electing people to serve in public offices and that cannot be described as unconstitutional. An act can only be correctly described as unconstitutional only where it infringes or runs contrary to a positive provision of the Constitution. An act is not unconstitutional just because a person is or a group of people are not satisfied with it or because a person or a group of people think that it could have been done in some other way.

The practice of democracy implies a system by which persons may be elected to represent others to take decisions on behalf of the electorate. But the term "democracy" is accommodative of a wider meaning than just voting or elections. This fact is recognised by the eminent jurist Aharon Barak in his book: The Judge in a Democracy; where, at page 23, he stated that:

"Democracy is a rich and complex normative concept. It rests on two bases. The first is the sovereignty of the people. This sovereignty is exercised in free elections, held on a regular basis, in which the people choose their representatives, who in turn represent

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their views. This aspect of democracy is manifested in majority rule and in the centrality of the legislative body through which the people's representatives act.

This is a formal aspect of democracy. It is of central importance, since without it the regime is not democratic. Of course, different democratic regimes vary regarding the level of representativeness of the elected officials and the connection between them and the people. It is not uncommon to find a democratic regime in which the representatives in the legislative body represent the minority of the populace.

The second aspect of democracy is reflected in the rule of values (other than the value of majority rule) that characterize democracy. The most important of these values are separation of powers, the rule of law, judicial independence, human rights, and basic principles that reflect yet other values (such as morality and justice), social objectives (such as the public peace and security), and appropriate ways of behavior (reasonableness, good faith). This aspect of democracy is the rule of democratic values. This is a substantive aspect of democracy. It too is of central importance. Without it, a regime is not democratic.

Both aspects, the formal and the substantive, are necessary for democracy. They are "nuclear characteristics." And "are based ... upon the recognition of the sovereignty of the people manifested in free and egalitarian elections; recognition of the nucleus of human rights, among them dignity and equality, the existence of separation of powers, the rule of law, and an independent judiciary. A regime in which the citizens are not sovereign and the legislative and executive branches do not represent it is not a democratic regime. A regime devoid of the separation of powers, the rule of law, the independence of judges, human rights, and fundamental values reflecting ethical values, social objectives, and appropriate ways of behavior is not a democratic regime. Indeed, a regime in which the majority denies the minority human rights is not a democratic regime.

Democracy's world is rich and multifaceted. Democracy should not be viewed from a one-dimensional vantage point. Democracy is multidimensional. It is based both on the centrality of laws and on democratic values, and, at their center, human rights. Indeed,

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democracy is based on every individual's enjoyment of right, of which even the majority cannot deny him simply because the power of the majority is in its hands.

Democracy is not only majority rule. Democracy is also the rule of basic values and human rights as they have taken form in the constitution. Democracy is a delicate balance between majority rule and society's basic values, which rule the majority. Indeed, democracy is not only "formal" democracy (which is concerned with the election process by which the majority rules). Democracy is also "substantive" democracy (which is concerned with defense of the rights of a person as an individual... When the majority denies the minority human rights, it harms democracy...take majority rule away from constitutional democracy, and you have struck at its very essence. Take the rule of basic values away from constitutional democracy, and you have struck at its very existence.

Democracy, then, is based on the simultaneous existence of both the rule of the majority and the rule of values that characterize democracy. This dual nature should not lead to the assumption that any flaw in one of these aspects denies the regime its democratic character. We are dealing with a spectrum of situations that runs from the existence of the mere heart of democracy – the minimal existence of the different aspects that ensure the existence of a democratic regime – at one end to the maximal existence of those aspects, at the other. Therefore, there are "better" and "stronger" democracies and "worse" and "weaker" democracies. However, there is a certain minimum that must be observed, without which a regime is no longer democratic. A delicate balance must be maintained, therefore, between the two aspects of democracy, in a way that protects the nucleus of each one of its aspects. This balance will be based inherently on the restrictions placed both on majority rule and on the rule of fundamental values of democracy. Furthermore, it is not uncommon to find conflict between the different substantive values of democracy. This situation is likely to exist also within the framework of a single characteristic of democracy, internally. Thus, for example, there are internal conflicts between different human rights. The solution to all these conflicts is the use of the tool of balancing (horizontal and vertical)".

The phrase "democratic principles" as used in article 55(5) of the Constitution bears a wider and broader meaning than just the holding of elections by political parties. As

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pointed out, it embraces the minimum ideals and principles which one expects to be present in democratic governance. Such ideals and principles include the presence of an independent judicial system, the rule of law, separation of powers, periodic organisation of a free and fair elections which permit every adult of full capacity and soundness of mind to take part in the election of the leadership of the nation, free speech and freedom of the media and many other indicia of democracy which are too numerous to be individually enumerated in an opinion such as this. The meaning of the phrase "democratic principles" as used in article 55(5) of the Constitution cannot therefore be chained to the existence or presence of the opportunity for registered members of a political party to vote directly in the selection of the party's Presidential and Parliamentary candidates as has been urged upon the Court by the Plaintiffs in this matter.

[h]. In filing their statement of case as required by rule 48 of the Supreme Court Rules, the 1st Defendant exhibited a copy of its Constitution and Guidelines and Timelines for 2026. This constitution of the 1st Defendant is a contract which spells out rules and regulations which guide the administration and the internal affairs and organisation of the 1st Defendant. It was voted upon and accepted by the members of the 1st Defendant party to regulate their relationship. Article 13 of the constitution of the 1st Defendant contains detailed and elaborate provisions on the qualification and election of the Presidential candidate of the 1st Defendant. It deals with who qualifies to vote in the selection of the Presidential candidate. It regulates the voting process itself and there are also provisions on the qualification and selection of the Vice-Presidential candidate. Article 12 of the 1st Defendant's constitution also contains detailed provisions on the selection of the Parliamentary candidates for the 1st Defendant party. It must be placed on record that, contrary to the arguments of the Plaintiffs, most of the members of the Electoral College who are charged with the duty to vote and select both the Presidential and Parliamentary candidates were themselves voted upon by the members of the 1st Defendant's party to occupy the positions which gave them the right under the constitution of the 1st Defendant to be members of the Electoral College. At any rate, it must not be forgotten that the very constitution of the 1st Defendant was voted and agreed upon by the very members of the party as the instrument which shall regulate

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the internal governance of the party and therefore no member of the party can legally say that the provisions of the party's constitution disallow him from taking part in the selection of the Presidential and Parliamentary candidates of the party. A fortiori, one need not vote directly to select the Presidential or Parliamentary candidate of the party before he becomes bound by the decision taken by the party in consonance with the very provisions of the party's constitution. Representative governance is also one of the cardinal attributes of democratic principles.

[i]. Notwithstanding their alliance with the Plaintiffs herein, the 2nd Defendant concedes that in the internal governance of its party, it employs the Electoral College system in the selection of its Presidential and Parliamentary candidates. The 2nd Defendant has a constitution which governs its internal party organisation. The constitution of the 2nd Defendant lays down the procedures for the selection of the party's leadership, including rules that govern the selection of the leadership of the party. This constitution was voted and agreed upon by the members of the 2nd Defendant party and therefore it is binding on the members. As already pointed out, if the members of the 2nd Defendant party do not agree with the provisions and arrangements in their constitution with respect to the selection of Presidential and Parliamentary candidates of the party, they do not require any pronouncement from this Court before they proceed to effect changes which suit their course. The 2nd Defendant does not need a declaration from this Court as to the constitutionality or otherwise of the delegate-based system in the selection of their Presidential and Parliamentary candidates before they embark upon arrangements to effect changes in a constitution which its members voted upon and accepted to govern their internal party organisation. The 2nd Defendant referred to the case of Frank Oduro vs Graphic Communication Group Ltd. (Unreported) Civil Appeal No. J4/25/2018 dated the 12th December 2018 where Benin JSC stated that:

"In the case of Republic v. High Court, General Jurisdiction, Accra; ex parte Zanetor Rawlings, (Ashittey & National Democratic Congress Interested Parties) (2015-2016) SCGLR 53, the argument was made that under the constitution of the NDC the applicant was disqualified from contesting the parliamentary primaries on the party's ticket because she was not a registered voter in the records of the Electoral Commission and in terms

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of the NDC constitution. When the matter landed in the apex court, the court held that a person was only disqualified if he/she was not qualified in terms of article 94 of the Constitution. This decision effectively meant that the NDC could not draw up constitutional provisions that took out relevant provisions of the 1992 Constitution. Consequently, the High Court was directed to determine the party's constitutional provisions on primaries to elect parliamentary candidates in the light of the interpretation given to article 94 of the Constitution, in order to bring the party constitution to be in harmony with what the national Constitution says".

The issue before us in the instant matter is not whether the political parties, 1st to 3rd Defendants herein, have excluded relevant constitutional provisions from their respective constitutions which govern their internal affairs and organisations. The issue is whether or not the delegate system which all the political parties herein practice in the selection of their Presidential and Parliamentary candidates is inconsistent with any provision of the 1992 Constitution of Ghana and therefore null and void. In my opinion, the very text of the provisions in article 55(5) of the 1992 Constitution leaves matters with respect to the internal organisation of political parties such as the 1st to 3rd Defendants herein in the hands of the political parties themselves with an injunction that they conform to democratic principles and that their actions and purposes should not be in contravention or be inconsistent with the Constitution or any other law. It is the duty of the Plaintiffs herein and consequently, the 2nd, and 5th Defendants who align with the position of the Plaintiffs that the delegate system practiced by the 1st to 3rd Defendants in this matter contravenes provisions of the 1992 Constitution and therefore null and void to prove that allegation.

[j]. As for the 3rd Defendant herein, the least said about its stand in this matter the better for it. This is because the 3rd Defendant does not seem to have any concrete position. For, in one breath it disputes, in its statement of case, that the delegate system it practices in the selection of its Presidential and Parliamentary candidates is unconstitutional and in the next intake of air it says that it aligns with the views and position taken by the Plaintiffs herein.

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[k]. If it is alleged that with all the internal arrangements and rules of governance stipulated in the constitutions of the 1st to 3rd Defendants herein, democratic principles are not observed as required by article 55(5) of the 1992 Constitution, then what may be said of persons who independently and without any system of delegated election, offer themselves as Presidential and Parliamentary candidates to contest national elections? Do such persons conform to any system of election prior to offering themselves as such candidates? And yet can it be argued, lawfully, that they infringe any constitutional provision by offering themselves? My answer is No. And this is so because, the supreme law of the land, the 1992 Constitution, allows it. Judicial notice may be taken of the fact that some of these independent candidates have won at least Parliamentary elections and have served or are serving in Parliament as such.

The import of the above is that "democratic principles" is not defined only by reference to direct participation in the election of Presidential and Parliamentary candidates but also by how well the law is allowed to influence the process. The rule of law is thus key to the concept of "democratic principles". It must not be forgotten that the 1992 Constitution was voted upon and accepted by majority of Ghanaians and this is reflected in the preamble to the Constitution.

It must also be stated that the fact that an individual of voting age and capacity was not given the opportunity to directly vote in the selection of a Presidential or Parliamentary candidate does not mean that that person has been denied his constitutional right to vote under article 42 of the Constitution which states that "Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda". The elections under reference in article 42 of the 1992 Constitution are public elections not elections organized by political parties or other organisation or institution to select their party leadership whether Presidential or Parliamentary or any other leader in that political party, organisation or institution. It must be noted however that after various persons have been put forward or have put themselves forward as candidates for Presidential and Parliamentary positions in the country, article 42 then steps in to give the right to vote to every adult of voting capacity to decide eventually who should be President and who

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should be a Parliamentarian for any particular constituency in the country. The implication is that no qualified person is denied the right to vote for a President and appropriately who has the right to vote for a Parliamentarian.

[l]. My lords, I need to point out that even the criteria suggested by the Plaintiffs herein that all members of the political parties in good standing should be allowed to vote to elect the Presidential and Parliamentary candidates of these parties contains, within it, a disqualifying factor embodied in the expression "in good standing". "Good standing" may be defined differently by the various political parties. Its effect is that it disqualifies a person who is regarded as not having met the criteria of good standing from holding any office or from participating in any elections of the party. For instance, article 5(1)(g) of the 1st Defendant constitution states that "a member shall be disqualified from holding any office or contesting any election in the party if such a member is not in good standing" and article 5(2) also provides that "a member shall be in good standing where the member has paid in full or is up to date on all dues, contributions or levies, and has discharged all duties as provided by this constitution". Thus, clearly, the inability of a member to pay his party dues or contributions or levies may disqualify such a member from participating in an election to select the Presidential and or the Parliamentary candidate of the party. What this implies is that even the suggestion by the Plaintiffs herein is problematic and does not ensure that every registered member of a political party can participate in the selection of the party's leadership.

[m]. The business of electing its leaders and the Presidential and Parliamentary candidates is a business left entirely within the province of political party organisation under article 55(5) of the 1992 Constitution and the Political Party Act, 2000, Act 574 with an injunction that such business must be exercised and governed by democratic principles. The courts will generally not intervene in the internal affairs of a political party unless it is shown that the internal management or organisation contravenes the law, especially the national constitution.

The reliefs sought by the Plaintiffs seem to portray that there is a single model of democratic principles with respect to the internal management of political parties and especially relative to the selection of the party leadership which is that every member of

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the party shall have the opportunity to vote to select the Presidential and Parliamentary candidates. Representative governance, as already stated, is also recognised by the 1992 Constitution, that is why the country is divided into constituencies and periodic elections organized by the 4th Defendant to elect members of Parliament to represent the people of Ghana in Parliament. In Ahumah-Ocansey vs Electoral Commission; Centre for Human Rights & Civil Liberties (CHURCIL) vs Attorney General & Electoral Commission (Consolidated) [2010] SCGLR 575, this court gave recognition to representative governance when it stated among others that "true democracy, with its hall mark of all-inclusiveness, recognises certain key fundamental values and principles. Without these there can be no functional democracy. A core value of any democratic system is the concept of sovereignty of the people, and as expressed through the right to choose representatives, through whom the sovereign will of the people, shall be exercised. This choice can only be achieved through the popular participation in public elections".

[n]. The Plaintiffs have also submitted that the 1st to 3rd Defendants are the vehicles through which the citizens of Ghana organize political power, formulate public policy alternatives and contest for control of the State. I accept that political parties are important and that they contribute to the realisation of these indexes which the Plaintiffs have outlined in their submission. However, the achievement of these virtues does not rest entirely in the existence of political parties in a country. The history of Ghana even shows that one does not require political parties to enable policies to be formulated and implemented. Political parties serve as one of the means by which policies may be formulated and implemented for the public good but their existence is not a sine qua non to the functioning of nationhood.

[o]. Under article 55(5) of the Constitution, not only is the internal governance of political parties expected to conform to democratic principles but also the actions and purposes of political parties are expected to function within the limits of the Constitution and shall not contravene or be inconsistent with any provision of the Constitution. Some of these actions and purposes can be found in the 1992 Constitution itself. Article 55(4) requires every political party to have a national character devoid of ethnicity, religious bias, regional or sectional divisions. Political parties are prohibited from compelling citizens to

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be members of the party under section 2 of the Political Party Act, Act 574. Political parties are prohibited from having symbols that portray ethnicity, sectionalism etc. Thus, the demand for the existence and observance of democratic principles in the internal organisation of political parties go beyond voting to select their Presidential and Parliamentary candidates.

[p]. My lords, the issue before this Court is not about the nobility of the claims which the Plaintiffs have put forward. The Plaintiffs' claims can be achieved by political parties without the need for the invocation of the original jurisdiction of this Court under article 2(1) and 130(1) of the 1992 Constitution. The issue before this Court is whether or not upon a true and proper interpretation of article 55(5) of the 1992 Constitution, the 1st, 2nd, 3rd Defendants and other political parties in this country in the selection of their Presidential and Parliamentary candidates are enjoined to allow each and every registered member of the party to participate in the selection of these candidates. The issue is also whether the delegate system practiced by these political parties in the selection of their Presidential and Parliamentary candidates contravenes and so is inconsistent with article 55(5) of the 1992 Constitution.

[20]. CONCLUSION:

In my opinion, upon a true and proper interpretation, the provisions in article 55(5) of the 1992 Constitution means that in their internal management and internal organisation political parties shall observe democratic principles such as the rule of law, separation of powers in internal dispute resolution, grant equal opportunity to their members to vote on the selection of the leadership of the party including the Presidential and Parliamentary candidates within the limits of their constitutions and regulations. Political parties are enjoined to grant the right to be heard before a member is condemned on any allegation made against that member. Further, in the management of their internal affairs, political parties shall observe the rules and laws put in place to ensure that they are of national character. Political parties shall not, directly or indirectly, promote ethnicity, religious bias, and any other activity that breaches the laws of the land including the 1992 Constitution of Ghana. Article 55(5) does not mandatorily require political parties to allow every

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member of the party to vote directly to elect the leadership of the party including their Presidential and Parliamentary candidates. Article 55(5) of the 1992 Constitution of Ghana does not render unconstitutional the delegate system of electing Presidential and Parliamentary candidates of the political parties.

[21]. I wish to firmly state that there is no claim before this Court that the delegate system being practiced by the political parties in this country breeds corruption and for that reason the delegate system should be jettisoned. If that were the Plaintiffs' claim, this Court would have no jurisdiction to entertain same. A summary of the Plaintiffs' claim is that the delegate system by which the political parties elect their Presidential and Parliamentary candidates is unconstitutional. That is the issue before this Court for adjudication.

[22]. I do not rule that the delegate system currently being practiced by our political parties is the best. Neither do I rule that a system where every member of a political party has an opportunity to vote for the selection of the Presidential and Parliamentary candidate of that party is better. I rule that the Plaintiffs have failed to show that the delegate system practiced by the 1st to 3rd Defendants by which they elect their Presidential and Parliamentary candidates is inconsistent with or contravenes any provision of the 1992 Constitution including article 55(5) of the Constitution. Let the writ together with the reliefs sought by the Plaintiffs thereon stand dismissed.

(SGD.) **S. K. A. ASIEDU**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E. Y. GAEWU**
(JUSTICE OF THE SUPREME COURT)

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