



**IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE, ACT 1993 (ACT 456)**

BETWEEN:

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| 1. THE NATIONAL YOUTH LEAGUE OF
THE CONVENTION PEOPLES PARTY | COMPLAINANTS |
| 2. NANA ADOFO OFORI | |
| 3. THE PROGRESSIVE PEOPLE'S PARTY | |

AND

HIS EXCELLENCY, JOHN DRAMANI MAHAMA, PRESIDENT OF THE REPUBLIC OF GHANA	RESPONDENT
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DECISION

1.0. INTRODUCTION

The Commission on Human Rights and Administrative Justice (the Commission) received three separate complaints from two political organisations and a private citizen namely: the National Youth League of the Convention People's Party (CPP), dated 21st June 2016; the Progressive People's Party (PPP) dated 23rd June 2016 and Nana Adofo Ofori, dated 21st June 2016; (hereinafter referred to as "the Complainants").

For purposes of this investigation, the three complaints/allegations have been consolidated, as all three, in essence, rely on similar sets of facts, and allege contravention of the provision on conflict of interest under Chapter 24 of the 1992 Constitution (the Constitution) (in particular Article 284) against the President of the Republic of Ghana, His Excellency, John Dramani Mahama (the Respondent). All the three Complainants allege that the Respondent, in accepting a Ford Expedition vehicle valued at \$100,000 as a gift/donation from Mr. Djibril Kanazoe, a Burkinabe businessman who does business with the Government of Ghana, placed himself in a conflict of interest situation contrary to Article 284 of the Constitution.

In accordance with Regulation 3 of the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C.I. 67), the Commission assigned Investigators to conduct Preliminary Investigations into the complaints. This is the decision of the Commission resulting from the findings of the Preliminary Investigations.

2.0 BACKGROUND

On or about 15 June 2016, Myjoyonline.com of the Multimedia Group Ltd, advertised and subsequently published a story titled "Burkinabe contractor offers controversial gift to Prez Mahama" which it said, was the result of an investigation by one of its journalists, Manasseh Azure Awuni.

In that story, it was alleged that the Respondent, among other things, received a gift of a Ford Expedition vehicle from one Djibril Freres Kanazoe who has been a friend. As evidence of their friendship, the report indicated that the Respondent, then Vice President of the Republic of Ghana, sent a delegation, which included Hon. Mark Woyongo, then Upper East Regional Minister, to Burkina Faso to mourn with his friend, and made a donation at the funeral, when Mr. Kanazoe's father died in October 2011.

The publication by Joy News also alleged that Manasseh Azure Awuni was in Ouagadougou, the capital city of Burkina Faso "...to investigate allegations that Mr. Djibril Freres Kananzoe used undue influence to get contracts and paid bribes to some Ghanaian officials". The contracts listed in the report relate to the following: **Ghana Embassy Perimeter Fence Wall worth \$650,000; the Dodo Pepeso-Nkwanta Road worth €25.9million, and a 28km road project worth GHc82 million.**

Concerning the \$650,000 Ghana Embassy Fence Wall Contract, the report alleged that the procurement process was breached in order to favour Mr. Djibril Freres Kanazoe (claiming that the contract sum exceeded the threshold of the price quotation method used). The report stated that the cost of the fence wall was questioned by Public Accounts Committee of Parliament (PAC), when it discovered that an amount of \$656,246.48 had been spent on the construction of a fence wall, and ordered the Bank of Ghana to investigate what it termed "outrageous" cost.

Regarding the €25.9 million Dodo Pepeso-Nkwanta Road contract, the report alleged that Mr. Djibril Freres Kananzoe was favoured in the award of the contract.

On the 28km Road project valued at GHc82 million, the report alleged that the Minister for Roads and Highways had said that his Ministry was in the process of awarding the contract to Oumarou Kanazoe Construction Limited through sole sourcing and that *“The sector Minister, Inusah Fuseini, says the Burkinabe contractor is being handpicked for the 28-kilometre road project because of the quality of the road and the fact that he is near the project site. He said moving from Burkina Faso to the Hamile area will be easy for the contractor whose tools and equipment are in Burkina Faso. Another reason Inusah Fuseini says Kanazoe is being considered for the project is the fact that he did Burkina Faso-Hamile stretch of the road and that he was familiar with the terrain”*.

Turning again to the “gift”, Joy News reported that *“There is evidence that the contractor gave a brand new Ford Expedition out (2010 model) as a “gift” to President John Mahama in 2012, the year he won the two contracts ... He says the Ford is not a bribe. A Laissez-Passer dated October 29, 2012, and signed by the Head of Chancery at the Ghana Embassy in Burkina Faso, Maxwell Nyarko-Lartey, for the Head of Mission and addressed to the Divisional Commander of the Ghana Revenue Authority at the Paga Border, show that the Ford had entered Ghana on 29 October 2012”*.

The report continued that Ghana’s Ambassador to Burkina Faso at the time, Chief Dauda Mandiaya Bawumiah, accompanied the vehicle from Ouagadougou to Bolgatanga and handed it over to then Upper East Regional Minister, Mr. Mark Owen Woyongo, to be sent to President Mahama in Accra, with Chief Bawumia confirming the gift in the following words, “I believe he would have handed it over to the President,” he said.

The report further had it that the Ford Expedition vehicle entered Ghana on October 29th, 2012, with one Quedraogo Cheik Mohammed as the

importer. That the vehicle was declared as a “used” vehicle and cleared at Tema harbour on 13th February, 2013, by Vision Logistics Limited, a private clearing agent, with Customs Declaration Number of the vehicle given as 420130771843/0.

According to Joy News, it was not clear why the vehicle was declared as a used vehicle. However, the donor of the gift as well as Ghana’s ambassador who facilitated the transportation of the Ford Expedition to Ghana, said the vehicle was a brand new one. A source at the Customs Division of the Ghana Revenue Authority (GRA) said sometimes goods are under-declared in order to reduce the value of import and the duty to be paid.

Furthermore, Joy News reported that a duty of GHc23, 646.41 was paid on the vehicle; all other details of the vehicle, including receipt numbers, are captured except the registration details at the Driver and Vehicle Licensing Authority (DVLA). The person in whose name the vehicle was registered as well as the vehicle’s registration number are not found in the system of the DVLA when Joy News made its checks. According to highly placed sources within the DVLA and the Customs Division of the Ghana Revenue Authorities, the absence of details meant that the vehicle had either not been registered, or that the registration details were deliberately deleted from the records of the DVLA...".

The rest of Joy News' report and publication contained views and opinions of some individuals on issues of gifts and conflict of interest, among others. The publication also contained the following documents, which were said to have been obtained in the course of the investigation by Manasseh Azure Awuni:

- a copy of a Laisser-Passer, dated 29 October 2012 (with myjoyonline.com inscribed on it) said to be from the Head of Chancery, Ghana Embassy in Burkina Faso, addressed to the Divisional Commander, Ghana Revenue Authority, Paga Border, Upper East Region, Ghana
- A copy of a letter (with myjoyonline.com inscribed on it) supposed to be from the Chief of Staff to the Minister of Finance, dated 12 May 2015.

Several other media houses reproduced the Joy News publication under various headlines such as “Mahama took car ‘gift’ from Burkinabe contractor”, dated 15 June 2016; “PPP to petition CHRAJ over Mahama Ford gift”, attributed to the Daily Graphic, 21 June 2016; “Speak up; NPP tells Mahama on Ford Expedition car gift”, attributed to **graphic.com.gh**, 22 June 2016; “Bribery claims over Ford gift baseless - Mahama”, Wednesday 22nd June, 2016 6:33 pm - available at <http://citifmonline.com/2016/06/22/>; “Ford Expedition vehicle cannot be a gift to Mahama - Lawyer”, available at Ghana | Adomonline.com, 16 June 2016; and “Mahama did no wrong in Ford Expedition 'gift' scandal”, among others.

In sum, the Joy News report suggested that the Respondent received a gift from Mr Djibril Kanazoe that improperly influenced Respondent to award him two contracts, namely, the construction of the perimeter Fence Wall around the Ghana Mission plot of land in Ougadougou, Burkina Faso, and the Dodo-Pepeso-Nkwanta road contract, and was about to award another contract worth GHc82 million through sole sourcing.

It is against this background that the three Complainants lodged the three separate complaints with the Commission. All three Complainants relied broadly on the Joy News report.

Neither Joy News nor Manasseh Azure Awuni lodged a complaint with the Commission beyond publishing the story/report.

3.0. THE ALLEGATIONS

3.1. The Youth League of the Convention People's Party

The CPP Youth League is said to be a youth wing of the Convention People's Party, one of the Political Parties in the country. In the complaint titled "PETITION TO INVESTIGATE THE PRESIDENT ON A CASE OF POSSIBLE CONFLICT OF INTEREST", signed by the Secretary of the Youth League of the CPP on the instructions of "the Commander-in-Chief of the CPP Youth League", it is alleged as follows:

"Taking note of discussion over the past week on a Ford Expedition car purportedly taken by President John Dramani Mahama as a gift sometime in 2012 triggered by a report by Manasseh Azure Awuni, broadcast journalist at Joy Fm (please find report attached).

Understanding that the said gift was given to and taken by H.E. John Dramani Mahama whilst in office as President and that the said giver, Mr Djibril Kanazoe, a contractor of BurKinabe origin represents a commercial interest:

Noting that such occurrences can occasion conflict of interest;

And having regard to articles 284, 287, 218 (a) and (e) of the 1992 Constitution as well as section 7(1) of Act 456 to petition..." the Commission, "...to

i) institute a formal investigation into the matter

ii) establish whether or not accepting the gift occasioned a conflict of interest situation

iii) clarify what manner of gifts given to and taken by public workers and government officials may be properly classified as bribes".

The Commission, on receipt of the complaint, requested the CPP Youth League to clarify the capacity in which it presented the complaint, as well as furnish any additional evidence it may have beside the Joy News story to assist the Commission with its preliminary investigations. In response, the CPP Youth League submitted a recording by Manasseh together with a copy of a letter (also contained in Manasseh's story), and stated it had a "star" witness in Manasseh.

3.2. Nana Adofo Ofori, a Private Citizen

Nana Adofo Ofori's complaint is under the heading, "A PLEA FOR INVESTIGATION INTO THE "FORD EXPEDITION" SAGA BY THE PRESIDENT". He alleges as follows:

"I start by quoting Article 284 of Chapter 24 that states "A public officer shall not put himself in a position where his personal interest conflicts will or is likely to conflict with the performance of the functions of his office."

President Mahama's "Code of Ethics for Ministers and Political Appointees" states that a conflict of interest "may arise if a Minister's family or personal friends might derive, or be perceived as deriving some personal, financial or other benefits from a decision or action by a Minister or the Government."

If allegedly receiving a Ford Expedition vehicle valued at \$100,000 in order to award contracts to a Mr. Djibril Kanazoe is not corruption then what is corruption?

If some government spokespersons defend this conduct of the president by saying the vehicle was put in a pool and cite a Mercedes Benz gift given by the late Libyan president Muamar Gadafi to president John Kuffour in 2007

as a defence for such a scandalous act then what has our leadership been reduced to?

Popular among the alleged series of contract given to the said Burkinabe contractor, Mr. Djibril Kanazoe is the \$650,000 deal to build a wall around Ghana Embassy in Burkina Faso.

My fellow countrymen, it is time for us to come together to cause a change, as Ghanaians, we have been taken for granted for so long a time by the president and his team. It is very important that citizens of this country have faith in their government and such actions go a long way to affect that. It would be rather unfortunate and highly unfair if such an act is overlooked. Our country is a constitutional one and as such the constitution reigns supreme.

Would this issue be swept under the carpet as usual or would actions be taken in order to serve as a deterrent for future presidents?

It is of great interest to this issue that these questions are answered:

- 1. when was the vehicle cleared?*
- 2. In whose name was it registered or cleared?*
- 3. When was it added to the presidential pool?*
- 4. Is it a gift or a bribe?"*

The Commission requested Nana Adofo Ofori to furnish it with any additional evidence he may have to assist the Commission. In a letter dated 20 July 2016, he responded thus:

“...In your response on 13th July to follow up sent on 12th July, 2016, the Commission requested I provide evidence in relation to my complaint.

The Commission being the body licensed to investigate such issues would have an easy access to documents relevant to the case which an ordinary citizen would not easily have access to...”

He concluded by stating that:

“I humbly request the Commission to acquire these documents and any other document deemed relevant by the Commission and investigate the various processes involved. It would be of great interest to most Ghanaians that this issue is investigated immediately and a conclusion drawn as to whether the Ford Vehicle was a gift or a bribe”

3.3. The Progressive People’s Party

The Progressive People’s Party is a registered political party in the country. The allegations are in substance the same as the story by myjoyonline.com, and attributed to an investigation by Mr. Manasseh Azure Awuni.

The complaint was signed by the **National Chairman** of the Progressive People’s Party (PPP), and **alleges** as follows:

- i. “The sitting President of the Republic of Ghana His Excellency John Dramani Mahama has conducted himself in a manner that has clearly violated Article 284 of the 1992 Constitution of the Republic of Ghana*
- ii. This conduct of the President involves a receipt of a gift in the form of Ford Expedition 2010 model with engine No. E173A1905101 and Chassis No. 1FMJUIJ58AEB748.*
- iii. The Donor of this gift is a Burkinabe National by name Djibril Kanazoe.*

- iv. *Djibril Kanazoe runs a company Oumarou Kanazoe Construction Limited, whose core business is road construction inter alia.*
- v. *Djibril Kanazoe has been a personal friend to the President since 2011 when the President was then the sitting Vice President of the Republic of Ghana.*
- vi. *Djibril Kanazoe has since he became a personal friend to the President, secured two contracts from the Republic of Ghana.*
- vii. *The first contract was secured and executed in the year 2011 at the cost of US\$656,246.48 being Ghana Embassy Fence Wall in Quagadougou, Burkina Faso.*
- viii. *The second was the 46.4 - kilometre Dodo Pepeso - Kwanta road which road the President commissioned on April 19, 2016.*
- ix. *Djibril Kanazoe with his company Oumarou Kanazoe Construction Limited is in a process of being awarded the 28 - kilometre road project via sole sourcing by the Ministry of Road and Highways in Hamile area worth GHC82,000.000.00.*
- x. *On October 29, 2012, the Head of Chancery of Ghana Embassy in Quagadougou, Burkina Faso wrote a letter captioned "Laissez - Passer" to the Divisional Commander, Ghana Revenue Authority, Paga Boarder, informing the Commander of his direction that Ghana Mission in Ouagadougou was assisting the transportation of a gift donated to H.E. John Dramani Mahama, the President of the Republic of Ghana offered to him by his friend Mr. Djibril Kanazoe of which gift was a Ford Expedition with Engine No. E173A1905101 and Chassis No. 1FMJUIJ58AEB60748.*

- xi. The letter supra concluded by stating that it was requested that the competent Ghanaian Boarder Authorities at the Paga Boarder would assist with the passage of the said vehicle and those transporting it without any let or hindrance.*
- xii. This vehicle which is said to be a brand new vehicle at the time it entered Ghana was cleared at Tema Port of the Republic of Ghana as a used car at a duty of GHC23,646.41 with one Quedrago Cheik Mohammed as the importer.*
- xiii. All other details on the Vehicle including receipt numbers among others are captured except registration details at the Driver and Vehicle Licensing Authority (DVLA).*
- xiv. That there is no information that the President paid gift tax on this vehicle donated to him by his friend Djibril Kanazoe.*
- xv. Ministry of Communication by Press Release under the sector Minister Dr. Edward Omane Boamah dated June 15, 2016, stated that the Ford Expedition with Engine No. E173A1905101 and Chassis No. IFMJUIJ58AEB60748 has been placed in the vehicle pool at the Presidency as per established convention”.*

The PPP further alleges:

- a) “That the Nation has suffered a violation of article 284 of the 1992 Constitution by its sitting President whose Presidential oath requires him to protect and defend same.*
- b) That the State has suffered an abuse of office of the Presidency by the President using the State’s material and human resources to transport his personal gift from Burkina Faso to Ghana.*

- c) *The State has lost tax revenue as a result of the President's failure to pay gift tax on Ford Expedition with Engine No. E173A1905101 and Chassis No. IFMJUIJ58AEB60748.*
- d) *The State again has suffered a loss of revenue as a result of inadequate duty for the Ford Expedition with Engine No. E173AQ1905101 and Chassis No. IFMJUIJ58AEB60748 declared as a used vehicle instead of a brand new vehicle and thereby paying under - declared duty.*
- e) *The President has perpetrated fraud on people of Ghana by representing to Ghanaians that Quedrago Cheik Mohammed was actually the importer of the vehicle in question when indeed the vehicle was infact transported by road with personnel from both Ghana Embassy at Burkina Faso and Ghana Boarder at Paga through to Accra".*

Finally, the PPP asked for the following "reliefs" from the Commission:

1. *"A declaration that the said Gift from Djibril Kanazoe to His Excellency President John Dramani Mahamah, Ford Expedition 2010 model with engine No. E173A1905101 and Chassis No. IFMJUIJ58AEB748 was given with intent to corrupt the President of the Republic of Ghana and that the President of the Republic of Ghana received same knowing very well that was the intended purpose.*
2. *A declaration that the said Gift from Djibril Kanazoe to His Excellency President John Dramani Mahamah, Ford Expedition 2010 model with engine No. E173A1905101 and Chassis No. IFMJUIJ58AEB748 was a brand new vehicle at the time it was cleared at the Port of Tema in the Greater Accra Region of the Republic of Ghana.*

3. A declaration that the said Gift from Djibril Kanazoe to Dramani Mahamah, Ford Expedition 2010 model with engine No. E173A1905101 and Chassis No. IFMJUIJ58AEB748 being a brand new vehicle had its duty under-valued and or under declared by the officials of the Ghana Revenue Authority, Customs Division on sole grounds that the beneficiary of same was the sitting President of the Republic of Ghana which act was intended to cause the Nation to lose money and indeed led to the loss of funds to the State.

4. A declaration that Quedrago Cheik Mohammed, the alleged importer of the said Ford Expedition 2010 model with engine No. E173A1905101 and Chassis No. IFMJUIJ58AEB748 was an instrument of fraud in the hands of the sitting President of the Republic of Ghana, John Dramani Mahama.

5. A declaration that the said Gift from Djibril Kanazoe to His Excellency President John Dramani Mahamah, Ford Expedition 2010 model with engine No. E173A1905101 and Chassis No. IFMJUIJ58AEB748 was subject to Gift Tax as per section 106 of the Internal Revenue Act, 2000 (Act 592) as amended and now repealed by Income Tax Act, 2015 (Act 896) which Act 896 has saved the gift tax regime.

6. An order and or recommendation directed against the Ghana Revenue Authority, GRA, Customs Division, to cease the Vehicle, assess same and request the President to pay for its full duty and interest on the said amount from the date of clearing to the date of final payment.

7. An order and or recommendation directed against the Ghana Revenue Authority, GRA, to assess President John Dramani Mahama for gift tax and same paid to the State forthwith accordingly”.

Attached to the PPP complaint were 1) copy of a Letter (Laisser-Passer) dated October 21, 2012 from the Head of Chancery of Ghana's Embassy in Burkina Faso; 2) copy of an extract from the Joy News story, obtained from myjoyonline.com; and 3) copy of a Myjoyonline.com publication, "Gov't admits Ford gift to Prez. Mahama but...Omane Boamah", containing a statement attributed to Dr. Omame Boamah, Minister for Communications, dated June 15, 2016.

4.0. RESPONDENT'S COMMENTS ON THE ALLEGATIONS

In accordance with the provisions of Article 287 of the 1992 Constitution, the Commission wrote to H. E. John Dramani Mahama, President of the Republic of Ghana, (in a letter dated 07 July 2016 with Ref. Nos 145/2016, 146/2016 & 147/2016) requesting him to comment on the allegations of contravention of Article 284 (of Chapter 24) of the Constitution made against him by the three Complainants. On July 18 2016, the Respondent, through his Lawyers, Lithur Brew and Company Ltd, duly submitted his comments on the allegations, denying that he had contravened Chapter 24 of the Constitution.

On the gift of the Ford Expedition (the vehicle), the Respondent stated that in or about October 2012 the vehicle in question was delivered by Ghana's Mission in Burkina Faso to the Upper East Regional Minister, Hon. Mark Woyongo, for onward delivery to him at the Castle, then the Seat of Government. The Upper East Regional Minister was informed that the vehicle was a gift from Mr. Djibril Kanazoe, a Burkinabe national and businessman, and friend of the Respondent.

According to the Respondent, the vehicle was delivered to the Castle at a time he was on a nationwide election campaign tour, and was unaware of the existence of the gift. It was not until his campaign took him to the

Upper East Region that the Honourable Minister, assuming that the Respondent had already been notified of the delivery of the vehicle, enquired about it. The Respondent there and then asked the Minister to call Mr. Kanazoe (the donor) for him (Respondent) to thank him (the donor) and it was accordingly done. When the Respondent returned to Accra after his campaign but before the December 2012 General Elections, the officer-in-charge of the Presidential car fleet confirmed to the Respondent that he had taken delivery of the vehicle, and asked what he should do with it. The Respondent instructed the officer-in-charge to add it to the Presidential car fleet.

The Respondent further stated that when the allegations first surfaced, he called for information about the vehicle and the use to which it had been put since delivery. The information furnished him showed that since its delivery, the vehicle has been re-fitted with security equipment including machine guns, and used exclusively to provide security for state convoys and very important persons (VIPS) generally. The Respondent attached a collection of pictures of the vehicle, together with its contents, six pen drives of video of how the vehicle has been used over a period, and an extract from the digital logbook used to record vehicles received at the Presidency.

The Respondent added that:

“the gift was completely unsolicited, as neither he nor Mr. Kanazoe had previously discussed Mr. Kanazoe’s intention of making a gift of the vehicle to My Client; and the vehicle has remained in the Presidential car pool since... while it may have been Mr. Kanazoe’s intention to donate the vehicle to him as a personal gift, neither he nor his office regarded or treated it as such. Since its delivery to the Presidency, therefore, the vehicle has always been treated as state property; and, as can be seen from the facts

stated hereinabove, My Client's conduct at all material times was consistent with such treatment.

My Client was not involved in, and until the news broke out, was not aware of the formal processes by which the vehicle came to be delivered to the Ghana Embassy in Burkina Faso, driven from Burkina Faso and delivered to the Castle in Accra. He cannot therefore comment on the customs and other formalities relating to the delivery of the vehicle to the Presidency in Accra beyond the facts that, from the documents delivered to him upon his request..."

The Respondent indicated that the customs documents exhibited by the National Youth League of the Convention People's Party in support of its complaint, were not in the name of the Respondent, and the Laisser Passer dated October 29, 2012, attached to the petition by the Progressive People's Party, was not the one used for customs purposes. The official document has the Customs official stamp affixed to it.

He maintained he was not aware of the gift and when it was delivered to Ghana. Nevertheless, when his attention was drawn to it, he instructed that it should be added to the official Presidential fleet. And since then the vehicle had been used and continue to be used for official purposes.

On the construction of the Perimeter Fence Wall around the Ghana Mission Plot of Land (the Wall) in Ouagadougou, Burkina Faso, the Respondent categorically denied the allegations that he played any role and/or was involved in any shape or form, in the award of the contract for the construction of the Wall and/or the payment therefore, and that, until these allegations came to his notice, he was not aware that the donor's company had been awarded, and was executing, the contract for the construction of the Wall.

The Respondent also said that the documentation furnished him shows that

“...the Government of Burkina Faso had created a diplomatic enclave in Ouagadougou, its capital, where all diplomatic missions and international organizations in Ouagadougou were required by the Government of Burkina Faso to relocate. The documentation further shows that Ghana Government has lost two previous allocations because the Burkinabe Government repossessed them due to delays by the Government of Ghana in developing them. This time, the Mission, through several correspondences, communicated to the Ministry of Foreign Affairs and Regional Integration (“the Ministry”) the necessity of hurriedly securing the allotted plot in the diplomatic enclave, by constructing a perimeter fenced wall around it.

In or about September 2011, the Mission intimated to the Ministry that in order to secure a piece of land in a diplomatic enclave allocated to the Mission by the Government of Burkina Faso, there was the need to construct a perimeter fence wall around it with the aim eventually of relocating the chancery to the enclave.

In a letter, dated April 12, 2012, with Reference Number OU/AD/CB/VOL.1, the Mission forwarded to the Ministry three quotations from three construction companies who had placed bids to construct the perimeter wall. In the letter, the Mission recommended that the contract should be awarded to Kanazoe Freres, as its quotation of 353,136,603 FCFA was the lowest, compared to the two other bidders - 413,177,892 FCFA and 462,608,949 FCFA from COSITRAP and IBOUS, respectively. Based on Appendix R3, the Ministry wrote to the Minister of Finance to authorize the release of funds for the construction of the perimeter wall”

According to the Respondent, the documentation also showed that before making its recommendation to the Ministry for the award of the contract to

Kanazoe Freres as the lowest bidder, the Ghana Mission in Burkina Faso, in a letter dated 16th March, 2012, contacted the Architectural and Engineering Services Limited (AESL), to validate the price quoted by Kanazoe Freres. AESL, in response to the request by the Mission, in a letter dated 20th March 2012 with Reference Number AESL/HQO2/36.V.0/834), confirmed to the Ministry of Foreign Affairs and Regional Integration (MoFARI) that Kanazoe Freres' offer was a fair one; hence the contract could be awarded to the company for commencement of the work on the Fence Wall. The documentation further showed that, by a letter dated August 9, 2012 addressed to the Controller and Accountant-General, the Minister of Finance authorized the release of funds for the construction of the Fence Wall.

He stated that from his understanding, JOY NEWS, as part of its investigations, had requested for information from AESL regarding the award to Kanazoe Freres of the contract to construct the Wall, to which AESL obliged. The Respondent attached copy of the AESL's response to JOY NEWS, dated the 8th June 2016 with reference AESL/HQ02/36V.11/228, explaining AESL's involvement in the Wall contract.

The Respondent stated that from the available records, AESL was the independent entity contracted by the Ministry to provide, among others, pre and post contract consultancy services in terms of architecture, structure and land surveying in relation to the construction of the Wall. That from the documentation, it can be seen that the scope of works included, not only the construction of a 673.0 meter-long reinforced fence wall in sandwiched design, but also two septic tanks, security gate houses, complete with visitors waiting area.

With regards to the procurement processes that ensued prior to the award of the contract for the Wall, the Respondent stated

“since at the time, he was not involved in, or aware of, all the matters described above, he cannot say anything about the procurement processes that went into the award of the contract beyond the documents that have come to his attention”.

The Respondent further stated that the documentation available to him show that designated State Officials independently took and executed decisions in the normal course of their work, and in accordance with the demands of the situation, and that he played no part in the award of the contract to construct the Wall.

On the Award of Contract No. 294552 for rehabilitation of the Dodo Pepeso-Nkwanta Road, the Respondent wrote,

“The Petitioners also alleged that the award to Enterprise Oumaroe Kanazoe of the contract mentioned above was as a result of the gift of Ford Expedition made to My Client by Mr. Kanazoe. My Client denies this. Even the most cursory investigation into the circumstances of the award of that particular contract would show that it was a European Union (EU) funded project, awarded after an international competitive bidding process, supervised by the EU, and therefore not subject to any external influence.

After My Client had received news about the false allegations being made against him regarding the contract, he called for information on the award process. The documentation received by My Client shows that Enterprise Oumaroe Kanazoe emerged as the lowest evaluated bidder in an international competitive bidding process, after undergoing a valuation process supervised by representatives of the EU. Thereafter, the Ministry of Roads and Highways invited the company for negotiations. The negotiation report listed those who were members of the negotiating team, to include “The Consultant representative and European Union delegation” were

observers. The EU delegation was there to ensure that the negotiations were held in accordance with the EU procedure for negotiations.”

The Respondent further stated that

“...by a letter dated March 24, 2012, written by Claude Maerten, the EU’s Ambassador to Ghana, and addressed to the Honourable Minister of Finance, the EU signified its “No Objection” to the award of the contract to Enterprise Oumarou Kanazoe... Upon receiving the “No Objection” from the EU, and, by a letter dated March 23, 2012 with Reference Number MRH/HD81/214/01, the Ministry of Roads and Highways notified Enterprise Oumarou Kanazoe of its intention to award the contract to it after a successful bid, subject to the satisfaction by it of certain conditions precedent. Enterprise Oumarou Kanazoe’s response, dated April 10, 2012, is attached, marked Appendix “R11”. Both letters were copied to Head of EU Delegation in Ghana. The contract for the construction works is dated June 11, 2015 and signed between Government of Ghana as the Contracting Party and Enterprise Oumarou Kanazoe as the Contractor, and endorsed by Claude Maerten, the Head of EU Delegation in Ghana”.

According to the Respondent, the report on the negotiations and the issuance of “NO OBJECTION” letter by the EU Ambassador to Ghana, Claude Maerten, underscored the point that he could not have influenced the award because, being an EU contract, the EU supervised the formal processes leading to the award. Therefore, the allegation of bribery and corruption against him can only be described as malicious.

Concluding, the Respondent denied any involvement in and/or influenced the processes that led to the award of the two contracts mentioned by the Complainants as well as the payments that were made in this regard. The Respondent urged the Commission to peremptorily dismiss the

claims/allegations against him, claiming that they are absolutely without any basis whatsoever, either in law or in fact.

5.0 MANDATE OF CHRAJ WITH REGARDS TO THE ALLEGATIONS

5.1 Ghana's 1992 Constitution

Article 218 provides that:

The functions of the Commission shall be defined and prescribed by Act of Parliament and shall include the duty –

(a) To investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties

(e) to investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including report to the Attorney-General and the Auditor-General, resulting from such investigations.

Article 287 provides that:

(1) "An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(2) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission.”

5.2 CHRAJ Act, 1993 [Act 456]

Section 7(1) on the functions of the Commission provides that:

The functions of the Commission are –

- a. **to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;**
- b. to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Coordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services of fair administration in relation to those services;
- c. to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;
- d. to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this subsection through such means as are fair, proper and effective, including –
 - i. negotiation and compromise between the parties concerned;

- ii. causing the complaint and its findings on it to be reported to the superior of an offending person;
- iii. bringing proceedings in a competent court for a remedy to secure then termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and
- iv. bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;
- e. to investigate allegations that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution;**
- f. to investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including reports to the Auditor-General, resulting from such investigation;**
- g. to educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia; and
- h. to report annually to Parliament on the performance of its functions.

The Supreme Court, in the seminal case on conflict of interest; *Okudzeto Ablakwa (No.2) v Attorney-General & Obetsebi-Lamptey (No.2) (2012) 2 SCGLR 846* (hereinafter referred to as “*the Okudzeto Ablakwa Case*”), settled the question of forum for investigating complaints of conflict of interest against public officers under Articles 284 and 287.

In the *Okudzeto Ablakwa Case*, the plaintiffs invoked the original jurisdiction of the Supreme Court regarding Articles 284, 287 and 35(8) of the

Constitution on conflict of interest. Instructively, the Supreme Court held, per Brobbey, JSC, that:

The issue of conflict of interest raised here can easily be resolved by recourse to Article 287 of the 1992 Constitution. Article 287 mandates that complaints under Chapter 24 of the 1992 Constitution are to be **investigated exclusively by the Commission for Human Rights and Administrative Justice**. Article 287 (1) provides that:

287(1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written submission of the contravention or non-compliance, cause or matter to be investigated.

(2) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission.

Since specific remedy has been provided for investigating complaints of conflict of interest, the plaintiffs were clearly in the wrong forum when they applied to this court to investigate complaints relating to conflict of interest involving those public officers. This was the decision of this court in *Yeboah v Mensah* [1998-99] SCGLR 492 which endorsed similar decision of the court in *Edusei v Attorney-General* [1996-97] SCGLR 1 and *Edusei v Attorney-General* [1998-99] SCGLR 753.

In the earlier case of *Yeboah v J H Mensah* (1998-99) SCGLR 492, the Supreme Court held, per Hayfron-Benjamin, JSC that:

“When a remedy is given by the Constitution and a forum is given by either itself or statute for ventilating that grievance, then it is to that forum that the plaintiff may present his petition”.

The Supreme Court has also held in the *Republic v High Court (Fast Track Division) Accra; ex parte Commission on Human Rights and Administrative Justice (Richard Anane, Interested Party (2007-2008) SCGLR* (hereinafter referred to as “*the Anane Case*”) that the Commission’s mandate over conflict of interest has to be triggered by an identifiable complainant, be it natural or legal (corporate).

From the forgoing, there is no question that the Commission is the competent forum for investigating the allegations made against the Respondent, and that the mandate of the Commission has been duly triggered.

This position is consistent with previous positions of the Commission when it had to investigate allegations of conflict of interest and corruption of public officers, notable among them the cases of *Ibrahim Adam & P V Obeng Case; New Crusading Guide v Ampiah Ampofo; SSNIT Case; and the Hotel Kufuor Case, to mention but a few.*

5.3. Special Investigative Powers of CHRAJ

S. 8 of Act 456 provides:

The Commission shall for purposes of performing its functions under this Act, have power –

- (a) to issue subpoena requiring attendance of a person before the Commission and the production of any document or record relevant to any investigation by the Commission;

(b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent court;

(c) to question any person in respect of any such matter under investigation by the Commission;

(d) to require any person to disclose truthfully and frankly any information within

6.0 APPLICABLE CONSTITUTIONAL, LEGAL AND POLICY FRAMEWORK

6.1 Ghana's Constitution, 1992

In embarking on this investigation, the Commission was guided by the overarching values and principles underpinning the 1992 Constitution, among others, Ghana's commitment to "*Freedom, Justice, Probity, and Accountability*". The Directive Principles of State Policy, particularly article 35(8) of the Constitution which provides thus:

"The State shall take steps to eradicate corrupt practices and abuse of power".

Chapter 24 of the Constitution is the Code of Conduct for Public Officers. Under the said chapter, Article 284 provides that:

A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.

6.2 The Criminal and Other Offences Act, 1960 (Act 29)

Section 239(1) provides:

“A public officer or juror who commits corruption, or wilful oppression, or extortion, in respect of the duties of office, commits a misdemeanour”.

Explaining the term “corruption by public officers”, section 240 of Act 29 provides:

“A public officer, juror, or voter commits corruption in respect of duties of office or the vote, if the public officer, juror, or voter directly or indirectly agrees or offers to permit the conduct of that person as a public officer, juror, or voter to be influenced by the gift, promise, or prospect of a valuable consideration to be received by that person or by any other person, from any person”.

In relation to bribery and its acceptance by a public officer after the act, section 244 of Act 29 provides:

“Where, after a person has done an act as a public officer, juror or voter, that person secretly accepts, or agrees or offers secretly to accept for personal gain or for any other person, a valuable consideration on account of the act, that person shall be presumed, until the contrary is shown, to have acted corruptly, within the meaning of this Chapter [Chapter 5] in respect of that act before doing the act”.

6.3 Code of Conduct for Public Officers of Ghana and Guidelines on Conflict of Interest to Assist Public Officials Identify, Manage and Resolve Conflicts of Interest (Guidelines)

The Code of Conduct and Conflict of Interest Guidelines issued by CHRAJ provide the administrative and operational framework/guidelines for implementing the Constitutional intendment underpinning articles 284

through to 288 of the Constitution and, in the context of this complaint, articles 284 and 287 of the Constitution. The Preamble to the Conflict of Interest Guidelines states the rationale for the Guidelines at page 9 as follows:

“... the Constitution does not define in detail the situations which constitute conflict of interest neither is there a document providing for the codes of conduct for the several public officers there are in Ghana which the Commission could fall on in determining complaints of conflict of interest made against public officials. The absence of such a definition of conflict of interest and a unified code of conduct for public officers make the processing of allegations “... that a public officer has contravened or has not complied with a provision of this Chapter... (Chapter 24 of the Constitution)...” before the Commission an uneasy task for both the Commission and the public officer against whom the allegation has been made.”

Section 2.0 of the **Guidelines defines conflict of interest as:**

“a situation where a public official’s personal interest conflicts with or is likely to conflict with the performance of the functions of his/her office”.

The Guidelines explains conflict of interest to include:

- i. Any interest or benefit, financial or otherwise, direct or indirect;*
- ii. Participation in any business transaction, or professional activity;*
- iii. An incurring of any obligation of any nature; or*
- iv. an act or omission which is or appears or has the potential to be in conflict with the proper discharge of a public official’s duties in the public interest.*

3.5.1 Use of Public Office for Private benefit

General Rule: A public official shall not use his public office for his/her own private benefit for the endorsement of any product, service or enterprise, or for any product, service or enterprise , or for the private benefit of friends, relatives or persons with whom the public official is affiliated in a private capacity, including political parties, non-profit organization of which he/she is an officer or member, and persons with whom the public official has to seek employment or business relations.

3.5.2 Inducement or Coercion of Benefit

General Rule: A public official shall not use or permit the use of his/her position or title or any authority associated with his/her public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to himself or herself or to friends, relatives or persons with whom the public official is affiliated in a private capacity

Section 3.7.1 of the Guidelines sets out the Gifts Policy as follows:

General Rule: A public official shall not:

- i. solicit gifts, tangible or intangible, directly or indirectly from persons with whom they come into contact in relation to official duties;*
- ii. accept gifts, tangible or intangible, that may or appear or have the potential to influence the exercise of their official functions, proper discharge of their duties or their judgement, indirectly from a person with whom they come into contact in relation to official duties and;*
- iii. accept cash of any amount.*

Section 3.7.4, **dealing with Disposal of Prohibited Gifts**, provides:

Gifts offered/accepted in violation of the exceptions must be politely declined or immediately returned to the sender if delivered without prior notice. Alternatively, the official should pay the market value for the gift. When it is not practicable to return a tangible item, the item should be given to an appropriate charity.

4.0: **Dealing with conflict of interest situations**

As soon as a conflict of interest situation is foreseeable, the public official must take all appropriate steps to extricate him/her from the situation. Such steps may include:

- i. Reporting the conflict of interest situation and its circumstances to his/her superior officer, or
- ii. Removing him/her from the conflict of interest situation.

4.2 **Disclosure of Conflicting Interests**

Whenever a conflict of interest situation occurs or is likely to occur, the public official must make a disclosure of the situation as provided by law or as follows:

What to disclose: Assets and liabilities, **gifts**, conflicting interests, outside employment, and NGO activities.

How to disclose: In writing, verbal and **surrender** the item.

When to disclose: As soon as a conflict of interest situation occurs or is likely to occur and when doubt.

To Whom: CHRAJ, superior officer/head of institution, and ethics committee or compliance officer or a similar set up within the institution.

To improve the regime for dealing with prohibited gifts, the Commission has further elaborated that all prohibited gifts offered or accepted in violation of the Gift Policy should be properly declared and surrendered to appropriate authorities [Ethics Officers and Heads of Entities] and documented, and directions given on how they should be disposed of. These have been duly incorporated in the Conduct of Public Officers Bill, 2013 currently pending before Parliament.

7.0. ISSUES FOR DETERMINATION

The allegations raised 2 broad issues for determination, namely:

- .1. Whether the acceptance of the Ford Expedition Vehicle by the Respondent contravened existing Gift Policy under the Code of Conduct for Public Officers?
- .2. Whether the acceptance of the gift by the Respondent occasioned a conflict of interest under Article 284 (Chapter 24) of the Constitution.

In addition to these two broad issues above, there were other issues emanating from the complaints which have been set down for determination, namely:

- .3. Whether the Vehicle which is said to be a brand new vehicle at the time it entered Ghana was cleared at Tema Port as a used car in order to undervalue it and pay less duty?
- .4. If the Vehicle was declared as “used” when it was “new” on entry into Ghana, whether the State suffered a loss of revenue?
- .5. Whether the Registration details of the Vehicle can be found at the DVLA and if so, in whose name was the Vehicle Registered?

.6. Whether the Vehicle has been added to the Presidential pool and if it has, when was it added?

.7. Whether the Respondent has perpetrated fraud on people of Ghana by representing to Ghanaians that Quedrago Cheik Mohammed was actually the importer of the vehicle in question when indeed the vehicle was transported by road with personnel from both Ghana Embassy at Burkina Faso and Ghana Boarder at Paga through to Accra?

.8. Whether the Gift was given with intent to corrupt the Respondent and whether the Respondent knew that Djibril Kanazoe made him the gift with intent to corrupt the Respondent?

.9. Whether the acceptance of the gift (Ford) amounts to a bribe?

.10. Whether due process and procedure were followed by public officials in the award of contracts.

.11. Whether the Ministry of Roads and Highways was in the process of "handpicking" Djibril Kanazoe for the award of a 28-kilometer Wa-Hamile Road worth GHC82,000.000.00. because of the gift of the vehicle to the Respondent?

.12. Whether the Respondent influenced the award of contracts?

.13. Whether the Respondent has conducted himself in a manner that violates Article 284 of the 1992 Constitution of the Republic of Ghana?

8.0. THE INVESTIGATION

The investigation was conducted in terms of Articles 284 and 287 of the Constitution and Section 7(1) (e) of Act 456 and comprised the following:

- Consideration and evaluation of the media reports including Joy News report on the Ford Expedition;
- **Interviews with:**
 - Hon. Mark Woyongo - Member of Parliament (MP) for Navrongo Central and former Upper East Regional Minister
 - Hon. Inusah Fuseini - Minister for Roads and Highways
 - Mr. Satchmo Atongo - Managing Director, Architectural and Engineering Services (AESL)
 - Frank Niiti - Office of the President
 - Mr. John V. Kuudamnuru - Commissioner, Customs Division, Ghana Revenue Authority
 - Mr. Humphrey Ajongbah - Director, Ministry of Foreign Affairs and Regional Integration
 - Manasseh Azure Awuni - Journalist, Joy News
- **Evaluation of information/Documents**
 - The Complaint received from the Youth League of the CPP
 - The Complaint received from the Progressive People's Party
 - The Complaint by Nana Adofo Ofori
 - Response to allegations by the Respondent
 - Technical drawings of the Fence Wall project by AESL.
 - Correspondence on the Fence Wall between the AESL and the Ghana Mission, Burkina Faso.

- Letter of Notification of award of contract for construction of Fence wall in Ouagadougou, Burkina Faso.
- AESL letter to the Managing Director of Multimedia Group Ltd on the Involvement of AESL in the Fence Wall.
- List of Tenderers (Second Tender Process) on the Wa-Hamile Road Project from the Ministry of Roads and Highways.
- Documentation on the award of contract for the construction of the EU Dodo Pepeso-Nkwanta Road Project (Negotiations Report, 'No Objection' Letter to Hon. Minister of Finance by the EU Ambassador, Notification of Award of Contract on the Eastern Corridor project, Copy of Eastern Corridor contract endorsed by the EU, among others)
- Laissez Passer issued by the Ghana Mission in Burkina Faso.
- Flagstaff House Vehicle Logbook
- Customs Vehicle Temporary Importation Permission.
- Bill of Entry on Ford Expedition vehicle.
- Written response by the Ministry of Foreign Affairs and Regional Integration to the Managing News Editor, Joy News, Multimedia Group Ltd.
- Audio/video recordings and other documents from Manasseh Azure Awuni, Journalist, Joy News, Multimedia Group Ltd.
- Relevant documents and other articles of evidential value procured in the course of the investigation.

iv. Field Visits/Inspection

The Commission visited relevant offices in the course of the investigation, including the following:

- AES Ltd, Head Office, Accra
- Ministry of Roads and Highways, Accra
- Transport Section of the Office of the President
- Ghana Revenue Authority, Accra
- Ministry of Foreign Affairs and Regional Integration, Accra
- Inspection of the Ford Expedition vehicle

8.1. SUMMARY OF EVIDENCE/INFORMATION

8.1.1. Mr. Satchmo Atongo, Managing Director, AES Ltd

Mr. Satchmo Atongo, is the Managing Director (MD) of the Architectural Engineering Services Ltd (AES Ltd). He provided information to the Commission in the course of the investigation in relation to the construction of the Wall.

The MD stated that the AES Ltd, got involved in the Project, which began in March 2011, and that its involvement consisted of the provision of consultancy services, which included the following:

- i. Pre and post contract consultancy services leading to the preparation of technical specification, bills of quantities and tender documents for the Project, such as:
 - a) Architectural, structural and land surveying;
 - b) Quantity surveying services;
- ii. Evaluation of tenders;
- iii. Award of contract, and
- iv. Supervision of execution of the construction works.

On the scope of works undertaken in respect of the Wall, the MD explained that the works included the following:

- i. Site clearance, removal of topsoil, clearing of existing rice farm and compensating owners in accordance with Burkinabe Laws
- ii. Dug out unsuitable soil material, cart away where directed, refill with imported lateritic soil, well spread and compacted to approved levels.
- iii. Construction of 673.0 m long fence wall in sandwich design with 100mm quarry dust block walls in filled with 100mm thick reinforced concrete wall, given an overall thickness of 300mm, an average height of 2200 mm above ground and 800mm below ground. The mid-section of the wall is reinforced with 12mm diameter high tensile steel at 450mm centres both ways, even though 10mm diameter @ 450 mm centres mild steel was specified horizontally on the drawings.
- iv. Construction of 2No security posts (gate houses) completed with visitors waiting area, and
- v. Construction of 2No septic tanks

The MD provided the Commission with the technical drawings of the Project as well as pictures ("artist's impression") of the Project. The drawings provide an indication of the scope of work, which are not different from the statement the MD provided.

The MD informed the Commission that the AESL, upon request, received tenders from three prospective bidders for evaluation. The bidders were:

- CONSTRAP - 413,177,892.00 FCFA
- KANAZOE FRERE'S - 353,136,603.00 FCFA
- IBOUS - 462,608,949.00 FCFA

The AESL recommended that the contract for the works be awarded to KANAZOE FRERE'S (the contractor) as his bid, in their professional assessment, was the lowest and the prices of the items quoted were not subject to changes in the event of price fluctuations during the period of the execution of the contract.

The letter from the MD dated 20th March 2012, ref. No. AESL/HQ/36V.9/834, to the Ghana Embassy in Burkina Faso (the Mission) advising that the contract could be signed with the Contractor for works to begin reads:

“...From our study of the contractor's items rates and the fact that the contract will be awarded on FIRM PRICE basis, we find it a fair offer. It is therefore, our opinion that a contract could be signed with the company for the works to be undertaken immediately”.

He explained that the AESL assigned a team of consultants onto the Wall project consisting of a Project Coordinator and Project Engineer. This Team coordinated and supervised the Project from start to finish and at no time was any impropriety raised against the provision of their professional services in relation to the Project. He mentioned that the procurement method used was Selective Tendering and not Price Quotation.

The MD also disputed the Joy News story on the Fence Wall Project, indicating that in May 2016, at the request of Manasseh Azure Awuni and the MD of Joy News, AESL prepared responses to questions and he personally delivered them to Joy News on 8th June 2016 in a letter dated June 8, 2016, titled “RE: REQUEST FOR INFORMATION ON GHANA FENCE WALL IN BURKINA FASO. The contents read:

“... A. THE ROLE OF THE AESL IN THE FENCE WALL PROJECT

The AES Limited's role was to provide pre- and post-contract consultancy services in terms of architectural, structural and land surveying, quantity, surveying services leading to preparation of technical specification, bills of quantities and tender documents, evaluation of tenders, award of contract and supervision of selected contractor to execute the construction works.

B. WHEN THE PROJECT WAS BROUGHT TO OUR NOTICE AND WHAT WE DID

The Project was brought to our notice in March 2011 and we dispatched a technical team to visit the site for a reconnaissance survey for the purpose of necessary design works and definition of scope of works

C. TECHNICAL DETAILS OF THE PROJECT, THE LENGTH OF THE WALL, THICKNESS ETC

The scope of work included but not limited to the following:

- i. Site clearance, removal of topsoil, clearing of existing rice farm and compensating owners in accordance with Burkinabe Laws*
- ii. Dig out unsuitable soil material, cart away where directed, refill with imported lateritic soil, well spread and compacted to approved level*
- iii. Construction of 673.0 m long fence wall in sandwich design with 100mm quarry dust block walls in filled with 100 mm thick reinforced concrete wall, given an overall thickness of 300mm, an average height of 2200 mm above ground and 800mm below ground. The mid-section of the wall is reinforced with 122mm diameter high tensile steel at 450mm centres both ways, even though 10mm diameter @ 450 mm centers mild steel was specified horizontally on the drawings.*
- iv. Construction of 2No security posts (gate houses) completed with visitors waiting area, and*
- v. Construction of 2No septic tanks*

D. DID THE FOREIGN AFFAIRS MINISTRY SEEK THE AES LIMITED'S ADVICE ON THE COST OF THE PROJECT

Yes, the Ministry sought and obtained the AES Limited advice on the cost of the Project

E. WHEN THE PROJECT COMMENCED AND ENDED

The site was handed over to the contractor on 2nd August 2012 for works to be completed within three (3) months. Works was officially completed on 21st February 2013. Final inspection was conducted on 21st August 2013.

The letter concluded by stating that "... we shall be glad to assist you with any further information you may be requesting."

The MD also said AESL attached copies of the project drawings to the letter.

8.1.2. Honourable Inusah Fuseini

Hon. Inusah Fuseini, Minister for Roads and Highways, assisted the Commission with information on the road projects.

He told the Commission that the Dodo Pepesu-Nkwanta road rehabilitation project (Eastern Corridor Road) started before he became the sector Minister. He noted that the project was an European Union (EU) funded project and that the contract was awarded after an international competitive bidding under EU supervision.

He said that sometime in 2010 there was a tender process for the award of contract for the project. The tender was, however, cancelled by the then Minister for Finance and Economic Planning, Dr. Kwabena Duffuor, following allegations that one of the bidders attempted to influence the process. As a result, a second tender process was initiated and bids opened

in November, 2010 in the presence of representatives of bidding companies, namely, Oumarou Kanazoe, COLAS Afrique, JV RCC (Nig) and SONITRA Ltd, COSAP Ghana Ltd, and Senpa SA. At the close of the tender, Oumarou Kanazoe emerged the most technically compliant bidder.

The Minister informed the Commission that the tender was conducted in accordance with EU Procedures, with EU Observer present throughout the process, including negotiations with the successful bidder. Also present all the time was the EU Consultant, Louis Berger, a French company, with a Local Representative called Transtech Consult. The contractor was notified of the award by Ministry of Roads and Highways letter dated 23rd March 2012, Ref., MRH/ND81/214/VOL. 1, and on 11th June, 2012, the contract for the project was signed between Djibril Kanazoe (for the Contractor) and Hon. Joe Gidisu, then Minister for Roads and Highways (for the Contracting Authority), after the contract was endorsed for financing by the European Union by Claude Maerten, the Head of the EU Delegation in Ghana.

On the GhC82 Million Contract for 28-Kilometre Road Project from Wa to Hamile, Hon. Fuseini, denied the allegation that *“Djibril Kanazoe with his company Oumarou Kanazoe Construction Limited is in a process of being awarded the 28 - kilometre road project via sole sourcing by the Ministry of Road and Highways in Hamile area worth GHC82,000,000.00”*.

Hon. Fuseini said that subsequent to the Dodo Pepesu road project, the Ministry initiate process for the Wa-Hamile stretch as an extension to the Dodo Pepesu wing. Accordingly, Oumarou Kanazoe and other contractors were invited to partake of the tender process. He explained that Oumarou Kanazoe was invited based on the good work he had done earlier and also because the contract site was near the Dodo Pepesu stretch.

According to Hon. Fuseini, Oumarou Kanazoe did not respond to the invitation and, at the time the story broke out, the Ministry had already opened the tenders without participation of Oumarou Kanazoe.

8.1.3. Inspection of the Vehicle at its Location

Investigators of the Commission visited the Office of the President to inspect the Vehicle at its location. Mr. Frank Niiti, Special Assistant, Logistics and Operations at the Flagstaff House, Kanda, received the Investigators. He took the Investigators to the garage where the Presidential Fleet of vehicles were parked.

The Investigators found that the vehicle, blue-black in colour with Chasis Number 1FMJU1J58AEB60748 and engine no. E173A1905101, was at the location. Upon inspection, the Investigators noticed that the Vehicle had been 'customized' (i.e. re-fitted) with security gadgets, including machine guns and ammunition. The Investigators also noticed that the Vehicle uses different numbers at different times as part of security measures.

At the time of the inspection, Mr. Niiti stated that the Vehicle should have been part of the Presidential convoy to the Ashanti Region, but was 'dropped' to enable the Team have access to the vehicle on that day as requested.

Mr. Niiti took the Investigation Team to see one Rev. Abbam, who is a Technical Assistant at the Transport Section. Rev. Abbam stated that the Ford vehicle was received and added to the Presidential pool of vehicles on 2nd November, 2012. He indicated that his Section kept concise records on all vehicles. In relation to Ford vehicles at the Flagstaff House, Rev. Abbam provided access to the "CONFIDENTIAL" Records on all Ford Vehicles on the computer. The Ford Expedition vehicle in question is listed as **number 34** on the list.

8.1.4. Mr. Frank Niiti

Mr. Frank Niiti, Special Assistant, Logistics and Operations at the Flagstaff House, Kanda, assisted the Commission with information on the use of the Ford Expedition.

He said ever since the delivery of the Vehicle to the Castle, it had been used solely for the provision of security for Presidential and other VIP convoys. He stated that the vehicle was specifically under the charge of the Counter Assault Team (CAT). The Commander of CAT, ASP Gariba, who was present during the inspection, confirmed the facts presented by Mr. Niiti.

Mr. Niiti noted that when he took delivery of the Vehicle, he informed the President about it and he (the President) asked him to put it in the Pool. Mr. Niiti added that when the car arrived at the Castle (the President had then not moved to the Flagstaff House). The Vehicle was subsequently customised and prepared for the purpose for which it is being used today.

Again, as an operational vehicle, its registration number changes every so often for security reasons. Furthermore, Mr. Niiti mentioned that as a security measure, no operational vehicle at the Presidency is registered at the Driver and Vehicle Licensing Authority (DVLA) through the process of registration of ordinary motor vehicles. Explaining the process, Mr. Niiti said that what usually happens is that the Security applies for a set of numbers and then these are used as and when necessary. So that a vehicle could have several numbers to it within a day. And so the Ford Expedition vehicle, being used for security purposes, was registered according to the procedures for such vehicles.

8.1.5. Ghana Revenue Authority

Mr. John V. Kuudamnuru is the Commissioner, Customs Division of the Ghana Revenue Authority. He assisted the Commission with information on the registration of the vehicle.

He said that for purposes of assessing duty to be paid on a vehicle imported to the country, the date of manufacture is used to calculate its age. Where a vehicle is less than six (6) months old from its date of manufacture and the time it enters Ghana, it is considered a new/"unused" vehicle. But where date of manufacture exceeds six months, it is considered a "used" vehicle. Therefore, a vehicle could be new but if it enters Ghana, years after its first manufacture, for purposes of meeting the requirements of the law for calculating duty, it is categorized as "used" on date of its first entry and depreciated accordingly.

He stated that the Ford Expedition (the Ford) first entered Ghana through the Paga border on 29/10/12. The driver/Owner or "importer", was Ouedrago Cheik Mohamed, who was issued with "Customs Temporary Vehicle Importation permission (TVI) same day to expire on 27 November 2012. Under the law, importers with TVI are not to dispose of the vehicle, use it for commercial activities, sell it or give it away, without paying the necessary duties on the vehicle.

He explained that the Ford was manufactured in 2010 and entered Ghana in 2012, two years old when it entered the country. Though new, the Ford was assessed as "used vehicle" for purposes of assessing duty payable under the law. The term "used" is a term of art and, therefore, not synonymous with the term "second hand" vehicle as popularly used in Ghana. He said the assessment of GHC 23,646.41 was based on the existing law. He further explained that the vehicle was not assessed as "used" in order to reduce the amount of duty imposed to favour the President.

The Commissioner provided copies of the Temporary Vehicle Importation (TVI) dated 29/10/12, the Laisser Passer, dated 29th October 2012, and the Bill of Entry No. 420171843, dated 13/02/2013.

The Laisser Passer, dated 29th October 2012 and addressed to the Divisional Commander, Ghana Revenue Authority, Paga Border, Paga, Upper East Region, indicates that the Ghana Mission in Ouagadougou was assisting with the transportation of a gift donated to the Respondent by Mr. Djibril Kanzoe, a personal friend of the Respondent and was requesting the assistance of the competent Ghanaian authorities to enable the passage of the vehicle into Ghana.

The Customs Temporary Vehicle Importation permission shows that the Ford Expedition first entered Ghana through the Paga border on 29/10/12. The driver/Owner or importer, was Ouedrago Cheik Mohamed, who was issued with "Customs Temporary Vehicle Importation (TVI) permission same day to expire on 27 November 2012.

The Bill of Entry, No. 420171843, dated 13/02/2013, which captures the information on the TVI issued on 29 October 2012 shows, among others, that the importer paid duties all amounting to GHC 23,646.41, on the vehicle.

8.1.6 Ministry of Foreign Affairs and Regional Integration

Mr. Humphrey Ajongbah, Director at the Ministry of Foreign Affairs and Regional Integration, assisted the Commission with information on the contract for the construction of the Wall.

He said the contract was awarded by the Mission using selective tendering method to the most competitive bid of three companies which submitted tenders on the basis of drawings and specifications prepared by the AESL, the Mission's/Ministry's consultant. That prior to the award of contract, the tender of the most competitive firm was forwarded to the AESL, which evaluated the bill of quantities and found them to be satisfactory on "FIRM BASIS".

He provided copy of letter dated 23rd August 2012, ref. OU/AD/CB/Vol. 1, addressed to Kanazoe Freres, titled, CONSTRUCTION OF PERIMETER WALL AROUND MISSION'S PLOT OF LAND, AWARD OF CONTRACT, and signed by the Ambassador, Chief Dauda M Bawumia, as follows:

" I refer to your tender for the above works dated 14th March 2012 and wish to inform you that you have been awarded the contract for CONSTRUCTION OF PERIMETER WALL AROUND MISSION'S PLOT OF LAND LOCATED AT OUAGA 2000 for an amount of THREE HUNDRED AND FIFTY-THREE MILLION, ONE HUNDRED AND THRITY-SIX THOUSAND, SIX HUNDRED AND THREE CFA FRANCS (353,136,603 CFA) for completion in FOUR (4) CALENDAR MONTHS.

Possession of the site will be given to you immediately and you are to commence work not later than 13th September, 2012. You will be expected to complete and hand over the whole of the works within the contract period of four calendar months.

The AESL, Ghana, is in-charge of the project and you are to contact them for further instructions. By the terms of the contract, you are required to submit a performance security and an insurance cover for the works before any mobilisation fee can be paid to you..."

The letter was copied to the Minister, Deputy Minister and Chief Director, Ministry of Foreign Affairs and Regional Integration, and the Managing Director, AESL, Accra.

8.1.7. Hon Mark Woyongo

Hon. Mark Woyongo, MP for Navrongo Central and former Upper East Regional Minister, assisted the Commission with information on the delivery of the gift to the Respondent.

He stated sometime in October, 2012 while he was the Upper East Regional Minister, he received a call from the then Ghana's Ambassador to Burkina Faso that a friend of the President who is a Burkinabe had presented a gift of a Ford vehicle intended for the President. Hon. Woyongo said the Ambassador informed him that he would bring the vehicle to him (Hon. Woyongo) at Bolga for him to have it delivered to the Respondent in Accra.

Hon. Woyongo admitted that the Ambassador delivered the Ford vehicle to him at the Residency at the Upper East Regional Co-ordinating Council in October 2012 from where he had it sent to the Castle, Accra.

Continuing, Hon Woyongo mentioned that the President visited the Upper East Region on his election campaign tour and he (Hon. Woyongo) informed him about the vehicle. According to Hon. Woyongo, the President asked if he could call Djibril Kanazoe so that he (the President) could thank him. Hon. Woyongo said as he had earlier taken the phone number of Djibril Kanazoe from the Ambassador, he readily called Djibril Kanazoe and the President duly thanked him.

8.1.8. Manasseh Azure Awuni, Joy News, Multimedia Group Limited

Manasseh Azure Awuni, Senior Broadcast Journalist, Joy FM, and whose investigation report broke the story on the gift and the award of contracts to Djibril Kanazoe, assisted the Commission with information on the subject matter of the investigation. In particular, he submitted to the Commission substantial information on an external hard drive which he described as **"Raw Video, Audio and Documents on the President's Ford Gift Story"**.

Review of Videos, Audios and Documents

The Commission accessed and reviewed the Folder on the hard drive which Manasseh made available to the Commission. The main contents are summarized below:

I. Interaction/interview with the Burkinabe Contractor, Djibril Kanazoe

In all, there are 2 audio and 3 video recordings on Manasseh's interaction/interview with Djibril Kanazoe. [Mr. Kanazoe did not appear to be very fluent in English].

In the interview, Djibril Kanazoe says that he is into roads and building construction, and car sales, notably Ford cars, claiming 40 years' experience in road construction in Burkina Faso, Niger, Benin, Cote d'Ivoire "and so on".

On the construction of the Fence Wall in Ghana's Mission in Ouagadougou, Djibril Kanazoe denied using any influence to get the contract, saying that he did not have any influence in Ghana. He said he received a letter from the Ghana Embassy inviting him to put in a bid which he did and got the contract. He stated that there were other companies which put in bids – "three or four others".

He gave a detailed account of the "scope" of work he did and that "the drawings came from an institution in Ghana called AESL". Having showed Manasseh Azure the drawings on the project, which he said came from the AESL, Mr. Kanazoe stated that what he did was to submit a "quote" based on the quantities and drawings from AESL. On the Fence Wall project, Djibril Kanazoe said the place was waterlogged and so he had to do back-filling of about one metre, and double wall with concrete and also that he was told the reason for the thick wall was to enhance security, to which Manasseh remarked, "it was good I came because the picture we got was just a small wall".

Asked about the gift, Djibril Kanazoe admitted giving a Ford Expedition vehicle to the President as a gift. He said, "Yes, I and my family gave the President a gift, a Ford Expedition because we are selling Ford cars. So we gave him a gift". Asked what the President did for him before he gave him a brand new Ford Expedition car, Djibril Kanazoe said the President is a friend to him and his family since 2010 when he was the Vice-President and when his father died, the President sent a delegation to "salute us". Djibril Kanazoe said the President gave him a donation when his father died; that it was "a very big gesture", and they also wanted to show gratitude to the President that is why they gave him the Ford Expedition.

When he was told that the Ford Expedition created the suspicion that it was a bribe, Djibril Kanazoe reacted:

"A bribe is too much. We did not intend to bribe anybody. As I was saying, I have a relationship with the President since he was the Vice-President. I was going to Ghana. I was saluting him every time. And when my father died, he sent a strong delegation to salute us and everybody was happy. It was a decision of the family to give him a gift. Everybody know us in Burkina Faso and they know how we are in good relation with everybody. We used to give gift also to people which are not Presidents. My father built a lot of mosques and a lot of church in Burkina Faso. And it was not with the intention to bribe the President or for anything".

Reacting to the suggestion that he was the only African that got a contract in the Eastern Corridor Road project, and that he got it because he influenced the process, Djibril Kanazoe stated:

“It is not a matter of African Contractor or not. It is not the President who awarded us the Eastern Corridor Road contract. It is the European Union. So it doesn't have nothing to do with bribing somebody to get a contract. We have contracts all over Africa; a different funding. This is not the way we do to have our contracts ... We are not doing illegal things here”.

II. Interaction/interview with Ghana's Ambassador to Burkina Faso at the time the vehicle was sent to the President

There are 2 audio recordings on this interview.

Ambassador Dawuda Bawumia denied that the contract for the Fence Wall project was sole-sourced. He admitted that the procurement was not advertised, explaining that his instruction was to shortlist three contractors working in Burkina Faso for consideration. He gave account of AESL's involvement in the award of the contract from the outset, through the execution stage, to completion point, and advised Manasseh to contact AESL for the technical details. He also spoke about AESL's involvement in projects of other Ghana Missions.

Ambassador Bawumia admitted that Djibril Kanazoe is his friend and that they became friends a month after his assumption of office as Ambassador, and initiated discussions with Djibril Kanazoe's father to invest in Ghana before his demise.

On the Ford Expedition car, the Ambassador said Djibril Kanazoe sells cars in Burkina Faso. He said Djibril Kanazoe told him that when his father died the President assisted them with the funeral and so his family had also decided to give the President a car. Ambassador Bawumia admitted that he took the car and handed it

over to the then Hon. Minister for the Upper East Region, Mark Woyongo, in Bolgatanga. Reacting to Manasseh's suggestion that he got a junior officer to write and sign a letter for him so he can facilitate the transmission of the gift to the President, Ambassador Bawumia explained that it was not a letter, but a Laissez Passer and that he was not allowed to sign certain documents, which civil servants, including the Head of Chancery, could do.

The Folder also contained opinions/comments on conflict of interest, gifts and other related matters from following personalities:

- Justice Emile Francis Short, former Commissioner, CHRAJ;
- Mr. Daniel Batidam, the Advisor on Governance at the Office of the President;
- Mr. Agyenim Boateng Agyei, former Chief Executive, Public Procurement Authority,,; and

10. ANALYSIS OF THE EVIDENCE IN THE LIGHT OF THE ISSUES AND APPLICABLE LAWS AND POLICIES

Issue 1: Whether the acceptance of the Ford Expedition vehicle by the Respondent contravened existing Gift Policy under the Code of Conduct for Public Officers

The evidence available establish that the Respondent was given a gift, Ford Expedition 2010 model with engine No. E173A1905101 and Chassis No. IFMJUIJ58AEB748, from Mr. Djibril Freres Kanazoe, a Burkinabe businessman who doing business with the government of Ghana. The evidence further show that the gift was first received by the Ghana Mission in Burkina Faso and sent through the then Upper Regional Minister to the Respondent. The Respondent himself admits having eventually received

the gift, although he explains that he had no prior knowledge of the gift until several days after it had been delivered to the Seat of Government, as he was on campaign tour at time of delivery.

The **General Rule** on gift under Section 3.7.1 of the Guidelines is that a public official **shall not**:

ii. accept gifts, tangible or intangible, that may or appear or have the potential to influence the exercise of their official functions, proper discharge of their duties or their judgement, indirectly from a person with whom they come into contact in relation to official duties.

The Commission is satisfied that the gift in question forms part of gifts prohibited under the Gift Policy under the Code of Conduct. Although the evidence show that the Respondent subsequently surrendered the gift to the State, the action nonetheless contravened the gift policy.

Issue 2: Whether the acceptance of the gift by the Respondent placed him in a conflict of interest situation under the Code of Conduct for Public Officers and Conflict of Interest Rules?

The Guidelines recognize the likelihood that some public officials may receive gifts under various circumstances in contravention of the Gift Policy, and made provision for how such situations should be dealt with to avoid or cure possible conflict of interest. Among the measures to deal with potential conflict of interest that may arise from receiving prohibited gifts are disclosure and surrender of the gifts so received, and refraining from participating in decisions affecting the giver of the gift/donor, or in any way influencing others involved in the decision making.

Section 3.7.4, dealing with Disposal of Prohibited Gifts, provides:

Gifts offered/accepted in violation of the exceptions must be politely declined or immediately returned to the sender if delivered without prior notice. Alternatively, the official should pay the market value for the gift. When it is not practicable to return a tangible item, the item should be given to an appropriate charity.

4.0: **Dealing with conflict of interest situations**

As soon as a conflict of interest situation is foreseeable, the public official must take all appropriate steps to extricate him/herself from the situation. Such steps may include:

- iii. Reporting the conflict of interest situation and its circumstances to his/her superior officer, or
- iv. Removing him/her from the conflict of interest situation.

4.2 Disclosure of Conflicting Interests

Whenever a conflict of interest situation occurs or is likely to occur, the public official must make a disclosure of the situation as provided by law or as follows:

What to disclose: Assets and liabilities, **gifts**, conflicting interests, outside employment, and NGO activities

How to disclose: In writing, verbal and **surrender** the item.

In the instant case, the evidence available show that although the gift was offered to the Respondent as a personal gift, the Respondent surrendered the vehicle to be added to the Presidential Pool as State property. According to the Respondent,

“the gift was completely unsolicited, as neither he nor Mr. Kanazoe had previously discussed Mr. Kanazoe’s intention of making a gift of the vehicle to My Client; and the vehicle has remained in the Presidential car pool

since... while it may have been Mr. Kanazoe's intention to donate the vehicle to him as a personal gift, neither he nor his office regarded or treated it as such. Since its delivery to the Presidency, therefore, the vehicle has always been treated as state property; and, as can be seen from the facts stated hereinabove, My Client's conduct at all material times was consistent with such treatment".

The Investigation found as a fact that the vehicle, blue-black in colour with Chasis Number 1FMJU1J58AEB60748 and engine no. E173A1905101, was being used as part of vehicles under the charge of the Counter Assault Team (CAT) at the Office of the President. The Investigation also established that the Vehicle had been retrofitted with security gadgets and ammunition. The Investigators also noticed that the Vehicle used different numbers on different occasions of inspection, something the Officer in Charge explained was a security measure.

As seen from the Guidelines, receiving a prohibited gift by itself does not automatically put someone in a conflict of interest situation. Disclosure and surrendering of the gift are some of the ways prescribed under the Guidelines for dealing with conflict of interest that may arise from gifts received in violation of the Gift Policy.

From the evidence available, the Respondent surrendered the gift in question for use by the State, and the vehicle has been under the charge of the Counter Assault Team (CAT) at the Office of the President. Beyond accepting the prohibited gift, the available evidence do not show that the Respondent:

- participated in the decision/matter involving the donor, in violation of section 3.3.1 on **Impartiality in Performing Official Duties;**

- used his office for the private benefit of the donor, or person with whom he is affiliated in a private capacity, in violation of section 3.5.1 on **Use of Public Office for Private benefit**;
- used or permitted the use of his position or title or any authority associated with his office in a manner intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to the donor or a person with whom he is affiliated in a private capacity, in violation of section 3.5.2 on **Inducement or Coercion of Benefit**; or
- used his office to influence a decision to be made by another person to further the interest of the donor in violation of section 3.5.7 on **Influence Peddling**

Having reviewed the evidence on the actions and conduct of the Respondent after the gift was made, the Commission is satisfied that his actions and conduct sufficiently dealt with any conflict of interest that could have been occasioned. In the circumstances, the Commission finds that the Respondent did not put himself in a conflict of interest situation or contravene the conflict of interest rules under Article 284 of the 1992 Constitution.

Issue 3: Whether the Vehicle which is said to be a brand new vehicle at the time it entered Ghana was cleared at Tema Port as a used car in order to undervalue it and pay less duty.

The evidence show that the vehicle first entered Ghana through the Paga border on 29th October 2012. The driver/importer of the vehicle was Ouedrago Cheik Mohamed, who was issued with Customs Temporary Vehicle Importation (TVI) permission on the same day to expire on 27 November 2012. The TVI also shows that the Vehicle was manufactured in 2010.

Commissioner John Kuudamnuru of the Customs Division of the Ghana Revenue Authority whose evidence and explanation the Commission places a lot of weight, explained that in assessing the duties to be paid on a vehicle imported into the country, the age of the vehicle is very critical. The age is determined from the time of manufacture of the vehicle and the time it first enters the country.

According to the Commissioner, where a motor vehicle is less than six (6) months old from the time of its manufacture and the time it enters Ghana, that motor vehicle is considered a new vehicle, or unused. But where the age of the motor vehicle exceeds six months from the time it was manufactured and the time it first enters the country, that motor vehicle is considered a "used" one. Therefore, a motor vehicle could be new but if it enters Ghana after six months from date of manufacture, then for purposes of calculating duty, it may be categorized as "used" on date of its first entry and depreciated accordingly.

Section 89 (2) of the Customs, Excise and Preventive Service (Management) Act, 1993 (P.N.D.C. L 330, as amended by the Customs Excise and Preventive Service (Amendment) Act, 1998, Act 552, provides as follows:

"The age of a motor vehicle under this law shall be calculated with effect from the year in which the motor vehicle was first manufactured."

Section 91 (1) of Act 330 under the Heading "**Import value of used vehicles**" provides as follows:

(1) Despite an enactment, this section applies for the determination of the value for customs purposes of used motor vehicles imported under this Act.

(2) The value of a used motor vehicle shall be the price of the motor vehicle as assessed in accordance with this section together with freight, insurance commission and any other costs, charges and expenses incidental to the delivery of the vehicle at the port or place at which the vehicle first entered Ghana.

(3) Where the age of a used motor vehicle

(a) does not exceed six months, the price shall be deemed to be the **first purchase price**;

(b) exceeds six months but does not exceed one and a half years, the price shall be deemed to be eighty-five percent of the first purchase price;

(c) exceeds one and a half years but does not exceed two and a half years, the price shall be deemed to be seventy percent of the first purchase price..."

In the instant case, the evidence show that the vehicle was manufactured in 2010. Therefore, it was two years old or thereabout when it entered the country. Accordingly, the Ghana Revenue Authority assessed it as a "used vehicle" only for purposes of meeting the requirements of the law referred to above for calculating customs duty on it.

On the basis of the evidence, the Commission is satisfied with the explanation from the GRA that the vehicle was assessed in accordance with sections 89 & 91 of Act 330, and not described as used vehicle to undervalue the duty payable. The term "used" therefore, is not synonymous with the term "secondhand" vehicle.

Issue 4: If the Vehicle was declared as “used” when it was “new” on entry into Ghana, whether the State suffered a loss of revenue

As shown above, the reason for describing the vehicle as “used” vehicle was only for purposes of assessing duty under sections 89 & 91 of Act 330. The Bill of Entry (BOE) shows that the Importer paid GHC23,646.41 in respect of all duties assessed.

In the absence of direct evidence to the contrary, the Commission accepts that the duty paid on the vehicle was the regular duty payable under the law, and therefore the State did not lose revenue on the vehicle.

Issue 5: Whether the Registration details of the Vehicle can be found at the DVLA and if so, in whose name was the Vehicle Registered

The evidence show that the vehicle is used as part of vehicles under the charge of the Counter Assault Team (CAT) at the Office of the President. The Respondent, in response to the allegation, stated that when he became aware of the Vehicle, he instructed that it be put in the Presidential Pool since he regarded it as a gift to the State. Rev. Abbam corroborated Respondent that the Ford was received and added to the Presidential pool of vehicles on 2nd November, 2012. The “CONFIDENTIAL” Records on all Ford vehicles at the Presidency recorded that the vehicle in question was received and added to the Presidential Pool on 2nd November 2012. Mr. Niiti added that the Vehicle was refitted and used as an operational vehicle at the Presidency for security duties.

Mr. Niiti also stated that as a security measure, no operational vehicle at the Presidency is registered at the Driver and Vehicle Licensing Authority

(DVLA) in the manner done for other motor vehicles. He said the Security at the Presidency applies for a set of numbers for operational vehicles in bulk, and these numbers are used as and when necessary. In other words, an operational vehicle could have several numbers within a day.

In the instant case, the Vehicle was registered together with others by the Security Section of the Flagstaff House as State property using same procedures for registering operational vehicles at the Presidency. Checks by the Commission's Investigators at the DVLA offices confirmed that operational vehicles at the Presidency are not registered at the DVLA in the same manner as other vehicles, but that registration numbers are issued "en masse" for such vehicles at the Presidency.

On the evidence available, the Commission is satisfied that the vehicle is registered and used as State property in same manner as other operational vehicles at the Presidency.

Issue 6: Whether the Vehicle has been added to the Presidential pool and if it has, when was it added?

As seen above, the evidence show that the vehicle, blue-black in colour, with Chassis Number 1FMJU1J58AEB60748 and engine no E173A1905101, has been retrofitted, and is used as part of vehicles under the charge of the Counter Assault Team (CAT) at the Office of the President to provide security for Presidential and VIP convoys. The evidence further show that it was received and added to the Presidential pool of vehicles on 2nd November, 2012. In other words within 4 days of the vehicle's entry into Ghana facilitated by the Laissez Passer issued by Ghana's Mission in Burkina Faso on the 29th October 2012 requesting that "the competent Ghanaian Border Authorities at Paga Border to kindly assist with the passage of the vehicle and those transporting it without let or hindrance"

and the Temporary Vehicle Imports (TVI) issued in the name of Ouedraogo Cheick Mohammed described as driver/importer at the Paga Border, it was received by the Transport and Logistics Section and duly logged while the processes leading to the payment of duties at the Tema Harbor were being worked out.

Based on the overwhelming evidence before the Commission, the Commission is satisfied and finds as a fact that the vehicle was received and added to the Presidential Pool on 2nd November, 2012.

Issue 7: Whether the Respondent has perpetrated fraud on people of Ghana by representing to Ghanaians that Ouedraogo Cheik Mohammed was actually the importer of the vehicle in question when indeed the vehicle was transported by road with personnel from both Ghana Embassy at Burkina Faso and Ghana Boarder at Paga through to Accra.

The evidence show that the gift was first received by the Ghana Mission in Burkina Faso and sent to the then Upper Regional Minister to be sent to the Respondent. The evidence further show that the vehicle first entered Ghana through the Paga border on 29th October 2012. The driver/importer of the vehicle was Ouedraogo Cheik Mohamed, who was issued with Customs Temporary Vehicle Importation (TVI) permission on the same day to expire on 27 November 2012.

The Commission did not come across any evidence linking the Respondent to the transportation of the vehicle from Burkina Faso up to the point where the vehicle entered the country, even though the Ambassador played a direct role as evidenced by the Laissez Passer from the Ghana Mission at Burkina Faso. It is therefore to be expected that the person in charge of the vehicle at the point of entry and to whom the TVI is issued

will be the one whose name will appear as the importer, in the instant case, Ouedrago Cheik Mohamed.

On the basis of the available evidence, the Commission finds clearly stated on the face of the Customs Temporary Vehicle Importation permission duly stamped and signed by Customs officials the name of Ouedraogo Cheick Mohammed as the owner/driver and therefore finds the allegation of the perpetration of fraud on Ghanaians on the part of the Respondent totally misconceived and unsupported by the evidence.

Issue 8: Whether the Gift was given with intent to corrupt the Respondent and whether the Respondent knew that Djibril Kanazoe made him the gift with intent to corrupt the Respondent

The Respondent, from the outset, admitted that he received the gift but denied that he had any prior knowledge of it. According to him:

“the gift was completely unsolicited, as neither he nor Mr. Kanazoe had previously discussed Mr. Kanazoe’s intention of making a gift of the vehicle to My Client; and the vehicle has remained in the Presidential car pool since... while it may have been Mr. Kanazoe’s intention to donate the vehicle to him as a personal gift, neither he nor his office regarded or treated it as such. Since its delivery to the Presidency, therefore, the vehicle has always been treated as State property; and, as can be seen from the facts stated hereinabove, My Client’s conduct at all material times was consistent with such treatment”.

From the recordings that Manasseh provided the Commission, when Mr. Kanazoe was confronted by Manasseh, that the Ford Expedition created the suspicion that it was a bribe to the President, Djibril Kanazoe reacted:

“A bribe is too much. We did not intend to bribe anybody. As I was saying, I have a relationship with the President since he was the Vice-President. I was going to Ghana. I was saluting him every time. And when my father died, he sent a strong delegation to salute us and everybody was happy. It was a decision of the family to give him a gift. Everybody know us in Burkina Faso and they know how we are in good relation with everybody. We used to give gift also to people which are not Presidents. My father built a lot of mosques and a lot of church in Burkina Faso. And it was not with the intention to bribe the President or for anything”.

The evidence show that the vehicle, blue-black in colour, with Chassis Number 1FMJU1J58AEB60748 and engine no E173A1905101, was surrendered to the State for use as part of vehicles under the charge of the Counter Assault Team (CAT) at the Office of the President to provide security for Presidential and VIP convoys on 2nd November, 2012, within days the vehicle entered the country.

As already established, beyond accepting the gift, the available evidence does not show that the Respondent acted in any manner that placed him in a conflict of interest situation or occasioned abuse of functions. Further, the Commission finds that the explanation offered by Mr. Kanazoe on his intention for making the gift to the Respondent, at a time he was not aware he was being recorded by Manasseh, is consistent with the actions of the Respondent after the gift was received.

The Commission is satisfied with the actions of the Respondent after the gift was made, and accordingly finds that his conduct was not consistent with that of a person who had been corrupted by a gift or improperly influenced by same.

Issue 9: Whether the acceptance of the gift (Ford) amounts to a bribe.

The Commission has already found on the evidence before it that the Respondent, from the outset, admitted having received the gift (Ford) from Mr. Djibril Freres Kanazoe, a Burkinabe national and businessman, through the Upper East Regional Minister, Honourable Mark Woyongo. The Commission has also found on the evidence that beyond receiving the gift, the Respondent did not use the gift for his person or private interest, but surrendered the gift to his office to be used as State property. Records at the Presidential Pool as well as information from Mr. Niiti and Rev. Abam all confirm that the vehicle was received and added to the Presidential Pool of vehicles on 2nd November, 2012.

The investigation also confirmed that the vehicle, blue-black in colour, with Chassis Number 1FMJU1J58AEB60748 and engine no E173A1905101, has been retrofitted, and is used as part of vehicles under the charge of the Counter Assault Team (CAT) at the Office of the President to provide security for Presidential and VIP convoys.

The Criminal Offences Act, 1960, Act 29 defines acceptance of bribe by a public officer at Section 244 as follows:

“Where after a person has done an act as a public officer....that person **secretly accepts, or agrees or offers secretly to accept for personal gain** or for any other person, a valuable consideration on account of that act, that person shall be presumed, **until the contrary is shown**, to have acted corruptly, within the meaning of this chapter, in respect of that act before the doing of the act”

Key ingredients of the offence of “acceptance of bribe by a public officer” are “**secrecy**” and “**personal gain**” that must be proven.

The Commission had occasion in the past to determine whether a “gift” accepted by a public officer was a “bribe” in the case of the **Crusading Guide V Appiah Ampofo**, decision dated April 5, 2002, Case No. CHRAJ/195/2001/1319, affirmed in **Appiah Ampofo V. CHRAJ, Fast Track (HC) 2/20, decision dated 17 February 2006**, unreported.

In that case, the Complainant alleged that the Respondent “caused the displacement of the former insurance brokers of Ghana Airways, Bowring (the former Lloyd’s broker) now known as Marsh, in 1995 and in their place put another insurance company by name AON. The Complainant alleged that the Respondent was influenced by assurances from the new brokers that it was going to reward him with commission. Subsequently, he was alleged to have received USD 96,500 from AON between 1995 and 1998. In response to the complaint, the former Insurance Commissioner denied receiving any payments.

After preliminary investigations, the Commission found that there were reasonable grounds for full investigations to determine the merits of the complaint. During the full investigations, the Respondent continued to deny receiving any payments. He also denied playing any role in the selection of the new insurance broker, AON, for Ghana Airways. When he was confronted with the evidence, he admitted receiving the payments but said it was “meant for the boys”.

On conclusion of the investigation, the Commission found that in total, five payments were made to him over a three-year period (1995-1998) totaling USD 96,500 into his personal account. A sixth payment was requested but was stopped by AON’s senior lawyer. In addition, it was found that he had, in his official role as Insurance Commissioner, played a prominent role in the appointment of AON as reinsurance brokers for the Ghana Airways and he did it against opposition from the state based Insurance and Reinsurance Companies involved in the risks.

The Commission found that the USD 96,500 that he had received over the period, was a bribe, for the following reasons:

- The payments made to him were from an official of the new brokers for his contribution in facilitating the change of reinsurance brokers for Ghana Airways for a lower premium, which Ghana Airways did not even know about the payments.
- All the installment payments were paid after Ghana Airways reinsurance had been awarded to AON.
- The USD 96,500 received was, under the circumstance, significant.
- Respondent's continued denial that he had received any payments until he had heard the very damaging evidence against him, and then he changed his evidence and said it was a "thank you" to the boys.
- The payments were made clandestinely into Respondent's personal account totaling the USD 96,500 without the knowledge of any of the parties involved in the negotiations.

The Commission then recommended, *inter alia*, that the 96,500 (at the conclusion of the investigation, the amount left was less than 20,000USD), be recovered to the state and the Respondent prosecuted. The Commission further disqualified Respondent from holding public office.

Dissatisfied with the decision of the CHRAJ, and without waiting for CHRAJ to seek enforcement of its decision in Court, he issued a Writ of Summons in the High Court seeking, *inter alia*, a declaration, "that the decision of the Defendant dated the 5th April 2002, which made adverse findings against the Plaintiff was absurd, perverse, illogical and unreasonable to the effect that it cannot stand in law and same should be set aside by the Honourable Court".

One of issues set for determination was "Whether or not the Defendant understood the true meaning of a bribe *vis-à-vis* gift". In other words,

whether the US 96,500 the Plaintiff in that case received was a gift or a bribe. The High Court, affirming the decision of the Commission held, inter alia that the 96,500 paid to the Plaintiff was a bribe since: (1) the payment was from an official of AON, the New Broker, (2) the payments were made after the award of the contract to AON, and (3) the Plaintiff's continued denial, and lack of transparency in the payment of the money.

In the instant case, it has been clearly established that beyond receiving the gift, the Respondent did not profit personally from the gift. The vehicle was first received at the Ghana Mission in Burkina Faso, and was transported under a Laissez Passer officially issued by the Mission. Again at the Paga Border, officials who handled the vehicle and issued a TVI were aware that the vehicle was a gift made to the President. The evidence shows that the Respondent surrendered the gift to the State, and it was received and added to the Presidential Pool by State Officials in charge of the Transport and Logistics Section of the Office of the President. The evidence further shows that the vehicle is being used by the Counter Assault Team (CAT) at the Office of the President to provide security for Presidential and VIP convoys. The channels by which the gift was delivered to the Respondent, and the surrender of the gift to the Presidential Pool which are well documented, rebuts the element of secrecy (clandestineness) and personal gain that must be proved under the law.

The Commission accordingly finds that the circumstances under which the gift was delivered to the Respondent, and conduct of the Respondent after the gift was made sufficiently rebuts the presumption of acceptance of a bribe by a public officer.

Issue 10: Whether due process and procedure were followed by public officials in the award of contracts

Documentary evidence made available to the Commission from the Ministry of Foreign Affairs and Regional Integration confirm that the contract for the construction of the Fence Wall was awarded by the Mission using Price Quotation method to the most responsive bidder among three companies that submitted bids on the basis of drawings and specifications prepared by the AESL, the State Consultant. Although both AESL and the Ghana Mission claimed that the method used was Selective Tendering, the Commission is satisfied on the basis of the evidence that the method used was Price Quotation.

Prior to the award of the contract, the quotations of the successful bidder were forwarded to the AESL, which evaluated the bill of quantities and found them to be satisfactory on "FIRM PRICE BASIS".

The Managing Director of the AES Ltd confirmed that the AESL got involved in the Fence Wall Project which began in March 2011 with the provision of various consultancy services. He also elaborated on the scope of works the AESL undertook on the Project. He further provided the Commission with the technical drawings of the Project as well as pictures (referred to as "artist's impression") as proof of the scope of work on the Project.

The Managing Director provided the Commission with documentation from Ghana's Mission at Burkina Faso to support the engagement of AESL as Consultants to the Fence Wall Project and the request from the Mission at Burkina to the AESL to "vet" the most responsive bid received from three prospective bidders for evaluation. The bidders were:

- CONSTRAP - 413,177,892.00 FCFA
- KANAZOE FRERE'S - 353,136,603.00 FCFA
- IBOUS - 462,608,949.00 FCFA

AESL in correspondence dated 20th March 2012 addressed to Ghana's Ambassador to Burkina with copies to the Hon. Minister of Foreign Affairs and Regional Integration and his Deputy as well as other senior public officers at the Ministry recommended that the contract for the works be awarded to KANAZOE FRERE'S (the contractor) as his bid, in their professional assessment, was the lowest and the prices of the items quoted were not subject to changes in the event of price fluctuations in the period of the execution of the contract.

The MD of AESL said that in a letter dated 20th March 2012, ref. No. AESL/HQ/36V.9/834 the Managing Director advised the Ghana Mission that the contract could be signed with the Contractor for works to begin. Subsequently, in a letter dated 23rd August 2012, ref. OU/AD/CB/Vol. 1, titled CONSTRUCTION OF PERIMENTER WALL AROUND MISSION'S PLOT OF LAND, AWARD OF CONTRACT, and addressed to Kanazoe Freres, the Ambassador of the Mission, Chief Dauda M Bawumia, duly informed Kanazoe about the award of the contract to him.

The Public Procurement Act, 2003 (Act 663), provides in SCHEDULE 3, Thresholds for Procurement Methods. For Price Quotation method it provides at 1(5) as follows

"Price Quotation

- (a) Goods – Up to GHC 200 million
- (b) Works – UP to GHC 500 million
- (c) Technical Services – Up to GHC 200 million"

These were the thresholds in force at the time the contract was entered into for the construction of the fence wall in 2012.

The Commission is aware that Act 663 and schedule three quoted above have been amended by the Public Procurement (Amendment) Act, 2016,

Act 914 passed by Parliament and assented to by the President on the 11th May 2016. The amendments in Act 914 have now replaced the third schedule on Thresholds for Procurement Methods with a Fifth Schedule. Under Price Quotation Method now the thresholds are as follows:

“3. Price Quotation

- a. Goods – Up to GHC 100,000
- b. Works – Up to GHC 200,000
- c. Technical Services – Up to GHC 50,000”

It is trite learning that what the law allows to be done is legal until the law changes or is amended. At the time of the award of the contract by the procurement entity i.e. the Mission at Burkina Faso the Threshold for Price Quotation method for works was up to GHC 500 million.

On the procedure adopted by the Procurement entity, section 43(1) of the Public Procurement Act, Act 663 at the time provided as follows:

“(1) The procurement entity shall request quotations from as many suppliers or contractors as practicable, but from at least three different sources.”

(4) No negotiations shall take place between the procurement entity and a supplier or contractor with respect to a quotation submitted by the supplier or contractor, prior to the evaluation of bids”

The Public Procurement (Amendment) Act, 2016 has effected an amendment to section 43 (1) to cater for potential conflict of interest situations as follows:

“The procurement entity shall request for quotations from as many suppliers or contractors as practicable, but shall compare quotations from at least three different sources that should not be related in

terms of ownership, shareholding or directorship and the principles of conflict of interest shall apply between the procurement entities and their members and the different price quotation sources.”

In the instant case, the Ghana Cedi equivalent of the contract sum for the construction of the Fence Wall worked up to GHC 1,265,054.26 or thereabout which falls within the threshold for the procurement method used.

On the strength of the evidence, the Commission is satisfied that the procurement process and procedure were regular and within the Public Procurement Act, 2003 (Act 663), in particular, Section 43(1).

On the second contract, the Dodo Pepesu-Nkwanta Road Rehabilitation Project, the evidence confirm that it was an European Union (EU) funded project and that the contract was awarded after an international competitive bidding under EU supervision, and in accordance with EU Procedures.

From the available evidence, Oumarou Kanazoe turned out to be the most technically compliant bidder, out of about 6 competitors. The evidence also show that EU consultant and observer were involved from the beginning of the processes up to the award of the contract. Finally, the contract was endorsed for financing by the Head of the EU Delegation in Ghana, HE Claude Maerten. There is no evidence to suggest that the Respondent used his high office to interfere or influence the award of the contract to Oumarou Kanazoe.

In the absence of direct evidence to the contrary, the Commission accepts the evidence of the Public Officials involved that the contracts were awarded regularly and in the normal course of their duties.

Issue 11: Whether the Ministry of Roads and Highways was in the process of "handpicking" Djibril Kanazoe for the award of an 28-kilometer Wa-Hamile Road worth GHC82,000.000.00. because of the gift of the vehicle to the Respondent.

On the GhC82 Million Contract for 28-Kilometre Road Project from Wa to Hamile, the evidence show that neither Djibril Kanazoe or his company, Oumarou Kanazoe Construction Limited, have been sole-sourced or participated in the bid for the road project.

The Minister for Roads and Highway explained that subsequent to the Dodo Pepesu road project, the Ministry was expecting tenders for the Wa-Hamile stretch as an extension to the Dodo Pepesu wing. Oumarou Kanazoe and other contractors were invited to partake of the tender process. However, Oumarou Kanazoe did not respond to the invitation and, at the time the story broke out, the Ministry had already opened the tenders and Oumarou Kanazoe had not submitted any bids and did not take part in the process. Documentation examined at the Ministry showed that Djibril Kanazoe was invited among other contractors to submit bids, but he did not respond to the invitation and did not participate in the bidding process.

Under the circumstance, the Commission finds the allegation that the Ministry of Roads and Highways was in the process of awarding the contract for the construction of the 28 kilometre Wa-Hamile road worth GHC82, 000,000.00 to Djibril Kanazoe through sole sourcing speculative and not supported by the evidence.

Issue 12: Whether the Respondent influenced the award of contracts

As has been established under issue 2 above, beyond accepting the prohibited gift, the available evidence do not show that the Respondent:

- participated in any decision involving the Djibril Kanazoe;
- used his office for the private benefit of Djibril Kanazoe;
- used or permitted the use of his position or title or any authority associated with his office in a manner intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to Djibril Kanazoe; or
- used his office to influence a decision to be made by another person to further the interest of Djibril Kanazoe.

In the absence of evidence to the contrary, the Commission reiterates its earlier finding that the evidence do not show that the Respondent influenced the award of the two contracts won by Djibril Kanazoe or his company, Oumarou Kanazoe Construction Limited.

Issue 13: Whether the Respondent has conducted himself in a manner that has violated Article 284 of the 1992 Constitution of the Republic of Ghana by a receipt of a gift of the vehicle

Article 284 of the Constitution provides that:

“A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office”.

In the Ablakwa Case (supra), the Supreme Court held, among others, that:

“The Plaintiffs, like other Ghanaians, were entitled to believe that public actions had been tainted with all manner of illegalities and improprieties. Where the plaintiffs would want those illegalities and improprieties to be tagged on to specific public officers, they

should be in the position to establish the facts which would support that belief and the basis of that belief in the illegalities and improprieties on the one hand, and the nexus or connection with the specific public officers on the one hand. It was the facts, basis and nexus which would amount to proof and justification for the accusations. The necessity to adduce proof would become even more imperative where, as in the instant case, the accusers had invited the court to declare the actions as tainted with cronyism, corruption, arbitrariness, capriciousness, conflict of interest and abuse of discretionary power vested in a public officer.

As seen under issue 2 above, the Code of Conduct & Conflict of Interest Guidelines recognize the likelihood that some public officials may receive gifts under various circumstances in contravention of the Gift Policy, and made provision for how such situations should be dealt with to avoid or cure possible conflict of interest. Among the measures to deal with potential conflict of interest that may arise from receiving prohibited gifts are disclosure and surrender of the gifts so received, and refraining from participating in decisions affecting the giver of the gift/donor, or in any way influencing others involved in the decision making.

In the instant case, the evidence available show that although the gift was offered to the Respondent for his personal use, the vehicle was surrendered and put in the Presidential Pool for State use. Further, the available evidence do not show that the Respondent:

- participated in the decision/matter involving the donor, in violation of section 3.3.1 on **Impartiality in Performing Official Duties;**
- used his office for the private benefit of the donor, or person with whom he is affiliated in a private capacity, in violation of section 3.5.1 on **Use of Public Office for Private benefit;**

- used or permitted the use of his position or title or any authority associated with his office in a manner intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to the donor or a person with whom he is affiliated in a private capacity, in violation of section 3.5.2 on **Inducement or Coercion of Benefit**; or
- used his office to influence a decision to be made by another person to further the interest of the donor in violation of section 3.5.7 on **Influence Peddling**

Whilst the Respondent contravened the Gift Policy by accepting the Ford vehicle, his actions after the gift was made clearly cured any conflict of interest that could have been occasioned.

In the circumstances, the Commission is satisfied that the Respondent's conduct did not violate Article 284 of the 1992 Constitution of Ghana.

DECISION

Article 287 (2) the 1992 Constitution makes provision for what the Commission may do in respect of the results of its investigation:

The Commissioner for Human Rights and Administrative Justice or the Chief Justice, as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or admission.

At the end of the Preliminary Investigation the Commission has come to the conclusion, based on the extensive evidence assembled, that the allegations that the Respondent has contravened Article 284 of the 1992

Constitution by putting himself in situations of conflict of interest has not been substantiated. Consequently, the Commission holds that full or further investigations into the allegations are not warranted. The allegations therefore, are hereby dismissed.

RECOMMENDATIONS

1. One of the issues that needs to be addressed as a nation, is the concerns raised by the Constitution Review Commission (CRC) in its Recommendations on conflict of interest. The CRC Report commented:

“The CHRAJ has published the Conflict of Interest Guidelines and Code of Conduct for Public Officers to flesh out the provisions of Chapter 24 of the Constitution. These, however, remain soft law”.

The CRC then recommends on page 307 of its Report:

“There is clearly the need for legislation to define in detail the situations that constitute conflict of interest and which serve as the legal framework within which the CHRAJ can determine complaints made against public officers for breaches of the Code. Such a law should also provide for the manner in which public officers should treat gifts that are offered to them. The absence of enabling legislation setting out the parameters of conflict of interest makes Article 284 considerably vague in terms of definition, procedure and sanctions. The lack of clarity in matters of conflict of interest

and the lack of an extensive code of conduct for public officers only helps to lower the trust that the people have [in public office officers]”

The Commission joins the CRC, and strongly recommends the early passage of the Conduct of Public Officers Bill which seeks to codify the current Guidelines on conflict of interest and to make for Regulations among others that would govern the Regime of “gifts” including solicitation and acceptance of gifts; what constitutes acceptable gifts; forfeiture and disposal of prohibited gifts; the keeping of gift registers etc, which the Commission has been at the forefront of championing. The Bill has been before Parliament for two terms, but is yet to be passed.

The interest generated by this case among the Ghanaian public should remind us of the urgency the Ghanaian public attaches this issue, and an early passage of the Conduct of Public Officers Bill will help improve public understanding/appreciation of the issues involved.

The perception of corruption among public officers by members of the general public is directly or indirectly traceable to the conduct exhibited by public officers in their service delivery which is seen to be at variance with the code of conduct expected of them under Chapter 24 of the 1992 Constitution. If we are to increase the trust of the general public in public service delivery, serious attention must be paid to strengthening the legal framework on conflict of interest and ensuring that it is seen as a high risk activity by public officers and the general public at large

2. The Commission also reiterates its recommendation in the Anane Case, that Public Officials who occupy very high positions, among them, the President, Vice President and all appointees of the Executive; the Speaker, Deputy Speakers, Members of Parliament, and Senior Staff of the Parliamentary Service; the Chief Justice, Members of the Judiciary, and Senior Staff of the Judicial Service, should receive compulsory training on the Code of Conduct for Public Officers and the Conflict of Interest Guidelines on assumption of office.

The Commission further recommends that Heads of MDAs and MMDAs should ensure that should ensure that all staff in their institutions/organisations receive compulsory training on the Code of Conduct for Public Officers and the Conflict of Interest Guidelines on assumption of office.

ACKNOWLEDGEMENT

The Commission would like to acknowledge the role of the Complainants and the Respondents in this investigation.

Public office is a public trust, and whenever citizens have doubts and suspicions that these suspicions are addressed through approved channels under law, instead of resorting to the rumour mill to peddle unsubstantiated allegations. Article 218(e) of the 1992 Constitution mandates the Commission “to investigate all instances of alleged or suspected corruption ...”, against public officers, and we would encourage others to come forward with their suspicions and allegations for investigation.

Finally, we commend the Complainants and the Respondent for the excellent cooperation we received. We also commend all persons, institutions, and members of the general public for their assistance and cooperation.

**DATED THIS 28th DAY OF SEPTEMBER 2016 AT THE
COMMISSION ON HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE, OLD PARLIAMENT HOUSE,
JOHN EVANS ATTA MILLS HIGH STREET, ACCRA**

Richard Quayson
Acting Commissioner