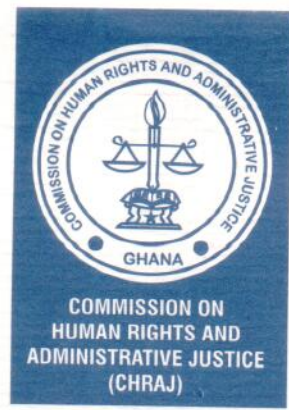


CHRAJ/63/2015/433



30/09/20

JUSTICE JOSEPH ASANTE
NATIONAL POPULATION COUNCIL
MINISTRIES
ACCRA

Dear Madam,

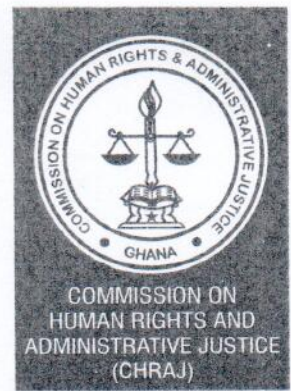
IN THE MATTER BETWEEN JUSTICE JOSEPH ASANTE AND DR. LETICIA ADELAIDE APPIAH, EXECUTIVE DIRECTOR, NPC

Please find enclosed the decision of the Commission in the above-mentioned complaint.

Yours faithfully,

DANIEL ANANG AFETSI
SNR. REGISTRAR

For: Commissioner



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

AND

**IN THE MATTER OF ARTICLES 218(a), 284 AND 287 OF THE
1992 CONSTITUTION**

BETWEEN:

JUSTICE JOSEPH ASANTE

-

COMPLAINANT

**DR. LETICIA ADELAIDE APPIAH -
EXECUTIVE DIRECTOR
NATIONAL POPULATION COUNCIL**

RESPONDENT

DECISION

1.0 INTRODUCTION AND BACKGROUND

On the 6th of January, 2017, H.E President Nana Akufo-Addo acting in accordance with the advice of the Governing Board of the National Population Council (NPC) and in consultation with the Public Services Commission (PSC) appointed Dr. Leticia Adelaide Appiah, the Respondent herein as Executive Director of the National Population Council (NPC) (hereinafter referred to as “the Council”). Prior to her appointment, the Respondent was the Director of the Ledzokuku Municipal Directorate of Health Services in the Greater Accra Region. The appointment by the President was per letter Ref.No.AC 22/548/01A signed by the Secretary to the Public Services Commission, one Michael Owusu Nimako containing the contractual terms and conditions relevant portions of which would be set out verbatim in the course of this Decision.

It is partly the implementation of some of these terms and conditions by the Respondent that occasioned the instant complaint entitled "PETITION" per letter dated 4/2/2019 by Justice Joseph Asante, the Complainant herein who at all material times leading to this complaint was a staff of the National Population Council on the rank of Driver Grade 1. In the course of investigations by the Commission, the complainant came under the disciplinary rod of the Council and was accordingly dismissed. However, his dismissal did not affect the scope of investigations as no complaint against the dismissal is before the Commission.

The complainant did not ask for any specific relief in the instant case. All that he requested from the Commission is captured in brief in the last sentence of the complaint, quote:

"All I ask is that the right thing should be done".

Of course, this request appears anomalous and would be discussed further in the course of this Decision.

2.0 ALLEGATIONS

The Complainant alleges that in June 2018, the Council appointed one Jeremiah Naaba with staff ID 1261366 as a day watchman and posted him to its Head office in Accra. However, the said employee never reported at the said Head Office or any of the Council's Regional offices for work. In effect he alleges that the affected staff never assumed duty in the Council.

Complainant further alleges that he conducted his own investigations which revealed some additional information on the affected staff. That information related to the Respondent and would be reproduced in extenso as follows that:

- 1. Mr. Jeremiah Naaba was introduced by the Executive Director of the NPC [Respondent] for employment**
- 2. Mr. Jeremiah Naaba was already working in Madam Leticia Appiah's house before his employment at NPC**
- 3. Mr. Jeremiah Naaba is presently on the payroll of the NPC being paid directly through the Controller and Accountant General's Department (CAGD)**
- 4. Ghana Government is through CAGD already paying Madam Leticia Appiah for the services of two security men contained in her appointment letter**

5. The above amounts to paying for the services of Mr. Jeremiah Naaba twice by the CAGD

6. Madam Leticia Appiah's attention was brought to the issue but she ignored it".

Complainant additionally alleges that the Respondent is keeping two (2) official vehicles, one with Registration No GV-673-14 being used by Respondent's family and another vehicle with Registration No. GN 6559-18 presumably being used by the Respondent herself, contrary to Respondent's appointment letter under which she is entitled to only one official vehicle. Concluding complainant provided both the residential and office address of the Respondent.

Complainant later indicated that the payment of double salary on security as per paragraph 5 supra was directed at the Respondent and not Jeremiah Naaba. He also clarified that "the issue" in paragraph 6 supra had to do with the failure of Jeremiah Naaba to assume duty at the Head office of the Council.

3.0 MANDATE OF THE COMMISSION

Following an assessment of the complaint, the Commission decided to invoke its jurisdiction to investigate same on two main grounds.

The first had to do with the fact that the allegations contained therein border on abuse of power and conflict of interest by the Respondent, a public officer. The complainant had alleged that it was the Respondent who introduced Jeremiah Naaba, the interested person for employment in the Council and that prior to this appointment, the said Jeremiah Naaba was already working in the Respondent's house. What this allegation implies is that the appointment of the interested person was facilitated by the Respondent. Two questions arise. The first is whether this facilitation was driven by the personal interest of the Respondent or that of the Council?

If it was driven by her personal interest then the potential for conflict of interest arises in the sense that under Article 284 of the 1992 Constitution, there is a constitutional injunction against a public officer allowing his personal interest to conflict or likely conflict with the performance of his functions. The said Article 284 provides as follows:

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

The second is whether the Respondent breached any of the known procedures for recruitment into the public service or the Conditions of Service of the Council. If there were any breaches, then the potential for abuse of power by the Respondent existed, gleaned from the fact that abuse of power is a departure from legal or reasonable use or misuse of power (See the definition of “abuse” by the **Black’s Law Dictionary**, 9th ed. at page 10). Abuse of power is also a specie of conflict of interest (See the definition of corruption under the **National Anti-corruption Action Plan (2015-2024)** at page 23.

Then, there are also allegations bordering on the double payment to the Respondent of emoluments for security in the sense that the Respondent is allegedly being paid for two (2) security persons pursuant to her offer of appointment and at the same time enjoying the services of Jeremiah Naaba who is on the pay roll of the Controller and Accountant’s General Department.

The aggregation of these allegations, if proven mean that the State is spending in respect of three (3) security officers for the Respondent to the knowledge of the Respondent. This is also in addition to the allegation that the Respondent is keeping two (2) official vehicles, one of which is being used by her family when she is entitled to one.

It is not in doubt that the Respondent is a public officer having been appointed by his Excellency the President as the Chief Executive Officer of the National Population Council whose function by the **National Population Council Act, 1994 (Act 485)** is to inter alia advise government on all population matters.

Now, it is trite learning that the Commission has the jurisdiction to investigate allegations of abuse of power by public officers pursuant to section 7(1) (a) of the **Commission on Human Rights and Administrative Justice Act 1993 (Act 456)** which provides as follows:

“7. (1) 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”

This provision is a replication of Article 218(a) of the 1992 Constitution.

The Commission also has jurisdiction to investigate allegations of conflict of interest pursuant to Article 287(1) which states 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 admission of the contravention or non-compliance ,cause the matter to be investigated”

The third reason is that the complaint meets the constitutional standard for the invocation of Article 218(a) in that it was filed by an identifiable person within the context of the Supreme Court’s decision, in what may be described as the *locus classicus* for the interpretation of the word “complaint” under Article 218(a), in the case of 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 213**. There, the court at HOLDING 9 per Brobbey (JSC) said:

“Complaints as used in Article 218(a) refers to complaint against “a public officer in the exercise of his official duties”. The reference to “public officer” and “discharge of official duties” necessarily presuppose that there must be someone identifiable who makes complaints in respect of the matters stated in that clause. In other words, once the public officer is known, the person who has been wronged will logically be known because public officers operate in respect of specific or identifiable individuals or human beings who are known”

It should be pointed out that in terms of the corruption mandate, the Commission has jurisdiction under Article 218(e) of the **1992 Constitution**, the same as section 7(1)(e) of Act 456 to investigate any allegations against a public officer without an identifiable complainant since these provisions empower the Commission to investigate “...all instances of alleged or suspected corruption”.

Nonetheless, in the instant case, the complainant, Justice Asante is a known person, a staff of the National Population Council with a known address being the official address of Council as disclosable from the complaint. The complaint also satisfied the statutory requirements governing complaints provided by Section 12 of the Commission's enabling Act referred hereto and Regulation 1 Sub-Regulations (1),(2) and (3) and Regulation 2 of the **COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (INVESTIGATION PROCEDURE) REGULATIONS,2010(C.I 67)** in that it was submitted to the Commission in writing and signed by the complainant with his full name and address and that of the Respondent. It also contains the particulars of the complaint/allegation and the nature of injustice perpetrated. These provisions are quoted hereunder for ease of reference.

Section 12 of Act 456

- “12. (1) A complaint to the Commission shall be made in writing or orally to the national offices of the Commission or to a representative of the Commission in the Regional or District Branch.**
- (2) Where a complaint is made in writing it shall be signed by the complainant or his agent**
- (5) A complaint under this Act may be made by any individual or a body of persons whether incorporated or unincorporated**

Regulation 1(1)(2) and (3) and 2 of C.I 67

- “1. (1) A complaint made to the Commission shall be submitted to**
- (a) the national office of the Commission; or**
- (b) a representative of the Commission at the regional and district branch of the Commission**
- (2) A complaint made to the Commission may be made**
- (a) in writing**
- (b) orally**
- (c) by facsimile or**
- (d) by electronic mail**
- (3) A complaint made in writing may be addressed to the Commissioner or the Commissioner's regional or district representative and the complainant shall**
- (a) sign,**
- (b) thumbprint, or**
- (c) authenticate**
- the written complaint”**

Admittedly, the complainant did not include any specific relief sought as pointed out supra. The complainant only indicated that he wanted “the right things to be done”. In the Commission’s view, this could only mean that the complainant was interested in rectifying the alleged anomalies being perpetrated, which is a relief sought within the meaning of Regulation 2(1) (e) of C.I 67 which states:

“(2) (1) A person who lodges a complaint with the Commission shall include the relief sought by the complainant...”

Moreover, despite the omnibus character of this relief, the Commission does not think that its jurisdiction should be ousted considering that under Section 18(1) of the Act 456 which would be highlighted at the end of this Decision, the Commission has a discretion to make any recommendation without tying itself to reliefs being sought by complainants after investigations.

It was for these reasons that the Commission decided to invoke its jurisdiction in the matter and accordingly investigated same.

4.0 RESPONSE/COMMENTS OF RESPONDENT

Pursuant to Regulation 3 of C.I 67 and section 14(1) of Act 456, the Commission requested the comments of the Respondent vide letter Ref. No. CHRAJ/63/2019/233 of 31/7/2019 enunciating the statutory **principles underlying the complaint as provided by Articles 284 and 287 of the Constitution as well as section 7(1)(a) and (b) of Act 456**. Regulation 3 of C.I 67 is subtitled “Transmission of complaint” and it provides as follows:

“3. (1) The Commission shall transmit a copy of the complaint to and request a response from
(a) the person against whom the complaint is made, and
(b) the head of the body or organization of the person
against whom the complaint is made after receiving a
complaint that is within the mandate of the Commission”

Where necessary the Commission would in the course of this Decision reproduce the constitutional provisions stated above.

In her comments, the Respondent did not traverse all the allegations made against her in that she admitted the use by her of two (2) official vehicles and the retention of three (3) security officers inclusive of the affected watchman, Jeremiah Naaba at her residence but sought to justify same on grounds *inter alia* of trekking and internal travels in the case of the vehicles and medical grounds in the case of the security persons. She however denied the use by her family members of her official vehicle, the abuse of power by her and the double payment by government to her as security as alleged by the complainant.

The Respondent nonetheless failed to comment on the alleged introduction by her of Jeremiah Naaba for employment in the Council and the refusal or failure by her to take action when the Jeremiah Naaba's failure to assume duty was brought to her attention. To appreciate the full effect of her response, the said comments dated 15/8/2019 and provided essentially in two (2) paragraphs are hereby reproduced as follows:

“Vehicles

As the Executive Director of the National Population Council (NPC), my job schedule includes trekking as well as internal travels. I use the Prado vehicle to trek and the saloon for internal travels. Indeed, prior to being assigned 4*4 vehicle for my trekking, I used my family's Land cruiser for trekking on official assignments.

Furthermore, I deny that my family members use my official vehicle.

Security Officers

As the Executive Director of NPC, I am responsible for protecting its human resource, State facilities as well as my personal safety. Per my conditions of service, my consolidated salary caters for two security officers who I have engaged to protect the State residential facility where I currently occupy and my person for 24 hours.

As a medical officer by profession, I appreciate the detrimental effect to the health of two security officers offering 24hour security cover. To that end, as a former Municipal Director of Health Services at LEKMA, three security officers worked eight-hour shift daily to protect the State residential facility where I lived. Therefore, as standard practice from my previous employment, I assigned additional security officer from NPC head office to complement the two based on the reasons adduced above.

Based on the aforementioned, I strongly disagree with the whistle blower that I have abused my power nor caused government to pay twice for security as alleged by the whistleblower.

SIGNED

DR. LETICIA APPIAH
EXECUTIVE DIRECTOR”

Following a request for additional information by the Commission per letter Ref.No.63/2019/331 of 19/9/2019, the Respondent in her response dated 24/9/2019 provided the following:

1. A Copy of her Appointment Letter marked as “Appendix A”,
2. A Copy of the Appointment Letter of Jeremiah Naaba as a Day Watchman Marked as “Appendix B”, and
3. A Copy of the August 2019 Pay slip of Jeremiah Naaba, “Appendix C”

The Respondent also reiterated the justification for the retention/keeping of three security officers at her residence whose names and phone numbers she provided as follows: Jeremiah Naaba (054315770), Kaka Afidador (0245395195) and Kwame Gordon (0248559017). In the case of the retention of the additional third security in particular, she indicated that it was in exercise of her discretion. She also indicated that paragraph(5)(b) of her Conditions of Service entitles her to a chauffeur driven official vehicle with free maintenance and 80 gallons fuel for efficient performance of her duties and therefore she uses any vehicle depending on what she describes as “on safety and efficiency”. Once again, the relevant but what in the Commission’s view are controversial paragraphs, of the additional information are reproduced as follows:

“iv. As I stated in my earlier response, being a medical officer by profession, and now in charge of both human and material resources of the council, I was worried about the detrimental effect on the health of the two security officers offering 24-hour security cover. Again, security duties are very important and therefore, a security officer should not be fatigued under any circumstance, but always stay alert, observant and sit through his/her duties effectively. It is out of these considerations that I used my discretion to engage the third security officer from the head office to complement the efforts of the two who are catered for in my appointment letter.”

“vi. Per paragraph 5(b) of my service/appointment letter, I am entitled to a chauffeur-driven official vehicle, with free maintenance and 80 gallons of fuel for the efficient performance of my duties. So, as and when my duty demands, I use any vehicle depending on safety and efficiency”

It is important to state that on the 27/9/2019, the Respondent, unsolicited this time, provided information in the form of documentation on the promotion of the Complainant herein to the grade of Chief Driver vide letter Ref.No.NPCS/PROM/2017/1 of 1/12/2017 ,the reversal of the said promotion vide letter Ref.No.NPCS/P.225/18/70 of 22/3/2018, a query on the complainant for absencing himself from duty per letter Ref.No.NPCS/PS 225/VOL.1/2019/63 of 18/6/2019 and the subsequent dismissal of the complainant on grounds of vacation of post by letter Ref.No.NPCS/P.F.248/VOL.1/2019/64 of 23/7/2019. However, these letters have no probative value as they are unconnected whatsoever to the issues at stake and are therefore rejected by the Commission as being irrelevant.

5.0 ISSUES FOR DETERMINATION

The Commission identified the following as the issues for determination and was accordingly guided by same during investigations.

1. Whether or not Jeremiah Naaba was employed as a day watchman and posted to the Head Office of the National Population Council.
2. Whether or not the said Jeremiah Naaba assumed duty at his duty station
3. Whether or not the appointment of Jeremiah Naaba was in accordance with laid down rules on recruitment into the public service and the Conditions of Service of the Council.
4. Whether or not Respondent is being paid double remuneration for the services of security
5. Whether or not the Respondent is entitled to three (3) security/watchmen inclusive of Jeremiah Naaba at her residence per her instrument of appointment and the approved Conditions of Service of the National Population Council
6. Whether or not the assigning/keeping of an additional watchman at the residence of the Respondent was a proper exercise of discretion by Respondent.
7. Whether or not the Respondent is entitled to the use of two (2) official vehicles per her offer of appointment.

8. Whether or not an official vehicle in the custody of Respondent is being used by Respondent's family members
9. Whether or not the conduct of the Respondent amounts to abuse of power and conflict of interest.

6.0 THE INVESTIGATION

To resolve the above-mentioned issues, the Commission undertook investigations principally through exchange of correspondences, interviews and review of relevant documents.

6.1 THE EVIDENCE

The correspondences exchanged were basically the request for comments and the responses of the Respondent already indicated supra whilst the documents reviewed consisted of the following:

1. The Appointment letter of the Respondent, Exhibit "A"
2. Appointment letter of Jeremiah Naaba, Exhibit "B".
3. The pay slip of Jeremiah Naaba, Exhibit "C"
4. A report recommending the employment of Jeremiah Naaba dated 3/5/2018, Exhibit "D"
5. Medical Report on Jeremiah Naaba, Exhibit "E"
6. A letter of Assumption of Duty of Jeremiah Naaba Ref.No.NPCS/PF.303/2018/05 of 5/6/2018 signed by Mr.Foster Brehini, Head of Human Resource of the Council, Exhibit "F"
7. A Memorandum from the Head, Human Resource to Ag. Director, Finance and Administration dated 24/12/2018 on the absence from duty of Jeremiah Naaba, Exhibit "G".
8. Pictures of Vehicles Exhibits "H", "J", "K" and "L"
9. The Collective Bargaining Agreement Between the National Population Council and the Public Services Workers Union of GTUC dated 1/7/2007, Exhibit "M"

10.The Scheme of Service of the National Population Council,2013, Exhibit “N”

11.The Human Resource Management Policy Frame Work and Manual for the Ghana Public Services, Exhibit “O”

6.2 THE INTERVIEWS

The Commission interviewed both the Complainant and the Respondent in the course of investigations in addition to one Richard B.Abroquah, the Head of Human Resource of the Council, Jeremiah Naaba, the affected security person/watchman and Dr Gladys Norley Ashitey, the Chairman of the National Population Council. A summary of the interviews is as follows:

1. JUSTICE JOSEPH ASANTE-COMPLAINANT

The Complainant basically rehashed his allegations against the Respondent contained in his complaint but added that prior to the employment of Jeremiah Naaba as a day watchman, the latter was working as a security at the official residence of the Respondent.

He admitted that the Respondent is entitled to security at her official residence which the State has been providing in the form of allowance every month but took issue with the assigning by Respondent of Jeremiah Naaba as a security at her official residence outside where he was specifically engaged to work. He insisted that the Respondent is being paid double for security in the sense that she is enjoying the services of Jeremiah Naaba (who is on the payroll of the Controller and Accountant General’s Department) and at the same time receiving monthly allowance in respect of security. In respect of the vehicles, he conceded that the Respondent is entitled to a chauffeur-driven vehicle but indicated that she is not entitled to the personal use and to her comfort of the 4 x 4 Toyota Landcruiser Vehicle which according to him was procured in 2018 for trekking by staff of the Council. Concluding, he indicated that the Respondent places her personal interest and comfort above everything, work and staff.

2. DR. LETICIA APPIAH

On the 27/6/2019, the Respondent insisted before the Commission that her Conditions of Service as Executive Director entitled her to the services of a day and night watchman at her official residence.

She admitted that this is provided to her in the form of monthly allowances paid to her by the State i.e the said allowances are indexed into her salary. She admitted that she facilitated the recruitment of Jeremiah Naaba into the Council as a day watchman indicating that the relationship between them commenced at the Ledzokuku Municipal Health Directorate when Jeremiah Naaba was introduced to her by a friend following her quest for a private security person at her residence. She added however that the affected watchman, whom she described as being honest, was regularly appointed as he went through the processes before his appointment.

On the continued presence of Jeremiah Naaba at her residence as security, she indicated that she decided to assign the former to her residence because as a professional medical officer, she appreciated the detrimental effects on the health of two (2) security persons having to work for 24 hours. She conceded that the allowances being paid to her for security and the assignment of Jeremiah Naaba to her residence constituted dual payment on security since she is the ultimate beneficiary.

She again justified the use by her of two (2) official vehicles but revealed that some staff at the head office of the Council were not happy with the use by her of the Landcruiser Prado. She maintained that her family members are not using any of the official vehicles assigned to her adding that her daughters have their own cars.

3. RICHARD B. ABROQUAH

Richard B. Abroquah is the Head, Human Resource (HR) and former Acting Director, Finance and Administration at the Council. On 30th September 2019, he told the Commission that the Respondent is entitled to security at her official residence per the Conditions of Service of the Council. He added that the State pays the Respondent allowances every month for her to engage security for the residence.

Regarding the appointment of Naaba, Mr. Abroquah said that it was the Respondent who recommended him for appointment as Day Watchman at the Council. That he invited Jeremiah Naaba for what he termed a "pre-employment discussion" on the 3rd of May 2018 and found that he could write and speak good English and thus qualified for the job. That he subsequently issued an appointment letter to Jeremiah Naaba which was signed by the Respondent. He confirmed that Jeremiah Naaba has since his appointment not reported for work at the Head office of the Council. He added that the attention of the Respondent was drawn to the continuous absence of Naaba from work per a Memorandum dated 24th December,

2018, but she failed to take action. This Memorandum was subsequently made available to the Commission as Exhibit G. He indicated that it was later discovered that it was the Respondent who asked Mr. Naaba to continue to work at her official residence as security.

On a purported assumption of duty of Jeremiah Naaba per letter dated 5th June, 2018, he explained that it was written to enable the Human Resource Unit process salaries of all staff recruited at that time including, Mr. Naaba, ostensibly to avoid delays in the payment of salaries to them. He indicated that Mr. Naaba has since been duly placed on the payroll of the Council as a staff, but continues to work at the residence of the Respondent.

In respect of the vehicles, Mr. Abroquah said that per the Conditions of Service of the Council, the Respondent is entitled to a saloon car with fuel and free maintenance but not a Land Cruiser Prado which is meant for trekking by all staff of Council. He indicated that staff have resorted to the use of public transport for official assignments outside Accra because of what the Respondent has done.

He made available to the Commission the report which recommended the appointment of Jeremiah Naaba in the Council, Exhibit D.

4. JERERMIAH NAABA

Mr. Jeremiah Naaba is the affected Day Watchman who was employed on 28th May, 2018 by the Council. Prior to his engagement he was working as a security at the residence of the Respondent.

On the 1st of October, 2019, he told the Commission that he was introduced to the Respondent by one Aunti Grace, a former staff of the Zoomlion Office at the Ledzokuku Municipal Assembly (LEKMA). That the Respondent engaged him as security at her residence whiles she was with the LEKMA Health Directorate.

According to Mr. Naaba, it was the Respondent who asked him to submit an application to the Council for employment as a security. That he submitted the said application and was invited by Mr. Abroquah, the Head of Human Resource for a discussion and was subsequently issued with an appointment letter as a day watchman of the Council which letter was signed by the Respondent. He indicated that he was posted to the Head Office of the Council but was instructed by the Respondent to continue to work at her residence.

He also said that he went through the Biometric Registration process to be placed on the Government Payroll and thus receives salary.

On the Vehicles, he indicated that four (4) vehicles are normally parked at the residence of the Respondent, two (2) of which are official vehicles to wit:

1. **Land Cruiser Prado** with Registration No. **GN 6559-18,**
2. **Saloon car (Toyota Avensis)** with Registration No. **GV 673-14,**
3. **Toyota Corolla (Saloon car-wine colour)** with Registration No. **GT 3968-18,**and
4. **KIA (Saloon car-silver colour)** with Registration No. **GN 2601-11**

The last two (2) vehicles, he indicated belong to the daughters of the Respondent. He indicated that he has never seen the Respondent's family members use the official vehicles. He added that he used to be the only security at the residence of the Respondent until four (4) months ago when the Respondent engaged two others as security.

5. **HON.(Dr) GLADYS NORLEY ASHITEY**

Hon. Dr. Gladys Norley Ashitey is the Chairman of the National Population Council. Dr. Ashitey, told the Commission that on the 9th December 2019, she received a petition from staff concerning the conduct of the Respondent, Dr. Leticia Appiah.

According to Dr. Ashitey, the Governing Council immediately set up a three (3) Member Committee to look into the issues. However, the Committee's work has since stalled due to lack of logistics, busy schedule of members and upcoming international programmes, which needed urgent attention.

Dr. Ashitey also indicated that the Council later received a "Resolution" from some Management Members and staff of the Council on their unwillingness to work with the Respondent. As a result, a five (5) Member Committee this time was being constituted to investigate the matter and that an invitation had been extended to the Commission on Human Rights and Administrative Justice to nominate a staff to serve on the Committee.

Dr. Ashitey further said that the Respondent is yet to officially inform the Council about the instant investigations by the Commission against her although she, the Respondent had informally informed her about it. She said that her immediate reaction to the allegations against the Respondent was that if the State offers you an appointment with certain Conditions of Service that does not suit you, the

honourable thing is to decline and not to engage in improper conduct after acceptance.

She lamented over the issue and indicated that the happenings could poison the work environment and affect the functions of the Council. She added that the whole issue borders on leadership and that any leader or head that undermines subordinates is bound to fail and that seems to be the situation at the Council. She cited an instance when Mr. Abroquah, then Acting Director, Finance and Administration, gave a three (3) months' notice of his intention to resign from the Council only for the Respondent to request him to handover immediately. That she had to intervene when this happened.

7.0 ANALYSIS OF THE ISSUES IN THE LIGHT OF THE APPLICABLE LAW AND THE EVIDENCE

ISSUE 1: Whether or not Jeremiah Naaba was employed as a day watchman and posted to the Head Office of the National Population Council

Issue 1 would have been needless but for the failure of the Respondent to directly address the circumstances surrounding the appointment of Jeremiah Naaba and the equivocal responses given in her comments to the Commission dated 24/9/2019 and 15/8/2019 even though Exhibit B made available to the Commission by the Respondent herself could have put this issue to rest.

It should be pointed out also that Jeremiah Naaba is not a subject matter of investigations by the Commission as he is not the Respondent nor has he been joined as Respondent. There is no allegation made against Jeremiah Naaba per se but the conduct of the Respondent in relationship to Jeremiah Naaba; the copious reference to Jeremiah Naaba in this Decision has to be understood in this context.

The letter engaging Jeremiah Naaba by the Council, Exhibit B is entitled "OFFER OF APPOINTMENT AS A DAY WATCHMAN" and it was signed by no less a person than the Respondent. This title is very clear and concise and does not need any interpretation. But if there are any doubts regarding the utility of this heading, paragraph 1 of the said letter dated 28/5/2018 clears any such doubt. The said paragraph is quoted in extenso as follows:

"I have the honour to inform you that following your success at the recent interview conducted at the National Population Council (NPC) Secretariat, you have been offered appointment as **Day Watchman** at the NPC Secretariat, subject to medical fitness and checks. You will report at the

Head office and may be posted to any of our regional offices when necessary”.

Accepting the offer of appointment, Jeremiah per letter dated 1/6/2018 and Headed ”RE: OFFER OF APPOINTMENT” indicated:

“ I refer to your letter dated 28th May,2018 on the above subject and write to accept the offer as a Day Watchman with the National Population Council(NPC) Secretariat.

I hope to commit my time, energy and skills to the service of the NPC.
Thank you.

Yours faithfully,
Sgn
JEREMIAH Naaba”

The Respondent and later the Head of Human Resource and the said Jeremiah Naaba all admitted before the Commission during the interview sessions related supra that Jeremiah Naaba was appointed as a Day watchman and that his duty post was the Head office of the Council. There is therefore sufficient evidence on the balance of probabilities that points clearly to the appointment of Jeremiah Naaba as a day watchman and his posting to the Council’s Head Office. The question to ask is whether Jeremiah Naaba assumed duty at all at the Head Office of the Council? This is the subject matter of issue two (2).

In many employment contracts, the effective date of appointment is normally the date of assumption of duty and this was so in the case of Jeremiah Naaba where at paragraph 2 of Exhibit B it was stated:

“2. The appointment takes effect from the date of your assumption of duty”

Of course, there is sound policy reason for this because it is the presence at post that effectuates the contract. For this reason, it is often necessary to indicate in separate communication the date of assumption.

This reasoning was not lost on the Council and therefore on the 5th of June, 2018, the then Head of Human Resource, Mr.Foster Brehini authored Exhibit F informing the Ag. Director, Finance and Administration with copies to the Director, PPP, the Head, P & D and the Controller and Accountant General’s

Department about the purported assumption of duty of Jeremiah Naaba. The said letter is reproduced below:

“NATIONAL
POPULATION COUNCIL
SECRETARIAT

Our Ref: NPC/PPF.303/2018/05
Your Ref:

5TH JUNE, 2018

LETTER OF ASSUMPTION

This is to inform you that Jeremiah Naaba a newly recruited Day Watchman **has commenced work on Monday, 11th June 2018 at the NPC Head office.** Submitted for your information, please.

Thank you.

MR. FOSTER BREHINI
HEAD HUMAN RESOURCE

AG. DIRECTOR
FINANCE AND ADMINISTRATION
NPC SECRETARIAT
MINISTRIES, ACCRA

cc: Director PPP
Head P&D
The C&AGD”

(emphasis supplied)

This letter was very misleading in the sense that there is overwhelming evidence that indicates that the said day watchman never assumed duty at the Head Office but elsewhere at the residence of the Respondent. Mr. Richard Abroquah the then acting Director, Finance and Administration had attempted to justify the contents of this letter on the basis that it was meant to enable the Human Resource Unit process salaries of newly recruited staff including Jeremiah Naaba and avoid delays. The Commission is however unable to accept this view because the Council could have indicated that Jeremiah Naaba had assumed duty simpliciter without stating the specific venue of assumption

It is not surprising that in both her comments to the Commission, the Respondent appeared evasive on this issue. In her concluding comments dated 15/8/2019, the

Respondent after stating what in her view are the medical/health reasons for keeping three security at her residence indicated:

“... Therefore, as standard practice from my previous employment, I assigned additional security officer from **NPC Head office** to complement the two based...”

In her comments dated 24/9/2019, the Respondent reiterated this position when she indicated:

“...It is out of these considerations that I used my discretion to engage the **third security officer** from head office to complement the efforts of the two....”

The Respondent did not mention the name of this third security, nonetheless there is sufficient evidence that points to the fact that this third security is no less a person than Jeremiah Naaba.

Jeremiah Naaba at the interview indicated that he was posted to the Council's head office but was instructed by the Respondent to keep working at her Residence. This was corroborated by the head of Human Resource, Mr. Ricahrad Abroquah who stated that it was later discovered that it was the Respondent who requested Jeremiah Naaba to continue to work at her residence. The Respondent herself in her comments dated 24/9/2019 mentioned Jeremiah Naaba as being one of the three security at post at her residence.

In addition to this, the continued absence of Jeremiah Naaba from the Head office had earlier attracted the concern of the Head of Human Resource who in a Memorandum to the Ag. Director, Finance & Administration of the Council dated 24/12/2018, Exhibit G requested that steps be taken to cause the officer to resume [assume] his duties at the head office of the Council's Secretariat.

Exhibit G is entitled “ABSENCE FROM DUTY-JEREMIAH NAABA” whose relevant paragraphs are hereby reproduced as follows:

“I write to draw your attention to the fact that Mr. Jeremiah Naaba who was employed in June 2018 as a Day Watchman is yet to resume work at the Head office of the National Population Council (NPC) Secretariat as indicated in his appointment letter.

Records available to the Human Resource Unit suggest that the Controller and Accountant General's Department (CAGD) in

September commenced payment of salary arrears effective June 2018 to Mr. Jeremiah Naaba”

It is not certain whether this memo or the contents thereof were brought to the attention of the Respondent who by Section 10(3) of **Act 485** is in charge of the day to day administration of the Council subject to directives of the Council.

Section 10 of Act 485 is provides as follows:

“10(3). Subject to such general directives as the Council may give, the Executive Director shall be responsible for directing the work of the Secretariat and the day to day administration of the Council and shall ensure implementation of the decisions of the Council.

Mr. Richard Abroquah, the Head of Human Resource and former Ag. Director, Finance and Administration had indicated that this Memo was brought to the attention of the Respondent but she did nothing about it. However, the Commission could not verify this, the reason being that the said Memo was not addressed to the Respondent neither was there any minute or mark by the Respondent on the face of the Memo to suggest that she had notice of same just that she decided to ignore it.

It thus appears in the Commission’s view that even if the said Memo were brought to the Respondent’s attention it would still have served no purpose having regards to the justification for retention of the Day watchman made by the Respondent in her comments to the complaint. Be that as it may, all that this Memo seeks to do is to reinforce the fact that Jeremiah Naaba never assumed duty at his post.

The Commission finds from the evidence that Jeremiah Naaba was employed by the NPC as Day Watchman and specifically posted to the Head Office but ended up working at the residence of Respondent instead.

ISSUE 3: Whether or not the appointment of Jeremiah Naaba was in accordance with laid down rules on recruitment into the public service and the Conditions of Service of the Council.

The Scheme of Service of the Council (Exhibit N) which came into effect in 2013 does not provide for the position of watchman/security unlike other positions in the Council where the duties and responsibilities, qualification, experience, competences, career progression and training are spelt out. The processes for recruitment into the said position are not also provided. It is quite apparent that the position of watchman/security is a non-established post in the Council.

Notwithstanding this, the Collective Bargaining Agreement (CBA) made between the Council and the Public Service Workers Union (PSWU) of TUC(Ghana) made on 1/7/2007 provides for working hours for watchmen/security officers under Article 21(iii) as follows:

**“iii) For night watchman, hours of work shall be from 6:00pm to 6:am
For [day] watchmen/security officers it shall be from 6:00am to 6:00pm”**

The significant thing about the CBA is the recognition of the Council as one of the Public Services. That being the case the Council is governed by rules and regulations pertaining to the public service.

The current policy governing human resource in the public service is the **Human Resource Management Policy Framework and Manual for the Ghana Public Services** (hereinafter referred to as “the **Policy Frame- Work and Manual**”), **Exhibit O** which was developed in 2015. There, section 4.2.3.2 provides for selection interview as one of the discretionary processes for recruitment.

Consistent with this, Exhibit B, the Appointment Letter of Jeremiah Naaba indicated that the said appointment was based on the success of the said staff at a “recent interview”. But the question to ask is whether there was an interview prior to engagement of the said staff?

The beef of the complainant is that Jeremiah Naaba was introduced by Respondent to the Council for employment at which time he was already working at Respondent’s Residence as a security. The fact of Jeremiah Naaba being an ex-worker of the Respondent was not denied by the Respondent. Indeed, Respondent told the Commission during the interview that she had earlier engaged Jeremiah Naaba as a private security at her residence during her tenure with the Ledzokoku Municipal Health Directorate. Respondent however indicated that she recommended Jeremiah Naaba for appointment at the Council because he was honest adding that Mr. Naaba went through the processes before his appointment as day watchman. This recommendation was corroborated by Mr. Abroquah, the Head of Human Resource.

Mr.Abroquah however indicated that he invited Jeremiah Naaba for what he termed a “pre-employment discussion” on the 3rd of May, 2018 and found that he could write and speak good English and thus qualified for the job.

Whilst the Commission does not wish to interfere with the internal recruitment processes of the Council, it is quite apparent that what took place on the 3/5/2018 was not an interview.

Section 4.2.4.2 B and C of the **Policy Frame- Work and Manual** make it mandatory for the constitution of an interview panel for selection interviews. It states as follows:

“4.2.4.2 B For positions below the grade of Director, the shortlisted candidates shall be invited in writing to appear before an interview panel constituted by the appointing authority and the panel shall be constituted as follows:

(a) a chairperson who shall be the head of service or organization or a representative of the chairperson not below the grade of a Director;

(b) the head of the division into which the officer is being recruited or a representative of that head not below the grade of the officer being recruited

(c) one representative of the sector Ministry in the case of Senior officers

(d) one representative of the PSC, and

(e) one external assessor who shall be an expert in the relevant field

C. In the case of a junior officer position, any Three (3) of the above including a representative of PSC”

None of these provisions were followed in the case of Jeremiah Naaba. What took place as described by the Human Resource Manager was a discussion and not an interview. It is not surprising that no interview results or score sheet was made available to the Commission during investigations. No questions were asked on the job descriptions of a watchman and of security in general as it ought to have been the case from the testimony of the Head of Human Resource. It is quite obvious in the view of the Commission therefore, that the discussion of 3/5/2018 was carried out to effectuate the “recommendations” that had already been made by the Respondent and not to conduct an interview, for the employment horse had already been put before the cart.

The Commission would conclude therefore that the recruitment/appointment of Jeremiah was not in accordance with laid down principles on employment in the public service and the Conditions of Service of the Council.

ISSUE 4: Whether or not Respondent is being paid double remuneration for the services of security

ISSUE 5: Whether or not the Respondent is entitled to three (3) security/watchmen inclusive of Jeremiah Naaba at her residence per her instrument of appointment and the approved Conditions of Service of the National Population Council

Issues 4 and 5 stated above would be discussed together. The relevant terms and conditions governing the appointment of the Respondent are contained in paragraphs 4, 5 and 6 of Exhibit A, the Appointment letter of the Respondent. These are reproduced below for ease of reference

“4. The salary scale attached to the post is SSS Level 24L ie GHC40,788.78-GHC43,114.94 per annum. You will enter the scale at the 1st point ie GHC40,988.78 per annum.

5. You will be entitled to the following per month:

(b) a chauffeur driven official vehicle, with free maintenance and 80 gallons of fuel for the efficient performance of your duties;

(c) a security {day and night watchman} allowance of GHC764.00

(d) a house-help allowance of GHC328.00

(e) utilities (water, electricity and telephone) allowance of GHC450.00

(f) a garden boy allowance of GHC328.00

(g) an entertainment allowance of GHC391.00

(h) clothing allowance of GHC391.00

(i) free medical care for yourself, spouse and four (4) children under eighteen (18) years of age for ailments not covered by the National Health Insurance Scheme; an

(j) thirty-six (36) working days leave for every complete twelve months of service

6. You will enjoy other facilities/benefits which are not specifically spelt out in this letter, but which are enjoyed by Senior Staff of the National Population Council under the Council's approved Conditions of Service provided they do not duplicate what has been provided herein”

The facilities and benefits which are being enjoyed by Senior Staff of the Council but are not spelt out in Exhibit A are provided in the Collective Bargaining

Agreement between the Council and Public Services Union (CBA), Exhibit M. These include Salary Advances, Article 30; Loan for Repair/Overhauling of Means of Transport, Article 33; Housing Loan, Article 34; Official Accommodation Article 36, Funeral Grant, Article 37; Car Maintenance Allowance, Article 38; etc

Nowhere in Exhibit L is a Senior staff entitled to the services of three watchmen/security. Under Exhibit A, the Executive Director is only entitled to two security whose hours of work as indicated under Article 21(iii) of Exhibit M to be 6pm to 6am in the case of night security and 6am to 6pm in the case of day security. As it is, these security work for 24 hours a day. There is therefore no opportunity for the engagement of a third security.

The Commission would conclude that following from a combined reading of Exhibit A and Exhibit M, Respondent is only entitled to two security and the assigning of a third security at her residence is *ultra vires* her powers and in excess of her terms and conditions of service. This, in the Commission's view constitutes abuse of power.

Investigations reveal that all these security are being paid. Whilst Kaka Afidador and Kwame Gordon are being paid from emoluments indexed into Respondent's Salary, Jeremiah Naaba is being paid by the state. The Respondent admitted during interview that this amounts to double payment for security since she is the ultimate beneficiary of the services. Flowing from this admission it would be pointless to conduct further investigations and draw any other conclusion than what the Respondent has indicated.

Accordingly, the Commission finds as indicated from the horse's own mouth that the Respondent is substantially being paid double emoluments for security.

The Respondent has however raised very important labour issues in her comments to the complaint in defense of the irregular retention of one additional security at her residence at her discretion contrary to the terms and conditions of her appointment. According to the Respondent, as a medical officer by profession she appreciates:

“...the detrimental effect to the health of two security officers offering 24 hour security cover. To that end, as a former Municipal Director of Health Services at LEKMA, three security officers worked eight-hour shift daily to protect the State residential facility where I lived. Therefore, as standard practice from my previous employment, I assigned additional security officer from NPC head office to complement the two based on the reasons adduced above.”

In effect that decision was based on health/medical reasons. The Commission is mindful of the obligation placed on the employer under section 118(1) of the **Labour Act, 2003(Act 651)**:

“...to ensure that every worker employed by him or her works under satisfactory safe and healthy conditions”.

To achieve this, Section 118(2) makes it mandatory for employers to:

“(a) provide and maintain at the workplace, plant and system of work that are safe and without risk to health

(b) ensure the safety and absence of risks to health in connection with use, handling, storage and transport of articles and substances;

(c) provide the necessary information, instructions, training and supervision having regard to the age literacy level and other circumstances of the workers to ensure so far as is reasonably practicable, the health and safety at work of those other workers engaged on that particular work;

(d) take steps to prevent contamination of the workplaces by, and protect the workers from toxic gases, noxious substances, vapours, dust, fumes, mists and other substances or materials likely to cause risk to safety or health;

(e) supply and maintain at no cost to the worker adequate safety appliances, suitable fire-fighting equipment, personal protective equipment and instruct the workers in the use of the appliances or equipment;

(f) provide separate, sufficient and suitable toilet and washing facilities and adequate facilities for the storage, changing, drying and cleansing from contamination of clothing for male and female workers;

(g) provide adequate supply of clean drinking water at the workplace; and

(h) prevent accidents and injury to health arising out of, connected with or occurring in the course of work by minimizing the causes of hazards inherent in the working environment”.

None of these provisions supra empower the Respondent to engage, assign and keep more workers qua watchmen/security as a means of ensuring their health.

There is however a lot of sense in ensuring that workers do not work beyond the maximum eight (8) hours as stipulated under Section 33 of Act 560 which states:

“Section 33-Maximum Hours of Work

The hours of work of a worker shall be a maximum hours a day or forty hours a week except in cases expressly provided for in this Act”

Section 34 however allows for different hours of work be they shorter or longer and Section 35 provides for paid overtime where a worker in an undertaking works for additional hours.

In the Commission’s view therefore, if the Respondent came to the conclusion that the two security were working beyond eight (8) hours, then she ought to have explored the possibility of paying them overtime and not to assign another security to her residence. But even then the question to ask is whether the said security persons were really working outside the hours stipulated for them?

It should be reiterated that the offer of employment entitles the Respondent to two security men-day and night. The CBA, Exhibit M recognizes such situations; that is why under Article 21(iii) it gives the respective hours of work for night watchmen and watchmen from 6pm to 6am and vice versa.

Now, the effect of a collective agreement is provided under section 105(2) of Act 651 which states:

“(2) The provisions of a collective agreement concerning the terms of employment and termination of employment and personal obligations imposed on and rights granted to a worker or employer shall be regarded as terms of a contract of employment between each worker to whom the provisions apply and his or her employer”

It is arguable whether the two security-Kaka Afidador and Kwame Gordon are employees of the Council and therefore amenable to the provisions of the CBA. But their appointments are subject to that of the Respondent and are paid by the state and cannot escape the provisions of the CBA in terms of their functions. The provisions of hours of work in Exhibit M are therefore applicable to them. It is therefore not surprising that the two (2) security men have not raised any objection to the terms of employment and the Commission's investigations did not come across such an objection.

The reasons advanced therefore by the Respondent in assigning another security to her residence amounts to an unnecessary importation of a practice at her former workplace which has no basis in terms of the human resource rules and regulations at the Council and her offer of appointment, Exhibit A. It is obvious that the Respondent was mindful of the illegality of this act of assigning another security at her residence. That is why in additional comments to the comments to the Commission she waxed into discretion by indicating:

“It is out of these considerations that I used my discretion to engage the third security officer from the head office to complement the efforts of the two who are catered for in my appointment letter.”

Was this a proper exercise of discretion?

It is trite law that, some public officers are allowed to exercise discretion in the performance of their duties subject to certain limitations. Thus Article 296 of the **1992 Constitution** provides as follows:

“296. Where in this Constitution or in any other law discretionary power is vested in any person or authority -

(a) that discretionary power shall be deemed to imply a duty to be fair and candid;

(b) the exercise of the discretionary power shall not be arbitrary, capricious or biased whether by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and

(c) where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power.”

As indicated supra, the act of the Respondent was contrary to human resource rules and regulations within the Council. Jeremiah Naaba was particularly appointed per Exhibit B to be a day watchman at the Head office of the Council. In the Commission's view, that appointment would not have been necessary if there were no vacancy and need for a day watchman.

The assigning of Jeremiah Naaba to the residence of the Respondent was therefore unreasonable as it was based on an individual and personal discretion and not official nor based on policy. It was therefore most unfair to the Council and arbitrary.

The **Black's Law Dictionary** cited supra at page 112 defines "arbitrary" as that: **"Depending on individual discretion...rather than by fixed rules, procedures or law"**. A decision that is arbitrary is founded on prejudice or preference rather than on reason or fact. That being the case the act of the Respondent cannot be said to be in proper exercise of discretion.

The Commission accordingly finds that the assignment of Jeremiah Naaba to the Residence of the Respondent was not in proper exercise of her discretion.

ISSUE 7: Whether or not the Respondent is entitled to the use of two (2) official vehicles per her offer of appointment.

ISSUE 8: Whether or not an official vehicle in the custody of Respondent is being used by Respondent's family members.

Issues 7 and 8 can also be conveniently handled together.

The offer of appointment of Respondent, Exhibit A entitles the Respondent to **"a chauffeur-driven official vehicle with free maintenance and 80 gallons of fuel for the efficient performance..."** of her duties.

Part of the gravamen of complainant's case is that the Respondent is keeping two official vehicles, one of which is being used by her family contrary to the terms of Respondent's appointment.

In her comments to the Complaint, the Respondent, may be for obvious reasons, refused to respond directly to the fact of her offer of appointment entitling her to only one vehicle. All that she stated was the use to which she is putting the two vehicles to i.e one, the Prado Vehicle with Reg.No.GN-6559-18 for trekking and the other, the Saloon Car with Reg. No. GV 673-14 for internal travels.

However, when she appeared before the Commission on the 27/9/2019, she admitted that she is entitled to only one chauffeur- driven vehicle, the Saloon car but decided to allocate the Land cruiser vehicle to herself for trekking and comfort. This fact was corroborated by the Head of Human Resource, Richard B. Abroquah when he appeared before the Commission on the 30/9/2019.

Once again the question to ask is whether the allocation of the Land cruiser by Respondent to herself was in proper exercise of discretion.

There is evidence that the said allocation was met with some resistance by staff of the Council. Respondent herself told the Commission that some staff of the Council were not happy with this decision. The reason is not far-fetched. According to the Head of Human Resource, the Land cruiser Prado, which the Commission found was procured in 2018, was meant for trekking by all staff of the Council but the Respondent allocated same for "herself and comfort" resulting in staff resorting to the use of public transport for official assignments outside Accra.

To be fair to the Respondent, the Commission did not cite any document indicating the circumstances under which the Land cruiser was purchased and what it was meant to be used for. No evidence was also made available to the Commission indicating that some staff going on treks outside Accra were denied the use of the said Land cruiser when they applied for same. However, there is evidence that the Respondent is using the Land cruiser as her personal vehicle in addition to the vehicle that she is entitled to per the offer of appointment. Jeremiah Naaba indicated that the said vehicle is one of the vehicles often parked at Respondent's house.

As the offer of appointment entitles her to only one vehicle, the Commission finds it difficult to agree with the decision by the Respondent to allocate to herself the said Land cruiser. That act was not in proper exercise of discretion within the context of the principles on discretionary power cited above. Accordingly, the said allocation was also an abuse of power by the Respondent.

It must be stated that the Commission did not find any evidence alluding to the use of the Saloon car by family members of the Respondent contrary to the claims of the complainant. Jeremiah Naaba, the security at Respondent's residence denied seeing Respondent's family members using the said car. The Commission has no reason to doubt the sincerity of Mr. Naaba's testimony and accordingly finds that family members of the Respondent do not use the saloon car allocated to her.

ISSUE 9: Whether or not the conduct of the Respondent amounts to abuse of power and conflict of interest.

The allegations made against the Respondent by the Complainant relate to conflict of interest or the likelihood of conflict of interest and abuse of office. Conflict of interest is provided for in Article 284 of **the 1992 Constitution**.

Article 284 states as follows:

“284. 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.”

Article 288 of the Constitution defines a public officer as meaning **“...a person who holds a public office”** and public office has been defined under Article 295 (1) to include **“...an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament.”**

The Respondent is the Executive Director of the National Population Council, established by the **National Population Council Act, 1994 (Act 485)** and is being paid from the consolidated fund. It is not for this reason that her appointment letter was copied to the Controller and Accountant General’s Department. She is therefore as found earlier a public officer.

The Code of Conduct for Public Officers and Guidelines on Conflict of Interest (hereinafter referred to as “the Code”) issued by the Commission on Human Rights and Administrative Justice in 2006 provides some definitions of Conflict of Interest as follows:

“2.0. DEFINITION OF CONFLICT OF INTEREST:

A "Conflict of Interest", refers to 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.

In other words, a conflict of interest includes:

- 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".

The Code also provides that:

"Conflict of interest occurs when a public official attempts to promote or promotes a private or personal interest for himself or herself or for some other person and the promotion of the private interest then result or is intended to result or appears to be or has the potential to result in the following:

i. an interference with the objective exercise of the person's duties; and

ii. an improper benefit or an advantage by virtue of his/her position.

The said "private interest"-is financial or other interests of the public officer and those of:

i. Family members, relatives

ii. Personal friends

iii. Clubs and associations

iv. Persons to whom the public officer owes a favour or is obligated

v. Recruitment and Employment of Spouses and Relatives or other Relations, for example old boys and girls, membership of associations, etc.

The principle is that a public official shall comply with procedures established for recruitment or employment into the public office. He or she is also prohibited from recruiting and employing spouses, relatives and other close associates based on those relations"

(emphasis supplied).

In its text, **Managing Conflict of Interest in the Public Sector (2005)** the Organisation for Economic Cooperation and Development (OECD) defined conflict of interest as:

"Conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities".

The Code also decries:

"...the improper use of public office, official time and authority, information and resources to which a public official has access because of his position in employment."

And as General Rule, the Code also places an injunction on a public official not to:

"...use or permit the use of his or her position or title or any authority associated with his or 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/herself or to friends, relatives or persons with whom the public official is affiliated in a private capacity" (emphasis supplied)

The Commission found during investigations that the Respondent facilitated the employment of Mr. Jeremiah Naaba as a security in the Council and that prior to the said appointment, the said security was already in the employment of the Respondent as a private security at her residence. The Respondent also signed the said letter appointing Naaba as Day Watchman at the Council.

In addition to these, it was the Respondent who assigned Mr. Naaba to continue to work at her residence as security instead of the Head Office of the Council, his official duty post. The State pays the Respondent allowance in respect of security; meanwhile she assigned Naaba, Day Watchman, to work at her residence.

On the basis of the above, the Commission finds that that the Respondent used her position as a public officer to promote her private interest by recruiting a person with whom she was affiliated in a private capacity and benefitting same thereof and accordingly was in conflict of interest situation.

In respect of abuse of power, the Commission finds that the assignment of Jeremiah Naaba by the Respondent to her official residence to work as security while at the same time receiving allowance in respect of two other security and the allocation of the additional official vehicle to herself outside her terms of appointment constitute improper use of her office and authority. It is also, as demonstrated supra, an improper exercise of discretion contrary to Article 296 of the **1992 Constitution**.

8.0 SUMMARY OF KEY FINDINGS AND CONCLUSIONS

- 1) Jeremiah Naaba was appointed as Day Watchman by the Council upon the recommendation of the Respondent in May 2018 and posted to the Head office of the Council but never assumed duty at his official duty post.
- 2) The Respondent signed the Appointment letter of Jeremiah Naaba.
- 3) The employment of Jeremiah Naaba as security was not in accordance with the rules and regulations on recruitment into the public service and was therefore contrary to law.
- 4) Prior to the appointment of Jeremiah Naaba, he was already working at the Respondent's residence as a security.
- 5) Jeremiah Naaba, since May 2018 never reported for work as Day Watchman at the offices of the Council but was rather assigned by the Respondent to her official residence as security.
- 6) From June 2018 till date, Naaba is paid salary every month as Day Watchman at the Council.
- 7) The Respondent is entitled to security (day and night watchman) and not three security as per her offer of appointment and the Conditions of Service of the Council and therefore the assigning of an additional security to residence is improper and unreasonable.
- 8) The Respondent is paid a monthly allowance of GH¢764.00 to use for recruiting security for her official residence.
- 9) The Respondent is entitled to one chauffeur-driven official vehicle for the efficient performance of official functions.

10)The Respondent allocated an additional official vehicle to herself.

10) The conduct of the Respondent in recruiting, assigning and keeping Jeremiah Naaba at her official residence and the allocation of the additional official vehicle to herself amounts to abuse of power and conflict of interest.

13). The Respondent's family does not use any official vehicle belonging to the Council.

9.0 CONCLUSION

In conclusion, the Commission finds the conduct of the Respondent in this matter, as decried by the Board Chairman of Council, Hon Dr.Gladys Ashitey as unacceptable.

However, before laying this decision to rest, there is the need to re-visit the constitutional and statutory requirements accompanying the conclusion of an investigation by the Commission on conflict of interest and abuse of power.

These are provided under Article 287(2) of the 1992 Constitution and Section 18(1) of Act 456.

Article 287(2) provides as follows:

"287(2) The Commissioner for Human Rights and Administrative justice and the Chief Justice as the case be may take such action as he considers appropriate in respect of the results of the investigation or admission"

(emphasis supplied)

Section 18(1) of Act 456 subtitled **PART IV-PROCEDURE AFTER INVESTIGATION BY THE COMMISSION** provides as follows:

"18 (1). Where after making an investigation under this Act, the Commission is of the view that the decision, recommendation, act or omission that was the subject matter of the investigation-

(a) amounts to a breach of any of the fundamental rights and freedoms provided in the Constitution; or

(b) appears to have been contrary to law; or

(c) was unreasonable, unjust, oppressive, discriminatory or was in accordance with a rule of law or a provision of any Act or a practice that is unreasonable, unjust, oppressive, or discriminatory; or

(e) was based wholly or partly on a mistake of law or fact; or

(e) was based on irrelevant grounds or made for an improper purpose; or

(f) was made in the exercise of a discretionary power and reasons should have been given for the decision; the Commission shall report its decision and the reasons for it to the appropriate person, Minister, department or authority concerned and shall make such recommendations as it thinks fit and the Commission shall submit a copy of its report and recommendations to the complainant.”(emphasis supplied)

What these provisions seek to do is to give the Commission some discretionary power in taking appropriate action consequent upon the decision it arrives and to bring the decision and the reasons for it together with any recommendations the Commission deems fit to make to the affected parties and any appropriate person or authority.


This is a decision the Commission deems fit to bring to the attention of the Board of the National Population Council which exercises oversight over the Respondent.

The Commission having found as fact and come to the conclusion that the conduct of the Respondent in respect of the allegations amounts to conflict of interest and abuse of power has determined and directs the following actions as appropriate to be undertaken by the Respondent:

1. The Respondent should with immediate effect, release Jeremiah Naaba to report for work at the Head office of the National Population Council.
2. Respondent should ensure that the station Wagon (4*4) is used in the manner approved by the Board.
3. The Respondent should henceforth ensure that the laid down rules and regulations of the National Population Council are strictly adhered to and to

respect the authority of the Board when it gives general directions in the running of the Council.

DATED IN THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE, ACCRA THIS 28th DAY OF SEPTEMBER, 2020.


JOSEPH WHITTAL
COMMISSIONER