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

AND

IN THE MATTER OF ALLEGATIONS OF CONTRAVENTION OF PROVISIONS OF CHAPTER 24 OF THE CONSTITUTION, 1992 BY HON. FRANCISCA OTENG-MENSAH

CASE NO: CHRAJ/32/2021

ISMAIL MOHAMMED

COMPLAINANT

AND

HON. FRANCISCA OTENG-MENSAH

RESPONDENT

DECISION

1.0. Introduction

Article 284 of the 1992 Constitution, 1992, which forms part of Chapter 24 of the Constitution, 1992 on the Code of Conduct for Public Officers, 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.

Article 287 also provides:

An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] 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.

On 28 January 2021, the Commission received a Complaint from Mr. Ismail Mohammed (hereinafter referred to as Complainant) alleging conflict of interest against Hon. Francisca Oteng-Mensah (hereinafter referred to as Respondent), who at all times material to this case was the Member of Parliament (MP) for the Kwabre East Constituency of the Ashanti Region, and Chairperson of the Board of the National Youth Authority (NYA).

2.0. The Allegations

We reproduce in extenso below, the allegations of the Complainant.

PETITION AGAINST HON.FRANCISCA OTENG MENSAH (MP), BOARD CHAIRPERSON OF NATIONAL YOUTH AUHORITY (NYA) FOR ACTING IN CONTRAVENTION OF ARTICLE 284 OF THE CONSTITITION 1992, WHERE HER PERSONAL INTEREST CONFLICTED WITH THE PERFORMANCE OF HER FUNCTION AS THE BOARD CHAIRPERSON OF NATIONAL YOUTH AUTHORITY

As a citizen of Ghana resident in Nima, Accra, I petition your organization as mandated by the Constitution, 1992 of the Republic of Ghana to look into issues of conflict of interest concerning State Institutions. The above-mentioned officer on March 30th, 2020, presided over a Board Meeting of the National Youth Authority where she led other Board members in approving the purchase of PPEs for the fight against COVID-19.

As mandated by The National Youth Authority Act 2016, Act 939. An act to establish the National Youth Authority, to develop a dynamic and disciplined youth imbued with a spirit of nationalism, and a sense of public service and morality, and provide for related matters.

The procurement of PPE's was and is not the mandate National Youth Authority. However, as directed by the Board Chairperson, Hon Francisca Oteng Mensah (MP) at a Board Meeting, it came as a surprise when the National Youth Authority was directed as a result of the said Board Meeting presided over by Hon. Francisca Oteng Mensah to set aside an amount of Three Million Ghana Cedis (GHC 3 million) for the procurement of PPE's. Especially after the President of the Republic had stated at the time that enough PPE's had been procured to take care of the needs of the Ghanaian public in the fight against COVID-19.

Pursuant to her directive at the board meeting dated above, hand sanitisers/alcohol were thus procured at an amount exceeding Seven Hundred Thousand Ghana Cedis (GHC 700,000) from Adonko Bitters Limited, a subsidiary of Angel Group of companies which is a limited liability company owned by Hon. Francisca Oteng Mensah personally and her biological father Mr. Kweku Oteng, thus, amounting to conflict of interest. (Find the company's Registration Documents attached showing Directors and Share Holders).

This act of the Board Chairperson is not just in contravention of article 284 of the Constitution, 1992, 1992 which reads "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". But also contravenes the very Act that sets up the National Youth Authority in section 7.

Disclosure of Interest - In section 7

- (1) A member of the Board who has an interest in a matter for consideration shall
 - (a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and
 - (b) not be present at, or participate in the deliberations of the Board in respect of the matter.
- (2) A member ceases to be a member of the Board if that member has an interest in a matter before the Board and
 - (a) fails to disclose that interest; or
 - (b) participates in the deliberation of the matter.

The Board Chairperson in this instance, was not only present at this meeting but also participated, deliberated, and presided over this particular matter and subsequently failed to disclose her interest in the matter. Attached is an excerpt of the board meeting's conclusion including her signature as chairperson of the board.

As such, in pursuance to article 284 of the Constitution, 1992 1992 and Section 7 of the National Youth Authority Act 2016, Act 939, Honourable Francisca Oteng Mensah (MP) as a Public Officer put herself in a position where her personal interest conflicted with the performance of her functions as a public officer.

Therefore, present this two-page petition to your respected Institution to investigate this matter. It is a clear case of conflict of interest perpetuated by the

Board Chairperson in regard to her public duty to the State. Added is a sample of the customised products from Adonko Bitters Limited for your attention. I look forward to your immediate action on this matter.

Thank you.

Yours sincerely,

Signed

Ismail Mohammed

The Complainant attached copies of the following documents to his petition:

- 1) Documents ostensibly emanating from the Office of the Registrar of Companies, containing the Company Profile of Adonko Bitters Ltd that shows that the Respondent and her father, Mr. Kwaku Oteng, are the shareholders of Adonko Bitters Ltd, which we have marked as Exhibits A1, A2 and A3.
- 2) Photograph of two bottles branded in colours of the National Youth Authority with the inscription "Adonko Original Hand Sanitiser," marked as Exhibit B.
- 3) A document showing a portion of Minutes of the Ordinary Meeting of the NYA Board Held via Zoom on 31 March 2020, which we have labelled as Exhibit C.

On the 17th of February 2022, the Complainant was invited to the Commission for an interview. At the interview, Mr. Ismail Mohammed furnished the Commission with a copy of the full Minutes of the Board Meeting held on 31 March and indicated that he had made a mistake regarding the date of the Board meeting as it was held on 31st, and not 30th as alleged in his complaint.

We reproduce the below the relevant portions of Minutes of the Governing Board of the NYA meeting held via zoom on 31 March 2020 chaired by the Respondent, at which said meeting the Complainant alleged that the Respondent led the Governing Board to approve an amount of GHS3 million for the purchase of PPEs to fight COVID-19, or directed the NYA to set aside an amount of GHS3 million for the procurement of PPEs.

MINUTES OF THE ORDINARY MEETING OF THE NATIONAL YOUTH AUTHORITY GOVERNING BOARD, HELD VIA ZOOM MEETING PLATFORM ON 31ST MARCH 2020

IN APPEARANCE

1. Hon. Francisca Oteng Mensah (MP)	Member
3. Mr. Joshua Gmayenaam Makubu	Member
4. Mr. Dennis Owusu-Appiah Ofosuapea	Member
5. Mrs. Theodora Williams Anti	Member
6. Mr. David-Dan Kwame Agorso	Member
7. Ms. Agnes Ashun	Member
8. Mr. Henry Nana Boakye	Member
9. Hon. Mustapha Ussif	Member
10. Mrs. Vera W. Akoto	Member
11. Ms. Dorothy Akosua Onny	Member
12. Mr. Frimpong kwateng-Amaning	Member
13. Mrs. Velda Adobea Atuah Kusi	Member
14. Mr. Emmanuel Yao Dormenyah	Member
Present	
1. George Orwell Amponsah	Secretary
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Agenda

- 1. Minutes of previous meetings
- 2. Matters Arising from previous meetings
- 3. Presentation of report by the CEO
- 4. Discussion and approval or otherwise of 2020 procurement plan
- 5. Discussion and approval or otherwise of proposal on youth in COVID-19 campaign
- 6. A. O. B.

4. PRESENTATION OF REPORT BY THE CEO

The CEO presented on the first issue which had to do with the request by Management to procure items including other medical supplies and run "youth in COVID-19" campaign programmes in support of the Government's bid to curb the savaging pandemic. Thus, the CEO requested for the Board's approval for Three Million Ghana Cedis (GHS. 3,000.000.00) to fund a series of activities towards the course.

The second issue which related to the 2020 Procurement Plan was however differed and was referred to the Finance Committee by the Board Chair for further scrutiny and report to the Board. Messrs. Makubu and Boakye supported and commended the move by Management to support the National efforts and campaigns. They therefore called for approval of the request by the Board. Mrs. Anti also supported the COVID 19 campaign initiative with a call to Management to ensure full participation of the Youth in the project.

On this note, the Chairperson asked for voice vote for approval or otherwise of the requested Three Million Ghana Cedis (GhS. 3,000,000.00) to fund the "youth in COVID-19" campaign and related activities. Consequently, majority of members voted for the approval of Three Million Ghana Cedis (GHS. 3,000.000.00) for Management to undertake various activities towards the fight

against COVID-19, with no indication of dissension. Mr. Dormenyah yet suggested that Management should submit budget to the finance committee for scrutiny. The Chairperson, however, in view of the exigency of the request, directed the CEO to present regular updates on the activities on the Board's page and comprehensive report to the Board on the outcomes of the lined-up activities under the programme during the subsequent meeting.

CLOSURE AND ADJOURNMENT

The Chairperson expressed gratitude to members for their co-operation and participation. The meeting was adjourned by a motion by Mr. Boakye and was seconded by Mr. Agorsor at exactly 10:43pm. Closing prayer was said by Mr. Makubu.

Under the Chairmanship of:

Hon. Francisca Oteng Mensah (Chairperson)

Recorded By:

George Orwell Amponsah (Secretary)

3.0. Comments of Respondent

In accordance with article 287 of the Constitution, 1992, as well as Regulation 3 of the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C.I 67), the Commission in a letter Ref. No. CHRAJ/32/2021/103 dated 11 March 2021 requested written comments from the Respondent on the complaint and its attachments. We reproduce below, in extenso, the Comments of the Respondent submitted on her behalf by her Solicitors, Ghartey & Ghartey.

RE: ALLEGATION OF CONTRAVENTION OR NON-COMPLIANCE WITH PROVISIONS OF CHAPTER TWENTY-FOUR OF THE 1992 CONTITUTION BY HON. FRANCISCA OTENG MENSAH (MP), FORMER BOARD CHAIRPERSON OF THE NATIONAL YOUTH AUTHORITY -RESPONSE TO PETITON

A perusal of the Petition filed against Hon Francisca Oteng Mensah (our Client), discloses that the Petition is based on the following allegations.

- 1. That our Client led other Board members to approve the purchase of personal protective equipment for the fight against COVID-19.
- 2. That it is outside the mandate of the National Youth Authority (NYA) to procure Personal Protective Equipment (PPEs).
- 3. That the Board presided over by our Client directed the management of National Youth Authority to set aside an amount of Three Million Ghana Cedis for the procurement of Personal Protective Equipment.
- 4. That the Board of the National Youth Authority directed the management to procure hand sanitisers/alcohol from Adonko Bitters Limited to the tune of Seven Hundred Thousand Ghana Cedis.
- 5. That the Board Chairperson 'participated', 'deliberated' and 'presided' over the purchase of hand sanitisers from Adonko Bitters Limited and failed to disclose her interest in the procurement.
- 6. That the Board Chairperson of NYA acted in clear breach of Article 284 of the Constitution, 1992 of Ghana, 1992 and Section 7 of the National Youth Authority Act, 2016, (Act 939).

These are very serious allegations and before we proceed to answer the allegations in specificity, please permit us to make a few preliminary observations.

Respectfully, the Supreme Court of Ghana has had the occasion to discuss the duty of a person making such allegations. This was discussed in great detail in OKUDZETO ABLAKWA (NO. 2) & ANOTHER V. A-G & OBETSEBILAMPTEY (NO. 2) [2012] 2 SCGLR 845. This case, involved, inter alia, a complaint of conflict of interest made by the plaintiff against public officers. The complaint was dismissed, inter alia, because a specific remedy had been provided under article 287 of the 1992 constitution, 1992, which required complaints of conflict of interest against public officers to be exclusively investigated by the Commissioner on Human Rights and Administrative Justice. The case is relevant, however, because the Supreme Court set out clearly the responsibility of a person alleging conflict of interest against a public officer.

The Supreme Court held, inter alia, at pg. 852, as follows:

In proving the averments of cronyism, arbitrariness, capriciousness, and discrimination, which amount to corruption, the plaintiffs had based their complaint on bare allegations. No evidence whatsoever had been led to substantiate those allegations as required by section 17 (a) and (b) of the Evidence Act, 1975 (NRCD) 323).

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 a 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 other 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 instant case, the accusers had invited the court to declare that action as tainted with cronyism, arbitrariness, capriciousness, conflict of interest and abuse of discretionary power vested in a public officer.

Therefore, where persons, in this case the petitioner, would want illegalities, improprieties and <u>conflict of interest</u> to be tagged on specific public officers (in this case our client), they should be in the position to establish the following:

- The facts that would support that belief.
- The basis of that belief in the illegalities and improprieties on the other hand.
- The nexus or connection with the specific public officers on the other hand.

The Supreme Court's decision (supra) clearly sets out the standard of proof required for those making such serious allegations of wrongdoing, including conflict of interest. Respectfully permit us to emphasize as held by the Supreme Court in Okudzeto Ablakwa (No 2) & Another v. A-G & Obetsebi-Lamptey, it is the facts, basis and nexus which would amount to proof and justification for the accusations. It is on the basis of the above that we proceed to respond to the issues on allegations raised by the petition (emphasis supplied).

Issue 1

That our Client led other Board members to approve the purchase of personal protective equipment for the fight against COVID-19.

It is the allegation of the Petitioner that our Client led other Board members to approve the purchase of PPES for the fight against COVID-19. Our Client, chaired the Board meeting of 31st March 2020 in her capacity as the Chairperson of the Board of the National Youth Authority. Per the minutes of the Board meeting held on 31st March 2020, (Attached as Annex 1) our Client did not lead the other Board members to approve the purchase of PPES. Hon Francisca Oteng

Mensah was the Chairperson of the Board and exercised her responsibilities as Chairperson without any hint of impropriety whatsoever and did exactly what good corporate governance practices dictate that a Chairperson of a board should do when chairing a board meeting.

The role of the Chairperson as discussed by the Institute of Directors includes the following. $^{\rm 1}$

To take the chair at general meetings and board meetings With regard to the latter (board meetings), this will involve: the determination of the order of the agenda; ensuring that the board receives accurate, timely and clear information; keeping track of the contribution of individual directors and ensuring that they are all involved in discussions and decision making. At all meetings, the Chair should direct discussions towards the emergence of a consensus view and sum up discussions so that everyone understands what has been agreed.

The allegation that our Client led other Board members to approve the purchase of personal protective equipment for the fight against COVID-19 connotes some calculated misadventure by our Client. This cannot be further from the truth. The entire matter relating to the 'Youth in COVID 19 Campaign' was on the agenda of the meeting of the board. Indeed, if the matter relating to the COVID 19 campaign was not part of the agenda for the meeting and its discussion had somehow been smuggled in by our Client, then the allegation by the Petitioner may have had some slight measure of merit. However, in the case where the discussion was clearly an agenda item, this leg of the Petition should be totally ignored as being wholly unmeritorious. Item 5 of the Agenda of the Ordinary Meeting of the National Youth Authority Governing Board, held on 31st March 2020 is as follows:

5. Discussion and approval or otherwise of proposal on Youth in COVID 19 Campaign.

The test of whether a meeting is properly conducted, includes what was on the agenda of the meeting and what was discussed at the meeting. With regard to the agenda, the matters that are discussed at the meeting should be stated in sufficient particularity in order to enable those participating in the meeting have sufficient notice of the matters to be discussed. This enables the board members to prepare for the meeting, participate in the meeting and arrive at decisions. In Young v Ladies' Imperial Club Ltd, [1920] 2 KB 523, the plaintiff succeeded in her claim, that the meeting was not properly held, inter alia, on the basis that the notice of the meeting did not state the object of the meeting with sufficient particularity. This does not apply in this matter since the agenda was clear and was stated with sufficient particularity.

Thus, the Board had the opportunity to have a lively discussion on the item 5 of the Agenda as recorded in the Minutes of the Board meeting of March 31st 2020 (the Minutes). Item 5 was discussed and recorded as paragraph 4.0 of the Minutes of the Board under the heading. 4.0 Presentation of Report by the CEO. It is clear from the Minutes that our client chaired the meeting bearing in mind corporate governance best practices as set out by the Institute of Directors.

Section 4 of the National Youth Authority Act, 2016 (Act 939) is on the Governing body of the Authority. It provides, among other things, that the governing body consist of a chairperson and other members. Section 4 (3) further provides that the Board shall ensure the proper and effective performance of the functions of the Authority. The Board exercises it powers by meeting as a Board and taking decisions. Section 6 of the National Youth Authority Act, 2016 (Act 939) is on meetings of the Board. It provides, among other things that the chairperson shall chair the meeting and that matters before the Board shall be decided by a majority of the members present and voting. In the event of a tie, the person presiding shall have the casting vote.

Paragraph two, page four of the Minutes of the Board, reveals that in her capacity as the Board Chairperson, our Client, asked the other members of the Board to vote for approval or otherwise of the request made by the Chief Executive Officer (CEO) of NYA. The Acting Chief Executive Officer presented an update of the activities of the Authority, including activities relating to COVID 19 and also a breakdown of the cost, annexed as Appendix 2. The breakdown indicated that the hand sanitisers from Adonko Bitters Ltd amounting to sixty-eight thousand nine hundred and eighty Ghana Cedis and fifty eight pesewas (GHC 68,980.58) had already been purchased prior to the meeting. There was therefore no question or declaring any conflict of interest.

The call on other members of the Board to vote in support or against the said request from the CEO was preceded by a discussion, which included some members commending management for the initiative to support the national fight against the COVID-19 pandemic. Page four of the Minutes provides as follows:

On this note, the Chairperson asked for voice vote for approval or otherwise of the requested Three Million Ghana Cedis (GH¢3,000,000) to fund the "Youth in COVID- 19 campaign and related activities". Consequently, majority of the members voted for the approval of Three Million Ghana Cedis (GH¢3,000,000) for Management to undertake various activities towards the fight against COVID-19, with no indication of dissension.

It is clear from the record that the decision was unanimous since there was no dissension. The claim of the Petitioner that our Client led or rather misled the Board to approve the funds for the 'Youth in COVID 19 campaign' is not supported by the evidence (the minutes of the Board meeting held on the 31^{st of} March 2020. There is no evidence on the facts that our client or indeed the Board, sought to do or did anything untoward at the Board meeting, which discussed and approved the Youth in COVID 19 campaign.

Respectfully, rather there is further evidence that our Client and indeed the Board acted in utmost good faith in all its dealings with regard to the 'Youth in COVID 19 campaign'. The matter was discussed at the Board meeting of June 12th, 2020 and referred to the Joint Committee (Finance & Audit and Legal and Complaint Committees of the Board for further discussion. A copy of the Minutes of the Board of the Board meeting of June 12th is attached as **Appendix 3**. Paragraph 4.2 COVID provides as follows:

In respect of the COVID 19 campaign and the activities carried, the report was laid to the Board for onward referral to the Joint Committee for further review.

It will be recalled that on page 4 of Appendix 1 (the Minutes of the Board meeting of 31st March 2020) the Board Chairperson, our Client, directed:

That the CEO present regular updates on the activities relating to the Youth for COVID 19 campaign on the Board's page and a comprehensive report to the Board on the outcomes of the lined-up activities under the programme during.

The Joint Committee (Finance & Audit and Legal and Complaint Committees) held its meeting on the 15th, 16th and 19th June 2020 and its Report is attached as **Appendix 4**. The Youth in COVID Campaign was discussed extensively and the Joint-Committee then presented its Report to the Board. It must be noted that our Client was not present at the said Joint Committee meeting. The Report (**Appendix 4**) was discussed and approved with amendments at the Board meeting of 25th June 2020, the minutes of which is attached as **Appendix 5**.

It is our respectful submission that at no time did our Client lead or mislead members of the Board in respect of the Youth in COVID-19 campaign.

Issue 2

That it is outside the mandate of the National Youth Authority to procure Personal Protective Equipment (PPEs).

The preamble to the National Youth Authority Act, 2016, (Act 939) provides as follows:

An Act to establish the National Youth Authority, to develop a dynamic and disciplined youth imbued with a spirit of nationalism, and a sense of public service and morality, and to provide for related matters.

The objects of the National Youth Authority as set out by section 2 of Act 939 states as follows: Objects of the Authority

- 2 The objects of the Authority are to
- (a) develop the creative potential of the youth:
- (b) develop a dynamic and disciplined youth imbued with a spirit of nationalism, patriotism and a sense of propriety and civic responsibility; and
- (c) ensure the effective participation of the youth in the development of the country.

Section 3 of the National Authority Act is on the functions of the Authority. It provides as follows:

Functions of the Authority

- 3. To achieve the object under section 2, the Authority shall
 - (a) formulate policies and implement programmes that will promote in the youth
 - (i) a sense of creativity, self-reliance, leadership, loyalty to the country discipline and civic responsibility; and

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- (ii) a sense of friendship and co-operation through exchange of ideas with recognized youth Organisations in other countries in Africa and the world;
- (b) develop the capacity of the youth to participate in decision making at all levels;
- (c) establish and supervise youth leadership and skills training institutes; and
- (d) in collaboration with the Ghana Youth Federation, organize annual youth conferences at the national, regional and district levels.

It beggars' belief that one of the allegations of the Petitioner is that, it is outside the mandate of the National Youth Authority to procure Personal Protective Equipment. Respectfully, in considered [opinion] this allegation we could not help but to wonder to ourselves whether the Petitioner is the 'only stranger in Jerusalem'. At the time the National Youth Authority Act was enacted in 2016, COVID 19 had not even been contemplated by the world. Of course, it will be asking for too much to ask for a 'prophetic inclusion' of the words COVID 19 in an Act of Parliament which was enacted in 2016.

Section 2 (b) of the National Youth Authority Act, provides that the objects of the Authority include the development of a dynamic and disciplined youth imbued with a spirit of nationalism, patriotism and a sense of propriety and civic responsibility. To achieve the objects under section 2, the National Youth Authority Act, directs, among other things, in section 3 (a) (i) that the Authority shall formulate policies and programmes that will promote in the youth a sense of creativity, self-reliance, leadership, loyalty to the country, discipline and civic responsibility. In a COVID crisis, if the National Youth Authority fails to develop a programme involving the youth as a response to the COVID Pandemic, it will be in our respectful view, a dereliction of duty. This allegation, that it is

outside the mandate of the National Youth Authority to purchase Personal Protective Equipment, also has no basis whatsoever.

In any event, if, which is denied, the National Youth Authority, had no mandate to purchase Personal Protective Equipment, surely Corporate Social Responsibility requires that all corporate bodies, including the National Youth Authority, respond in a time of global crisis. Respectfully, we are of the considered [opinion] that the issue as to which expenditure is permissible for a public entity, simpliciter, is in the purview of the Auditor-General and not the Commission on Human Rights and Administrative Justice, which deals with weightier matters as set out by law, including allegations of conflict of interest infractions.

It is the Auditor-General who will audit the accounts of the company and make whatever recommendations or prepare the reports. The jurisdiction of the Commission that is being invoked by the Petitioner is its jurisdiction in cases of alleged conflict of interest. The purchase of PPE's simpliciter cannot be the basis of a finding of a breach of conflict of interest against our Client.

Issue 3

That the Board presided over by our Client directed the management of the National Youth Authority to set aside an amount of three million Ghana cedis for the procurement of Personal Protective Equipment.

It is clear from the various Minutes of the Board in its March and June meetings in 2020 and also the Minutes of the Joint Committee of the Board also in June, all of which are annexed as Appendixes 1, 3 & 4, that the Board did not direct the management of the National Youth Authority to set aside the amount of three million cedis for the procurement of PPES. The amount was set aside for a 'Youth in COVID 19 Campaign' which included, but was not limited to, the purchase of PPES.

We respectfully submit that the allegation that the Board presided over by our Client directed the management of the National Youth Authority to set aside an amount of three million Ghana Cedis for the procurement of Personal Protective Equipment is false.

Issue 4

That the Board of National Youth Authority (NYA) directed the management of NYA to procure hand sanitisers/alcohol from Adonko Bitters Limited to the tune of Seven Hundred Thousand Ghana Cedis.

It is on record, particularly at page three (3) of the minutes of the Board meeting of March 31st 2020 (Appendix 1) that the CEO of the National Youth Authority requested for the Board's approval for Three Million Ghana Cedis to fund series of activities towards the "Youth in COVID-19 campaign" which said amount was subsequently approved through voting by majority of the Board members. In fact, our Client in a bid to ensure accountability and transparency directed the CEO to present regular updates and comprehensive report of the activities of the 'Youth in COVID-19 campaign'. This is evident at page four (4) of the Minutes attached to the Petition.

This allegation of a direction from the Board to the management to purchase seven hundred thousand Ghana Cedis is palpably false and the Petitioner will be put to strict proof of same.

Issue 5

That the Board Chairperson 'participated', 'deliberated' and 'presided' over the purchase of hand sanitisers from Adonko Bitters Limited and subsequently failed to disclose her interest in the procurement.

Respectfully, our Client admits that she is and remains a director and shareholder of Adonko Bitters Limited. She was also a director and shareholder of Adonko Bitters Limited during the period, subject-matter of the Petition. However, she is not in any way responsible for the management or the day-to-

day management of Adonko Bitters Limited. She is not an employee or a marketing and sales executive for the company. Our Client submits further that she is not an executive director of Adonko Bitters Limited.

It is evident from Appendixes 1, 3 and 4 that the specific decision as to where to purchase hand sanitisers was never brought before the Board. Had such a matter arisen our client would have had no hesitation in declaring her interest in accordance with the law. Our client and other members of the Board were mindful of the powers that they can exercise. It is further evident that our client never 'participated', 'deliberated' and 'presided' over the purchase of hand sanitisers from Adonko Bitters Limited as alleged by the Petitioner. It was a decision taken by management as part of the Three Million Ghana Cedis that was approved for the Youth in COVID 19 program. In any case, the Petitioner has failed to adduce any documentary evidence in the form of a directive from the Board to the management of National Youth Authority to procure hand sanitisers amounting to the afore-mentioned amount specifically from Adonko Bitters Ltd as contained in paragraph four of his petition.

It is pertinent to note that pursuant to the provisions of the Public Procurement (Amendment) Act, 2016 (Act 914), specifically, section 20c (1) and Category C of the Second Schedule, the Head of the Procurement Unit of the National Youth Authority does not need the prior approval of the Board to procure goods within the threshold as contained therein. Section 20c provides:

(1) The threshold limits for ministries, departments, and agencies and Metropolitan, Municipal and District Assemblies for procurement shall be as specified in the Second and Third Schedules.

Our Client admits that some hand sanitisers were purchased by National Youth Authority from Adonko Bitters Ltd. These were purchased without any reference to our Client or the Board. It was within the capacity of the Head of Procurement Unit, and it did not need or receive any direction from the Board or our Client.

Consequently, we have annexed to this response copies of the sales invoice from Adonko Bitters Ltd for the supply of Two Hundred & Ninety boxes of hand sanitisers to National Youth Authority, cheque payment voucher as approved by the Director of Finance and Acting Chief Executive Officer of National Youth Authority, cheque numbered 330003 issued in favour of Adonko Bitters Ltd (Appendix 6) with a face value of Sixty-Eight Thousand, Nine Hundred and Eighty Ghana Cedis Fifty-Eight Ghana Pesewas (GH¢68,980.58) which amount is within the threshold allowed under Category C of the Second Schedule of the Public Procurement (Amendment) Act, 2016 (Act 914). It is important to note that the date of payment for the items purchased from Adonko Bitters Ltd, is 29th March 2020. This is before the Board meeting of 31st March 2020, where the Board set aside the amount of three million cedis for the Youth in COVID 19 program. The decision was purely a management decision and had nothing to do with our Client, we respectfully submit.

ISSUE 6

That the Board Chairperson of NYA acted in clear breach of Article 284 of the Constitution, 1992 of Ghana, 1992 and Section 7 of the National Youth Authority Act, 2016 (Act 939).

It is the final contention of the Petitioner that our Client acted in clear breach of the provisions of Article 284 of the Constitution, 1992 of Ghana, 1992 and Section 7 of the National Youth Act, 2016, (Act 939). It is submitted in response that on the basis of the above, our Client did not breach article 284 of the 1992 Constitution, 1992 or section 7 of the National Youth Authority Act. Rather, our Client was very mindful of these provisions and acted in a transparent manner and observed the best corporate governance practices.

CONCLUSION

As stated above, where persons, in this case the Petitioner, would want illegalities, improprieties and conflict of interest to be tagged on specific public officers (in this case our Client), they should be in the position to establish the following.

- *The facts that would support that belief.*
- The basis of that belief in the illegalities and improprieties on the one hand.
- The nexus or connection with the specific public officers on the other hand.

The Supreme Court decision, (supra) clearly sets out the standard of proof required for those making such serious allegations of wrongdoing, including conflict of interest. In the Petition there are no facts that would support the belief that our Client has been involved in a conflict of interest situation. There is without question no basis for the belief that there has been a conflict of interest situation. There is also absolutely no nexus or connection between the mistaken belief that there has been a breach of the clear rules on conflict of interest and our Client.

In the circumstances, we submit that the Petition filed by Mr. Ismail Mohammed on January 28th, 2021, is without merit and same must be dismissed accordingly.

The Respondent ended her Comments on the above note and attached a number of documents in support of her case, and same were received and marked as Exhibits 1, 2, 3, 4, 5, 6, 7, 8 and 9.

1. **Exhibit 1** is the Minutes of the Ordinary Meeting of the National Youth Authority Governing Board, held via Zoom Platform on 31 March 2020 and it is the same as Exhibit C that was attached to the Complaint. Since the contents of this Exhibit have already been reproduced supra there is no point repeating same.

2. Exhibit 2 is dated 12 June 2020 and it is entitled National Youth Authority Update Report reputedly presented by the CEO of the NYA during the Governing Board's Meeting held on 12 June 2020 via Zoom. We reproduce below the relevant portions of the report that relate to the COVID-19 Campaign activities.

NATIONAL YOUTH AUTHORITY UPDATE REPORT

Honourable Chair and esteemed Board Members, I would like to present to you updates on the Authority's activities for the second quarter of the year 2020.

Honourable Chairperson, the updates are as follows:

3.0 COVID-19 Related Activities

In response to the coronavirus pandemic, the National Youth Authority procured Personal Protective Equipment and gadgets to enhance safety and facilitate work in the various district and regional directorates as well as the head office. The Authority also launched the COVID- 19 Youth Campaign on 30th March 2020 to facilitate an unprecedented youth response to curtail the spread of coronavirus and intensify public awareness and education. In achieving the above-mentioned goals, the Authority:

- Donated over 700,000 cedi's worth of Personal Protection Equipment to the Ghana Health Service in April 2020.
- Engaged the International Young Democrats Union (a global alliance of youth organisations) in creating awareness and educating the youth on COVID-19 safety and control measures.

- Procured megaphones and public address systems to assist youth volunteers in carrying out mass sensitization and education in communities all over the country.
- Partnered with notable media houses like TV3, Citi TV, Citi FM, Metro TV, the Multimedia Group as well as change-makers, media personalities and celebrities to reach a wider audience and educate the public.

10.0 Conclusion

Honourable Chair and esteemed Board Members, despite the challenges posed by coronavirus, Management is still committed to steering the Authority to fulfil its duties to the Ghanaian youth. This includes following due procedure, ensuring the adoption of best practices, achieving set goals, efficiently allocating resources, and deriving maximum benefit from resources spent.

Thank you.

SYLVESTER MATTHEW TETTEH
CHIEF EXECUTIVE OFFICER (AG.)

NATIONAL YOUTH AUTHORITY COVID -19 EXPENDITURE

DATE	CHEQU	DESCRIPTION	COVID -19
	E		
27-Mar-	329992	Akuaya Company Ltd Being payment in	90,000.00
20		respect of 2000 boxes of PPE Cardinal	
		Health items supplied	

ng 75.000.00
ıal
to
of 97,087.38
ead
ent 75.000.00
ive
ead
n - 650,000.00
on
the
ive
the
for 68,980.58
to
for 97,087.38
ent
of 95,000.00
alls
- 170,500.00
on
isk
ity
the

14-Apr-	TRSF203	Being transfer of funds to accounts of the	154,875.00
20		Regional Secretariat of the National	
		Youth Authority in respect of COVID-19	
		campaign programme	
21-Apr-	330029	Multimedia Group (Adom TV) - Being	30,003.91
20		payment in respect of public	
		Education/public service campaign on	
		COVID-19	
21-Apr-	330030	Multimedia Group (Joy News)- Being	26,854.30
20		payment in respect of public	
		Education/public service campaign on	
		COVID-19	
21-Apr-	330031	Metro TV- Being payment in respect of	7,883.38
20		public Education/public service campaign	
		on COVID-19	
21-Apr-	330032	TV3 Network Ltd - Being payment in	38,701.53
20		respect of Public Education/ public	
		service campaign on COVID-19	
21-Apr-	330033	Citi TV Ghana - Being payment in respect	25,399.24
20		of public Education/ public service	
		campaign on COVID-19	
23-Apr-	330034	Citi FM Ghana - Being payment in	13,397.40
20		respect of public Education/ public service	
		campaign on COVID-19	
23-Apr-	330034	Media-shop - Being payment in respect of	72,198.41
20		public Education/ public service	
		campaign on COVID-19	
	330042	Dow- Tech Ventures - Being payment for	72,000.00
		supply of 300 pieces of Rechargeable	
		Megaphones to NYA head office to aid the	
		implementation of the COVID-19 Youth	

	campaign programme in the hinterlands	
	and the slum arears	
330044	Rowwet Premium Ltd - Being payment	48,600.00
	for supply of 130 pieces of P.A Systems to	
	NYA Head office against the COVID-19	
	pandemic campaign	
330045	8TH Day Ventures - being payment for	60,000.00
	supply of 120 pieces of shoulder slung	
	P.A Systems to NYA Head office against	
30 Sept.	the COVID-19 pandemic	
330046	Rowwet Premium Ltd - Being payment	63,700.00
	for supply of Nose Masks and	
	Thermometer Gum to NYA Head office	
	against the COVID-19 Pandemic	
	campaign	
		2,032,268.51
	330045	and the slum arears Rowwet Premium Ltd - Being payment for supply of 130 pieces of P.A Systems to NYA Head office against the COVID-19 pandemic campaign 330045 8TH Day Ventures - being payment for supply of 120 pieces of shoulder slung P.A Systems to NYA Head office against the COVID-19 pandemic 330046 Rowwet Premium Ltd - Being payment for supply of Nose Masks and Thermometer Gum to NYA Head office against the COVID-19 Pandemic

3. **Exhibit 3**, entitled MINUTES OF THE ORDINARY MEETING OF THE NATIONAL YOUTH AUTHORITY GOVERNING BOARD, HELD AT NYA BOARD ROOM, ACCRA, ON 12 JUNE 2020, is also reproduced below.

MINUTES OF THE ORDINARY MEETING OF THE NATIONAL YOUTH AUTHORITY GOVERNING BOARD, HELD AT NYA BOARDROOM, ACCRA ON 12TH JUNE 2020

IN APPEARANCE

Hon. Francisca Oteng Mensah (MP) - Chairperson

Mr. Sylvester M. Tetteh - Member

Mr. Joshua Gmayenaam Makubu - Member

Mr. Dennis Owusu-Appiah Ofosuapea - Member

Member Mrs. Theodora Williams Anti Member Mr. David-Dan Kwame Agorsor Member Ms. Agnes Ashun Member Mr. Henry Nana Boakye Member Hon. Mustapha Ussif Member Mrs. Vera W. Akoto Member Ms. Dorothy Akosua Onny Mr. Frimpong kwateng-Amaning Member Mrs. Velda Adobea Atuah Kusi Member Member Mr. Emmanuel Yao Dormenyah

Present

1. George Orwell Amponsah - Secretary

<u>Agenda</u>

- 1. Minutes of previous meetings
- 2. Matters Arising from previous meetings.
- 3. Presentation of CEO's report
- 4. Budget estimates and programmes for 2020
- 5. Phase 1 out of the scope of work
- 6. Astro turf projects
- 7. A.O.B

NO	ITEM	ACTION BY
1.0	CALL TO ORDER The meeting was called into session at exactly 10:00am. Opening prayer was said by Mrs. Anti.	

READING AND*AMENDMENTS* OF PREVIOUS MINUTES Discussion and adoption of the following 2.0 outstanding minutes was undertaken. 1. Ordinary meeting 30th September 2019 2. Emergency meeting 19th December 2019 3. Extra ordinary meeting 28th April 2020 4. Ordinary meeting 31st March 2020 3.0 MATTERS ARISING FROM PREVIOUS The Joint **MEETINGS** Committee was tasked to review The first issue regarding the inability of the Joint the 2020 Committee to scrutinize the Procurement Plan procurement for 2020 as referred by the Board Chair was plan among reported Mr. Ofosuapea. The Committee was other issues as thus directed to meet and review the plan. directed. The next issue addressed by the CEO was in relation to the temporary recruitment of staff and the state of the ongoing drafting of scheme of service. He reported that the recruitment had been done but for the COVID-19 pandemic. Prospective staff who qualified after the interview were yet to be engaged. He again reported that the scheme of service had been completed with final approval by the Public Service Commission. PRESENTATION OF REPORT BY THE CEO

The CEO presented his report as attached (Appendix A).

4.1. Payment of Acting Allowance to the immediate past CEO and his two Deputies
On the above matter, the CEO reported that the former officers (CEO and his deputies) had been paid their outstanding allowances, except Mr. Acheampong who was expected to account for few unresolved matters to warrant payment.

4.2. COVID-19

In respect of the COVID-19 campaign and the activities carried, the report was laid to the Board for onward referral to the Joint Committee for further review.

4.7. Second Phase of Youth Resource Centers
The CEO reported that the requested report (as referenced) had since been submitted and it was expected to be forwarded to the Board for onward referral to the Committee for review.

In conclusion, he reported on a commendation by the UN on the activities of the youth geared towards the fight against the COVID-19. In addition, he indicated that selected young innovators had been enrolled in the UNDP innovation competition/project for a prize of Ten Thousand Dollars (\$10.000).

The
Consultants'
report to be
submitted to the
Board.

Secondly, she directed with support from members that the claims by those contractors on the sites visited by the Board, Management should use its internal technical unit to verify and advise.

The FF issues were thus referred to the Joint Committee:

- 1. COVID 19 expenditure outline
- 2. Proposed Office Block
- 3. Budget and Programmes, 2020
- 4. Auctioning of unserviceable vehicles

Mr. Boakye suggested for the consideration of the Board, extension of invitation to all the contractors and the Consultant for engagement to understand their challenges if any, to which members assented.

Mrs. Anti asked about the state of Youth Policy review process and the UNDP activities. The CEO explained that the draft report on the Policy and the implementation plan had been submitted to Management for perusal and onwards submission to the Ministry of Youth and Sports. Regarding the UNDP activities, he explained that UNDP was helping the Authority with

The CEO was directed to make arrangement for the engagement.

The Board also to schedule for another trip to the remaining sites.

\$100,000 in its bid to undertake baseline study on impact of COVID-19 on the youth entrepreneurs and also continue the community information dissemination project. He again reported that they (UNDP) further seek to support the Authority's entrepreneurship challenge programme with a regional allocation of \$20,000, and the process was ongoing.

Mr. Boakye reminded the Board about the plan by Cabinet to have similar Youth Resource Centers in the newly created Regions. The CEO explained that preliminary engagement was on going though he was yet to receive formal directives on the plan, and thus called for formal engagement with Minister. Mr. Boakye on the contrary indicated that the Board had to at a later time have some discussion regarding that forthcoming subject matter. Mr. Ofosuapea in his view and according to him, for the purposes of fairness to the new regions, agreed with the call for the Board to have deliberations in that light. He however further asked for swift action on the youth mobilization drive as captured in paragraph 6.0. of the report.

Ms. Onny, on her part, indicated that because the subject matter relating to the new projects for the new regions bordered on policy, it was prudent for the Board to wait for the Ministry to give formal directives.

The FF issues were thus referred to the Joint Committee:

- 1. COVID-19 expenditure outline
- 2. Proposed
 Office Block
- 3. Budget and Programmes, 2020
- 4. Auctioning of unserviceable vehicles

Mr. Boakye wanted to know the state of the processes leading to the commencement of the second phase of YRCs. The CEO explained that it had been referred to the Joint Committee for review, and the documents were ready for their scrutiny and deliberation. On this note, the CEO report (as attached) was approved and adopted unanimously by the Board.

Budget Estimates and Programmes for 2020
This item on the agenda was referred by the
Board Chair to the Joint Committee for

consideration

1. Phase I out of the scope of work

2. Astro turf projects

5.0

6.0

AOB

The Chairperson briefed members on her engagement with the Minister for Youth and Sports. She reported that her attention was drawn, in the presence of the CEOs of NYA and Sports Authority regarding the President's aversion to an indication in the draft Youth Policy seeking to reintroduce subjects relating to Comprehensive Sexuality Education. In addition, the CEO indicated that that portion or aspect of the document had since then been expunged from the draft Youth Policy during the plenary session.

The CEO was to brief the Board on the cost of the boardinization process in a later meeting.

The Chairperson again informed the Board of a memo received from Afranse Youth Leadership and Skills Training Institute regarding their request for approval for the school to be boardinized. Mrs. Akoto supported the idea and called for the approval. Hon. Ussif and Mr. Dormenyah wanted to know from the CEO the expected cost for the change in status (from day school to boarding). The CEO indicated that the process for costing especially for the feeding and other logistical arrangements was ongoing, awaiting the approval by the Board. Thus, the Board unanimously approved the request to commence accommodating the students of Afranse YLSTI.

CLOSURE AND ADJOURNMENT

The Chairperson expressed gratitude to members for their co-operation and participation. The meeting was adjourned with a motion by Mr. Kwateng and was seconded by Mrs. Kusi at exactly 2:43pm. Closing prayer was said by Mr. Makubu.

Under the Chairmanship of:

Hon. Francisca Oteng Mensah (Chairperson):

Recorded By:

5.0

George Orwell Amponsah (Secretary)

4. Exhibit 4, entitled NATIONAL YOUTH AUTHORITY GOVERNING BOARD FINAL REPORT OF THE JOINT COMMITTEE (FINANCE & AUDIT,

AND LEGAL AND COMPLAINT COMMITTEES) ON THE APPROVAL OF 2020 PROGRAMMES AND PROJECTS WITH ESTIMATED BUDGET AND OTHER MATTERS: HELD AT NSS BOARD ROOM DATED 15TH, 16TH & 19TH JUNE 2020, is reproduced below:

NATIONAL YOUTH AUTHORITY GOVERNING BOARD

FINAL REPORT OF THE JOINT COMMITTEE (FINANCE & AUDIT,

AND LEGAL AND COMPLIANT COMMITTEES) ON THE APPROVAL

OF 2020 PROGRAMMES AND PROJECTS WITH ESTIMATED

BUDGETS AND OTHER MATTERS; HELD AT NSS BOARDROOM

DATED 15th, 16th & 19th JUNE 2020

MEMBERS PRESENT:

Hon. Mustapha Ussif	-	Chairman
Mr. Dennis Owusu-Appiah Ofosuapea		Member
Mr. Frimpong kwateng-Amaning	-	Member
Mrs. Theodora Williams Anti	-	Member
Mr. Joshua Gmayenaam Makubu	-	Member
Mrs. Velda Adobea Atuah Kusi	-	Member
Ms. Dorothy Akosua Onny	-	Member
Mr. Sylvester M. Tetteh	_	Member
Ms. Agnes Ashun	=	Member
Mrs. Vera W. Akoto	-	Member

MEMBERS ABSENT:

Hon. Francisca Oteng Mensah - Member Mr. Emmanuel Dormenyah - Member

In Attendance

George Orwell Amponsah - Secretary

Mr. Nelson Owusu Ansah - Dep. CEO (Programmes & Operations)

- Director, Technical Projects

1.0 BACKGROUND

The meeting was held at the instance of the Governing Body of the Authority at her meeting held on 12th June 2020. The Board Chairperson accordingly directed the Finance and Legal Committees to sit as a Joint Committee to have extensive deliberations on the details of the proposed programmes and activities of the Authority together with the budgetary estimates for the year 2020. It was further directed that the Joint-Committee recommend for approval or disapproval by the Board, the stated programs and budget estimates. The Committee was also tasked to consider other matters as have been captured in the terms of reference.

2.0. TERMS OF REFERENCE

- 2.1 Review the valuation processes and the request by Management to auction unserviceable vehicles and advise accordingly.
- 2.2 Verify and report on the budget and expenditure outline presented by Management on the COVID- 19 programmes and activities.
- 2.3 Review and recommend to the Board for approval or otherwise the proposed programmes and budget estimates for the year 2020 and related matters.

3.0 PROCEEDINGS

The Committee interrogated each item of the above stated terms of reference:

3.2. Budget and expenditure outline presented by Management on the covid-19 programmes and activities

The Committee, on the basis of initial approval given by the Board and presumptive premise thought that the approved funds for the COVID 19 campaign was budgeted for under the contingency allocation. The

Committee therefore recommended for ratification of the expenditure subject to the fulfilment of the directives herein referenced.

3.3.3 Research on the Impact of COVID 19 on the youth

A research project which is to be undertaken by a research institution is to survey and ascertain the impact of the COVID-19 on the youth. The Committee raised concern about the under budgeted amount of GHs 150,000. 00 meant for the project, which Mr. Owusu Ansah accepted to have been captured in error and was thus withdrawn.

4.0 REQUISITIONS

- 4.1 The report of the feasibility study on the plan for the establishment of the NYA TV was to be made available to the Board for perusal.
- 4.2 The report of the feasibility study on the green house installation for the Board's perusal.
- 4.3 Management was asked to provide further and better particulars on the number of master craftsmen to be engaged for the STEP programme.
- 4.4 Management was tasked to provide the budgeted amount for the celebrations of the 2019 international events (i.e., International and Africa Youth days).
- 4.5 The estimated amount for the research on the impact of COVID-19 on the youth was under budgeted, and thus Management was asked to review and report.
- 4.6 Budgetary allocation for the proposed research for data on YLSTI students was differed pending provision of the actual budget.

5.0. SUGGESTIONS

The Committee made the following suggestions to Management:

5.1 Breakdown of the various budgets into unit costs per specific items.

- 5.2 The allocated funds for the establishment of the GYF was considered under budgeted and ought to be a minimum of GHS 3,000,000.00.
- 5.3 On the proposed construction of the office complex for the Authority, it was suggested to Management to consider the option of Build Operate and Transfer (BOT).
- S.4 It was suggested to Management to provide reliable accessibility facility in the proposed office complex for PWDs.

6.1DIRECTIVES

- 6.1 With respect to the auctioning of the unserviceable vehicles, Management was directed to communicate with Chief of Staff for final approval as required by practice.
- 6.2 Management was directed to present corresponding "quantities" for the identified items captured under the COVID-19 expenditure outline (as attached Appendix C).
- 6.3 Management to prepare budget for the remaining amount out of the approved Three Million Ghana Cedis (GHs 3,000,000.00) to cater for the subsequent activities with respect to the COVID-19 campaign.
- 6.4 Further to the preceding sub-paragraph (6.3), the Committee directed Management to request activity report from the International Young Democrat Union (IYDU) on their COVID-19 activities.
- 6.5 Again, it was suggested to Management to have a formal MOU with IYDU (supra) for subsequent engagements and activities.
- 6.6 In future, audited report on the activities under the COVID-19 campaign should be made available to the Board for perusal.
- 6.7 Regarding the Youth in skills development, the Committee entreated Management to have coordinated framework that will ensure proper exit plan for the beneficiaries.
- 6.8 Regarding the celebrations of the international events, the Committee directed Management to furnish it with the last year's budgetary

- estimates to guide its recommendation for approval or otherwise. As a result, the consideration was differed subject to the provision of the information.
- 6.9 Management should consider other sources of funding for the various projects that were undergoing feasibilities to ensure actualization.
- 6.10 Management was directed to consider procuring additional 4×4 pickup for the Ashanti Regional Directorate to support its operational activities.
- 6.11 Management was asked to review the cost for printing of 10,000 Youth policy, and the 5000 each for action plan and registration manual as it was considered under budgeted.
- 6.12 Discussion and approval for the installation of Wide Area Network Infrastructure was differed pending provision of further explanations and justification for its installation.
- 6.13 The media engagement with the "youth with website presence" was also differed for review by Management.
- 6.14 Management was directed to consider increasing the number of young people who participate in international programmes.
- 6.15 On the Governance and leadership programme, the Committee proposed a differently tailored programme for the other segment of the youth population, including the PWDs whilst young females with disability are considered in the proposed leadership capacity building session for females (Go Lead).

7.0 RECOMMENDATIONS

The Committee generally recommended for approval by the Board the estimated budgets for the programmes and activities for 2020 (Appendix D) except few exclusions. Thus, the following specific recommendations were made for the Board's consideration:

7.1 Approval be given to the auctioning of the unserviceable vehicles.

- 7.2 The COVID- 19 campaign expenditure so far was recommended for ratification subject to the provisions or fulfilment of other details as directed under section 6.0 ("Directives").
- 7.3 The Consultancy for the feasibility on the establishment of the NYA TV was recommended for ratification as the Committee commended the initiative.
- 7.4 Recommendation for the engagement of master craftsmen for the STEP programme was differed pending the provision of further information on the number of prospective master craftsmen.
- 7.5 The Consultancy for feasibility study on the Greenhouse technology was recommended for approval.
- 7.6 Recommended for approval to procure four (4) 4×4 pick-ups for the Authority's operational activities.
- 7.7 The Committee differed approval of the estimated budget for the celebration of international events (i.e., International and Africa Youth Days) pending provision of 2019 budget for same celebrations for verification and comparison.

8.0 CONCLUSION

This report has captured the views and outcomes of the Joint Committee meetings (Finance and Audit, and Legal and Compliant) successively held at the NSS Boardroom. The review exercise was at the instance of the Governing Body of the Authority and as accordingly directed by the Board Chairperson. The terms of reference were duly carried out, namely, deliberation on the budgetary estimates for the 2020 NYA Programmes and Projects, the expenditure outline for the COVID-19 campaign activities, and the request for approval to auction unserviceable cars. The Committee generally recommended for the Board's approval for the matters as presented under each term of reference, whereas few other approvals or otherwise were contingent on Management undertaking necessary corrections and reviews as directed.

Recorded By (Secretary):

<u>Under the Chairmanship of:</u> Hon. Ussif Mustapha (Chairman): Mr. Dennis Owusu-Appiah Ofosuapea (Co-Chair):

5. **Exhibit 5** is entitled MINUTES OF THE EMERGENCY MEETING OF THE NATIONAL YOUTH AUTHORITY GOVERNING BOARD, HELD AT NYA BOARDROOM, ACCRA ON 25TH JUNE 2020, is reproduced below.

MINUTES OF THE EMERGENCY MEETING OF TIE NATIONAL YOUTH AUTHORITY GOVERNING BOARD, HELD AT NYA BOARDROOM, ACCRA ON 25TI JUNE, 2020

PRESENT

Hon. Francisca Oteng Mensah (MP) -		Chairperson
Mr. Sylvester M. Tetteh -		Member
Mr. Joshua Gmayenaam Makubu	-	Member
Mr. Dennis Owusu-Appiah Ofosuapea	-	Member
Mrs. Theodora Williams Anti	-	Member
Mr. David-Dan Kwame Agorsor	-	Member
Ms. Agnes Ashun	-	Member
Mr. Henry Nana Boakye	-	Member
Hon. Mustapha Ussif	-	Member
Mrs. Vera W. Akoto	-	Member
Ms. Dorothy Akosua Onny	-	Member
Mr. Frimpong kwateng-Amaning	_	Member
Mrs. Velda Adobea Atuah Kusi	-	Member
Mr. Emmanuel Yao Dormenyah	-	Member
IN ATTENDANCE		
1. George Orwell Amponsah	-	Secretary
		-

AGENDA: Discussion and consideration of the of the Joint Committee's report on the approval of 2020 programmes and projects with estimated budgets and related matters.

NO	ITEM	ACTION BY
1.0	OPENING REMARKS The meeting was called to order at exactly 11:50am. Opening prayer was said by Ms. Onny. The 3 rd of December 2019 minutes was discussed and adopted as corrected.	
2.0	PROCEEDINGS 2.1 Presentation/Laying of Report by Joint Committee Mr. Ofosuapea as a Co-chair of the Committee briefed the Board on the highlights and the ensued recommendations in the report (attached as Appendix A). After the presentation, the following decisions and directive were given. Before that, the CEO clarified that the item number 5.3 under the Suggestion section in page 5 of the report (Appendix A, herein referenced): On the proposed construction of the office complex for the Authority, it was suggested to Management to consider the option of Build Operate and Transfer (BOT), was a proposal for the consideration of Management. Mr. Makubu on his part brought to fore his personal observation regarding the "inaccessibility" of the public educational materials used for the COVID-19	

Campaigns especially the videos, did not have Persons with Disability in mind, particularly the deaf. Members supported the call and encouraged Management to consider all segments of society when running such educational campaigns, including an adopted language that was common to the understanding of many targets.

Mrs. Anti commended Management for the lined programme and activities. She however underscored the under budgeting of some of the programs, which in her view meant that Management was not committed at implementing or actualizing those programmes. The CEO assured that the affected programmes had since been revised and that implementation will take be carried out. Further to that, the Board chair asked about the state of the revision process. The CEO indicated that it was ongoing and that it will be laid for the Board verification during the subsequent meeting. He for instance. appealed to the Board to amend the item: 'The Committee differed approval of the estimated budget for the celebration of international events i.e., International and Africa Youth Days pending provision of 2019 budget for some celebrations for verification and comparison", as stated in page 6 of the report herein referenced to grant Management the approval to implement the 2020 calendar events which are time bound, as it prepares to furnish the Board with requested information.

Management to re submit copies of the revised budgets, copy of the 2019 budgets and report on international day celebrations to the Board.

Mr. Boakye, commending the detailed work done by the Committee referenced the report (supra) asked whether the recommendation for supplementary budget on the remaining amount of the allocated funds for the COVID-19 campaign programme had been done (as directed under subsection 6.3, in page 5). The CEO promised to make same available for the Board's perusal. Mr. Boakye on this assurance by the CEO and in the absence of any further issues called for approval of the report.

Mrs. Akoto on her part pleaded on seeing some adjustment being done to the budgetary allocation meant for the women-related programmes. The CEO assured that Go Lead Project for instance that seeks to empower young women in the senior high school was going to supported by UNDP which guaranteed adequate funding.

'The report of the feasibility study on the plan for the establishment of the NYA TV was to be made available to the Board for perusal

2.2 Decisions

It was the decision of the Board that the following actions be taken subsequently by Management and report back to the Board

1.1 The report of the feasibility study on the plan for the establishment of the NYA TV was to be made available to the Board for perusal.

The report of the feasibility study on the green house installation for the Board's perusal.

Management was provide asked to further and better particulars the on number of master craftsmen be 1.2 The report of the feasibility study on the green house installation for the Board's perusal.

1.3 Management was asked to provide further and better particulars on the number of master craftsmen to be engaged for the STEP programme.

1.4 Management was tasked to provide the budgeted amount for the celebrations of the 2019 international events (i.e., International and Africa Youth days).

1.5 The estimated amount for the research on the impact of COVID-19 on the youth was under budgeted, and thus Management was asked to review and report.

At this juncture, there was a voice vote, and the Board unanimously approved and adopted the Joint Committee's report as amended.

CLOSURE

The Board Chair reminded members of the pending second phase of the Board's tour and encouraged all members to join when dates were finally decided. Mrs. Akoto, moved for the closure of the meeting and was seconded by Mr. Makubu at exactly 1:52pm. Closing prayer was said by Hon. Ussif.

Recorded By:

George Orwell Amponsah (Secretary)

engaged for the STEP programme.

Management was tasked to provide the budgeted amount for the celebrations of the 2019 international events (i.e., International and Africa Youth days)

The estimated amount for the research on the impact of COVID-19 on the youth was deemed under budgeted, and thus Management was asked to review and report.

<u>Under the Chairmanship of:</u> Hon. Francisca Oteng Mensah (Chairperson)

- 6. Exhibit 6 is copy of VAT & NHIL Invoice.
- 7. **Exhibit 7** is Sales Invoice submitted by Adonko Bitters Ltd in respect of the supply of Adonko Hand Sanitisers.
- 8. Exhibit 8 is a Copy of Bank of Ghana Cheque No. 330003 issued in favour of Adonko Bitters Ltd; and
- 9. Exhibit 9 is a copy of payment voucher raised in favour of Adonko Bitters Ltd.

Regarding allegations of her private capacity interest in Adonko Bitters Ltd, the Respondent confirmed through her Solicitors as follows:

- 1. The father-daughter relationship between our client and Mr. Kweku Oteng is not in dispute.
- 2. It is not disputed that Mr. Kweku Oteng is a shareholder and director of Adonko Bitters Limited.
- 3. It is also not disputed that our client (Hon. Francisca Oteng) is a shareholder and director of Adonko Bitters Limited.

Respondent again made reference to Section 6(2) and (5) of the National Youth Authority Act, 2016 (Act 939) which provides for duties of the Chairman of the Board qua Respondent as being the convening of extraordinary meetings of the Board and the presiding over Board meetings. She also referred to the duties of a Board Chairperson as provided at page 13 of the Corporate Governance Manual for Governing Board/Councils of the Ghana Public Services as follows:

- (a) Determination of agenda, venue, and date of Board meetings in consultation with the Chief Executive and Secretary.
- (b) Convening Board meetings
- (c) Presiding over the meetings of the Board and ensuring smooth functioning of the Board in line with good corporate governance.
- (d) Providing overall leadership to the Board without limiting the principle of collective responsibility.
- (e) Acting as the main link between the Board and Sector Minster.
- (f) Leading the Board in the determination of the organization's strategy and in monitoring the achievement of its goals.
- (g) Leading in evaluating and monitoring the compliance with policies and governance processes.

Quoting Article 284 of the Constitution, 1992, Respondent stated that the relationship between herself and her father does not lend itself to a conflict of interest situation. She reiterated her non-involvement in the day-to-day administration of Angel Group of Companies or its subsidiaries. She added that she does not hold any executive or managerial position in any of the afore-mentioned companies. In her considered view, the instant case, does not give rise to a conflict of interest situation, whether "actual", "real", or "potential". She posed the question whether the Board Chair had any private interest of a relevant kind which was part of the agenda for the Board meeting and stated that this question does not arise at all considering the well-established fact that the Board never considered any business relating to Adonko Bitters Ltd or its subsidiary companies owned by Respondent and Mr. Kweku Oteng, her father.

A careful examination of the Complaint and Comments of the Respondent, and the accompanying documents, show that the following facts were uncontested between the parties:

- 1. That on 31 March 2020 the Board of NYA approved an amount of GHS3 million to fund the "Youth in COVID-19 Campaign" and related activities.
- 2. That the Respondent was the Chairperson of the National Youth Authority (NYA) at all material times.
- 3. That the Respondent presided as Chairperson at 31 March 2020 Board Meeting that approved an amount of GHS3 million to fund the "Youth in COVID -19 Campaign".
- 4. That as part of the "Youth in COVID -19 Campaign", the NYA procured Personal Protective Equipment (PPEs) to combat the COVID-19 pandemic from a number of suppliers, including alcohol-based hand sanitisers from Adonko Bitters Company Ltd;
- 5. That the Respondent and her father, Mr. Kweku Oteng, were at the material time Directors and Shareholders of Adonko Bitters Company Ltd;
- 6. That the Respondent did not disclose her private capacity interest in Adonko Bitters Ltd during the Board Meetings of 31 March 2020 and 12 & 25 June 2020.

4.0. Mandate of the Commission

As stated supra, this is a case involving allegations of conflict of interest. The mandate of the Commission in investigating complaints of conflict of interest is, as already stated, provided under Articles 218(a), 284 and 287 of the 1992 Constitution, 1992.

Further, Section 7(1) (a) and (e) of the Act 456 provide as follows:

- (1) In accordance with article 218 of the Constitution, 1992, 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;

...

(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, 1992;

In terms of conflict of interest, the Supreme Court has interpreted Articles 284 and 287 of the Constitution, 1992 to vest the Commission with exclusive mandate over allegations of contravention of Chapter 24 of the Constitution, 1992. See the case of Okudzeto Ablakwa and One Other (No.2) V Attorney-General & Obetsebi-Lamptey (No.2) [2012] 2 SCGLR 846 where per Brobbey, JSC (as he then was) held with sufficient clarity that:

The issue of conflict of interest raised here can easily be resolved by recourse to Article 287 of the 1992 Constitution, 1992. Article 287 mandates that complaints under Chapter 24 of the 1992 Constitution, 1992 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 noncompliance, cause or matter to be investigated.

The Supreme Court, citing with approval the cases of Yeboah v. Mensah [1998-99] SCGLR 492 and Edusei v.Attorney-General [1998-99] SCGLR 753, held that 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.

In the Yeboah v. Mensah case, the court per Hayfron-Benjamin, JSC held that:

When a remedy is given by the Constitution, 1992 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.

Further, the Supreme Court held in the case of the Republic V High Court (Fast Track Division) Ex Parte, CHRAJ; Interested Party Richard Anane (HC) [2007-2008] SCGLR 340, that to invoke the investigative machinery of the Commission on Human Rights and Administrative Justice in matters relating to Article 218 (a) and Chapter 24 of the Constitution, 1992, there must be an identifiable complainant, be it an individual or a body or persons or even bodies corporate, in the instant case, Ismail Mohammed.

5.0. Issues Identified for Determination in this Investigation

The main issue for determination is whether the Respondent put herself in a position where her personal interest conflicted or was likely to conflict with the performance of her official duties as Board Chairperson in contravention of

Article 284 of the Constitution, 1992. However, to determine this main issue, the Commission will answer the following questions:

- What are the ingredients of conflict of interest relevant to the instant case?
- Did the conduct of the Respondent meet the threshold for or amount to conflict of interest:
 - Did she direct the NYA to purchase hand sanitisers from Adonko Bitters Ltd?
 - Did she have a duty to disclose her interest or recuse herself from the Board Meetings of 31 March and 12 & 25 June 2020?
 - O Did she take any step outside the Board Meetings that put her in a position where her personal interest conflicted with or was likely to conflict with the performance of her official duties?
- Other Related Matters of Law

6.0. Methodology Adopted

The Commission conducted the investigations in accordance with Chapter 18 and 24 of the Constitution, 1992, and the CHRAJ Act, 1993 (Act 456) and the CHRAJ (Investigation Procedure) Regulations 2010 (C.I.67). The methodology included review of the Complaint and Comments, request for and review of documents, and interview of witnesses, among others. The Commission interviewed over five witnesses including the following:

- i. Ismail Mohammed (Complainant),
- ii. Nelson Owusu Ansah, Acting CEO of the NYA,
- iii. Hon. Francisca Oteng Mensah (Respondent),

iv. Mark Freddy Ofori, Head of Procurement, NYA, and v._Hon. Sylvester Matthew Tetteh, former CEO of the NYA

7.0. Summary of Evidence

7.1. Interview of Persons

Article 219 (1) provides:

"The powers of the Commission shall be defined by Act of parliament and shall include the power –

- (c) to question any person in respect of any subject matter under investigation before the Commission;
- (d) to require any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commissioner.

Section 15(1) of Act 456 also provides as follows:

Subject to this Section, the Commission may require a person who is able to give an information relating to a matter being investigated by the Commission

- (a) to furnish the information to it, or
- (b) to produce a document, paper or thing that relates to the matter being investigated and which may be in the possession or control of that person.

7.1.1. Interview of Complainant

On the 17th of February 2022, the Complainant was invited to the Commission for an interview. At the interview, Mr Ismail Mohammed virtually rehashed the contents of his Complaint forwarded to the Commission. He also furnished the Commission with a copy of the Minutes of the Board Meeting held on 31 March and indicated that he had made a mistake regarding the date the Board meeting was held in his Complaint; the meeting was on 31st, not 30th.

According to him, he was of the understanding that the NYA is an agency under the Ministry of Youth and Sport (MoYS), which makes it a public institution and by extension makes all its officials, public officers. He stated further that though he was not a staff of the NYA, he brought his complaint before the Commission because he was of the understanding that conflict of interest is a public interest matter, and the Commission is the appropriate body to deal with it.

In conclusion, Mr Mohammed mentioned that his source informed him that aside the Board Meeting held on 31st March 2020, Hon. Francisca participated in other meetings involving Adonko Bitters Ltd but failed to disclose her interest.

7.1.2. Interview of Respondent

The Respondent on invitation appeared before the Commission on 1 April 2022 for interview, accompanied by her Solicitors. She identified and associated herself with comments submitted to the Commission by her Solicitors, Ghartey & Associates, for and on her behalf. She told the Commission that she was appointed and sworn in as Chairperson of the Governing Board of the NYA in December 2017 and mentioned other members of the Board to include the former CEO, representatives from the Ministry of Local Government, Ministry of Finance, Ministry of Youth and Sports, Ministry of Gender and Social

Protection and the Youth. She indicated that the functions of the Board include ensuring that management implements activities geared towards achieving the objective of the NYA as provided under the Act. It also includes supervising management to ensure that the management complies with financial regulations in Ghana in the use of funds.

She indicated that minutes of meetings held on 31 March 2020 and 12 June 2020 were a true reflection of what transpired at these meetings. That the CEO requested for the approval of GHS 3million to fund COVID-19 related activities and subsequently gave an update on 12 June 2020. She confirmed that documents covering expenditure on COVID-19 activities were referred to a Joint Committee of the Board for review with instructions that the report on the review be made available to the Board.

Respondent indicated that her status as a Shareholder and Director of Adonko Bitters Ltd had not changed at the time of the interview. She stated that her responsibility as a Director is to ensure that management complies with the companies' law. She indicated that Directors of Adonko Bitters meet once every quarter.

On procurement of goods and services at the NYA, she indicated that the responsibility for doing so inheres in the Head of Entity and the Head of Procurement Unit and that she, as Chairperson, does not involve herself in procurement issues save (with other Board Members) to approve budgets presented to the Board by management and to ensure that the processes comply with the law. She indicated that decisions at Board meetings are taken collectively by the Board. She indicated that although the agenda and documents for Board Meetings are usually sent to members ahead of time before the meetings, no document was made available to members before the virtual meeting held on the 31 March 2020. She cited safety concerns as reasons which necessitated this virtual meeting.

On the approval by the Board of the GHS 3 million, Respondent stated that it was based on the presentation by the former CEO of the NYA on the intent to undertake a "Youth in COVID-19" campaign and related activities. She added that after the presentation, the matter was deliberated on by members before a decision was subsequently taken. She added that management indicated that it was going to procure some medical supplies including PPEs and that after deliberations, the request for GHS 3 million was approved by the Board.

On the date or period that she had knowledge of the procurement of hand sanitisers from Adonko Bitters Ltd, Respondent stated that it was at the 12 June 2020 Meeting of the Board during the presentation of the COVID-19 Expenditure by the former CEO. She indicated that the activities took place before the 12 June 2020 meeting and not the 31 March 2020 meeting during which period, the stated amount was approved. She added therefore that at the 31 March meeting, no expenditure was submitted by management to the Board as no expenditure had been incurred by then.

The Respondent further stated that she saw Adonko Bitters Ltd in the list of companies that supplied PPEs and that the report together with documents were referred to a Joint Committee for review and the submission of a report to the Board. She added that the Joint Committee submitted its report to the Board on 25 June 2020, which discussed and adopted or ratified same.

Regarding disclosure of interest in the 12 and 25 June 2020 meetings, the Respondent indicated that there was no need, because at that time the transaction had already taken place. Concluding, she indicated that the Board exercised its oversight responsibilities in accordance with law.

7.1.3. Interview of Nelson Owusu Ansah

Nelson Owusu Ansah, Acting CEO of the NYA appeared before the Commission on the 24 August 2021. He said that prior to his appointment as acting CEO, he was the Deputy Chief Executive in charge of Programmes and Operations, a position that he held for two years. He indicated that he is privy to all the issues in this investigation.

On the procurement of the hand sanitisers from Adonko Bitters Ltd, he said that Management of NYA during the COVID-19 pandemic took a decision to assist in the protection of the youth at public workplaces including the hospitals across the country. As a result, the Governing Board of the NYA approved GHS3million for the procurement of Personal Protective Equipment (PPEs) to the Ministry of Health (MoH) for onward distribution to youth. He stated that the NYA also procured other things like megaphones for the youth to disseminate information on the need to observe the COVID-19 protocols. He added that the essence was to ensure that the youth do not contract the virus and infect the aged at home, who were considered as being vulnerable.

Mr. Owusu-Ansah indicated that initially it was very difficult accessing various PPEs at the time due to high demand. He added that the NYA contacted GIHOC for the supply of hand sanitisers but due to demand from others it had to fall on Adonko Bitters Ltd, which at that time had just started production of the sanitisers to support government efforts.

According to him, the NYA informally approached the Board Chairperson for help, who requested the production manager of Adonko Bitters Ltd to supply some of the hand sanitisers to the NYA. Based on this, 290 pieces of hand sanitisers were supplied. He stressed that it was through the instrumentality of the Respondent that the NYA was able to procure the PPEs.

Regarding payment, he said that the cheque issued to Adonko Bitters Ltd for the supply of the hand sanitisers became stale and was thus reversed to the NYA. He added that he is yet to find out from the Finance Officer of the NYA whether the amount has since been paid to the company.

With regards to the beneficiaries, Mr. Owusu-Ansah said that the PPEs were donated to the Ministry of Health and other groups for distribution to youth within their domain. He indicated that the NYA did not follow the procurement processes during this transaction and that it was later ratified by the Board at a meeting which was chaired by the Respondent.

He concluded that considering the status of the Respondent and the amount involved in this case, it is nothing to her and that it was unfortunate that her good gesture has turned out to create a problem for her.

7.1.4. Interview of Mark Freddy Ofori

Mark Freddy Ofori, Head of Procurement at the NYA appeared before the Commission on 7 March 2022. He stated that he was at post when the transaction involving the procurement of PPEs to fight COVID-19 was undertaken by the NYA.

On approval from the Public Procurement Authority (PPA) for the procurement of hand sanitisers from Adonko Bitters Ltd, Mr. Ofori said that the rules on procurement are clear on the methods or processes of procurement that requires approval from the PPA. According to him, approval is required for restricted and single source procurement and not price quotation as in the instant case involving Adonko Bitters Ltd. He further stated that the amount involved was within the threshold of the CEO and needed no approval from the PPA.

Regarding the method of procurement, he said that Price Quotation method was adopted in which three (3) invoices were received from companies including Adonko Bitters Ltd. These quotations were evaluated after which the lowest bidder was awarded the contract. He intimated that there was nothing wrong with the processes and that the records to that effect were included in the first response of the NYA to the Commission.

On the purchase of hand sanitisers, Mr. Ofori said that at the time of COVID-19, few companies were engaged in the production of sanitisers. These included Adonko Bitters Ltd, Kasapreko and GIHOC. So, it was difficult getting a supplier and the few available in the market were being sold at higher prices.

Concerning the number of companies that submitted invoices for the supply of hand sanitisers, Mr. Ofori said that three companies including Adonko Bitters Ltd did so but that the Invoice of the third company was not available at the time of the interview.

Regarding whether it was proper for one of the companies to indicate in its Invoice that it was going to supply Adonko hand sanitisers when Adonko Bitters Ltd i.e., the producer, had also bidded to supply same, he stated that this is possible, just that the affected company would substitute its own label with that of Adonko Bitters Ltd.

With regards to how the companies were invited, Mr. Ofori stated that there was no formal invitation and that there was an informal discussion with the former CEO and the Finance Officer on how to reduce the cost of procuring PPEs and in order to get value for money. According to him, during the said discussion, the former CEO indicated that he had a friend who could supply

the product. In reaction, he asked the former CEO to let the said friend submit an invoice for consideration. He added that he only got to know that it was Adonko Bitters Ltd when the invoice was submitted.

On whether the invitation made to Adonko Bitters Ltd to supply the hand sanitisers was proper under the law, he rhetorically responded as follows: "If there is a fire outbreak and your boss has a friend in the Fire Service who can help and calls that person for assistance, won't one be happy?". He also stated that the procurement took place at a time that it was difficult to get supplies.

Concerning the variation in dates appearing on Adonko Bitters Ltd Invoices, the tender evaluation report, and other documents, Mr. Ofori attributed same to mistakes arising out of the number of lots that were involved and inexperienced staff at the stores of the NYA.

On the location of Adonko Bitters Ltd offices, Mr. Ofori said that the company has an outlet in Accra where it does its distributions, but the production or manufacturing is done at Kumasi.

On the treatment of VAT/NHIL in an Invoice, Mr. Ofori said that the value of the tax or levy is usually included in the Invoice to make up the total cost; however, where it is not charged on the Invoice, it is treated as being part of the invoice value.

On why Adonko Bitters Ltd did not state VAT on its invoice, Mr. Ofori said, a draft was brought, and he told them that it will not work because at the time of submission we have to state it and that the moment it is not stated, it is taken as price inclusive and used for the computation. He further stated that once the invoice is submitted, you cannot come back to say that you have not added it. When that is done, it takes all the procurement out of the way, because the

moment the VAT is added the price will shoot up which could affect the lowest competitive dealer. He added again that it is against the procurement laws and no institution or procurement officer will accept it as that would be considered unprofessional.

On whether Adonko Bitters Ltd has been paid, Mr. Ofori stated that he was aware that the company supplied the hand sanitisers and a Cheque issued by NYA in favour of Adonko Bitters Ltd as payment. He added however that as at the time of this interview, Adonko Bitters Ltd was yet to collect the cheque.

On why the NYA had to supply PPEs to the Ghana Health Service, Mr. Ofori said he could not answer this question and asked that the question be directed to Sylvester Matthew Tetteh, former CEO of NYA.

On the relations between him and the Respondent/Board Chairperson, Mr. Ofori said that he had never spoken to her personally on any matter and that procurement issues are presented to the Governing Board by the CEO.

7.1.5. Interview of Hon. Sylvester Matthew Tetteh

Hon. Sylvester Tetteh is the former Chief Executive Officer (CEO)/Board Member of the National Youth Authority (NYA), and the CEO at all material times of the procurement of the PPEs by the NYA. He is currently the Member of Parliament for the Bortianor-Ngleshi Amanfro Constituency in the Greater Accra Region.

On the power of the Governing Board, Mr. Tetteh stated that the Board is responsible for strategic decisions of the NYA and that the CEO together with Management is responsible for the day-to-day implementation of the said decisions. According to him, everything the CEO does is with the prior

approval of the board. He stated that the CEO submits reports to the Governing Board after implementation of the decisions of the Board in line with the NYA Act and Regulations.

According to him, the CEO/Management cannot exercise his/its responsibility beyond what is approved by the Governing Board, and that where management undertakes any activity to address an urgent issue without prior approval, same must be brought to the Governing Board for ratification or adoption.

Regarding notices for Board Meetings, Mr. Tetteh said that invitations are usually sent out with the necessary attachments. With Emergency Meetings however, Mr. Tetteh said that the manner of the invitation is stipulated in the NYA Act, and it could even be done through phone calls. To him, what is most important during such meetings is quorum and that the procedure prescribed for meetings in the Act for normal meetings is not followed in Emergency Meetings. He added that the meeting to consider and approve the amount for COVID-19 was an emergency meeting. He also stated that meetings are usually conveyed at the instance of the Chairperson in accordance with law and the CEO can also confer with the Chairperson on the need for a meeting to address an urgent matter requiring the Board's approval.

On reports to the Governing Board, Mr. Tetteh said that reports are usually submitted to the Board at its meetings: either at an Ordinary/General or Emergency.

Mr. Tetteh stated the PPEs for the fight against COVID 19 were procured in an emergency situation as it was difficult to tell the end from the beginning i.e the pandemic was not anticipated and hence no preparation was made towards it.

He further stated the decision to procure the PPEs was taken at an emergency meeting. He stated that with the outbreak of Covid, the Authority thought given its mandate to educate and inform Ghanaian youth, there was the need to protect the young people of the country and staff of NYA.

He stressed that educating people about the COVID pandemic at that time was crucial, hence a presentation was made by him to the Board on the need to undertake the Youth in Campaign Fight against Covid-19. According to him, following consultations with the Respondent, the latter requested the Board Secretary to call for the Board meeting to deliberate on the matter subsequent to which the Board eventually approved the programme after asking the relevant questions. He confirmed the holding of the meeting via Zoom on the 31 March 2020 to approve the GHS3million but declined to answer questions posed by the Commission on the presentation made by him on that date arguing that the amount approved by the Board was not the subject of investigations by the Commission. He also added that that he was not sure whether other works of the NYA were under scrutiny.

He stated however that the CEO has a threshold under the procurement law which does not require the Board's approval. Zeroing on the hand sanitisers procured from Adonko Bitters Ltd, he stated that the total amount is about GHS68, 000.00 which does not require prior approval from the Board. He further stated that the Governing Board did not give approval to procure solely from Adonko Bitters Ltd. According to him, they were procuring PPEs to combat Covid-19 including public education. He added that the Governing Board gave management approval to undertake certain activities and gave a ceiling to which to spend.

On whether Adonko Bitters Ltd delivered the sanitisers to the NYA on 29 March 2020, Mr. Tetteh said that the date was a mistake and that he would have

to check on the 29 and 31 dates as indicated on the Stores Received Advise (SRA) and revert to the Commission. He is yet to do so at the time of this decision.

Mr. Tetteh further stated that when COVID struck, it was a panic situation. That at same time his mother was sick at the village and he had to travel to visit her and so he hurriedly worked on the documentation after the Board's approval. He indicated that normally items procured are received at the stores. Those going out are issued and subsequently dispatched because of lack of big space for storage and that this is what might have happened to the PPEs procured by the NYA.

Regarding processes involved in the procurement of items at the NYA, Mr. Tetteh said that first, the value of the items to be procured are checked, the threshold ascertained; where the threshold is above the CEO, approval is sought from the appropriate authority or the PPA. According to him, where the threshold is not above the CEO, a request is made for invoices, following which a valuation is carried out and appropriate decision taken. He added that although there is a procurement officer, the head of the institution is the spending officer and has the responsibility to make sure everything is done within the law.

Concerning the invitations made to companies for the supply of hand sanitisers, Mr. Tetteh declined commenting on how Adonko Bitters Ltd was invited to participate in the process. He however indicated that few local companies such as Ghana Industrial Holding Distillery Company Limited (GIHOC Ltd), Kasapreko Company Limited and Adonko Bitters Company Limited were engaged in the production of hand sanitisers to complement the imported ones at that time. He added that he contacted Mr. Maxwell Kofi

Jumah, Managing Director of GIHOC Ltd for supply of hand sanitisers, but was unsuccessful due to the high demand at the time.

Commenting on the allegations brought against the Respondent, Mr. Tetteh stated that the Chairperson does not determine where to procure the items from and that the procurement of the items was purely a management's decision. He stressed that the Chairperson never took part in any of the procurement processes and could not have been in conflict of interest.

On whether Adonko Bitters Ltd met the requirements, Mr. Tetteh responded in the affirmative and stated that considering the price and availability, he would have still gone in for hand sanitisers from Adonko Bitters Ltd even if its prices were the highest.

Regarding payment to Adonko Bitters Ltd, Mr. Tetteh stated that after supplying the items, Adonko Bitters Ltd did not pick the cheque that was issued by the NYA for the payment of the items. He added that Adonko Bitters Ltd also supplied Parliament some hand sanitisers free of charge.

Mr. Tetteh further stated that the CEO of Adonko Bitters Ltd supported a lot of institutions during the COVID era. He indicated that once on his way to Kumasi, he met the CEO and reminded him of the cheque belonging to his company which had to be picked. He stated that the CEO said he was going to inform management of Adonko Bitters Ltd to pick it up but at the time he left office, they had not shown up for the cheque.

Regarding whether it is permissible to set aside rules during emergencies, Mr. Tetteh said that provided one could justify that it was not within normal times. He added that during an emergency, the President of the Republic could spend money before getting Parliamentary approval or ratification. He added that

each issue should be situated in a context and the exigency of the time, so as to avoid abuse of the laws.

7.2 Consideration of Documents

Article 219 (1)(a) provides:

"The powers of the Commission shall be defined by Act of parliament and shall include the power –

(a) to issue subpoenas requiring the attendance of any person before the Commission and the <u>production of any document or record relevant to any investigation by the Commission</u>;

Apart from documents made available by the Complainant and Respondent, below are the relevant portions of documents obtained and reviewed in the course of the investigation by the Commission:

7.2.1 A letter Ref. No. NYA/ADM/VOL.11/133 dated 19 July 2021 from the National Youth Authority in response to the Commission's request for information. The letter is reproduced below:

RE: REQUEST FOR INFORMATION TO ASSIST IN INVESTIGATION

The National Youth Authority is in receipt of your letter dated 28th May, 2021 ref. CHRAJ/32/2021/203 on the above subject matter.

No.	COMPANY	DESCRIPTION	QUAN TITY	AMOUNT
1	Ruzyne Group Limited	Supply of PPES coveralls to NYA head office	4.00	97,087.38

2	ERA 53 Limited	Supply of 2,000 packs of hand Gloves to NYA head office.	2000	97,087.38
3	Akuaya Company Limited	Supply of 2,000 boxes PPES Cardinal Health items to NYA head office	2000	90.000.00
4	Jay Cobi Company Ltd	Supply of PPES coveralls to NYA head office	300	75,000.00
5	Mens and BSK Ventures Limited	Supply of PPES coveralls to NYA head office	300	75,000.00
6	Jardinia Limited	Supply of PPES coveralls and Goggles to NYA head office	400	95,000.00
7	Adonko Bitters Limited	Supply of Adonko Hand Sanitisers to NYA	290	68,980.58
	TOTAL			598.155.34

The Management of the National Youth Authority at the height of the Covid-19 pandemic, sought approval from its Governing Board to donate PPEs to the Ministry of Health in support of measures undertaken by government to control the spread of the deadly virus across the country.

An amount of Three Million Ghana Cedis (GH3,000,000.00) was therefore approved by the Board to be spent on COVID-19 related issues.

Below are the PPEs procured for the donation to the Ministry of Health with the amount involved.

We wish to state that, at the peak of the Covid-19, procurement of PPEs from one source was impossible since the country (Ghana) was not adequately resourced Page 66 of 111

for it. Request for quotation was selected as the procurement method for the procurement of the PPEs.

In respect of the supply of the hand sanitisers, Adonko Bitters Limited was selected to supply the above, since they and few local companies were the only companies producing it locally. In fact, it was almost impossible getting other local companies to participate in the tendering process as the demand at the time exceeded supply in the country.

Adonko Bitters Limited supplied the items and a Bank of Ghana cheque no.33003 with face value of GH68,980.58 was issued to Adonko Bitters Limited. It is important to note that, the said cheque became stale and has since been reversed to the Authority's accounts on the 30th October 2020.

We wish to state categorically that, as a result, no money has been paid to Adonko Bitters Limited.

Also attached are copies of all the documents requested as well as other relevant documents.

- Certified copies of documents Appendix 1
- Receipt of PPEs by the NYA Appendix 2
- Beneficiaries of the PPEs Appendix 3
- Store issue Voucher (donation to the Ministry of health) Appendix 4
- Particulars of Board Members -Appendix 5
- Portion of NYA cashbook Appendix 6
- Board Approval letter Appendix 7

We look forward to your usual cooperation in this regard

NELSON OWUSU ANSAH Ag. Chief Executive Officer Cc: The Hon. Minister

Ministry of Youth and Sports

Ministries - Accra

The NYA attached to the letter copies of several documents, the relevant ones being the following:

- 7.2.1.1. Cheque Payment Voucher for Ruzyne Group Ltd dated 27 March 2020, which we have marked as Exhibit NYA.
- 7.2.1.2. Memo from the Head of Procurement to the CEO dated 26 March 2020 requesting for the release of an amount of One Hundred Thousand Ghana Cedis (GHS100,000.00) to pay Ruzyne Group Ltd for the supply of PPEs to the NYA, marked as Exhibit NYA 1.
- 7.2.1.3. Official Receipt from Ruzyne Group Ltd valued at GHS97,087.38 in respect of funds received from NYA, marked as Exhibit NYA 2. 7.2.1.4. Invoice from Ruzyne Group Ltd in the sum of GHS100,000.00 for supply of PPEs, marked as Exhibit NYA 3.
- 7.2.1.5. Invoice from 8th Day Ventures in the value of GHS107,120 for supply of PPEs, marked as Exhibit NYA 4
- 7.2.1.6. Invoice from GASEF ventures in the sum of GHS115,360.00, marked as Exhibit NYA 5.
- 7.2.1.7. VAT & NHIL Invoice from Ruyne Group Ltd dated 29 March 2020 in respect of the supply of PPEs to the NYA, marked as Exhibit NYA 6.

- 7.2.1.8. Stores Service Received Advice dated 16 March 2020 on supply of PPEs Coveralls by Ruyne Group Ltd, Exhibit NYA 7
- 7.2.1.9. Cheque Payment Voucher dated 29 March 2020 from the NYA to Jardinia Ltd for the supply of PPEs, marked as Exhibit NYA 8.
- 7.2.1.10. Memorandum from the Head of Procurement to the Chief Executive of the NYA requesting for the amount of GHS97,850.00 to pay Jardinia Ltd for the supply of PPEs, marked as Exhibit NYA 9.
- 7.2.1.11. Ghana Revenue Authority VAT FLAT RATE SCHEME INVOICE in the sum of GHS95,000.00 from Jardinia Limited dated 29 March 2020 for the supply of 400 PPEs, marked as Exhibit NYA 10.
- 7.2.1.12. A letter from the NYA signed by its Head of Procurement dated 9 March 2020 requesting for price quotations addressed to Jardinia Ltd, OFA Link Ventures and 8th DAT Ventures, marked as Exhibit NYA 11.
- 7.2.1.13. Payment Voucher dated 30 March 2020 from the NYA raised in favour of Adonko Bitters Ltd in the sum of GHS68,980.58 for the supply of hand sanitisers, marked as Exhibit NYA 12.
- 7.2.1.14. Memorandum from the head of procurement at the NYA to the CEO dated 30 March 2020 requesting approval for the amount of Seventy-one Thousand and Fifty Ghana Cedis (GHS71, 050.00) to pay for the supply of Hand Sanitisers from by Adonko Bitters Limited, Exhibit NYA 13.
- 7.2.1.15. Ghana Revenue Authority VAT & NHIL Invoice dated 29 March 2020 in the sum of GHS 83,927.81 from Adonko Bitters Ltd on the supply of 290 hand sanitisers, marked as Exhibit NYA 14.

7.2.1.16. Sales Invoice dated 29 March 2020 in respect of 290 Adonko Hand sanitisers in the sum of GHS71,050.00 issued by Adonko Bitters Ltd, marked as Exhibit NYA 15

7.2.1.17. Invoice dated 30 March 2020 in the sum of GHS100,000.00 purportedly issued from a company called **Flomichdicta Company Ltd** for the supply of Adonko Hand Sanitisers to the NYA, marked as Exhibit NYA 16.

7.2.1.18. Ghana Government Stores Received Advice (SRA) dated 29 March 2020 in respect of the supply of 290 Adonko Hand Sanitisers to the NYA from Adonko Bitters Ltd signed by Mark Ofori and two others, marked as Exhibit NYA 17.

7.2.1.19. Tender Evaluation Report on the supply of Adonko Hand Sanitisers to the NYA by Adonko Bitters Ltd, dated 29 March 2020, marked as Exhibit NYA 18. Relevant portions of Report are hereby reproduced as follows:

TENDER EVALUATION REPORT FOR

THE SUPPLY TWO HUNDRED AND NINETY (290)
BOXES OF ADONKO HAND SANITISERS TO THE
HEAD OFFICE OF THE NATIONAL SECRETARIAT, NYA

Tender Evaluation Report

And

Recommendation for Award of Contract

Name of Procurement Entity: National Youth Authority Supply of Two Hundred and Ninety

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Contract Name: (290) Boxes of Adonko Hand Sanitisers to the Head Office of the National Secretariat, NYA

Contract Number: NYA/GDS/PQ/2020//07

Date of Submission: March 29th, 2020

1. Summary Evaluation Data and Award Recommendation

2. Name of Procurement entity: National Youth Authority

3. IFT Quotation Number: NYA/GDS/PQ/2020//07

4. Contract Name: Supply of Two Hundred and Ninety (290) Boxes of

Adonko Hand Sanitisers to the Head Office of the

National Secretariat, NYA5

5. Tender Opening Date: March 29th, 2020

TENDER EVALUATION SUMMARY:

Supply of Two Hundred and Ninety (290) Boxes of Adonko Hand Sanitisers

No.	Tenderer	Read-out Tender	Evaluated Tender	Rank
		Price	price	
1.	Adonko Bitters	GHS71,050.00	GHS71,050.00	1^{ST}
2.	Forgee Ventures	GHS93,000.00	GHS93,000.00	3 RD
3.	Flomichdicta	GHS 100,000.00	GHS 100,000.00	2 ND
	Company Ltd			

1. The lowest evaluated responsive tender has been determined to be qualified and capable of performing the contract.

2.On the basis of the evaluation (outline in the attached Report), which was carried out in accordance with quotations, we recommend accepting the tender of the lowest evaluated tenderer ADONKO BITTERS which has been determined as qualified and capable of performing the contract.

The Report also referred to quotations from bidding companies for the supply of hand sanitisers to Adonko Bitters Ltd, which were received allegedly on 16 March 2020 at 10:00hrs GMT and were immediately Opened thereafter. This is provided in the Table Below:

 Table 1:
 Record of Tender Prices

No.	Tenderer Identification		Tender Prices (s)
	Name	Address	Amount (s)
	(a)	<i>(b)</i>	(e)
1.	ADONKO	P. O. Box A 211, La-	GHS71,050.00
	BITTERS	Accra	
2.	FORGEE	P. O. Box Co A110, La-	GHS93,000.00
	VENTURES	Accra	
3.	FLOMICHDICT	P. O. Box Co 419, Tema	GHS100,000.00
	A COMPANY		
	LTD		

7.2.1.20. Letter dated 9 March 2020 from the NYA requesting for price quotations for the supply of PPEs (Coveralls) addressed to Mens & BSK Ventures Ltd, Kay Bonsu Royal Investment Ltd, and OFA Link Ventures, marked as Exhibit NYA 19

7.2.1.21. Tender Evaluation Report dated March 2020 for the supply of Specified PPEs to the NYA (described as LOT 1-LOT 6) indicating companies

recommended for the supply of PPEs on the basis of the lowest responsive tender, marked as Exhibit NYA 20.

7.2.1.22. Store Issue Voucher dated 29 March 2020 in respect of the donation of PPEs including 290 Boxes of Adonko Hand Sanitisers by NYA to the Ghana Health Service, marked as Exhibit NYA 21.

7.2.1.23. Letter Ref. No. SCR/DA16/39/01 dated 5 December 2017 signed by the Hon. Akosua Frema Osei-Opare, Chief of Staff, Office of the President and addressed to the Hon. Minister, Ministry of Youth and Sports appointing 15 persons as members of the Governing Board of the NYA including the Respondent as Chairperson, marked as Exhibit NYA 22.

7.2.1.24. Letter dated 11 September 2019 and signed by Secretary to the President, Nana Bediatuo Asante, appointing Mr. Sylvester Matthew Tetteh, as Chief Executive Officer of the NYA, marked as Exhibit NYA 23.

7.2.1.25. Extracts from the Cash Book of the NYA for October 2020 which includes a reversal of stale Cheque issued to Adonko Bitters Ltd for the supply of Adonko Hand Sanitisers, marked as Exhibit NYA 24. The part dealing with Adonko Bitters is as below:

Extract of NYA Cash Book as at 30/10/20

Date	Cheque	Description	Credit GHS	Running Balance
30-Oct-	330003	Adonko Bitters Limited-Being		
20		reversal of stale Cheque no. 330003	68,980.58	512,384.66
		for the supply of Adonko hand		
		sanitisers to the NYA		

7.2.2 The NYA in another letter Ref. No.NYA/ADM/VOL.11/134 dated 5 April 2022 also made available the following documents to the Commission:

7.2.2.1. Certified True copies of Bank Statements of the NYA between January 2020 and May 2020. We have marked same collectively as Exhibit NYA 24.

7.2.2.2. List of names and particulars of Board Members of the NYA indicating their contact details, marked as Exhibit NYA 25.

7.2.2.3. Minutes of the Ordinary meeting of the Governing Board of the NYA held on the 31 March 2020 via zoom, marked as Exhibit NYA 26.

7.2.3 Letter from Registrar-General's Department **Ref:** NO: SH/RG/01 dated 10 March 2021 communicating results of Search on Adonko Bitters Ltd on request by this Commission per letter No. CHRAJ/32/2021/66 of 12 February 2021. The Search Results marked as Exhibit RGD are indicated as follows:

Date of Incorporation: 17th December 2015

Date of Commencement: 23rd December 2015

Ownership of the Company:

Kwaku Oteng with 1,600 shares

Francisca Oteng-Mensah with 400 Shares

Particulars of Director and Secretary

Directors:

Kwaku Oteng

Francisca Oteng-Mensah

Juliet Anang

Kwame Adom- Appiah

Vincent Opare Larbi

Eric Appiah

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Joseph Kofi Mensah

Kwaku Duah Boasiako

Secretary:

Juliet Anang

Nature of Business: Manufacturing of Beverages, Transportation, Haulage and Logistics of Alcoholic and other Products.

8.0 Analysis of Evidence and Consideration of Issues

As indicated above, the main issue for this investigation is whether the Respondent put herself in a position where her personal interest conflicted or was likely to conflict with the performance of the functions of her office in contravention of Article 284 of the Constitution, 1992 in her dealings as Board Chairperson? To assist the Commission, determine this issue, we will answer the following questions:

- What are the relevant ingredients of conflict of interest in the instant case?
- Did the conduct of the Respondent meet the threshold for conflict of interest?
 - Did the Respondent direct the NYA to purchase hand sanitisers from Adonko Bitters Ltd?
 - Did the Respondent have a duty to disclose her interest or recuse herself from the Board Meetings of 31 March and 12 June 2020?
 - Did she take any step outside the Board Meetings that put her in a position where her personal interest conflicted with or was likely to conflict with the performance of her official duties?
- Other Related Matters of Law

- O Does the Commission have the mandate of to disallow expenditures made by a public entity pursuant to its investigations?
- Does the burden of proof in an investigation before the Commission lie on a Complainant?
- Was the procurement of PPEs by the NYA ultra vires its mandate?

8.1. Relevant ingredients of conflict of interest in the instant case?

Article 284 which forms part of the Chapter 24 of the Constitution, 1992 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.

Article 287 also provides:

An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] 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. Pursuant to its mandate under Articles 284 and 287 of the Constitution, 1992, the Commission in 2006 issued Guidelines on Conflict of Interest to assist public officials to whom Article 284 applies to identify, manage, and resolve conflicts of interest. In addition, the Commission, pursuant to its mandate under Chapter 24 of the Constitution, 1992, issued a generic Code of Conduct for Public Officers to guide public officials on compliance with Chapter 24 of the Constitution, 1992.

Thus, the Code of Conduct for Public Officers in chapter 24 of the 1992 Constitution, 1992 and as elaborated in the Code of Conduct for public officers of Ghana, 2009, (the Code) developed and issued by the Commission, contains minimum standards of conduct applicable to all public officers, including elected, non-elected or appointed, who are to ensure that the basic values and principles provided in the Constitution, 1992 and the Code are adhered to. The Code seeks to promote integrity, probity, and accountability, dedicated and faithful service to the Republic of Ghana. These standards include "Guidelines on Conflict of Interest to Assist Public Officials Identify, Manage and Resolve Conflicts of Interest" (the Guidelines). The Code and the Guidelines were issued as administrative and operational framework for implementing the Constitution, 1992al intendment underpinning Chapter 24 of the Constitution, 1992.

The Guidelines define 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 also provides that:

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

- i. <u>An interference with the objective exercise of the person's duties;</u> and
- ii. An improper benefit or an advantage by virtue of his/her position

On Conflicting Financial Interest and Self-dealing, the Guidelines provides as follows:

3.1. Conflicting Financial Interest

This section covers financial interests of a public official, which may conflict with his/her official duties. It provides for conflict of interest situations in the award of contracts for goods and services, procurement of goods and services, self-dealing and other related matters.

General Rule: A public official shall not participate in an official capacity in any particular matter which to his knowledge:

- i. he/she has a financial interest; and
- ii. any person whose interests are imputed to him in any way has a financial interest;

if the particular matter will have a direct effect on that interest.

3.2. Self-dealing: A public official shall not take an action in an official capacity which involves dealing with him/herself in a private capacity and which confers a benefit on himself/herself.

Similarly, the Organisation for Economic Co-operation and Development (OECD) has defined conflict of interest in the public sector as:

"A conflict between the public duties and private interests of a public official, in which the public official <u>has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.</u>"

Black's Law Dictionary (9th ed.) also defines conflict of interest as

"a real or seeming incompatibility between one's private interests and one's public or fiduciary duties".

"Private interest" is defined in the Guidelines to include:

A 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

Further, among the international best practice guidelines on conflict of interest is the guidelines of the Australian Public Service (APS) which provides, among others, that:

5.1.3 A real conflict of interest occurs where there is a conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties.

¹ https://www.dgaep.gov.pt/media/0602010000/Paperguidelinesconflitsofinterest.pdf- 27/07/2020

- 5.1.4 An apparent conflict of interest occurs where it appears that an employee's personal interests could improperly influence the performance of his or her duties, but this is not in fact the case.
- 5.1.7 Where there is credible evidence that a personal interest has compromised the decision made by an employee, that situation should be handled as suspected misconduct. See Section 9: *Reporting suspected misconduct* for further information.
- 5.2.1 The Code requires that where a material personal interest cannot be avoided, the employee must disclose that interest so that it can be managed.
- 5.2.2 To be 'material' a personal interest needs to be of a type that can give rise to a real or apparent conflict of interest. Personal interests do not give rise to a conflict of interest unless there is a real or sensible possibility of conflict and not simply a remote or theoretical possibility of conflict. If no reasonable person could draw a connection between the employee's personal interest and their duties, then the personal interest is not 'material'.

In the Hon. Richard Anane Case [CHRAJ Case No. 5117/2005] on the subject of conflict of interest, the Commission held on page 20 of its decision as follows:

In the Commission's view, a conflict of interest is,

- 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.

It is also the view of the Commission that conflict of interest occurs when a public official attempts to promote a private or personal interest for himself/herself or for some other person, the promotion of the private interest then results 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.

Then also, in the SSNIT Case involving Multimedia Ltd and Charles Kwame Asare, [CHRAJ Case No. 775/2000], the Commission held at page 31 its decision as follows:

"A public official breaches this provision not only where there is actual conflict of interest but also where there is a likelihood of conflict of interest. Where there is already in existence a personal relationship between a public officer and another person or between their respective institutions or companies, there is an onerous responsibility on the public officer to ensure that all future transactions between the two persons or institutions are conducted with utmost transparency and in such a manner as to avoid suspicion of any improper motive or conduct"

In sum, the law on conflict of interest is not a blanket one but operates within context. In other words, having financial or relational interest simpliciter does not necessarily place you in a conflict of interest situation. A person must have put him/herself in a position where his/her private capacity interest conflicts or is likely to conflict with the performance of his/her official duties.

The Supreme Court put it more succinctly in the case of **Okudzeto Ablakwa** (N02) & Another v Attorney General & Obetsebi-Lamptey as follows:

"a conflict of interest allegation must be examined in the light of clear facts which support a conclusion that a public officer's personal interest conflicts with or is likely to conflict with the performance of the functions of his or her office. The interest ought to be financial or otherwise, direct or indirect, which must ultimately be clearly proven". [Okudzeto Ablakwa (N02) & Another v Attorney General & Obetsebi-Lamptey (No2) (2012) 2 SCGLR 845].

Section 7 of the NYA Act, 2016 (Act 939) also provides:

7. Disclosure of interest

- (1) A member of the Board who has an interest in a matter for consideration shall
 - (a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and
 - (b) not be present at, or participate in the deliberations of the Board in respect of the matter.
- (2) A member ceases to be a member of the Board if that member has an interest in a matter before the Board
 - (a) fails to disclose that interest, or
 - (b) participates in the deliberations of the matter

In essence, Section 7 of Act 939, as an Act of Parliament, has elaborated on Article 284 of the Constitution, 1992 on how to identify and manage conflict of interest when it arises or is likely to arise at NYA Board Meetings, and demands of a member of the Board who has a private capacity interest in a matter for consideration by the Board to disclose the nature of the interest and recuse him/herself. This requirement for disclosure and recusal is consistent with the provisions of the Guidelines on Conflict of Interest for Public Officers issued by the Commission as set out above.

8.2. Did the Conduct of the Respondent Meet the Threshold for Conflict of Interest?

As indicated above, the Respondent was the Chairperson of the National Youth Authority (NYA) at all material times. On 31 March 2020 the Respondent chaired the Board of NYA that approved an amount of GHS3 million to fund the "Youth in COVID-19 Campaign" and related activities. Among others, the NYA procured PPEs to combat the COVID-19 pandemic from a number of suppliers, including alcohol-based hand sanitisers from Adonko Bitters Company Ltd, out of the GHS3 million approved by the Board to fund the "Youth in COVID-19 Campaign" and related activities. The Respondent and her father were at the material time Directors and Shareholders of Adonko Bitters Company Ltd. The Respondent did not disclose her private capacity interest in Adonko Bitters Ltd during the Board Meetings of 31 March 2020 and 12 & 25 June 2020. These are the settled facts of the case.

Rule 3.1 on Conflicting Financial Interest provides that:

A public official shall not participate in an official capacity in any particular matter which to his knowledge:

- i. he/she has a financial interest; and
- ii. any person whose interests are imputed to him in any way has a financial interest if the particular matter will have a direct effect on that interest.

Rule 3.2 on Self-Dealing also provides that:

A public official shall not take an action in an official capacity which involves dealing with himself/herself in a private capacity and which confers a benefit on himself/herself.

The rules are unequivocal that a public officer cannot perform an official function in the situations stated above without violating Article 284 of the Constitution, 1992. In any of the above situations, Article 284 prohibits the public officer from performing his/her official duties, as to do so would put the public officer in a position where his/her private capacity interest conflicts or is likely to conflict with the performance of the functions of his/her office. The Commission will now proceed to examine the above issue in the light of the following questions on the conduct of the Respondent.

8.2.1. Did the Respondent direct the NYA to purchase hand sanitisers from Adonko Bitters Ltd as alleged?

The Complainant alleged that at the 31 March Board meeting chaired by the Respondent, she led the NYA Board of Directors to approve the amount GHS3 million to fund the purchase of PPEs, and directed the NYA to purchase PPEs from Adonko Bitters Ltd. In the words of the Complainant:

The procurement of PPE's was and is not the mandate National Youth Authority. However, as directed by the Board Chairperson, Hon Francisca Oteng Mensah (MP) at a Board Meeting, it came as a surprise when the National Youth Authority was directed as a result of the said Board Meeting presided over by Hon. Francisca Oteng Mensah to set aside an amount of Three Million Ghana Cedis (GHC 3 million) for the procurement of PPE's. Especially after the President of the Republic had stated at the time that enough PPE's had been procured to take care of the needs of the Ghanaian public in the fight against COVID-19.

Pursuant to her directive at the board meeting dated above, hand sanitisers/alcohol were thus procured at an amount exceeding Seven Hundred Thousand Ghana Cedis (GHC 700,000) from Adonko Bitters Limited, a subsidiary of Angel Group of companies which is a limited liability company

owned by Hon. Francisca Oteng Mensah personally and her biological father Mr. Kweku Oteng, thus, amounting to conflict of interest.

In other words, the Complainant is claiming that although procurement of PPEs was outside the mandate of NYA, the Respondent led the Board of NYA to approve the sum of GHS 3 Million for the procurement of PPEs, so that her company, Adonko Bitters Limited, can benefit from the purchase of GHS 700,000 worth of hand sanitisers.

The Respondent denied that either she or the Board directed the NYA Management to procure hand sanitisers from Adonko Bitters Ltd or at all, insisting that the procurement of the hand sanitisers was within the threshold of the entity head of NYA (the CEO). In her Comments she stated,

It is pertinent to note that pursuant to the provisions of the Public Procurement (Amendment) Act, 2016 (Act 914), specifically, section 20c (1) and Category C of the Second Schedule, the Head of the Procurement Unit of the National Youth Authority does not need the prior approval of the Board to procure goods within the threshold as contained therein. Section 20c provides:

(1) The threshold limits for ministries, departments, and agencies and Metropolitan, Municipal and District Assemblies for procurement shall be as specified in the Second and Third Schedules.

Our Client admits that some hand sanitisers were purchased by National Youth Authority from Adonko Bitters Ltd. These were purchased without any reference to our Client or the Board. It was within the capacity of the Head of Procurement Unit, and it did not need or receive any direction from the Board or our Client.

Consequently, we have annexed to this response copies of the sales invoice from Adonko Bitters Ltd for the supply of Two Hundred & Ninety boxes of hand sanitisers to National Youth Authority, cheque payment voucher as approved by

the Director of Finance and Acting Chief Executive Officer of National Youth Authority, cheque numbered 330003 issued in favour of Adonko Bitters Ltd (Appendix 6) with a face value of Sixty-Eight Thousand, Nine Hundred and Eighty Ghana Cedis Fifty-Eight Ghana Pesewas (GH¢68,980.58) which amount is within the threshold allowed under Category C of the Second Schedule of the Public Procurement (Amendment) Act, 2016 (Act 914).

The question is, what actually happened at the Board Meetings chaired by the Respondent? We believe the answer can be deciphered from the Minutes of the meetings and other records. We start with a reproduction of the relevant portions of the Minutes of the 31 March 2020 meeting on all discussions on the "Youth in COVID-19 Campaign" where the directive was allegedly made:

5.0 PRESENTATION OF REPORT BY THE CEO

The CEO presented on the first issue which had to do with the request by Management to procure items including other medical supplies and run "youth in COVID-19" campaign programmes in support of the Government's bid to curb the ravaging pandemic. Thus, the CEO requested for the Board's approval for Three Million Ghana Cedis (GHS. 3,000.000.00) to fund series of activities towards the course.

The second issue which related to the 2020 Procurement Plan was however differed and was referred to the Finance Committee by the Board Chair for further scrutiny and report to the Board. Messrs. Makubu and Boakye supported and commended the move by Management to support the National efforts and campaigns. They therefore called for approval of the request by the Board. Mrs. Anti also supported the COVID 19 campaign initiative with a call to Management to ensure full participation of the Youth in the project.

On this note, the Chairperson asked for voice vote for approval or otherwise of the requested Three Million Ghana Cedis (GhS 3,000,000.00) to fund the "youth in COVID-19" campaign and related activities. Consequently, majority of members voted for the approval of Three Million Ghana Cedis (GHS. 3,000.000.00) for Management to undertake various activities towards the fight against COVID-19, with no indication of dissension. Mr. Dormenyah yet suggested that Management should submit budget to the finance committee for scrutiny. The Chairperson, however, in view of the exigency of the request, directed the CEO to present regular updates on the activities on the Board's page and comprehensive report to the Board on the outcomes of the lined-up activities under the programme during the subsequent meeting.

CLOSURE AND ADJOURNMENT

The Chairperson expressed gratitude to members for their co-operation and participation. The meeting was adjourned by a motion by Mr. Boakye and was seconded by Mr. Agorsor at exactly 10:43pm. Closing prayer was said by Mr. Makubu.

From the minutes of the 31 March Board Meeting, it is evident that the allegation that the Respondent directed the NYA to procure alcohol-based hand sanitisers from Adonko Bitters Ltd is not supported by the evidence, and we so find. Indeed, it is obvious from the Minutes of the meeting that the name of Adonko Bitters Ltd never came up at all in the deliberations.

8.2.2. Was the Respondent under a duty to disclose her interest in Adonko Bitters Ltd and recuse herself from the Board Meetings of 31 March and 12 & 25 June 2020?

Section 7 of the NYA Act, 2016 (Act 939) also provides:

7. Disclosure of interest

- (1) A member of the Board who has an interest in a matter for consideration shall
 - (a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and
 - (b) not be present at, or participate in the deliberations of the Board in respect of the matter.
- (2) A member ceases to be a member of the Board if that member has an interest in a matter before the Board
 - (a) fails to disclose that interest, or
 - (b) participates in the deliberations of the matter

As can be seen from the Minutes of the 31 March Board meeting, the name of Adonko Bitters Ltd did not surface in any of the discussions. Accordingly, the Commission finds as a fact that the circumstances did not require or necessitate that the Chairperson should disclose her private capacity interest in Adonko Bitters Ltd or recuse herself at the 31 March Board meeting as Adonko Bitters Ltd was not a subject and did not feature at all in any of the discussion before the Board.

At the 12 June Board Meeting, the evidence show that the CEO presented his report on the COVID-19 Campaign, on how the GHS 3Million was disbursed, which report captures the item that hand sanitisers worth GHS 68,980.58 had been purchased from Adonko Bitters Ltd. Below is the relevant portion:

29-Mar-	330002	International Young Democrats Union - Being	650,000.00
20		financial support for embarking on a COVID-19	
		campaign to educate the youth in Ghana on the	

29- Mar-20	330003	preventive measures and actions to contain the disease Adonko Bitters Ltd - being payment for supply of Adonko Hand sanitisers to NYA	68,980.58
29-Mar- 20	330004	Ruzyne Group Ltd- Being payment for supply of personal protective Equipment (PPE) coveralls to NYA Head office	97,087.38

That is the first time ever the name of Adonko Bitters Ltd surfaced in any of the Minutes, i.e. it was contained in the CEO's report to the Board, which report included COVID-19 activities. We again reproduce below the relevant portions of the Minutes of the meeting in relation to discussions on COVID-19 activities:

MATTERS ARISING FROM PREVIOUS MEETINGS

The next issue addressed by the CEO was in relation to the temporary recruitment of staff and the state of the ongoing drafting of scheme of service. He reported that the recruitment had been done but for the COVID-19 pandemic, prospective staff who qualified after the interview were yet to be engaged. He again reported that the scheme of service had been completed with final approval by the Public Service Commission.

4.2. COVID-19

In respect of the COVID-19 campaign and the activities carried, the report was laid to the Board for onward referral to the Joint Committee for further review.

4.7. Second Phase of Youth Resource Centers

"...In conclusion, he reported on a commendation by the UN on the activities of the youth geared towards the fight against the COVID-19. In addition, he indicated that selected young innovators had been enrolled in the UNDP innovation competition/project for a prize of Ten Thousand Dollars (\$10.000)."

4.8. Commentary

"...Regarding the UNDP activities, he explained that UNDP was helping the Authority with \$100,000 in its bid to undertake baseline study on impact of COVID-19 on the youth entrepreneurs and also continue the community information dissemination project. He again reported that they (UNDP) further seek to support the Authority's entrepreneurship challenge programme with a regional allocation of \$20,000, and the process was ongoing.

Again, the evidence from the Minutes of the 12 June meeting does not support the allegation that the Respondent directed the NYA to procure alcohol-based hand sanitisers from Adonko Bitters Ltd, nor does it support the allegation that:

the Board Chairperson in this instance, was not only present at this meeting but also participated, deliberated, and presided over the purchase of hand sanitisers from Adonko Bitters Limited and subsequently failed to disclose her interest in the matter, as she was not required to do so.

Although the name of Adonko Bitters Ltd featured in the CEO's expenditure report, the report was in respect of expenditure that had already taken place, and same was referred to the Joint Committees of the Board (made up of Finance, Legal and Audit). The Minutes records that:

In respect of the COVID-19 campaign and the activities carried, the report was laid to the Board for onward referral to the Joint Committee for further review.

The records of the Minutes of the Joint Committee meetings show that the Respondent was not present at any of the Joint Committee meetings of 13, 14

and 15 June 2020 that examined the CEO's report on the COVID-19 activities and expenditure.

At the third Board Meeting held on 25 June 2020, the Minutes discloses that the following were the discussions that took place in relation to all COVID-19 related activities:

Mr. Ofosuapea as a Co-chair of the Committee briefed the Board on the highlights and the ensued recommendations in the report (attached as Appendix A). After the presentation, the following decisions and directive were given.

Mr. Makubu on his part brought to fore his personal observation regarding the "inaccessibility" of the public educational materials used for the COVID-19 Campaigns especially the videos, did not have Persons with Disability in mind, particularly the deaf. Members supported the call and encouraged Management to consider all segments of society when running such educational campaigns, including an adopted language that was common to the understanding of many targets.

Mrs. Anti commended Management for the lined programme as and activities. She however underscored the under budgeting of some of the programs, which in her view meant that Management was not committed at implementing or actualizing those programmes. The CEO assured that the affected programmes had since been revised and that implementation will take be carried out. Further to that, the Board Chair asked about the state of the revision process. The (CEO) indicated that it was ongoing and that it will be laid for the Board verification during the subsequent meeting. He for instance, appealed to the Board to amend the item: 'The Committee differed approval of the estimated budget for the celebration of international events i.e., International and Africa Youth Days pending provision of 2019 budget for some celebrations for verification and comparison", as stated in page 6 of the report herein referenced to grant

Management the approval to implement the 2020 calendar events which are time bound, as it prepares to furnish the Board with requested information.

Mr. Boakye, commending the detailed work done by the Committee referenced the report (supra) asked whether the recommendation for supplementary budget on the remaining amount of the allocated funds for the COVID-19 campaign programme had been done (as directed under subsection 6.3, in page 5). The CEO promised to make same available for the Board's perusal. Mr. Boakye on this assurance by the CEO and in the absence of any further issues called for approval of the report.

Mrs. Akoto on her part pleaded on seeing some adjustment being done to the budgetary allocation meant for the women-related programmes. The CEO assured that Go Lead Project for instance that seeks to empower young women in the senior high school was going to supported by UNDP which guaranteed adequate funding.

2.2 Decisions

It was the decision of the Board that the following actions be taken subsequently by Management and report back to the Board:

- 1.1 The report of the feasibility study on the plan for the establishment of the NYA TV was to be made available to the Board for perusal.
- 1.2 The report of the feasibility study on the green house installation for the Board's perusal.
- 1.3 Management was asked to provide further and better particulars on the number of master craftsmen to be engaged for the STEP programme.
- 1.4 Management was tasked to provide the budgeted amount for the celebrations of the 2019 international events (i.e., International and Africa Youth days).

1.5 The estimated amount for the research on the impact of COVID-19 on the youth was under budgeted, and thus Management was asked to review and report.

At this juncture, there was a voice vote, and the Board unanimously approved and adopted the Joint Committee's report as amended.

At this stage, one will ask, what possible interest of the Respondent in Adonko Bitters Ltd did the Board discuss at the 25 June meeting that could put the Respondent as Chairperson in a conflict of interest situation? Is it the Joint Committee's report on its examination of the CEO's report on COVID-19 expenditure that includes purchase of GHS 68,980.58 worth of hand sanitisers from Adonko Bitters Ltd in March? What possibly could the Chairperson have done at the Board Meeting to affect or influence purchases that had already taken place?

The Commission does not find that the Respondent was required to disclose her private capacity interest in Adonko Bitters Ltd or recuse herself in the circumstances as required of her by Section 7 of the NYA Act, 2016 (Act 939).

It is clear from the various Minutes of the Board Meetings, 31 March, 12 June and 25 June 2020, as well as the various reports presented to the Board, that the allegation that either the Respondent or the Board directed the management of NYA to purchase PPAs from Adonko Bitters Ltd is not supported. The evidence does not also support the allegation that the Board Chairperson in this instance, was not only present at this meeting but also participated, deliberated, and presided over the purchase of hand sanitisers from Adonko Bitters Limited and subsequently failed to disclose her interest in the matter.

8.2.3. Did the Respondent take any step outside the Board Meetings that put her in a position where her personal interest conflicted with or was likely to conflict with the performance of her official duties?

In the course of the investigation, the Commission reviewed all documents available and interviewed a number of witnesses.

In particular, the Commission critically examined the correspondence from the NYA dated 19 July 2021 and accompanying documents, including records of procurement of hand sanitisers from Adonko Bitters Ltd. The said procurement records include Sales Invoice from Adonko Bitters Ltd dated 29 March 2020 (Exhibit NYA 15); VAT & NHIL Invoice dated 29 March 2020 from Adonko Bitters Ltd (Exhibit NYA 14), Invoice from Flomichdicta Company Ltd dated 30 March 2020 (Exhibit NYA 16), Stores Received Advice (SRA), dated 29 March 2020 (Exhibit NYA 17) and Tender Evaluation Report for the Supply of 290 Boxes of hand sanitisers dated 29 March 2020 (Exhibit NYA 18). The Commission also apprised itself of the relevant provisions of the Public Procurement Act, 2016 (Act 914) as amended.

On the processes of procurement, the Commission identified a number of discrepancies. The NYA management had indicated that three companies submitted invoices for the supply of hand sanitisers, out of which Adonko Bitters Ltd was selected as the least evaluated bidder and awarded the contract. Our investigations showed that only two companies Adonko Bitters Ltd and Flomichdicta Company Ltd submitted quotations for the supply of hand sanitisers contrary to the price quotation method of procurement.

Mr. Ofori and Mr. Tetteh, Head of Procurement Unit and former CEO of the NYA, respectively, indicated that three companies including Adonko Bitters Ltd submitted quotations for the supply of hand sanitisers. However, they failed to submit the invoice from the third company.

Furthermore, there were discrepancies in the documentation, especially regarding dates the activities were recorded to have taken place. The Payment Voucher raised in favour of Adonko Bitters Ltd dated 27 March 2020 (Exhibit NYA12), although the Sales Invoice of Adonko Bitters Ltd was dated 29 March 2020. Finally, Flomichdicta Company Ltd submitted its Invoice to the NYA for consideration on 30 March 2020, the same day that a cheque in favour of Adonko Bitters Ltd was issued for the supply of hand sanitisers.

In the interview with Hon. Sylvester Matthew Tetteh, who was CEO of NYA at the material time:

Mr. Tetteh stated the PPEs for the fight against COVID 19 were procured in an emergency situation as it was difficult to tell the end from the beginning i.e., the pandemic was not anticipated and hence no preparation was made towards it.

He further stated the decision to procure the PPEs was taken at an emergency meeting. He stated that with the outbreak of COVID-19, the Authority thought given its mandate to educate and inform Ghanaian youth, there was the need to protect the young people of the country and staff of NYA.

He stressed that educating people about the COVID pandemic at that time was crucial, hence a presentation was made by him to the Board on the need to undertake the Youth in Campaign Fight against Covid-19. According to him, following consultations with the Respondent, the latter requested the Board Secretary to call for the Board meeting to deliberate on the matter subsequent to which the Board eventually approved the programme after asking the relevant questions. He confirmed the holding of the meeting via Zoom on the 31 March 2020 to approve the GHS3million but declined to answer questions posed by the Commission on the presentation made by him on that date arguing that the amount approved by the Board was not the subject of investigations by the

Commission. He also added that that he was not sure whether other works of the NYA were under scrutiny.

He stated however that the CEO has a threshold under the procurement law which does not require the Board's approval. Zeroing on the hand sanitisers procured from Adonko Bitters Ltd, he stated that the total amount is about GHS68, 000.00 which does not require prior approval from the Board. He further stated that the Governing Board did not give approval to procure solely from Adonko Bitters Ltd. According to him, they were procuring PPEs to combat COVID-19 including public education. He added that the Governing Board gave management approval to undertake certain activities and gave a ceiling to which to spend.

On whether Adonko Bitters Ltd delivered the sanitisers to the NYA on 29 March 2020, Mr. Tetteh said that the date was a mistake and that he would have to check on the 29 and 31 dates as indicated on the Stores Received Advise (SRA) and revert to the Commission.

Concerning the invitations made to companies for the supply of hand sanitisers, Mr. Tetteh declined commenting on how Adonko Bitters Ltd was invited to participate in the process. He however indicated that few local companies such as Ghana Industrial Holding Distillery Company Limited (GIHOC Ltd), Kasapreko Company Limited and Adonko Bitters Company Limited were engaged in the production of hand sanitisers to complement the imported ones at that time. He added that he contacted Mr. Maxwell Kofi Jumah, Managing Director of GIHOC Ltd for supply of hand sanitisers, but was unsuccessful due to the high demand at the time.

Commenting on the allegations brought against the Respondent, Mr. Tetteh stated that the Chairperson does not determine where to procure the items from and that the procurement of the items was purely a management's decision. He

<u>stressed that the Chairperson never took part in any of the procurement processes</u> <u>and could not have been in conflict of interest.</u>

The interview with Mr. Owusu-Ansah, the current Ag. CEO of NYA also sheds more light on what must have transpired:

Mr. Owusu-Ansah indicated that initially it was very difficult accessing various PPEs at the time due to high demand. He added that the NYA contacted GIHOC for the supply of hand sanitisers but due to demand from others it had to fall on Adonko Bitters Ltd, which at the time had just started production of the sanitisers to support government efforts.

According to him, the NYA informally approached the Board Chairperson for help, who requested the production manager of Adonko Bitters Ltd to supply some of the hand sanitisers to the NYA. Based on this, 290 boxes of hand sanitisers were supplied. He stressed that it was through the instrumentality of the Respondent that the NYA was able to procure the PPEs.

We also reproduce the relevant portions of the interview of Mark Freddy Ofori, the Procurement Officer of NYA at the material:

Regarding the method of procurement, he said that Price Quotation method was adopted in which three (3) invoices were received from companies including Adonko Bitters Ltd. These quotations were evaluated after which the lowest bidder was awarded the contract. He intimated that there was nothing wrong with the processes and that the records to that effect were included in the first response of the NYA to the Commission.

On the purchase of hand sanitisers, Mr. Ofori said that at the time of COVID-19, few companies were engaged in the production of sanitisers. These included Adonko Bitters Ltd, Kasapreko and GIHOC. So, it was difficult getting a supplier and the few available in the market were being sold at higher prices.

With regards to how the companies were invited, Mr. Ofori stated that there was no formal invitation and that there was an informal discussion with the former CEO and the Finance Officer on how to reduce the cost of procuring PPEs and in order to get value for money. According to him, during the said discussion, the former CEO indicated that he had a friend who could supply the product. In reaction, he asked the former CEO to let the said friend submit an invoice for consideration. He added that he only got to know that it was Adonko Bitters Ltd when the invoice was submitted.

On whether the invitation made to Adonko Bitters Ltd to supply the hand sanitisers was proper under the law, he rhetorically responded as follows: "If there is a fire outbreak and your boss has a friend in the Fire Service who can help and calls that person for assistance, won't one be happy?". He also stated that the procurement took place at a time that it was difficult get supplies.

It is apparent from the above interviews that the NYA management fell on the Respondent to obtain supply of 290 boxes from Adonko Bitters Ltd when they had difficulty in obtaining supply for alcohol-based hand sanitisers.

The question is, did that place the Respondent in a position where her private capacity interest in Adonko Bitters Ltd conflicted with the performance of her official duties? The Commission does not think so. The Commission has taken judicial notice of the chaotic situation at the outbreak of the pandemic and the shortage of hand sanitisers and other PPEs, and has come to the conclusion that the Respondent did not in any way seek to improperly influence or benefit from her official function as Chairperson of NYA from the procurement of the hand sanitisers undertaken by the NYA, either for herself directly or her company.

As noted above, the discrepancies in the records, particularly with dates, leaves a lot of room for suspicion. However, there is no evidence that suggests or indicate that the Respondent is responsible for those discrepancies, nor is there evidence to suggest that the Respondent put herself in a position where her private capacity interest conflicted with the performance of her official duties as Board Chairperson.

The evidence available does not support the Complainant's allegation that:

Pursuant to her directive at the board meeting dated above, hand sanitisers/alcohol were thus procured at an amount exceeding Seven Hundred Thousand Ghana Cedis (GHC 700,000) from Adonko Bitters Limited, a subsidiary of Angel Group of companies which is a limited liability company owned by Hon. Francisca Oteng Mensah personally and her biological father Mr. Kweku Oteng, thus, amounting to conflict of interest.

Further, the evidence does not support the allegation that hand sanitisers worth GHS700,000.00 were procured from Adonko Bitters Ltd. The evidence rather specifies GHS68,980.58 as supplies from Adonko Bitters Ltd.

From all the evidence and the circumstances of the time, the Commission does not find that the conduct of the Respondent put her in a position where her personal interest conflicted with or was likely to conflict with the performance of her official duties.

The Commission agrees with the Supreme Court that:

"a conflict of interest allegation must be examined in the light of clear facts which support a conclusion that a public officer's personal interest conflicts with or is likely to conflict with the performance of the functions of his or her office. The interest ought to be financial or otherwise, direct, or indirect, which must

ultimately be clearly proven". [Okudzeto Ablakwa (N02) & Another v Attorney General & Obetsebi-Lamptey (No2) (2012) 2 SCGLR 845].

8.3. Other Related Matters of Law

The Commission will now turn its attention to the following matters of law that came up in the course of the investigations. They are, whether:

- the Commission has mandate to disallow expenditures made by a public entity pursuant to its investigations.
- the burden of proof in an investigation before the Commission lies on a Complainant.
- Procurement of PPEs is within the mandate of NYA?

8.3.1. Does the Commission have the mandate to disallow expenditures made by a public entity pursuant to its investigations?

Part of the Complainant's case is that the NYA does not have the mandate to procure PPEs. In addition, the President of the Republic had announced that there is enough PPEs for the fight against COVID-19.

In response to this averment, the Respondent posited as follows:

Respectfully, we are of the considered [opinion] that the issue as to which expenditure is permissible for a public entity, simpliciter, is in the purview of the Auditor-General and not the Commission on Human Rights and Administrative Justice, which deals with weightier matters as set out by law, including allegations of conflict of interest infractions.

It is the Auditor-General who will audit the accounts of the company and make whatever recommendations or prepare the reports. The jurisdiction of the

Commission that is being invoked by the Petitioner is its jurisdiction in cases of alleged conflict of interest. The purchase of PPE's simpliciter cannot be the basis of a finding of a breach of conflict of interest against our Client.

Section 18(1) of Act 456 on Procedure after Investigation, provides as follows:

- (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, 1992, 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 an Act or practice that is unreasonable, unjust, oppressive, or discriminatory, or
 - (d) 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 given in exercise of a discretionary power and reasons should have been given for the decisions

the Commission shall report its decision and the reasons for it to the appropriate person, Minister, department, or authority concerned and shall make the recommendation that it thinks fit.

There is no doubt that the NYA is a public body. Being a public body its expenditures on procurement of goods and services are considered acts that

are regulated by law i.e., the Public Financial Management Act, 2016 (Act 921) and the Regulations made thereunder, and the Public Procurement Act (as amended).

Clearly, given the provisions of Section 18(1) of Act 456, and Acts 921 and 914, the contention by the Respondent that scrutiny of expenditure is not within the purview of the Commission is erroneous and not supported by law. Arguably, the Respondent is not suggesting that if the Commission uncovers in the course of its investigations any expenditure that appears to be contrary to law, the Commission cannot question it? It is the considered view of the Commission that this certainly could not have been the intention of the law makers in the drafting of Section 18 of Act 456. Beyond that, the Commission has power under Article 218(e) of the Constitution, 1992 and Section 7(1)(f) of Act 456, "in an investigation on allegations of corruption...", to "take appropriate steps including reports to the Attorney-General and Auditor-General resulting from that investigation".

8.3.2. Does the burden of proof in an investigation before the Commission lie on a Complainant?

The Respondent relied on the case of **Okudzeto Ablakwa (No.2) vs. Attorney-General & Obetsebi Lamptey (No.2),** where the Supreme Court held, inter alia, at pg. 852, as follows:

In proving the averments of cronyism, arbitrariness, capriciousness, and discrimination, which amount to corruption, the plaintiffs had based their complaint on bare allegations. No evidence whatsoever had been led to substantiate those allegations as required by section 17 (a) and (b) of the Evidence Act, 1975 (NRCD) 323).

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 a 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 other 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 instant case, the accusers had invited the court to declare that action as tainted with cronyism, arbitrariness, capriciousness, conflict of interest and abuse of discretionary power vested in a public officer.

She argued that, where persons, in this case the Complainant, would want illegalities, improprieties and <u>conflict of interest</u> to be tagged on specific public officers (in this case the Respondent), they should be in the position to establish the following:

- The facts that would support that belief.
- The basis of that belief in the illegalities and improprieties on the other hand.
- The nexus or connection with the specific public officers on the other hand.

This Commission has had the opportunity in the case of Yaw Brogya Genfi And Ken Ofori-Atta [Case No. CHRAJ 129/2017], to indicate that the ratio of this case is distinguishable from matters being investigated by the Commission in the sense that the Commission is not a Court but an investigation body. In that case, the Commission held that:

The Commission is not oblivious of the position of the law on conflict of interest espoused in the Ablakwa case which requires that that when litigant/person comes to Court with a claim of conflict of interest against

a public officer, the onus of proof lies on that person to prove the matters listed therein. But no such requirement is necessary to invoke the investigative machinery of the Commission.

The correct position of the law on the mandate of the Commission on matters of conflict of interest is that an allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] 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: article 287 (1) of the Constitution, 1992.

To invoke the investigative machinery of the Commission under Chapter 24 of the Constitution, 1992 (also on conflict of interest), the Complainant is required to file a Complaint before the Commission. The Complainant does not have to be the victim and the complainant could be an individual or a body corporate. This was the decision of the Supreme Court in Republic v High Court (Fast Track Division) Ex parte, CHRAJ; Interested Party, Richard Anane (HC) [2007-8] SCGLR 340 (supra).

There are no new circumstances warranting a departure from this position in the instant case. Even though the right position of the law is as stated in the Supreme Court decision, the burden of proof in an investigation before the Commission does not rest solely on the Complainant.

The Commission has been given special powers of investigation by the Constitution, 1992 and Act 456. Article 219 (1) provides:

"The powers of the Commission shall be defined by Act of parliament and shall include the power –

- (c) to question any person in respect of any subject matter under investigation before the Commission;
- (d) to require any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commissioner.

Sections 8(1), 14(4), 15(1) & (2), and 23 of Act 456 also provide as follows:

- 8(1) By virtue of Article 219 of the Constitution, the Commission may, for the purposes of performing its functions under this Act,
 - (a) issue subpoenas requiring the attendance of a person before the Commission and the production of a document or record relevant to an investigation by the Commission;
 - (b) cause a person contemptuous of a subpoena issued by the Commission to be prosecuted before a Court;
 - (c) question a person in respect of a subject matter under investigation before the Commission;
 - (d) require the person to disclose truthfully and frankly an information within the knowledge of that person relevant to an investigation by the Commission.
- 14(4) Without prejudice to the generality of this section, the Commission may obtain information from any other person and in the manner, and make the inquiries, that it considers necessary.
- 15(1) Subject to this Section, the Commission may require a person who is able to give an information relating to a matter being investigated by the Commission

- (a) to furnish the information to it, or
- (b)to produce a document, paper or thing that relates to the matter being investigated and which may be in the possession or control of that person.
- (2) The Commission may summon before it and examine on oath or affirmation
 - (a)a person required to give information or produce anything under subsection (1),
 - (b)a Complainant, or
 - (c)any other person who the Commission considers will be able to give information required under subsection (1)
- 23. For the purposes of this Act, the Commissioner, or a public officer authorised by the Commissioner, may at any time enter any premises occupied by a department, an authority or a person to whose acts or omission this Act applies and inspect the premises and, subject to Sections 16 and 17 carry out an investigation that is within the jurisdiction.

From the special powers of investigation set out above, the Commission is an inquisitorial constitutional body when exercising its powers of investigation. As an investigation body with inquisitorial procedures, and not adversarial, it is perfectly within the Commission's mandate to go beyond the evidence of both Complainant and Respondent, and use its special powers of investigations under Article 219 of the Constitution, 1992 and Sections 8(1), 14(4), 15(1)&(2) and 23 of Act 456 to gather independent evidence to establish or otherwise a matter under investigation.

In a conflict of interest allegation/complaint, as in the instant case, the Commission fully endorses the decision of the Supreme Court that the allegation of conflict of interest must ultimately be clearly proven;

"a conflict of interest allegation must be examined in the light of clear facts which support a conclusion that a public officer's personal interest conflicts with or is likely to conflict with the performance of the functions of his or her office. The interest ought to be financial or otherwise, direct, or indirect, which must ultimately be clearly proven". [Okudzeto Ablakwa (N02) & Another v Attorney General & Obetsebi-Lamptey (No2) (2012) 2 SCGLR 845].

8.3.3. Was the procurement of PPEs by the NYA ultra vires its mandate?

In his petition, Complainant alleged that "the procurement of PPEs is not the mandate of the National Youth Authority... especially after the President of the Republic had stated at the time that enough PPEs had been procured to take care of the needs of the Ghanaian public in the fight against COVID-19".

In rebuttal, the Respondent argued that at the time of the enactment of the Act 939 in 2016, COVID-19 had not even been contemplated by the world and therefore it will be asking too much to make a prophetic inclusion of the words COVID-19 in the Act, and that corporate social responsibility requires that all corporate bodies including the NYA respond in times of global crisis.

The Commission takes judicial notice of the fact that at the height of the pandemic, various public institutions procured PPEs to protect staff and other key populations. Those were uncertain times, and it was only prudent that organisations, including public offices, would take steps to protect lives. The Commission accordingly finds that the allegation that procurement of PPEs is outside the mandate of the NYA is not supported by the evidence.

In the course of the investigation the Commissioned came across evidence that showed that Adonko Bitters Ltd had not collected the cheque for GHS 68,980.58 issued by NYA in payment of the 290 boxes of alcohol-based hand sanitisers the company supplied. As at the time of the conclusion of the investigation the situation had not changed. This state of affairs cannot continue indefinitely. There is evidence on record that Adonko Bitters Ltd donated alcohol-based hand sanitisers to a number of institutions in the heat of the pandemic as part of its corporate social responsibility. The Commission invites the company to come out and indicate whether the supply is to be paid for or treated as a donation.

9.0 Summary of Key Findings

On the totality of the evidence, the Commission makes the following findings:

- 1. That, at the 31 March 2020 Board Meeting chaired by the Respondent the Board approved an amount of GHS3 million to fund the "Youth in COVID-19 Campaign" and related activities.
- 2. That the NYA used part of the GHS3 million to procure Personal Protective Equipment (PPEs) for the fight against the COVID-19 pandemic;
- 3. That the NYA procured some PPEs consisting of alcohol-based hand sanitisers amounting to GHS68,980.58 from Adonko Bitters Ltd;
- 4. That the Respondent and her father were Directors and Shareholders of Adonko Bitters Company Ltd at the material time;
- 5. That there is no evidence that the Respondent gave directives for procurement of hand sanitisers from Adonko Bitters Ltd.

- 6. That the allegation that the Board Chairperson was not only present at the 31 March Board meeting but also participated, deliberated and presided over the purchase of hand sanitisers from Adonko Bitters Limited and failed to disclose her interest in the matter, is not supported by the evidence.
- 7. That the Respondent was not under a duty to disclose her private capacity interest in Adonko Bitters Ltd at any of the March and June 2020 Board Meetings.
- 8. That there were discrepancies in the processes of the procurement of the PPEs by management of NYA.
- 9. That the Management of NYA informally fell on the Chairperson to intervene and have Adonko Bitters Ltd supply 290 boxes when they had difficulty in obtaining supply for alcohol-based hand sanitisers.
- 10. That the action of the Respondent to have Adonko Bitters Ltd supply hand sanitisers to the NYA did not amount to conflict of interest.
- 11. That at the time of concluding the investigations on this case, Adonko Bitters Ltd had not picked its Cheque of GHS68,980.58 from the NYA in respect of supplies of hand sanitisers made to the NYA.
- 12. That on the totality of the evidence, Respondent did not put herself in a position where her personal interest conflicted or was likely to conflict with the performance of her official duties as Chairperson of the NYA Board of Directors.

10.0 Decision

Article 287 of the Constitution, 1992 guides the Commission on the action to be taken on the results of its investigations. It provides as follows:

287.(1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be to the Commissioner for Human Rights and Administrative 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 as the case may be may take such action as he considers appropriate in respect of the results of the investigation or admission.

Once again, the Commission agrees with the Supreme Court in the case of Okudzeto Ablakwa (No.2) vs. Attorney-General & Obetsebi Lamptey (No.2), 2 SCGLR 845 at pg. 852, 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 a 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 other 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 instant case, the accusers had invited the court to declare that action as tainted with cronyism, arbitrariness, capriciousness, conflict of interest and abuse of discretionary power vested in a public officer.

It is abundantly clear that the evidence in the instant case does not support the allegations of conflict of interest against the Respondent. Accordingly, the Complaint is dismissed for lack of merit.

Nonetheless, the Commission commends the Complainant for showing public spiritedness in lodging this Complaint, and the Respondent and her Solicitors, Ghartey & Ghartey, for the admirable cooperation. The Commission is also grateful to all witnesses and institutions that assisted it in this investigations.

DATED AT COMMISSION ON HUMAN **RIGHTS** AND ADMINISTRATIVE JUSTICE (CHRAJ), OLD PARLIAMENT HOUSE, JOHN EVANS ATTA MILLS HIGH STREET, ACCRA THIS 2ND DAY OF **FEBRUARY 2023**

Joseph A. Whittal
Commissioner