

**REPORT OF THE SPECIAL
COMMITTEE TO INVESTIGATE
MATTERS RELATING TO THE GHANA
EXPATRIATES BUSINESS AWARDS**

MINORITY REPORT

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I. INTRODUCTION

On January 5, 2018, this Honourable House debated a motion filed by the Honourable Member for Asawase, Hon. Muhammed-Muntaka Mubarak. The motion requested that this Honourable House “investigates the levy and collection” of various sums of money in United States of America Dollars from the expatriate business community during the Ghana Expatriate Business Awards held on December 4, 2017. Having debated the motion and taking into account the general mood of the House and the need to avoid what Mr. Speaker rightly called a praetorian political society, a Special Committee of Parliament was established pursuant to article 112(3) of the Constitution and Order 38 of the Standing Orders of Parliament.

The Committee comprised three Members of the Majority and two Members of the Minority as follows:

- | | |
|---|-------------|
| 1. Mr. Kwasi Ameyaw-Cheremeh (Sunyani East) | Chairman; |
| 2. Dr. Mark Assibey-Yeboah (New Juaben South) | Member; |
| 3. Mr. Yaw Buaben Asamoah (Adentan) | Member; |
| 4. Mr. James Klutse Avedzi (Ketu North) | Member; and |
| 5. Dr. Dominic Akuritinga Ayine (Bolga East) | Member. |

In accordance with Order 198(1) of the Standing Orders of Parliament, the Clerk-to-Parliament appointed the following staff of Parliament to assist the Committee in the execution of its assigned task:

1. Mrs. Rosemary Arthur Sarkodie- Clerk to the Committee
2. Mr. Louis Boakye- Assistant Clerk to the Committee

Staff of the Hansard Department were coopted to provide assistance to the Secretariat of the Committee with respect to the recording and transcription of proceedings.

At the direction of Mr. Speaker, the Committee was tasked with the following Terms of Reference:

- i. To investigate the alleged levy and collection of sums of money by the Ministry of Trade and Industry from expatriate businesses during the recently held Ghana Expatriate Business Awards in Accra;
- ii. To inquire whether any payments were made and received and, if so, how disbursements was effected and whether such disbursement offended any law;
- iii. To investigate any relevant related matters;

- iv. To recommend appropriate measures aimed at redressing violations, if any, that may have occurred and the prevention of such violations; and
- v. To produce a report for the attention of Parliament on the 24th day of January, 2018.

II. BACKGROUND

At an Emergency Sitting of Parliament held on Friday 5th January, 2018 pursuant to article 112(3) of the 1992 Constitution and Order 38 (1) of the Standing Orders of the House, the Hon. Minority Chief Whip and Member of Parliament for the Asawase Constituency, Alhaji Muhammed-Mubarak Muntaka moved a motion in the following terms:

“That this Honourable House investigates the levy and collection by the Ministry of Trade and Industry of the Ghana Cedi equivalent of various sums of money in United States of America Dollars, from expatriate businesses and related matters during the recently held Ghana Expatriate Business Awards (GEBA) in Accra.”

In moving the Motion, the Honourable Members alleged that people had to pay money to sit close to the President and expressed worry over same. He also stated that he had a document which stated that the moneys “had to be paid”.

Indeed, he stated, among other things, as follows:

“Mr. Speaker, I said that it was very worrying not only for me but many Ghanaians, both home and abroad, to wake up to the news that it was possible in our country Ghana today that sitting in proximity to the President cost money.

Mr. Speaker, the document available to me, which I am ready to tender in, says: “Meeting of 23rd October 2017”. It was signed by my Hon Colleague, Mr. Carlos Ahenkorah.

Mr. Speaker, that document clearly states that these sums of money, ranging from US\$15,000 to US\$100,000, would have to be paid –

Mr. Speaker, the sum had to be paid for attendees to have access to sit in “proximity to the President.”

He took the view that the allegation, to him, raised serious ethical issues if they were to be established and proven. On this he stated:

“Mr. Speaker, this is a very worrying situation. For me, if it is established and proven, it could be a very difficult ethical issue for us as a country.

Mr. Speaker, it is unethical to even imagine such a thing would happen. So, even if it is proven, it would be a very interesting one”

The Honourable Member referred the House to article 175 of the 1992 Constitution, the Public Financial Management Act, 2016 (Act 921) and the Financial Administration Regulations 2004 (L.I.1802). He referred specifically to Regulations 16 to 18 of L.I. 1802, and Section 7 of Act 921 and maintained that, in accordance with the statute and the Regulations, the sums of money collected by the Ministry of Trade and Industry from the expatriate businesses constituted public resources.

Hon. Muntaka further alleged that the Ministry of Trade denied the issue and Industry (MOTI) when it was first raised at the Parliamentary Committee on Trade, Industry, and Tourism and also on the 15th December 2017 on the floor of Parliament. He further alleged that “On the 17th of December, 2017 the Ministry issued a statement; paragraph 5 of that statement categorically stated that the Ministry of Trade and Industry had nothing to do with resource mobilisation.”

He said there was, however, a subsequent interview on Joy FM with him and Hon. Carlos Ahenkorah in which the latter admitted that the Ministry had collected monies but every pesewa from that money they collected was transferred to the Millennium Excellence Foundation.

Hon. Muntaka further stated: “Mr. Speaker, on 21st December 2017 there was another statement from the Ministry of Trade and Industry that they did not have anything to do with resource mobilization. However, they moved from that denial to acceptance that they collected GH¢2.6 million and they spent GH¢2.3 million”. To him, the said statement of 21st December 2017 had admitted that official receipts were issued for the monies collected and that meant that once they issue official receipts, these become part of our public resources. So, in spending it, they had to go through the laid down structure for spending. Mr. Speaker, all these were not done.”

According to the Honourable Member for the Asawase, he was most worried that the 21st December 2017 Statement had said that the Presidency had nothing to do with what happened as he felt that position was inconsistent with a 17th December 2017 press release by the Ministry on the matter.

He finally called for a public inquiry into the matter. He delivered himself thus:

“Mr. Speaker, in conclusion, let me say, it is important that these matters are properly investigated. This should be done in the public view to create the necessary image. Once again, Parliament has the biggest opportunity to prove to the people of this country that as a House, we would do what is right to establish, if there is any doubt, how finances are used in this country.”

In seconding the Motion, the Honourable Member of Parliament for North Tongu, Mr. Samuel Okudzeto Ablakwa thanked the Rt. Hon. Speaker for the opportunity to second the Motion and expressed the conviction that the matter was one which satisfied the requirements of the law for the establishment of a Committee to investigate it. He stated, inter alia, that:

“Mr. Speaker, this is a matter that I am convinced satisfies the requirement in article 103(1) and (3) of the Constitution of Ghana, and if I may quote with your permission;

“(1) Parliament shall appoint standing committees and other committees as may be necessary for the effective discharge of its functions”.

Clause 3 says;

“(3) Committees of Parliament shall be charged with such functions, including the investigation and inquiry into the activities and administration of ministries and departments as Parliament may determine; and such investigation and inquiries may extend to proposals for legislation”.

The Honourable Member was convinced that the Motion satisfies Standing Order 191, which is to the effect that: “The House may at any time by motion appoint Special or Ad Hoc Committee to investigate any matter of public importance...”

The Honourable Member was also convinced that this “cash-for-seats scandal”, which had engaged the nation’s attention met the criteria of public importance as outlined by Erskine May in his Parliamentary Practice Book.

He stated further that leading anti-corruption crusaders like Ghana Integrity Initiative, which is the local chapter of Transparency International, Mr. P.C. Appiah-Ofori, Honourable Kennedy Agyapong and Dr. Kojo Asante of the Centre for Democratic Development (CDD) had called for an inquiry into what was being referred to as “cash-for-seats scandal”. He expressed optimism that it was a matter that the House has a locus and which also falls very much within its purview. He informed the House further that:

“The Presidency attempted earlier to investigate this matter per a statement issued on 21st December, 2017, but clearly, this would have been the Presidency becoming a judge in their own court (sic), and it would not generate the confidence that we need to delve into these matters.”

He alleged that there had been “so many inconsistencies” relating to the matter and prayed the House to set up a Committee to look into the matter. He stated further that in the opinion of the Minority several laws have been breached. He stated thus:

“Mr. Speaker... I wish to submit that in our opinion, several sections of the Public Financial Management Act have been breached, as well as the Financial Administration Regulations, and article 284 of the Constitution of Ghana. That is why I second the Motion which has been ably moved by the Hon Muntaka.”

In contributing to the debate on the Motion, the Honourable Minority Leader, Mr. Haruna Iddrisu, stated that the matter was of public importance and called on the Rt. Hon. Speaker to set up a Committee of Five Members to investigate the matter pursuant to Order 191 of the Standing Orders of the House. He stated thus:

“Mr Speaker, undoubtedly, this is a matter of public interest and importance, that the highest office of the land was engaged in some transaction to which there are questions relating to payments of certain amounts of money, ranging from US\$75,000.00 to US\$100,000.00, whether a person was seated on the right hand side or the left hand side of the President, which is the highest office of the land.

Mr. Speaker, for us to set up an Ad hoc Committee, I believe, pursuant to Order 191, it should be a Committee of five (5) members.”

Also contributing to the Motion, the Honourable Majority Leader, Mr. Osei Kyei-Mensah-Bonsu affirmed Parliament’s responsibility to oversee Executive performance and stated that; “So, if anything untoward happens, it should be within the remit of Parliament to investigate any infractions.” He however indicated that: “Mr. Speaker, ordinarily, a Motion relating to extortion of funds, as it has been put out there, must be supported. Except that, I believe that in this particular instance, the resort by Hon Colleagues amounts to a gross abuse of the process of the House.”

Whilst agreeing in principle that Parliament could investigate matters within the realm of the executive branch of Government, he took issue with the competence of the Motion and the Memorandum requesting the Speaker to summon the House under article 112(3) and called for the correction of the Motion.

III. APPROACH TO THE ASSIGNMENT

The Committee held its first meeting on Monday, 8th January, 2018 to determine the modalities and procedure for regulating its deliberations and executing its mandate. The Committee was particularly mindful of Order 197, which states among others, that:

“The deliberations of the Committee shall be confined to the matter referred to it by the House and any extensions or limitations to it made by the House....”

However, for transparency, openness, and integrity of the deliberations and processes, the Committee decided to hold all its sittings in public but reserved the right to take evidence in-camera should the circumstances and public interest so dictate.

For purposes of its public sittings, the Committee identified the following key witnesses:

- i. Proponent of the Motion - Hon. Alhaji Muhammed-Mubarak Muntaka;
- ii. Seconder of the Motion – Hon. Samuel Okudzeto Ablakwa;
- iii. The Ministry of Trade and Industry;

- iv. The Millennium Excellence Foundation (MEF);
- v. Representatives of the Expatriate Businesses; and
- vi. The Controller and Accountant-General

The Committee's sittings were generally held in public and were covered live on TV and Radio stations. However, at the request of the expatriate business, the evidence of their representatives was taken in-camera.

The Committee received documents from the various witnesses who appeared before it and also took oral evidence from the witnesses by examining them on oath, affirmation or otherwise. Thus, in investigating the matter, the Committee examined the following:

- Audio recordings and transcripts of interviews granted by witnesses;
- Material evidence in relevant media publications; and
- Written and oral submissions/evidence adduced witnesses

A total of fourteen (14) witnesses appeared and provided evidence, out of which five (5) were examined in public and nine (9) in-camera. All these Witnesses were examined on oath and had the opportunity to be legally represented. They were given the opportunity to correct the transcript of the hearings involving each witness.

The public evidence sessions of the Committee were held on 11th, 12th and 15th and 25th January, 2018 to which the media and the general public were invited. The witnesses that appeared during these hearing included the under-listed:

- i. Hon. Alhaji Muhammed-Mubarak Muntaka – MP for Asawase;
- ii. Hon. Samuel Okudzeto Ablakwa - MP for North Tongu;
- iii. Hon. Alan John Kwadwo Kyerematen - Minister for Trade and Industry;
- iv. Ambassador James Victor Gbeho - Chairman, Millennium Excellence Foundation;
- v. Ambassador Ashim Morton - President, Millennium Excellence Foundation; and
- vi. Mr. Eugene Asante Ofosuhene – Controller and Accountant General.

The Committee also sat in-camera on the 23rd January 2018 and took evidence from representatives of the under-listed expatriate businesses:

1. Gopal Vasu - MD, M&G Pharmaceutical
2. Joe Mensah - CEO, Kosmos
3. Salem Kalmoni - MD, Japan Motors
4. S. Ramella - MD, Consar Ltd
5. Mukey Thakwani - MD, B5 Plus
6. Amar Deep S. Hari - CEO, IPMC
7. Saeed Fakhry - Interplast
8. Roshi Motman - Airtel-tigo

The Committee further received written submissions from the following expatriate businesses who were unable to appear before the Committee due to prescheduled assignments or the absence of the respective CEO from the jurisdiction. :

- 1) Unilever Ghana Limited
- 2) Zenith Bank (Ghana) Ltd
- 3) Aviance Ghana Limited
- 4) Melcom Group of Companies
- 5) Barry Callebaut
- 6) De Simone Ltd.
- 7) Mohinani Group
- 8) Queiroz Galvao
- 9) Sunon Asogli Power
- 10) M & K Ghana Ltd.
- 11) Amandi Ltd.
- 12) Geodrill Ltd.

IV. REASONS FOR FILING OF MINORITY REPORT

The Minority Members of the Committee participated diligently in the deliberations of the Committee but decided to file a separate report in dissent. This decision was not taken either lightly or in haste. First of all, at the conclusion of deliberations, it became patently clear that the Majority Members

of the Committee had made up their minds about the issues of fact and the conclusions to be drawn from the evidence adduced before the Committee. As would be made clear in the remainder of this Report, some of the findings made and conclusions drawn by the Majority Report come nowhere close to a *vraisemblance* of reality. These findings and conclusions were against the overall weight of the evidence placed before the Committee. Indeed, as a tribunal of fact, the Committee had a responsibility not only to Parliament but to the entire people of Ghana to ensure that whatever it put out was absolutely consistent with the facts on record. The Majority, in our view, deviated from this responsibility in many respects by its interpretation of the facts.

Secondly, the Majority Report glosses over a number of critical ethical and legal issues raised by not only the proponent of the Motion but also by the Committee itself during the course of its deliberations. Some of these legal and ethical matters were also discussed widely within the public sphere a consequence of the wide media coverage that the sittings of the Committee received. Matters such as the possible forgery of documents designed to deceive the Committee, possible violations of foreign corrupt practice legislation and international conventions by the involvement of the foreign businesses in this scheme and fraudulent misrepresentations relating to the benefits of the awards scheme have all been glossed over by the Majority. As part of its mandate to investigate related relevant matters, the least the Committee could have done in this regard, would have been to examine these matters and to objectively explain why they are either not related or relevant. We deem this not to be in consonance with the constitutional mandate of parliamentary committees as watchdogs over the affairs of ministries, departments and agencies of state.

V. PRELIMINARY OBSERVATIONS

The first observation we wish to make in this Report is that the work of the Special Committee has generated a lot of public interest. But, as Lord Denning MR (as he then was) once said, it is not everything that is interesting to the public that is in the public interest. However, the matter under consideration in

this Report is exceptional in the sense that it is both interesting to the public and is in the public interest. The matter under investigation generated so much interest in media circles but we believe that that is not the reason why Mr. Speaker set up the Special Committee to investigate it; we believe that the fundamental reason for the establishment of the Special Committee is that the findings and recommendations of the Committee would inure to the benefit of the people of Ghana as a whole. That is the definition of the public interest under article 295 of the Constitution.

Secondly, it has been said of this matter that Parliament should have stayed its hand once the President of the Republic had indicated, through a letter issued by the Minister of Information (Exhibit OK.), that there was no wrongdoing on the part of the Honourable Minister of Trade and Industry. Whilst that may be true of matters that are within the exclusive preserve of executive power, in matters that border generally on the public interest such as this one, it would be extremely derelict on the part of Parliament to stay its hand. This is most especially the case where the possibility exists that the executive branch may be engaged in some manner of self-dealing. In this particular case, we strongly believe that there is a justifiable case for parliamentary intervention given the surrounding circumstances.

Thirdly, there is sufficient evidence on record to show that the involvement of the Ministry of Trade and Industry in the organization of the first Ghana Expatriate Business Awards was borne out of a desire to lend credibility to the event. Notwithstanding the claims of a great track record in the organization of such events by the Foundation, we have serious doubts as to whether the Foundation, on its own, would have been able to convince the expatriate business owners to part with significant sums of money for this event. Indeed, as the findings of fact on record would show, some businesses expressed reservations regarding the role of the Foundation. The chief executive officer of a major steel manufacturing company informed the Committee in his evidence that “the most important aspect was that the money would go to a government

body.”¹ The same chief executive had earlier informed the Committee that he had run checks on the Foundation just to be sure “how genuine they were.”²

Furthermore, it is important to underscore the fact that during the hearing, much was made of the fact that this was a novel partnership between a private sector entity (the Foundation) and the Ministry of Trade and Industry to develop a scheme for the recognition and reward of the expatriate business community in this country. And it is indeed a laudable idea. But having said that, it is significant to note that partnership has implications with respect to rights and responsibilities. A core principle of partnership law is that partners come in pairs when it comes to issues of liability; partners are jointly and severally liable for the acts of the partnership. In consequence, the attempt by the Ministry to distance itself from the actions of the so-called organizers of the event is inconsequential. In other words, the Ministry cannot run away from the matters arising out of or in connection with the organization of the Ghana Expatriate Business Awards, especially as they relate to the so-called sponsorship package that placed the President of the Republic at the center of the event. In the context of the relationship that it forged with the Foundation through the execution of a Memorandum of Understanding (Exhibit MEF4), the Ministry cannot turn around and deny responsibility for its role in the design of the entire scheme.

Consequently, the central issue is whether the Ghana Expatriates Business Awards was conceived, designed and executed with a view to raising funds using the President of the Republic as the center of attraction for the businesses that opted to provide sponsorship. As would be made clear in the part of this Report dealing with the issue of payments and receipts, there is incontrovertible evidence on record that the intent and purport of the so-called sponsorship package, which was sent out to the expatriate business enterprises with the tacit support or approval of the Ministry of Trade and Industry, was to tie payment values to the distance of the payor from where the President of the Republic, as opposed to the so-called President of the Foundation, was seated. However, the

¹ See Transcript of Hearing, Tuesday, January 23, 2018, p. 88

² Id., p. 87

question whether and the extent to which the President knew about this arrangement is disputable. In other words, there isn't sufficient evidence on record to conclusively state that the President was aware of the arrangement.

VI. FINDINGS OF FACTS AND ANALYSIS

As stated above, the Committee held both public and in-camera hearings involving scores of witnesses and reviewed documents tendered in evidence by them. The primary objective of that exercise was to make findings of fact in support or disavowal of the allegations made against the conduct of the Ministry of Trade and Industry and the Foundation in this matter. In conducting the hearings, the Committee was mindful of its obligation of fidelity to the terms of reference handed to it by the leadership of this Honourable House through the directive of the Rt. Honourable Speaker. The first task of the Committee is inquire into whether, as a matter of fact, as opposed to law, there was a levy and collection of various sums of money by the Ministry of Trade and Industry. The second task involves making findings of fact with respects to payments to and disbursements made by the Ministry of Trade and Industry and whether such disbursement offended any law. The third leg of the work of the Committee involves an investigation into relevant related matters. That is, matters connected to and arising directly out of the two previous terms of reference. And finally, the Committee is tasked with making appropriate recommendations for redress and for the prevention of future occurrence of any violations of the law.

a. Levy and Collection of Sums of Money by the Ministry of Trade

In moving the motion for the establishment of the Committee, CW1 urged this Honourable House to investigate "the levy and collection" of various sums of money from expatriate businesses and related matters. The Committee took pains to understand what exactly the proponent of the motion meant by the phrase "levy and collection" of sums of money.

As a result, when CW1 appeared before the Committee he was asked to explain what he meant by the term levy. In his testimony before the Committee, he explained that he had used the term levy in a generic sense and that he took its meaning from Collins Dictionary which defined it as “a sum of money that you have to pay.” He further explained that he had contemplated the possibility of the Ministry of Trade and Industry asserting a right to under law to collect the sums of money that it did from the expatriate businesses and that he used the phrase “levy and collection” “to encapsulate every possible thought.” Pressed further on this point by Members of the Committee, CW1 would seem to have abandoned his position on the use of the term *levy* and rather placed reliance on the use of the word *collection*.

It is however important to point out that the starting point of the Committee’s inquiry was the legal-technical meaning of the word levy. This comes out most poignantly in the following exchange between CW1 and the Honourable Member for New Juaben South:³

Dr. Assibey-Yeboah: Mr. Chairman, first, he gave use a definition of “levy” that it is a sum of money that has to be paid. My Wikipedia definition of “levy” is that it is a tax, fee or fine. In the context of our Ghanaian legislation....what is his understanding of levy as used in his Motion?

Alhaji Muntaka: Mr. Chairman, like I said earlier, my use of “levy” in my Motion was to make it broad enough to convey (sic) every possible area, so that in moving the motion, I would not have been shut down...

Dr. Assibey-Yeboah: So per you're your understanding, the activities of the even organizers and the facilitation role of the Ministry in raising money falls within the scope of a “levy.”

³ Transcript of Hearing.....

the expatriate businesses to pay the sponsorship 'fees' requested by its private sector partner- the Foundation. In other words, whilst there may not be a law imposing the amount to be paid, the element of compulsion may still be lurking in the background due to the pre-eminent role of the Ministry in the entire scheme of things. It must be said that during the hearings of the Committee, none of the expatriate business executives who attended upon the Committee admitted to having been compelled to pay money. But we don't think that any Member of the Committee expected a rational businessman or woman operating in Ghana to make an admission that they had been forced to pay money towards an event openly supported by the Government.

Thus, whilst the proponent of the motion could not justify his use of the word "levy" from a legal-technical point of view, it cannot be denied that, from the evidence on record, the Ministry of Trade and Industry played a pre-eminent role in the determination of the amounts 'solicited' by the MEF. In short, the manner in which the sponsorship package was designed and executed conforms to CW1's conception of a levy as "money that you have to pay." The pre-determined sums of money were paid with the backing of the Ministry of Trade and Industry, the agency with oversight responsibility for the business sector of the economy.

Before the Committee, there was no controversy with respect to the issue of *collection* of the sums of money to be paid to the Ministry of Trade and Industry by the expatriate businesses. The evidence on record shows that the Ministry had undertaken, as part of its obligations under the MoU (Exhibit...) to serve as the collection point of payments. Indeed, all payments were made to Room 308 at the Ministry and subsequently into a designated account of the Ministry.

CW1 had informed the Committee that he used the word 'collection' as an alternative or as an addition to the word 'levy'. In this view, the word "and" in the phrase "levy and collection" must be read as disjunctive and not conjunctive. This would also mean that, in essence, there could have been collection of sums of money without the imposition of a levy both in the sense in which he understood the term or in the legal-technical sense proffered by both CW3 and CW5. However,

we take the view that the more appropriate position is that the two words are interdependent in that the levy precedes the collection. As noted above, the evidence on record supports the conclusion that the payment for seats was an inherent part of the sponsorship package designed with and agreed to by the Ministry of Trade and Industry. That being the case, the expatriate businesses had to pay money ranging between USD15,000.00 and USD100,00.00 to a designated officer of the Ministry of Trade and Industry and into a designated account of the same Ministry depending on their choice of package.

Finally, on the issue of levy and collection, if the Committee accepts the position put forward by the CW3 and CW5, then the burden shifts on to them to provide the legal justification for the collection of the various sums of money. For, if it is not a levy as they claimed before the Committee because, in the words of CW3, “it is not collected by compulsion or legal authority”, then there must be some other legal basis for the collection of the various sums of money by a public agency such as the Ministry of Trade and Industry. We will deal with this aspect in the next section of the Report dealing with payments and disbursements.

b. Payments and Disbursements

The most contentious issue before the Committee was the issue of payment and disbursements. In the public discussion prior to the establishment of the Committee, evidence of which was placed before the Committee, the critical issue related to who paid and how much was paid and whether the payments made had anything to do with where the payor sat in terms of proximity to the so-called “Presidential High Table” and to the benefits enumerated in the sponsorship package such as an exclusive dinner with the President at a later date.

In his evidence before the Committee, CWI had asserted that information available to him indicated that certain expatriate businesses had paid sums up to USD100,000.00 to attend the Ghana Expatriates Business Awards and he sought to bring this to the attention of the Ministry when its officials appeared before

the Parliamentary Committee on Trade, Industry and Tourism. However, both the Deputy Minister who attended the Trade Committee meeting and the Chief Director expressed surprise about this information.⁷ In the course of time, another Deputy Minister, Hon. Carlos Kingsley Ahenkorah, admitted that payments had been made to the Ministry by the expatriate businesses but that the entire amount realized from these payments had been disbursed to the MEF.⁸ This was corroborated by CW2 when he appeared before the Committee.⁹

According to CW1, the Ministry of Trade and Industry subsequently released a more detailed statement in which it claimed that it had, in collaboration with MEF “audited the account for the event and can confirm that an amount of Ghc 2,667,215.00 was raised against an expenditure of Ghc2,367,426.06.” In that statement, the Ministry also indicated that it had agreed with MEF that a portion of the funds realized from the event in excess of expenditure be retained by the Ministry to fund the organization of the next event.

This was confirmed by CW3 when he appeared before the Committee. He provided the Committee with documents evidencing the payments as well as the disbursements made out of the designated account numbered 1112001498401 with the National Investment Bank (NIB). The following two tables show the payments and the expenditures made:

Table 1: Exhibit MOTI 3- Ghana Expatriate Business Awards Receipts

NO.	DATE	CHEQUE NO.	NAME OF COMPANY	MOTI RECEIPT NO.	AMOUNT (GH¢)
1.	14-11-2017	000246	AVIANCE GH. LTD USD 15'000	14/0190501	66,000.00
2.	14-11-2017	000014	ALLIANZ LIFE INSURANCE	14/0190502	20,000.00
3.	14-11-2017	095360	CANWEST LTD	14/0190503	15,000.00
4.	16-11-2017	888342	M. BARBISOTI & SONS LTD USD 15,000	14/0190504	66,000.00

⁷ Transcript of Hearing, January 11, 2018, p.6

⁸ Id., p. 12

⁹ Id., p. 122

5.	20-11-2017	005036	C. WOERMANN (GH)	14/0190505	65,850.00
6.	20-11-2017	000412	CHENSHIN CO.LTD	14/0190506	66,000.00
7.	20-11-2017	005542	AMANDI INVESTMENT LTD	14/0190508	66,000.00
8.	22-11-2017	201090	M&G PHARMACEUTICAL LTD	14/0190510	15,000.00
9.	22-11-2017	000422	NIIT	14/0190509	44,000.00
10.	22-11-2017	161225	SUNON ASOGLI POWER (GH LTD)	14/0190511	176,108.00
11.	23-11-17	008015	GEODRILL GHANA LIMITED	14/0190512	110,250.00
12.	24-11-2017	005675	B5 PLUS LTD	14/0190513	110,000.00
13.	24-11-2017	005676	B5 PLUS LTD	14/0190513	110,000.00
14.	24-11-2017	485085	MELCOM LTD	14/0190516	110,145.00
15.	24-11-2017	CASH	CORAL PAINT USD 25,000	14/0190514	109,750.00
16.	24-11-2017	781244	HFC BANK GHANA LTD	14/0190519	88,072.00
17.	24-11-2017	DIRECT	ZENITH BANK GH LIMITED	14/0190528	330,270.00
18.	27-11-2017	DIRECT	UNILEVER GH	14/0190529	227,500.00
19.	27-11-2017	000210	KEY ARCHITECTURAL CO.LTD	14/0190518	22,000.00
20.	28-11-2017	000215	QUIEROZ GALVAO	14/0190520	66,750.00
21.	12-04-2017	432672	KOSMOS ENERGY	14/0190521	109,250.00
22.		000473	BARRY CALLEBAUT GH LTD USD 15,000	14/0190523	65,850.00
23.	12-05-2017	161382	JAPAN MOTORS USD 3,000	14/0190524	13,170.00
24.	12-05-2017	428570	INTERPLAST LTD	14/0190525	440,000.00
25.	12-12-2017	000037	CONSAR LTD USD 25,000	14/0190526	109,750.00
26.	14-12-2017	009744	DESIMONE LIMITED	14/0190527	44,500.00
			TOTAL		2,667,215.00

Table 2: Exhibit MOTI 4- Ghana Expatriate Business Awards Expenditure

NO.	DATE	NAME OF PAYEE	CHEQUE NO.	AMOUNT(GHC)
1.	17-11-2017	GRAPHIC COMMUNICATION	00098	6,307.53
2.	20-11-2017	CHIEF DIRECTOR & GRA	00100 & 000110	18,000.00
3.	20-11-2017	CHIEF DIRECTOR & GRA	00102 & 000108	13,500.00
4.	27-11-2017	GRAPHIC COMMUNICATIONS GROUP LTD	00114	12,615.00
5.	27-11-2017	CHIEF DIRECTOR	00113	3,000.00
6.	24-11-2017	MILLENNIUM EXCELLENCE FOUNDATION	000112	484,265.31
7.	12-06-2017	MILLENNIUM EXCELLENCE FOUNDATION	000115	57,758.20
8.	12-06-2017	CHIEF DIRECTOR	000116	10,000.00
9.	12-06-2017	STONE LODGE	000117	6,289.10
10.	12-06-2017	GHANA REVENUE AUTHORITY	000119	428.80
11.	12-06-2017	MILLENNIUM EXCELLENCE FOUNDATION	000120	23,889.00
12.	12-06-2017	MILLENNIUM EXCELLENCE FOUNDATION	000121	86,673.12
13.	12-06-2017	MOTI DEST INSP SCHEME	000122	40,000.00
14.	13-12-2017	MILLENNIUM EXCELLENCE FOUNDATION	000124	1,604,700.00
		TOTAL		2,367,426.06

According to the evidence of CW3, a total amount of Two Million, Six Hundred and Sixty-Seven Thousand, Two Hundred and Fifteen Ghana Cedis (**Ghc2,667,215.00**) was paid by the expatriate businesses as shown in Table 1 above. Out of this amount, Two Million, Three Hundred and Sixty-Seven Thousand, Four Hundred and Twenty-Six Ghana Cedis and Six Pesewas (**Ghc2,367,426.06**) was paid out to the MEF as shown in Table 2 above. CW3 maintained in his evidence before the Committee that the Ministry of Trade and

Industry retained 10% of the total amount for expenses on agreed future activities.

As shown in **Table 1** above, the payments made were fairly consistent with the sponsorship package designed by the MEF with the approval of the Ministry of Trade and Industry. These ranged between **USD15,000** (e.g. Aviance Ghana Ltd) and **USD75,000.00** (e.g. Zenith Bank). From the evidence adduced by the expatriate businesses that appeared before the Committee, some businesses which paid less than the minimum amount stipulated in the package actually negotiated those sums with the MEF before making payment inconsistent with the design of the sponsorship package (e.g. Japan Motors). In other words, a deviation from the standard package put together by MEF with the approval of the Ministry of Trade and Industry had to be negotiated.

In the course of the Committee's hearings, both CW3 and CW4 (Mr. Ashim Morton) stressed the fact that there were companies that attended without making a payment. According to them, what this meant was that participation in the event was never tied to any payment for a seat. Of course, in light of the evidence provided the Committee, the organizers expected a high patronage by inviting close to 450 expatriate businesses. However, if the evidence of payment is to be believed, then it means that just a small number of companies responded positively with respect to the payment for seats. Thus whatever amount was realized from the sale of seats was used to subsidize the participation of those who either could not afford to pay or could have paid but refused to do so for reasons best known to them.

As noted above, the critical issue before the Committee was whether the payments made were in anyway related to where a person sat relative to the distance from the table where the President of the Republic was seated. Both CW3 and CW4 vehemently denied before the Committee that this was the case. CW3 actually informed the Committee that he had issued instructions to MEF

and for that matter CW4 not to sell any seats on the presidential high table.¹⁰ In his evidence before the Committee, CW4 actually repeated this instruction to the Committee as if its mere repetition attracted believability. The credulity of the statement is enormous for at least two reasons. First, if the issue of sale of seats close to the President of the Republic had been such a big deal to the GEBA partners as they described themselves, they would have written it into the MoU so as to make it legally binding. Secondly, having failed to reflect it in the MoU, CW3 should have communicated in writing to CW4 so as to make it objectively verifiable. Repeating the statement ad nauseam after the controversy broke seems more like an ex post facto rationalization.

Moreover, the purported instruction runs against the grain of the evidence before the Committee for a number of reasons. The first is that the President was put at the center of the entire scheme; he was the incentive for the price tag on the seats. The evidence of this is as follows: the MoU imposed a legally binding obligation on the Ministry of Trade and Industry to ensure the presence of the President at this and other future Ghana Expatriate Business Awards; the entire program was advertised as being under the auspices (i.e., patronage, supervision, guidance etc.) of the President of the Republic and was postponed several times so as to accommodate his schedule; the seating design was done in concentric circles with the presidential circle attracting the highest price-tag. The second reason why this claim runs against the weight of the evidence is that, when the matter became one of public concern, CW4 quickly claimed that he was the one being referred to in the documents as the “President” on whose table guests were to be seated if they paid USD100,000.00.¹¹

Besides brazenly making this rather ludicrous claim publicly at a news conference, CW4 repeated it before the Committee and was then confronted with documents showing that he had tried to change his designation from Chairman of MEF to President of MEF in order to be able to validate this claim. In Exhibit MOTI 6, which is a letter written to inform the Ministry of Trade and Industry

¹⁰ Transcript of Hearing []

11

about the proposed Ghana Expatriate Business Awards, CW4 is described as “President”. However, though properly dated and signed with slightly different signature, Exhibit MOTI 6 contained no evidence that it had been received by the Ministry. So, when the Committee noticed this fact and requested for the original and it was brought, it showed that it had been received on April 26, 2017 and stamped with the official seal of the Ministry of Trade and Industry. On this original letter, CW4 is described as “Founder/Chairman.” In other words, Exhibit MOTI 6 was forged with a view to deceiving the Committee that the correct designation of CW3 was “President” and not “Founder/Chairman” as in the original. CW4 however put up a brave defense and insisted that his position as Chairman changed in July 2017 to President. Exhibit MOTI 6 nailed that defense in the coffin.

The third reason why the claim that reference in the sponsorship package to the presidential high table is not a reference to the President of the MEF is that, in a desperate attempt to counteract the allegation that the price tag of seats was tied to how far one sat from the President of the Republic, CW4 quickly redesigned the sponsorship package and took out the ministerial circle, the next area of seating to that of the President of the Republic. This, we believe, was done in response to the evidence of CW1 and CW2 in relation to the issue. In their evidence before the Committee, the two had queried whether, if the CW4 claimed to be the president referred to in the sponsorship package, how come that the said package made reference to a ministerial circle? The Committee believes that the package was redesigned to respond to this query. Indeed, after tendering in the redesigned package that omitted the ministerial circle, two of the expatriate businesses that were invited to the event and supplied with sponsorship packages by MEF came before the Committee and tendered in evidence the sponsorship package that were referred to by both CW1 and CW2.

In sum, these efforts at doctoring documents in a rather desperate attempt to prove that CW4 was the president referred to in the sponsorship package rather ended up exposing him as a witness with very little, if any, credibility. The probative value of the evidence he gave before the Committee on this matter

rather exposes his desperate attempt to cover up the fact that in its initial conception, the event had the President of the Republic as the center of attraction and that payment for seats bore a direct relationship to the distance of the payor's seat from the presidential high table.

c. Relevant Related Matters

The Committee, as noted above, was tasked with investigating relevant related matters. The Committee interprets this mandate to mean that it could investigate any matter arising directly out of the proceedings and which bore a relationship to the main terms of reference of the Committee. In other words, this mandate is not a license to embark on a fishing expedition.

A number of critical and related issues arose during the course of the Committee's proceedings. These included the allegation that the payments made by the expatriate businesses amounted to extortion by the Ministry of Trade and Industry; ethical considerations arising out of the conduct of the Ministry and its officials; lack of openness in the scrutiny of the expenses of the MEF; the forgery of documents by CW4 in a bid to deceive the Committee; deceit in the organization of the event and possible foreign corrupt practice violations. It is the view of the Committee that these arise directly out of the work of the Committee as set out in its terms of reference.

i. Extortion by Ministry of Trade

The issue of extortion arose in the course of the evidence of CW2 who had issued a press statement on the entire event and described the receipt of funds from the expatriate business entities as extortion. In his evidence before the Committee, CW2 was asked directly by the Honourable Member for New Juaben South whether the organizers and the Ministry extorted money from the expatriates.¹² In answer to the said question, CW2 stated that he considered the practice as extortion because the Ministry deviated from the standard practice whereby

¹² Transcript of Hearing, January 12, 2018, p. 137.

public institutions provided endorsement of events organized by private sector entities without official involvement such as was done in this case by the Ministry of Trade and Industry. He gave the example of the fact that the expatriates were directed in the sponsorship letter to make payments in Room 308 and to pay their cheques into a designated account of the Ministry.¹³ In his view, this was designed to let the expatriates know that the Ministry was watching to know who had made payment thus injecting a certain amount of compulsion into the process.¹⁴

In our criminal legislation extortion is a crime. Therefore, the allegation that the Ministry had extorted money, if proven, would require further investigation by the law enforcement agencies to establish whether the elements of the crime of extortion exist in this case. For the purposes of the work of the Committee, we must state upfront that the Ministry is neither a natural person nor a corporate entity capable of committing a crime. So if a crime has been committed, it would be the individual officers of the Ministry involved directly in this matter who would bear criminal liability.

That said, there is some merit to the allegation by CW2 that some form of extortion took place. The Criminal and Other Offences Act, 1960 (Act 29) defines the crime of extortion by a public officer as follows:

“A public officer is guilty of extortion who, under *colour of his office, demand or obtains* from any person, whether for public purpose or for himself or for any other person, any *money or valuable consideration* which he knows that he is not lawfully authorized to demand or obtain...”

For this crime to be committed, one need not prove that the public officer making the demand or obtaining the money or other valuable consideration put a gun to the head of the person from whom he was making that demand or obtaining the money or other valuable consideration. A voluntary payment induced by a promise by a public officer either to perform or desist from performing an official act is sufficient. Sometimes the demand for money or

¹³ Id., p. 138

¹⁴ Id.

valuable consideration is explicit but it may also take the form of what Justice Stevens of the United States Supreme Court described as “subtle extortion” in the case of *McCormick v. United States*, 500 U. S. 257 (1991).

The evidence before the Committee shows that the Ministry of Trade and Industry formed a partnership with MEF for the purposes of the organization of the GEBA. Pursuant to its legally enforceable role under the MOU, it wrote letters introducing MEF to the expatriates. Also in fulfilment of its obligations under the same MOU, MEF also designed a package of benefits which was delivered to the expatriates as a means of soliciting financial support for the organization of the GEBA. Was this a legitimate solicitation or the exaction of money in exchange for promised benefits? The evidence before the Committee tilts more in favour of a conclusion that the money was exacted in exchange for promised benefits such as being seated close to the President during the award ceremony and having an exclusive dinner for two with the President at a future date.

ii. Ethical Considerations

In the course of its investigations, the Committee stumbled upon facts that raised serious ethical issues relating to the organization of the event. First, the Ministry of Trade claimed, among other things, that the purpose of the event was to recognize and reward the contributions of the expatriate business community to the development of our dear nation. In its letter introducing the concept and the Foundation to the expatriate business enterprises, the Ministry was emphatic that this was the central purpose of the event. In other words, in the view of the Ministry and its private sector collaborator, the nation owed the expatriate business enterprises some measure of gratitude for their positive contributions to her economic progress.

In consequence, we found it patently unethical to design an event that depended heavily on sponsorship by the same persons to whom we, as a people, wanted to express gratitude. Put crudely, we demanded payment for the expression of our gratitude.

Secondly, a benefits package designed with the tacit support of the Ministry promised an exclusive dinner for two with the President. Assuming without admitting that the reference to the President was even a reference to the President of the Foundation (which we have just shown could never have been the case), in his evidence before the Committee, Mr. Ashim Morton categorically stated that the exclusive dinners for two with the President and other benefits, though promised and stated in the benefits package communicated to the expatriate business community, would never be delivered. That is highly unethical and the Ministry should never have lent its support to an enterprise designed with the knowledge that the promised benefits would never be delivered. Indeed, the Honourable Minister of Trade made it clear to the Committee that, given the busy schedules of H. E. the President, he could never have agreed to a benefits package that contemplated exclusive dinners with the President. Granted that that statement is true, we find it highly unethical for the Ministry to have agreed to a package that was communicated to the business community but which, unbeknown to the latter, was never going to be honored. The pertinent question is whether the Ministry knew or had reason to know that the promised benefits would not be delivered?

Thirdly, the Ministry created an opportunity for an otherwise non-profit organization to make profit, described as a “fair return on their investment”, without explicit provisions in the Memorandum of Understanding as to how the profit so made was to be utilized towards the achievement of corporate objects of the organization. According to the MOU, whereas the 10% of the funds reserved for the Ministry was to be utilized for specific future activities, no provision was made for the utilization of excess funds held by MEF after meeting all expenses relating to the organization of the event. We deem this as an unethical practice in that the Ministry, as a public agency, should have acted with probity in relation to the funds and how they would ultimately be utilized. CW1

described this as “the ethics of using the President to collect money for private persons”.¹⁵

Another ethical dimension to this event is that the whole notion of an access fee, even whilst being disputed, erodes confidence and trust in public officeholders. As CW2 stated poignantly at the hearing:

“Mr. Chairman, I believe that public officers come by their positions because of public trust. The power that we have is from the people. It is the people’s right to have access to us. When the people have elected us into high offices, we cannot then make access by the people to us a matter of who can pay or who can afford.”¹⁶

iii. Possible Deceit in the Organization of the Event

The Committee noted that the MEF had been involved in deceitful practices related to the organization of the GEBA. In their evidence before the Committee, both CW3 and CW4 created the impression that they had designed objective criteria for determining who obtained an award at the GEBA. Indeed, they tendered in evidence a set of criteria designed by the accounting firm KPMG for the selection of companies for various categories of award.

However, in the course of its proceedings, the Committee learned from at least three of the businesses that they had not even sent information to KPMG in order to qualify for the nomination for an award but were called and informed that they had been selected for the award by none other than CW4. Indeed, in one case, a telecommunications company objected to paying for any of the packages, refused to send information to be selected for an award but was still given an award which was announced by CW4. In each case, there was no official communication from KPMG.

¹⁵ Transcript of Hearing, January 12, 2018, p. 52

¹⁶ Transcript of Hearing, January 12, 2018, p.146

The Committee takes a serious view of this matter because it would appear that the so-called partnership between the Ministry and MEF is an empty shell that allows MEF or its chief executive to raise funds on the back of the credibility of Government as a partner.

iv. Lack of Transparency in Relation to the Expenses of MEF

Notwithstanding that the funds raised were deposited into a public account and constitute, in our considered opinion, public funds, in its evidence before the Committee MEF refused to account for how it has spent the funds allocated to it pursuant to the MOU. As stated earlier, MEF obtained over Two Million Ghana Cedis from the funds raised but conceded that it had spent only Forty Thousand Ghana Cedis in advance of the event.

In view of the collaboration between the Ministry and MEF, it is important to ensure that it accounts for all funds received as a consequence of the partnership with the Ministry. It bears repeating that the Ministry of Trade and Industry has a duty under the law to act with probity when it comes to resources mobilized through its activities. And it should not matter if it is collaborating with a private sector entity.

v. Possible Forgery of Documents

As we noted above, in a desperate attempt to counteract the allegation that the price tag of seats was tied to how far one sat from the President of the Republic, CW4 quickly redesigned the sponsorship package and took out the ministerial circle, the next area of seating to that of the President of the Republic. This, we believe, was done in response to the evidence of CW1 and CW2 in relation to the issue. Furthermore, we have pointed out that Exhibit MOTI 6 was forged with a view to deceiving the Committee that the correct designation of CW3 was “President” and not “Founder/Chairman” as in the original.

Forgery is a criminal offense under the laws of Ghana. Unlike the case of extortion, it is clear that CW4 forged documents and brazenly tendered same in evidence with a view to deceiving the Committee to arrive at erroneous

conclusions. By extension, the forgery is intended to deceive Parliament as a whole and must be further investigated and punished.

vi. Possible Foreign Corrupt Practice Violations

In the course of its hearing and bearing in mind the fact that the business entities in question are foreign-owned businesses, the Committee questioned CW3 on whether any due diligence was done regarding possible violations of foreign corrupt practice legislation in the countries of origin of the said business enterprises or treaties and conventions to which these countries are parties. CW3 answered the question in the negative.

However, one of the companies that appeared before the Committee mentioned the fact that, prior to making payment, it had to request for headquarters clearance in relation to possible violation of the Foreign Corrupt Practices Act (FCPA) of the United States of America. Another company mentioned that it had elevated the package for the event and its corporate business governance rules did not permit it to make payments towards such an event. We are sure this company could not convince headquarters that it would not violate foreign corrupt practice rules. And we suspect it was also because of the deep involvement of the Government in the organization of the awards and, in particular, the solicitation of funds.

This is an important aspect of doing business globally and so the Ministry of Trade and Industry must take it seriously if it intends to continue to solicit funds from businesses for future events.

VII. CONCLUSION- SUMMARY OF FINDINGS

In light of the evidence adduced before the Committee, we are convinced that:

1. In the overall circumstances surrounding the organization of the Ghana Expatriate Business Awards, whilst the proponent of the motion could not justify his use of the word “levy” from a legal-technical point of view, it

cannot be denied that, from the evidence on record, the Ministry of Trade and Industry played a pre-eminent role in the determination of the amounts 'solicited' by the MEF. In short, the manner in which the sponsorship package was designed and executed conforms to Honourable Muhammed-Muntaka Mubarak's conception of a levy as "money that you have to pay." The pre-determined sums of money were paid with the backing of the Ministry of Trade and Industry, the agency with oversight responsibility for the business sector of the economy;

2. Notwithstanding denials to the contrary, there is evidence on record to the effect that, in its initial conception, the event had the President of the Republic as the center of attraction and that payment for seats bore a direct relationship to the distance of the payor's seat from the presidential high table. Furthermore, the evidence shows clearly that Mr. Ashim Morton forged documents in a desperate attempt to cover up this blatant fact;
3. The Ministry of Trade and Industry contravened existing law on public financial management, particularly the Financial Administration Regulations, by allowing the use of an existing account for the receipt of monies that it claimed were private funds;
4. The Ministry of Trade and Industry engaged in serious ethical violations by allowing its credibility as a public agency to be used to amass profit for a private non-profit organization which it cannot hold to public standards of accountability as well as by using the name of the President of the Republic as a means to make such profit;
5. The MEF engaged in deceitful practices in the process of the organization of the awards event by selecting companies for awards even when the companies had not submitted information meeting the designed criteria and also forged documents meant to deceive the Committee and Parliament as a whole; and
6. The Ministry of Trade and Industry failed or neglected to take account of possible violations of foreign corrupt practice laws and regulations in the conception, design and organization of the expatriate business awards.

Dated in Accra this 2nd Day of February 2018

Hon. James Klutse Avedzi, Member

Hon. Dr. Dominic Akuritinga Ayine, Member