

**IN THE FIRST SESSION OF THE EIGHTH PARLIAMENT OF THE
FOURTH REPUBLIC OF GHANA**



**REPORT OF THE AD HOC COMMITTEE TO INVESTIGATE THE
PROCUREMENT CONTRACT BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF GHANA AND HIS HIGHNESS SHEIKH AHMED
DALMOOK AL MAKTOUM AND S. L. GLOBAL FOR THE SUPPLY
OF SPUTNIK-V COVID-19 VACCINES**

AUGUST 2021

**REPORT OF THE AD HOC COMMITTEE TO INVESTIGATE THE PROCUREMENT
CONTRACT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GHANA AND HIS**

HIGHNESS SHEIKH AHMED DALMOOK AL MAKTOUM AND S. L. GLOBAL FOR THE SUPPLY OF SPUTNIK-V COVID-19 VACCINES

1.0 INTRODUCTION

1.1 On Thursday, 8th July, 2021, the House established the Ad Hoc Committee pursuant to Order 191 of the Standing Orders to investigate the Procurement Contract between the Government of the Republic of Ghana and Sheikh Dalmook Al Maktoum and S. L. Global Limited for the supply of Sputnik-V Covid-19 Vaccines.

1.2 The House established the Ad Hoc Committee following the adoption of a Private Members' Motion moved by the Hon. Minority Leader, Mr. Haruna Iddrisu and seconded by the Hon. Member for Juaboso, Mr. Kwabena Mintah Akandoh.

2.0 COMPOSITION OF THE COMMITTEE

2.1 The Ad Hoc Committee comprised the following Hon. Members:

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|--------|-------------------------------------|---|-------------|
| (i) | Mr. Alexander Kwamena Afenyo-Markin | - | Chairperson |
| (ii) | Mr. Kwabena Mintah Akandoh | - | Vice-Chair |
| (iii) | Mr. Bernard Ahiafor | - | Member |
| (iv) | Mr. Kwame Anyimadu-Antwi | - | Member |
| (v) | Dr. Nana Ayew Afriye | - | Member |
| (vi) | Mr. Ernest Henry Norgbey | - | Member |
| (vii) | Mrs. Elizabeth Ofosu-Adjare | - | Member |
| (viii) | Mr. Umar Farouk Aliu Mahama | - | Member |
| (ix) | Ms. Sheila Bartels | - | Member |

3.0 TERMS OF REFERENCE FOR THE COMMITTEE

3.1 The Terms of Reference (TOR) for the Committee were as follows:

- i. To determine whether the transaction with respect to the procurement and supply of Sputnik-V COVID-19 Vaccines between the Government of the Republic of Ghana (represented by the Ministry of Health) and the Private Office of H.H. Sheikh Ahmed Dalmook Al Maktoum and S. L. Global qualifies as an International Business or Economic Transaction under article 181(5) of the Constitution, and if so, whether it was subjected to prior approval by Parliament;
- ii. To determine whether the procurement process was followed and the propriety of same;
- iii. To determine whether the services of a middle man were procured in the transaction and if so, the propriety of same having regard to the relevant laws;
- iv. To ascertain the cost of the vaccines, the justification of the cost of the vaccine and whether the transaction guaranteed value for money for Ghana;
- v. To determine whether any consideration has passed from the Government of the Republic of Ghana to the middle man, the suppliers or any other person in respect of the transaction;
- vi. To determine whether the Hon. Minister for Health misled Parliament during the consideration of the transaction for the procurement of the vaccine; and
- vii. To inquire into any other matter connected with the intended purchase and supply of the SPUTNIK-V Vaccine in the Agreement between the Government of the Republic of Ghana and the Private Office of H.H. Sheikh Ahmed Dalmook Al Maktoum and S. L. Global.

4.0 **METHODOLOGY ADOPTED FOR THE INVESTIGATION**

- 4.1 The Committee first obtained written response of the Hon. Minister for Health and copies of specified documents.
- 4.2 The Committee subsequently held four public hearings to take oral evidence of the Hon. Minister for Health and Officials of the Ministry of Health.
- 4.3 After reviewing the evidence on record, the Committee sent a written request to the Ministry of Finance to obtain information regarding payment of money under the two Procurement Agreements.

5.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during its deliberations:

- i. The 1992 Constitution of the Republic of Ghana;
- ii. The Standing Orders of Parliament;
- iii. Imposition of Restrictions Act, 2020 (Act 1012);
- iv. The Public Procurement Act, 2003 (Act 663) as amended by Act 914;
- v. The Imposition of Restrictions Coronavirus Disease (COVID-19) Pandemic (No. 1) Instrument, 2020 (E. I. 64); and
- vi. The Imposition of Restrictions Coronavirus Disease (COVID-19) Pandemic (No. 2) Instrument, 2020 (E. I. 65).
- vii. The Vaccine Supply Agreement between the Private Office of H. H. Sheikh Ahmed Dalmook Al Maktoum and the Ministry of Health dated 9th March, 2021;
- viii. The Minutes on Negotiations between the Private Office of H. H. Sheikh Ahmed Dalmook Al Maktoum and the Ministry of Health; and

- ix. Partnership Agreement between S. L. Global Limited and the Ministry of Health dated 16th March, 2021;
- x. Letter to the Public Procurement Authority (PPA) requesting the Ratification of the Vaccine Supply Agreement between the Private Office of H. H. Sheikh Ahmed Dalmook Al Maktoum and the Ministry of Health dated 15th April, 2021;
- xi. Response from the Public Procurement Authority (PPA) on the Ministry's request for Ratification of the Vaccine Supply Agreement between the Private Office of H. H. Sheikh Ahmed Dalmook Al Maktoum and the Ministry of Health dated 30th April, 2021;
- xii. Advice of the Minister for Justice & Attorney-General in respect of the Letter to the Procurement Authority (PPA) requesting the Ratification of the Vaccine Supply Agreement between the Private Office of H. H. Sheikh Ahmed Dalmook Al Maktoum and the Ministry of Health dated 12th April, 2021;
- xiii. Letter of Termination of the Agreement between the Private Office of H. H. Sheikh Ahmed Dalmook Al Maktoum and the Ministry of Health dated 14th July, 2021;
- xiv. Letter to the Russian Minister for Trade dated 23rd March, 2021; and
- xv. Letter of the Minister of Health to the Russian Minister for Foreign Affairs dated 28th April, 2021.

6.0 BACKGROUND INFORMATION

- 6.1 COVID-19 was first identified in Wuhan Province, China in December 2019, and later spread to other parts of the world. The World Health Organisation (WHO) declared it a global pandemic on 11th March, 2020.
- 6.2 Ghana recorded its first two cases of COVID-19 on 13th March, 2020. The cases were found after laboratory testing of the two individuals who returned to Ghana from Norway and Turkey. Ghanaians and other residents were then educated and encouraged by the Ministry of Health and its agencies, particularly the Ghana Health Service and the Food and Drugs Authority (FDA), to take certain precautionary and safety measures to avoid the spread of the Virus. The education to help contain the Virus was done on various platforms such as the media. Measures included social distancing, regular washing of hands thoroughly with soap under running water and the use of alcohol-based hand sanitizers as often as possible.
- 6.3 Education on the precautions required continued, but significantly more cases of the disease were recorded with some leading to deaths. The country went into a partial lockdown of Accra and Kumasi, to avoid community spread of the Virus, and further closed the country's borders. Following the enactment of the Imposition of Restrictions Act, 2020 (Act 1012), the President issued the Imposition of Restrictions Coronavirus Disease (COVID-19) Pandemic (No. 1) Instrument, 2020 (E. I. 64) and later the Imposition of Restrictions Coronavirus Disease (COVID-19) Pandemic (No.2) Instrument, 2020 (E. I. 65) to help combat the spread of the Virus.
- 6.4 Following the development of COVID-19 vaccines, a number of bilateral platforms were created. Ghana signed onto the COVAX Initiative. Ghana was selected as one of the first recipients of the doses, due to its rapid efficient and coordinated response to the Pandemic. Accordingly, Ghana received its first consignment of 600,000 doses of AstraZeneca COVID-19 Vaccine, developed by the Serum Institute of India (SII), through the COVAX Facility with logistical support from UNICEF. The Vaccine was

accessed and endorsed formally by the Initiative and the Food and Drugs Authority (FDA) in Ghana before usage.

- 6.5 Some members of the public were selected for the first vaccination. Immediately after this exercise, it became imperative to obtain more COVID-19 vaccines to vaccinate the majority of Ghanaians, to achieve herd immunity and to avert vaccine hesitancy. At the same time, the bilateral sources had indicated that their scheduled deliveries had been postponed to August, 2021. This development prompted the Ministry of Health to start looking for vaccines from private sources, including an intended procurement contract between the Government of the Republic of Ghana and Sheikh Dalmook Al Maktoum and SL Global, for the supply of Sputnik-V Covid-19 Vaccines.
- 6.6 The attention of some Hon. Members of Parliament was drawn that the Ministry of Health had entered into a procurement contract for COVID-19 vaccines. Accordingly, the Hon. Minority Leader, Mr. Haruna Iddrisu, moved a Private Members' Motion and same was seconded by the Hon. Member for Juaboso, Mr. Kwabena Mintah Akandoh, on Thursday, 8th July, 2021. The Motion was adopted by the House leading to the establishment of an Ad Hoc Committee to investigate the Procurement Contract between the Government of the Republic of Ghana and Sheikh Dalmook Al Maktoum and S.L. Global, for the supply of Sputnik-V Covid-19 Vaccines.
- 6.7 The intended Procurement Agreement comprises the following two separate Agreements:
- i. The Vaccine Supply Agreement between the Private Office of H. H. Sheikh Ahmed Dalmook Al Maktoum and the Ministry of Health dated 9th March, 2021; and
 - ii. Partnership Agreement between S. L. Global Limited and the Ministry of Health dated 16th March, 2021, as revised by the Amendment to the Partnership Agreement.

7.0 BACKGROUND OF THE ENTITIES INVOLVED IN THE PROCUREMENT AGREEMENTS UNDER INVESTIGATION

7.1 The Private Office of His Highness Sheikh Dalmook Al Maktoum

7.1.1 The Private Office of His Highness Sheikh Dalmook Al Maktoum has a portfolio of privately held group of companies that focus mainly on infrastructure development, energy projects, LNG terminal development, commodity and oil trading, water desalination, water recirculation as well as Education and Agricultural Projects. The Office address is 27th Floor Burj Al Salaam Tower, Sheikh Zayed Road, Dubai, United Arab Emirates.

7.1.2 The manufacturers appointed RDIF as their exclusive sellers, and RDIF subsequently appointed Auruguff Health Investment, which in turn appointed the Private Office of the Sheikh as its Agent in Ghana.

7.2 S. L. Global Limited

7.2.1 S.L. Global Limited is a Ghanaian private entity organised and registered under the laws of Ghana with License Number CS102212012 and has its registered office at House Number 3RS25, Devtraco Estates, Tema, P.O. Box KA 18193, Accra, Ghana. The Company was established in 2016 and it is a partnership between a leading global healthcare investment group and some accomplished and passionate Ghanaian entrepreneurs. It is vested with the provision of funding for and delivery of healthcare projects and infrastructure in Ghana.

7.2.2 The Company has secured rights for the distribution of the world's first COVID-19 vaccine, the Sputnik. The Company is also responsible for the Sputnik Vaccine rollout in Ghana and has concluded all necessary agreements with local and international stakeholders in order to spearhead such efforts.

7.2.3 Per its website *slglobalafrica.com*, S.L. Global has partnered with international financiers to begin a rollout of diagnostic, primary, secondary and tertiary healthcare across Ghana. Coupled with innovative social and healthcare insurance programmes, the Company had the intent to raise the quality of healthcare available to all Ghanaians.

7.2.4 The manufacturers appointed RDIF as their exclusive sellers, and RDIF subsequently appointed Auruguff Health Investment, which in turn appointed the S. L. Global Limited as its Agent in Ghana.

8.0 SUMMARY OF EVIDENCE GIVEN BY THE HON. MINISTER FOR HEALTH, MR. KWAKU AGYEMAN-MANU

The following is a summary of the oral and written evidence given by the Hon. Minister and same is set out based on the Committee's Terms of Reference.

8.1 Whether the transaction in respect of the Procurement and Supply of the Sputnik-V Covid-19 Vaccines between the Government of the Republic of Ghana (represented by the Ministry of Health) and the Private Office of His Highness Sheikh Ahmed Dalmook Al Maktoum qualifies as an International Business or Economic Transaction under Article 181(5) of the 1992 Constitution.

The Minister agreed with the suggestion that the Vaccine Supply Agreement between the Private Office of H. H. Sheikh Ahmed Dalmook Al Maktoum and the Ministry of Health qualified as an international business or economic transaction under Article 181(5) of the 1992 Constitution. He also referred to the advice of the Minister for Justice & Attorney-General which affirmed that position. He, however, stated that the Ministry did not seek prior Parliamentary approval of the Agreement as required by Article 181(5) of the 1992 Constitution. He explained that he was compelled to sign the two Agreements in March, 2021 when the country was experiencing the second wave of COVID-19 and recording its highest fatalities since the outbreak of the pandemic. He also explained that the situation was further exacerbated by the fact that all the bilateral sources that the country relied upon had indicated a postponement of

deliveries to August, 2021. This, according to the Hon. Minister, put him under extreme frustration and desperation to find vaccines to ameliorate the situation and protect the lives of the people of Ghana. This caused him to rely on the emergency provisions under E.I. 64, to enter into the Agreement with Al Maktoum who had demonstrated capacity to deliver the Sputnik-V vaccines with the intention of seeking subsequent Parliamentary approval.

8.2 Whether the procurement process was followed and the propriety of same

8.2.1 The Hon. Minister informed the Committee that the Ministry of Health did not seek prior approval from the Public Procurement Authority as required by the Public Procurement Act, 2003 (Act 663) as amended. He reiterated that he acted in good faith during the Pandemic at the time, to save the lives of Ghanaians with the intention of seeking ratification from the Authority under Act 663. The Committee noted further in a letter dated 15th April, 2021, that in line with this the Hon. Minister applied for ratification of the two Agreements from PPA.

8.2.2 The Public Procurement Authority, in a letter of 30th April, 2021, responded that the Technical Committee of the Board of PPA had reviewed the request from the Hon. Minister for Health and its decision was to conduct an investigation in accordance with Section 89(1) of the Public Procurement Act, 2003 (Act 663) as amended. The letter from PPA went on further to say that the investigation to be conducted was to ascertain the circumstances that gave cause for the Ministry of Health to undertake the said assignment without prior approval from the Board of PPA as required by Sections 40 and 41 of Act 663 on single source procurement. The response from PPA was also included in the exhibits.

8.2.3 The Minister again explained that the Ministry's original vaccine strategy was to source the vaccines through bilateral sources by registering with COVAX and the African Medicine Supplies Platform (AMSP) for huge volumes to vaccinate about 20 million Ghanaians to secure herd immunity. The Minister said Ghana had a deliberate schedule

from COVAX and AMSP for the supply of AstraZeneca Vaccines but unfortunately, not long after the first delivery of 600,000 doses from COVAX, it was announced that India had stopped the export of all vaccines. COVAX took its supplies from the Serum Institute in India, and for that matter, could not get vaccines from the Country because India's borders were closed. He said efforts made by the Ministry to get all vaccines from Bilateral and Multi-Lateral Institutions and Organisations proved futile, so the Ministry resorted to other options. The African Medicines Supply Platform (AMSP), which was one of the options, had the same problem like COVAX because its supplies also came from India. He lamented that even after India had lifted its ban on vaccine exportation, COVAX and AMSP had indicated that they could only supply us with vaccines somewhere in August, 2021. The Ministry thought it could not wait for that long, in view of the situation and therefore decided to make arrangements to procure some of the vaccines to urgently combat the Virus while waiting for supplies from the two bigger Windows.

8.2.4 The Hon. Minister further informed the Committee that the Ministry of Health entered into another agreement to procure COVID-19 vaccines from S. L. Global Limited, a Ghanaian company. The Minister added that similar to the Agreement with the Sheikh, the transaction in respect of the Procurement and Supply of the Sputnik-V Covid-19 Vaccines between the Government of the Republic of Ghana (represented by the Ministry of Health) and S. L. Global, was negotiated without ratification by PPA. He also said that the contract still subsisted but because of the scarcity, S. L. Global Limited had also given the Ministry the indication that they would not be able to supply the vaccines. He provided evidence of the letter the Ministry of Health wrote to the Ministry of Finance, requesting Letters of Credit for S. L. Global Limited. It was dated 16th March, 2021.

8.2.5 On the issue of whether the Ministry had proof of market authorisation from the manufacturer to Sheikh Al Maktoum in respect of the distribution or supply of the vaccines, the Hon. Minister answered in the affirmative and informed the Committee that upon the representation of Sheikh Al Maktoum, the presumption was that they had

the capacity to deliver the vaccines. He said he relied on the representation by the Distributors (the Sheikh's Outfit) that they were the agents of the manufacturer and had its authorization to supply the products to some markets, including West Africa and the Middle East. He subsequently provided a document to prove same and it was dated 25th February, 2021. However, upon perusal of the document, it was found that the manufacturers appointed RDIF as their exclusive sellers, and RDIF subsequently appointed Auruguff Health Investment, which in turn appointed the Private Office of the Sheikh as its Agent in Ghana.

8.2.6 On whether the Ministry obtained Executive approval before signing the Al Maktoum Procurement Agreement, the Hon. Minister responded in the negative. He however, explained that he took the ministerial decision after the Emergency Operating Centre under the Ministry had deliberated on the matter and the Ministry's Entity Tender Committee had been informed about it. He reiterated that the decision to sign the Al Maktoum Procurement Agreement was taken at a time when bilateral sources had communicated to the Ministry, their inability to supply the vaccines. He further reiterated that he relied on the emergency provisions contained in the Imposition of Restrictions Coronavirus Disease (COVID-19) Pandemic (No.1) Instrument, 2020 (E.I. 64) and the Imposition of Restrictions Coronavirus Disease (COVID-19) Pandemic (No.2) Instrument, 2020 (E.I. 65), to enter into the Al Maktoum and S.L. Global Limited Agreements. He said he had the intention to apply to the Public Procurement Authority for ratification, which he did, and in his opinion was permitted under Section 90 of the Public Procurement Act, 2003 (Act 663) as amended. He disagreed with a suggestion that he contravened Section 41 of Act 663.

8.2.7 He told the Committee that he did not publish a public notification when he decided to undertake the sole sourcing. He said further that he did not include the issue of vaccines in the procurement plan of the Ministry of Health submitted to the Public Procurement Authority in November, 2020, because at that time it was not expected that the COVID-19 vaccine would have to be procured in 2021 from private sources. He gave the reason that the Country relied on its arrangements with COVAX and AMSP. He was of the

conviction that even if the vaccine would become of critical need in 2021, it could be produced and easily made available in February, 2021 by COVAX and AMSP.

8.2.8 The Hon. Minister disagreed with a suggestion that an entity could only engage in sole sourcing only after prior approval by the Board of the Public Procurement Authority. According to him, the law permitted entities to undertake sole sourcing under certain emergency situations and later apply to the Authority for ratification.

8.2.9 The Hon. Minister disagreed with a suggestion that he erred in signing the Al Maktoum Agreement on sole sourcing, without seeking prior approval from the Public Procurement Authority. He reiterated that he signed the Procurement Agreement during a public health crisis situation when Ghanaians were dying and with the disappointment in sources that were already in existence, there was the urgent need to take a quick decision or action to save lives. He said it was the urgency of the situation that compelled him to indulge the Outfit of the Sheikh for the negotiations before applying to PPA for ratification. He reminded the Committee of his assertion that he took the action with the intention of applying for ratification from the PPA, which he did in a letter of 15th April, 2021.

8.2.10 On the question of what necessitated the decision to undertake sole sourcing, the Hon. Minister told the Committee that he relied on the emergency situation at the material time when the Country had its highest COVID-19 fatalities and all bilateral sources to get vaccines had failed.

8.2.11 The Minister further told the Committee that he did not also seek Cabinet approval before entering into the Al Maktoum Procurement Agreement and that it was a ministerial decision that was taken after meetings with the COVID-19 Emergency Committee. The Minister maintained that the Ministry of Health approached Messrs Al Maktoum in the first instance and disclosed that he personally called the Outfit of the Sheikh in Dubai and invited them to come to Ghana for negotiations, which they did.

8.3 Whether the services of a middle man were procured in the transaction and if so, the propriety of same having regard to relevant laws

8.3.1 The Hon. Minister denied that the Ministry dealt with a middleman. He said the Ministry dealt with Messrs Al Maktoum as distributors of the manufacturer's product, the Vaccine and that the term "middleman" was not found on the website of Messrs Al Maktoum. The Minister explained that the Ministry could not have direct access to the manufacturers to procure the Sputnik-V vaccines to deal with the surging cases of COVID-19. He said that the Ministry got the information that the manufacturer's products (the Sputnik-V Vaccines), were all being offloaded to the Russian Direct Investment Fund (RDIF) to sell on behalf of the manufacturer in Russia. He said that due to scarcity of the vaccines, a number of people approached him to demonstrate their capacity to link the Ministry to the right sources to buy the vaccines but all that proved futile except the Outfit of Sheik Al Maktoum. According to the Minister, the Outfit of the Sheik Al Maktoum approached the Ministry at the material time of the peak of the Pandemic and adequately demonstrated that they had the vaccines in stock and had the capacity to deliver them. He said the Outfit of the Sheikh demonstrated the capacity to deliver the vaccines at the material time when the Ministry was frustrated and desperate to access vaccines to combat the surging COVID-19 infections. The Ministry did not have any contact with the manufacturers of the Sputnik-V COVID-19 Vaccines in Russia prior to the execution of the contract. He intimated that he proceeded to deal with entities that demonstrated the availability and capacity to deliver vaccines with acceptable efficacy and safety standards. He informed the Committee that per the negotiations made, Sheikh Al Maktoum had the necessary capacity to do the distribution or supply the vaccines.

8.3.2 The Minister also informed the Committee that even after the conclusion of the contract with Messrs Al Maktoum, the Ministry continued to find other ways of securing direct access to the manufacturers in Russia. He disclosed that he wrote a letter to the Minister for Trade of Russia to try to link the Ministry of Health to RDIF so we could do

direct bilateral procurement from the manufacturer. He further informed the Committee that he later made a request to the Russian Minister for Foreign Affairs through the Ministry of Foreign Affairs and Regional Integration of Ghana to assist but he had no response from all the two Ministries of Russia that he wrote to.

8.3.3 The Hon. Minister stated that the Ministry's original vaccine procurement policy was to acquire vaccines on a bilateral basis through the COVAX window, and the African Medicine Supplies Platform (AMSP) created by the African Union (AU) but added, however, that the two platforms could not have the vaccines to supply to Ghana. He recounted that COVAX had procured in advance and even allocated certain doses to Ghana but after the first 600,000 doses they brought, the allocations for March, April, and May which would have culminated into over US\$2 Million, could not be delivered. He reiterated that the non-delivery was because the COVAX Initiative, which could only source AstraZeneca vaccines from the Serum Institute of India to supply to African countries that have signed on to its Platform, could not get supplies when India got their upsurge and were dying in large numbers. By policy, India closed its borders against the export of vaccines. The Minister said therefore that COVAX could not receive any dose of the vaccine again from India. He indicated that AMSP had the same problem as they could not get supplies from the Serum Institute of India and was therefore thinking of varying the vaccines they would bring to Ghana.

According to the Hon. Minister, eventually during the Ministry's engagement with AMSP, the Ministry was made to register for US\$12 Million doses but nothing was supplied. The African Medicines Supply Platform came back to the Ministry that it could no longer give us AstraZeneca, but could only provide us with Johnson and Johnson Vaccine which had not been approved at that time by the Food and Drugs Authority of Ghana. He said even though samples had not been brought at the time to be tested by the Food and Drugs Authority, the Ministry was willing to agree to the supply so that the test would be conducted in due course but AMSP gave the Ministry the indication of their first delivery date in August 2021.

8.4 Ascertainment of the cost of the Vaccine, justification of the cost of the Vaccine and whether the transaction would guarantee value for money for Ghana

- 8.4.1 The Hon. Minister told the Committee that he got information about the ex-factory price of US\$10.00 per dose of the Sputnik-V COVID-19 Vaccine after the execution of the contract. The Minister stated that the price of US\$19.00 achieved under the contract included accessories and freight charges. He also stated that the price of US\$19.00 was accepted because, at that material time, the country to country or government to government dealings in respect of COVID-19 vaccines were extremely difficult for the Ministry to indulge in. The Ministry of Health had another difficulty and that was getting direct access to the manufacturer of the Vaccines and had no other option at the time.
- 8.4.2 He disclosed that at the beginning of the negotiations, Messrs Al Maktoum was mentioning prices of about US\$28 and US\$38 per dose. The Hon. Minister submitted the Minutes of the negotiations which culminated in the Procurement Contract with Messrs Al Maktoum and attached same as Exhibit MOH 4A to his written response to the Committee.
- 8.4.3 The Minutes of the negotiations between the Ministry of Health and Al Maktoum were submitted by the Hon. Minister for Health and marked as Exhibit MOH 4A. He recounted that the parties negotiated the price till they finally settled on US\$19. He represented that the Ministry was not even comfortable with the US\$19 price and got the negotiation to be suspended at its instance. He also represented that when the parties resumed the negotiations, the suppliers threatened to pull out of the negotiations and return to their country. He said his hands were tied at that material time because the Country had been caught up in the second wave of COVID-19 with rising fatalities.

The Hon. Minister reiterated that the Country had received some doses of vaccines from the COVAX Initiative. He said Ghana was fortunate to be the first Country to have had vaccine supply from the COVAX Initiative. He also said that the Ministry had earlier

been assured of a deliberate schedule from COVAX for the supply of AstraZeneca Vaccine but he reminded the Committee that after the first delivery, it was immediately announced that India had stopped exports of all vaccines because its borders had been shut. According to the Hon. Minister, the scarcity heightened the Ministry's search for vaccines to protect Ghanaians at the time when more COVID-related deaths were being recorded than previously.

8.4.4 The Hon. Minister informed the Committee that the Ministry decided to take all our vaccines from bilateral and multilateral institutions and organisations but they were all challenged as both COVAX and the African Medicine Supplies Platform announced they could not supply from India. He also stated that the AMSP had informed the Platform that it would start delivery of vaccines to Ghana only from August, 2021. The Hon. Minister said that he decided to explore diplomatic channels in order to access the vaccines at the ex-factory price which was more favourable and cited the letters he wrote to the Russian Minister of Trade and the Russian Minister for Foreign Affairs on 23rd March, 2021 and 28th April, 2021 respectively, requesting assistance to procure the vaccines on a bilateral basis from Russia for which he had not received any response, at the time he was giving the evidence. The two letters were tendered in evidence. The Hon. Minister made the attempts after signing the agreement with Messrs Al Maktoum.

8.5 Whether any consideration had passed from the Government of the Republic of Ghana to a middle man, the suppliers or any other person in respect of the transaction

8.5.1 The Hon. Minister said that to the best of his knowledge, the Ministry had not made any payment to the Suppliers under the Agreement. He said that the Letters of Credit issued by the Ministry were done on sight and that the Supplier could not have drawn on them until the Ministry had informed the Bank that it had received the Vaccines.

8.5.2 On payment for the initial delivery of 20,000 doses of the Sputnik-V Vaccine already provided by the Suppliers, the Minister indicated that the Ministry would engage with

the Suppliers on the matter, in view of the fact that they had actually terminated the Procurement Agreement. He said the amount of money owed by the Country for the vaccines already supplied and used, would have to be paid after negotiations with the Suppliers. The Hon. Minister, however, admitted that bank charges had been paid already.

8.6 Whether the Hon. Minister for Health misled Parliament during the consideration of the transaction for the procurement of the Vaccine

The Minister recollected that issues relating to the procurement of vaccines came up during the consideration of the Budget Estimates of the Ministry of Health by the Health Committee, held on the 22nd and 23rd of March, 2021. He admitted informing the Health Committee during the Budget Hearing that, no vaccine would be purchased at more than US\$10.00 per dose but added that his assertion at the time was based on government to government dealings and not private. He also admitted he was aware of the ex-factory price of US\$10.00. He said, however, that nothing prompted him to inform the Committee about the negotiations and the fact that the price was going to be pegged at US\$19.00 when other cost elements like the syringes were added.

9.0 OTHER MATTERS CONNECTED WITH THE INTENDED PURCHASE AND SUPPLY OF THE VACCINES

9.1 Quantity of vaccines contracted and supplied

9.1.1 The Minister told the Committee that, in view of vaccine scarcity in the world at the time of the entry into of the Procurement Agreement with Messrs Al Maktoum, he was guided by four principles in all his engagements in relation to the procurement of the vaccines. He said his principles were: availability and capacity to deliver the vaccine, pricing, safety and efficacy. According to the Hon. Minister, when he got in touch with the private office of Sheikh Al Maktoum and they declared that they could supply Ghana with vaccines and that they were ready to come down to sit with officials of the Ministry and negotiate, he insisted they show proof of availability because he did not trust they had the capacity to deliver. He said to demonstrate that they had the

vaccines, the Outfit of the Sheikh brought in 15,000. He also said the Outfit was initially bringing 20,000 to actually demonstrate that they had the vaccines to supply so that he could be motivated to engage them. He explained that the initial vaccines brought were like samples for demonstration to actually prove that they had the vaccines in their warehouse or in their stocks. The Hon. Minister said the Outfit during the negotiations indicated they were selling the vaccines for US\$19.00 per dose which the Ministry of Health thought was too high and as such decided not to lock itself up under the agreement with the private office of Al Maktoum and signed for 3.4 million doses. He added that the Ministry proceeded to explore other possibilities that would yield cheaper price.

9.1.2 The Hon. Minister reiterated that the Outfit of the Sheikh brought with them 15,000 doses of Sputnik-V Vaccines on the day the negotiations began to demonstrate availability and capacity to deliver the vaccines, if contracted to do so. He explained that the Sputnik-V vaccine is developed such that you have a different vaccine for the first dose and a slightly varied one for the second dose. He said that out of the 15,000 doses brought initially, 10,000 were for the first dose and 5,000 were for the second dose. He informed the Committee that when it was becoming imminent that the Outfit could not supply the vaccines, the Ministry insisted that they would not allow the Dealer to take the vaccines back but rather, 5,000 doses be brought to compliment the second dose for us to get 10,000 for the first dose and another 10,000 for the second dose. He said the request by the Ministry was accepted and the Outfit brought the compliment of 5,000 doses, bringing the total to 20,000 out of the 3.4 million doses signed for in the procurement Agreement and making it a first dose of 10,000 and a second dose of 10,000 to enable us utilise the vaccines.

9.1.3 The Minister told the Committee that the Ministry considered that the price of US\$19.00 obtained under the Al Maktoum Agreement was too high and therefore did not want to lock the Country up with significant quantities or doses of the vaccines under the Agreement. He stated that since the Ministry wanted to have the 3.4 million

doses signed for at the time, it started looking out for possibilities of getting to the source to see if it could get it at a cheaper price.

9.2 Termination of the Al Maktoum Agreement

9.2.1 The Hon. Minister told the Committee that the Outfit of the Sheikh defaulted in meeting the deadlines for the delivery of the vaccines having regard to the terms of the Agreement. He said that the Outfit insisted they had the capacity to deliver within the agreed period of two weeks but could not perform as agreed and later said they would deliver the vaccines in July, 2021. He also said since we were still looking for vaccines, he found it very awkward to actually start invoking termination clauses in the Agreement. He further disclosed that the Ministry delayed in issuing the Letters of Credit (LCs) and therefore he found it very difficult to invoke breach of supply timelines. He explained that the contract was to be operationalised by orders and because the Ministry's LCs actually delayed, it could not push the Outfit to comply with the delivery dates as contained in the Agreement.

9.2.2 The Minister disclosed in his written response to the Committee that the Al Maktoum Agreement had been terminated by a letter dated 14th July, 2021. He also said that under the Agreement, the Suppliers were committed to supply the first 300,000 vaccines in two weeks, based on our ability to give them Letters of Credit as part of the terms of the Agreement. He said however that, the Ministry's Letters of Credit delayed. He said later, the Suppliers informed the Ministry that they had ran out of stock but Russia was going to supply them with more stocks to enable them to deliver the vaccines within two weeks from that date agreed on. According to the Minister, the Supplier, after non-delivery within the said two weeks, later indicated to supply in July, 2021. Since the July, 2021 supply notification by the Supplier was close to August, 2021 where the Ministry's bilateral/multilateral suppliers was going to be delivered, the Ministry then requested the Office of Sheikh Al Maktoum to amicably withdraw from the Agreement. The Sheikh's Office then wrote a termination letter to the Ministry.

9.3 Whether the Ministry sought advice from the Attorney-General in respect of the S.L. Global Agreement

On whether the Ministry of Health sought advice from the Attorney-General before signing the S.L. Global Agreement, the Officials of the Ministry answered in the negative. They explained that, at the time the Ministry signed the S.L. Global Agreement on 16th March, 2021, they were awaiting the advice of the Attorney-General in respect of the AI Maktoum Agreement. They said that upon receipt of the Attorney-General's advice in respect of the AI Maktoum Agreement, they studied the advice and realised that the issues raised by the Attorney-General were similar to those contained in S.L. Global Agreement. Based on that realisation, they took the decision to be guided by the Attorney-General's advice in respect of the AI Maktoum Agreement, hence, the decision not to seek advice on the S.L. Global Agreement.

9.4 Type of vaccine contracted under the S.L. Global Agreement

The Minister reiterated that the Ministry agreed to procure the Sputnik-light Vaccine (single dose) for US\$26 per dose under its original Agreement with S.L. Global dated 16th March, 2021 but the parties later revised the product to Sputnik-V Vaccine at US\$18.50 per dose under the Amendment to the Agreement dated 14th April, 2021.

9.5 Correspondence from the Ministry of Finance and Bank of Ghana

9.5.1 The Committee wrote to the Ministry of Finance and requested the following information:

- i. Whether any money has been paid in respect of the above two Agreements and if yes, the amount paid; and
- ii. The payment instruments used, if any.

Regarding the Vaccine Supply Agreement between the Government of the Republic of Ghana and His Highness Sheikh Dalmook Al Maktoum for the supply of Sputnik-V COVID-19 Vaccines, the Ministry of Finance in response to the Committee's request in a letter of 26th July, 2021 indicated as follows:

- i. The Ministry of Finance received a request from the Ministry of Health in respect of the purchase of Sputnik-V, COVID-19 vaccines from the Office of H. H Sheikh Ahmed Dalmook Al Maktoum for the supply of 300,000 thousand doses at the total cost of US\$5,700,000.00. The request from the Ministry of Health was dated 10th March, 2021 and received at the Ministry of Finance on 11th March, 2021.
- ii. Under clause 4.2 of the Contract Agreement, 50% of the payment was to be made through the establishment of sight Letter of Credit (LC) and the remaining 50% through confirmed letter of credit.

9.5.2 According to the Bank of Ghana in its letter of 31st March, 2021, out of the total amount of US\$5,700,000.00 owed to Sheikh Al Maktoum, an amount of US\$2,850,000.00 representing 50% has been paid to him and that translates into a Cedi equivalent of GH¢16,331,640.00 converted at the exchange rate of US\$1 to GH¢5.73.

In the case of the Partnership Agreement between S. L. Global and the Government of Ghana (represented by the Ministry of Health) for the supply of Sputnik-V COVID19 Vaccines, the Ministry of Finance in the same letter, informed the Committee of the following:

- i. The Ministry of Finance received a request for the establishment of Letters of Credit for the supply of 5,000,000 Sputnik-V COVID-19 vaccines at a total cost US\$92,500,000.00. The Letters of Credit to be established was to cover 15% of the cost. Under the original transaction, it was to be pre-financed by S.L. Global and payment was to be done within a period of three (3) years.

- ii. The Ministry of Finance was in the process of requesting for the term sheet and Public Procurement Authority approval when it had notification that the contract had been revised/reviewed. The Ministry of Finance received an amended Contract without the relevant approval documents and therefore no further action had been taken.

9.6 Future plans to procure COVID-19 Vaccines

The Minister informed the Committee that the delivery schedules that had been promised through the government to government arrangement was very close, as we may begin to receive doses from COVAX around mid-July and by end of July or early August, 2021. He also told the Committee that the African Medicine Supplies Platform had changed our request from AstraZeneca to Johnson and Johnson Vaccines which was yet to be approved by our Food and Drugs Authority (FDA). As already mentioned, the Minister said the strategy of the Ministry was that, though we were looking for close to about 43 million doses, we only signed for 3.4 million when we got the opportunity to buy Sputnik V because more supplies were being expected. He reiterated that there was no need to lock ourselves up into large volumes of vaccines. He also stated that the Ministry had plans that would bring in vaccines to Ghana as soon as possible. He, however, added that, in view of the scarcity of vaccines across the globe, there had been pressure from G8, WHO and the United Nations to compel richer countries that have procured vaccines in abundance and were not using, to share their doses with poorer ones. He was therefore of the conviction that, from the generosity of the richer countries, Ghana may be receiving deliveries even before the end of July, 2021.

10.0 FINDINGS OF THE COMMITTEE

10.1 Non-Compliance of Article 181(5) of the 1992 Constitution

10.1.1 The Committee found that the Procurement and Supply of the Sputnik-V Covid-19 Vaccines between the Government of the Republic of Ghana (represented by the

Ministry of Health) and the Private Office of His Highness Sheikh Ahmed Dalmook Al Maktoum, is an international Agreement. The Committee therefore took the considered view that the Agreement qualifies as an International Business or Economic Transaction and the legal implication is that, the Agreement required a prior Parliamentary approval to come into operation in accordance with Article 181(5) of the 1992 Constitution. The view of the Committee aligns with the advice of the Hon. Minister for Justice and Attorney-General and the ratio in the case of the ***Attorney-General v. Balkan Energy Ghana Limited & Others [2012] GHASC 35.***

10.1.2 The Committee found that S. L. Global was a Ghanaian Incorporated Company, hence the Ministry's Agreement with the Firm did not qualify as an International Business or Economic Transaction where Parliamentary approval would be required.

10.2 Procurement process

10.2.1 The Committee found that the Ministry of Health did not seek approval from the Board of PPA under Sections 40 and 41 of Act 663 before signing the Agreements. The Ministry however, applied for ratification under Section 90(3) (c) of the Act. Which has still not been granted.

10.2.2 The Committee also found that PPA has not concluded its investigations into the matter.

10.3 Dealings with Distributors

The Committee found that the Ministry dealt with the Private Office of His Highness Al Maktoum and S. L. Global. The two entities were appointed by the Aurugulf Health Investment (Abu Dhabi, United Arab Emirates), to be both Agents and Distributors of the Sputnik-V COVID-19 Vaccines in Ghana. Clearly using middlemen for the purchase and distribution of the vaccine.

10.4 Cost of the Vaccines

10.4.1 The Committee found that the amount of US\$19.00 was the agreed price of the vaccine under the Ministry's Agreement with Al Maktoum and US\$18.50 under the Agreement with S. L. Global which was originally \$26 per dose.

10.4.2 The Committee found that the ex-factory price of the Sputnik-V Vaccine was US\$10.00.

10.4.3 The Minister explained that the prices achieved under the two Agreements included the cost of documentation, shipping, packaging, logistics and expenses in relation to transportation of the vaccine from its place of origin to Ghana.

10.5 Decision to Procure the Vaccines

The Committee found that the Ministry entered into the two Agreements without cabinet approval but only based on a Ministerial decision, having regard to the advice of the COVID-19 Emergency Operating Committee.

10.6 Payment to Messrs Al Maktoum

The Committee found that the amount of US\$2,850,000.00 (representing 50% of the contract sum of US\$5,700,000.00) has been paid to Messrs Al Maktoum and this translates into the Cedi equivalent of GH¢16,331,640.00 converted at the then prevailing exchange rate of US\$1 to GH¢5.73 whereas the minister said he had no knowledge of payment under oath.

11.0 RECOMMENDATIONS

Based on the afore-mentioned findings, the Committee recommends as follows:

11.1 Issues Relating to Article 181(5) of the Constitution

11.1.1 The Committee is of the opinion that even if the situation in the country at the time the Agreement was signed, was that of an emergency, due process of law should have been followed because Parliament would have treated the issue with the urgency it deserved and the appropriate action would have been taken accordingly. The Agreement would have been taken under certificate of urgency in accordance with the Standing Orders and the practices of the House.

11.1.2 The point must also be made that, even if it was an emergency, the Minister should have found time to communicate effectively and engage with the Committee on Health. The extensive engagement would have saved the Ministry from the negative reactions from the citizenry and some Members of Parliament.

11.1.3 The Committee therefore recommends that, in future, any such transaction, whether local or international, be subjected to broader stakeholder consultations and should be taken through due process of law including Parliamentary approval. Other Ministries, Departments and Agencies (MDAs) should take a cue from the recommendation, not only in the case of Agreements but also on issues relating to policies and programmes to be implemented.

11.2 Issues relating to the Procurement Process

11.2.1 The Committee found that the Ministry of Health did not seek approval from the Board of PPA under Sections 40 and 41 of Act 663 before signing the Agreements. It applied for ratification under Section 90(3) (c) of the Act. For the avoidance of doubt, Section 89(1) provides as follows *“The Board may appoint a person to conduct an investigation into a matter related to the conduct of procurement proceedings by a procurement entity, or the conclusion or operation of a procurement contract if it considers that an investigation is necessary or desirable to prevent, or detect a contravention of this Act”*. Section 90 of Act 663 as amended sets out the procedures on completion of an investigation caused by the Board of the Authority. Specifically, Section 90(1) provides

that “An investigator shall forward a copy of the investigation report to the Board”. Section 90(3) provides that “The Board shall, if satisfied that there has been a contravention of a provision of this Act or any other enactment in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include

- (a) annulment of the procurement proceedings;
- (b) cancellation of the procurement contract;
- (c) ratification of anything done in relation to the proceedings; or
- (d) a declaration consistent with the relevant provisions of this Act.”

11.2.2

12.0 **CONCLUSION**

12.1 The Committee has discharged its mandate by diligently examining the two Agreements, written and oral evidence on the subject within the parameters of the seven Terms of Reference and the timelines given by the House.

12.2 As already stated, the Committee found that the Ministry of Health did not comply with the requirements of Article 181(5) of the Constitution in respect of its Agreement with Messrs Al Maktoum. The Minister said that he did that because of the exigencies of the time when COVID-19 posed public health crisis with highest fatalities and there was urgent global search for vaccines and at that material time the Agreements were signed, all government to government sources had failed as the bilateral sources had communicated to the Ministry that they would only be able to deliver in August 2021. Suffice to say that the bilateral sources did not include Russia since Ghana had no such arrangement with Russia.

12.3 The Agreements ensuing from the negotiations have been submitted to the PPA for ratification, the Committee determined that the Agreements were entered into without

prior approval by PPA under Sections 40 and 41 of Act 663. Indeed, at the time of completing its work, PPA was yet to do the ratification.

- 12.4 The Committee urges the Minister for Finance to take steps to recover the money due the Republic in respect of the amount of US\$2,850,000.00 (Cedi equivalent of GH¢16,331,640.00) being the cost of the Sputnik-V vaccines that were proposed to be procured.

The Committee, by consensus, recommends to the House to adopt this Report.

Respectfully submitted.

.....
HON. ALEXANDER K. AFENYO-MARKIN
CHAIRMAN OF THE COMMITTEE

.....
PEACE FIAWOYIFE (MS)
CLERK TO THE COMMITTEE

AUGUST 2021

