



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

**REPORT OF THE  
COMMITTEE ON CONSTITUTIONAL, LEGAL  
AND PARLIAMNETARY AFFAIRS**

**ON THE  
ARMED FORCES (AMENDMENT) BILL, 2022**

*6<sup>TH</sup> JULY, 2023*

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**1.0 INTRODUCTION**

- 1.1 The Armed Forces (Amendment) Bill, 2022 was laid in Parliament on 25<sup>th</sup> July, 2022 by Hon Francis-Xavier Kojo Sosu pursuant to Article 106 (1) of the 1992 Constitution.
- 1.2 The Bill was subsequently referred by the Rt Hon Speaker to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to Article 106 (4) of the 1992 Constitution and Order 179 of the Standing Orders of Parliament.

**2.0 DELIBERATIONS**

- 2.1 The Committee met on 27<sup>th</sup> May, 2023 and considered the Criminal Offences (Amendment) Bill, 2022. In attendance at the meeting to assist the Committee in its deliberations were Justice Dennis Dominic Adjei (Justice of the Court of Appeal), Ms Agnes Quartey-Papafio (Chief State Attorney at the Office of Attorney-General Department) and her other technical staff, Mr Nene Ahoma Korda (Ghana Bar Association) ACP Benjamin Osei Addae (Ghana Police Service), Ms Mercy Larbi (Deputy Commissioner, Commission on Human Rights and Administrative Justice), Mr Andrew Nethercott (British High Commission), Mr Saul Lehrfreund ( Death Penalty, UK), CSP Mrs Edem Acquah

(Ghana Prisons Service), Ms Eugenia Ayishetu Ayagibe (Women's Right) and Ms Esther Ohenewaa Brown (Action Aid Ghana).

The Ghana Armed Forces was also invited to provide clarification on certain issues. The Armed Forces was ably represented by Colonel Frederick Aboagye, Deputy Judge Advocate General and Lieutenant Colonel Ernest Awuah-Ameyaw, Acting Director, Prosecutions, both from the Ghana Armed Forces.

2.2 The Committee is grateful to all the participants for their invaluable inputs.

### **3.0 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. Criminal Act, 1960 (Act 29);
- iv. Armed Forces Act, 1962 (Act 105) and;
- v. Position Paper on Abolishing the Death Penalty in Ghana Armed Forces from the Ghana Armed Forces and the Ministry of Defence.

#### **4.0 BACKGROUND AND JUSTIFICATION FOR THE BILL**

- 4.1 There has been increasing campaign against the continuous retention of the death penalty in the criminal statutes of some countries, including Ghana.
- 4.2 The concerns have emanated from the cruel nature of the death penalty, amidst obligations on nations to observe the tenets of international human rights treaties and conventions.
- 4.3 Ghana's ratification of most international human right treaties such as Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights and International Covenant on Civil and Political Rights (ICCPR) is an indication that the country has accepted to respect the right to life and the rights of persons to live free from torture, cruel, inhuman and degrading treatment or punishment.
- 4.4 The ineffectiveness of the death penalty in serving as a deterrent to curb crime has resulted in the failure of many countries to enforce court orders in relation to same.
- 4.5 The 2022 Amnesty International Global Report on Death Penalty describes Ghana as being "Abolitionists in Practice" because of the retention of the death penalty in its statute book without enforcement. Indeed, the last execution was carried out in 1993.

- 4.6 The retention of the death penalty in the statute book of Ghana without implementation has been described as a mockery of the justice system because it is a disregard of the orders of a court of competent jurisdiction.
- 4.7 The failure of Presidents of the fourth Republic to sign death warrants of condemned persons, has in recent years culminated in the commutation of death sentences to life imprisonment. Statistics from the Ghana Prisons Service reveals nine prisoners so far have had their death sentences commuted to life imprisonments.
- 4.8 The imposition of the death penalty poses a threat to the fundamental right to life because it is final and irreversible. It is easy to compensate a convicted person exonerated of an offence, but it is impossible to give life back if the person is executed.
- 4.9 This Bill therefore seeks to respond to the foregoing discourse and concerns, by specifically amending relevant sections of Act 29 and the Armed Forces Act, 1962 (Act 105) to replace death penalty with life imprisonment.

## **5.0 OBJECT OF THE BILL**

- 5.1 The purpose of the Bill is to amend the Armed Forces Act, 1962 (Act 105) to provide for life sentence in the administration of criminal justice.

5.2 The overarching objective is to reform the criminal justice system of Ghana to meet the needs of emerging society and to bring it in tandem with international best practices of criminal jurisprudence.

## **6.0 HIGHLIGHTS OF THE BILL**

Clauses 1 to 8 seek to amend section 14, 16, 17 19, 20, and 78 of Act 105 to substitute life sentence for death penalty.

## **7.0 OBSERVATIONS**

### **7.1 Recognition for the Respect of Human Rights and Dignity**

The Committee is of the view that the core objectives of human rights provisions in Chapter Five of the 1992 Constitution is about the recognition for the value and dignity of persons. The imposition of the death penalty subjects persons to cruel, inhuman, and degrading treatment. The execution of citizens also violates the right to life and undermines Ghana's commitment to upholding human dignity, including that of the men and women in the military.

## **7.2 Irreversibility and Fallibility of the Justice System**

One of the primary concerns surrounding the death penalty is its irreversible and finality. Judicial systems, including military courts, are not infallible. Errors are inevitable and there is always risk of wrongful conviction. Executing an innocent person is an irreversible tragedy that violates the principles of justice. Replacing the death penalty in the Armed Forces Act (Act 105) would mitigate the risk of wrongful executions and ensure that no irreversible mistakes are made within the military justice system.

## **7.3 Moral and Ethical Considerations**

Many have raised concerns about the moral uprightness of the use of death penalty in retaliation for crimes committed. It is argued that taking a life in retaliation for the commission of crime is not reconciliatory, but rather perpetuates a cycle of violence, undermines the sanctity of life, and contradicts the values of compassion, forgiveness, and rehabilitation enshrined in Christian, Islamic and Traditional values.

Therefore, it goes without saying that it is equally upright to align Ghana's military justice system with the high treasured moral and ethical principles of Ghanaian values.

## **7.4 International Human Rights Obligations**

Ghana's assent to international human rights treaties and conventions, including the Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights, and

International Covenant on Civil and Political Rights (ICCPR) places an obligation on the country to respect the tenets of the conventions. The passage of this Bill will be in accord with the country's obligations which enjoins state parties to realise the abolition of the death penalty and accelerate its commitment to fulfilling international human rights standards. It will provide Ghana with the moral standing to join the global movement towards the abolition of capital punishment. Ghana will also be fulfilling the provisions of Article 37(3) of the 1992 Constitution.

#### **7.5 Rehabilitation and Restorative Justice**

Generally, the essence of punishment is principally to ensure justice and build social cohesion. As a result, punishment should not solely focus on retribution, but also strive for rehabilitation and restorative justice. The death penalty eliminates the possibility of reform and denies individuals the opportunity to reintegrate into society. The passage of the Bill will enable Ghana to adopt alternative forms of punishment that prioritise rehabilitation and reintegration. This will foster a more just and compassionate military justice system that aims to transform individuals rather than simply punishing them.

#### **7.6 Redundancy of the Provisions related to the Death Penalty**

The Committee noted that even though the death penalty has remained in the Armed Forces Act since it was enacted,



the last time it was enforced was about four decades ago. The provisions are therefore found in the statute but without enforcement. The mere fact that there has not been any execution for over forty (40) years ago, means the death penalty provisions in the Armed Forces Act has out-lived its usefulness as a deterrent action. It is extremely doubtful that the death penalty provisions in the Armed Forces Act ever served as a deterrent because even the most sophisticated empirical studies have failed to demonstrate any clear evidence of a deterrent effect from the use of the death penalty. The need has therefore arisen to amend relevant sections of Act 105 to replace death penalty with life imprisonment in order to maintain a high level of certainty in the military justice system.

#### **7.7 Fiscal Impact Assessment**

The Committee received Fiscal Impact Assessment report on the Bill in compliance with Section 100 of the Public Financial Management Act, 2016 (Act 921). The Fiscal Impact Assessment report indicates that there were **15,185** prisoners in Ghana as at June 26 2023. The feeding cost per person per day of all manner of prisoners, irrespective of the offence is **GHS1.80**. This gives a total average feeding cost of **GHS10,167,876** per year.

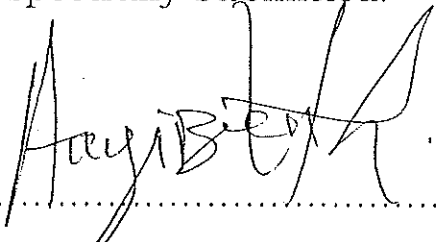
Considering that since 1993, no President of the Republic has signed death warrant for the execution of those sentenced to death and the fact that the daily amount spent per prisoner does not vary in spite of the category of prisoners, it is appropriate to conclude that replacing death penalty with life imprisonment will not have any financial burden on the State. Contrary, it will reduce existing costs incurred by the State relating to the security, medical, and psychological needs of inmates on death row. This is because, prisoners on death row require close supervision than other inmates. Moreover, because prisoners on death row are prohibited from participating in educational and recreational activities, their heightened senses of isolation, distress, and anxiety may increase the need for medical attention and psychiatric assistance.

## **8.0 CONCLUSION**

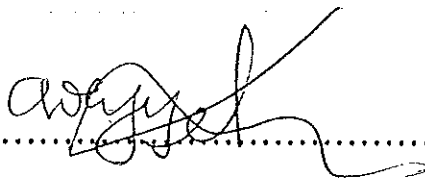
The Committee after examining the Bill and its accompanying memorandum, together with inputs from major stakeholders, came to a realisation that public opinion supports the proposed amendment. It is the view of the High Ranks within the Military Command and the Ministry of Defence that the death penalty be replaced with life imprisonment in tandem with international human rights laws and value systems of the Ghanaian tradition.

The Committee accordingly recommends to the House to adopt its report and pass the Armed Forces (Amendment) Bill, 2022 into law, in accordance with Article 106 of the 1992 Constitution.

Respectfully submitted.



HON. KWAME ANYIMADU-ANTWI  
(CHAIRMAN, COMMITTEE ON CONSTITUTIONAL,  
LEGAL, AND PARLIAMENTARY AFFAIRS)



MRS. AKUA DUROWAA OWUSU-AGYEKUM  
(HEAD, LEGAL COMMITTEES CLUSTER)

*5<sup>th</sup> July, 2023.*