

IN THE FIRST MEETING OF THE FOURTH SESSION OF THE FIFTH PARLIAMENT

**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL AND PARLIAMENTARY
AFFAIRS ON THE CRIMINAL OFFENCES (AMENDMENT) BILL**

1.0 INTRODUCTION

1.1 Parliament was first seized with the Criminal Offences (Amendment) Bill on the 26th of May 2010 when it was presented and read the first time in the House. Subsequently, the Hon. Attorney-General and Minister for Justice by leave of the House withdrew the Bill and re-presented a new one to the House on the 12th of December 2011. The Rt. Hon Speaker subsequently referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to article 106(4) and (5) of the Constitution and Order 179 of the Standing Orders of the House.

2.0 DELIBERATION

2.1 The Committee met on Wednesday, 8th February, 2012 to consider the Amendment Bill. The technical team from the Ministry of Justice led by the Deputy Attorney-General and Deputy Minister for Justice, Hon. Ebo Barton-Odro and Mr. Samuel Thompson Essel, Chief Executive Officer of the Financial Intelligence Centre were in attendance at the invitation of the Committee to assist in deliberations on the Bill.

The Committee is therefore grateful to them for their attendance and input.

3.0 REFERENCE DOCUMENTS

3.1 The Committee had recourse to the under-listed documents during the deliberations:

- a. The 1992 Constitution,
- b. The Standing Orders of Parliament,
- c. Criminal Offences Act, 1960 (Act 29)
- d. Criminal and other Offences (Amendment) Bill

2.0 **BACKGROUND**

The issue of arrest, detention, or abduction of individuals against their will in some jurisdictions and consequently the deprivation of such individuals of their personal liberties has engaged the attention of the United Nations. The United Nations has observed that these acts are more often than not, perpetuated by organised groups or individuals acting either directly or indirectly on behalf of their governments. Such conducts often results in the enforced disappearance of the individuals concerned.

The United Nations General Assembly per its Resolution 47/133 declared the enforced disappearance of persons as a crime and therefore enjoins member countries to ensure the protection of all persons from enforced disappearance and such other related conducts. To prevent this occurrence, it is important to ensure strict compliance with the body of principles for the protection of all persons under any form of detention or imprisonment as contained in the annexure to United Nations Resolution 43/143.

Further to the above, the annex to the Economic and Social Council Resolution 1989/65 endorsed by the General Assembly also provides for the effective prevention and investigation of extra-legal, arbitrary and summary executions.

The need for Ghana as a member of the comity of nations to discharge its international obligations by domesticating these international treaties on these matters to combat the act of enforced disappearance and other related criminal conducts necessitated the introduction of this Bill.

3.0 OBJECT OF THE BILL

4.1 The Bill seeks to amend the Criminal Offences Act, 1960 (Act 29) to include the unlawful use of human parts, enforced disappearance, sexual exploitation, illicit trafficking in explosives, firearms and ammunition, participation in organised criminal groups activities and racketeering in the Act 29 as criminal offences and to prescribe the requisite sanctions for such offences.

4.0 PROVISIONS OF THE BILL

Clause 1

Clause 1 of the Bill amends the principal enactment by the insertion after section 69A of Section 69B which seeks to criminalize the unlawful use of human parts.

Clause 2

This Clause provides for a new section, section 95B to criminalise the enforced disappearance of persons in compliance with the country's obligations under the United Nations General Assembly Resolution on the Protection of all Persons from Enforced Disappearance.

Clause 3

Under clause 3, Section 101 of the principal enactment is amended by the insertion of section 101A to define the offence of sexual exploitation.

Clause 4

Clause 4 amends section 192 of the principal enactment by inserting section 192A to provide for the offence of illicit trafficking in explosives, firearms and ammunition.

Clause 5

Clause 5 creates new sections 200A and 200B after section 200 of the principal enactment to define organised criminal group and racketeering respectively.

5.0 OBSERVATIONS

6.1 Unlawful use of human parts

The Committee observed that, the illicit practice of the removal of human organs such as kidneys and the drawing of human blood which is associated with ritual murder are currently unknown to the criminal law regime of Ghana and therefore makes it difficult for the country to support global initiatives towards combating this menace. The criminalisation of this heinous practice by its inclusion in the body of our criminal laws would therefore provide Ghana the necessary impetus to complement international efforts at fighting the menace to eliminate such criminal conducts both within and outside the jurisdiction. This is so in view of the fact that Ghana would be properly positioned to assume jurisdiction over such offences even when committed outside the jurisdiction.

6.2 Enforced disappearance

The Committee further observed that there is a clear distinction between abduction, kidnapping and enforced disappearance. Enforced disappearance the Committee noted is usually characterised by torture which results in the person living in constant fear of harm or death. Victims of enforced disappearance are never released and their fate remains unknown to their families and friends.

The Committee observed that, this act constitutes a violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which protect the right to life, liberty and security of all persons. In the wake of a clarion call by the international body for united efforts to combat this phenomenon, the Committee considers the incorporation of enforced disappearance of persons as a serious offence in the body of our criminal laws which is a step in the right direction. The Committee therefore proposes that the upper limit on sentencing in this regard should be set high enough in order to instill deterrence of, prevention and requisite harsh punishment for the commission of such offence.

Sexual exploitation, Illicit trafficking in explosives, firearms and ammunitions

The Committee also took note that, the Mutual Evaluation Report on the Financial Action Task Force (FATF) against anti-money laundering and terrorist financing relating to the 40+9 recommendations requires Ghana to criminalise sexual exploitation including the sexual exploitation of children and illicit trafficking in explosives and ammunition. The recent evaluation report indicated that, the overall level of compliance for Ghana was poor and as such, Ghana is expected to include such offences in the body of its criminal laws. As a member of the comity of nations in a common fight against transnational organised crime, the inclusion of provisions on the above listed conducts in Ghana's criminal legal regime would contribute to making the country unsafe for the perpetrators of such crime.

Organised criminal group and racketeering

The Committee observed that the United Nations passed the Vienna Convention against trafficking of narcotics which Ghana ratified. The United Nations subsequently noted that, there were nineteen (19) other offences in money

laundering through trans-national organised crime which called for the enactment of appropriate legislation to combat same. The participation in organised criminal group action and racketeering has been identified as part of the nineteen (19) predicated offences for money laundering and terrorist financing.

The criminalization of the above conducts as part of the list of predicated offences relating to money laundering and terrorist financing would undoubtedly render this jurisdiction an unsafe haven for money launders and terrorists. This would enable Ghana not to only support fully international efforts at combating transnational organised crimes in all its forms but also make the Republic a safer place for the conduct of business and thus, be able to attract more investments which would consequently improve economic conditions generally as well as the standard of living.

Amendments proposed –

The Committee in the light of foregoing proposes the following amendments for consideration by the House:-

- i. Clause 1 – Amendment proposed – Paragraphs (a) delete “organs” and insert “parts”
- ii. Clause 1 – Amendment proposed – Paragraphs (b) delete “organs” and insert “parts”
- iii. Clause 1 – Amendment proposed – sub clause (2) – line 1, delete “means” and insert “includes” and in line 2 at the end of the sentence insert “or human blood”
- iv. Clause 5 – Amendment proposed – Delete and insert the following:
“ 5. The principal enactment is amended by the insertion after section 200 of sections 200A and 200B

"Organised criminal group

200A "(1) A person who participates in an organised criminal group commits an offence and is liable on conviction to a term of imprisonment of not less than five years.

(2) An organised criminal group is a structured group existing for a period of time and acting in concert with the aim of committing a serious offence.

(3) For the purposes of subsection (2)

(a) "serious offences" means an offence for which the penalty is imprisonment for a period of not less than twelve month; and

(b) "structured group" consist of two or more persons not randomly formed for the commission of an offence, and in which the members may or may not have defined roles, continuity of membership or which may not have a developed structure.

"Racketeering

200B. "(1) A person who engages in racketeering commits an offence and is liable on conviction to a term of imprisonment of not less than five years.

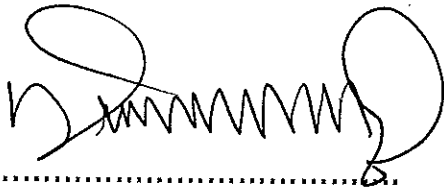
(2) For purposes of subsection (1) racketeering is the act of operating an illegal business or scheme in order to make a profit perpetuated by a structured group.

(3) Criminal acts associated with racketeering include bribery, prostitution, sexual exploitation of persons, gambling, narcotic drug offences, money laundering, human trafficking and migrant smuggling".

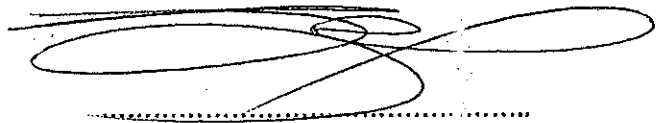
8.0 RECOMMENDATIONS AND CONCLUSION

The Committee has carefully examined the provisions of the Bill in the light of its object and purpose and is of the view that they are consistent with the Constitution and other relevant statutes and accordingly recommends its passage by the House subject to the above proposed amendments.

Respectfully submitted.



EBENEZER AHUMAH DJIETROR
PRINCIPAL ASSISTANT CLERK
COMMITTEE ON CONSTITUTIONAL,
LEGAL & PARLIAMENTARY AFFAIRS



HON. EMMANUEL K. BANDUA
CHAIRMAN, COMMITTEE ON
CONSTITUTIONAL, LEGAL &
PARLIAMENTARY AFFAIRS

MARCH 2012.

