

**REPORT OF THE JOINT COMMITTEE OF CONSTITUTIONAL, LEGAL
AND PARLIAMENTARY AFFAIRS AND DEFENCE AND INTERIOR ON
THE TRANSFER OF CONVICTED PERSONS BILL**

1.0 INTRODUCTION

1.1 The Transfer of Convicted Persons Bill was presented and read the first time in Parliament on 17th May, 2006. Mr. Speaker referred the Bill to the Joint Committee of Constitutional, Legal and Parliamentary Affairs and Defence and Interior pursuant to article 106(4) and (5) of the Constitution, and Standing Orders 179 and 158 respectively for consideration and report.

2.0 DELIBERATIONS

2.1 The Committee held a number of meetings and consultative sessions with relevant stakeholders. In attendance at its meetings were the Director-General of the Ghana Prisons Service; the technical team from the Attorney-General's Department led by Mrs. Estelle Appiah, Director, Legislative Drafting; Dr Raymond Atuguba and Mr. Bassit Abdul Aziz all of the Faculty of Law, University of Ghana and the Legal Resources Centre, amongst others. The Committee is grateful to them for their presence and inputs in its deliberations.

3.0 REFERENCE DOCUMENTS

3.1 The Committee had recourse to the under-listed documents in considering the referral.

- a. The 1992 Constitution
- b. The Standing Orders of Parliament
- c. The Extradition Act 1960 (Act 22)
- d. The Courts Act, 1993 (Act 459)

4.0 **BACKGROUND**

- 4.1 The current law on imprisonment does not permit the transfer of foreign nationals convicted and sentenced by Ghanaian Courts for offences committed in our jurisdiction from serving their sentences in their respective countries and vice versa. The Extradition Act 1960, (Act 22) only permitted a person accused of an offence committed outside Ghana to serve the term of imprisonment in this country where the Republic has an extradition agreement with the other country. Further to this, the request for extradition of the accused person can only be made where the act or omission in question constitutes an offence in both jurisdictions. The above specified conditions for the transfer of accused or convicted person under the Extradition Act poses severe limitation.

The Commonwealth Secretariat has proposed a scheme for member countries to enact legislation to facilitate the transfer of convicted prisoners to address issues where extradition does not respond to the transfer of convicts. Twenty-five member countries of the Commonwealth have so far enacted legislation in this regard. In addition to the above, the President of the Republic continues to receive persistent requests during his visits abroad from citizens abroad for Ghanaian convicts to serve their prison terms in Ghana. The introduction of the Bill was informed by the above stated concerns.

5.0 **OBJECT AND PURPOSE OF THE BILL**

- 5.1 The Bill seeks to facilitate the transfer of convicted persons from the Republic to another Country and from another Country to the Republic for the purpose of serving a prison term and for related matters.

6.0 **PROVISIONS OF THE BILL**

The Bill comprises three main parts as follows:

- 6.1 Part one deals with the subject matter and provides for request to be made by competent authority of sentencing country to the Republic, request to be made by convicted person, qualification for the transfer of convicted person, the grant of application for transfer of convicted person, issue of warrant by the Minister of the Interior, receiving of convict by the Director-General, information on enforcement, and application for adaptation and adoption of a foreign order.
- 6.2 Part two focuses on the transfer of a convicted person out of Ghana and makes specific provision for the Attorney-General to request the transfer of a convict, the issuance of a warrant for transfer out of Ghana, and the validity of consent given by a convict.
- 6.3 The final part makes general provisions for appeals; pardon, amnesty, commutation or review; transit; cost of transfer; power to issue regulations and interpretation amongst others.

7.0 **OBSERVATIONS**

- 7.1 The Committee observed that even though the general principles and policy underlining the Transfer of Convicted Persons Bill are laudable, there are a number of concerns which must be addressed during implementation. These include congestion in our local prisons, establishing the nationality of convicted persons; cost of transferring convicted persons, logistical limitation and the abolishing of death penalty in some jurisdiction.

7.1.1. Congestion in Our Local Prisons

The Director-General of the Prisons Service advised the Committee that even though our prisons were constructed to confine a maximum of eight thousand inmates, currently the total number of inmates is twelve thousand five hundred. Some Members therefore felt that the passage of this Bill and the consequent transfer of Ghanaian convicts outside the Country to serve their prison term in Ghana may rather aggravate the current problem of congestion in our prisons. The Committee was reliably informed that out of the twelve thousand five hundred convicts, six hundred and fifty are foreign nationals. The Committee was unable to ascertain the number of Ghanaian nationals serving their prison term outside the jurisdiction but noted that, there are about one hundred Ghanaian convicted persons serving their prison term in Thailand.

Majority of Members of the Committee after having examined the above issue held the view that, passage of the Bill would also provide opportunity for foreign convicts serving their sentences in Ghanaian prisons to also apply and leave the jurisdiction to continue their prison term in their various countries. It was also observed that ordinarily, many Ghanaian prisoners would be reluctant to apply to be transferred to Ghana to continue their prison term. Consequently the presumed aggravation of the problem of congestion in our prisons is not well founded.

7.1.2 Establishing Nationality of Convicted Persons

Some Members including some stakeholders expressed concern about possible difficulty in establishing the citizenship of some convicted persons serving their prison term outside the jurisdiction who, on passage of this Bill

might want to be transferred to Ghana. The Committee however observed that establishing the citizenship of a Ghanaian convict is not a major challenge. This is because citizenship is a matter of law which has been adequately dealt with in the Citizenship Act 2000, (Act 591). The Act provides as follows:

"20. Certificate of Citizenship in Doubtful Cases

The Minister may, on an application made by or on behalf of a person with respect to whose citizenship of Ghana a doubt exists under this Act, certify that the person is a citizen of Ghana and a certificate issued under this section is prima facie evidence that that person was a citizen at the date indicated in the certificate, but without prejudice to any evidence that that person was a citizen at an earlier date.

21. Evidence

- 1) A document purporting to be a notice, certificate, an order or a declaration or an entry in a register, or a subscription to an oath of allegiance, given, granted or made under this Act shall be received in evidence.
- 2) The evidence may be given by the production of a certified true copy of the document.
- 3) An entry in a register made under this Act shall be received as evidence of the matters stated in the entry."

The relevant authorities have always applied the above provisions in determining Ghanaian Citizenship.

7.1.3 Cost of Transferring Convicted Persons and Logistical Limitation

The cost of transferring convicted persons to serve their prison term in other jurisdictions vis-à-vis logistical limitation also came up in the Committee's deliberations. Some Members contended that, the above issue could impose extra financial burden on the Republic which to them is unnecessary. The high cost of maintenance especially feeding and medical care of inmates was also of concern to those Members of the Committee. The passage of this Bill in their view may eventually exacerbate the above situation.

However, majority of Members of the Committee observed that the Bill makes provision for cost sharing between the sentencing Country and the Country to administer the penalty after the transfer. They also observed that the Bill specifically provides for long term agreement on apportionment of cost associated with the transfer of convicted persons. They further maintained that, it was even not automatic that on passage of the Bill all Ghanaians serving prison terms abroad would apply to be transferred to Ghana to continue their prison term. Majority of the Members held the view that it was more likely that most Ghanaian prisoners outside the jurisdiction would for various reasons rather prefer to serve their term of imprisonment abroad than in Ghana.

7.1.4 Abolishing of Death Penalty in Some Jurisdiction

Some stakeholders, particularly from academia pointed out possible implementation challenges; especially where a convict serving a death sentence is to be transferred under the Act to another jurisdiction where death penalty has been abolished. The Committee upon careful examination of the above concern noted that the Bill seeks to deal with convicted persons

serving sentences of terms of imprisonment therefore the issue of persons sentenced to death will not arise since such persons would not qualify under the Bill.

- 7.2 The Committee noted that fact that even though conditions in Ghanaian prisons require significant improvement; the inhumane conditions in prisons in which some Ghanaian convicts serve outside the jurisdiction equally call for concern.

It is important to note that the transfer of accused or convicted persons from one jurisdiction to another for trial or imprisonment is not a novelty. The Extradition Act, 1960 enables countries with extradition treaties between them to have accused or convicted persons to be extradited to and from their respective jurisdictions for trial or imprisonment. The Committee observed that, the Commonwealth Secretariat has proposed a scheme for Member countries to enact legislation to facilitate the transfer of convicted prisoners to address issues where extradition does not respond to the transfer of convicts. The following twenty-five Commonwealth Countries have already enacted this legislation: Anguilla, Australia, Bahamas, British India Ocean territories, British Virgin Islands, Canada, Cayman Island, Cook Islands, Cyprus, Sovereign base areas of Akrotiri and the Dhekelia, Falkland Island, Gibraltar, Guernsey, Isle of Man, Malawi, Malta, Montserrat, Samoa, Saint Helena and Dependency, Sri-lanka, Kingdom of Tonga, Trinidad and Tobago, Uganda, United Kingdom and Zimbabwe.. It is therefore appropriate that Ghana, being one of the members of the Commonwealth pass this Bill to deal with the subject matter.

7.3 Amendments Proposed

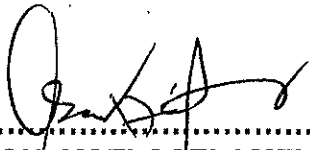
The Committee proposed the following amendments to the Bill for the consideration of the House

- I. Long Title – amendment proposed – *delete* “one country to another” and *substitute* “the Republic to another country and from another country to the Republic”.
- II. Clause 1 – amendment proposed – at end *delete* “this country” and *substitute* “the Republic”.
- III. Clause 2 - amendment proposed – sub clause 3 *delete* and *substitute* “subject to sub section 4 the Attorney-General shall within thirty days upon receiving an application, communicate a decision on the request to the competent authority of the specified country after consultation with the Minister for the Interior, the Director-General of the Prison Service and other relevant state bodies”.
- IV. Clause 3 – amendment proposed – sub clause 4 line 1 after “submitted” *insert* “within thirty days”.
- V. Clause 4 – amendment proposed – head note *delete* “qualification” and *substitute* “conditions”.
- VI. Clause 4 – amendment proposed – paragraph d *delete* “term of imprisonment” and *substitute* “sentence”.
- VII. Clause 10 – amendment proposed – sub clause 4 line 2 after “shall” *insert* “within thirty days”.
- VIII. Clause 11 – amendment proposed – sub clause 3 paragraph b line 1 before “not literate” *insert* “blind, deaf, dumb or”.
- IX. Clause 11 – amendment proposed – sub clause 5 paragraph a line 4 *delete* and *substitute* “of the country of the convict to take custody of the convict”.

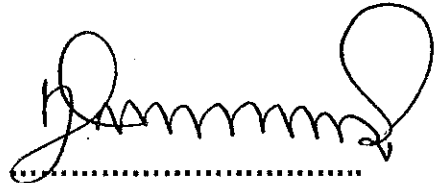
- X. Clause 12 – amendment proposed – head note *delete* and *substitute* “consent not to be withdrawn”.
- XI. Clause 12 – amendment proposed – line 2 *delete* “can” and *substitute* “shall”.
- XII. Clause 13 – amendment proposed – sub clause 2 line 3 *delete* “8” and *substitute* “9”.
- XIII. Clause 14 – amendment proposed – sub clause 2 line 3 *delete* “communication” and *substitute* “commutation”.
- XIV. Clause 15 – amendment proposed – sub clause 1 *delete* “transfer convict” and *substitute* “a convict on transfer”.
- XV. Clause 18 – amendment proposed –*delete* “contents” and *substitute* “content” and at end *delete* “5(2) and 10(2)” and *substitute* “6(2) and 11(2)”.
- XVI. Clause 18 – amendment proposed – page 8 line 2 at beginning insert “and sentenced”
- XVII. Clause 18 – amendment proposed – page 8 line 4 *delete* “and” and at end add “and lodging”
- XVIII. Clause 18 – amendment proposed – page 8 line 5 *delete*
- XIX. Clause 18 – amendment proposed – page 8 line 6 *delete* and *substitute* “ ‘Director-General’ means the Director-General of the Ghana Prisons Service”
Clause 18 – amendment proposed – page 8 line 11 at beginning *delete* “national”

8.0 **RECOMMENDATION AND CONCLUSION**

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



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