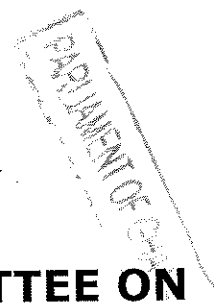
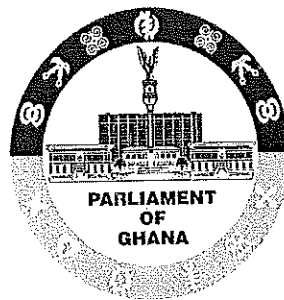




**IN THE THIRD SESSION OF  
THE SIXTH PARLIAMENT OF  
THE FOURTH REPUBLIC OF GHANA**



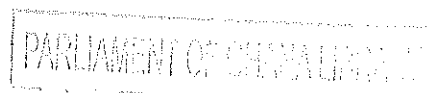
**REPORT OF THE COMMITTEE ON  
CONSTITUTIONAL, LEGAL AND  
PARLIAMETARY AFFAIRS**

**ON THE  
TRANSFER OF CONVICTED PERSONS  
(AMENDMENT) BILL, 2014**

**FEBRUARY 2015**

Acc No: 1586

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## **1.0 INTRODUCTION**

1.1 The **Transfer of Convicted Persons (Amendment) Bill, 2014** was presented to Parliament and read the first time on **Wednesday, 19<sup>th</sup> November, 2014**. In accordance with Article 106(4) and (5) of the Constitution and Order 179 of the Standing Orders of the House, the Rt. Hon. Speaker referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report.

1.2 The Committee expresses gratitude to the Honourable Minister for Justice and Attorney-General, Mrs. Marietta Brew Appiah-Oppong, the Honourable Deputy Minister for Interior, Mr. James Agalga, Officials from the Drafting Division of the Ministry of Justice and Attorney-General's Department, Officials from the National Security who were in attendance to assist the Committee in its deliberations.

## **2.0 REFERENCE**

2.1 The Committee referred to the following Documents during its deliberations.

- i. The 1992 Constitution
- ii. The Standing Orders of Parliament
- iii. The Transfer of Convicted Persons Act, 2007, (Act 743)

- iv. European Union Convention on the Transfer of Sentenced Persons (Strasbourg, 21.11.1983)
- v. Additional Protocol to the European Union Convention on the Transfer of Sentenced Persons (Strasbourg, 18.11.1997)
- vi. United Nations (UN) Handbook on the International Transfer of Sentenced Persons (2012)

### **3.0 BACKGROUND**

3.1 The ultimate aim of every penitentiary system is to reform and rehabilitate convicted persons. This is why in the implementation of prison sentences, considerable attention is paid to the rehabilitation of convicts to ensure that, they are resocialised and eventually reintegrated into society. According to the United Nations, all things being equal, convicted persons who serve their sentences in their home countries can be rehabilitated, resocialised and reintegrated into their society better than elsewhere. This is because, they can overcome difficulties such as language barriers to communication, alienation from their indigenous culture, customs and values and would not lose contact with their relatives. It may also be more humane for

convicts to serve their sentences in countries where they belong.

3.2 The issue of transfer of convicted persons has therefore become a topical issue in international human rights law, leading to the emergence of international conventions on the transfer of convicted persons. An example is the European Union Convention on the Transfer of Sentenced Persons.

3.3 The European Union Convention on the Transfer of Sentenced Persons (Strasbourg, 21.11.1983) afforded convicted persons the opportunity of serving their sentences in their home countries. By the Convention, the repatriation of a sentenced person should not only be in the interest of the state party concerned but also beneficial to the prisoner. The consent of both countries involved as well as of the person concerned is an integral element of the Convention. Therefore, a person sentenced in the territory of a state party to the Convention, may be transferred to the territory of another state party, in order to serve the sentence imposed on that person.

3.4 The substance of the European Union Convention on the Transfer of Sentenced Persons was adopted by the Commonwealth Secretariat as a Model Law for

countries that belonged to the Commonwealth. In line with the Model Law of the Commonwealth, Ghana enacted the Transfer of Convicted Persons Act, 2007 (Act 743) to facilitate the transfer of convicted persons between Ghana and other countries. Section 4 of Act 743 spells out the conditions under which a convicted person would be transferred from a Sentencing State to an Administering State. Section 4(g) of Act 743 states, **"4.The transfer of a convict to Ghana shall be subject to the following conditions..... (g)that the convict consents to the transfer or where, in view of the age, physical or mental status of the convict, the convict is unable to give consent, the consent is given by a person designated either by the Attorney-General or the appropriate authority of a Sentencing Country as being competent to give consent on behalf of the convict"**.

3.5 The European Union Convention on the Transfer of Sentenced Persons from which the Commonwealth derived its Model Law on the subject, has subsequently been amended to reflect modern trends in the International Community. In the Amended Protocol, the consent of a convicted person is waived absolutely by that convicted person when an Administering State

is requested by the Sentencing State of the convicted person to take over the execution of the sentence of the convicted person, where;

- (a) the convicted person tried to avoid incarceration by fleeing from the Sentencing State to the Administering State prior to the conviction of that person, or
- (b) the convicted person escapes from lawful custody of the Sentencing State after conviction but prior to the convicted person serving the full term of the sentence.

3.6 The Convention further provides that where the sentence passed on a convicted person, or an administrative decision consequential to that sentence includes an expulsion order or a deportation order or any other measure as a result of which that convicted person is not allowed to remain in the territory of the Sentencing State once the convicted person is released from prison, then the Administering State may accept a request for the transfer of the convicted person without the consent of that person but only after considering the opinion of that person concerning the transfer.

3.7 Though the Commonwealth has not reviewed its Model Law on the subject matter, Ghana sees the need to

amend its Law to include the Provision in the Amended Convention of the European Union as the reasons underlying the signing of the Additional Protocol to the Convention on the Transfer of Sentenced Persons (Strasbourg, 18.x11.1997), holds good for the Country. Hence the introduction of the Bill to amend the Transfer of Convicted Persons Act, 2007 (Act 743) to conform to modern international standards.

#### **4.0 OBJECT OF THE BILL**

4.1 The Bill seeks to amend the Transfer of Convicted Persons Act, 2007 (Act 743) by incorporating the substance of the Additional Protocol to the European Union Convention on the Transfer of Sentenced Persons (Strasbourg, 18.x11.1997) that waives consent of convicted persons on transfer in certain circumstances already stated in the Report.

#### **5.0 OBSERVATIONS**

5.1 The Committee observed that even though the Bill allows for the transfer of convicted persons, individual countries would have to make specific Agreements spelling out the terms and conditions of the transfer. This will afford the Sentencing State and the Administering State, the opportunity to discuss issues relating to the transfer in order not to infringe on the

Fundamental Human Rights of convicted persons. The Committee was informed by the Attorney-General that the Government is currently holding discussions with the British Government in order to sign a Treaty/Agreement for the Transfer of Convicted Persons between the two (2) Countries.

5.2 The Committee also observed that though the Bill seeks to waive the consent of convicted persons for transfer in the circumstances described afore, the waiver would not be arbitrary but would be based on conditions specified in Clause 12A, Sub-clause (2)(a) and (b) of the Bill. The conditions are that;

**(a) "the sentence passed on that convict is equal to or more than the sentence that makes that convict eligible for transfer, as specified in the Agreement for the Transfer of Convicted Persons between that foreign country and the Republic; and**

**(b) the Attorney-General has considered the representations made by the convict with respect to the transfer".**

## **6.0 CONCLUSION**

6.1 In recent times, crime syndicates have been on the ascendancy and international criminal networks have



taken advantage of technological and other developments to facilitate their operations. For this and other reasons, convicted persons can avoid incarceration by fleeing from a Sentencing State to another Country, prior to the conviction of that person. It is also possible that a convicted person would escape lawful custody from the Sentencing State after conviction but prior to serving the full term of the sentence. Hence, the need to address the legal lacunae to make it extremely difficult if not impossible, for such malefactors to escape lawful custody.

6.2 The Committee therefore recommends to the House to adopt its Report and pass the Bill subject to the proposed Amendment attached.

Respectfully submitted.

  
**ERIC OWUSU-MENSAH**  
Clerk, Committee on  
Constitutional, Legal and  
Parliamentary Affairs

  
**HON. ALBAN S.K. BAGBIN**  
Chairman, Committee on  
Constitutional, Legal and  
Parliamentary Affairs

**FEBRUARY 2015**

## **APPENDIX**

### **AMENDMENT PROPOSED TO** **THE TRANSFER OF CONVICTED PERSONS** **(AMENDMENT) BILL, 2014**

Clause 3 – Section 12A of Act 743 – Amendment proposed – Delete “into” after “transferred” and substitute “to” in Sub-clause (1), line 2.