

THE FIRST SESSION OF THE SEVENTH PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA

REPORT OF THE FOREIGN AFFAIRS COMMITTEE

ON THE REQUEST

FOR RATIFICATION OF THE AGREEMENT
BETWEEN THE GOVERNMENT OF GHANA

AND

THE GOVERNMENT OF THE UNITED STATES OF
AMERICA

ON THE

RESETTLEMENT IN GHANA OF TWO (2) FORMER
GUANTANAMO BAY DETAINEES.



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- iii. The Note Verbal between the Government of Ghana and the Government of the United States of America on the resettlement in Ghana of two (2) former Guantanamo Bay detainees.

4.0 BACKGROUND

The Government of Ghana and the Government of United States of America entered into an agreement for the resettlement of Mahmud Umar Muhammad bin Atef and Khalid Muhammad Salih Al-Dhuby of Guantanamo Bay Detainees in 6th January 2016.

The U.S Government submitted through its Embassy, a Demarche on the resettlement of the above mentioned Guantanamo Bay Detainees. Both detainees are Yemen descendants born in Saudi Arabia, and were held for fourteen years at the facility without trial.

The Demarche was pursuant to the former President of America; President Obama's political ambition to close the Guantanamo Bay detention facility and based on that, the U.S. Government requested Ghana Government's support to achieve the objective.

Successive negotiations were held between officials of the two countries, the Ministry of Foreign Affairs and Regional Integration and the National Security Coordinating Council representing Ghana, whilst His Excellency Ambassador Gene Cretz, the Special Envoy for Guantanamo Closure, and officials from the State Department in Washington represented the United States of America.

Through the exchanges of U.S. Note Verbale No. 2015 – 1422 dated 13th July 2015 and the Ghana Answering Note Verbale No. SCR. GH/ USA/ RELS dated 17TH August 2015, the two countries outline a framework and determined the arrangements for settlement of the matter concern.

The United States Government explained that the favorable consideration of the request by Ghana was considered a humanitarian gesture and further indicated Ghana's support was critical for closing down the facility.

Following the resolution, in January 2016, Government of Ghana accepted transfer of the two Yemeni ex detainees from the United States Military Prison in Guantanamo Bay in to the Country for a period of two years despite popular opposition in the country.

Some Ghanaians including Civil Society groups called for their return describing the agreement as secretive and un-constitutional. Following the agitations, in January 2016, Mrs. Margaret Banful and Henry Nana Boakye, brought an action to the Supreme Court and challenged the Constitutionality of the transfer of the two detainees, citing a violation of Article 75 of the 1992 Constitution.

On Thursday, June 22, 2017 the Supreme Court by a majority decision declared the Agreement between the then Government of Ghana and the United States of America for the resettlement the two Guantanamo Bay Detainees brought into the Country as unconstitutional. The Court ordered that Government must within the three months send the Agreement to Parliament for Ratification or have the two Detainees sent back to the United State of America.

It is in this regard that the Government of Ghana submitted the document on the Agreement to the House for consideration and Ratification in accordance with Article 75 (2) of the 1992 Constitution of Ghana.

5.0 OBLIGATIONS OF GHANA UNDER THE AGREEMENTS

Ghana is committed to satisfy the stated obligations pursuant to the Agreements as follows:

- ❖ To receive Mahmud Umar Muhammad Bin Atef and Khalid Muhammad salih Al-Dhuby;

- ❖ monitor and surveil the Subjects for at least two (2) years or longer if necessary.
- ❖ And to withhold their passports and travel documents and where appropriate and make necessary arrangements to prevent them from traveling outside Ghana for at least two years.
- ❖ Ghana to immediately notify the U.S. Government if, it became aware of any travel or the intention of either of them to travel outside Ghana;
- ❖ to regularly consult on matters regarding the status, activities, whereabouts and integration progress of the two;
- ❖ take measures to facilitate their integration into society;
- ❖ to ensure their unfettered access to legal representation of their choice and
- ❖ Ghana is to provide access, with minimal notice to the Subjects by a mutually agreed upon independent third party in the instance that both or either of them was incarcerated or detained after their resettlement;

6.0 URGENCY OF THE AGREEMENT.

6.1 The Committee observed that the Supreme Court of Ghana ruled that the note verbal between the Government of Ghana and the Government of the United States of America constituted an agreement and as such had to be submitted to Parliament for ratification. Subsequently, the Supreme Court in its ruling on the 22nd of June directed that the Government should seek the ratification of the agreement within three months or the personalities involved be sent back to the United States of America. One month has elapsed and Parliament is scheduled to go on recess on Wednesday 2nd August 2017.

6.2. The Committee is therefore of the considered view that the deadline given by the Supreme Court would have elapsed by the time Parliament resumed from recess. The Government of Ghana has indicated in the Memo submitted to the House that it intends to fulfil the commitment made by the Government of Ghana by fulfilling the requirement of Article 75(2) to enable the two personalities spend the remaining six months in line with the Agreement.

6.3. The Committee therefore is of the considered view that the Agreement is of an urgent nature and wish to recommend to the House to consider it as such.

7.0 **PURPOSE OF THE AGREEMENT**

The purpose of the Agreement is to seek the ratification of the House of the Agreement between the Government of Ghana and the Government of the United States of America on the resettlement in Ghana of Two Former Guantanamo Bay Detainees in line with Article 75(2) of the 1992 Constitution and pursuant to the directive of the Supreme Court of the Republic of Ghana

7.0 **OBSERVATIONS**

7.1 ***Compliance with Supreme Court Ruling***

The Committee observed that the agreement is submitted to the House in compliance with the Supreme Court ruling directing the Government of Ghana to obtain Parliamentary ratification of the Agreement within three months from the date of the ruling or before 22nd September, 2017. The ratification is to give effect to the Constitutional provisions of Article 75 of the 1992 Constitution.

7.2 ***Commitment to Obligation of Government***

The Committee was informed that Government does not intend to amend or change any of the obligations accepted by the Government of Ghana as contained in the note verbal, but only seeks the Ratification of the Agreement

by the House to enable it conform with provisions of Article 75(2) of the Constitution as directed by the Supreme Court.

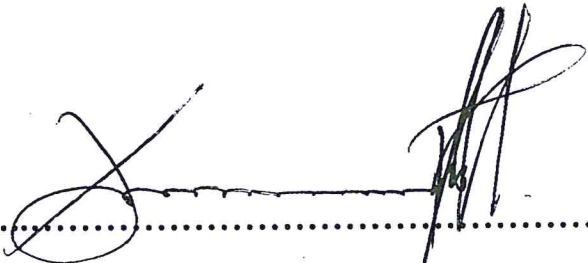
- 7.3. The Committee wanted to know whether there was any intention by government to extend the stay of the detainees at the end of the expiry of the Agreement in January 2018 as stipulated by the agreement. The Ministry explained that there is no such consideration now as the decision is subject to the decision of the detainees to apply for asylum at the expiry of the agreement in January 2018. The detainees may opt to apply for visa to stay in countries other than Ghana. The Ministry further stated that the approval of request for asylum will be subject to the recommendation of security agencies under the Ministry of the Interior.
- 7.4. The committee was informed that the Government of Ghana was informed by the government of the United States of America that no adverse findings were made linking the detainees to any terrorist group and as such they were been held at Guantanamo Bay without trial thereby infringing on their fundamental right to free movement.
- 7.4. The Committee is of the view that the Ratification of the Agreement will further strengthen the already cordial relationship between the Government of Ghana and the Government of the United States of America.

8.0 CONCLUSION

Considering the fact that no findings have linked the detainees to any terror group and the importance of the Agreement to the strengthening of the bond between the government of Ghana and the government of the United States of America, the Committee wishes to recommend to the House to adopt its report and ratify **the Agreement Between the Government of Ghana and the Government of the United States of America on the Resettlement in Ghana of Two (2) former Guantanamo Bay Detainees**

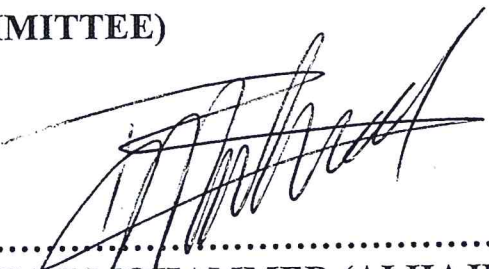
in accordance with Article 75(2) of the Constitution, and Order 183 of the Standing Orders of Parliament of Ghana.

Respectfully Submitted



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HON. ANNOH Dompok
CHAIRMAN,
(FOREIGN AFFAIRS COMMITTEE)



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INUSAH MOHAMMED (ALHAJI)
(CLERK TO THE COMMITTEE)

JULY, 2017

