

**REPORT OF THE JOINT COMMITTEE ON CONSTITUTIONAL, LEGAL
AND PARLIAMENTARY AFFAIRS AND DEFENCE AND INTERIOR ON
THE ANTI-TERRORISM BILL**

1.0 INTRODUCTION

1.1 The Anti-Terrorism Bill was presented and read the first time in Parliament on 25th October, 2005. Mr. Speaker referred the Bill to the Joint Committee on Constitutional, Legal and Parliamentary Affairs and Defence and Interior for consideration and report pursuant to article 106(4) and (5) of the Constitution, and Standing Orders 179 and 158 of Parliament.

2.0 DELIBERATIONS

2.1 The Committee held a preliminary consultative session, workshops and meetings with relevant stakeholders on the Bill. The preliminary consultative session was facilitated by the Legal Resources Centre, with support from the USAID to collate views of civil society on the Bill. In attendance were Dr Raymond Atuguba and Mr. Bassit Abdul Aziz both Lecturers at the Faculty of Law, University of Ghana, and Mr. Emmanuel Sowatey of the African Security Dialogue and Research, amongst others.

The Committee with the support of the Ministry of National Security held a two-day workshop to examine in detail provisions of the Bill. In attendance at the workshop were the technical team from the Attorney-General's Department led by Mrs. Estelle Appiah, Director, Legislative Drafting; Security Experts from the Ministry of National Security led by Mr. A. A. Ampong, Chief

Director and Col. William Ayamdo, amongst others. The Committee is grateful, to all the sponsors and resource persons, particularly the Ministry of National Security for their attendance and critical support which facilitated the work of the Committee.

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 Anti-Money Laundering Act, 2007 (Act 749)
- d. The Criminal Offences Act 1960, (Act 29)
- e. The Courts Act, 1993 (Act 459)
- f. OAU Convention on Prevention and Combating of Terrorism
- g. United Nations Security Council Resolution 1373 of 2001
- h. Commonwealth Plan of Action on Terrorism
- i. Forty Plus Nine Recommendations of the Financial Action Task Force on Money Laundering and Financing of Terrorism

The Committee also made reference to memorandum it received from the Legal Resources Centre on the Bill.

4.0 **BACKGROUND**

4.1 The scourge of terrorism and the threat it poses to life and property, has and continue to raise grave concerns about global peace and security. The terrorist attacks on the New York Trade Center in the United States of America on September 11, 2001, the City of London on the July 7, 2005, and

in the wake of other attacks on a number of countries including Kenya, Tanzania and Egypt culminated in the call for international efforts to fight against terrorism and terrorist financing on any part of the globe.

The plague of terrorism unlike ordinary warfare often results in large numbers of people being killed, massacred and maimed by terrorists in indiscriminate random acts of violence and terror. Apart from the tragic toll on humanity, terrorism has always resulted in destruction of property.

United Nations Security Council Resolution 1373 of 2001 enjoins Member states to deny safe haven to those who finance, plan, support or commit terrorist acts. The Commonwealth Plan of Action on Terrorism also requires member states to implement the United Nations Resolution 1373. Further to the UN and Commonwealth initiatives on the subject matter, the OAU Convention on the Combating and Prevention of Terrorism which has become the framework for the collective African response initiative on the subject matter also mandates member states of the OAU to review their national laws to include terrorist offences.

The need to provide for a comprehensive anti terrorism legislative framework to combat and prevent the occurrence of this menace and to project the country as an unsafe haven for perpetrators of this heinous crime necessitated the introduction of this Bill.

5.0 OBJECT OF THE BILL

- 5.1 The Bill seeks to combat terrorism, suppress and detect acts of terrorism, prevent the territory, its resources and financial services from being used to

commit terrorist acts, and to protect the rights of people in the country to live in peace, freedom, and security and to provide for related matters.

6.0 PROVISIONS OF THE BILL

6.1 The Bill is organised in five distinct sections, namely terrorist acts; terrorist offences; specified entities, search, seizure and forfeiture of properties, and miscellaneous matters.

6.2 Terrorist Act

This section provides for terrorist acts which cover clauses 1 to 5.

Clause 1

Clause 1 proscribes acts of terrorism.

Clause 2

Clause 2 defines terrorist acts and specifies in detail obnoxious acts which affect people, property and the environment, which are committed in furtherance of political, ideological, religious, racial, ethnic or other reasons that amount to terrorism.

Clause 3

Clause 3 seeks to distinguish terrorist acts from other acts not considered to fall within the scope of terrorism by stating acts not considered to amount to terrorism.

Clause 4

The meaning of terrorist act in armed conflict is stated in clause 4 with exceptions as provided for by the OAU.

Clause 5

Clause 5 provides for extended jurisdiction and confers jurisdiction on the High Court to try offences committed outside the country under specified circumstances.

6.3 Terrorist Offences

The second section of the Bill relates to terrorist offences and these are provided for in clauses 6 to 18. The offences range from the provision and use of property for the recruitment and incitement of persons for acts of terrorism to the rendering of financial services in support of such courses. The associated sanctions include a term of imprisonment of not less than two years with an option of a fine of five hundred penalty units. It also provides for a maximum term of imprisonment of not less than ten years without the option of a fine depending on the gravity of the offence.

Clauses 6 and 7

Clause 6 prohibits the provision or collection of property to commit acts of terrorism and clause 7 also prohibits the provision of financial services for the commission of a terrorist act.

Clauses 8 and 9

Clause 8 makes it a criminal offence to use a property for the commission of terrorist acts and clause 9 criminalises the concealment, transfer or removal from the jurisdiction of property used for the commission of a terrorist offence.

Clauses 10 and 11

Offences relating to dealing with terrorist property and the support of terrorist acts are provided for in clauses 10 and 11 respectively.

Clauses 12 and 13

Clauses 12 and 13 proscribe the harbouring of persons committing terrorist acts and the provision of a lethal device to terrorist groups.

Clauses 14 and 15

Recruitment of members of terrorist groups and the provision of training and instructions to such groups are criminalised and these are covered in clauses 14 and 15 respectively.

Clause 16

Clause 16 proscribes the incitement, promotion or solicitation of property for terrorist acts.

Clauses 17 and 18

The provision of facilities in support of terrorist acts and the arrangement of meetings in support of terrorist groups are all criminalised in clauses 17 and 18 respectively.

6.4 Specified Entities

The third section of the Bill covers clauses 19 to 23 and relates to specified entities which are defined as groups associated with acts of terrorism.

Clauses 19 and 20

Clause 19 empowers the Minister for the Interior to declare by publication in the gazette an entity as specified while clause 20 authorises the Minister to revoke the specified entity orders so published.

Clauses 21, 22 and 23

Clause 21 avails persons aggrieved by the specified entity orders so published the opportunity to seek redress in court, and clause 22 provides for periodic review of the specified entity orders; while clause 23 defines specified entities.

6.5 Search, Seizure and Forfeiture of Properties

Matters relating to search, seizure and forfeiture of properties are dealt with in the fourth section of the Bill.

Clauses 24 and 25

Clause 24 vests power in lawful authority to conduct searches and clause 25 proscribes obstruction of inspection and search by lawful authority and also specifies the penalty for such obstruction.

Clauses 26, 27 and 28

Clauses 26, 27 and 28 deal with the seizure of terrorist property, its management and the destruction where necessary of such seized property.

Clauses 29 and 30

Orders for seizure and restraint of terrorist property as well as orders for forfeiture of such properties are also dealt with in clauses 29 and 30.

Clause 31

Provisions relating to forfeiture orders in respect of interested parties are captured under clause 31.

Clauses 32 and 33

Clause 32 addresses orders for the forfeiture of property on conviction for offences under the Act and clause 33 makes provision for appeal in relation to forfeiture orders.

6.6 Miscellaneous Provisions

The fifth section of the Bill covers miscellaneous matters and these are captured in clauses 34 to 42.

Clause 34

Clause 34 empowers the police to apply to the court for intercepted communication orders for the purpose of obtaining evidence in relation to the commission of offence.

Clause 35

Clause 35 vests power in the Director of Immigration to deny entry and to order the removal from the jurisdiction of persons suspected to be connected with the commission of terrorist offence.

Clause 36

Clause 36 also enjoins operators of aircrafts or masters of vessels arriving or departing from the Republic or registered in the Republic but departing from places outside the Republic to provide information about persons on board.

Clauses 37 and 38

Clauses 37 and 38 provide for the power to refuse refugee application and evidence by certificate respectively.

Clauses 39 and 40

Clause 39 also vests in the Minister the power to make Regulations for the effective implementation of the Act and clause 40 deals with interpretation.

Clauses 42 and 43

Provisions relating to consequential amendments and modifications are also dealt with in clauses 41 and 42 respectively.

7.0 OBSERVATIONS

7.1 The Committee observed that, although Ghana has been a signatory to a number of international conventions aimed at combating terrorism including the Commonwealth Plan of Action on Terrorism which compels member countries to implement the United Nations Resolution 1373 on the subject matter, these international instruments are yet to be incorporated into our domestic legislation.

The Committee further observed that although Ghana's legal regime generally provides for legislations considered necessary for the safety of the State and for matters connected with terrorism, it does not specifically deal with the crime of terrorism. Moreover the provisions in our statute books are considered inadequate to meet current international standard and best practice requirements on the subject matter. Indeed the Committee took particular note of the fact that there are no specific legislations on our statute books which deal with this global menace. The Committee therefore considers the passage of the Bill, which is long overdue, necessary to bring Ghana's legal regime on the subject matter in conformity with the requirement of the international legal system.

7.2 Issues of Concerns

The Committee however noted a number of concerns expressed by some civil society organisations and sections of the public on the Bill with regards to the problematic nature of what actually constitutes terrorism. This concern stems from the fact that there appears to be no internationally agreed definition of the crime of terrorism. The second concern has been the issue of

possible inroads into the fundamental rights of citizens including possible curtailment of some of their rights.

7.3 Definitional Problem

Indeed the Committee noted that, the definitional problem associated with terrorism as expressed by sections of the public is confirmed in the legislative scheme of UN Resolution 1373 for which reason, the said Resolution requires member states to determine the precise details of the definition of terrorist act in their national legislations. Like the UN Resolution 1373, all the other counter terrorism conventions to which Ghana is a signatory, stated the constituent elements of terrorism instead of defining it. The Committee is however of the considered view that, the above concerns notwithstanding, the scourge of terrorism poses security risk for all nations and require urgent attention. Further to this, the provisions of the Bill cover the essential elements considered necessary for the establishment of cases of terrorism. The difficulty of obtaining international consensus on the definition of the crime of terrorism should therefore not preclude Ghana from the passage of this all important legislation

7.4 Inroads into the fundamental Rights of Citizens

The extent of the impact of the Bill on the fundamental rights and basic freedoms of citizens also engaged the attention of the Committee. Sections of the public expressed concern about potential conflict emerging between provision of the Constitution on guaranteed rights and liberties of citizens and aspects of the Bill which make serious inroads into these guaranteed rights. Particular references are made to clause 3 of the Bill which seeks to characterise demonstrations and protests as potential terrorist activities and

clause 34 of the Bill in relation to the interception of communications which they contend may violate privacy rights of citizens amongst others.

The Committee having closely examined this concern held the view that, this was the case of striking a balance between two competing interests, i.e. probable invasion of fundamental rights of citizens and the need to preserve national security. National security issues, the Committee noted should necessarily affect all and sundry and in that regard must be the concern of the entire citizenry. Further to this, even the Constitution subjects the enjoyment of fundamental rights to national security. Consequently any efforts aimed at promoting and ensuring the preservation of national security by way of legislation must be embraced by all. .

7.2 Amendment Proposed –

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

I. Clause 1 – amendment proposed – delete sub-clause 2

(Chairman of the Committee)

II. Clause 2 – amendment proposed – sub-clause 1, line 1 delete “Republic” and insert “country” and in line 3 after convention insert “and protocol”

III. Clause 2 – amendment proposed – sub-clause 2, delete and insert the following: “An Act is a terrorist act if it is performed in furtherance of a political, ideological, religious, racial or ethnic course and”

IV. Clause 2 – amendment proposed – sub-clause 2, paragraphs (a) and (b) delete “involves” and insert “causes”

- V. Clause 2 – amendment proposed – sub-clause 2, paragraph f , line 1 delete and insert the following: “releases into the environment or exposes the public to”
- VI. Clause 2 – amendment proposed - sub-clause 2 paragraph (h), delete and insert the following: “is designed or intended to disrupt
- i. a computer system or the provision of services directly related to communications infrastructure
 - ii. banking or financial services
 - iii. utilities or transportation
 - iv. other essential services; or”
- VII. Clause 2 – amendment proposed - sub-clause 2, paragraph (i) delete “disrupt the provision of essential services” and insert “cause damage to essential infrastructure”
- VIII. Clause 2 – “amendment proposed” - sub-clause 2, add a new paragraph as follows:
- “(j) is intended or by its nature in context may reasonably be regarded as being intended to
- i. intimidate the public, or
 - ii. compel a person, a government or an international organization to do or refrain from doing an act”.
- IX. Clause 2 – amendment proposed - sub-clause 3, delete
- X. Amendment proposed – at end of clause 2 add a new clause numbered clause 3 as follows:
- “a person who contravenes sub-section 2 of section 2 of this Act commits an offense and is liable on summary conviction to a fine of not

less than five hundred penalty units or to a term of imprisonment of not less than five years and not more than ten years".

- XI. Clause 4 – amendment proposed – sub-clause (1), line 1, at end add "during the course of an armed conflict"
- XII. Clause 4 – amendment proposed – sub-clause (1), paragraph (a) line 1, delete "the intimidation of" and insert "intended to intimidate" and in line 2 delete "which is intended"
- XIII. Clause 4 – amendment proposed – sub-clause (1), paragraph (b) line 2 delete "in that situation"
- XIV. Clause 4 – amendment proposed – add the following sub-clause
 - "(3) This Act does not
 - a) diminish the other rights, obligations and responsibilities of citizens and the Republic under international law, the purposes and principles of the character of the United Nations and international humanitarian law;
 - b) apply to the activities of the armed forces
 - i. during an armed conflict conducted in accordance with international humanitarian law, and
 - ii. which are in exercise of their official duties and are in accordance with other rules of international law.
- XV. Clause 5 – amendment proposed – head note, after offenses insert "committed outside the country"

- XVI. Clause 5 – amendment proposed – paragraph (e) delete “Ghana” and insert “this country”
- XVII. Clause 5 – amendment proposed – add a new sub-clause as follows:
- “(2) the High Court shall order the funds of
- a) a terrorist,
 - b) financiers of terrorism, and
 - c) a terrorist organization as designated by the United Nations Security Council in accordance with chapter vii of the United Nations Charter
- to be frozen and any person holding such funds shall immediately freeze them
- (3) the terms, conditions and time limits applicable to the freezing shall be defined in the order
- (4) a person holding funds to which sub-section 2 relates shall report without delay to the Financial Intelligence Centre established under section 4 of the Anti-Money Laundering Act, 2008 (Act 749) the existence of the funds
- XVIII. Clause 6 – amendment proposed – line 7 after out insert “or in relation to carrying out”
- XIX. Clause 7 – amendment proposed – sub-clause 1 line 2, delete “services” and insert “service”
- XX. Clause 7 – amendment proposed – sub-clause 1 paragraph (a) delete and insert the following: “(a) with the intention that the financial or other related service be used, in whole or in part, to commit or facilitate the commission of a terrorist act”

- XXI. Clause 7 – amendment proposed – sub-clause 1 paragraph (c) delete and insert the following: “(c) knowing or having reasonable course to believe that the financial service in whole or part will be used by or will benefit a terrorist group.
- XXII. Clause 7 – amendment proposed – sub-clause 1 at end add “and not more than twenty five years
- XXIII. Clause 8 – amendment proposed – paragraph (a) after commit insert “or in relation to the commission of “
- XXIV. Clause 8 – amendment proposed – paragraph (b) line 2 at beginning insert “or having reasonable cause to believe”
- XXV. Clause 8 – amendment proposed – at end add “and not more than twenty five years”
- XXVI. Clause 9 – amendment proposed – paragraph (a) delete “jurisdiction” and insert “country” and at end of the clause add “and not more than twenty five years.
- XXVII. Clause 10 – amendment proposed –paragraph (e) delete “services” and insert “related service” and at end of the clause add “and not more than twenty five years.
- XXVIII. Clause 11 – amendment proposed – sub-clause 1, paragraph (a) delete “and” and insert “or” and at the end of paragraph (b) add “and not more than twenty five years”
- XXIX. Clause 11 – amendment proposed – sub-clause 2 paragraph (b) delete and insert the following
- (b) the provision or an offer to provide a skill or expertise
- (i) for the benefit of,
- (ii) at the direction of, or

(iii) in association with a person or a terrorist group;

- XXX. Clause 12 – amendment proposed – sub-clauses 2 and 3 at end, add “and not more than twenty five years”
- XXXI. Clause 13 – amendment proposed – at end add “and not more than twenty five years”
- XXXII. Clause 14 – amendment proposed – at end add “and not more than twenty five years”
- XXXIII. Clause 15 – amendment proposed – at end add delete “ten years” and add “and not more than twenty five years” and insert “seven years and not more than twenty five years”.
- XXXIV. Clause 16 – amendment proposed – at end add “and not more than twenty five years”
- XXXV. Clause 17 – amendment proposed – sub-clause 4 line 1 delete “person” and insert “is”.
- XXXVI. Clause 17 – amendment proposed – sub-clause 5 delete and insert the following: “a person convicted of an offense under this section is liable on conviction indictment to a term of imprisonment of not less than seven years and not more than twenty five years”.
- XXXVII. Clause 18 – amendment proposed – head note delete “Arrangements” and insert “Arrangement”.
- XXXVIII. Clause 18 – amendment proposed – sub-clause 1 after paragraph (c) delete “and” insert the following: “commits an offense and is liable on conviction on indictment to a term of imprisonment of not less than seven years and not more than twenty five years”
- XXXIX. Clause 19 – amendment proposed – sub-clause 1 paragraph (d) delete and insert the following:

“(d) facilitated the commission of
a terrorist act “

- XL. Clause 19 – amendment proposed – sub-clause 3 line 2 delete
“declared”
- XLI. Clause 20 – amendment proposed – sub-clause 3 delete “sixty” and
insert “30”
- XLII. Clause 24 – amendment proposed – sub-clause 2 line 1 delete “a”
- XLIII. Clause 24 – amendment proposed – sub-clause 3 paragraph (a)
delete and insert the following:
“(3) A police officer may
(a) conduct a physical search of a person who the police
officer has reason to believe is in possession of property
liable to seizure or forfeiture under this Act
- XLIV. Clause 24 – amendment proposed – sub-clause 3 paragraph (b)
delete the words “a police officer may also”
- XLV. Clause 25 – amendment proposed – paragraph (a) before premises
delete “a”
- XLVI. Clause 25 – amendment proposed – paragraphs (b) and (c) delete
“execution” and insert “discharge”.
- XLVII. Clause 25 – amendment proposed – paragraph (f) at beginning insert
“in relation to inspection or search intentionally
- XLVIII. Clause 25 – amendment proposed – concluding paragraph line 2
delete “exceeding” and insert “more than”
- XLIX. Clause 26– amendment proposed – sub-clause 5 paragraph (b) after
months delete “of” and insert “after”.

- L. Clause 27 – amendment proposed – sub-clause 3 delete “of the management order”
- LI. Clause 28 – amendment proposed – sub-clause 1 line 2 after “that” insert “it is dangerous to detain the property or”
- LII. Clause 29 – amendment proposed – sub-clause 2 paragraph (a) line 2 after “and” delete “a” and insert “any”.
- LIII. Clause 30 – amendment proposed – sub-clause 2 delete “those persons who are” and insert “the person who is”
- LIV. Clause 30 – amendment proposed – after sub-clause 3 add a new sub-clause as follows:
“(4) the court upon hearing the application may direct that notice be served on the interested party”
- LV. Clause 30 – amendment proposed – sub-clause 5 line 2 delete “and” and insert that”.
- LVI. Clause 34 – amendment proposed – sub-clause 1 delete and insert the following: “a police officer not below the rank of an Assistant Commissioner of Police may apply ex-parte to the Circuit Court for an Order to intercept communication for the purpose of obtaining evidence of the commission of an offense under this Act”.
- LVII. Clause 34 – amendment proposed – sub-clause 3 line 1 delete “Justice” and insert “Judge”.
- LVIII. Clause 35 – amendment proposed – sub-clause 4 line 3 at end delete “Republic” and insert “country”
- LIX. Clause 40 – amendment proposed – at end add the following:
“ordinarily resident means”
- LX. Clause 41– amendment proposed – sub-clause 1 paragraph a delete

8.0 CONCLUSION AND RECOMMENDATION

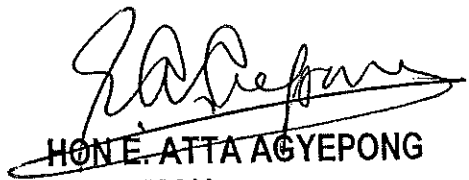
The Committee has examined the provisions of the Bill and notes that, they provide adequate legal basis for Ghana to meet its international obligations to counter terrorism and to ensure that, the country does not become a safe haven for terrorism. The Committee further noted that the passage of the Bill would enable Ghana, as a member of the UN and a signatory to all the international conventions on anti-terrorism bring the country's legal regime in conformity with international requirements.

The Committee accordingly recommends that subject to the proposed amendments this House passes the Anti-Terrorism Bill.

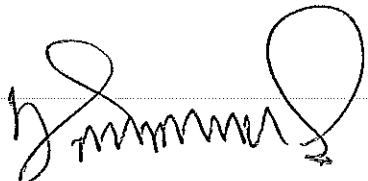
Respectfully submitted



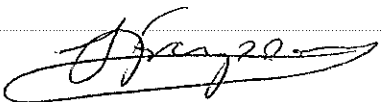
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JUNE 2008