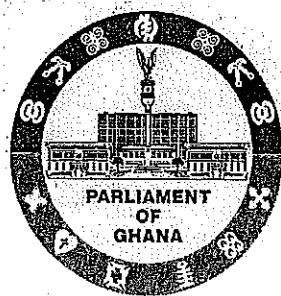


**IN THE SECOND MEETING OF THE FOURTH
SESSION OF THE SIXTH PARLIAMENT OF
THE FOURTH REPUBLIC OF GHANA**



**REPORT OF THE COMMITTEE
ON DEFENCE AND INTERIOR**

**ON THE
INTERCEPTION OF POSTAL PACKETS AND
TELECOMMUNICATION MESSAGES BILL, 2016**

JULY, 2016

PARLIAMENT OF GHANA LIBRARY

Acc No: 1628 02

Class No: BR/1PPTM/16

1.0 INTRODUCTION

The Interception of Postal Packets and Telecommunication Messages Bill, 2016 was laid in Parliament by the Hon. Deputy Minister for the Interior, Mr. James Agalga on Thursday, 30th June, 2016 in accordance with Article 75 of the 1992 Constitution of Ghana.

The Bill was accordingly referred to the Committee on Defence and Interior for consideration and report pursuant to Orders 156 and 158 of the Standing Orders of the Parliament of Ghana.

1.1 The Committee met with the Hon. Deputy Minister for the Interior and officials, as well as senior officers of the National Security Secretariat and representatives of the Attorney General's Department and thoroughly deliberated on the provisions of the Bill.

The Committee is grateful to the Hon. Deputy Minister of the Interior and Hon Members of this august House who were in attendance at its hearings and officials of the Agencies who attended upon it.

2.0 REFERENCE DOCUMENTS

Your Committee referred to the following documents during its deliberations:

- i. The 1992 Constitution of the Republic of Ghana
- ii. The Standing Orders of the Parliament of Ghana
- iii. The Interception of Postal Packets and Telecommunication Messages Bill, 2016
- iii. The Interception of Postal Packets and Telecommunication Messages Bill, 2015
- iv. Postal and Courier Services Regulatory Commission Act, 2003

- v. Relevant Legislation with privacy and secrecy provisions.

3.0 BACKGROUND

The purpose of the Bill is to provide for the lawful interception of postal packets and telecommunication messages of persons suspected of criminal activity, in a bid to fight crime generally and suppress organised crimes including money laundering, terrorism, narcotic trafficking, and the assurance of protecting overall national security.

3.1 Incidences of armed robbery, terrorism, money laundering and narcotic drug trafficking have become a real threat to public order and to the safety and well-being of member-countries of the West African sub-region as a whole. These activities are not only a threat to life, but create disorder, cause fear and panic as well as insecurity. This undermines the confidence of potential and real investors. Perpetrators of such crimes rely on telecommunication systems and use of postal packets to evade the surveillance of law enforcement agencies. To be ahead of such criminal activities, there is the need for empowerment of security intelligence or the relevant agency to as a necessity intercept a postal packet, telephone or other electronic or cyberspace communications related to such potential threats.

3.3 Prior to the laying of this Bill, the *Interception of Postal Packets and Telecommunication Messages Bill, 2015* was laid in Parliament by the Hon. Minister for the Interior, Mr. Mark Owen Woyongo on Wednesday, 3rd February, 2016 and was referred to the Committee on Defence and Interior for consideration and report pursuant to Orders 156 and 158 of the Standing Orders of the Parliament of Ghana.

The Committee, working on that referral, met with the Hon. Deputy Minister for the Interior and his officials, as well as senior officers of the National Security Secretariat, representatives of the Attorney General's Department and some members of the Public and Agencies who submitted memoranda on the Bill, and thoroughly deliberated on the provisions of the said Bill. Memoranda were received from various institutions and persons, including IMANI Centre for Policy Education, Data Protection Commission, Martin A. B. K. Amidu Esq., Ghana Bar Association, The Catholic Bishops Conference, Centre for Democratic Development (CDD-GHANA), Occupy Ghana, Ghana Chamber of Telecommunications (including major Service Providers -MTN, Tigo, Vodafone, Expresso, Airtel) and A-Partners @ Law.

The Hon. Deputy Minister for the Interior, Mr. James Agalga, on Wednesday, 30th June 2016 however, on behalf of the Minister and by leave of the House, withdrew the *Interception of Postal Packets and Telecommunication Messages Bill, 2015*. The referral was accordingly withdrawn from the Committee. The Committee registers profound gratitude to the groups and individuals who submitted memoranda on the said Bill as their rich input fuelled active debate and subsequently enriched the quality of the *Interception of Postal Packets and Telecommunication Messages Bill, 2016*, being that critical issues raised, have been taken on board.

4.0 OBJECTIVE OF THE BILL

To enact legislation for the lawful interception of postal packets and telecommunication messages for the purpose of fighting crime, suppressing organised crime including money laundering, terrorism,

narcotic drug trafficking, identity theft, and generally for the protection of our health, public safety, order, and national security.

4.1 PROVISIONS OF THE BILL

Articles 12 and 18(2) of the Constitution of Ghana provide for the protection of fundamental human right and freedoms of citizens. These constitutional provisions emphasise the importance of fundamental human right and freedom generally and the right or freedom of the individual to privacy in particular. To interfere with the right to privacy thus, this Bill seeks to spell out circumstances and procedure for such.

4.2 The Bill provides for a centralised judicial process for the purpose of intercepting communication of persons suspected of criminal activity when necessary, as well as to consolidate all the powers of interception which currently exist in multiples of legislation.

4.3 Clause 3 of the Bill prohibits the interception of a postal packet, telephone or other electronic or cyberspace communication unless the interception is lawful and done in accordance with the Postal and Courier Services Regulatory Commission Act, 2003 (Act 649) or under the Bill. Clause 4 specifies the procedure for interception which includes obtaining a warrant from a Justice of the High Court. The Bill provides that telecommunication service providers enable interception capability making it possible to do so in real time thus providing the security and intelligence units the medium to trace communication of criminals when there is need to do so. Clauses 7 and 8 provide the procedure for interception.

Clause 18 of the Bill requests the Minister responsible for the Interior to submit annual reports to Parliament on the performance of the functions of the National Security outfit.

5.0 COMMITTEE'S OBSERVATIONS

The Committee observed that concerns raised through memoranda submitted on the Interception of Postal Packets and Telecommunication Messages Bill, 2015, and which were thoroughly debated were amply taken on board in the reformulation of the current Bill. The rising rate and sophisticated trend of perpetuating crime, with the evident threat that terrorism poses on West African states in recent times, places an urgent need to find tactful measures to secure citizens and ensure that the country is generally safe.

Submissions pointed to the fact that due to above conditions, there was need for precaution however, other existing laws border on dealing with such crimes. The Committee observed however that the Bill seeks to consolidate all the powers of interception for the purpose of protecting national security, fighting crime generally and in particular suppressing organised crime.

5.1 The Committee observed that the Bill takes into consideration the protection of fundamental human right and freedom as espoused in Articles 12 and 18 of the Constitution. Ordinarily, Right to privacy which happens to be the main area of discomfort expressed by citizens, should not be tampered with unless there are special reasons related to the protection of the fundamental rights including the right to live, and freedoms of others.

Looking at high-level crime rates including murder, death-threats and threats of terrorism, there are justifications for intercepting communications of such criminals under surveillance in order to safeguard the life and properties of innocent others.

5.2 Clauses 7 and 8 of the Bill provide conditions for an interception warrant to be applied for and be issued for criminal investigation and for security reasons, thus protecting the privacy of the ordinary citizen. This makes it clear that not each and every communication activity would be intercepted nation-wide. Interception will be carried on need-basis, following due process.

Citizens can thus use telecommunication services without fear of interception but have assurance that the relevant body is empowered to offer protection as threats will be uncovered whilst under surveillance.

5.3 The Committee noted that issues of authorisation and potential abuse of power are taken care of by the provision that National Security does not have access to the switches for interception which is the sole preserve of Service Providers.

Oral authorization in urgent cases is limited to 48hrs by which time the necessary legal right must have been complied with, else all information retrieved is nullified.

6.0 RECOMMENDATIONS:

Mr. Speaker, the rapid rise of threats of terrorism and the unpredictable trend of perpetuating crime convinces all of the

importance and need empowerment of the national security system. The Committee has taken on board public concerns regarding fundamental human rights and privacy and thoroughly debated the provisions of the Bill.

6.1 The scourge of acts of terrorism, abduction, murder, proliferation of weapons of mass destruction and drug trafficking on a massive scale were unknown to countries in West Africa some few years ago.

In recent times however, we have heard such activities in Nigeria, Cote d'Ivoire, Mali and Burkina Faso. This only means that our security agencies must be extra alert and be ahead of the game.

6.2 The emergence of new forms of communications such as electronic mail and social media, most of which are real-time in nature, have presented the security and intelligence agencies with serious challenges when it comes to combating and preventing crime. Most high-level criminals rely on these new and fast trends of communication to escape the surveillance of law enforcement agencies.

Unless we equip the agencies to do so, monitoring of communications of identified and suspected criminals will be almost impossible in real time and they will continue to perpetuate evil.

To be ahead of perpetrators, it is imperative for security intelligence or a law enforcement agency to as and when it is required as a necessity, intercept, by obtaining a legal interception warrant from the Court, a postal packet, telephone or other electronic or cyberspace communication in order to forestall potential threats.

7.0 PROPOSED AMENDMENTS TO THE BILL:

The Committee hereby proposes for consideration, the following amendments to the Bill:

i. Clause 4 – Procedure for interception

Amendment proposed- Delete sub clause (4) and insert the following:

“(4) Where a written authorisation is not confirmed within the forty-eight hour period, the authorisation shall cease to have effect and any information obtained shall not be used against that person.”

ii. Clause 21 – Interpretation

Amendment proposed- In the definition for “Minister”, delete “the Interior” and insert “National Security”.

8.0 CONCLUSION:

Ghana has been known to be a safe haven for business and tourism and as such we must do all in our power to empower the relevant agencies to protect citizens as we go about our daily activities.

Mr. Speaker, with the current terrorist threats within the West African sub-region of which we are part, there is the urgent need to give legal backing for the interception of telecommunication messages and postal packets as and when necessary, for security reasons and by the body entrusted to ensure the security of the country and its citizens. The benefits for doing this far outweigh the challenges and if we succeed, we no doubt will have other nations replicating our model.

The Committee, after careful examination of the provisions of the Bill hereby recommends its passage into law, taking cognisance of the amendments proposed herein.

Respectfully submitted,



**FRITZ BAFFOUR (HON.)
CHAIRMAN, COMMITTEE ON DEFENCE & INTERIOR**



**GLORIA SARKU KUMAWU
CLERK, COMMITTEE ON DEFENCE & INTERIOR**

July, 2016