

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

PARLIAMENT OF GHANA LIBRARY

**REPORT OF THE COMMITTEE ON
YOUTH, SPORTS AND CULTURE**

ON THE

**CHIEFTAINCY (AMENDMENT) BILL,
2013**

PARLIAMENT OF GHANA LIBRARY

Acc No 1528 G

Class No BR/CB/13-

1.0 INTRODUCTION

1.1 The Chieftaincy (Amendment) Bill, 2013 was presented to Parliament and read the first time on Tuesday, 12th November 2013. In accordance with article 106 (4) and (5) of the 1992 Constitution of the Republic of Ghana and Order 187 of the Standing Orders of the House, the Rt. Hon. Speaker referred the Bill to the Committee on Youth, Sports and Culture for consideration and report.

1.2 During the consideration of the Bill, the Committee was assisted by the Hon. Minister for Chieftaincy and Traditional Affairs, Dr. Henry Seidu Daannaa, his Deputy, Mr. John Alexander Ackon, a representative from the National House of Chiefs, and an official from the Attorney General's Department. The Committee is grateful for their assistance.

2.0 REFERENCE

2.1 The Committee made reference to the following documents during its deliberations:

- a. The 1992 Constitution of the Republic of Ghana.

- b. The Standing Orders of Parliament.
- c. The Chieftaincy Act, 2008 (Act 759).
- d. The Supreme Court Ruling in the case of Nana Adjei Ampofo vrs the Attorney-General and the President of the National House of Chiefs (suit No J.I/8/2008 dated 20th July 2011).

2.0 BACKGROUND

Following a Supreme Court ruling in the case of Nana Adjei Ampofo vrs the Attorney-General and the President of the National House of Chiefs (Suit No J.1/8/2008 dated 20th July 2011), section 63(d) of the Chieftaincy Act, 2008 (Act 759) was declared unconstitutional and subsequently expunged from the Chieftaincy Act. Section 63 (d) of the Chieftaincy Act provided as follows:

“A person who deliberately refuses to honour a call from a chief to attend to an issue commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units or to a term of imprisonment of not more than three months or to both and in a case of a continuing offence to a further fine of not more

than twenty-five penalty units for each day on which the offence continues.”

The above provision made it a criminal offence if a person intentionally refused to heed a call from a Chief to attend to an issue.

The Supreme Court held the view that the scope of the provision was too wide and did not also make room for a defense for a person who had a reasonable excuse for not honouring a chief's call.

Consequently, the panel of judges indicated that:

“It would be unwise for this court to rewrite a criminal statute which appears, on its plain meaning, to be unconstitutional. It is a much better outcome for this court to strike down the offending legislation and for Parliament itself then to rewrite the statute in the light of the Supreme Court's view. In our view, a statutory provision which limits itself to a chief's call within his or her Traditional Area and provides a defense for a person who is called but has a reasonable excuse not to heed the call would have a better chance of passing the constitutionality test”

To give effect to the Supreme Court's ruling, the Chieftaincy (Amendment) Bill, 2013 was presented to Parliament to amend section 63(d) of the Chieftaincy Act, 2008 (Act 759).

3.0 OBJECT OF THE BILL

The Bill seeks to provide a replacement for section 63 (d) of the Chieftaincy Act, 2008 (Act 759) which was declared unconstitutional by the Supreme Court.

4.0 OBSERVATIONS

4.1 The Committee observed that the proposed amendment to section 63 (d) of the Chieftaincy Act, 2008 (Act 759) has been amended for the consideration of Parliament as follows:

“(d) being a subject of a chief or a resident of the traditional area of a chief or other person who is involved in a harmful economic or social activity within a chief's traditional area, refuses, without reasonable excuse, to honour a call from the chief to attend to an issue affecting or relating to that person or in the public interest” commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units or to a term of

imprisonment of not more than three months or to both and in a case of a continuing offence to a further fine of not more than twenty-five penalty units for each day on which the offence continues.

4.2 One school of thought expressed concern about the possible misapplication or abuse of the clause as amended, by traditional authorities. They interpreted the clause as granting or vesting wide powers in the chiefs.

However, a second school of thought, held by majority of Members of the Committee, disagreed with the first school thought and considered the clause as an appropriate remedy to the defects identified by the Supreme Court in clause 63 (d) of the Chieftaincy Act, 2008 (Act 759).

They were of the view that, the proposed rendition takes into account the suggestion of the Supreme Court to limit the power of chiefs to summon subjects and residents to their traditional areas while making the purpose of the summons more specific. It also provides for a defense for persons who may have a reasonable excuse for not honouring the call of a chief.

4.3 The Committee, in its deliberations took cognisance of article 270 (2) (b) of the 1992 Constitution, which provides that:

“Parliament shall have no power to enact any law which in anyway detracts or derogates from the honour and dignity of the institution of chieftaincy.”

The Committee is of the view that the authority and dignity of chiefs to a large extent, finds expression in their power to summon people in their jurisdiction on matters of social and economic concerns. It is important to note that, over the years, this unique authority has enabled chiefs play a pivotal role in the socio-economic development of their traditional areas and the country at large. It is no gainsaying that in areas where there are no police stations, it is the chiefs who assume the responsibility of maintaining law and order. The Committee therefore finds it imperative to uphold the authority and dignity of the chieftaincy institution at all times.

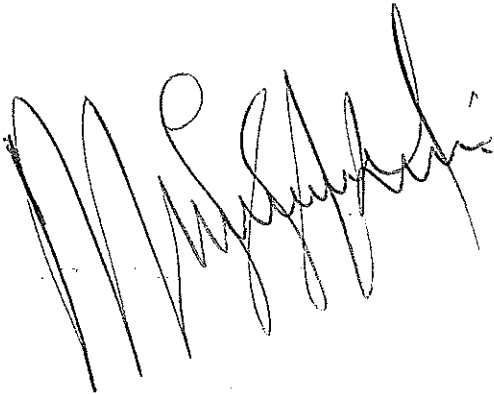
5.0 CONCLUSION

The proposed amendment generally addresses the concerns of the Supreme Court and also provides the needed impetus for chiefs to

effectively perform their roles in the socio-economic development of the country.

The Committee, by majority decision, therefore recommends that the House adopts its report on the Chieftaincy (Amendment) Bill, 2013.

Respectfully Submitted



.....
HON. KOBLA MENSAH WOYOME
CHAIRMAN, COMMITTEE ON
YOUTH & SPORTS



.....
JANET FRIMPONG
CLERK TO THE COMMITTEE

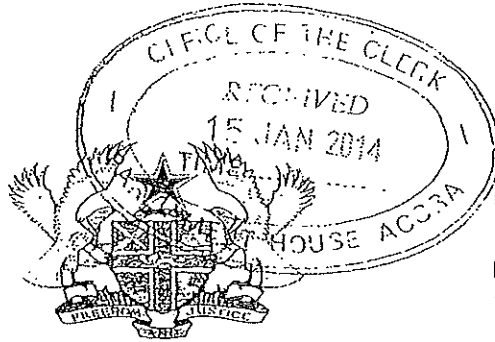
March 2014

In case of Reply the number and date of this letter should be quoted

My Ref No. L. 2/85 Vol. 5

Your Ref No.

Fax No: 667609 / 666625



ATTORNEY-GENERAL'S
DEPARTMENT
P. O. BOX MB. 60
MINISTRIES, ACCRA
2nd JANUARY, 2014

REPUBLIC OF GHANA

CHIEFTAINCY (AMENDMENT) BILL- POSITION PAPER OF THE ATTORNEY-GENERAL AND
MINISTER FOR JUSTICE

Reference is made to a request for a position paper on the Chieftaincy (Amendment) Bill, made by the Chairperson of the Parliamentary Select Committee on Youth, Sports and Culture at the meeting of Parliamentary Select Committee on Youth, Sports and Culture held on the 27th of November, 2013 to consider the Chieftaincy (Amendment) Bill for enactment.

Background

The amendment to the Chieftaincy Act, 2008 (Act 759) was proposed by the National House of Chiefs consequent to a Supreme Court ruling in the case of *Nana Adjei Ampofo vrs. The Attorney-General and the President of the National House of Chiefs (Suit No. J.1/8/2008. Dated the 20th of July, 2011)*.

Brief facts of the case is that the plaintiff sued the defendants at the Supreme Court seeking among other reliefs that paragraph (d) of section 63 of Act 759 be declared unconstitutional because its application is in conflict with articles 14 and 21 of the Constitution. Section 63(d) Of Act 759 made it a criminal offence if a person "deliberately refuses to honour a call from a chief to attend to an issue". The Supreme Court granted this relief because in the opinion of the court, the provision was in conflict with article 21(1)(g) of the Constitution. The Supreme Court explained that the provision

- (a) was too wide and untargeted; and
- (b) did not provide for a defence for a person who is called but has a reasonable excuse for not honouring the call.

The Supreme Court questioned the necessity for that provision in view of the fact that the judicial functions of the institution of Chieftaincy is limited to chieftaincy causes and matters under the present Constitutional dispensation; and that with respect to customary arbitration which the chiefs engaged in, there was not the need to compel a person to appear before them because arbitration is based on the parties giving their consent. The Supreme Court observed two possible constructions that could be placed on section 63(d) as follows:

- (a) a construction which accords with the literal interpretation of the provision i.e. that Parliament may have intended to confer the wide power of summons that the plaintiff

- complained about, in order to strengthen the authority of chiefs beyond the borders of their traditional areas; or
- (b) a construction that limits the scope of application of section 63(d) of Act 759 to a power which a chief has under customary law.

The second possible construction formed the basis of a draft Bill which this Office submitted to the National House of Chiefs for their consideration, in view of the fact that the Supreme Court rejected the first possible construction in paragraph (a) as being unconstitutional. The draft was as follows:

“(d) being a subject of a chief, refuses without reasonable excuse to honour a call from that chief to attend to an issue that affects that person or to which the person is related or an issue that is in the public interest.”

This draft was rejected by the Chiefs at a meeting of the Legal Committee of the National House of Chiefs in the Ministry of Chieftaincy Affairs on the 4th of May, 2012. The Legal Committee of the National House of Chiefs rather took a decision to prepare its own draft and to submit that draft to Parliament for enactment. This draft was later submitted to this Office and went through the preparatory stages till it was laid in Parliament.

Our position

After considering the judgment of the Supreme Court, this Office took the position that if the Supreme Court were not inclined to strike down section 63(d) of the Chieftaincy Act, 2008 (Act 759), it would have adopted a construction that would limit the power granted to a chief under section 63 (d) of Act 759 to call a person, to the power the chief has under customary law. The question therefore is whether under customary law a chief has power to summon persons other than the subjects of that chief. Our answer to that question is that under customary law a chief can summon his or her subjects only.

It is established in the judgment of the Supreme Court that the customary law right of chiefs to exercise judicial functions and to incarcerate those adjudged by them to be guilty of a crime is not permissible under the Constitution; that the Constitution limits the jurisdiction of their judicial councils to a chieftaincy cause or matter. Granted that to be so, what then can a chief do if a person the chief has summoned appears before that chief and declines the jurisdiction of that chief?

Conclusion

It is the submission of this Office that a chief, being the first gentleman of the traditional area, draws attention of the appropriate state institution to any harmful economic or social activity being undertaken within his or her traditional area, be it by a subject of that chief or by a resident or non-resident person, instead of inviting the person to meet with the chief just for the person to decline consent or jurisdiction.

Though the Supreme Court proposed to limit the jurisdiction of a chief to summon a person to the power of that chief under customary law, a rendition in that light will also be discriminatory against the subjects of that chief, in that, the penal law will apply to the subjects only as far as heeding to the call of that chief in the traditional area of that chief is concerned and not to other persons living in that traditional area. Article 17(1) and (2) of the Constitution states as follows:

In case of Reply the number and date of this letter should be quoted

My Ref No. L. 2/2009 V3

Your Ref No.

Fax No: 667609 / 666625



REPUBLIC OF GHANA

ATTORNEY-GENERAL'S
DEPARTMENT
P. O. BOX MB. 60
MINISTRIES, ACCRA
31st MARCH, 2014

**CHIEFTAINCY (AMENDMENT) BILL- POSITION PAPER OF THE ATTORNEY-GENERAL
AND MINISTER FOR JUSTICE**

Reference is made to discussions on the Chieftaincy (Amendment) Bill between my good self and the Chairperson of the Parliamentary Select Committee on Youth, Sports and Culture.

Based on the understanding of this Office with respect to the decision of the Supreme Court in the case of *Nana Adjei Ampofo vrs. The Attorney-General and the President of the National House of Chiefs* (Suit No. J.1/8/2008. Dated the 20th of July, 2011), this Office proposed a new rendition of section 63 (d) to the Ministry of Chieftaincy and Traditional Affairs, and the National House of Chiefs. This rendition was communicated under cover of a letter dated the 4th of January, 2012 to the President of the National House of Chiefs but our proposed rendition was rejected by the National House of Chiefs at a meeting held at the Ministry of Chieftaincy and Culture on the 4th of May, 2012. Our rendition was as follows:

"(d) *being a subject of a chief, refuses without reasonable excuse to honour a call from that chief to attend to an issue that affects that person or to which the person is related or an issue that is in the public interest.*"

Subsequently, a new rendition proposed by the National House of Chiefs was presented by the Ministry of Chieftaincy and Traditional Affairs to Cabinet for approval. This rendition is as follows:

"(d) *being the subject of a chief or a resident of the traditional area of a chief or other person who is involved in a harmful economic or social activity within a chief's traditional area, refuses, without reasonable excuse, to honour a call from the chief to attend to an issue affecting or relating to that person or the public interest.*"

Under cover of a Cabinet Memorandum dated the 15th of April, 2013, Cabinet approved the Bill in its current form as submitted by the Minister for Chieftaincy and Traditional Affairs.

Subsequently at the meeting of the Parliamentary Select Committee on Youth, Sports and Culture held on the 27th of November, 2013 at Parliament to consider the Chieftaincy (Amendment) Bill for enactment, this Office informed the Committee of the sequence of events leading to the present draft when the Chairperson of the Committee inquired from the representative of the Office whether this Office supports the rendition submitted by the National House of Chiefs and approved by Cabinet.

This Office was requested by the Chairperson to submit a position paper for consideration pursuant to which this Office communicated to Parliament under cover of letter dated 2nd January, 2014.

Since the Bill is currently within the purview of Parliament, Parliament may consider the Bill in its current form in accordance with its law making powers.



MARIETTA BREW APPIAH-OPONG (MRS.)
ATTORNEY-GENERAL AND
MINISTER FOR JUSTICE

THE CLERK
PARLIAMENT HOUSE,
ACCRA

Cc: The Chairperson, Parliamentary ✓
Select Committee on Youth, Sports
and Culture

The Hon. Minister,
Chieftaincy and Traditional Affairs

