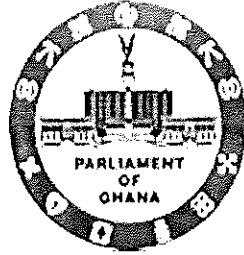


IN THE THIRD SESSION OF THE SEVENTH PARLIAMENT OF THE
FOURTH REPUBLIC OF GHANA



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REPORT OF THE

**COMMITTEE ON
DEFENCE AND INTERIOR**

ON THE

**NARCOTICS CONTROL COMMISSION
BILL, 2019**

Acc No: 1909 cy
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1.0 INTRODUCTION

The Narcotics Control Commission Bill, 2019, was presented and read the first time in Parliament on Thursday, 21st March, 2019 in accordance with Article 106 of the 1992 Constitution by the Hon. Minister for the Interior.

Pursuant to Article 106 of the 1992 Constitution and Orders 125 and 158 of the Standing Orders, the Rt. Hon. Speaker, Prof. Mike Oquaye, in accordance with Article 106 of the 1992 Constitution and Orders 125 and 158 referred the Bill to the Committee on Defence and Interior for consideration and report.

2.0 DELIBERATIONS

In considering the Bill, the Committee met with the Hon. Minister for the Interior, Mr. Ambrose Dery; the Hon. Deputy Minister, Mr. Henry Quartey and the Chief Director of the Ministry, Officials of the Narcotics Control Board and the Attorney-General's Department were in attendance to assist the Committee in its deliberations.

The Committee also met with individuals and organisations that submitted memoranda to the Committee. The stakeholders are:

- i. International Drug Policy Consortium;
- ii. POS Foundation;
- iii. Students for Sensible Drug Policy;
- iv. Concerned Citizens of Ghana (Irene Ockrah-Anyim)
- v. Harm Reduction Alliance of Ghana;
- vi. West African Drug Policy Network, Ghana Chapter; and
- vii. Institute of Leadership and Development; and
- viii. Nana Kweku Agyeman.

The Committee is grateful to the Hon Minister, the Hon. Deputy Minister, the Chief Director, individuals and institutions who attended upon the Committee and made useful input that informed the reshaping of the Bill.

3.0 REFERENCE DOCUMENTS

The 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. Narcotics Drugs (Control, Enforcement and Sanctions) Act, 1990 (PNDC Law 236)
- iv. The Narcotics Control Board Bill, 2015;
- v. The Economic and Organised Crime Office Act, 2010 (Act 804)
- vi. The United Nations Convention against Corruption adopted October 2003 and entered into force in December 2005;
- vii. The African Union Convention on Corruption adopted in July 2003.

4.0 BACKGROUND

Ghana has ratified the United Nations Convention against Corruption and the African Union Convention on Corruption. The Republic of Ghana also became a signatory to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998, which came into force on the 20th December, 1998. The Convention was domesticated with the promulgation of the Narcotic Drugs (Control, Enforcement and Sanctions) Act, 1009 (PNDCL 236).

The legal landscape has changed globally, with the enactment of major laws that have an impact on the proceeds of serious offences. The Anti-Money Laundering Act, 2008 (Act 749), the Anti-Money Laundering Regulations,

2011 (L.I. 1987), the Economic and Organised Crime Office Act, 2010 (Act 804) and the Mutual Legal Assistance Act, 2010 (Act 807) are some significant legislation enacted by Ghana that have a bearing on narcotic offences. The level of the drug menace internationally and specifically in the West African sub-region needs a robust legal framework to deter drug traffickers and take the profit out of crime by depriving drug barons of their illicit property.

In view of this, it has become imperative for the Government to ensure that legislation in this country meets current international standards in respect of narcotic offences. Additionally, a peer review mechanism conducted by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), an ECOWAS specialised institution in 2016, based on the Financial Action Task Force's Revised Recommendation (2012) and assessment in 2013 by the United Nations Office on Drugs and Crime in compliance with the United Nations Convention Against Corruption makes it essential to review the narcotics legislations.

Drug abuse, drug trafficking and drug related money laundering pose a serious threat to the national security of this country. Currently, the situation demands a concerted regional approach and a strong legal regime to deal with the scourge to ensure public safety by controlling the traffic in prohibited narcotic drugs and instituting of measures to prevent the illicit use of precursors which are controlled substances in the pharmaceutical industry.

By strengthening of Anti-drug and anti-money laundering measures in other regions of the world such as the Caribbean and Central America have been strengthened, traffickers have sought new routes in order to send illicit

drugs to countries in high demand for them. The saturated market and ample supply to North America has caused the South American cartels to search for different consumer targets in Europe. Research indicate that West Africa has become a major transit route for narcotics. The easy money to be gained from the drug trade has a corrupting effect on the youth. It has also erodes traditional values and has created drug abuse and addiction related problems. Money laundering in this country is mainly connected to the narcotics trade. Taking action against the narcotic trade is thus a sure way of stemming the flow of tainted funds derived from money laundering which distort the economy, create social and health problems and overburden the legal system.

5.0 PURPOSE OF THE BILL

The Bill seeks to address the weaknesses in PNDCL 236 which came into force before the commencement of the Fourth Republican Constitution. The current legislation restricts the confiscation of illegal properties to drug-related ones and does not adequately deal with the freezing of accounts of drug dealers.

6.0 CONTENT OF THE BILL

The Bill consists of one hundred and eight clauses which has been grouped into seven sections and two schedules with the following headings:

- i. *Clause 1 through to clause 13* provides for the **Establishment of the Commission**
- ii. *Clauses 14 to 27* are on the **Administration** of the Commission.
- iii. **Powers of the Office** is dealt with under *clauses 28 to 32*
- iv. **Narcotic Drug Offences** is provided for under *clauses 33 to 45*

- v. In *clauses 46 to 76* deals with **Arrest, Investigation and Seizure**
- vi. *Clauses 77 to 84* deals with the **Forfeiture of Property of Liable Persons**; and
- vii. **Miscellaneous matters** are dealt with in *clauses 85 to 108*;

7.0 OBSERVATIONS AND RECOMMENDATIONS

7.1 ESTABLISHMENT OF THE COMMISSION

The Bill seeks to establish a body corporate with perpetual succession to be known as the Narcotics Control Commission which would be responsible for ensuring public safety by controlling and eliminating trafficking in prohibited narcotic drugs. The Commission would be responsible for measures to prevent the illicit use of precursors, co-ordinating the treatment and rehabilitation of drug addicts and developing, in consultation with other public agencies, alternative means of livelihood for farmers who cultivate illicit narcotic plants.

7.2 DRUG USE AND DRUG ADDICTION

The Committee observed that the Bill is in tandem with international practices adopted by the United Nations Office on Drug and Crime (UNODC). The Bill also makes significant improvement and changes to the existing law (PNDC Law 836). One of the key changes is drug addiction and drug use being treated as a health related issue.

In Ghana, prohibition has not seen a decline in drug use in the country since the coming into force of the PNDC Law 236 in 1990. The use of drugs such marijuana and cocaine is on the ascendency, with thousands of people, particularly the youth, using drugs.

Mounting evidence shows that there is the need to move towards a new policy approach, one in which progress is measured by public health indicators such as the number of people receiving drug treatment, rather than being measured by seizures and arrests.

Ghana needs to take a cue from other progressive countries and consider alternatives to punishment or incarceration of people who use drug and other alternatives to ending the criminalisation of people who use drugs. Criminalisation of drug use and possession has led to the arrest, prosecution and incarceration of thousands of Ghanaians across the country. Faced with the high justice system, social, health and economic costs of criminalisation, Ghana's drug law, over the years has disenfranchised many young men and women especially those who use drugs to the extent that a person caught with one joint of marijuana or 0.05 grams of cocaine for use spend the next 10 years in prison for possession charges. This law has caused more harm giving criminal records to many future young men and women, criminal's tags serving as albatross on their necks for the rest of their lives.

Children and other family members of people who use drugs should not suffer victimization through losing a parent or loved one. People who use drugs should be supported to overcome the problems that they may be facing. These tags have disabled many young men and women from accessing jobs, benefiting from government benefits and even the extent of denying them of their fundamental human rights enshrined in our 1992 Constitution. That is why, it has become necessary for Ghana to remove all criminal sanctions for drug use and put in place alternatives to punishment as recommended by the United Nation General Assembly Special Session to all member states. Nothing with concern the "unintended consequences" of drug control, mechanisms

The Committee also observed that the treatment of drug use and addiction as a health related issue would make it possible establish facilities for the rehabilitation and treatment of addicts. Drug use and drug dependence must be prevented as it has issues with socio-economic causes and consequences in the international drug control architecture. People who use drugs must be offered support, treatment and protection, rather than punishment and a possible criminal record for drug use. This includes the provision of alternatives to conviction or punishment for appropriate drug related offences of a minor non-violent nature.

The availability of and accessibility to drugs for the relief of pain and suffering is a major challenge in Africa, resulting in the majority of patients who need these drugs dying in pain. The African Union Ministers responsible for Drug Control adopted a Common Position in this regard in 2012, and in tandem with the United Nations General Assembly Special Session (UNGASS) outcome, access to and availability of controlled substances for medical and scientific purposes while preventing their diversion, is addressed as a priority.

The Committee noted that the right to health of all citizens but that of drug user is a complex condition that needs much attention. Children and other family members of people who use drugs should not suffer victimization through losing a parent or loved one. Clause 20 of the Bill provides for the establishment of a trust fund to support the treatment of persons suffering from substance use disorders. Clause 22 outlines source of funding for the sustainability of the Trust Fund. These provisions, hitherto were not made in the PNDC law 236 (1990).

There is also the need for the provision of infrastructure and services in areas vulnerable to drug production and use, to stimulate job creation and socio-economic development.

7.3 BURDEN OF PROOF

The Committee observed that in the Bill one issue that has been clarified is the issue of where to place the burden of proof. Under the existing legislation, the burden of proof, when it comes to the seizures forfeiture of property is placed on the Board, but that position lacks clarity. So, most often, it makes the prosecution of cases relative to the pursuit, seizures and forfeiture of property very cumbersome. However, under the Bill, there is now clarity. The burden is squarely placed on the accused person if he or she decides to mount a challenge in relation to the pursuit, forfeiture and seizure of property acquired or suspected to be acquired through the proceeds of crime.

7.4 USE OF FIREARM

The Committee observed that currently, NACOB relies on the Ghana Police Service for armed protection when conducting an operation or raid. In view of this NACOB is enjoined to notify the Police at least 24hours before any operation. This poses a challenge to the conduct of urgent swoops. The number of armed officers required for a particular operation is often not made available to NACOB due to other national assignments being undertaken by the Police. Provisions in Clause 29 addresses this challenge by relying on the Police for protection during operations or raid. This will also help secure the intelligence received for operations that require armed protection.

The use of firearms by officers of the Commission has in recent times been necessitated by observations made from operations or raids that suspects

are found to be in possession of firearms in their homes and in their vehicles. For the safety and security of officers on such assignment, it is imperative that they are allowed to carry firearms.

7.5 ILLICIT DRUG TRAFFICKING

The Committee noted that the rapid rise in illicit drug trafficking which is closely related to money laundering and financing of high level crime and terrorism, has convinced the Government of the importance and urgency of re-equipping the Narcotics Control Commission as an additional tool in enhancing the national security system. Drug use on the continent has escalated in all 5 AU Regions, confirming that Africa is no longer only a transit zone in the global trade in narcotics, but also a major consumer. While cannabis remains the most widely used substance after alcohol, there is evidence of growing use of cocaine, heroin, tramadol, amphetamine-type stimulants (ATS), as well as new psychoactive substances (NPS).

The fundamental objective of the AU Plan of Action (AUPA) on Drug Control and Crime Prevention (2019-2023) is to improve the health, security and socio-economic well-being of the people of Africa by addressing drug trafficking and problematic drug use in all its forms and manifestations and preventing the onset of drug use.

The AUPA also responds to the contemporary challenges in drug supply reduction, such as the diversion of precursor chemicals, online drug markets, new psychoactive substances, and the linkages between drug trafficking and organised crime of which drug trafficking is usually the first link in the chain of illicit flows. In this regard, the revised AUPA focuses on drug-related violence, and the profiling of high-level actors and enablers of

drug trafficking and drug related crime (such as illicit arms dealers, corrupt officials and money launderers).

7.6 DRUG POLICIES

The Committee also observed that, the fundamental goal of drug policies should be to improve the health, safety, security and socio-economic well-being of people by adopting appropriate measures combat illicit crop cultivation and the illicit production, manufacture, transit, trafficking, distribution and use of narcotic drugs and psychotropic substances, as well as its associated substances”.

Drug policies which focus entirely or disproportionately on law enforcement, incarceration, punishment and repression have not succeeded in eradicating supply, demand and harm caused by illicit drugs on the Continent. These policies have led to serious unintended consequences and often disproportionately impact upon the poor and marginalised, while creating a rich and powerful criminal market that undermines security of states.

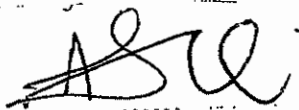
The Committee finally observed that drug dependence must be treated as a public health issue with socio-economic causes and consequences and justifies a separate fourth pillar in the international drug control architecture. People who use drugs must be offered support, treatment and protection, rather than be faced with punishment and a criminal record for drug use. Hence, the Common African Position reflects what is contained in the UNGASS Outcome Document, and vice versa. In addition, the UNGASS Outcome in Chapter II focuses on increasing access and availability to controlled drugs for medical purposes, for which the AU also adopted the Common Position on Controlled Substances and Access to Pain Management Drugs in 2012.

8.0 CONCLUSION

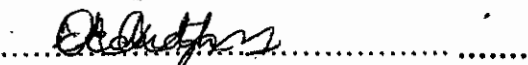
The Committee has thoroughly examined the Bill and is of the considered view that drug dependence should be treated as a public health issue with socio economic causes.

The Committee, hereby recommends its approval for passage into law, pursuant to the amendments proposed herein.

Respectfully submitted.



.....
HON. SETH KWAME ACHEAMPONG
(CHAIRMAN OF THE COMMITTEE)



.....
MS. EDITH EDILYN ADJEI
(CLERK TO THE COMMITTEE)

AUGUST, 2019.