

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

REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL
AND PARLIAMENTARY AFFAIRS

ON THE

WITNESS PROTECTION BILL, 2017

MAY, 2018

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1.0 INTRODUCTION

- 1.1 The Witness Protection Bill, 2017 was laid in Parliament on Tuesday, 23rd January, 2018 by the Attorney-General and Minister for Justice, Hon. Gloria Akuffo for passage in accordance with Article 106 of the Constitution.
- 1.2 Consequently, the Bill was referred to the Committee on Constitutional, Legal and Parliamentary Affairs by the Speaker for consideration and report pursuant to Order 179 of the Standing Orders of the House.

2.0 DELIBERATIONS

The Committee met with the Attorney-General and Minister for Justice, Hon. Gloria Akuffo to consider the Bill. In attendance were Officials of the Office of the Attorney-General and Ministry of Justice to assist in the deliberations.

The Committee expresses its profound gratitude to the Hon. Attorney-General and Minister for Justice and the Officials for attending upon the Committee and for making valuable contributions in the deliberations.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during its deliberations:

- i. The 1992 Constitution;
- ii. The Standing Orders of Parliament;
- iii. The Whistle-blowers Act, 2006 (Act 720); and
- iv. The United Nations Convention against Corruption, 2007 (UNCAC).

4.0 BACKGROUND INFORMATION

- 4.1 The testimony of witnesses in criminal investigations is often critical to the work of intelligence agencies, the Police and other agencies tasked with the maintenance of law and order, and safeguarding the security and safety of the nation. In many cases the evidence of a witness can be the pivotal piece of information that concludes an investigation or that leads to the successful outcome of the investigation or criminal proceedings. The evidence of witnesses is commonly

required to prevent or prosecute crimes such as human trafficking, illicit arms dealing and money laundering.

- 4.2 Witnesses can freely only offer testimonies when there is confidence and trust in the legal environment. There is therefore the need to provide full support and protection to witnesses for fear of retaliatory attacks to themselves and their relations
- 4.3 In line with the above, certain international instruments make provisions for affording effective protection to witnesses and their relatives as a critical step towards combating crimes especially corruption. One of such international instruments is the United Nations Convention against Corruption (UNCAC), which was ratified by Ghana on the 27th June, 2007.
- 4.4 Per Article 32 of the UNCAC, Ghana as a State Party to the Convention is required to take appropriate measures to provide effective protection to witnesses, experts and other persons who assist in the investigation of crimes. The Convention further requires protection to be afforded to the relatives of witnesses, experts and other persons who are close to such witnesses or their relatives. Such protection measures include relocation of witnesses and their families, police escort to hearings, testifying in-camera, adoption of new identities and provision of temporary residences.
- 4.5 Article 65 of UNCAC requires State Parties to take steps to implement the above measures through mechanisms such as the establishment of a Witness Protection Programme.
- 4.6 It therefore became imperative to lay in Parliament the Witness Protection Bill, 2017 for passage in accordance with the relevant provisions of the 1992 Constitution.

5.0 PURPOSE OF THE BILL

The purpose of the Bill is to establish a Witness Protection Agency to administer a witness protection programme. The implementation of the programme by the Agency would protect witnesses, experts and their relatives against potential retaliation or intimidation as a result of their cooperation with law enforcement agencies.

6.0 SUMMARY OF KEY PROVISIONS

- 6.1 The Bill has been arranged into sixty provisions. Clauses 1 to 12 relate to a proposed Witness Protection Agency to administer the witness protection programme in the country. Specific matters covered under this cluster of Clauses

include establishment of the Agency, its object and functions, powers, and the governing body of the Agency.

- 6.2 Clauses 13 to 19 deal with administrative and financial matters of the Agency. These provisions cover the appointment of an Executive Director, the Deputy Executive Director and other Staff of the Agency. Other provisions cover funds of the Agency, sources of the fund, management of the fund, disbursements from the fund, accounts and audit, and annual reports.
- 6.3 The above provisions are followed by the proposal to establish Victims Compensation Fund. The object of the Fund is to provide financial resources for the protection of victims, witnesses and related persons who face risk of harm or retaliation as a result of their co-operation with law enforcement agencies in the course of criminal investigations.
- 6.4 The powers of the Agency are covered under Clauses 26 and 27. These provisions relate to the authority of the Executive Director, the Deputy Executive Director and other authorised Officers to have the powers and immunities conferred on the Police under relevant laws of the country.
- 6.5 Clauses 28 to 56 set out the measures to be administered under the Witness Protection Programme established by the Agency. Some of the measures include relocating witnesses, offering counselling and vocational training services for the witnesses and providing them with transport to convey their properties. The provisions also make special arrangements to meet the needs of witnesses who are children, the aged and witnesses with special needs.

Further provisions in the Bill set out the criteria to be used to assess the qualification of persons for protection. Furthermore, provision has been made for the execution of a Memorandum of Understanding between participants and the Attorney-General.

- 6.6 Miscellaneous matters are covered under Clauses 54 to 60. Key among these provisions are provisions relating to specific offences prohibiting persons or participants from disclosing information under the witness protection programme.
- 6.7 The power of the Attorney-General and the Minister for Justice is provided for under Clause 59 to make Regulations for the effective implementation of the provisions of the Bill. This is followed by Clause 60 which covers interpretation of some of the words and expressions used in the Bill.

7.0 OBSERVATIONS

7.1 Absence of Witness Protection Law

The Committee took note of the fact that there is currently no law in Ghana which addresses matters relating to witness protection in a broader context. Though the Committee acknowledges the existence of the Whistleblower Act, 2006 (Act 720), it identifies some fundamental differences between the two pieces of legislation. Thus, while a witness protection law provides for the protection of witnesses and other persons who cooperate with the law enforcement agencies in the investigation and prosecution of criminal offences, the Whistleblower law (Act 720) among other things deals with mechanisms by which people may expose corrupt practices in the public services. On the basis of this, the Committee is satisfied that a new law be enacted to generally deal with witness protection in the country.

7.2 Ghana's Obligations under the UNCAC

The Committee noted that the passage of the Bill would fulfil one of the country's key obligations under the United Nations Convention Against Corruption, of which Ghana is a party. Per Article 32 of the UNCAC, Ghana is required to take appropriate measures to afford full protection to witnesses, experts and victims who may face possible threat of intimidation or physical harm.

7.3 Proposed Witness Protection Agency

The issue regarding the establishment of the proposed witness protection agency to administer witness protection programme in the country received considerable attention. Some Members of the Committee held the view that a new department be created under the Office of the Attorney-General to administer the programme instead of creating a new body. They explained that the creation of a new institution would impose a burden on the public purse. Others held a contrary view that the Agency as envisaged in the Bill must be maintained. They explained that the Office of the Attorney-General is already burdened and should not further be constrained.

7.4 The Role of the Attorney-General

The Committee again noted that the Bill has distributed responsibilities under the programme between the proposed Agency and the Attorney-General. Under the Bill, the Attorney-General would be solely responsible for determining whether or not a witness be included in the programme. Whereas, the proposed Agency would be in charge of the day to day administration of the witness protection programme in the country.

7.5 Board of the Agency

It was further noted that the governing body of the proposed Agency has been structured to include representatives from all relevant law enforcement agencies in the country. The membership of the board would include representation from the Police Service, the Economic and Organised Crime Office, the Commission on Human Rights and Administrative Justice. The other members would be representatives of the Ministry of the Interior, the Prisons Service and the National Security Council. The Board would be chaired by a retired Justice of the Superior Court or a person who has held an analogous position. The diversified composition of the board is purposed to bring vast experiences to bear on the work of the Agency for effective discharge of the duties envisaged in the Bill.

7.6 Funding of the Agency

The Committee noted that arrangements have been made in the Bill to ensure that the proposed Agency is well funded to discharge its responsibilities. Apart from annual budgetary allocation which will be approved for the general activities of the proposed institution, the Bill also seeks to establish Victims Compensation Fund to rake-in additional funds to support victims, witnesses and related persons under the programme. Sources of the Fund are expected to come from moneys approved by Parliament, subject to any other enactment, proceeds from the sale of property forfeited to the Republic in connection with crime, grants, gifts and donations. These arrangements would ensure that the Agency would be well equipped to implement its core business of administering the witness protection programme.

7.7 Memorandum of Understanding

The Committee again noted that, as part of the process for the admission of witnesses into the programme, a Memorandum of Understanding (MOU) would be executed between witnesses and the Attorney-General. This MOU is to set out the basis under which protection would be accorded to a witness, the obligations of the parties, matters relating to the change of identities of witnesses among other relevant matters. An MOU executed under the Bill may be varied subject to the consent of both participants and the Attorney-General.

8.0 PROPOSED AMENDMENTS

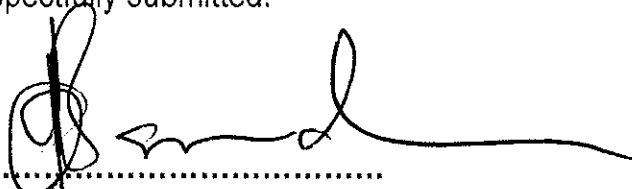
The Committee has proposed a number of amendments to help further strengthen the Bill. The proposed amendments are attached as an annexure.

8.0 CONCLUSION AND RECOMMENDATION

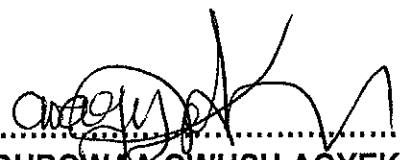
The Committee, having critically examined the Referral, is of the considered view that the provisions of the Bill conform to the relevant provisions of the 1992 Constitution. The passage of the Bill into law would enable the country fulfil one of its key obligations under the UNCAC by implementing a witness protection programme in Ghana.

It is therefore recommended that the House adopts this Report and ensure the passage of the Witness Protection Bill, 2018 in accordance with the procedure outlined under Article 106 of the 1992 Constitution.

Respectfully submitted.



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HON. BEN ABDALLAH BANDA
(CHAIRMAN)



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AKUA DUROWAA OWUSU AGYEKUM (MRS.)
(CLERK TO THE COMMITTEE)

ANNEXURE A

PROPOSED AMENDMENTS TO THE WITNESS PROTECTION BILL, 2017

- i. **Clause 1 - Amendment proposed** – Sub-clause (3), line 2, delete “**Authority**” and insert “**Agency**”.
- ii. **Clause 2 - Amendment proposed** – Sub-clause (1), line 4, after “**cooperation with the**” delete the remaining words and insert “**law enforcement agencies with respect to investigations and prosecutions**”.
- iii. **Clause 2 - Amendment proposed** – Sub-clause (2), lines 1 and 2, delete “**entails the power of the Agency to acquire**” and insert “**confers on the Agency the power to acquire, use,**”
- iv. **Clause 3 - Amendment proposed** – Paragraph (d), line 1, delete “**Government, Ministry, Department, Agency**” and insert “**public institution**”.
- v. **Clause 4 - Amendment proposed** – Paragraph (d), line 1, delete “**enter into association**” and insert “**collaborate**”.
- vi. **Clause 4 - Amendment proposed** – Paragraph (i), delete “**their property**” and insert “**the property of the protected person**”.
- vii. **Clause 5 - Amendment proposed** – Sub-clause (1), redraft as follows: “**(1) Subject to this Act, the Agency is not subject to the direction or control of any person or authority.**”
- viii. **Clause 5 - Amendment proposed** – Sub-clause (2), *delete*.
- ix. **Clause 6 - Amendment proposed** – After subparagraph (viii), insert a new paragraph as follows: “**(c) two other persons nominated by the President at least one of whom is a woman**”.

- x. **Clause 6 - Amendment proposed** – subparagraph (viii), line 2, insert “**and**” after “**Analyst**”.
- xi. **Clause 6 - Amendment proposed** – paragraph (a), line 4, delete “**and**”.
- xii. **Clause 7 - Amendment proposed** – Insert a new paragraph (a) as follows: “**(a) formulate policy for the effective implementation of the objects of the Agency;**”
- xiii. **Clause 9 - Amendment proposed** – Insert a new sub-clause (3) as follows: “**(3) The quorum at a meeting of the Board is six members**”.
- xiv. **Clause 17 - Amendment proposed** – Delete paragraph (c) and insert “**and**” after paragraph (a).
- xv. **Clause 18 - Amendment proposed** – Sub-clause (1), lines 1 and 2, delete “**in relation to them**”.
- xvi. **Clause 19- Amendment proposed** – Sub-clause (1), line 1, delete “**one month**” and insert “**thirty days**”.
- xvii. **Clause 19 - Amendment proposed** – Sub-clause (3), line 1, delete “**one month**” and insert “**thirty days**”.
- xviii. **Clause 20 - Amendment proposed** – Headnote, insert “**Support and**” after “**Victims**”.
- xix. **Clause 20 - Amendment proposed** – Line (1), insert “**Support and**” after “**Victims**”.
- xx. **Clause 24 - Amendment proposed** – Sub-clause (4), lines 1 and 2, delete “**in relation to them**”.
- xxi. **Clause 24 - Amendment proposed** – Sub-clause (5), lines 1 and 2, delete “**in relation to them**”.
- xxii. **Clause 25 - Amendment proposed** – Sub-clause (2), paragraph (c), line 2, delete all words after “**Act**”.

- xxiii. **Clause 25 - Amendment proposed** – Sub-clause (2), after line 8, insert “**within twenty days, if the Board receives an application for a payment out of the Fund**”.
- xxiv. **Clause 26 - Amendment proposed** – Line 1, insert “**of the Agency**” after “**officers**”.
- xxv. **Clause 28 - Amendment proposed** – Sub-clause (1), line 3, delete “witness” and insert “person who satisfies the criteria specified in subsection(4)”.
- xxvi. **Clause 29 - Amendment proposed** – Sub-clause (4), line 1, insert “in writing” after “shall”.
- xxvii. **Clause 29 - Amendment proposed** – Sub-clause (5), Paragraph (a), line 3, insert “years” after “eighteen”.
- xxviii. **Clause 29 - Amendment proposed** – Sub-clause (5), Paragraph (b), line 2, insert “years” after “eighteen”.
- xxix. **Clause 29 - Amendment proposed** – Insert a new sub-clause (5) as follows: “(5) A person who has been refused protection by the Attorney-General after a written request has been made by that person to the Attorney-General for protection may apply to the High Court for a protection order.”
- xxx. **Clause 30 - Amendment proposed** – Delete sub-clause (2), and insert a new sub-clause as follows: “(2) The Attorney-General shall not include a witness in the Programme if the Attorney-General does not have enough information to assess the matters referred to in this section and the criteria for admission determined in accordance with clause 3(b) as they relate to the witness.”
- xxxi. **Clause 31 - Amendment proposed** – Substitute “Witness Protection Agreement” for “Memorandum of Understanding”.
- xxxii. **Clause 57 - Amendment proposed** – Sub-clause (2), line 2, delete “did not believe it to be true” and insert “ought to have known that the statement is not true.”
- xxxiii. **Interpretation- Amendment proposed-** Definition for “participant”, in line 1, after “witness”, insert “or a person”

