

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

REPORT

OF THE JOINT-COMMITTEE ON DEFENCE AND INTERIOR AND
CONSTITUTIONAL, LEGAL AND PARLIAMENTARY AFFAIRS

**ON THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF
AMERICA AND THE GOVERNMENT OF THE
REPUBLIC OF GHANA ON DEFENSE
COOPERATION, THE STATUS OF UNITED
STATES FORCES AND ACCESS TO AND USE
OF AGREED FACILITIES AND AREAS IN THE
REPUBLIC OF GHANA**

22nd March 2018

1.0 INTRODUCTION

The Agreement between the Government of the United States of America and the Government of the Republic of Ghana on Defense Cooperation, the Status of United States Forces, and Access to and Use of Agreed Facilities and Areas in the Republic of Ghana was laid in Parliament on Tuesday 20th March, 2018 in accordance with article 75 of the 1992 Constitution.

The Agreement was subsequently *referred* to a Joint Committee on Defence and Interior and Constitutional, Legal and Parliamentary Affairs for consideration and report in accordance with article 103 of the 1992 Constitution and Orders 158 and 179 of the Standing Orders of the House.

The Minister for Defence, Hon. Dominic Bingab Aduna Nitiwul and officials of the Ministry of Defence attended upon and assisted the Committee in its deliberations on the Agreement.

The Committee is grateful to the Hon. Minister and the officials of the Ministry of Defence for attending upon the Committee.

2.0 REFERENCES

The Committee referred to the following documents *inter alia* during its deliberations on the Agreement:

- i. The Constitution of the Republic of Ghana, 1992.
- ii. The Standing Orders of the Parliament of Ghana.
- iii. The Armed Forces Act, 1962 (Act 105)
- iv. African Crisis Response Initiative and Other activities, 1998
- v. Humanitarian Relief Operations, 2000
- vi. Acquisition and Cross-Servicing Agreement, 2015

3.0 BACKGROUND

Contemporary issues regarding international peace and security and emerging trends of terrorism in most regions of the world have created the need for security co-operation among peace loving nations.

To safeguard the interest of each other, the Republic of Ghana and the United States of America entered into a mutual relationship which has helped to ensure security cooperation between the two countries.

The Government of the Republic of Ghana and the Government of the United States of America executed an African /Crisis Response Initiative and other activities effected by an exchange of notes at Accra dated November 24, 1997 and February 24, 1998 and entered into force February 24, 1998. There was also the Humanitarian Relief Operations in Southern Africa where notes were exchanged at Accra on March 22 and April 7, 2000 and this entered into force in April 7, 2000. On April 13, 2015, Ghana signed an Acquisition and Cross-Servicing Agreement (ACSA) in Stuttgart, Germany. That Agreement entered into force on April 28, 2015. The said Acquisition and Cross-Service Agreement served as an initial step for enhanced partnership and security cooperation between Ghana and the United States of America.

The Acquisition and Cross-Servicing Agreement has currently elapsed by effluxion of time and hence the need for this present Agreement to ensure continuity in the cooperation arrangements between the two countries.

The Agreement if ratified, will offer the Ghana Armed Forces training opportunities, combat readiness, intelligence gathering skills and disaster management opportunities. It would also ensure access to and use of agreed facilities and areas by US Forces within Ghana.

4.0 PURPOSE OF THE AGREEMENT

The object of the Agreement is to set forth a framework for enhanced partnership and security cooperation between the United States of America and the Republic of Ghana with the aims of strengthening their defense relationship further and addressing shared security challenges in the Region, including those relating to the protection of Government personnel and facilities.

5.0 CONTENTS OF THE AGREEMENT

The Agreement between the Government of the United States of America and the Government of the Republic of Ghana on Defense Cooperation, the Status of United States Forces, and Access to and Use of Agreed Facilities and Areas in the Republic of Ghana contains a Preamble and nineteen Articles.

The Preamble stipulates that the Agreement is based on the desire of the two countries to conclude an agreement that contributes to enhanced security cooperation between the Parties, and on the recognition that such cooperation is based on full respect for the sovereignty of each Party.

Article 1 provides for the definition of the key terms used in the Agreement. Terms defined include "Military personnel", "Civilian personnel", "United States contractor", "Agreed facilities and areas", "Executive Agent" and "Duty"

Article 2 provides for the purpose and scope of the Agreement. The broad purpose is to provide a framework for enhanced partnership and security cooperation between the two countries with the aim of strengthening their defense relationship and addressing shared security challenges.

Article 3 accords the US military and civilian personnel the privileges, exemptions and immunities equivalent to those accorded to the administrative

and technical staff of a diplomatic mission under the Vienna Convention on Diplomatic Relations of April 18, 1961.

Article 4 makes provision for the entry into and exit from Ghana of US military and civilian personnel using a US Government-furnished identification.

Under **Article 5**, the Government of Ghana agrees to provide access to and use of agreed facilities and areas in Ghana to US Forces, Contractors and other mutually agreed persons.

Per **Article 6**, "all existing buildings, non-relocatable structures and assemblies affixed to the land in agreed facilities and areas, including ones altered or improved by United States forces, remain the property of Ghana. Buildings constructed by the United States forces shall become the property of Ghana once constructed, but shall be used by the United States forces until no longer needed by United States forces.

Article 7 is on prepositioning and storage of equipment, supplies and materiel.

Article 8 distributes responsibilities for the protection, safety and security of US forces and contractors.

Article 9 empowers US forces to conclude contracts for the acquisition of goods and services in accordance with the laws of the United States. Such contracts are to be tax free.

Article 10 exempts the US forces from the payment of any tax or similar charge assessed within Ghana.

Article 11 is on importation and exportation of personal property, equipment, supplies, materiel, technology, training or services in connection with the Agreement.

Article 12 provides for the freedom of movement in Ghana of vehicles, vessels and aircraft operated exclusively for the US forces.

Under **Article 13**, driving and other professional licenses issued by the United States Government to its forces and civilian personnel are to be accepted as valid in Ghana.

Article 14 permits US forces to use necessary radio spectrum and to operate their own telecommunication system.

Article 15 provides for cross waivers of claims by a contracting Party against the other. Third parties may however be able to make claims for damages or losses in accordance with US laws and regulations.

Article 16 incorporates "Annex A" into the Agreement by reference.

Implementing arrangements and the establishment of a Joint Committee to oversee implementation of the Agreement are provided for in **Article 17**.

Article 18 provides for the mutual settlement of disputes without third party involvement unless otherwise mutually agreed by the Parties.

Article 19 stipulates that the Agreement shall come into force on the exchange of notes between the Parties indicating compliance with each Party's internal procedures necessary for entry into force. The Agreement shall remain in force unless terminated by one year's written notice from either party through diplomatic channels.

6.0 OBSERVATIONS

After careful deliberations, the Committee made the following observations:

6.1 Execution of Treaties

Under Article 75 of the 1992 Constitution, this agreement as any other international agreement executed by the Executive ought to be placed before Parliament for ratification by resolution.

This agreement was placed before Parliament by the Executive for ratification prior to its execution.

6.2 Enhanced Security

The Committee noted that the Agreement, when ratified by this August House, would contribute to enhance security cooperation between the United States of America (USA) and the Republic of Ghana, based on full respect for the sovereignty of each other. The Agreement would also reaffirm the shared commitment of the two countries to peace and stability and ensure common opportunities for addressing regional defence and security concerns.

6.3 Additions in 2018 Agreement

The Committee also observed that this agreement is an enhancement over the 24th February, 1998 Exchange of Notes in certain respects, such as third party damage claims as per Article 15, Payment of Compensation as stated in Article 6(2), prepositioning and storage of materiel as provided for in Article 7, unimpeded access as in Article 5 and settlement of disputes provided for in Article 18.

6.4. Freedom of Movement of Vehicles, Vessels and Aircrafts

The Committee noted with concern, the unfettered access the Agreement grants to the Aircraft, vehicles and vessels of the US Department of Defense (DoD) to enter, exit and freely move within the territory, air space and territorial waters of Ghana. This may appear to undermine the sovereignty and security of Ghana.

6.5 Military Base Controversy

The Hon. Minister for Defence informed the Committee that the Agreement will not in any way permit the United States of America to establish a military base in Ghana. Accordingly, the Hon. Minister for

Defence disclosed that he actually wrote to the US Government for a confirmation of that fact and the response was in the negative. According to him, the purpose of the Agreement is to give access and use of certain facilities and areas to the US forces, which would be agreed between the parties. On its part, the Committee concurred with the Minister's position as any contrary assertion is not borne out of the provisions of the Agreement.

6.6 Provisions relating to Return of Property

The Committee noted that the Agreement offered ample provisions to govern ownership of both movable and immovable property. The parties have agreed that title to all immovable property including those constructed by the US forces in the agreed facilities and areas shall remain with Ghana. The immovable properties shall be returned to Ghana, as sole and unencumbered property, whenever they are no longer needed by the US forces. However, title in movable property such as equipment, materiel and supplies acquired by the US forces shall vest in the forces.

6.7 Implementation of the Agreement

It was again noted that measures have been made in the Agreement to ensure smooth implementation of the Agreement. Article 17 of the Agreement empowers the parties to enter into implementing arrangements to carry into force provisions of the Agreement. It goes further to establish a Joint Committee to oversee the implementation of the provisions of the Agreement. The Committee shall be co-chaired by representatives of Ministry of Defence and the Department of Defence of the USA.

6.8 Termination point for the Agreement

The lack of an explicit termination point in the Agreement also came under contention. The Committee was of the understanding that, this confers perpetual existence on the duration of the Agreement. The concern was that, the Agreement, if it comes into force will bind all Governments of Ghana in perpetuity.

The Minister however, explained by drawing the attention to the concluding sentence in Article 10(1), which states that, "...it shall remain in force unless terminated by either Party on one year's written notice to the other party through diplomatic channels". To wit, the agreement can be abrogated at any point in term albeit within a year written notice.

7.0 CONCLUSION

The Committee has thoroughly examined the Agreement and finds that its ratification would help provide a mutually beneficial arrangement for cooperation and readiness to combat emerging global security threats whilst also enhancing the already existing relationship between the two countries in the area of security cooperation.

The Committee therefore recommends to the House to adopt this report and ratify by Resolution, the Agreement between the Government of the United States of America and the Government of the Republic of Ghana on Defense Cooperation, the Status of United States Forces, and Access to and Use of Agreed Facilities and Areas in the Republic of Ghana in accordance with Article 75(2)(b) of the 1992 Constitution and the Standing Orders of the House.

Respectfully Submitted.



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HON. SETH K. ACHEAMPONG
CHAIRMAN,
COMMITTEE ON DEFENCE & INTERIOR



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EDITH EDILYN ADJEI (MS.)
CLERK,
COMMITTEE ON DEFENCE &
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HON. ALEXANDER KODWO KOM ABBAN
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