

Ghana (23)

Bilag B

6/1-2000

INDGÅET DF
CENTRALE AFDELINGER

31. OKT. 1997

J.NR.



amnesty international

Dansk afdeling / Danish Section

Dyrkøb 3

1166 København K

Tel: (+45) 33 11 75 41

Fax: (+45) 33 93 37 46

46

30. oktober 1997

Til / To:	Dansk Flygtningehjælp, att.: Mette S. Lassesen
Fra / From:	Birgitte M. Christensen
Vedr. / RE	Straffelovgivning m.v. i Ghana
Antal sider (inkl denne) Number of pages	4

Meddelelse / Message:

Kære Mette S. Lassesen,

under henvisning til din telefax af 20.10.1997 fremsendes hermed et uddrag af den ghanesiske straffelov.

Amnesty Internationals internationale sekretariat i London har d.d. som svar på dine spørgsmål oplyst, 1) at den ghanesiske straffelov skelner mellem "negligent homicide (manslaughter)" og "murder" (se vedlagte uddrag), 2) at hvis drabet fandt sted og han blev eftersøgt af det ghanesiske politi (hvilket ikke har kunnet bekræftes) og hvis hans sag blev prøvet af "the High Court", med fuld ret til forsvar og appel, så ville han kunne blive dømt til døden, og 3) at vi (AI's internationale sekretariat) ikke har nogen grund til at tro, at en sådan retssag ville være uretfærdig eller politisk motiveret.

Med venlig hilsen

Birgitte M. Christensen
Flygtningeafdelingen

THU, 30-OCT-97 14:28

P. 02

*Criminal Code, 1960***Act 29**

some person authorised by him or by law to give or refuse consent on his behalf dissents from the use of that force;

- (f) a party to a fight, whether lawful or unlawful, cannot justify, on the ground of the consent of another party, any force which he uses with intent to cause harm to the other party; and
- (g) a person may revoke any consent which he has given to the use of force against him, and his consent when so revoked shall have no effect for justifying force; save that the consent given by a husband or wife at marriage, for the purposes of marriage, cannot be revoked until the parties are divorced or separated by a judgment or decree of a competent Court.

43. Every person who, in justifiably using force against another person, is obstructed or resisted by a third person, may in any case use such force against the third person, as is reasonably necessary for overcoming the obstruction or resistance; and may, if the obstruction or resistance amounts to a crime or to abetment of a crime, use force in accordance with the provisions of this Chapter with respect to the use of force in case of necessity for preventing crime.

Use of force against third person interfering in case of justifiable use of force.

44. Every person who is authorised to use force of a particular kind against a person may further use such additional force, as is reasonably necessary for the execution of his authority.

Use of additional force for exercise of justifiable force.

45. Every person who aids another person in a justifiable use of force is justified to the same extent and under the same conditions as the other person.

Justification of person aiding another person in use of justifiable force.

CHAPTER 2—CRIMINAL HOMICIDE AND SIMILAR OFFENCES

Murder and manslaughter, etc.

46. Whoever commits murder shall be liable to suffer death.

Murder.

47. Whoever intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter or partial excuse, as mentioned in section 52.

Definition of murder.

48. Whoever attempts to commit murder shall be guilty of first degree felony.

Attempt to commit murder.

inlet to
death by
victim.
n-
lecher.
fication of
n-
upster.

49. Whoever, being under sentence of imprisonment for three years or more, attempts to commit murder, shall be liable to suffer death.

50. Whoever commits manslaughter shall be guilty of first degree felony.

51. Whoever causes the death of another person by any unlawful harm shall be guilty of manslaughter. Provided that if the harm causing the death is caused by negligence he shall not be guilty of manslaughter unless the negligence amounts to a reckless disregard for human life.

52. A person who intentionally causes the death of another person by unlawful harm shall be guilty only of manslaughter, and not of murder or attempt to murder, if—

(a) he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in succeeding sections; or

(b) he was justified in causing some harm to the other person, and, in causing harm in excess of the harm which he was justified in causing, he acted from such terror of immediate death or grievous harm as in fact deprived him for the time being of the power of self-control; or

(c) in causing the death, he acted in the belief, in good faith and on reasonable grounds, that he was under a legal duty to cause the death or to do the act which he did; or

(d) being a woman she caused the death of her child, being a child under the age of twelve months, at a time when the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child.

Illustration

Paragraph (c) A soldier is ordered by his commanding officer to fire upon a mob, there being no necessity for such an order to be given. Here, if the soldier in good faith believed himself bound to obey the order, he is not guilty of murder, but is guilty of manslaughter.

53. The following matters may amount to extreme provocation to one person to cause the death of another person namely—

(a) an unlawful assault and battery committed upon the accused person by the other person, either in an unlawful fight or otherwise, which is of such a kind, either in

respect of its violence or by reason of accompanying words, gestures, or other circumstances of insult or aggravation, as to be likely to deprive a person, being of ordinary character, and being in the circumstances in which the accused person was, of the power of self-control;

(b) the assumption by the other person, at the commencement of an unlawful fight, of an attitude manifesting an intention of instantly attacking the accused person with deadly or dangerous means or in a deadly manner; or an act of adultery committed in the view of the accused person with or by his wife or her husband, or the crime of unnatural carnal knowledge committed in his or her view upon his or her wife, husband, or child; and

(d) a violent assault and battery committed in the view or presence of the accused person upon his or her wife, husband, child, or parent, or upon any other person being in the presence and in the care or charge of the accused person.

54. (1) Notwithstanding proof on behalf of the accused person of any matter of extreme provocation, the crime shall not be thereby reduced to manslaughter if it appears—

(a) that he was not in fact deprived of the power of self-control by the provocation; or

(b) that he acted wholly or partly from a previous intention to cause death or harm or to engage in an unlawful fight, whether or not he would have acted on that purpose at the time or in the manner in which he did act but for the provocation; or

(c) that, after the provocation was given, and before he did the act which caused the harm, such a time elapsed or such circumstances occurred that an ordinary person might have recovered his self-control; or

(d) that he acted in a manner, in respect either of the instrument or means used or of the cruel or other manner in which it was used, in which no ordinary person would, under the circumstances, have been likely to act.

For the purposes of this subsection "an ordinary person" means an ordinary person of the community to which the accused belongs.

(2) Where a person, in the course of a fight, uses any deadly or dangerous means against an adversary who has not used or commenced to use any deadly or dangerous means against him, it appears that the accused person intended or prepared to use such

Cases in which benefit of provocation is excluded

THU, 30-OCT-97 14:30

P. 04

Act 29

Criminal Code, 1960

means before he had received any such blow or hurt in the fight as might be a sufficient provocation to use means of that kind, he shall be presumed to have used the means from a previous intention to cause death, notwithstanding that, before the actual use of the means, he may have received any such blow or hurt in the fight as might amount to extreme provocation.

Illustrations

Subsection (1) (b) A., who has long been seeking an occasion to fight in a deadly manner with B., is struck by B., and kills B. Here, if the jury think that A. put himself in B.'s way for the purpose of taking any opportunity which might occur to fight with B., the crime of A. is not reduced to manslaughter by reason of the blow which he received from B.

(d) A., receives a slight blow from weaker man, B., and beats and kicks, B. to death. A.'s crime is not reduced to manslaughter.

Mistake as to matter or provocation.

55. A lawful blow, arrest, or other violence may be a provocation, notwithstanding its lawfulness, if the accused person neither believed, nor, at the time of his act, had reasonable means of knowing or reasonable ground for supposing, that it was lawful.

Mistake as to person giving provocation.

56. Where a sufficient provocation has been given to the accused person by one person, and he kills another person under the belief, on reasonable grounds, that the provocation was given by him, the provocation shall be admissible for reducing the crime to manslaughter in the same manner as if it had been given by the person killed; but, except, as in this section mentioned, provocation given by one person is not a provocation to kill a different person.

Suicide and Abortion

Abetment of suicide. Attempted suicide.

57. (1) Whoever abets the commission of suicide by any person shall, whether or not the suicide be actually committed, be guilty of first degree felony.

(2) Whoever attempts to commit suicide shall be guilty of a misdemeanor.

Abortion. Amended by Act 157 s.1.

58. Whoever intentionally and unlawfully causes abortion or miscarriage shall be guilty of first degree felony and shall be sentenced to a term of imprisonment of not less than ten years:

Provided that the Court shall not be able under section 297 of the Criminal Procedure Code, 1960 (Act 30) to punish such offender with a fine only.

Explanation as to causing abortion.

59. (1) The offence of causing abortion or miscarriage of a woman can be committed either by that woman or by any other person; and that woman or any other person can be guilty of using means with intent to commit that offence, although the woman is not in fact pregnant.

(2) The offence of causing abortion can be committed by causing a woman to be prematurely delivered of a child with intent unlawfully to cause or hasten the death of the child.

Causin,

60. Whoe living child degree felon

61. (1) W birth, w child, m presumed to

(2) T commencen a person th

62. Whoe was born a existence, o guilty of a r

63. (1) A it be intend

(2) T place may purpose of

(3) S than

(4) S the birth, e its death, requisite th persons, e ment.

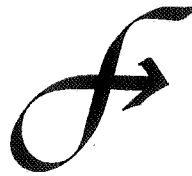
(5) S other perso

Subsecti her child. Si it from perso

(b) A w nurse who h of birth not

Danish Refugee Council

Borgergade 10, P.O. Box 53, DK-1002 Copenhagen K, Denmark



Bilag A

Phone +45 33 91 27 00
Telefax +45 33 32 84 48
Telex 19581 Refuco dk
E-Mail drc @ drc.dk
World Wide Web:
<http://www.drc.dk>
Cable Danrefuco

TELEFAX

Date: 20-10-97

To: Amnesty International, att.: Hanne Pilegård

Fax no.: 33 93 37 46

From: Mette S. Lassen

Re: Legal conditions in Ghana with special regard to the death penalty

Number of Pages: 2 including this cover page.

Message: *(Beskeden er på engelsk i tilfælde af at den skal formidles videre).*

Dear Hanne Pilegård,

Referring to our phone conversation earlier today I herby forward you the relevant details of the asylum case I mentioned. The description of the actual incident leading to the flight of the asylum seeker is followed by some questions concerning the practice of the Ghanaese legal system and the possible actions taken by the authorities in this respect.

The incident:

The asylum seeker is a male (26 years old) belonging to the Kasim-clan of the village Nyahnia (situated in the Jujuliga district in the upper eastern part of Ghana).

The grandfather, who was the head of family, died in the beginning of 1996, leading to rivalry within the family regarding the order of succession, thus the father of the asylum seeker being one of the competitors. This rivalry led to multiple incidents of both verbal and physical confrontation, some of which were reported to the Chief of Jujuliga who also tried to mediate the conflict.

In the middle of August 1997 yet another fight took place on the family compound - 25 people belonging to the two main factions within the family participated, everyone armed with clubs of different sorts. At some point during the fight the asylum seeker, using his club, hit the son of his father's rival on the forehead (according to his explanation he only hit his opponent once). The man fainted and fell to the ground, and while his companions were helping the wounded the asylum seeker fled to his grandfather's house. From his hiding he watched as the wounded was brought to the hospital and about two hours later he heard the call through out the village that the man had died. Following this his mother urged him to flee the village.

Members: Amnesty International - ADRA Denmark - CARE Denmark - Caritas Denmark - DanChurchAid - Danish Association for International Co-Operation - The Danish Association of Youth Clubs - The Danish Confederation of Trade Unions - Danish Employers' Confederation - Danish People's Relief Organization - Danish Red Cross - Danish Save the Children - Danish United Nations Association - Danish Youth Council - General Workers' Union in Denmark - Ibis - IND-sam, The Ethnic Minority Federation in Denmark - The Jewish Community - Labour Movement's International Forum - The National Council of Women in Denmark - The National Danish Organization for Gays and Lesbians - The Union of Commercial and Clerical Employees in Denmark - Danish Association of Youth Clubs - UNICEF Denmark

The asylum seeker claims that the authorities make no distinction between negligent homicide - as in his case - and murder. He thus - according to himself - faces the death sentence as this will most likely be the punishment for his crime.

Questions:

1. Do the Ghanese penal code provide for a distinction between negligent homicide (manslaugther) and murder?
2. What is your assessment of the actual possibility of him being sentenced to death?
3. Can he expect a fair trial under these circumstances?

I hope to hear from you as soon as possible as this case has been referred to us in the socalled hasty procedure for manifestly ill-founded cases. Furthermore the asylum seeker is still detained waiting for a decision in his case.

Yours sincerely,


Mette S. Lassen
Asylum Department