

## **ARTICLE 19's Submission to the UN Universal Periodic Review of the Republic of Ghana**

*14<sup>th</sup> Session of the Working Group of the Human Rights Council, October-November 2012*

### **Summary**

1. ARTICLE 19: Global Campaign for Free Expression is a non-governmental human rights organisation that works globally to promote and protect freedom of expression and information. ARTICLE 19 has observer status with ECOSOC. With this submission, ARTICLE 19 seeks to make a constructive contribution to the preparation process of the second cycle of UPR for the Republic of Ghana. Given the expertise of ARTICLE 19, this submission focuses on Ghana's compliance with its international human rights obligations in respect of freedom of expression.
2. ARTICLE 19 notes that only few freedom of expression issues have been addressed during the first cycle of the UPR. However, the Ghanaian Government accepted a number of related recommendations, in particular, to take further action to combat corruption especially in the public sector, including measures in the judiciary. This submission examines the implementation of these recommendation and supplements further information. Namely, this submission addresses:
  - Issues relegated to protection of the **right to freedom of information** and the activities undertaken by the Ghanaian Government to combat corruption (in the view of implementing the recommendations from the first UPR cycle);
  - State of **freedom of media** in the country;
  - **Use of criminal law** to limit freedom of expression;
  - Instances of **harassment and attacks on journalists and media workers**;
  - Instances of human rights violations related to **peaceful protest**.

These issues are examined in detail below.

### **Freedom of information and combating corruption**

3. An unambiguously positive development in Ghana since the first UPR cycle was the approval by the Cabinet of a **Right to Information Bill** in January 2009, advancing the right enshrined under Article 21(1)(f) of the 1992 Constitution. This Bill came with a number of commendable provisions, with the right to information being extended to every person irrespective of purpose, and the inclusion of a public interest override. The shortcomings of the Bill include long time-limits, unclear and broad exception clauses, and a lack of independent control over its implementation. The Bill, lamentably, has still not been passed into law almost four years after first being introduced. ARTICLE 19 urges the Ghanaian Government to ensure that the Bill is passed and swiftly implemented.
4. It is also commendable that the fight against corruption has been on the political agenda since the first cycle UPR and that the Government has adopted several measures to combat corruption in the legislation. For example, on 8 December 2009, the National Anti-Corruption Action Plan (NACAP) team was inaugurated, led by Commissioner for Human Rights and Administrative Justice (CHRAJ) Loretta Lamptey, to draft an anti-corruption action plan. This plan was eventually validated in October 2011 and presented to Vice President John Dramani Mahama. In response, Vice President Mahama gave his assurance in January 2012 that the Government would provide adequate support to agencies engaged in the fight against corruption. If passed by Parliament, the NACAP will become the official working document to combat corruption and other societal malpractices. Furthermore, in April 2011, the Petroleum Revenue Management Act 2011 (Act 815) that seeks to provide a

framework for the collection, allocation and management of petroleum revenue in a responsible, transparent, accountable and sustainable manner; and which was drafted with substantial contributions from the civil society organizations was adopted. Despite its positive features, the Act has been criticized for giving broad discretionary powers to the Energy Minister to oversee the management of oil and gas revenues. It has been recommended that these powers must be limited in order to ensure transparency in the management of the oil and gas revenues accruing to the country.

### **Freedom of media**

5. Freedom of media in Ghana has improved over the last years (with the country being often ranked as one of the first in press freedom on the continent. The communications regulator, the National Communications Authority (NCA), became significantly more independent in 2010, after the role of Chairman was separated from the Minister of Communication. However, complaints have persisted regarding delays in obtaining bandwidth and licenses for broadcast media. In late August 2011, the Ghana Community Radio Network (GCRN) expressed its dissatisfaction over the length of proceedings before the NCA, noting that some community radio stations had to wait for as long as 6 years before being granted a licence. Concerns have also remained over the lack of openness and transparency in the licensing procedure.
6. The problem with allocation of licenses stems from the legislation: the **National Communications Authority Act 2008** requires the NCA merely to observe '*reasonable standards of procedural fairness, act timeously, and observe the rules of natural justice*' in issuing licenses. This was a change from the previous legislation, which had laid down a much clear timeframe of 60 days for the adjudication of licensing applications. With no clear time limits for decisions, the new legislation clearly falls short of international standards

### **Using criminal law to suppress freedom of expression**

7. On the positive side, ARTICLE 19 highlights that Ghana has long since abandoned its Criminal and Seditious Libel laws. While this is indeed to be applauded, criminal sanctions for "false news" remain in **Section 208 of the Criminal Offences Act**. This law criminalises the publication or reproduction of any '*statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that the statement... is guilty of a misdemeanour*'. This regulation is inimical to freedom of expression should be abolished for its lack of compliance with international protections of free speech. ARTICLE 19 calls on the Ghanaian Government to repeal Section 208 in its entirety.
8. Other provisions of the Criminal Code have also caused problems for freedom of expression. **Section 207** targets those who use in a public place '*threatening, abusive, or insulting words or behaviour, with intent to provoke a breach of the peace*'. **Section 185**, meanwhile, says that '*a person who does an act or utters words or publishes a writing with intent to insult or bring into contempt or ridicule the official national flag or emblem of Ghana or a representation or pictorial reproduction of the flag or emblem, commits a misdemeanour*'. The potential severity of Sections 207 and 185 (with **Section 296(4)** of the **Criminal and Other Offences (Procedure) Act 1960** providing that those convicted be liable for up to three years imprisonment), along with the equivocal language used in the respective clauses, has opened the Criminal Code up to abusive restrictions on freedom of expression.
9. ARTICLE 19 is also concerned at liberal interpretation of these provisions by the police. These included, for example: journalists reporting on corruption (William Baffour from Yankee Radio in December 2010); a news editor who refused to reveal his sources (Ato

Kwamena Dadzie, *Joy FM* ), or a reporter for publishing a story related to land owned by a police officer (Enimil Ashon, *Ghanaian Times*, both in July 2010) and others. At least six people being prosecuted in 2011 alone.

10. While Ghana has no laws criminalising insult, there have been a number of cases where police have used these ambiguous provisions to arrest and detain those who insult the President. For example,

- In May 2010, Alexander Adu-Gyamfi, a social commentator was arrested in May 2010 AKA “High Priest”, was arrested during a radio programme in Kumasi after describing the President as a “chimpanzee” during a studio discussion. The police insisted that they arrested Adu-Gyamfi not for insulting the president but for “offensive conduct contrary to Section 207” of the Criminal Code. However, the police identified the “offensive conduct” in question as the saying of ‘*disparaging things about our number one man, that is, the President*’. The charge of “offensive conduct” was therefore said to be appropriate as the statement was ‘*offensive to the President, offensive to the state and offensive to even common sense*’. While ARTICLE 19 acknowledges that the vague language of the Criminal Code gives a great deal of discretion to the police, the interpretation made in this case appears to conflate the offence under Section 207 with criminal insult, which has long since been removed from the Criminal Code. As such, the police were clearly acting *ultra vires*. While the Government criticised the arrest and publicly urged greater tolerance, such illegal behaviour must be properly investigated and punished.

### **Harassment and attacks on journalists**

11. Despite its positive regional record on freedom of the press, ARTICLE 19 is concerned at the frequent occurrences of violence towards the media, which in some cases has originated from state security officials. For example:

- On 16 September 2010, prison officers in Kumasi reportedly stormed the premises of privately owned OTEC FM and attacked two staff members, including the program manager; the prison officers reportedly objected to the radio station's coverage of a prison guard strike.
- On 15 December 2010, police officers stormed the premises of *Yankee Radio* and assaulted its general manager in an effort to prevent the broadcasting of an interview which they claimed was creating fear and panic in the country.
- On 12 January 2012, several plainclothes agents from the Bureau of National Investigations brutalised photojournalist Gifty Lawson and two other staffers of *Daily Guide*, as she was covering the high-profile court case of a senior police officer for cocaine smuggling. The agents smashed Lawson's camera, beat her, ripped her clothes, and stripped her to her underwear.

12. More generally, ARTICLE 19 wishes to highlight the growing intolerance of dissenting views and the growing frequency with which media workers are attacked for carrying out their journalistic activities. This has created a precarious environment for freedom of expression. Implicit acts of intimidation and explicit death threats have also been made in response to the exercise of free expression. There are a number of examples of this trend including the following:

- On 22 March 2010, Ashanti Youth Incorporated, a youth group in Kumasi, gave a three-day ultimatum to the management of Multimedia Broadcasting Company, saying that unless the host of a morning newspaper review programme was sacked for insulting the king of Ashanti, the group would “vandalise” *Luv FM*.
- On 12 July 2010, Dauda Mohammad, a newspaper photographer, was reportedly abducted at knife-point by four unidentified men for taking pictures of a private mansion of former president Jerry John Rawlings.

- On 8 August 2011, three journalists from the *Hot FM Radio* were assaulted and the premises of the radio's studio vandalized in by three pastors as a displeasure at a current affairs programme. Following the subsequent trial for assault, reporters at Adom FM were assaulted by members of Obinim's ministry after visiting his Church to investigate the mood of the congregation.
  - On 12 October 2011, Fred Tettey Alarti-Amoako a reporter with the *Daily Guide* newspaper filed a complaint over death threats he received from supporters of Nana Kwasi Bosomphrah II, Paramount Chief of Goaso; in response to his article on chief's actions.
  - In February 2012, a group of New Patriotic Party (NPP) supporters, armed with cutlasses and machetes and other weapons, besieged the premises of *Asempa FM* and threatened to beat up a National Democratic Congress (NDC) panel member on the political programme *Ekosii Sen*, who they accused of insulting their party leader.
13. The government has given numerous assurances that attacks on the media have and will be properly investigated. In November 2009 the International Press Institute wrote to President John Atta Mills demanding that those who attack journalists be held to account. The Ghanaian ambassador to Switzerland insisted in response that "*the matter was receiving serious attention.*". When several plainclothes agents of the Bureau of National Investigations attacked photojournalist Gifty Lawson outside a courtroom in January 2012, meanwhile, Ghanaian Minister of Information John Akologo Tia insisted that the '*Government is very much aware, and committed to press freedom and the promotion of the rule of law*'. However, to date there has been no inquiry into the attack on Miss Lawson, reflecting a general trend of inaction with regard to incidents of assault and harassment against the media.

### **Freedom of Protest**

14. Over the last year clampdowns on protests and demonstrations have become increasingly common in Ghana. For example:
- On October 05 2011 two activists of the ruling NDC were arrested by the Ghana Police Service for organizing a demonstration without police permission, despite the action in question (petitioning the party leadership) being purely internal.
  - On September 21 2011 24 protestors were arrested and detained overnight at the headquarters of the BNI for allegedly participating in an illegal demonstration, after they refused to acknowledge a Prohibition Order from an Accra Circuit Court. They have since been charged with two counts of participating in an "illegal demonstration" and "unlawful assembly".
  - On August 23 2011 the Volta Regional Police Command scuttled a demonstration by some ruling National Democratic Congress (NDC) supporters and arrested eight of them for demonstrating without police authorization. The group's spokesman claimed that they had duly notified the police before embarking on their action, and that they had been assaulted after resisting unlawful arrest.
  - On March 11 2011 five teachers who were demonstrating while their union leadership was holding meetings with the government were brutally beaten by police and arrested for violating Act 491 of the Public Order Act. They were among a number of union members who accused the police of maltreating them by assaulting them with tear gas and rubber bullets. Police accused the Coalition of Concerned Teachers as being a "militant group", and said the tear gas was necessary to disperse "the lawless participants."
  - On February 02 2011 picketing in Accra by members of the Right to Information Coalition was forcibly broken up. The group, who were protesting delays in the adoption of the Bill, had defied a police order to reschedule the protest. Many in the

group were then assaulted, with some disabled members being pushed off their wheelchairs and onto the ground.

### **Recommendations**

ARTICLE 19 calls on the Human Rights Council to urge the Ghanaian Government to:

- Without any further delay, proceed with the adoption of the Right to Information Bill and undertake a comprehensive set of activities to subsequently implement the Bill. The Bill should fully comply with the international standards on freedom of expression and information, including limiting the scope of restrictions, reducing the long time-limits and provide possibility for independent control over its implementation.
- Adopt amendments to the National Communication Authority Act and impose clearer standards of transparency, procedural fairness and efficiency. In particular, the amendment should ensure that clear time frame is provided for decisions on allocations of broadcasting licenses.
- Ensure the regulation of media is free from any political intervention or bias.
- Repeal Section 208 of the Criminal Offences Act in its entirety and amend Section 207 and 185 of the Criminal Offences Act to clearly demarcate the scope of the law and to remove any suggestion of criminal insult.
- Cease using the criminal provisions to suppress legitimate speech and provide better statutory apparatus for the protection of the right to freedom of expression.
- Undertake effective and speedy investigation into all acts of violence towards the media perpetuated by security officials.
- Respect the democratic right to protest and ensure that the right to freedom of expression and freedom of peaceful assembly is respected in respect to demonstrations, marches and other forms of protest. Further, provide standards and guidelines for police and security services and ensure this right is fully protected.