



## **MFWA SUBMISSION TO THE THIRD UPR OF GHANA**

### **FREEDOM OF EXPRESSION DEVELOPMENTS SINCE SECOND UPR**

1. After Ghana's second UPR in December 2012 and since 2013, there were 44 recorded incidents of violations of free expression rights, including the right to freedom of expression and the right to freedom of assembly.
2. These recorded incidents should be considered in the context of Ghana's safety of journalists record since 2001, when Ghana repealed its criminal libel and sedition laws. Since 2001, most violations of freedom of expression took the form of physical attacks against journalists, and security forces (police or military) were the most common perpetrators.

### **METHODOLOGY**

3. The information here is based on reports by the Media Foundation for West Africa's (MFWA) correspondents. The MFWA also collated reports of violations issued by members of the IFEX global network, of which the MFWA is a member, and by other freedom of expression and human rights groups.

### **NATIONAL FRAMEWORK FOR FREE EXPRESSION RIGHTS**

4. The rights to freedom of expression, freedom of assembly, and freedom of association are guaranteed under Ghana's Constitution and international and regional human rights treaties ratified by Ghana.
5. Positively, Ghana repealed its criminal libel and sedition laws in August 2001.
6. However, Section 208 of the 1960 Criminal Code "Publication of False News with Intent to Cause Fear and Alarm to Public" is overly broad and is occasionally used against journalists, potentially causing a chilling effect on expression. This section states:

- (1) Any person who publishes or reproduces 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, rumour or report is false is guilty of a misdemeanour.
  - (2) It is no defence to a charge under subsection (1) that the person charged did not know or did not have reason to believe that the statement, rumour or report was false unless he proves that, prior to publication, he took reasonable measures to verify the accuracy of the statement, rumour or report.
7. In accordance with national law, courts can impose excessive punitive fines against media organisations and journalists. The threat of excessive punitive fines may cow media organisations and journalists into self-censorship, thus preventing critical reporting.
8. The Constitution provides for freedom of information, but there is no specific law on the right to information (RTI). A specific RTI law, which nearly half of the states in West Africa already have on the books, would help enforce Ghana's constitutional guarantee.

### **CONTEXT OF THE MEDIA**

9. Levels of press freedom in Ghana are high, and the country boasts diverse television, radio, and newspaper outlets.
10. Ghana has 58 television operators.
11. Ghana has 390 FM radio stations: 37 are state-owned, 273 are privately owned, 63 are community-owned, and 17 are university-operated.
12. Ghana has dozens of regular newspapers, including two state-owned and two private dailies.
13. Internet penetration continues to grow, and approximately one-fourth of the country has access to the internet (as of 2015). Consequently, Ghana has seen a rise in blogging and social media use, especially in the urban areas.
14. Journalists in Ghana are poorly paid, like many of their counterparts throughout the West Africa region. For example, the public broadcaster Ghana Broadcasting Corporation (GBC) receives inadequate government funding and thus relies on advertisements to cover operating costs. In addition, many individual journalists have accepted money to cover certain events, which significantly implicates issues of journalistic professionalism and ethics.

## **FOLLOW UP ON ACCEPTED RECOMMENDATIONS FROM THE 2012 UPR**

### **Police Continue to Brutalise Journalists and Others Exercising Their Free Expression Rights.**

15. Ghana supported and believed it already implemented the second-cycle UPR recommendation A/HRC/22/6 (2012), 124.4 (by France) to “build on its achievement and redouble its efforts to combat police brutality through administrative and judicial sanctions against perpetrators, training and education for serving police officers, and consider including relevant human rights education materials in the cadets’ training curriculum.”
16. Ghana also supported and believed it had already been implementing the second-cycle UPR recommendation A/HRC/22/6 (2012), 125.5 (by Australia) to “... introduce human rights education for police and security forces.”
17. However, from January 2013 through March 2017, the MFWA has recorded 19 incidents of violations of free expression rights that were perpetrated by security forces, including police. This means that over 40% of the recorded incidents of violations in Ghana during the time period (44 incidents) were perpetrated by security forces. In this troubling scenario, security forces—who are directed by international, African, and West African treaties and protocols to respect and protect the safety of journalists and to fight against impunity—are the most common human rights violators.
18. Given the number of incidents of violations perpetrated by security forces, it remains unclear if measures taken by the government to combat police violations, including brutality, against journalists and others exercising their free expression rights have been effective or even adequate.
19. Relatedly, it is consequently unclear if Ghana has been effectively training and educating police and other security forces on human rights, including the right to freedom of expression and the right to freedom of assembly.
20. In 2013, the MFWA recorded 2 incidents of violations of free expression rights. None were perpetrated by security forces.
21. In 2014, the MFWA recorded 16 incidents of violations of free expression rights, of which 7 were perpetrated by security forces.
22. In 2015, the MFWA recorded 10 incidents of violations of free expression rights, of which 3 were perpetrated by police and included police brutality. Some examples of police brutality during 2015 are highlighted in ¶¶ 23–24.
23. In the first part of the 2015, police beat and dragged journalists when they started to film an altercation between a policeman and another individual.
24. In September 2015, police attacked demonstrators who were demanding that the Electoral Commission of Ghana compile a new voters’ register. Police

employed excessive use of force against the demonstrators, including teargassing and whipping. As a result, dozens of demonstrators were injured. The police claimed the demonstrators refused to follow the approved route; however, even if this were true, it would not justify the excessive use of force. Then- President John Mahama called for the police to investigate the matter; however, as of March 2017, the MFWA has not heard of any investigation taking place.

25. In 2016, the MFWA recorded 15 incidents of violations of free expression rights, of which 8 were perpetrated by security forces, including police. Some examples of police brutality during 2015 are highlighted in ¶¶ 26–27.
26. In July 2016, police at the Gomoa Ojobi District in the Central Region beat journalist Seth Kofi Adjei before detaining him for several hours. The police alleged that the journalist had taken camera shots of the police station, which is prohibited under domestic law. The journalist denied this allegation and said he had tried to take a camera shot of the town. The perpetrators were identified as Sergeant Daniel Agbe and his two police colleagues, Bi Gyimah and Jake Adu. Troublingly, although the identities of the perpetrators are known, to the MFWA’s knowledge, there have been no investigations or prosecutions into this crime.
27. In September 2016, a journalist in Accra was assaulted, arrested, and detained when police saw him photograph a traffic policeman taking a 5-cedi bribe from a bus driver.
28. So far, in 2017, the MFWA has recorded 1 incident, which was perpetrated by security forces. This incident occurred during the celebration of Ghana’s 60<sup>th</sup> Independence Day (March 6) at the Independence Square in Accra when a journalist filmed three soldiers beating a civilian. The soldiers began beating the journalist from all sides and forced him to smash his phone when he was unable to delete the video.

### **Ghana Has Not Adequately Addressed Impunity for Crimes Against Journalists.**

29. Ghana supported and believed it already implemented the second-cycle UPR recommendation A/HRC/22/6, 124.3 (by Timor-Leste) “take measures in order to fight against impunity in torture and ill-treatment, especially in cases of police brutality and excessive use of force.”
30. While the government generally respects free expression rights, it has not made any strong and significant commitments to ensure the investigation and prosecution of crimes against journalists and others exercising their free expression rights. Ghana’s lack of political will to take measures to fight

- impunity for crimes against journalists has the potential to embolden individuals commit further violations.
31. In fact, according to the MFWA’s research into crimes against journalists and the safety of journalists since August 2001, perpetrators of crimes against journalists often go unpunished. At best, perpetrators simply apologise to the victims, as described below in ¶ 32. Impunity is also illustrated by the examples above in ¶ 24 and ¶ 26.
  32. By way of illustration, in February 2017, the Human Rights Division of the High Court in Ghana ordered the Inspector-General of Police (IGP) and authorities of the Accra Metropolitan Assembly (AMA) to apologise to two Multimedia Group Limited journalists after they attempted to arrest and detain the journalists. The court ordered the perpetrators to apologise within seven days, and the apologies were to be given “special prominence” in Ghana’s leading newspaper, *Daily Graphic*. While it is commendable that civil action took place, Multimedia Group Limited initiated the lawsuit. Although the police tried to arbitrarily arrest journalists, the state did not take measures to prosecute. It should be noted that criminal sanctions are greater deterrents to violating human rights than civil sanctions—especially if the civil sanction involves only “naming and shaming.”
  33. Positively, however, the government does not appear to endorse or incite crimes against journalists or against others exercising their free expression rights. Instead, government authorities have made public statements recognising the importance of journalists in promoting democracy.

#### **Parliament Has Not Taken Immediate Steps to Pass the RTI Bill.**

34. Ghana supported and believed it had already been implementing the second-cycle UPR recommendation A/HRC/22/6 (2012), 125.63 (by Canada) to “take immediate steps toward the adoption of the freedom of information Bill, building on its efforts to improve good governance, accountability and transparency.”
35. Ghana also supported and believed it had already been implementing the second-cycle UPR recommendation A/HRC/22/6 (2012), 125.10 (by Cape Verde) to “accelerate the adoption of pending bills and intensify efforts in order to see more strengthened implementation of the measures decided and instruments created, including in terms of ... access to justice and strengthening of its effectiveness.”
36. Although an RTI bill was drafted 15 years ago (in 2002), the government has continued to drag its feet on passing the bill into law. In March 2017, the

government of President Nana Akufo-Addo expressed its commitment to passing the bill.

37. Ghana's failure to pass the RTI bill into law has negative consequences on good governance, access to justice, and the fight against corruption.
38. The absence of an RTI bill also specifically harms women's access to justice and consequent gender equality in Ghana. According to the CEDAW Committee's General Recommendation No. 33 on women's access to justice, CEDAW/C/GC/33 (2015), ¶ 11, States Parties are obligated to ensure women's access to information about their rights as well as available remedies and how to access such remedies.

## **THE MFWA'S RECOMMENDATIONS**

### **TO THE GOVERNMENT OF GHANA**

#### **To Law Enforcement**

58. Respect and protect the right to freedom of expression and the right to freedom of assembly.
59. Train and educate security forces on protecting the human right to freedom of expression and on the role of journalists in promoting human rights, democracy, and development.
60. Develop and implement guidelines for police and other security forces prohibiting crimes, particularly violence, against journalists and others exercising their right to freedom of expression or their right to freedom of assembly.
61. Develop and implement guidelines for police on crowd control that conform to international principles, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Guidelines must clearly indicate when it is and is not permissible to use force and/or firearms, including teargas, to disperse demonstrations.
62. Conduct immediate and effective investigations into all violations of free expression rights, particularly the use of excessive force by security forces.
63. Hold police accountable through internal and external mechanisms.
64. Create a mechanism to specifically investigate and prosecute police brutality against journalists and others exercising their right to freedom of expression or their right to freedom of assembly.

### **To the Judiciary**

65. Stop issuing excessive punitive fines, which tend to have a chilling effect on expression.

### **To Parliament**

66. Reform Section 208 of the 1960 Criminal Code “Publication of False News with Intent to Cause Fear and Alarm to Public” such that the law is more narrow and precise.
67. Take immediate steps to adopt the RTI bill.
68. Establish a monitoring and reporting mechanism on the safety of journalists, using UNESCO’s national-level Journalists’ Safety Indicators.

### **TO THE WORKING GROUP ON THE THIRD UPR OF GHANA**

69. Make recommendations explicitly related to the protection and promotion of the right to freedom of expression and the right to freedom of assembly.
70. Make recommendations explicitly related to ending impunity for crimes against journalists and others exercising their right to freedom of expression or their right to freedom of assembly.
71. Re-emphasise the importance of immediately passing the RTI bill.