



## **PEN International and PEN Ghana**

### **Contribution to the 28th session of the Working Group of the Universal Periodic Review**

#### **Submission on Ghana**

30 March 2017

## **I. INTRODUCTION**

1. PEN International and PEN Ghana (the coalition) welcome the opportunity provided by the Office of the High Commissioner for Human Rights to comment on the climate for free expression – a right protected under domestic and international law<sup>1</sup>– and freedom of information in Ghana since the last Universal Periodic Review (UPR) on 23 October 2012.

## **II. EXECUTIVE SUMMARY**

2. In the 2012 UPR, Ghana received one recommendation from Austria and one from Canada on the Freedom of Information Bill.<sup>2</sup> Ghana accepted both, committing to take immediate steps to pass the bill into law and to amend the bill in line with recommendations made by the Commission on Human Rights and Administrative Justice (CHRAJ).

3. PEN International and PEN Ghana recognise that Ghana has a vibrant and free media environment, overseen by the two statutory regulatory agencies, the National Media Commission (NMC) and the National Communications Authority (NCA). Generally, availability of internet and mobile telephone facilities across the country has led to the creation of a number locally-based online media outlets, however, a large number of the well-known and widely accessed Ghanaian online media are based outside the country.

4. However, certain freedom of expression concerns remain, such as the use of contempt of court charges to prevent the media from scrutinising the activities of

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<sup>1</sup> Constitution of the Republic of Ghana. Available at: <http://www.ghanaweb.com/GhanaHomePage/republic/constitution.php?id=Gconst5.html>; Article 19, International Covenant on Civil and Political Rights. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

<sup>2</sup> Austria: “Amend the Right to Information Bill in line with the recommendations made by CHRAJ.”; Canada: “Take immediate steps toward the adoption of the freedom of information Bill, building on its efforts to improve good governance, accountability and transparency.”

judges and the courts, as well as concerns around the Interception of Postal Packets & Telecommunications Bill.

5. This submission examines the following key points related to freedom of expression:

- (a) Right to Information Bill
- (b) Other legislation impacting on speech and media
- (c) Interception of communications and surveillance
- (d) Situation of Press Freedom

### **III. RELEVANT ISSUES**

#### **(a) Right to Information Bill**

6. PEN International and PEN Ghana note with regret that the Right to Information (RTI) Bill has not yet been passed by Parliament, despite Ghana's acceptance of the recommendations made by Austria and Canada in 2012. The coalition stresses the importance of compliance of the provisions to the ICCPR, as stated also by the Human Rights Committee that Ghana should expedite the enactment of the Right to Information Bill and ensure that its provisions conform to the ICCPR.<sup>3</sup>

7. The bill was first presented before Parliament in 2003, and has been awaiting approval for 13 years. After consultation from civil society, the bill was reviewed and revised, and presented to Parliament by the Executive (through the Attorney General and Minister of Justice) again on 25<sup>th</sup> July 2015, for the second reading of the bill.

8. Under pressure from civil society, the Speaker of Parliament made an announcement on May 17, 2016 singling out the RTI Bill for priority attention. Following that announcement, the bill was taken through readings on a daily basis in the house from 18 to 20 May and 24 to 27 May 2016. Regrettably, since then the process has experienced a stalemate, as no further action has been taken by Parliament. In November 2016, then-President John Mahama said he could not force Parliament to pass the Bill into law, as parliament is autonomous, but that he had been advocating for the bill to be passed. The Right to Information (RTI) Coalition refuted these claims.<sup>4</sup> The current President's New Patriotic Party (NPP) party when in opposition was among the voices calling for the passage of the

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<sup>3</sup> Amnesty International, Ghana Report 2016/2017. Available at: <https://www.amnesty.org/en/countries/africa/ghana/report-ghana/>

<sup>4</sup> The Right to Information coalition is a group of rights advocacy organizations campaigning since 1998 for the passage of a Right to Information law. Citi FM, "I can't force Parliament to pass RTI bill – Mahama", 17 November 2016. Available at: <http://citifmonline.com/2016/11/17/i-cant-force-parliament-to-pass-rti-bill-mahama/>

Right to Information Bill. In the last two weeks of the last Parliament, the then-government, having lost the December 7, 2016 elections, tried to push the bill through with certain conditions which the then-opposition party (now ruling party) opposed.

9. Since the bill could not go through the last parliament, a fresh bill will have to be presented to the current parliament. At time of writing there were no updates from the government on the standing of the bill, but the coalition is encouraged by the President's past support of the RTI bill and his work as Attorney General and Minister of Justice where he initiated and effected the repeal of the Criminal Defamation Law.

### **(b) Other legislation impacting on speech and media**

10. Despite the welcome removal of criminal libel and seditious libel provisions from the country's Criminal Code (1960, Act 29) in 2001, there are several other pieces of legislation that restrict freedom of expression because they "pertain to criminal liability for putting words into circulation"<sup>5</sup> including obscenity; contempt of court; contempt of Parliament; exciting prejudice as to proceedings pending before court; and printing illegal offers.<sup>6</sup>

11. Besides the contempt laws, there is no indication that any of the other legislation listed above has been applied against the media or citizens in recent years. However, the application of contempt of court laws in several instances raises concerns about restricting freedom of expression. While contempt of parliament and contempt of court laws are used to protect the integrity of the parliament and judiciary respectively, the coalition is concerned with the capricious application against journalists and the media when there is no need for such an action. Civil society, media freedom groups and others have also expressed concern about the lack of a definition of the common law of contempt of court in regards to press freedom and the potential this creates for a chilling

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<sup>5</sup> H.J.A.N Mensah-Bonsu, "The Press and the Criminal Law in Ghana," In Kwame Karikari and Kofi Kumado (Editors), 2000. *The Law and the Media in Ghana*. Legon, School of Communication Studies, pp. 88 – 118, as quoted in "The Impacts of Decriminalisation of Defamation on Media Freedom in Ghana," paper prepared for PEN International by Kwame Karikari, Dean, School of Communication Studies, Wisconsin International University College, Ghana, unpublished.

<sup>6</sup> Criminal Offences Act - 1960 (Act 29), Section - 281 – "Further Offences Relating to Obscenity", available at [http://laws.ghanalegal.com/acts/id/19/section/281/Further\\_Offences\\_Relating\\_To\\_Obscenity](http://laws.ghanalegal.com/acts/id/19/section/281/Further_Offences_Relating_To_Obscenity); Article 19, 12 (clause 11) of the 1992 Constitution states that "the act or omission constituting the contempt is not defined in a written law and the penalty is not so prescribed." According to legal practitioner, Ace Kojo Annan Ankomah, "current definitions are based on the 'received' common law, which classifies contempt into (i) civil contempt conduct (involving a breach of a court order) and criminal contempt (refers generally to other conduct, which interferes with the due administration of justice)", as quoted in Ghana Web, "Parliament must consider contempt of court Act - Ace Ankomah," 3 July 2013, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Parliament-must-consider-contempt-of-court-Act-Ace-Ankomah-278572> ); Contempt of Parliament, Section 122 Ghana Constitution, available at <http://www.ghanaweb.com/GhanaHomePage/republic/constitution.php?id=Gconst10.html>; Criminal Offences Act - 1960 (Act 29), Section - 225 - Exciting Prejudice as to Proceeding Pending in Court, available at [http://laws.ghanalegal.com/acts/id/19/section/225/Exciting\\_Prejudice\\_As\\_To\\_Proceeding\\_Pending\\_In\\_Court](http://laws.ghanalegal.com/acts/id/19/section/225/Exciting_Prejudice_As_To_Proceeding_Pending_In_Court); section 233(c)

effect on the press.<sup>7</sup> Examples of the use of contempt laws on press freedom include a case where three members of the then-opposition New Patriotic Party (NPP) were brought before the Supreme Court in 2013, for “scandalising” the Court with comments they made separately on radio stations concerning the Court’s hearing of a petition brought before it by the then-opposition NPP. The petition sought the annulment of the results of the just-held general elections in which the Electoral Commission had declared the ruling NDC the winner. In a highly politically polarised atmosphere, the custodial sentences given to the contemnors intensified the public outrage ensuing from the case.<sup>8</sup>

12. Contempt of parliament has also been used in three instances since the decriminalisation of defamation in 2001, including in the period under review, for instance in July 2016, a reporter from the biggest newspaper, the state-owned Daily Graphic, was banned from reporting on proceedings of the House.<sup>9</sup>

13. Other legislation exists that could jeopardise the media’s freedom to inform the public or demand accountability from public office holders including those protecting state or official “secrets”, such as the State Secrets Act<sup>10</sup>, as well as section 208 of the Criminal Code which deals with false news.<sup>11</sup>

### **(c) Interception of communications and surveillance**

14. The Interception of Postal Packets and Telecommunication Messages Bill 2015, was presented by the previous government to Parliament. The Bill proposed the interception of all communications for the undefined purposes of “protecting national security” and “fighting crime generally.”<sup>12</sup> The coalition believes the Bill lacked sufficient safeguards and guidelines that could guarantee its correct implementation; consequently, the bill received widespread condemnation from civil society. In particular, clause 4(3) and (4) of the Bill were problematic as they allowed the National Security Coordinator to authorise interceptions for 48 hours

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Criminal Offences Act - 1960 (ACT 29), Section - 233 - Advertising a Reward for the Return of Stolen Property, etc, c) prints or publishes any such offer;  
[http://laws.ghanalegal.com/acts/id/19/section/233/Advertising\\_A\\_Reward\\_For\\_The\\_Return\\_Of\\_Stolen\\_Property,\\_Etc](http://laws.ghanalegal.com/acts/id/19/section/233/Advertising_A_Reward_For_The_Return_Of_Stolen_Property,_Etc)

<sup>7</sup> Akoto Ampaw (2004), Legislation on Media, Speech and Expression. A Source Book. Accra. MFWA. Introduction, p. 10, as referenced in Professor Kwame Karikari’s paper for PEN International, “The Impacts of Decriminalisation of Defamation on Media Freedom in Ghana,” unpublished.

<sup>8</sup> Professor Kwame Karikari, “The Impacts of Decriminalisation of Defamation on Media Freedom in Ghana,” paper for PEN International, unpublished

<sup>9</sup>The reporter had allegedly published a misleading report which he had apologised for when he was brought before the Privileges Committee. Ghana Web, “Parliament ban Daily Graphic Reporter”, 15 July 2016, Available at: <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Parliament-bans-Daily-Graphic-reporter-455565> ; referenced in Professor Karikari’s paper for PEN International, unpublished

<sup>10</sup> State Secrets Act, 1962 (Act 101)

<sup>11</sup> Criminal Offences Act 1960 (Act 29); Section - 208 - Publication of False news with Intent to Cause fear and Alarm to Public,  
[http://laws.ghanalegal.com/acts/id/19/section/208/Publication\\_Of\\_False\\_News\\_With\\_Intent\\_To\\_Cause\\_Fear\\_And\\_Alarm\\_To\\_Public](http://laws.ghanalegal.com/acts/id/19/section/208/Publication_Of_False_News_With_Intent_To_Cause_Fear_And_Alarm_To_Public)

<sup>12</sup> Amnesty International, Ghana Report 2016/2017. Available at: <https://www.amnesty.org/en/countries/africa/ghana/report-ghana/>

without any court order or warrant.<sup>13</sup> The coalition welcomes the fact that the bill expired with the end of the last Parliament and would caution against its reintroduction in its previous form.

15. On May 26, 2016, the Inspector General of Police, John Kudalor, told reporters in Accra that police were considering blocking Facebook, Twitter and other social media during general elections scheduled for December 2016.<sup>14</sup> PEN International and PEN Ghana note that this did not occur, yet are concerned that the authorities at the time threatened to block social media access and repress freedom of expression online.

#### **(d) Situation of press freedom**

16. Ghana has a robust media freedom environment, however the coalition notes two cases of concern relating to journalists in the period under review. Radio reporter George Abanga was shot and killed in Sankore, in the Brong Ahafo Region of Ghana on 10 September, 2015.<sup>15</sup> Abanga, a 35-year-old journalist, used to work for independent Success FM and Peace FM. He was investigating an alleged dispute among cocoa farmers and workers.<sup>16</sup> The motive behind the attack was unclear, but several Ghanaian newspapers alleged it could be related to the dispute among cocoa farmers and workers he was alleged to be investigating,<sup>17</sup> The police were said to be investigating, but at time of writing it was unclear what progress had been made as the police have not released any concrete information on his death.

17. Fadi Dabbousi, a Ghanaian and Lebanese author and journalist for the news website [Modern Ghana](#), was arrested on 23 September 2016 and held for two days. He was arrested by the Bureau of National Investigation (BNI) upon his arrival in Ghana from Lebanon.<sup>18</sup> After his arrest, the BNI reportedly searched his home and, among other items, seized copies of his book “59 Years of Ghana to Nowhere: The Future Is Now”, which is said to be critical of former President Mahama’s style of governance. The copies were reportedly returned on 25 September 2016.<sup>19</sup> Dabbousi had made critical observations about President Mahama and his government in several articles. Ghana’s deputy minister of communication said that Dabbousi was arrested in connection with allegations he had made relating to the suitability of the

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<sup>13</sup> Myjoyonline, “Current “Spy Bill” unacceptable”, 11 March 2016, available at:

<http://www.myjoyonline.com/news/2016/march-11th/current.php>

<sup>14</sup> Committee to Protect Journalists, “Ghana police threaten social media blackout during polls”, 30 September 2016. Available at: <https://cpj.org/2016/09/ghana-police-threaten-social-media-blackout-during.php>

<sup>15</sup> Freedom House, Ghana, ‘Freedom of the Press 2016’. Available at: <https://freedomhouse.org/report/freedom-press/2016/ghana>

<sup>16</sup> Committee to Protect Journalists (CPJ) “Journalists killed-Ghana:George Abanga”, 29 December 2015.

Available at: <https://cpj.org/killed/2015/george-abanga.php>

<sup>17</sup> CPJ, “Journalists killed-Ghana:George Abanga”, <https://cpj.org/killed/2015/george-abanga.php>

<sup>18</sup> Media Foundation for West Africa, “Ghana: Author Arrested for Critical Comments Against President,” 26 September 2016, available at <http://www.mfwa.org/ghana-author-arrested-for-critical-comments-against-president/>

<sup>19</sup> The New Statesman, Nana Yaw Dwamena, “BNI arrests Mahama critic -Detains him over 48hours without access to lawyer,” 26 September 2016, available at

<http://www.thestatesmanonline.com/index.php/news/2323-bni-arrests-mahama-critic-detains-him-over-48hours-without-access-to-lawyer>

former president to continue in office and that it was a security matter.<sup>20</sup> After his release, Dabboussi apologised on Peace FM for comments he had made on social media about former President Mahama allegedly impregnating the daughter of a chieftain and questioning Mahama's HIV status, which were the reason for his arrest.<sup>21</sup> The coalition is of the view that Dabboussi should not have been arrested over these comments. Civil defamation laws exist as a remedy that individuals can apply to in order to protect their reputations and integrity and former President Mahama could have used the civil courts for redress instead of criminalising Dabboussi's allegations.

#### IV. RECOMMENDATIONS

18. In light of these concerns, the coalition makes the following recommendations to the Ghanaian government:

- a. In line with the 2012 recommendations from Austria and Canada, Ghana should ensure the Right to Information Bill is passed and swiftly implemented in compliance with the Constitution of Ghana and the ICCPR in order to make it easier for citizens and media to have access to information held by the state and government
- b. Ensure that other existing legislation including contempt of court laws are not used to restrict freedom of expression
- c. In the event that the government reintroduces the draft Interception of Postal Packets & Telecommunications Bill, ensure it is revised in line with international standards; takes into consideration the concerns expressed by civil society organisations and the Ghana Bar Association; and allow consultation with the public and others before tabling the new bill before Parliament.
- d. Ensure that media freedom remains robust in Ghana by protecting media actors' freedom of expression in law, policy and practice, as per Chapter 12 of Ghana's Constitution, under Articles 162 and 163, which fully guarantees freedom and independence of the media and give journalists the full protection they need to practice.

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<sup>20</sup> CPJ, "Ghana detains writer for allegations regarding president", 29 September 2016, available at <https://cpj.org/2016/09/ghana-detains-writer-for-allegations-regarding-pre.php>

<sup>21</sup> Ghana Web, "Fadi Dabboussi apologises to President Mahama," 26 September 2016, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Fadi-Dabboussi-apologises-to-President-Mahama-472499>