



Stakeholder submission of Commonwealth Human Rights Initiative (CHRI) for the 2012
Universal Periodic Review of Ghana

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1. The Right to Information

2. During Ghana's first UPR in 2008, Canada recommended that it "pass the Freedom of Information Bill..." Ghana responded by saying that it shared the view that the bill was important and intended to consolidate democracy, and that it was "with this mind that the Right to Information Bill was being prepared within the framework of ongoing consultations with relevant stakeholders".¹ Four years later, the current government has not passed the Right to Information (RTI) Bill, despite calling for its passage in its campaign manifesto in 2008 and continuing to express commitment to pass the Bill since elected.²
3. The Right to Information is protected as an entrenched human right under Article 21 1(f) of the Ghana Constitution (1992). Ghana is a signatory to various international instruments and declarations that obligate member states to pass similar laws.³ Globally, over 80 states have secured freedom of information laws in-country and in the past few years a number of countries within the ECOWAS region, in which Ghana is highly regarded as a leading democracy, have passed RTI laws. These include Liberia, Guinea, Niger and Nigeria.
4. Despite regional movements towards RTI and a Constitutional imperative that Ghana operationalise the right to information, the right has little meaning to Ghanaian citizens in the absence of legislation. Surveys carried out in 2004⁴ and 2010⁵ showed that only a very small percentage of requests for important, non-sensitive government information were sufficiently granted in a timely manner. The overwhelming majority of requesters (70% in 2004 and 90% in 2010) were met with mute refusals or told that their requests were lost. Such numbers indicate the inadequate level of information disclosure practiced by the Ghanaian government and thus reflect the need for RTI legislation.
5. In 2002, the government initiated efforts to draft a Right to Information Bill and has reviewed it on numerous occasions for the past ten years. The latest version of the Bill, known as the Right to Information Bill 2010, was tabled before Parliament in February 2010 in the wake of public demands for passage of the Bill.
6. Ghana's RTI Bill has been languishing in Parliament since 2010. Despite the best of advice available from a broad-based civil society coalition, the Government introduced a weak Bill to provide access to information to citizens. The RTI Bill does not conform to international best practice standards. There are too many blanket exemptions covering all information relating to the offices of the President, Vice President and the Cabinet. Virtually any information about their functioning will become inaccessible under the law. The appeals process envisaged in the Bill is cumbersome. As the Minister is the competent authority for reviewing decisions of refusal, few people would have accessibility for redress of their grievances about denial of information. Information seekers living in far off places may simply not be able to attend a hearing into their appeals held in Accra. The final authority to adjudicate over access disputes is the Supreme Court. Few applicants will be able to afford a lawyer and court expenses involved in this process. The Bill does not conform to the principle of providing quick access to information. Decisions on a

¹ UN Human Rights Council (2008) Report of the Human Rights Council on its Eighth Session.

² *NDC manifesto, 2008, p. 24*, The government continued to express its commitment to pass the RTI law in the State of the Nation Address, February 25, 2009; on World Press Freedom Day, 2010, on World Press Freedom Day 2011 and on a number of other occasions.

³ These include; the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, African Union Declaration of Principles on Freedom of Expression in Africa and the AU Convention against Corruption.

⁴ Commonwealth Human Rights Initiative Africa Office et al. (2004) Access to Information Monitoring Survey.

⁵ Media Foundation for West Africa, (2010) *Report of Access to Information Monitoring Exercise, Ghana*.

request could be delayed by as many as 150 days under various clauses of the Bill. The possibility of charging excessive fees could be another dampener on potential applicants. The Bill does not provide for an independent mechanism such as an Information Commission to guide and oversee the implementation of the law in public authorities. Instead the Attorney General has been made responsible for implementation. Despite strong demands from the civil society, the Bill does not cover private actors and entities that may be supported through public resources or which may be entrusted with providing public services. The Bill also does not cover chieftaincy institutions that have control over large segments of public resources.

7. Beyond international instruments and a growing global trend towards the passage of RTI laws, a number of domestic opportunities for the passage of the bill are imminent. The exploration of oil in Ghana as well as its being part of the Extractive Industries Transparency Initiative (EITI) provide opportunities for Ghana to pass RTI legislation as part of complying with its transparency obligations. Also, in December 2012 Ghana will be holding another round of Presidential elections, presenting the government with an opportunity to prove how it has fulfilled its commitment to pass the Right to Information Bill.

8. Recommendations

- a. The government should immediately improve the current draft of the RTI Bill.
 - i. Exemptions should be clearly stated and only apply to specific information that protects the public interest and be subjected to the harm test.
 - ii. The Bill should envisage the establishment of an independent commission to oversee the implementation of the Act.
 - iii. The time frame for providing information should be shortened.
 - iv. The appeal process should be flexible and not deter citizens from accessing information.
 - v. The ambit of the Bill should be extend to private bodies that receive state funding and work in the public interest and companies that tap Ghana's natural resources.
- b. Once improved, the Bill should be passed into law immediately.
- c. The government should start preparing for the post-passage period. Mechanisms that would promote the availing of government information should be instituted to ease any transition that follows the Bill becoming law. Preparations should include, for example, training government officers on their obligations under the law and preparing information that can be proactively disclosed.

9. Reform of the police

10. During Ghana's 2008 UPR, Switzerland noted that it "shared the view of the Ghanaian Commission that police brutality is increasing as well as street justice, perhaps driven by slow justice system,"⁶ and recommended that police brutalities should be combated and sanctioned while the judicial system should be reformed. Ghana accepted this recommendation without comment.

11. Since 2008, CHRI's monitoring of media reports, reports received from its justice centres paralegals and complaints made by individuals to CHRI offices, reveal that little has been done to curb police brutality and hold offending officers accountable. The Police administration has failed to effectively address numerous reports of shooting and brutalisation of innocent civilians, such as, but not limited to, the Kokomlemlé shooting of a car dealer in September 2009, the brutal beatings meted out to former world boxing champion Ike Quartey at Mallam Junction in Accra in October 2009 and the alleged assault on a woman at her residence at Yawhima Shooting Range in Sunyani by six armed policemen in September 2010.

⁶ UN Human Rights Council (2008) Report of the Working Group on the Universal Periodic Review – Ghana.

12. Recommendations

- a. Existing mechanisms, such as the Police Council and Parliamentary Committee on Defence and Interior, are weak due to under-resourcing and lack of capacity. The government must establish an external independent police oversight mechanism.

13. Juvenile Justice⁷

14. The Juvenile Justice Act (2003) outlines most aspects of the juvenile justice system in Ghana, and establishes Junior and Senior Correctional Centres. The Act suffers from many gaps and a lack of implementation by court and police officials.
15. As with the criminal justice system as a whole in Ghana, the juvenile justice system in Ghana is inefficient. Even though the juvenile justice system within Accra city limits has areas of strengths, this is not representative of the entire country. Police are often unaware of regulations pertaining to juvenile arrest and as a result, they often break these rules. Juveniles are held with adults, they are not brought to court within 48 hours, and they are never offered bail by the police. Facilities for juvenile suspects are in disrepair, the juvenile court in Accra only operates once a week, outside of Accra juvenile courts barely exist at all, and Child Panels and Probation Committees meet irregularly.
16. The Government's Legal Aid Scheme operates at a low capacity and handles almost no juvenile cases. NGOs involved in providing legal advice generally do not focus on representing juveniles in court and there is no information available to juveniles on where and how they can access legal representation. There is a Juvenile Justice Project that provides legal aid for juveniles in Accra, but it operates through support from UNICEF and not the government and there is no similar programme in the rest of the country.
17. A major reason for the poor implementation of the Juvenile Justice Act is the fact that the Act is not accompanied by a corresponding juvenile justice policy. The government has no dedicated plan or strategy on how each section of the Juvenile Justice Act is to be carried out - and by which department or ministry within the government. UNICEF is currently working on such a policy, but research and policy creation must also be done by the government itself.
18. There is also no nodal department that deals with the issue of juvenile justice and, in general, the government of Ghana does not put a high priority on criminal justice.⁸

19. Recommendations

- a. The Government should prioritise the creation of a juvenile justice policy in conjunction with efforts currently undertaken by UNICEF, and designate a nodal ministry or department to take responsible for the entire juvenile justice process in the country.
- b. The Government should inject funds and work with international organisations to improve juvenile justice.
- c. Every police station should have one officer trained in juvenile justice on duty at all time.
- d. The Government should develop a legal aid scheme specifically for juveniles in all areas of the country.

20. The Commission for Human Rights and Administrative Justice

⁷ This section is an abbreviated version of: Commonwealth Human Rights Initiative, Africa Office (2011) *Juvenile Justice in Ghana: A Study to Assess the Status of Juvenile Justice in Ghana*, accessible at: <http://www.humanrightsinitiative.org/publications/ghana/JuvenileJusticeinGhana.pdf>.

⁸ Though there is technically a Director for Juvenile Justice Administration, he is finding it difficult to stay on top of the day-to-day working of the juvenile justice system since juvenile justice matters are scattered among various government departments, each falling under a different ministry.

21. During its 2008 UPR, Ghana accepted a recommendation *to further strengthen the capacities of the CHRAJ by increasing its funding and resources*. Since 2008, CHRAJ has experienced substantial improvements in its funding, which have had a positive impact on its ability to carry out its mandate. Specifically, CHRAJ's funds from the Government for operations have increased from GHS 880,000 in 2008 to GHS 2,168,836 in 2012. CHRAJ's budget for investments (which includes operational vehicles) has also increased from about GHS 180,000 in 2008 to GHS 1,848,590 in 2012. In addition, the financial support it receives from DANIDA has also increased substantially, and is expected to exceed GHS 3,000,000 in 2012.

22. Recommendations

- a. The Government must continue its efforts to strengthen the capacity of CHRAJ by increasing its funding and resources so that it can continue to carry out its mandate effectively.

23. Same-Sex Sexual Conduct

24. The 1992 Constitution of Ghana guarantees dignity and equality before the law.⁹ Despite these constitutional guarantees, Section 104 of the 1960 Ghanaian Criminal Code criminalises “unnatural carnal knowledge”.¹⁰ The definition of “unnatural carnal knowledge” is defined ambiguously in subsection (2) as “sexual intercourse with a person in an unnatural manner or with an animal.” The criminalisation of same-sex conduct means applying a criminal punishment to a person based on sexual orientation and is equivalent to criminalising an individual based on their gender or other immutable characteristic. Subsection (1)(a) gives the offence its fullest criminal impact where there is no consent and Subsection (1)(b) states that whoever has “unnatural carnal knowledge” consensually is “guilty of a misdemeanour.”

25. Under Article 17 of ICCPR, Ghana has a responsibility to protect individuals against “arbitrary or unlawful interference” with their “privacy, family, home or correspondence”. Laws banning same-sex conduct have been found by the Human Rights Committee to be in breach of Article 17.¹¹ Article 26 affords individuals “effective protection against discrimination on any ground” and the right to “the equal protection of the law”. The Human Rights Committee has held that state parties “should guarantee equal rights to all individuals and protect the right to equality before the law regardless of their sexual orientation”.¹² It has also previously held that criminalisation is incompatible with both the right to privacy and equality before the law.¹³ The criminalisation of same-sex sexual conduct by Ghana is therefore incompatible with Ghana's obligations under the ICCPR.

26. Ghana also has an obligation under Article 12 of the ICESCR to promote “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. The criminalisation of same-sex conduct interferes with the realisation of this right and the Committee on Economic, Social and Cultural Rights has held that the criminalisation of same-sex conduct has the effect of “nullifying or impairing the equal enjoyment or exercise of the right to health”.¹⁴ The effect of criminalisation on the right to health is apparent in Ghana. Paul Evans Aidoo, the government's Western Regional Minister, called for increased security and the arrest of all

⁹ The Constitution of the Republic of Ghana (1992), accessed at: <http://www.politicsresources.net/docs/ghanaconst.pdf>.

¹⁰ Criminal Code of Ghana, 1960 (Act 29) s.104 (1)b.

¹¹ The Human Rights Committee in *Toonen v Australia* held that the criminalisation of same sex conduct was incompatible with a state party's obligations under Article 17.

¹² Human Rights Committee (May 2007) *Concluding observations of the Human Rights Committee: Chile*, U.N. Doc. CCPR/C/CHL/CO/5, paragraph. 16.

¹³ Human Rights Committee (May 2007) *Concluding observations of the Human Rights Committee: Barbados*, U.N. Doc. CCPR/C/BRB/CO/3, paragraph. 13.

¹⁴ Committee on Economic, Social and Cultural Rights (August 2000) *General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4, , paragraph. 18.

homosexuals in response to a media report in May 2011 stating that 8,000 homosexuals had been registered by health NGOs in the country's western region.¹⁵ There have also been reports that healthcare workers treating HIV positive individuals have been pressured to release the names of people they are treating thus substantially interfering with the provision and protection of this right.¹⁶

In practice there have been limited incidents of prosecutions and convictions under Section 104 of the Criminal Code. The last recorded conviction was in 2003 when the Accra Circuit Court jailed four gay men for homosexual activities. In June 2011, a statement by the Director of Public Prosecutions confirmed that those engaged in homosexuality were breaking the law.¹⁷ However, two months later the Attorney-General and Minister of Justice made a statement that suggested that the provision did not criminalise homosexuality where it was practised between consenting parties within the confines of their home. He added that same-sex sexual relations were "generally considered wrong culturally" and that he did not believe that the criminal provisions would be repealed.¹⁸

27. The period under review has seen statements by members of parliament that the government should take action against homosexuals.¹⁹ Paul Evans Aidoo, the minister for Ghana's Western Region, said in September 2011 that efforts should be "made to get rid of these people in the society".²⁰ Church organisations like the Christian Council of Ghana which wield significant influence in Ghanaian politics, have publicly called for the strengthening of the laws in relation to same-sex sexual conduct.²¹ The impact of the debates, and the animosity towards homosexuality this incites, has meant that LGBTI individuals are more vulnerable to discrimination, harassment and violence. As homosexuality is illegal in Ghana, they have no protection under the law and reporting a crime can lead to the victim being criminalised. The animosity has also, in turn, led to decreased participation by the LGBTI community in programs that deliver safe sex education and other support programmes.

28. Recommendations

- a. Issue a moratorium on public prosecutions under Section 104(b) of the 1960 Criminal Code and embark on a process of repeal of Section 104(b).
- b. Ensure that the provisions in the Constitution that guarantee equality and dignity are used to protect members of the LGBTI community.
- c. Encourage dialogue and cooperation between civil society groups, human rights defenders, religious groups and other relevant stakeholders on the decriminalisation of same-sex sexual conduct.

¹⁵ IRIN Plus News (8 August 2011) 'Analysis: understanding the drivers of homophobia in Ghana', accessed at: <http://www.plusnews.org/Report/93387/Analysis-Understanding-the-drivers-of-homophobia-in-Ghana>.

¹⁶ *ibid.*

¹⁷ myjoyonline.com.gh (14 September 2011) 'Gays can be tried. The law is silent on lesbians', accessed at <http://www.modernghana.com/news/332861/1/gays-can-be-tried-the-law-is-silent-on-lesbians.html>.

¹⁸ GhanaWeb (31 August 2011) 'Attorney-General: Homosexuality is not illegal in Ghana', accessed at: <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=217527>.

¹⁹ GhanaWeb (16 July 2011) 'Homosexuals could soon be lynched – MP warns', accessed at: <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=211415>; citifmonline.com (6 June 2011) 'Gov't must close down all homosexual joints', accessed at: <http://www.citifmonline.com/mobile/index.php?id=1.419175>.

²⁰ MyJoyOnline (14 September 2011) 'Ghana gay call 'promotes hatred', accessed at: <http://edition.myjoyonline.com/pages/news/201107/69806.php>.

²¹ Daily Guide (31 August 2011) 'A-G's gay comments illogical, unfortunate – Clergy', accessed at: <http://www.dailyguideghana.com/?p=25197>; Ghana News Agency (18 July 2011) 'Christian Council joins calls to condemn homosexuality in Ghana', accessed at: <http://www.ghananewsagency.org/details/Social/Christian-Council-joins-calls-to-condemn-homosexuality-in-Ghana/?ci=4&ai=31187>.