

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
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27 October 2016

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 25/2.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the "Right to Information Bill" ("RTI Bill"), which was suspended by Parliament in June 2016, contrary to the recommendations made by the UN Human Rights Committee in its concluding observations in June 2016, urging Ghana to expedite the adoption of the RTI Bill and ensure that its provisions are in line with the International Covenant on Civil and Political Rights (CCPR/C/GHA/CO/1).

According to the information received:

The RTI Bill was drafted first in 1999, and revised in 2003, 2005 and 2007. The first attempt at enacting the law on the right to information was made on 5 February 2010, when the bill was presented to Parliament.

In 2008 and 2012, National Democratic Congress party ("NDC") promised in its manifesto that, if elected, it would pass an RTI law. In 2008, the NDC promised to deepen political accountability and transparency, enhance the disclosure of budgets, public expenditure and procedures, and enact a freedom of information act.

In the NDC's 2012 manifesto, President John Dramani Mahama promised that "the next NDC Administration would implement the Freedom of Information Act once it is passed by Parliament and would work with the Legislature to prioritize the passage of the Freedom of Information Act..." President Mahama has reportedly indicated on many occasions that he would sign an RTI bill into law without delay once passed.

President Mahama tabled the RTI Bill before the Parliament on 12 November 2013. Subsequently, he referred the RTI Bill to the Select Committee on Constitutional, Legal and Parliamentary Affairs for thorough discussion and review. The Select Committee, as part of its deliberative processes, held consultations with various stakeholders, including the civil society RTI Coalition and unanimously adopted a number of critical amendments to the Bill in its report presented to Parliament in December 2014. The objective of the proposed

amendments by the bipartisan Select Committee was reportedly to make the RTI Bill a robust, transparent and effective Bill that would promote democratic participation, transparency and the fight against corruption when passed into law.

In March 2016, the Parliament began the consideration of the RTI Bill with the proposed amendments made by the Select Committee. Between March and June 2016, the Parliament was only able to consider 29 out of 157 clauses of amendments. Yet, the Parliament suspended the consideration of the RTI Bill without providing any explanation.

It has been reported that majority and minority members of the Parliament assured various groups that the Parliament would pass the RTI Bill in its second sitting for the year (May to July 2016). In addition, at the 117th session of the UN Human Rights Committee in March 2016, the Human Rights Committee urged the government of Ghana to “provide information on the status of the Right to Information Bill and its compliance with the Covenant”. Members of Parliament led by the Deputy Attorney General, Hon Dominic Ayine, assured that Parliament would pass the RTI Bill by 22 July 2016. He remarked that President Mahama had personally tasked him to attend Parliament sessions regularly to ensure that the Parliament passed the RTI Bill. Yet, the RTI Bill has not yet passed and its status remains unclear.

While I welcome the work towards the drafting of the RTI Bill, I wish to share my concern that your Excellency’s Government has not followed through with its commitment to seek adoption of the RTI Bill. The absence of such a law and the delay in its passage deprive individuals and civil society in Ghana of a critical tool for public access to information and accountability.

An effective RTI law will set out the mechanisms by which all persons can enjoy the right to access information held by public authorities. The RTI Bill has concrete and practical benefits, as having access to information is the cornerstone for transparency, accountability, democratic participation and good governance. Furthermore, access to information is crucial for promoting human rights generally, and specifically for ensuring that the Government complies with its obligations under international human rights law, in particular with Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ghana on 7 September 2000, and the Sustainable Development Goals, in particular goal 16.10.

Article 19 of the ICCPR guarantees the right to seek, receive and impart information and ideas through any media and regardless of frontiers. Furthermore, under Article 9 of the African Charter on Human and Peoples’ Rights, which your Excellency’s Government ratified on 24 January 1989, everyone shall have the right to receive information and the right to express and disseminate his opinions within the law.

In view of the aforementioned comments, I urge your Excellency’s Government to engage the Parliament, as a matter of urgency, to pass the RTI Bill with the amendments before the Parliament lapses in January 2017.

In the meantime, as it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information you may have regarding the RTI Bill.
2. Please provide information about the current status of the RTI Bill and the estimated timeline for the passing of the bill into law.
3. Please provide information about the reasons for the delay of the passing of the RTI Bill.
4. Please provide information about how your Excellency's Government provides for public access to information in the absence of the RTI Bill.

I would appreciate receiving a response within 60 days.

Finally, I would like to inform your Excellency's Government that this communication will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: (<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>). Your Excellency's Government's response will also be made available on the same website as well as in the regular periodic Communications Report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression