



GHANA PERMANENT MISSION

SC/GE/UN.7

REF. N°.

56, RUE DE MOILLEBEAU

1209 GENEVA

DATE:

3rd August, 2015

LETTER FROM THE SPECIAL RAPPORTEUR ON THE PROMOTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

We forward, herewith, for your kind attention, the attached write-up being Ghana's response to your letter dated 18th May, 2015 on the above-mentioned subject.

2. We sincerely apologize for responding to your request after the deadline and do hope that you might still find the information provided, herewith, useful.
3. Please accept, Sir, the assurances of our highest consideration.

for: HEAD OF MISSION
EBENEZER APPREKU
DEPUTY PERMANENT REPRESENTATIVE

MR. DAVID KAYE
SPECIAL RAPPORTEUR ON THE PROMOTION
AND PROTECTION OF THE RIGHT TO FREEDOM
OF OPINION AND EXPRESSION.
GENEVA.

C/O OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS
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**REPORT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE
PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION
AND EXPRESSION.**

PURSUANT TO HUMAN RIGHTS COUNCIL RESOLUTION 25/2

**1. NORMS AND REGULATIONS WHICH PROTECT THOSE IN THE MEDIA
FROM THE COMPELLED DISCLOSURE OF CONFIDENTIAL SOURCES OF
INFORMATION**

The National Media Commission Act 1993 (Act 449) and the National Media Policy were considered in looking at the protection afforded those in the media compelling them to disclose their sources of information.

Both the Act and the National Media Policy do not contain any provisions that seek to protect those in the media from the compelled disclosure of sources of information.

The ethics of the media by which they are guided in their work is what determines what protection is afforded to the sources of information and their disclosure by the media. It is the norm that in the interest of justice and to protect the spirit of Article 162 of the 1992 Constitution (Freedom and Independence of the Media) and Articles 12 - 33 (Fundamental Human Rights and Freedoms, the media are not usually compelled to disclose their sources of information.

In ensuring the security and sovereignty of the Country, in some circumstances, the media could be ordered to disclose their sources of information by the State in using the various laws and the Directive Principle of State of the 1992 Constitution. This means that usually, the media per their ethics would not disclose their sources of information but under extreme circumstances, would do so.

**2. WHAT PROTECTIONS ARE AFFORDED TO WHISTLEBLOWERS IN
NATIONAL LAW**

THE WHISTLEBLOWERS' ACT 2006 (ACT 720)

The Act came into force on in October, 2006

The Act provides for:

1. *the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or corrupt practices of others;*
2. *to provide for the protection against victimisation of persons who make these disclosures;*
3. *to provide for a Fund to reward individuals who make disclosures and;*
4. *to provide for related matters.*

The Act is an anti-corruption measure that seeks to promote the civic responsibility of Ghanaians and empower people to expose corruption and wrongdoing in both public and private sector institutions.

Whistle blowing is when an individual or group of people reveal or disclose information about another person's impropriety to one or more persons or institutions specified in the Whistleblowers' Act to fight corruption. People are encouraged to report any illegal activity or wrong doing to the security agencies or other related bodies for necessary action.

The Act is based on the idea that if citizens are empowered to disclose the corrupt and unlawful acts of others without fear of victimization, millions of Ghana cedis will be saved. This in turn will increase the integrity of the Citizens who will respect decent behaviour and will also improve the quality of public service that the Government provides. Provision of quality of public service will therefore enhance the rule of law, preserve public interest in public services and promote good ethics in the Ghanaian citizen.

The Act sets out six (6) types of offenses that can be disclosed:

- 1. an economic crime has been committed, is about to be committed or is likely to be committed;*
- 2. another person has not complied with a law or is in the process of breaking a law or is likely to break a law which imposes an obligation on that person;*
- 3. a miscarriage of justice has occurred, is occurring or is likely to occur;*
- 4. in a public institution there has been, there is or there is likely to be waste, misappropriation or mismanagement of public resources;*
- 5. the environmental has been degraded, is being degraded or is likely to be degraded; or*
- 6. the health or safety of an individual or a community is endangered, has been endangered or is likely to be endangered.*

The Act sets out the persons who qualify to make disclosures as an employee in respect of an employer, by an employee in respect in respect of another employee or by a person in respect of another person, or an institution.

A disclosure under the Whistleblowers' Act can be made to an employer of the whistleblower, a Police Officer, The Attorney General, the Auditor-General, staff of Intelligence Agencies, a member of Parliament, the Serious Fraud Office, Commission on Human Rights and Administrative Justice (CHRAJ), the National Media Commission and the Narcotics Control Board. The rest are a Chief, the head of a recognised religious body, a member of a District Assembly, a Minister of State, the Office of the President, the Revenue Agencies Governing Board or, a District Chief Executive.

PROCEDURE FOR WHISTLEBLOWING

Whistle blowing can be made in writing or orally. Every disclosure must contain the full name, address and occupation of the whistleblower, the nature of the impropriety being disclosed, the name of the person or persons against whom the disclosure is being made. The time and the place where the alleged impropriety took place or is likely to take place. In addition, the full name, address and description of a person who witnessed the commission of

the impropriety and whether the whistle blower has made a disclosure of the same or of some other impropriety on a previous occasion and if so, about whom and to whom the disclosure was made. The whistleblower is required to disclose if they are making the disclosure against their employer or a fellow employee and whether the whistleblower remains in the same employment.

INVESTIGATIONS INTO DISCLOSURE

A person who receives disclosure of impropriety shall investigate the matter except where the person to whom the disclosure is made does not have the capacity to undertake the investigation. Under such circumstances, the person shall refer the disclosure to the Attorney-General or another body as directed by the Attorney-General for investigation within seven (7) working days after receipt of the disclosure. Investigation undertaken in respect of an impropriety shall be carried out as expeditiously as possible and shall in any event be completed within sixty (60) days of receipt of the disclosure or directives to undertake the investigation. A report on investigations conducted shall be submitted to the Attorney-General for directives immediately the investigation is completed. A report shall be submitted to the Attorney-General if there is a delay in concluding investigations beyond sixty (60) days stating the reasons for the delay, measures that are proposed to expedite the investigation and any further assistance needed to complete the investigation. The Attorney-General on receipt of a report on investigations;

- a) accept the recommendations contained in the report and act on it,
- b) ask for further investigations by the same person or institution that conducted the investigations or by some other person or institution or
- c) reject the report and the recommendations for stated reasons which shall be communicated to the investigator.

PROTECTION OF WHISTLEBLOWERS

Section 12 of the Whistleblowers Act sets out the protection afforded to Whistleblowers.

A whistleblower is protected against any form of victimization once a disclosure has been made from harassment, dismissal, suspension, redundancy, denial of promotion, unfair transfer among others. A whistleblower who believes that a disclosure that was made has resulted in that person being victimized may in the first instance make a complaint to CHRAJ. CHRAJ would investigate the complaint by the whistleblower and make orders as may be necessary including seeking redress from the High Court and request for police protection.

The Act states that a whistleblower is not liable to civil or criminal proceedings in respect of disclosures unless it is proved that the whistleblower knew that the information in the disclosure was false or that it was made with malicious intent.

THE REWARD FUND

The reward Fund set up under the Whistleblower's Act is to provide monetary rewards to whistleblowers. A whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded from the Fund with 10% of the money recovered or the amount that the Attorney-General shall in consultation with the Inspector-General of Police determine.

The moneys for the Fund are from voluntary contributions and other moneys that Parliament may allocate to the Fund. Moneys for the Fund are paid into a bank account opened for the purpose.