

STRATEGIC AND IMPACTFUL IMPLEMENTATION OF ELECTORAL AND INSTITUTIONAL REFORMS IN GHANA (SIIE-IR 2023-2025) AHEAD OF GHANA'S 2024 ELECTIONS PROJECT

MEETING WITH NATIONAL MEDIA COMMISSION (NMC)

REPORT

MARCH 29, 2023

NATIONAL COMMUNICATION AUTHORITY

www.ideg.org

1. BACKGROUND

The SIIE-IR 2023-2025 project was designed by the European Union (EU) as a result of gaps identified by the EU Election Observer Mission (EUOMs) before, during, and after the 2020 general elections in Ghana. The Mission after the elections made 18 recommendations to fine Ghana's electoral process for the 2024 general elections and beyond. Five (5) out of these recommendations have been prioritized by the Commission for implementation. Generally, the projects seek to promote the implementation of the EUOM-Ghana 2020 recommendations for credible and peaceful electoral outcomes in 2024.

Over the years, post-election recommendations by the EUOM have received limited attention from stakeholders in the election value chain. This has been attributed to the lack of local champions who would own and facilitate the implementation of these proposals. For this reason, the European Union commissioned IDEG and Norsaac to advocate and facilitate the implementation of 5 priorities before the 2024 general elections.

2. RATIONALE FOR ENGAGEMENT

Priority five (5) of the project sought to limit the role of the National Communications Authority (NCA) to administer broadcasting signals and transfer its licensing and sanctioning powers to the National Media Commission (NMC) to create one sole and completely independent media regulatory authority, in charge of allocating broadcasting licenses, analyzing broadcasting contents and dealing with media-related complaints.

The two main institutions at the center of this recommendation are the National Communications Authority (NCA) and the National Media Commission (NMC). In order to ensure the effective implementation of this recommendation before the 2024 general elections, the project team on March 29th, 2023 sought an audience with the NMC to ascertain the feasibility of implementing this recommendation. Specifically, the meeting sought to explore the following questions:

- (1) How desirable and feasible is the recommendation by the EU to the NMC?
- (2) Are there alternative approaches for implementing this recommendation?

This report provides a summary of the engagement.

3. PROCEEDINGS

3.1 Purpose of Visit

Mr. Jonah conveyed his gratitude to the commission for affording the project team the opportunity to address a matter of similar interest. He expressed his belief that the diverse composition of the commission would provide the project team with useful feedback and suggestions, which it expects will aid in the successful implementation of the recommendation before the 2024 general elections. In providing context to the project, Mr. Jonah stated that the European Union (EU) has been a significant external election observer in Ghana since 2012. However, despite their notable contributions to Ghana's electoral process, few of their post-election recommendations have been implemented since 2021. This trend has led to frustration and disappointment among members of the commission. The recent threats by the head of the Mission to discontinue election observations if the post-2020 election observation recommendations are not addressed clearly illustrate the gravity of the situation.

It is for this reason, that the Commission selected IDEG and CDD through a call of proposals to facilitate the implementation of 5 out of the 18 recommendations made after the 2020 general elections. These two institutions were to serve as local champions to sustain pressure on relevant stakeholders in the election value chain to implement these 5 recommendations before the 2024 elections in Ghana. The fifth (5) recommendation of the Commission seeks to:

“Limit the role of the National Communications Authority (NCA) to administer broadcasting signals and transfer its licensing and sanctioning powers to the National Media Commission (NMC) to create one sole and completely independent media regulatory authority, in charge of allocating broadcasting licenses, analyzing broadcasting contents and dealing with media-related complaints” (EUOM 20202)

This recommendation is against the background of sensationalism, hate speech, and unprofessionalism in media coverage before, during, and after elections in Ghana. In the Commission's opinion, transferring the licensing and broadcasting authority from the National Communication Authority (NCA) to the National Media Commission (NMC) would significantly improve the media landscape, resulting in credible, peaceful, fair, and transparent elections. The NMC has been in existence for 15 years before the NCA. This means that the NMC wields considerable knowledge of Ghana's media landscape.

For this reason, the project team sought the audience of the Commission to ascertain whether the recommendation by the EU to transfer licensing and broadcasting power from the NCA to the NMC before the 2024 general elections is: (1) desirable and feasible; (2) whether there is a more desirable approach to this problem; (3) link the project to contacts in the NCA.

3.2 DISCUSSION

This section is presenting the key issues that were raised during the discussion. It also provides preliminary answers to the two broad objectives of the engagement.

3.2.1 How Desirable and Feasible Is the Recommendation by the EU to the NMC?

Indeed, the NMC regards the EU's recommendation as desirable and feasible, albeit with some implications. One significant challenge faced by the Commission since its inception in 1992 has been its inability to take punitive actions. The framers of the 1992 Constitution believed that giving sanctioning powers to the NMC would curtail the constitutional right to free speech, which had previously been suppressed by the prior regime. To safeguard the media against excessive politicization, the Constitution granted the NMC the authority to regulate media content but restricted its power to issue licenses and exercise editorial discretion over the media. Although the Constitution has placed some limitations on the NMC, the Commission is not entirely powerless. Constitutional Instruments (CI) and Legislative Instruments (LI) provide alternative channels for the NMC to enforce compliance among media practitioners. As a result, the NMC possesses some power to improve the media landscape but lacks the ability to revoke or suspend licenses and broadcasting signals, which is another form of sanctioning power suggested by the EU.

According to the Constitution, the primary responsibility of the National Communication Authority (NCA) is to oversee the radio and TV spectrum used by broadcasting service providers, rather than the regulation of media content. This has led to calls for regulatory reforms, including the establishment of a centralized or unified body for media regulation and supervision. In South Africa, for instance, the government recently merged its media regulatory bodies into a single central entity called CISA. There have been similar calls in Ghana to merge the NCA and the NMC to effectively regulate the media space.

3.2.2 Are there Alternative Approaches For Implementing This Recommendation?

The NMC views the EU's recommendation as desirable and feasible which is why it has worked closely with stakeholders to advocate for the passage of the Broadcasting Bill (BB). The NMC believes that the passage of the BB would allow it to collaborate with the NCA to ensure a sanitized media space for elections and other democratic activities. The NMC is guided by Act 449 of the NMC, the Electronic Communications Act, and the 1992 Constitution, which clearly outline the roles of the NMC and NCA in relation to the media. The passage of the BB would serve as a meeting point for the two bodies.

For example, the BB has proposed that the Spectrum Function of the NCA under the broadcasting sector be transferred from the NCA to the NMC. This is because (1) unlike the NMC, the NCA is directly under the control of the sector minister; (2) the NMC is made up

of independent bodies and is not subservient to any other authority part of the constitution. Therefore, the NMC would be better placed to regulate the award of the broadcasting spectrum to service providers since it is largely insulated from obvious political pressure. Further, the BB also has proposals suggesting that the NCA and the NMC collaborate to issue broadcasting spectrums to consumers. The NMC had this to say:

“... The BB is also suggesting that the NMC and the NCA should working together at the background. So, what happens is that when someone is requesting for a new authorization to run TV, radio, IPT or any other services under these categories, they would apply to the NCA. After satisfying all the technical requirements, the NCA confers with the NMC to also make due diligence before authorisation is given. So here you realise that the NCA would not be the only institution making all the decision” (NMC 2020).

It is for this reason that the NMC believes that recommendation by the EU is desirable and feasible with the passage of the BB. This is because the bill has already had proposals that would achieve similar goals. The NMC believes that the proposal for the NCA and NMC to work together for the issuance of broadcasting spectrums can be immediately implemented without necessarily activating any constitutional amendment process.

3.2.3 Would this approach of the NCA and NMC working together confront challenges?

The NMC anticipates that the NCA may oppose the proposal to transfer the power of issuing broadcasting spectrums, but the NCA's resistance would be limited as it has not generated enough revenue. The NCA is subject to ministerial control, and the incumbent government would not be willing to share the power to issue signals with any other entity due to its political value. The passage of the BB could be the catalyst to push this proposal forward. Additionally, the NCA and NMC have a coordinating forum where inter-institutional relationships are discussed, but this is insufficient due to the vague legal framework. Presently, the Constitution lacks a provision that obliges the NCA to make regulatory decisions based on the NMC's recommendations. The NCA's domain is limited to technical breaches, leading many media houses to prioritize "what is inspected and not what is expected." Therefore, it is crucial for these two organizations to work together to ensure that the media space is sanitized before, during, and after elections in Ghana.

There are two prevalent types of infractions in the media space in Ghana. The first form of infraction arises due to professional weaknesses, while the second type involves deliberate distortions for political expediency. The latter cannot be controlled by inter-institutional collaboration between the NCA and NMC unless the law explicitly provides jurisdiction for such cases. Therefore, in conclusion, the NMC maintains its conviction that the transfer of

broadcasting licenses from the NCA is both desirable and feasible. It only necessitates a robust political will.

3.2.4 How Feasible Is the Passage of The BB Before The 2024 General Elections?

The BB was introduced to parliament before the RTI, and the delay can be attributed to several technical reasons. However, the NMC believes that the political will factor plays a more significant role in the current state of the BB. For instance, the telcos, which are prominent international conglomerates, control the media space in Ghana, and over the years, they have united to resist the diversification of the spectrum across the country due to the economic value they accrue. As a result, every new minister who seeks to transform the sector is quickly confronted with the complexity of the issue. Although these are technical reasons, some governments in Latin America prioritize the social and political value over economic value and maintain the status quo. The notion of spectrum transfer, which the BB aims to achieve, is further challenged by spectrum reframing and the emergence of new applications and technologies. Without sustained advocacy from CSOs and strong political will from the elite, the BB will perhaps suffer the same fate of the RTI.

4.0 KEY TAKEAWAYS

- The National Media Commission believes that the recommendation by the EU to transfer broadcasting and licensing authority from the National Communication Authority (NCA) is desirable and feasible
- The NMC suggests that the passage of the broadcasting bill is the panacea to the challenges confronting the media space especially before, during and after elections in Ghana
- The absence of political will by successive governments explains why the BB has not been passed for over two decades now
- CSO should sustain the advocacy for the media passage of the BB
- Political Parties should support the state against the big telcos in the efforts towards sharing broadcasting spectrum.

CONCLUSION

The project seeks to promote the implementation of the EUOM-Ghana 2020 recommendations for credible and peaceful electoral outcomes in 2024. One of these recommendations is to limit the role of the National Communications Authority (NCA) and transfer its licensing and sanctioning powers to the National Media Commission (NMC) to create one independent media regulatory authority. To ensure the successful implementation of this recommendation, the project team engaged the NMC to ascertain its feasibility and desirability, as well as explore alternative approaches. The NMC expressed its support for the recommendation, acknowledging some implications, but also

provided insight into alternative channels for enforcing compliance among media practitioners. In the view of the NMC, the passage of the Broadcasting Law would be the panacea to the challenge identified by the EU. Overall, the engagement was productive, and the project team hopes to build on the feedback received to ensure the successful implementation of the recommendation before the 2024 general elections in Ghana.