

Digital Rights in Ghana

Freedom of Expression and Opinion

Freedom of Information

Right to Equal Access and Opportunity

Right to Privacy

Submission to the 42nd session of the Universal Periodic Review, Ghana.

SUBMITTING ORGANISATIONS



Paradigm Initiative

<https://paradigmhq.org/>

Paradigm Initiative works to connect underserved young Africans with digital opportunities, and ensures protection of their rights. Across our regional offices in Cameroon, Kenya, Nigeria, Senegal, Zambia, Zimbabwe and beyond, we work to connect under-served African youth with improved livelihoods through our digital inclusion and digital rights programs.



Small Media

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Established in 2011, Small Media is a London-based organisation that works to support freedom of expression and access to information globally. Small Media works with their global partners to develop strategies and tools that can support human rights defenders, activists and journalists to work safely and effectively in the digital age. They support their network of partners to develop data-driven advocacy strategies that bring about meaningful change.



CIPESA

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CIPESA was established in 2004 under the Catalysing Access to Information and Communications Technology in Africa (CATIA) initiative, which was mainly funded by the UK's Department for International Development (DfID). CIPESA works to enable policy makers in the region to understand ICT policy issues, and for various stakeholders to use ICT to improve



ISOC Ghana

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Internet Society Ghana Chapter (ISOC Ghana) is a chartered Chapter of the Internet Society (ISOC) which is a non-profit organization founded in 1992 to provide leadership in Internet related standards, education, and policy. Formed in 1996, ISOC Ghana is dedicated to ensuring the open development, evolution and use of the Internet for the benefit of people

governance and livelihoods.

in Ghana and throughout the world.

Introduction

1. The Universal Periodic Review (UPR) is an important UN mechanism aimed at addressing human rights issues across the globe. Paradigm Initiative, Small Media, CIPESA and ISOC - Ghana welcome the opportunity to contribute to Ghana's third review cycle.
2. Ghana is a State party to the African Charter and the International Covenant on Civil and Political Rights with core obligations to respect rights entrenched in Articles 19 and 17 of the ICCPR, in particular, expression, information and privacy rights respectively.
3. This submission, therefore, assesses the human rights record of Ghana with respect to digital rights including privacy, freedom of expression and access to information since the last review in 2017. Specifically, we raise concerns regarding violations of the aforementioned rights, and the progress Ghana has made to protect these rights and posit recommendations to improve on the operational environment for the enjoyment of digital rights.

Updates Since the Previous Review Cycle

4. During the period of this current review, Ghana's human rights record was marked with concerning crackdowns on the media in the form of harassment and arbitrary arrests in the lead up to and aftermath of the December 2020 general elections.
5. On 7 December 2020, President Nana Akufo-Addo of the New Patriotic Party (NPP) was re-elected into power, and Ghana, unlike other African countries¹, did not shut down the Internet during the general elections. While this is commendable, notable gaps still exist as far as respect and promotion of freedom of expression, access to information and privacy rights online are concerned.
6. In the third cycle review held from 6 - 17 November 2017, 98 delegates made statements on Ghana and among other things applauded it for having a good standing in human rights development rankings.² Ghana received 241 recommendations of which 200 were accepted and 41 noted in the third cycle review.³
7. Four accepted recommendations urged Ghana to enact the Right to Information law in order to enable citizens access to information. These were made by Turkey, Namibia, Czechia and Canada. One accepted recommendation made by Lebanon called for Ghana to adopt a law guaranteeing media freedom and Ghana noted a recommendation made by

¹ AIRA, Study on Internet Shutdowns in Africa, 2021. See problematic countries listed including Uganda, Eswatini and Democratic Republic of Congo, available here: <https://aira.africa/wp-content/uploads/2022/04/STUDY-ON-INTERNET-SHUTDOWNS-IN-AFRICA-2021.pdf>

² United Nations, Report of the Working Group on the Universal Periodic Review Ghana (A/HRC/37/7), available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/367/88/PDF/G1736788.pdf?OpenElement>

³ United Nations, Report of the Working Group on the Universal Periodic Review Ghana (A/HRC/37/7), available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/367/88/PDF/G1736788.pdf?OpenElement>

Hungary to take further measures to prevent hate crimes, hate speech and discrimination.⁴

8. Ghana enacted the Right to Information Act in 2019, although media freedoms deteriorated especially in the run up to the 2020 general elections. For instance, on 7th December 2020, a number of journalists were assaulted or had their equipment seized by security personnel for covering elections..⁵

Freedom of Expression and Opinion

9. The Constitution of Ghana⁶ guarantees the right to freedom of expression under Article 21(1)(a) which includes freedom of the press and other media. Permissible limitations on reasonable grounds are stipulated under Article 21(4) including in the interest of defence, public safety or public order.
10. According to the National Communications Authority of Ghana, there are 141 television operators as of 20 December 2021 with 110 stations on the air.⁷ Ghana currently has 6 main mobile network providers including MTN Ghana, Tigo, and Airtel.⁸ This demonstrates the plurality of media in the country.
11. In 2019, upto 51 radio stations including 5 community radio stations were shut down for failure to comply with licensing requirements. Whereas there were reports that the closures were targeted at pro-opposition media,⁹ then Minister-designate for the Ministry of Communications and Digitization, Hon. Ursula Owusu-Ekuful clarified that the various stations were shut down for failure to submit the required licensing documents even after an amnesty was granted.¹⁰
12. The broadcasting licences of the affected stations were reinstated in 2021.¹¹ While the government denied the allegations of targeted shutdowns, the high number of affected stations suggests a need to not only extend the amnesty period but to also review the licensing requirements for broadcasters so as to remove unnecessary administrative barriers to a pluralistic media.

⁴ In this part, see United Nations, Report of the Working Group on the Universal Periodic Review Ghana (A/HRC/37/7), available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/367/88/PDF/G1736788.pdf?OpenElement>

⁵ Civicus, Covering Covid-19, December 2020 Elections: Journalists assaulted, intimidated and harassed, 18 September 2020, available here: <https://monitor.civicus.org/updates/2020/09/18/covering-covid-19-december-2020-elections-journalists-assaulted-intimidated-and-harassed/>

⁶ Constitution of the Republic of Ghana, 1992, available here: https://www.constituteproject.org/constitution/Ghana_1996.pdf

⁷ National Communications Authority, Authorised TV Broadcasting Stations, available here : <https://nca.org.gh/television/>

⁸ My health basics, available here : <https://myhealthbasics.site/list-of-mobile-network-operators-in-ghana/>

⁹ Media Foundation for West Africa, Shutdown of Pro-Opposition Radio Stations: Regulator's Action Arbitrary, Capricious, 13 May 2019, available here: <https://www.mfwa.org/shutdown-of-radio-gold-and-xyz-regulators-action-arbitrary-capricious/>

¹⁰ Ghana Politico, Media Foundation for West Africa got it wrong; Radio Gold, XYZ were not targeted – Ursula, available here: <https://politicoghana.com/media-foundation-for-west-africa-got-it-wrong-radio-gold-xyz-were-not-targeted-ursula/>

¹¹ Ghana Own, NCA restores licences of Radio Gold, Radio XYZ, 13 October 2021, available here: <https://ghanaown.com/nca-restores-licences-of-radio-gold-radio-xyz/> and <https://politicoghana.com/media-foundation-for-west-africa-got-it-wrong-radio-gold-xyz-were-not-targeted-ursula/>

13. *The Criminal Code (Repeal of Criminal Libel and Seditious Laws) (Amendment) Act 2001, (Act 602)* decriminalised libel and sedition in Ghana.¹² However, the Criminal Offences Act, 1960 (Act 29) over the period of review was relied upon to prosecute the media over false news.
14. The *Criminal Offences Act, 1960 (Act 29)* stipulates in section 185(1) that 'a person who communicates to any other person, whether by word of mouth or in writing or by any other means, a false statement or report which is likely to injure the credit or reputation of Ghana or the Government and which that person knows or has reason to believe is false, commits a second-degree felony.'¹³ Given the ambiguity and lack of clarity on what constitutes injury to credit or reputation, this provision is an affront to freedom of expression both offline and online.
15. In particular, section 208(1) of the *Criminal Offences Act* states that 'a person who publishes or reproduces a statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace knowing or having reason to believe that the statement, rumour or report is false commits a misdemeanor.'¹⁴
16. Similarly, another law criminalising false news in Ghana is the *Electronic Communications Act, 2008 (Act 775)* which states under Article 74 that a person who knowingly gives false or misleading information to the Authority commits an offence and is liable on summary conviction to a fine of not more than one thousand penalty units (2,459,752.61 USD)¹⁵ and/or a term of imprisonment of not more than three years.¹⁶
17. The false news cases in Ghana violating media freedoms are mainly based on section 208(1) of Act 29 and Act 775.
18. On 7 October 2020, a journalist and editor-in-chief of online news platform *Whatsapp News*, David Tamakloe, was arrested on charges of false news for allegedly violating Article 208(1) of the *Criminal Offences Act* over a report on a pre-election crisis in Ashanti.¹⁷
19. Ghana was ranked 60th out of 180 countries in the World Press Freedom Index in 2022, 30 places lower than it was in 2021 (30 out of 180).

¹² <https://ifex.org/criminal-libel-law-repealed/>

¹³ Ghana Justice, Criminal Offences Act, 1960 (Act 29) SS 172-270 available here: <https://acts.ghanajustice.com/actsofparliament/criminal-offences-act-1960-act-29-ss-172-270/>

¹⁴ Ghana Justice, Criminal Offences Act, 1960 (Act 29) SS 172-270 available here: <https://acts.ghanajustice.com/actsofparliament/criminal-offences-act-1960-act-29-ss-172-270/>

¹⁵ 1 Penalty Unit is Gh¢20,000 x 1000 penalty units = Gh¢20, 000,000 which is US\$2 459 752.61. See Fines (Penalty Units) ACT, 2000 ACT 572 [http://elibrary.jsq.gov.gh/fq/laws%20of%20ghana/%20REP/FINES%20\(PENALTY%20UNITS\)%20ACT,%202000%20ACT%20572.htm](http://elibrary.jsq.gov.gh/fq/laws%20of%20ghana/%20REP/FINES%20(PENALTY%20UNITS)%20ACT,%202000%20ACT%20572.htm) and exchange rate here : <https://ghs.currencyrates.today/convert/amount-20000000-to-usd.html>

¹⁶ Electronic Communications Act, 2008 (Act 775), available here: <https://www.moc.gov.gh/sites/default/files/downloads/Electronic%20Communications%20Act-775.pdf>

¹⁷ CPJ, Ghana journalist David Tamakloe arrested on false news charge, available here: <https://cpj.org/2020/10/ghana-journalist-david-tamakloe-arrested-on-false-news-charge/>

20. In 2018, 18 freedom of expression violations were recorded in Ghana while 19 violations recorded in 2019 in the form of arrests, harassments, physical attacks, shutdown of stations, killings and destruction of property indicating a deteriorating state of freedom of expression.¹⁸
21. Towards the elections in December 2020, Ghana recorded 14 media freedom violations between July and December¹⁹ while in 2021, 11 media freedom violations were recorded. Violations were mainly perpetrated by security agents in the form of harassments, physical attacks and arrests.²⁰ Increasingly, the media in Ghana are not operating in a safe environment free from threats of violence, violence or unwarranted arrests.
22. A reporter of The Finder newspaper, Selorm Gborbidz was arrested on 14 January 2021 for filming a scuffle between a police officer and a driver of a commercial vehicle who was being accused of breaching traffic regulations. The reporter was taken to the University of Ghana Police Station where he was detained on charges of obstructing justice, illegally filming and insulting an officer on duty. He was released on the same day after the recording was deleted off his phone.²¹
23. On 7 May 2021, security agents detained Peter Tabiri, a correspondent for Accra-based Pent TV , destroying his phone for reporting on a raid they were conducting at a Casino .²²
24. Journalists Nii Ayikwei of Citi FM/TV and Desmond Osae Amponsah of TV Africa were assaulted by soldiers while covering a demonstration at La in Accra on 15 April 2021.²³
25. On 14 December 2021, a radio presenter Oheneba Boamah Bennie of Power FM was arrested in Accra over allegations of threatening and insulting the President. The allegations stemmed from a Facebook post on his page which stated that President Nana Akufo influenced Supreme Court Judges to rule in his favor in the election petition against him filed by the opposition National Democratic Congress after the December 2020 elections. The journalist was charged and found guilty of contempt of court and on 8 February 2022,

¹⁸ Media Foundation for West Africa, West Africa Freedom of Expression Monitor Jan-Dec 2019, available here:

<https://www.mfwa.org/wp-content/uploads/2020/06/West-Africa-Freedom-of-Expression-Monitor-Jan-Dec-2019.pdf>

¹⁹ Media Foundation for West Africa, Freedom of Expression Monitors for Q3 - Q4, available here : <https://www.mfwa.org/wp-content/uploads/2020/12/FOE-MONITOR-JULY-SEPTEMBER-2020-VAM.pdf> and <https://www.mfwa.org/wp-content/uploads/2021/03/FOE-MONITOR-OCT-DEC-2020-mesh-1.pdf>

²⁰ Media Foundation for West Africa, Freedom of Expression Monitors for Q1 - Q4, available in the following links: <https://www.mfwa.org/wp-content/uploads/2021/06/FOE-MONITOR-Q1-2021-Finalised-1.pdf> , <https://www.mfwa.org/wp-content/uploads/2021/11/FOE-MONITOR-Q2-2021.pdf> , <https://www.mfwa.org/wp-content/uploads/2022/02/FoE-Monitor-Q3-July-Sept-2021-1.pdf> and <https://www.mfwa.org/wp-content/uploads/2022/04/FoE-Monitor-Oct-Dec-2021-MS.pdf>

²¹ Media Foundation for West Africa, available here: <https://www.mfwa.org/wp-content/uploads/2021/06/Q1-FOE-VIOLATIONS-JAN-MARCH-2021-Finalised.pdf>

²² Media Foundation for West Africa, available here: <https://www.mfwa.org/wp-content/uploads/2021/11/VIOLATIONS-FOR-APRIL-JUNE-2021-1.pdf>

²³ Media Foundation for West Africa, Arrest of Citi FM/TV Journalists Adds to a Growing Trend of Press Freedom Embarrassment in Ghana, 12 May 2021, available here : <https://www.mfwa.org/arrest-of-citi-fm-tv-journalists-adds-to-a-growing-trend-of-press-freedom-embarrassment-in-ghana/>

he was sentenced to 14 days in jail and a fine of GH¢3,000 (about 450 USD) by a High Court in Accra.²⁴

26. Kwabena Bobbie Ansah, an Accra FM presenter, was arrested on 10 February 2022 for allegedly posting a video on social media alleging that President Nana Akufo-Addo's two wives 'fraudulently obtained state land in order to build the headquarters for a foundation'.²⁵
27. In May 2021, a police officer, Corporal Frederick Kwaku Dzemeki was arrested and charged of misconduct for insulting the president through a Facebook post where he stated: *"Our leaders are very stupid and stubborn. They don't reason at all, Ghana is sick, Number 1 is sick and Number two too is sick"*.²⁶
28. On 12 August 2020, a soldier attacked Stanley Nii Blewu, a cameraperson with TV3 at Tema Station in Accra. The soldier was reportedly enforcing an operation at the Bus Terminus and attacked the journalist by taking his camera and a phone from his colleague reporter with TV3, Joseph Armstrong, and deleted all their recordings.²⁷
29. On 16 January 2019, an investigative journalist, Ahmed Hussein-Suale, was shot and killed close to home in Accra and the police reportedly believe the murder was linked to his investigative journalism work involving corruption among other governance issues.²⁸ The State has an obligation to take the necessary measures to ensure the safety of journalists.
30. On 11 May 2021, a broadcast journalist, Caleb Kudah of Citi FM/Citi TV was purportedly tortured by the national security agents who detained him for filming abandoned cars at the Ministry of National Security. He narrated the ordeal as follows:
"They pushed me and I sat on the chair. They [National Security operatives] slapped me from the back. I was trying to appeal to them that they had beaten me enough, but they were just slapping me from the back. I'll be talking to another one and someone will just come and slap me from the back."

²⁴ Media Foundation for West Africa, Ghana: Jailing of broadcast journalist, Oheneba Boamah Bennie unfortunate, 11 February 2022, available here: <https://www.mfwa.org/ghana-jailing-of-broadcast-journalist-oheneba-boamah-bennie-unfortunate/>

²⁵ RSF, Ghana sees disturbing surge in press freedom violations, available here: <https://rsf.org/en/ghana-sees-disturbing-surge-press-freedom-violations>

²⁶ Opera News, Police Officer arrested for insulting Akufo Addo and Bawumia on Facebook, available here: <https://gh.opera.news/gh/en/society/102be535023f21798a99caa2551accb0>

²⁷ Media Foundation for West Africa, Arrest of Citi FM/TV Journalists Adds to a Growing Trend of Press Freedom Embarrassment in Ghana, 12 May 2021, available here : <https://www.mfwa.org/arrest-of-citi-fm-tv-journalists-adds-to-a-growing-trend-of-press-freedom-embarrassment-in-ghana/> and <https://globecalls.com/a-police-officer-frederick-dzemeki-arrested-for-insulting/>

²⁸ BBC, Murder in Accra: The life and death of Ahmed Hussein-Suale, 30 January 2021, available here: <https://www.bbc.com/news/world-africa-47002878>

31. On 25 February 2021, the Judicial Service of Ghana through its lawyers issued a letter to media houses that had published content suggesting the Judiciary was not fair in determining an election petition following the 2020 general elections.²⁹ The Judiciary being an arm of government that is expected to not only preside over election petitions but also preside over cases of freedom of expression violations could have been more inclined towards advancing freedom of expression in its response. Instead, it made a general blanket call to all media houses in Ghana to do the following:

- Take down all statements and speeches regarded as conveying or insinuating hateful, spiteful, vengeful, and incendiary communications from their platforms,
- Prevent any publication of such (undefined) statements and speeches on their platforms,
- Immediately exercise the 'highest level of discernment, discretion and responsibility' in so far as the publication of statements and speeches regarding the administration of justice is concerned.

32. The conduct of the Judiciary of Ghana in this instance raises concern over their ability to preside fairly in cases where media freedoms and digital rights are under attack in view of their stern warning to all media houses. This came without due process in putting each accused media house and each published statement to the 3-part test that warrants a limitation on freedom of expression. In essence, this was a blatant threat on media freedoms.

Data Protection and the Right to Privacy

33. The Constitution provides for privacy under Article 18(2), which stipulates that no person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.

34. Ghana acceded to the *Convention on Cybercrime (ETS No. 185)* on 3 December 2018 and ratified the *African Union Convention on Cyber Security and Personal Data Protection* on 13 May 2019³⁰ showing a commitment to ensuring cyber security and the protection of personal data. In December 2020, the government enacted the *Cyber Security Act 2020 (Act 1038)*.³¹

²⁹ Ghana Web, Election petition: Delete all 'hateful, spiteful' comments against SC justices – Judicial Service to media, 26 February 2021, available here: <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Election-petition-Delete-all-hateful-spiteful-comments-against-SC-justices-Judicial-Service-to-media-1190476>

³⁰ African Union, African Union Convention on Cyber Security and Personal Data Protection, available here: <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>

³¹ Cyber Security Act, 2020, (Act 1038), available here: <https://csdsafrica.org/wp-content/uploads/2021/08/Cybersecurity-Act-2020-Act-1038.pdf>

35. Act 1038, among other things, safeguards children from sexual exploitation under Articles 62 to 68 and establishes the Cyber Security Authority in Article 2 to regulate cybersecurity activities in Ghana as well as raise awareness of citizens on this law. Civil Society Organisations in Ghana however are concerned about the need for people in Ghana to be made aware of this Act as this is essential in contextualising the parameters of privacy rights within normative values.³²
36. The same Act 1038 also criminalises the non-consensual sharing of intimate images, progress in protecting women from online gender-based violence.³³
37. The *Cyber Security Act 2020, (Act 1038)* states in Article 4(s) that one of the functions of the Cyber Security Authority is to: 'Collaborate with law enforcement agencies to intercept or disable a digital technology service or product whose operation undermines the cybersecurity of the country'
38. The disabling of a digital technology service as presented in the Cyber Security legislation above may also be interpreted to empower the government to summarily order an Internet shutdown or interfere with private communications and this places freedom of expression online in danger. Such unclear provisions are subject to abuse and misuse, especially through unwarranted state surveillance.
39. Article 4(s) raises further concern as it may be used arbitrarily to target anyone with a dissenting voice online under the guise of national security. The Act does not make a clear stipulation that national security concerns should not unreasonably limit freedom of expression, as presented under Article 19(3) of the ICCPR and as enunciated under the *Siracusa Principles*.³⁴
40. The government of Ghana launched a National SIM Card Registration Exercise in October 2021 in the quest to enforce mandatory sim card registration.³⁵ SIM Registration Regulations have been put in place, which impose a mandate on Ghanaians to register their personal details and national identity documents in order to obtain a sim card.
41. In 2020, Francis Kwarteng Arthur, sued the National Communications Authority (NCA), Vodafone Ghana, MTN Ghana and Keln GVG over the *Executive Instrument 63* promulgated to aid in Covid-19 contact tracing. The instrument mandates network providers to among

³² Media Foundation for West Africa, Ghana's Cybersecurity Implementation : CSOs demand more awareness creation, available here : <https://www.mfwa.org/issues-in-focus/ghanas-cybersecurity-law-implementation-csos-demand-more-awareness-creation/>

³³ Cyber Security Act, 2020, (Act 1038), available here: <https://csdsafira.org/wp-content/uploads/2021/08/Cybersecurity-Act-2020-Act-1038.pdf>

³⁴ The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles), see Article 31 which stipulates that national security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse, available here: <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

³⁵ Ministry of Communications and Digitilisation, National SIM card registration takes off next month (October), available here: <https://moc.gov.gh/national-sim-card-registration-takes-next-month-october>

other things supply personal data of all subscribers to the NCA.³⁶ The High Court of Ghana ruled that Executive Instrument 63 was in violation of the right to privacy.

42. A government agency in Ghana, the National Service Secretariat (NSS) experienced a data breach exposing over 700 000 people across Ghana and over three million (3,000,000) files on 20 December 2021.³⁷ The NSS collects large volumes of personal data through the mandatory national service registration of all graduates of accredited tertiary institutions who have a legal duty to join the program raising critical questions as to Ghana's compliance with the Data Protection Act, 2012 (Act 843).³⁸ While the Data Protection Act provides for protection of personal data, more needs to be done to ensure personal data is handled in a manner that safeguards privacy in line with the Act.

Freedom of Information and Censorship of Content

43. The Constitution provides for access to information in Article 21(1)(f). Ghana enacted the Right to Information Act, 2019 (Act 989)³⁹ in line with the recommendations in the third cycle review.
44. Despite the Right to Information Act coming into force, journalists and civil society organisations expressed concern in 2021 about some government agencies withholding information such as the Ghana Police Service, Ghana Health Services and other institutions and in some instances, hefty fees charged for information requests being a barrier to accessing information.⁴⁰
45. In 2021, *The Fourth Estate Project*, relying on Act 989 requested information on the licensing procedures for companies licensed to conduct mining operations in Ghana for the period January 2013 to May 2021 and information on the companies which had their licenses revoked over the same period. The Mining Commission then charged a fee of approximately US\$1000 to avail the information. The Fourth Estate sued the Commission and the High Court dismissed the exorbitant fines stating that agencies should not apply their respective legislative instruments to determine fees for information requests.⁴¹ Government agencies must comply with section 75(1) of the Right to Information Act which states that fees must be approved by Parliament. Regulations approved by Parliament must be promulgated which give effect to the Right to Information Act.

³⁶ IFEX, High Court halts collection of personal data by Ghanaian government, 9 August 2021, available here: <https://ifex.org/high-court-halts-collection-of-personal-data-by-ghanaian-government/> and

³⁷ CAJ News Africa, Ghana government agency suffers massive data breach, 21 December 2021, available here: <https://www.cajnewsafrica.com/2021/12/21/ghana-government-agency-suffers-massive-data-breach/>

³⁸ Ghana Plus available here: <https://ghanaplus.com/news/report-national-service-secretariat-in-massive-data-breach-affecting-over-600k-people/> and here: <https://www.vpnmentor.com/blog/report-ghana-nss-leak/>

³⁹ Right to Information Act, 2019 (Act 989), available here: http://www.africanplatform.org/fileadmin/user_upload/Ghana-RTI-Act-1.pdf

⁴⁰ Jam Lab, Ghanaian journalists still face challenge of access to information despite passage of RTI law, 29 November 2021, available here : <https://jamlab.africa/ghanaian-journalists-still-face-challenge-of-access-to-information-despite-passage-of-rti-law/>

⁴¹ The Fourth Estate, available here : <https://thefourthestategh.com/2021/06/18/minerals-commission-demands-1000-from-the-fourth-estate-in-a-right-to-information-request-2/>

46. In June 2021, the Media Foundation for West Africa sued the National Communications Authority and raised concerns over hefty fees for accessing information. The authority highlighted that these fees are a deterrent to accessing information, after requests on the number of radio stations were made and a charge of GHC2000 (approximately 300 USD) was imposed.⁴² Court reduced the fees significantly, noting that exorbitant fees for accessing information are a barrier to accessing information. Clear regulations on charges in line with section 75(1) of the Right to Information Act calling for charges to be approved by Parliament would help in ensuring uniform charges across government agencies.

Internet Access and Opportunities

47. Ghana had no record of shutting down the Internet during the period under review, maintaining a clean record consistently over the 1st and 2nd UPR Cycles of review. The National Communications Authority (NCA) dismissed any reports that it would shut down the Internet ahead of the 7 December 2020 elections.⁴³ The NCA further refuted media reports that it was interfering with the broadcasting services of some media houses highlighting that it licensed several categories of service providers to deliver internet connectivity to Ghana, including 'Service Providers, Broadband Wireless Access Service Providers and Mobile Network Operators (MNOs).⁴⁴
48. The above-mentioned dismissal was applauded by the Access Now led #KeepItOn Coalition who, in an open letter, called on Ghana to undertake the necessary measures to ensure that the Internet service providers and relevant actors operating in Ghana ensure an open, accessible, and secure internet across the country throughout the elections and beyond.⁴⁵ Ghana upheld this recommendation and set a commendable precedent in Africa.
49. According to the World Bank, 43% of the total population in Ghana was using the Internet while 53% and 58% were recorded in 2019 and 2020 respectively.⁴⁶ There were 138 mobile cellular subscriptions per 100 people in 2018, while 134 and 130 mobile cellular subscriptions per 100 people were recorded for the years 2019 and 2020 respectively. There was an increase in Internet use over time in the period of review but however, a steady decrease in the number of mobile cellular subscriptions.

⁴² Media Foundation for West Africa, RTI Court case: MFWA disappointed at ruling, 18 June 2021, available here : <https://www.mfwa.org/rti-request-case-mfwa-disappointed-at-judgment/>

⁴³ Graphic Online, NCA disputes claims of broadcast interference and internet shut down, available here: <https://www.graphic.com.gh/news/general-news/nca-disputes-claims-of-broadcast-interference-and-internet-shut-down.html>

⁴⁴ Graphic Online, NCA disputes claims of broadcast interference and internet shut down, available here: <https://www.graphic.com.gh/news/general-news/nca-disputes-claims-of-broadcast-interference-and-internet-shut-down.html>

⁴⁵ Access Now, #KeepItOn: Open letter on keeping the internet open and secure during elections in the Republic of Ghana, available here: <https://www.accessnow.org/ghana-to-keepiton-during-elections/> and also see <https://www.accessnow.org/cms/assets/uploads/2020/12/KeepItOn-open-letter-ghana-election.pdf>

⁴⁶ The World Bank, Individuals using the Internet (% of population) available here : <https://data.worldbank.org/indicator/IT.CEL.SETS.P2?locations=GH>

50. Ghana had an estimated total population of 31,400,000 in January 2021 with 49,3% females and 50,7% males.⁴⁷ 42,3% live in the rural areas against a backdrop of poor digital infrastructure in the rural areas, a barrier to Internet access for rural communities.⁴⁸
51. While Ghana's mobile data cost is not the worst in Africa, it is still out of reach for many in marginalised communities and low-income households.⁴⁹ During the COVID-19 pandemic, in September 2020, the government reduced the Communications Service Tax on telecommunications services from 9% to 5% in order to mitigate the effects of the COVID-19 pandemic, which tax had previously been increased in 2019 from 6 to 9 %.. Despite this reduction, Ghanaians still protested against the cost of mobile data highlighting that the cost was still out of reach for many.⁵⁰

Recommendations

52. In view of Ghana's human rights record on freedom of expression and opinion online, the right to privacy, and access to information, the submitting organisations urge States to make the following recommendations to Ghana:
 1. Repeal Articles 185(1) and 208(1) of the *Criminal Offences Act, 1960 (Act 29)* and *Article 74 of the Electronics Communications Act, 2008 (Act 775)* which criminalise false news in order to better protect the freedom of opinion and expression of individuals online and offline.
 2. Amend Article 4(s) of the CyberSecurity Act, 2020 (Act 1038) which gives unfettered discretion to intercept private communications Repeal Executive Instrument 63 which orders mobile network operators to submit all personal data and national identity documents of all registered subscribers to the government, which is in violation of international human rights standards, in order in order to better protect the right to privacy and digital rights online.
 3. Take steps in line with the Data Protection Act, 2012 (Act 843) to safeguard personal data and to prevent data breaches in violation of the right to privacy.
 4. Adopt Right to Information regulations that uniformly provide for reasonable fees for information requests across government agencies in order to promote access to information and take necessary measures to ensure information requests are complied with in accordance with the Right to Information Act, 2019 (Act 989) across all government agencies.
 5. Promote an impartial judiciary guided by strict adherence to the principles of legality, necessity and proportionality to better protect the freedom of opinion and expression and

⁴⁷ Datareportal, Digital 2021 : Ghana, 11 February 2021, available here : <https://datareportal.com/reports/digital-2021-ghana>

⁴⁸ Freedom House, Ghana, available here : <https://freedomhouse.org/country/ghana/freedom-net/2021>

⁴⁹ Broadcast Media, available here : <https://broadcastmediaafrica.com/ghana-consumption-of-foreign-content-contribute-to-high-cost-of-data-in-ghana-ceo-of-mtn>

⁵⁰ Broadcast Media Africa, Ghana: Consumption Of Foreign Content Contribute To High Cost Of Data In Ghana – CEO Of MTN, available here: <https://broadcastmediaafrica.com/ghana-consumption-of-foreign-content-contribute-to-high-cost-of-data-in-ghana-ceo-of-mtn>



media workers online and offline.

6. Take necessary legislative measures including implementing security sector reforms in order to safeguard journalists from harassment, intimidation, physical attacks.