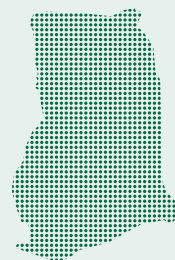
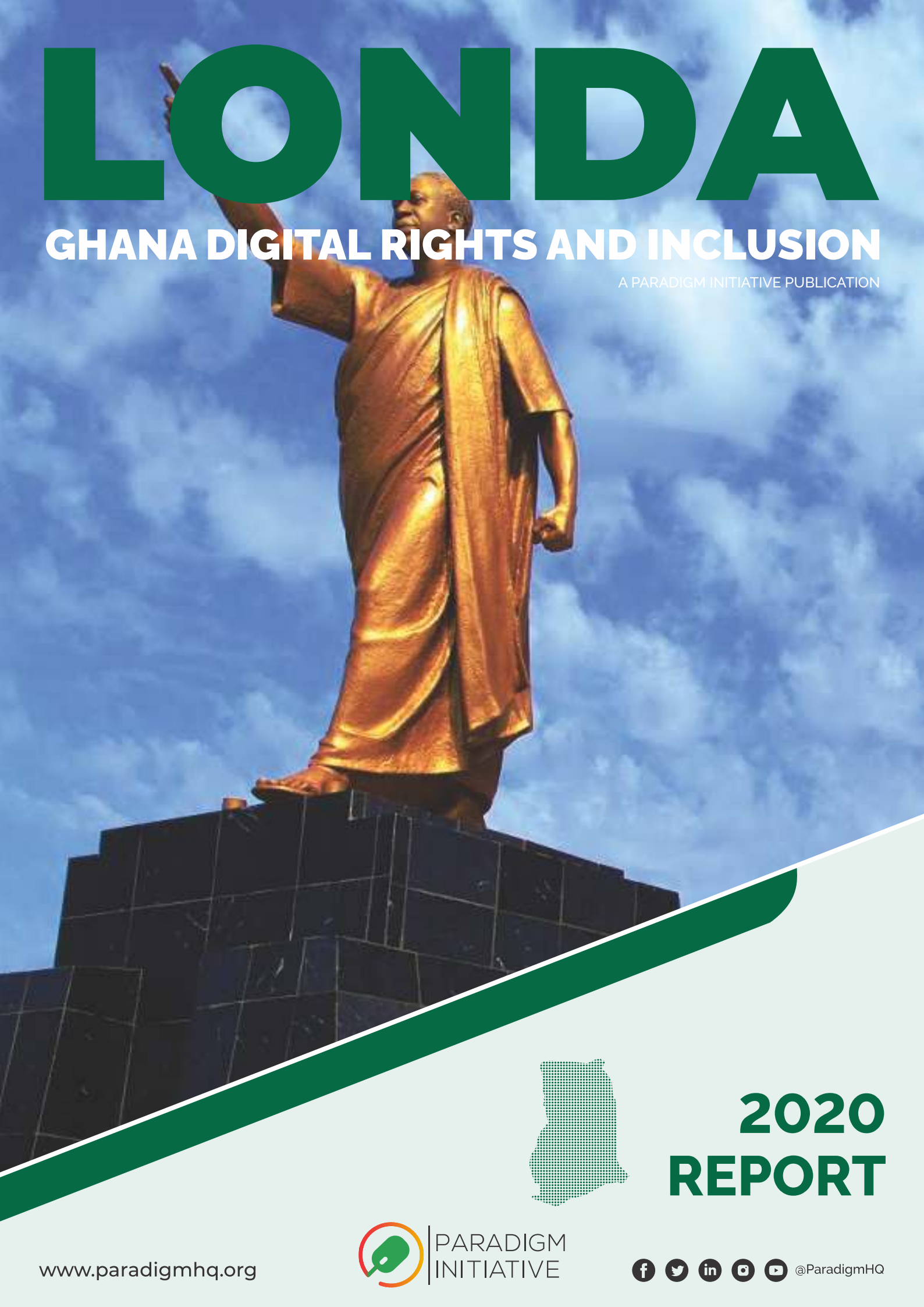


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GHANA DIGITAL RIGHTS AND INCLUSION

A PARADIGM INITIATIVE PUBLICATION



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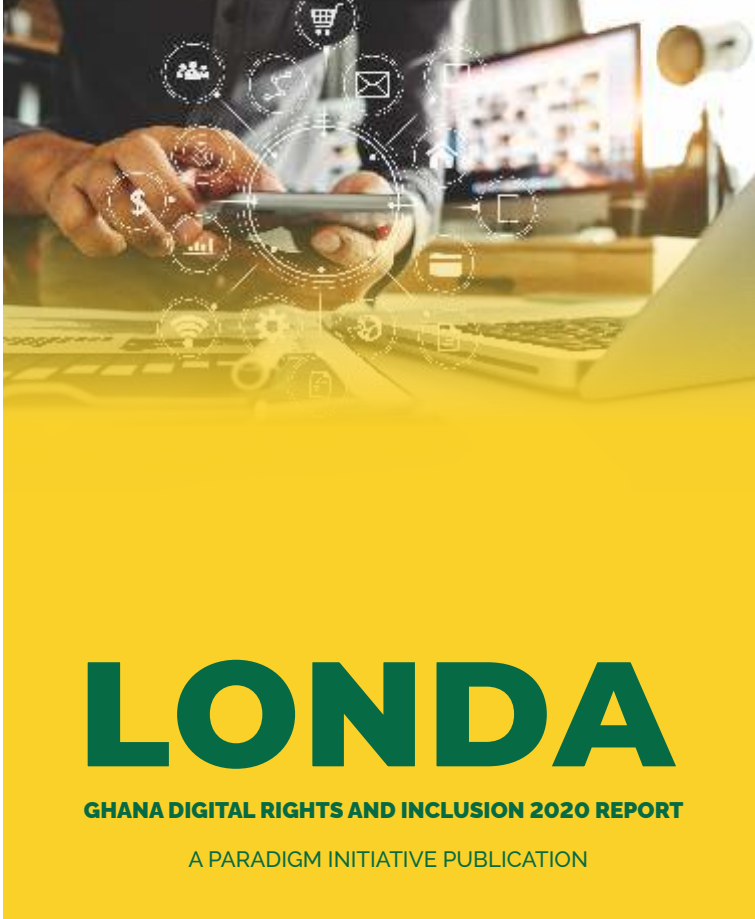
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GHANA DIGITAL RIGHTS AND INCLUSION 2020 REPORT

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Civil society organizations continue to work to advance digital rights and inclusion in Africa, ensuring best practices are adopted into policy and legislation. This report analyses the state of digital rights and inclusion in Ghana, examining violations and gaps, investigating the use and application of policy and legislation, highlighting milestones and proffering recommendations for the digital landscape in Ghana. This edition captures among other issues, the digital divide worsened by the COVID-19 pandemic and unearths infractions on different thematic areas such as privacy, access to information, and freedom of expression with the legislative and policy background well enunciated.

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Ghana is located on the Atlantic coast of west Africa, bordered on the North by Burkina Faso, East by Togo, West by Ivory Coast and South by the Gulf of Guinea. It has an estimated population of 29 million and covers an area of 238,533 sq km.¹

INTRODUCTION

DIGITAL RIGHTS AND INCLUSION IN GHANA

Ghana returned to constitutional democratic rule in 1993 after many episodes of military dictatorships interspersed by short stints of civilian regimes. This occurred between 1966 when Ghana's first President, Kwame Nkrumah was overthrown and the adoption of the 1992 Constitution, which ushered into being the Fourth Republic.² The 1992 Constitution established a multi-party unitary presidential system of government premised on universal adult suffrage and a decentralised local government system. The Constitution reiterates its supremacy as a fundamental value of the state and establishes "*a Supreme Court empowered to interpret the Constitution and strike down acts and omissions of the other branches of government which are inconsistent with the provisions of the Constitution*".³ The Constitution also guarantees a comprehensive list of civil and political rights and a limited number of socio-economic rights,⁴ which are supplemented by the directive principles of state policy in Chapter 6 of the Constitution. While the directive principles of state policy were initially thought to be unenforceable, judicial pronouncements from the Supreme Court have clarified that all provisions of the Constitution (including the directive



Military dictatorship
interspersed by short stints of civilian regimes

1. CIA Fact Book available at <https://www.cia.gov/library/publications/the-world-factbook/geos/gh.html>

2. K Quashigah 'The 1992 Constitution of Ghana' (2013), available at http://www.icla.up.ac.za/images/country_reports/ghana_country_report.pdf (accessed 7 October 2020); see also MG Nyarko 'The impact of the African Charter and Maputo Protocol in Ghana' in VO Ayeni (ed) *The impact of the African Charter and Maputo Protocol in selected African states* (2016) 95.

3. MG Nyarko (as above); article 2 of the 1992 Constitution.

4. Chapter 5 of the 1992 Constitution.

principles) are enforceable, unless there is a specific internal qualification concerning the non-enforceability of the provision.⁵ The legal system is modelled on the common law tradition inherited from the British colonial administration.

INTERNET PENETRATION, DIGITAL INFRASTRUCTURE AND REGULATION OF DIGITAL RIGHTS

Ghana has four active mobile network operators:

- MTN (67.78% of data and 57.07% of voice),
- Vodafone (15.49% of data and 20.95% of voice),
- AirtelTigo (15.81% of data and 20.25% of voice)
- and Glo (0.92% of data and 1.74% of voice%).⁶

These in addition to 52 registered internet service providers (ISPs)⁷ make the internet sector quite competitive and the introduction of fibre has improved quality and reduced the cost of using the internet.⁸ However, the dominance of MTN in the sector has led the National Communications Authority to declare MTN a 'significant market power', to enable the regulator to implement policies to allow more competition.⁹ In 2020, in order to improve network access in remote communities, the Ghana Investment Fund for Electronic Communications backed the deployment of 2000 new OpenRAN sites to help network operators reach under served communities.¹⁰ In the midst of the COVID-19 pandemic, the government decided to temporarily reduce the Communication Service Tax, which increased from 6% to 9% in 2019, to 5% to enable network operators to reduce tariffs.¹¹

The introduction of fibre has improved quality and reduced the cost of using the internet.



5. Ghana Lotto Operators Association & Others v National Lottery Authority [2007-2008].

6. Y Kazeem 'Ghana's move to curtail MTN's market share is about mobile money, not voice' available at <https://qz.com/africa/1866059/ghana-to-cut-mtn-market-share-to-avoid-kenya-safaricom-domination/> (accessed 25 November 2020).

7. National Communications Authority 'Internet Service Providers' available at <https://www.nca.org.gh/assets/Uploads/ISP-Operational.pdf>

8. Alliance for Affordable Internet 'Ghana: Expanding international connectivity' (2019) Good Practices Database. Washington DC: Web Foundation, available at <https://a4ai.org/studies/expanding-international-connectivity/>

9. Reuters 'Ghana to reduce MTN's telecoms market share' available at <https://www.reuters.com/article/ghana-mtngroup-idUSL8N2DL41B>

10. Alliance for Affordable Internet '2020 Affordability report' available at <https://a4ai.org/affordability-report/report/2020/>

11. As above; see also Ghana Chamber of Telecommunications 'Mobile industry modifies tariffs in accordance with amended communications service tax law', available at <https://telecomschamber.com/news-media/media-releases/mobile-industry-modifies-tariffs-in-accordance-with-amended-communication-service-tax-cst-law>

Ghana has a rapidly evolving, vibrant digital technology ecosystem that has grown exponentially since 2005.¹² Internet penetration was pegged between 30.3%¹³ and 48% as at January 2020 with 14.76 million internet users - a 1 million (7.5%) increase between 2019 and 2020.¹⁴ A majority of internet users (94%) connect through mobile internet at an average speed of 18.38 mbps.¹⁵ There were a total of 6 million social media users as at January 2020 representing 20% of the population, 98% of which are accessed via mobile.¹⁶ WhatsApp (82%), Facebook (71%), YouTube (62%) and Instagram (61%) are the most used social media platforms.¹⁷ Ghana has a very high mobile connection rate, with an estimated 39.97 million mobile connections as at January 2020, equivalent to 130% of the total population.¹⁸ Despite this impressive subscription rate, mobile penetration at the end of 2019 stood at a modest 55%. While still quite low, Ghana's mobile penetration rate is the highest in the West Africa region and above the Sub-Saharan Africa average of 44.8%.¹⁹

The communications sector is under the policy supervision of the Ministry of Communication and the National Communications Authority, while the Data Protection Commission is charged with the protection of the privacy of individual and personal data. The sector is regulated by the 1992 Constitution, the National Communications Authority Act, 2008 (Act 769), the Electronic

Communications Act, 2008 (Act 775), the Electronic Transactions Act, 2008 (Act 772), the National Information Technology Agency Act, 2008 (Act 771), the Communications Service Tax Act, 2008 (Act 754), the Data Protection Act, 2012 (Act 843)²⁰ and various regulations and guidelines issued under these laws.²¹

GENDER AND DIGITAL ACCESS

Significant strides have been made in closing the gender gap in internet access with one study suggesting that the gender gap in internet access was 5.8%, far below the global average of 21%.²² The gender gap however, increases to 14% when it comes to meaningful connectivity.²³ Poor service quality and availability in rural areas, coupled with high cost of data further exacerbates the gender divide in rural areas.²⁴ Recent data also suggests that women and girls are significantly under represented on social media platforms. For instance, only 38.4% of 1.4 million Instagram accounts reachable by advertisement are reported to be female users against 61.6% for men.²⁵ Similar ratios apply to LinkedIn subscriptions, with about 31.5% of the 1.4 million accounts reachable by advertisements belonging to females, while 68.5% belong to males. The figures are even worse for Twitter, with only 25.1% of the 555.5 thousand accounts reachable by advertisement belonging to females against 74.9% for males.²⁶

12. GSAM 'Country overview: Ghana – Driving mobile-enabled digital transformation'(2-17) 7, available at <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2020/05/Ghana-Country-Overview.pdf>

13. World Wide Web Foundation 'Women's rights online: Closing the digital gender gap for a more equal world' (2020) 12, available at <http://webfoundation.org/docs/2020/10/Womens-Rights-Online-Report-1.pdf>

14. Dataportal 'Digital 2020: Ghana', available at <https://dataportal.com/reports/digital-2020-ghana>

15. As above.

16. As above.

17. As above.

18. As above.

19. G Omondi 'The state of mobile in Ghana's tech ecosystem' (2020), available at <https://www.gsma.com/mobilefordevelopment/blog/the-state-of-mobile-in-ghanas-tech-ecosystem/>

20. <https://www.dataprotection.org.gh/resources/downloads/data-protection-act/38-data-protection-act-2012-act-843/file>

21. The database of legislation and regulations can be access at <https://www.nca.org.gh/regulatory-framework/legislations/>

22. World Wide Web Foundation 'Women's rights online: Closing the digital gender gap for a more equal world' (2020), available at <http://webfoundation.org/docs/2020/10/Womens-Rights-Online-Report-1.pdf>

23. As above, 12.

24. As above, 13-14

25. Dataportal 'Digital 2020:Ghana' available at <https://dataportal.com/reports/digital-2020-ghana>

26. As above.



There was a total of 6 million social media users as at January 2020 representing 20% of the population, 98% of which are accessed via mobile.

REGULATION OF SPEECH: HATE SPEECH, MISINFORMATION AND CRIMINAL DEFAMATION

Freedom of expression is guaranteed in the Constitution and generally respected in practice both online and print.²⁷ The repeal of the criminal defamation and sedition laws in 2001 has further enhanced the enjoyment of freedom of expression.²⁸

Parliament passed the Right to Information Act in March 2020, which was assented to by the President in May 2020.²⁹ However, there are occasional instances where security agencies have been reported to harass and arrest journalists who report on politically sensitive issues. For instance, in June 2019 two journalists from the website modernghana.com were arrested by personnel from the Ministry of National Security in connection with an article they published on the Minister. They were allegedly tortured while in custody and released two days later.³⁰



Journalists
harassed & arrested
by security agencies

27. Freedom House 'Freedom in the world 2020: Ghana' (2020), available at <https://freedomhouse.org/country/ghana/freedom-world/2020>

28. E Laryea & K Kwansa-Aidoo 'Going, going, gone! Implications of the repeal of criminal libel and sedition laws in Ghana' (2005) 8 Ghana Studies 127; O Anku-Tsede 'The media and offence of criminal libel in Ghana: Sankofa' (2013) 9 Journal of Law, Policy and Globalization 26; R Acheampong 'Repeal of the criminal libel law in Ghana: Challenges and prospects for journalism' (2017) 1 International Journal of Management and Scientific Research 79.

29. DW 'Are Ghanaians ready to take advantage of the right to information law?', available at <https://www.dw.com/en/are-ghanaians-ready-to-take-advantage-of-the-new-right-to-information-law/a-52171600>

30. As above.

While there is currently no specific law to counter disinformation, the Criminal and Other Offences Act³² and the Electronic Communications Act both contain provisions that can be used to prosecute online speech. Section 208 of the Criminal and Other Offences Act criminalises the publication or reproduction of *'any 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'*.

While this is classified as a misdemeanor, the punishment for misdemeanor under section 296 of the Criminal Procedure Act indicates the penalty for misdemeanor as a punishment of up to three years' imprisonment, which would clearly be excessive if the maximum sentence were to be imposed. Similarly, section 76 of the Electronic Communications Act³³ prohibits *'knowingly sending a communication which is false or misleading and likely to prejudice the efficiency of life saving service or to endanger the safety of any person, ship, aircraft, vessel or vehicle'* by means of electronic communication. The penalty for infringing this section is a fine or term of imprisonment up to a maximum of five years or both.

In May 2020, it was reported that an individual was arrested and charged under section 76 of the Electronic Communications Act for disseminating a video on YouTube encouraging Ghanaians to kill police officers and burn the house of the president alleging that partial lockdowns that were imposed were a ploy by the government to lay 5G cables.³⁴

IMPACT OF COVID-19 REGULATION ON DIGITAL RIGHTS AND INCLUSION

The COVID-19 pandemic and regulations adopted to counter the impact of the pandemic have impacted on digital rights in various ways. In addition to some of the developments highlighted earlier, another significant development in light of the COVID-19 pandemic, was the adoption of the Establishment of Emergency Communications System Instrument, 2020 (E.I. 63) under section 100 of the Electronic Communications Act. EI 63 requires network operators and other communications services providers to place at the state's disposal their services for the mass dissemination of information in cases of emergency, including public health emergencies. In such emergencies the network operators are also required to provide subscriber information to the National Communications Authority and other state agencies when requested, including caller and called numbers, merchant codes, mobile station international subscriber directory number codes, international mobile equipment identity codes and site locations, roaming files and location log files.³⁵

While this instrument was adopted in the context of enabling contact tracing in combating the COVID-19 pandemic, the broad powers have been criticized as potentially providing an avenue to be deployed for mass surveillance in violation of the right to privacy.³⁶

31. Criminal and Other Offences Act, 1960 (Act 29), available at <https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh010en.pdf>

32. Criminal Procedure Act, 1960 (Act 30).

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

34. Disinformation Tracker 'Ghana', <https://www.disinformationtracker.org> (accessed 24 November 2020); D Apinga 'Kill police Officers, burn Akufo-Addo's house – Social media alarmist' available at <https://www.theghanareport.com/kill-police-officers-burn-akufo-addos-house-social-media-alarmist/>

35. Section 1 of EI 63, available at <https://verfassungsblog.de/wp-content/uploads/2020/05/E.I.-63.pdf>

36. K Agyeman-Budu 'Constitutionalism and COVID-19 in Ghana', available at <https://ancl-radc.org.za/node/627>

On a positive note, in May 2020 the government of Ghana launched the Digital Financial Services Policy³⁷ aimed at, among others, improving financial inclusion through the use of digital platforms. Even though the policy has been on the drawing board for some years now, there are indications that its eventual launch provides an important tool in the arsenal of the government's COVID-19 response, which inevitably includes measures to cope with social distancing, which requires less reliance on cash.³⁸

The Criminal and Other Offences Act and the Electronic Communications Act both contain provisions that can be used to prosecute online speech.

CONCLUSION AND RECOMMENDATIONS

While Ghana has made some good progress in expanding access and providing a liberal regime on digital rights, including the recent launch of the Digital Financial Services Policy, there are still concerns that need to be addressed by the government and keenly watched by civil society and other stakeholders.

For instance, the glaring digital divide between genders and between rural and urban areas requires continuous attention and improvement.

One of the measures that can be adopted to address this challenge is taking another look at the cost of accessing the internet and ensuring that tariffs and other taxes imposed by the government that impacts on affordability are reduced or removed.

Government should also ward off the temptation to use the COVID-19 pandemic as an excuse to engage in mass surveillance or curtail online expressions through the wrongful use of 'fake news' or misinformation laws.

37. Ministry of Finance 'Digital Financial Services Policy' (2020), available at https://mofep.gov.gh/sites/default/files/acts/Ghana_DFS_Policy.pdf

38. Consultative Group to Assist the Poor (CCAP) 'Ghana launches world's first digital finance policy amid COVID-19' (May 2020), available at <https://www.cgap.org/blog/ghana-launches-worlds-first-digital-finance-policy-amid-covid-19>

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