

LONDA



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Ghana Digital Rights and Inclusion Report

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GHANA DIGITAL RIGHTS AND INCLUSION 2021 REPORT

A PARADIGM INITIATIVE PUBLICATION

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EXECUTIVE SUMMARY

Ghana's digital rights space has grown over the past two decades with increasing mobile subscriptions and about half of the population having access to the Internet. This has been on the back of increasing infrastructure and a booming artificial intelligence ecosystem, which culminated in Google setting up its first AI lab in Africa in Ghana in 2019. While these advancements should be celebrated, the data shows that there continues to be unequal involvement of women in these sectors and especially with regard to senior staff in the AI sector, especially in data science.

The growth of the digital space in Ghana comes on the back of a fairly liberal legislative framework that substantially implements the country's international and regional human rights obligations. Recent legislative changes include the coming into force of the Cybersecurity Act which among others criminalises online child pornography and child exploitation online generally and the protection of partners, mostly women, from '*revenge porn*'. The Act, however, contains provisions that could be utilised for mass or targeted surveillance with little critical oversight.

Another recent legislative framework, the Right to Information Act, appears to have hit an uncomfortable snag in its implementation, as government officials have been reluctant to accede to access to information requests leading to a confrontation with various civil society organisations, including litigation in court. The inauguration of the Right to Information Commission, which has begun to sanction recalcitrant government agencies is proving to be an important force in ensuring open governance and accountability.



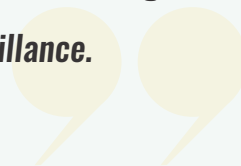
The year in review also saw a worrying decline in freedom of speech online, with a number of reports of social media users being targeted by state security agencies through the use of public order laws. Additionally, the government of Ghana needs to adopt more targeted measures to ensure gender parity in the digital rights space. Ensuring gender equality in all sectors of public and private life is one of the primary obligations that the state has in accordance with its international, regional and constitutional obligations.

Steps also need to be taken to ensure that the potential gains of the Right to Information Act are not lost through the conduct of government agencies that continue to hold on to official secrecy, rather than open governance, proactive disclosure and speedy disclosure of information upon request. Information officers within various government departments and agencies need to be trained to understand their obligation under the law, to ensure effective implementation of the Act.

The government also needs to take steps to repeal illiberal public order laws that are being used by state security agencies to stifle free speech, including online free speech.



Finally, stakeholders need to keep a keen eye on the implementation of provisions of the Cybersecurity law that allows for interception of private communication, to ensure that strict practical safeguards are adopted to prevent the potential use of the law for targeted or mass surveillance.





INTRODUCTION

DIGITAL RIGHTS AND INCLUSION IN GHANA

Since its return to democratic rule in 1993, after several successive military dictatorships between 1966 and 1992, Ghana has often been highlighted as a model democracy on account of fairly liberal laws and policies and successive peaceful change of governments through periodic free and fair elections.¹ As the second most populated and second largest economy in West Africa, Ghana plays an important role in the socio-political as well as the economic affairs of the region. Ghana has consistently ranked amongst the top three in Africa when it comes to freedom of speech and press freedom.²



81.1%
PUBLIC DEBT OF
GHANA GDP

Prior to the onslaught of the COVID-19 pandemic, the economy of Ghana was growing at 7% on average per annum but the pandemic resulted in economic slowdown which has put a strain on households, and slightly increased poverty from 25% in 2019 to 25.5% in 2020.³ In recent years, Ghana's public debt has significantly increased as a result of excessive borrowing, with the debt estimated at 81.1% of GDP which places Ghana in a significant risk of debt distress.⁴

1. See MG Nyarko 'Digital rights and inclusion in Ghana – 2020; see also Anyway Sithole 'Ghana: A beacon of hope in Africa' (2012) 18 Policy and Practice Brief <https://www.files.ethz.ch/isn/154807/ACCORD-policy-practice-brief-18.pdf> (accessed 26 February 2022).

2. <https://www.worldbank.org/en/country/ghana/overview#1> (accessed 26 February 2022).

3. As above.

4. As above.

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Ghana is a member of the United Nations (UN) and a founding member of the Organisation of African Unity (OAU) and African Union (AU). Since its independence, Ghana has ratified most of the core United Nations human rights instruments, including the:

- International Convention on the Elimination of All Forms of Racial Discrimination, which was ratified in 1966;
- Convention on the Elimination of All Forms of Discrimination Against Women, ratified in 1986;
- Convention on the Rights of the Child, ratified in 1990 and
- its Optional Protocol on the involvement of children in armed conflict, which was ratified in 2014.⁵

In the year 2000, Ghana ratified the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention Against Torture and Other Cruel Inhuman and Degrading Treatment and the International Convention on the Protection of the Rights of All Migrant Workers and members of their families.⁶ Other UN human rights treaties ratified by Ghana include the Convention on the Rights of Persons with Disabilities, which was ratified in

2012, and the Optional Protocol to the Convention Against Torture, ratified in 2016.⁷

At the African Union level, Ghana ratified the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa in 1983,⁸ African Charter on Human and Peoples' Rights in 1989,⁹ African Charter on the Rights and Welfare of the Child in 2005¹⁰ and the African Charter on Democracy, Elections and Governance in 2010.¹¹ Ghana also ratified the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) in 2007,¹² the Protocol to the African Charter on the establishment of the African Court on Human and Peoples' Rights in 2005,¹³ and the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) in 2019.

Being a dualist state, ratification of these human rights instruments does not make them directly applicable at the national level. Consequently, the government of Ghana has an obligation to enact domestic laws and policies to give effect to their obligations under these treaties.

While various laws and policies have been enacted to give effect to most of Ghana's international

5. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=67&Lang=EN (accessed 27 February 2022).

6. As above.

7. As above.

8. <https://au.int/sites/default/files/treaties/36400-sl-OAU%20Convention%20Governing%20the%20Specific%20Aspects%20of%20Refugee%20Problems%20in%20Africa.pdf> (accessed 26 February 2022).

9. https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf (accessed 26 February 2022).

10. <https://au.int/sites/default/files/treaties/36804-sl-AFRICAN%20CHARTER%20ON%20THE%20RIGHTS%20AND%20WELFARE%20OF%20THE%20CHILD.pdf> (accessed 26 February 2022).

11. <https://au.int/sites/default/files/treaties/36384-sl-AFRICAN%20CHARTER%20ON%20DEMOCRACY%20AND%20ELECTIONS%20AND%20GOVERNANCE.PDF> (accessed 26 February 2022).

12. <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf> (accessed 27 February 2022).

13. https://au.int/sites/default/files/treaties/36393-sl-protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_estab.pdf (accessed 27 February 2022).

human rights obligations,¹⁴ the Government has recently enacted the Cybersecurity Act 2020, Act 1038, to give effect to its obligations under the Malabo Convention.¹⁵ The government also launched a number of activities in 2021 to popularise the Act and raise awareness among key stakeholders and the general populace.¹⁶



**THE GOVERNMENT ENACTED
THE CYBERSECURITY ACT 2020,

ACT 1038**

The Cybersecurity Act provides, among others, a comprehensive legal framework for cybersecurity in Ghana including the protection of children online especially against child pornography and child sexual exploitation.¹⁷ The Act also makes provision for criminalisation of the '*non-consensual sharing of intimate image[s]*' (revenge porn), which carries criminal penalties of up to three years imprisonment.¹⁸ The Cybersecurity Act, however, contains some potentially problematic provisions relating to the interception of data by law enforcement agencies through *ex parte* applications to the High Court, without making provisions for safeguards such as the presence of an independent intermediary.¹⁹

These provisions may be abused by law enforcement officials to conduct surveillance, without the necessary checks and balances. Similar provisions in South Africa's Regulation of Interception of Communications and Provision of Communication- Related Information Act 70 of 2002 (RICA) were recently declared unconstitutional by the Constitutional Court for its failure to provide necessary safeguards during *ex parte* proceedings and post-surveillance notification to affected persons.²⁰



***The Cybersecurity Act provides, among others, a
comprehensive legal framework for cybersecurity in Ghana
including the protection of children online especially against
child pornography and child sexual exploitation.***

14. See for instance, 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.

15. Ministry of Communication and Digitalisation, Cybersecurity Act Passed to Promote & Regulate Cybersecurity Activities (2021) <https://www.moc.gov.gh/cybersecurity-act-passed-promote-regulate-cybersecurity-activities>.

16. <https://ncsam.cybersecurity.gov.gh> (accessed 27 February 2022).

17. See sections 62-66 of the Cybersecurity Act.

18. Sections 67 & 68.

19. See sections 69-75.

20. AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC and Others (CCT 278/19; CCT 279/19) [2021] ZACC 3; 2021 (4) BCLR 349 (CC); 2021 (3) SA 246 (CC) (4 February 2021).

FREEDOM OF EXPRESSION ONLINE IN 2021

While Ghana continues to have a liberal legislative and policy framework concerning freedom of expression online, actions of some organs of State put a strain on the enjoyment of freedom of expression online during 2021, of which a few examples are highlighted in this report. While many incidents relating to attempts to stifle online freedom of expression were recorded in Ghana during the year, perhaps the most shocking came from the Judiciary. In February 2021, the lawyers of the Judicial Service of Ghana issued a statement warning media houses to stop making *'incendiary, hateful and offensive statements and speeches on their various platforms'* about judges, and in particular judges of the Supreme Court who were presiding over a presidential election petition filed by the former President John Mahama challenging the legality of the re-election of the current President Nana Akufo Ado.²¹ The statement further requested media houses to immediately pull down the alleged statements from their websites and threatened legal action should media houses fail to do so.²² This was seen by many as an attempt by the Judiciary to intimidate and interfere with the editorial independence of media houses.²³

Other incidents related to attacks on freedom of expression online include the arrest on 1 April 2021 of David Tamakloe, the editor of an online newspaper (Whatsup News), on allegations of extortion and publishing false news, in relation to publications he made about a scandal involving a business woman who is the wife of a senior police officer.²⁴

On the back of the growing numbers of these kinds of cases, civil society organisations have urged the government to amend laws on the prohibition of *'false information'*, especially in the middle of a global pandemic, where access to vital information is critical. Government has been urged to utilise other alternatives including *'proactively providing timely, accurate and comprehensive information'*,²⁵ instead of resorting to criminal sanctions which could have a negative impact on freedom of expression and access to information online. Similar provisions in the Penal Code of Kenya were struck down by the High Court in Kenya as being an illegitimate restriction on freedom of speech.²⁶

21. GhanaWeb 'Election petition: Delete all 'hateful, spiteful' comments against SC justices – Judicial Service to media' 26 February 2021, <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Election-petition-Delete-all-hateful-spiteful-comments-against-SC-justices-Judicial-Service-to-media-1190476> (accessed 27 February 2022).

22. As above.

23. Media Foundation for West Africa 'The state of internet freedom in Ghana – 2021, (2022) 6 <https://www.mfwa.org/wp-content/uploads/2022/01/Freedom-of-Expression-Online-in-GHANA-2021-muh.pdf> (accessed 27 February 2022).

24. Media Foundation for West Africa (as above) 6; Committee to Protect Journalists 'Police detain Ghanaian journalist David Tamakloe overnight in relation to 'false news' complaint' <https://cpj.org/2021/04/police-detain-ghanaian-journalist-david-tamakloe-overnight-in-relation-to-false-news-complaint/> (accessed 27 February 2022).

25. Article 19 'Ghana: 'False information' prohibitions must be amended', 8 November 2021 <https://www.article19.org/resources/ghana-false-information-prohibitions-should-be-amended/> (accessed 27 February 2022).

26. Cyprian Andama v Director of Public Prosecutions & 2 others; Article 19 East Africa (Interested Party) [2021] eKLR, <http://kenyalaw.org/caselaw/cases/view/212397/> (accessed 27 February 2022).



ACCESS TO INFORMATION

The enactment of the Right to Information Act in 2019 after almost two decades of it pending in parliament marked a turning point for access to information and transparency in the public sector of Ghana. However, the essence of the Act has been stifled by government departments and agencies either refusing to accede to access to information requests or charging exorbitant fees for information requested from them, even where providing the information comes at no cost to the entity.²⁷ The Fourth Estate, an investigative journalism project of the Media Foundation for West Africa, which works on various issues related to public accountability and corruption, among others, reports that a number of requests it had made to various government agencies for information were either met with refusal, silence or exorbitant fees.²⁸

In one instance, the Minerals Commission demanded US\$1000 as the processing fee for an access to information request that was made concerning mining firms that had been licensed in Ghana.²⁹ In another case, which eventually ended up in the High Court, the National Communications Authority, which is one of the key regulators in the digital sector, charged GHS 2000 (US\$ 350) in response to a request for information concerning radio stations that have been licensed to operate. The High Court eventually reduced the fee to GHS 1500 after months of litigation.³⁰ These are rather high figures which, for the average Ghanaian, are unaffordable and have the impact of deterring citizens from making access to information requests.

Despite this unfortunate turn of events, the operationalisation of the Right to Information Commission, which is mandated under the Right to Information Act, to ensure compliance with the provisions of the Act seems to have given new impetus to access to information. For instance, in the Minerals Commission case cited earlier, an appeal by the Media Foundation for West Africa against the US\$1000 processing fee requested, resulted in the Right to Information Commission ordering the Minerals Commission to reduce the processing fee from US\$1000 to US\$ 0.33.³¹ In another instance, the Right to Information Commission ordered the Scholarship Secretariat, a State institution, to release information relating to beneficiaries of government scholarships, which it had previously refused, citing the privacy of beneficiaries.³²

27. The Fourth Estate 'Testing RTI law: The 33 public institutions that passed or failed', 11 October 2021, <https://thefourthstategh.com/2021/10/11/testing-rti-law-the-33-public-institutions-that-passed-or-failed/> (accessed 27 February 2022).

28. Evans Aziamor-Mensah 'Minerals Commission demands \$1000 from The Fourth Estate in a Right to Information request', 18 June 2021 <https://thefourthstategh.com/2021/06/18/minerals-commission-demands-1000-from-the-fourth-estate-in-a-right-to-information-request-2/> (accessed 27 February 2022).

29. As above

30. Media Foundation for West Africa 'RTI court case: MFWA disappointed at ruling' 18 June 2021 <https://www.mfwa.org/rti-request-case-mfwa-disappointed-at-judgment/> (accessed 27 February 2022).

31. Media Foundation for West Africa 'Ghana's Information Commission orders release of information to journalist at \$0.33 instead of \$1,000 demanded by state agency' 21 July 2021, <https://www.mfwa.org/ghana-information-commission-orders-release-of-information-to-journalist-at-0-33-instead-of-1000-demanded-by-state-agency/> (accessed 27 February 2022).

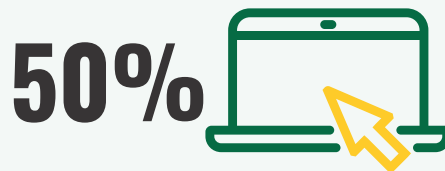
32. The Fourth Estate 'RTI Commission orders Scholarship Secretariat to release beneficiaries list', 4 October 2021, <https://thefourthstategh.com/2021/10/04/rti-commission-orders-scholarship-secretariat-to-release-beneficiaries-list/> (accessed 27 February 2022).

DIGITAL INFRASTRUCTURE, INTERNET PENETRATION AND GENDER INEQUALITY

Ghana's internet penetration rate increased from an estimated 48% to 50% during the course of 2021 marking a 2% increase in the space of one year, and one of the most rapid paces of growth in the sub-region.³³ This has been on the back of a booming mobile telephony industry and massive investment in fibre optic infrastructure.³⁴ Similarly, the number of Facebook users during 2021 was estimated at 8,838,800,³⁵ a marked increase from the estimated 6 million social media users in 2020.³⁶ Even as internet usage continues to increase, there is still a significant gender disparity. For instance, only 37.2% of Facebook users in Ghana are women,³⁷ even though women make up almost 51% of the population.³⁸ Research also shows that there is negligible participation of women in artificial intelligence and in particular the FinTech sector.³⁹ For instance, there are no 'women in senior data

science-related roles'⁴⁰ in Ghana even though there are reports that the AI sector is booming,⁴¹ culminating in Google opening its first AI lab in Ghana in 2019.⁴²

The share of the mobile service market among the mobile network operators remained significantly similar to the previous year.⁴³ However, there was a significant change in the ownership of mobile network operators within the sector, with the government acquiring a 100% stake in AirtelTigo,⁴⁴ which had a market share of 19.1% of mobile subscribers in Ghana as of June 2021.⁴⁵ This is in addition to the fact that the government already owns a 30% stake in Vodafone Ghana, raising concerns that the State may become a significant player in the industry and may put it in a position to control flow and access of information.⁴⁶



GHANA'S INTERNET PENETRATION RATE

33. Media Foundation for West Africa 'Internet freedom in Ghana-2021' (2022) 1 <https://www.mfwa.org/wp-content/uploads/2022/01/Freedom-of-Expression-Online-in-GHANA-2021-muh.pdf> (accessed 27 February 2022).

34. As above

35. As above

36. MG Nyarko 'Digital rights and inclusion in Ghana- 2020 (2021) 3.

37. Media Foundation for West Africa (n 23 above) 4.

38. <https://www.bbc.com/pidgin/58658816> (accessed 27 February 2022).

39. Shamira Ahmed 'A Gender perspective on the use of Artificial Intelligence in the African FinTech Ecosystem: Case studies from South Africa, Kenya, Nigeria, and Ghana' (2021) <https://media.africaportal.org/documents/Final-Revised-AI4D-Gender-ITS-conference-paper.pdf> (accessed 27 February 2022).

40. As above

41. DW 'Ghana's artificial intelligence sector booming' <https://www.dw.com/en/ghanas-artificial-intelligence-sector-booming/av-57820145> (accessed 27 February 2022).

42. Aanu Adeoye 'Google has opened its first Africa Artificial Intelligence lab in Ghana', 16 April 2019 <https://edition.cnn.com/2019/04/14/africa/google-ai-center-accra-intl/index.html> (accessed 27 February 2022).

43. Media Foundation for West Africa (n 23 above); see also National Communications Authority 'Quarterly statistical bulletin on communications in Ghana, April-June 2021' <https://nca.org.gh/wp-content/uploads/2021/12/Draft-Q2-2021-Statistical-Bulletin-Final-1-2.pdf> (accessed 27 February 2022).

44. Jame Barton 'Ghana's government assumes full control of AirtelTigo', 18 November 2021, <https://developingtelecoms.com/telecom-business/operator-news/12262-ghana-s-government-assumes-full-control-of-airteltigo.html> (accessed 27 February 2022); <https://www.graphic.com.gh/business/business-news/ghana-govt-signs-agreement-with-airteltigo-for-transfer-of-ownership.html> (accessed 27 February 2022).

45. National Communications Authority (n 43 above) 2.

46. Media Foundation for West Africa (n 23 above) 5.

ANALYSIS OF THE COUNTRY'S PERFORMANCE

While the state of digital rights in Ghana remains quite stable, with a steady increase in infrastructure and internet usage, there seems to be a decline in the respect for digital rights, given the reported number of attacks on social media activists and police harassment of journalists and human rights defenders for posts made on social media platforms. The enactment of the Cybersecurity Act, which harmonises regulations on online security, including the protection of women and children from online abuse and exploitation, demonstrates progress in the digital rights space over the past year. Other initiatives such as the nationwide sensitisation of key stakeholders and the public about the Cybersecurity Act are encouraging first steps towards the implementation of the Act. However, as noted earlier, the provisions of the Act relating to interception of private communication could potentially be used for targeted or mass surveillance in the absence of strict safeguards and continuous monitoring by stakeholders, especially civil society.

In another development, the High Court in Accra ordered the State through its National Communications Authority to stop collecting data on subscribers of mobile telephony services and to delete data already collected.⁴⁷ This follows the promulgation of the Establishment of Emergency Communications System Instrument, 2020 (EI 63) which, among others, tasked the network operators to provide the following information to the National Communications Authority Common Platform: all caller and called numbers, merchant codes (for mobile money), mobile station international subscriber directory number codes and international mobile equipment identity codes and site location etc,⁴⁸ as part of Covid-19 measures to facilitate contact tracing. Commentators had already warned of the potential dangers of EI 63 on privacy rights as it presented the State with the capacity to engage in mass surveillance without adequate oversight.⁴⁹



The enactment of the Cybersecurity Act, which harmonises regulations on online security, including the protection of women and children from online abuse and exploitation, demonstrates progress in the digital rights space over the past year.

47. Francis Kwarteng Arthur v Ghana Telecommunications Company Limited and others, Suit No. HR 0064/2020, Suit No. GJ 0855/2020 (Judgement of 22 July 2021) <https://news.dennislawgh.com/full-ruling-stop-providing-details-of-your-network-subscribers-to-government-court-orders-mtn-vodafone/> (accessed 27 February 2022).

48. Media Foundation for West Africa 'Ghana: MFWA welcomes high court ruling ordering government to stop collecting personal data' <https://www.mfwa.org/ghana-mfwas-welcome-high-court-ruling-ordering-government-to-stop-collecting-personal-data/> (accessed 27 February 2022).

49. See K Agyeman-Budu 'Constitutionalism and COVID-19 in Ghana' <https://ancl-radc.org.za/node/627> (accessed 27 February 2022); MG Nyarko 'Digital rights and inclusion in Ghana' (2021) 5.



CONCLUSION AND RECOMMENDATIONS

While Ghana remains an open and democratic state founded on the ideals of freedom and justice and has made important strides in this regard, there are some worrying trends that need to be urgently addressed. The State's continuous use of public order laws to frustrate the sharing of information online is of concern to all stakeholders. Freedom of expression online is equally as important as freedom of expression offline and the seemingly large appetite for State security agencies to target online expressions should be warded off. The State needs to develop a rights-based approach to guarding against dangerous speech online, and allow civil remedies or counter speech rather than using criminal sanctions to police what may, in some circumstances, be uncomfortable speech.

The government also needs to comply with the decision of the High Court in *Francis Kwarteng Arthur v Ghana Telecommunications Company Limited and others* and amend EI 63 to bring it in compliance with Ghana's constitutional and international human rights obligations – to promote, protect and fulfill the right to privacy. Similarly, safeguards need to be put in place to ensure that the newly promulgated Cybersecurity Act does not become a tool for government security agencies to conduct mass surveillance or even targeted surveillance against government critics, human rights defenders and other persons, similar to the fears expressed about EI 63.

Additionally, while the passage of the Right to Information Act was welcomed with much optimism, the practice over the last year shows that government departments and agencies have been reluctant to comply with requests for information, leading activists to resort to the use of the Right to Information Commission and sometimes the Courts to obtain information. This situation shows the absence of political will and/or sufficient familiarity of relevant State agencies with the Right to Information Act. The State, through its agencies, needs to show that it is committed to enforcing the Right to Information Act by complying speedily with requests for information.

State departments, agencies and organs need to be trained on their obligations under the Act to ensure that the real benefits of the Act, such as increasing transparency and accountability in the public service, become a reality and that those who make requests for information are not saddled with unnecessary hurdles.

Finally, the government and other stakeholders should not lose sight of the glaring gender inequalities that persist in the digital rights sector and should continue to take targeted steps to ensure that more women are involved in the sector to ensure inclusive growth.

Londa 2021 expands on last year's report with findings from 22 countries, examining themes of privacy, freedom of expression, access to information, segmentation and exclusion, digital transformation, affordability, gender and others within existing legislative frameworks, and against the backdrop of a widening digital divide. This edition captures the gaps and proffers recommendations to achieve a digitally inclusive and rights - respecting Africa.



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