

POLITICAL PARTICIPATION IN GHANA; A COMPARATIVE ANALYSIS OF DIGITAL AND POLITICAL RIGHTS

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★ Abstract

With the digital world gradually taking over a lot of activities in our society, the need for regulation of space has become imperative. Ghana, like many countries, has over the last decade passed many laws in that regard. To help understand how digital laws in the country promote or undermine the political rights of Ghanaians, this research, using qualitative methods, relies on content analysis to study texts from the three laws reviewed; Cyber-security Act 2020 (Act 1038), Data Protection Act 2012 (Act 843) and Electronic Communications Act 2008 (Act 775) and run a comparative analysis of the laws. Findings show that at least 6% of laws in the Cybersecurity Act border on the political rights of citizens. For the Electronic Communications Act, it is some 14% of provisions while in the case of the Data Protection Act more than 50% border on the political rights of citizens, establishing rules of procedure with regards to keeping and processing of information. Ghana's digital laws largely augment the political rights of citizens. Broadly, the laws's provisions touch on Safeguarding of rights of citizens, provisions on disinformation, protection and inclusiveness of citizens and/or consumers as well as control of information. Conclusively, the laws still have loopholes and are still yet to fully reflect that of international treaties the country has signed on to and even ratified. They can be used as means to deny people of same rights they are to enjoy while there are very few provisions aimed at targeting and addressing the special need of persons living with disabilities.

★ INTRODUCTION

Ghana as a country is noted for being a strong figure in the space of digital rights and media¹ freedoms. This has undoubtedly given it a strong foothold in terms of political participation especially as citizens, on a daily basis are free to express their sentiments and add their voices to as many issues of governance and society as they wish to. Rights like the freedom of expression and the right to information are guaranteed by the constitution . Some reports have even² suggested that calls for regulation of the space have risen as a result indicating popular support for free media dropped by 57% as of 2018.^{3,4}

As a result, political participation in Ghana is high as citizens generally feel free to express their political rights. After an improvement in 2018 when the country rose to 23rd on the world press⁵ freedom rankings, it dropped to 27 in 2019 and currently stands at the 30th position on world rankings. Journalists especially, have from 2019 to 2020 faced various actions that threaten their⁶ life and work. In 2020, during the heat of the COVID-19 pandemic,

journalists covering the effectiveness of the government's measures against COVID-19 were attacked by police. A journalist, David Tamakloe was arrested on allegations that he published false news . In May this⁷ year (2021), a journalist with Citi Fm and Citi TV, Caleb Kudah, was also arrested by the country's National Security at one of their installations in the capital on grounds of filming in a restricted area. This issue generated quite a number of controversies that bordered on public⁸ interest and the rights of citizens to be informed against arguments on security protocols.

One thing the incidents above have in common is the use of digital tools and platforms. In the case of the journalist David, his arrest was in connection with a news story shared on various online platforms through a Ghanaian news portal, Whatsup News . In the case of Caleb, his⁹ arrest attributed by some to previous posts on social media platforms including Twitter and Facebook. Before these incidents, there was also the gruesome murder

¹ [Londa – Digital Rights and Inclusion in Ghana](#)

² [1992 Constitution of Ghana](#)

³ Nyarko M. G (2021), 'LONDA;Ghana Digital Rights and Inclusion Report 2020'

⁴ [DW Akademie \(2018\). 'Digital backlash threatens media freedom in Ghana](#)

⁵ 'Afrobarometer Round 8 Survey in Ghana, 2019'

⁶ [Reporters Without Borders \(2021\). 'Ghana'](#)

⁷ [Police detain Ghanaian journalist David Tamakloe overnight in relation to 'false news' complaint](#)

⁸ [Citi News' Caleb Kudah arrested for filming at National Security Ministry](#)

⁹ [Police detain Ghanaian journalist David Tamakloe overnight in relation to 'false news' complaint](#)

¹⁰ [Citi News' Caleb Kudah arrested for filming at National Security Ministry](#)

¹¹ Murder in Accra: The life and death of Ahmed Hussein-Suale

of, Ahmed Husein¹⁰ Suale, an investigative journalist with the renowned Tiger Eye Private Investigation led by investigative journalist, Anas Aremyaw Anas. His death (investigations yet to conclude after 2 years) has been linked to comments made by a parliamentarian on a television station which¹¹ circulated highly on social media platforms as the case is in Ghana.

In the face of these happenings, there has also been a new regime of digital laws to regulate Ghana's digital space; something which has almost come to be inevitable in the technological dispensation. Over the last decade, laws passed to regulate the digital space in the country include Cyber-Security Act 2020 (Act 1038) , National Information Technical Agency Act 2008,^{12 13} Electronic Communications Act 2008 (Act 775) , Payment Systems and Services Act 2019,^{14 15} National Communications Authority Act 2008 , Electronic Transactions Act 2008 , Data^{16 17} Protection Act 2012 (Act 843) and the National Communications Authority Act 2008 . The^{18 19} space is largely overseen under the auspices of the National Communications Authority, Ministry of Communications and other bodies that

are affected by these laws in the space they are implemented.

Under the 1992 Constitution of Ghana, citizens enjoy political rights to enhance the democratic²⁰ process. Such provisions from the constitution include Clause 2 of Article 18, which provides,

“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 for 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 the protection of the rights or freedoms of others”.

¹² [Cyber-Security Act 2020 \(Act 1038\)](#)

¹³ [National Information Technical Agency Act 2008](#)

¹⁴ [Electronic Communications Act 2008 \(Act 775\)](#)

¹⁵ [Payment Systems and Services Act 2019](#)

¹⁶ [National Communications Authority Act 2008](#)

¹⁷ [Electronic Transactions Act 2008](#)

¹⁸ [Data Protection Act 2012 \(Act 843\)](#)

¹⁹ [National Communications Authority Act 2008](#)

²⁰ [1992 Constitution of Ghana](#)

★ REFLECTIONS FROM GHANA'S DIGITAL LAWS

Safeguarding of rights

Provisions in the laws examined, among other things, facilitate the protection of citizens and their privacy, are citizen/consumer-centred and finally lead to the deepening of the democratic process. They deepen the democratic dispensation critically through the establishment of industry forums which are aimed at bringing industry players together periodically. Sections 81 to 82, 29 to 30 and of the Cybersecurity and Electronic Communications provide for the setup of a forum for **Electronic Communications and Cybersecurity industry players, respectively**. The Minister and Authority only participate as observers but are mandated to consider and implement codes they come up with in a thirty days space.

The composition of the Cybersecurity Forum includes cybersecurity service providers, telecommunications network operators, and any other person concerned with matters of the industry that may participate in the activities of the Forum. Also, a representative²¹ from this Industry forum set up in the Cybersecurity and Electronic Communications Acts sits on the board of the Data Protection Commission.

The forums (**Electronic Communications and Cybersecurity industry forums**) are meant to facilitate the discussion of matters concerning the industry through codes. They (the codes) come to effect only after the authorities have passed them. However, in a case where the authority seeks to use its power of refusing to pass a code, they are obliged to explain to the forum on the decision within thirty days of the refusal. These provisions that establish Cybersecurity and Electronic Communications industry forums and their regulations, potentially stand as an avenue for issues concerning the space to be properly addressed.

The 'Data Protection Act', 2012 also provides extensively for the right of individuals to their privacy. The Commission, set up by the act, is expected to "protect the privacy of the individual and personal data by regulating the processing of personal information".²² It also includes obtaining their information along the lines of observing one's right to privacy. These are reflected in Sections 2(a), 17, 18, 48 and 57.

Section 17 of the Act charges people who process data to, among other things, consider the accountability,

²¹Cybersecurity Act 2020 (Act 1038); Section 81 sub-section 3

²²Data Protection Act 2012; Section 2(a)

lawfulness of processing, specification of purpose, data security safeguards and getting the data owner's involvement/consent in their line of work. Further, Section 48 of the law also provides grounds for the commission to refuse the application of one as a data controller if it is found that there aren't enough safeguards for the protection of people's rights to privacy.

The laws also punish the act of interfering with the personal information of citizens without their knowledge. Section 94 of the Cybersecurity Act makes punishable the act of retrieving or gaining control of information of subscribers (citizens and non-citizens), to communications services. The same is for Sections 77 to 79 of the Electronic Communications Act, which covers the interception of equipment to keep the personal information of citizens (described as subscribers).

These provisions go a long way to deepen political participation in the country on the tenets of democracy.

Submission to international best practices

Ghana signed onto international treaties like the Budapest and Malabo Conventions with a duty to comply. Section 84 of the Cybersecurity Act, which provides on 'International Co-operation' provides in the sub-section that;

“The Authority shall implement relevant measures for the effective implementation and enforcement of international treaties on cybercrime and cybersecurity, of which Ghana is a signatory”.

The Electronic Communications Act mandates the authority to allocate spectrum and regulate broadcast services according to standards set by the International Telecommunications Union (ITU) when considering spectrum allocation.

Section 87 of the Data Protection Act the Authority to “perform the data protection functions that are necessary to give effect to any international obligations of the Republic”.The laws clearly call for authorities to collaborate; learn from and adopt; co-operate and comply with international best practices and standards. This must be adhered to in the case of a state of emergency. These submissions give affected persons²³ avenues to have their issues properly addressed as Ghana has signed various treaties that give citizens the freedom to enjoy their rights.

Provisions about Disinformation

Used as a weapon against credible news media across the globe, the phenomena of information disorder has become rampant in recent times as blogs, cloned websites, satires and other forms of media including tradition-

²³ Cybersecurity Act, Sections 3(g); 59(1)(e); 48(1)(b); 89(3)(c)

al media, are used to fuel fake stories to shape narratives in a certain way. Conspiracy theories, blatant lies and what has been²⁴ described by some as information pollution has become the order of the day. Many²⁵ cases can also be stated for the fake information circulated to twist actions in favour of political interests in Ghana. A recent survey, by African Youth Survey, suggests that nearly nine in ten (90%) of Ghanaian youths believe the rampant nature of fake news in the country and around the continent has impacted their ability to stay informed.²⁶

Accordingly, the laws cater for such offences by making punishable the act of spreading false news and information. Section 76 of the Electronic Communication Act gives clear provisions which criminalizes the communication of false information.

Finding that the sender did not check the information before communicating it is one of the criteria for concluding that it was incorrect and had the potential to cause harm. These provisions are easily interpreted by many, especially government, as a way of ensuring public safety and making citizens responsible in a time when disinformation is high.

However these are in stark contravention to international charters like the

Declaration of the African Commission on Human and Peoples Rights (ACHPR) Declaration of Freedom of Expression and Access to Information [Eg. Principles 1 (2b); 2 and 5) which provides that freedom of expression is not curtailed at any point in time. Principle 22 (2) of the ACPHR Declaration of Freedom of Expression and Access to Information clearly states “States shall repeal laws that criminalise sedition, insult and publication of false news”.

Inclusive and Consumer Favorable

The Electronic Communications Act provide for the inclusion of such persons as the disabled and people living in rural areas who stand to be disadvantaged in the digital space. They also facilitate inclusion and are generally favorable to the consumer who also is a citizen.

Sections 23 to 24 of the Electronic Communications Act provide for the offering of ‘Universal Access and Services’, which allows consumers to enjoy services that take into consideration the needs of the public, affordability of the service and advances in technologies. In effect, this act gives the authority power to determine a baseline of services to consumers as a public service. The provisions also spell out clearly, the inclusion of disabled persons in sub-section 2(e) of Section 23;

²⁴ Wardle, C. and Derakhshan, H.: Thinking about ‘information disorder

²⁵ Wardle C., Derakhshan H. : ‘Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making

²⁶ [Delport J.: Fake News Impacts 84% of Ghana’s Youth...](#)

“Universal service includes, at a minimum, a high-quality public telephone service, that offers a provision of services that enable persons with disability to make and receive calls”

In issuing licenses to applicants, sub-section 2 (j) of Section 4 charges sector regulators²⁷ to ensure “...the provision of services to persons with disability and other social responsibility obligations.”

Also, private groups (private electronic communications service, closed user group service or value-added service) may be tasked with the obligation of funding universal access and services. This must be done clearly and transparently.

In addition to including disabled persons, sections 49 to 50 of the Electronic Communications Act provide for electronic communications in rural areas. Service providers in such communities and areas enjoy facilities that are aimed at helping them operate in the unique situations they find themselves. More so, Section 64 of the same Act mandates the authority to give frequency space on non-discriminatory grounds.

Notably, it states, “The Authority shall ensure that access to the space segment is made available on a non-discriminatory and equitable basis in allocating frequency bands for elec-

tronic communications services that use satellite systems”

Section 99(5) provides for service providers to be of use to the development of the country in times of emergency.

“A network operator or service provider shall develop and cooperate in- the development and implementation of plans for operating networks and providing services during force majeure and periods of serious and substantial interruption in the provision of electronic communications services.”

- Section 99 (5), Electronic Communications Act, 2008.

This was seen in 2020 when as a result of the COVID-19 pandemic, telecommunication companies provided access to zero-rated sites that were primarily aimed at helping people. Particularly two mobile telecommunication networks, MTN Ghana and Vodafone Ghana, supported distance learning with zero-rated access to education content for subscribers. This was in addition to Telcos providing their platforms to be used for COVID-19 education.²⁸

Information Control

Parts of the laws, like in Sections 69 to 75 of the Cybersecurity Act, pro-

²⁷ Electronic Communications Act 2008

²⁸ [Tech to the Rescue Against Covid-19: Reflections from West Africa](#)

vide for the power given the authority to have access to information from subjects that are under their investigation. They, among other things, are allowed to access information from content data (meaning or purport of a communication) or traffic data (communication by means of a computer system that forms a part of the chain of communication...).

This power given the authority is meant to give them access to private information on the grounds of national security, prevention or detection of a severe offence, economic well-being of the citizenry, or to give effect to a mutual legal assistance request.

In Section 87 of the same act, the authority is allowed to lock, filter and take down content flagged as illegal, while Section 86 gives power to the authority to be given information at its request. Refusal to produce the said information is punishable.

Section 100 gives the president the power to “by executive instrument make written²⁹ requests and issue orders to operators or providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security”. These could be used potentially as means for governments to use power in a manner that is not in favor of the rights of citizens politically.

²⁹ Electronic Communications Act 2008, Section 100

★ CONCLUSION

In as much as laws guiding the digital regime in the country are favorable to the exercise of political rights in the country, some leave room for abuse of power, as we have seen over the years in Ghana and across the continent of Africa. These leave room for the desire for more to be done to favor the rights of citizens. Overall, Ghana's digital laws are favorable enough to give room for even more participation in future. These laws, first of all, safeguard the rights of citizens to privacy, freedom of speech and expression, right to participate in social actions that influence public and government policies, conduct business on lines of interest (partisan politics) and participate in decision-making through voting are protected and further deepened by these laws. Although they give room for some unfavourable control, digital laws in Ghana augment, to a large extent, the political rights of citizens.

The laws, which are undoubtedly linked in various ways, provide space for the active participation of citizens in terms of exercising their political rights. Areas like the Industry Forum run through all the laws examined, with a representative from the forum sitting on the board of the Data Protection Commission. Although some provisions of the Cybersecurity Act (Act 1038) border on intercepting private data of citizens (subscribers) on the grounds of na-

tional security as well as the economic and social well-being of the citizens, it is essential to note that the state must ensure that this is in line with human rights standards across all levels. Article 12(2) of the Malabo Convention clearly states, among other things, that "...national protection authorities shall ensure that Information and Communication Technologies do not constitute a threat to public freedoms and the private life of citizens". With the arbitrary use of national security as grounds to violate these rights, much lives to be seen of what comes off this law in the Ghanaian space.

Such applications must sufficiently prove, among other things, why the information sought will be in the control of the computer or computer system under investigation; identify and explain the information suspected to be on that computer or system and the related offenses. Unless there is an arbitrary use of power from state authorities and even non-state actors, it should be hard for the personal data of citizens to be accessed anyhow. The issue, however, lies with the authority's power by this law to get data about people without their knowledge. Despite the stopgap put in the Electronic Communications Act to criminalise the spreading of false information, the punishment assigned (up to three years imprisonment) could be used to

prosecute online speech. This could potentially weaken political participation, especially in³⁰ cases where government and other officers use power on arbitrary grounds.

Again, the Data Protection Act, with all the protection it gives citizens in terms of their privacy, is a safeguard to their future political participation now that online voting is becoming a possibility in the near future. Lastly, while Section 81 Subsection 3 of the Cybersecurity Act gives room for proper participation in the forum set-up for those in the cybersecurity industry here in Ghana, that of the Electronic Communications Act is limited to network operators,³¹ service providers or electronic communications equipment manufacturers or dealers only.³²

³⁰ [Paradigm Initiative Network \(2021\), LONDA: Ghana Digital Rights and Inclusion](#)

³¹ Cybersecurity Act 2020, Section 81 subsection 3

³² Electronic Communications Act 2008, Section 29 subsection 3

★ RECOMMENDATIONS

Journalists and service providers in the digital space need to be well equipped with these laws in order to appreciate their implications. It is imperative for unions and groups in this space, like the Ghana Journalists Association (GJA), Ghana Independent Broadcasters Association (GIBA), and other bodies in the space, to raise awareness of the laws and monitor their implementation. The government needs to raise awareness of these laws and exercise more commitment to review and implement them in a way that respects human rights. More needs to be done for persons with disabilities in the electronic space as the laws give very little priority to their inclusion.



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