Democratic Development and the Public Sphere: The Rights to Hear and be Heard in Ghana

Duke Law School Seminar and Fact-Finding Trip to Ghana

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I. Project Overview

A. Freedom of Information in a Developing Nation

Ghana, a nation of 25 million in West Africa, is fiercely proud of its political history. The first Sub-Saharan African nation to achieve independence from colonialism, Ghana has been a constitutional democracy since 1992. Since that time, there have been six presidential and parliamentary elections, with two peaceful transitions of power from one party to another. The 1992 Constitution creates a democratic political system and protects a litany of personal liberties and freedoms, including freedom of speech, religion, assembly, and press.

Not only is Ghana one of Africa’s most stable democracies, it also has one of the continent’s most successful economies. GDP growth routinely eclipses that of other African nations. Worldwide, Ghana is renowned for its cocoa and gold exports, and its economic growth has been aided by the recent discovery of oil. Indeed, “Ghana has been lauded internationally by the IMF and the World Bank as a ‘flagship’ of success.”

Still, developmental problems remain. While per capita income is roughly $400-$450 per year, 80 percent of Ghana’s population subsists on less than $1.00 a day.
six percent of Ghanaians do not participate in the workforce. One third of all Ghanaians sleep under an insecticide-treated net to prevent malaria, and one fifth have no formal education. While 77 percent of men are literate, only 63 percent of women are.

Accusations of corruption, especially in regards to Ghana’s newfound oil wealth, are rampant.

Ghana’s continuing commitment to free speech and a free press plays a critical role in resolving these issues of poverty, resource allocation, healthcare, and educational opportunity. The freedom to acquire and share information is necessary both for democracy and for economic development. Media freedom enables journalists to serve as a watchdog against government corruption and relay important information to the electorate. Moreover, freedom of speech and economic development “expand[] the real freedoms that people enjoy,” and are thus part of the same path of progress for a developing nation. Fully realizing the freedom to acquire and share information is thus an essential part of the nation’s economic and political developmental goals.

B. Class Objective and Overview

10 Id. at 105–06.
11 Id. at 34.
13 Id. at 2.
14 Id.
16 See infra text accompanying notes 45–46.
17 See infra text accompanying notes 52–55.
In January 2013, ten students and Professor Joseph Blocher from Duke University School of Law organized a seminar to study legal, political, and cultural issues relating to freedom of speech, the press, and other media in Ghana. The seminar was the fourth iteration of international seminars initiated by Professor Laurence R. Helfer, the co-director of Duke Law School’s Center for International and Comparative Law and a member of the faculty steering committee of the Duke Center on Human Rights. Previous seminars had focused on property rights in Brazil, Israel, and Ghana.

The seminar met weekly for two months in Durham, North Carolina, focusing on Ghanaian law, history, culture, politics, and the present state of press freedom and media proliferation in Ghana. Students analyzed the Ghanaian Constitution and proposed freedom of information and broadcasting laws, read firsthand accounts of journalists’ experiences in Ghana, followed Ghanaian news sources in their coverage of political and social developments, and discussed academic literature written by Ghanaian lawyers and scholars. Particular attention was placed on the relationship between the government and both state-owned and private media, media penetration into rural areas, and the use of media for development purposes.

The fieldwork portion of the seminar lasted ten days and included meetings in Accra, Cape Coast, Ada, and Dogo. Students met with various stakeholders with unique perspectives on press freedom in Ghana. This included journalists from state-owned and private media outlets, government representatives from the National Media Commission.

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18 The students were Jacob Charles, Colleen Healy, Christopher Jones, Ellie Marranzini, Jonathan Nussbaum, Lauren Ross, all of the Duke Law class of 2013, and Nick Brod, Nina Gupta, Hyatt Howard, and Ndidi Menkiti, all of the class of 2014.
19 A full list of the works consulted by the seminar class before departing for Ghana is attached in Appendix II.
and Parliament, and lawyers and educators from the University of Ghana, the GIMPA Law School, and the Ghana School of Law. The Media Foundation for West Africa, headed by Kwame Karikari, served as the primary in-country partner.

C. Purpose of Written Work

This work product summarizes the findings of the Ghana seminar and analyzes current attempts to more fully realize media freedom in Ghana. Two attempts in particular, the proposed Right to Information Bill (RTI) and Broadcast Bill, are central to legal reform and media freedom, and thus receive extensive attention here.

The analysis here is greatly informed by, and indeed would not be possible without, the insights shared by our partners and interviewees in Ghana. Their generosity and insights form the core of this Report. And while each of those partners is truly the expert in his or her field, our hope as disinterested outsiders is to synthesize their insights, offering an analysis that incorporates multiple points of view. This Report was therefore written with our Ghanaian partners and interviewees in mind. The Report combines what we have learned from them, and from our own research. It offers a framework for conceptualizing how free speech and press advance democratic and economic development, analyzes recent legislative proposals for both accessing and disseminating information, and offers recommendations on how to more fully realize the freedoms of speech and press enshrined in the Ghanaian constitution.

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²⁰ A full list of the Ghanaian organizations and representatives met with is attached in Appendix I.
II. Summary of Findings

This Report begins by showing that free speech and free press are crucial for a developing nation. In an immediate sense, both freedom of press and freedom of speech are guaranteed by the Ghanaian Constitution. More broadly, promoting freedom of press and of speech is an essential element of promoting democracy. The progress Ghana’s democracy has made since the 1992 Constitution can be attributed in part to freedom of speech and press, and those values can continue to safeguard the democratic process. Moreover, a free and robust press can root out the kind of government corruption that hinders national development.

A detailed history of speech and media in Ghana both demonstrates the practical importance of these freedoms and sets the stage for current debates about how best to protect them. Many media outlets in Ghana, especially those owned by the state, predate the 1992 Constitution. These institutions now compete with a private press that has flourished since the country’s democratization. Legal reforms, including Article 162 of the Constitution, guarantee a free and independent media. Many restrictive pre-1992 media laws, including the criminal libel statute, survived the governmental transition but have since been repealed. Nonetheless, impediments such as laws that criminalize “causing fear and alarm” or “scandalizing the court” remain in place.

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22 Id. art. 162.
23 Interview with Nene Amegatcher, President, Ghana Bar Ass’n, in Accra, Ghana (Mar. 15, 2013).
Fully overcoming the residual legal impediments to free expression in Ghana means safeguarding the ability to acquire information and the freedom to share that information. Both are integral to the operation of a robust public sphere. Two proposed pieces of legislation, the Right to Information (RTI) Bill and the Broadcast Bill, seek to address these two components of media freedom.

The RTI Bill is designed to implement the broad right to information promised in the Ghanaian Constitution. It creates a procedure for obtaining information from various government agencies and qualifies what types of information citizens are entitled to. However, in many ways the Bill falls short of securing the full freedom to information needed in Ghanaian society.

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The proposals for a Broadcast Bill seek to regulate the national airwaves for both radio and television. In a country where most citizens get their news from radio, this is potentially a far-reaching piece of legislation. Yet the Bill fails to take into account many new developments in radio technology, leaving serious barriers for the free transmission of information by the Ghanaian media.

This Report discusses these proposed pieces of legislation in turn. By analyzing their purposes, structures, and likely effects, the Report can illuminate current attempts to more fully realize media freedom within the broader context of democratic and economic development in Ghana.

III. Free Speech and Development: Contemporary and Historical Context

A. The Role of Free Speech in Democratic and Economic Development

In the words of Bright Blewu, President of the Ghana Journalists Association (GJA), press freedom is critical to the functioning of a democratic society because it “promote[s] free transmission of information” and “lend[s] a voice to the voiceless.”26 This statement captures the importance of a democratic right to both receive information and communicate that information.27 Key stakeholders representing state-owned, private, and community media outlets agree that robust individual and collective speech rights facilitate public participation28 and ensure government transparency and accountability.29 Yaw Boadu-Ayeboafoh, General Manager of Newspapers at the Daily Graphic, predicts that these democratic outcomes will help to create a Ghanaian society that is more respectful of human rights.30

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26 Interview with Bright Blewu, President, Ghana Journalists Ass’n, in Accra, Ghana (Mar. 11, 2013).
28 Interview with Wilna Quarmyne, Co-founder, Ghana Cmty. Radio Network, in Accra, Ghana (Mar. 11, 2013) (emphasizing the importance of public participation by marginalized communities because the “right to communicate” encompasses a right “to not just express your opinion but to have it taken into account”).
29 Interview with Yaw Boadu-Ayeboafoh, Gen. Manager of Newspapers, Graphic Comm. Grp. Ltd., in Accra, Ghana (Mar. 12, 2013) (advocating for freedom of information legislation because it will (1) create an environment that is more open and transparent, (2) allow Ghanaians to challenge authorities openly in court, and (3) subject judicial action to public discussion); Interview with Gina Ama Blay, C.E.O., Western Publications, Ltd., in Accra, Ghana (Mar. 11, 2013) (explaining that the role of the private press is to ensure accountability and transparency of government by reporting from the independent perspective of one who is not “in bed with government”).
30 Interview with Yaw Boadu-Ayeboafoh, supra note 29.
These stakeholders’ statements reflect a national commitment to free speech, free press, and other “participatory freedoms”\(^\text{31}\) enshrined in Ghana’s 1992 Constitution as well as numerous international human rights instruments and the constitutions of democratic nations throughout the world. Specifically, Article 21 of the Ghanaian Constitution provides for “freedom of speech and expression, which shall include freedom of the press and other media” as well as freedom of information.\(^\text{32}\) Article 19 of the Universal Declaration of Human Rights states that “[e]veryone has the right to freedom of opinion and expression,” including freedom “to seek, receive and impart information and ideas through any media and regardless of frontiers.”\(^\text{33}\) The International Covenant on Civil and Political Rights, of which Ghana is a signatory, protects a nearly identical right.\(^\text{34}\) In addition, the African Charter on Human and Peoples’ Rights (the “Banjul Charter”) provides for an individual right to receive information and express and disseminate opinions.\(^\text{35}\) Ghana ratified the Banjul Charter in 1989 and signed it in 2004.\(^\text{36}\) Free speech has long been recognized in Ghanaian society as “an inviolable fundamental human right that cannot be suppressed.”\(^\text{37}\) Traditional maxims depict speech as an instinct that cannot be suppressed without causing agony to the speaker.\(^\text{38}\) Though

\(\text{31}\) The term "participatory freedoms" is used in this Report to refer to individual and collective freedoms that influence public discussion and social interactions, including freedom of speech, freedom of the press, freedom of expression, and freedom of information. See Amartya Sen, Development as Freedom 9 (1999).
\(\text{32}\) Constitution of the Republic of Ghana 1992, art. 21(1).
\(\text{35}\) Banjul Charter, supra note 27, art. 9.
\(\text{38}\) Id. at 13.
cultural norms and verbal taboos in traditional societies often dictated "the nature and style of communication in the face of authority," other traditional practices, such as festivals of free speech, demonstrate "a highly cherished democratic ideal of free expression." Despite widespread recognition of the intrinsic value of participatory freedoms, however, it is frequently argued that civil and political rights are "luxuries" of democracy that cannot be supported until "the development process has borne enough fruit." This argument prioritizes the national interest in economic development over individual political and civil liberties. When applied to speech and press freedom specifically, media becomes an instrument for development and a tool for government programs, rather than a critical watchdog. "Developmental journalism," as it is frequently referred to in practice and in academic literature, promotes national unification and education rather than fostering public debate and discourse. It is a concept that seems to be particularly common in postcolonial developing nations. This vision of the relationship between journalism and development is unduly narrow, robbing value from each. Sacrificing participatory freedoms in the name of development fails to give due regard to their intrinsic value. Moreover, this tradeoff

39 Id. at 25.
40 Id. at 23. Festivals of free speech were “days on which social norms [were] frozen” and “the deeds of rulers and elders [were] brought into the open forum ... and critically assessed in order to check the extent to which they promote[d] the people's collective aspirations over the past year.” Id. at 20–21.
41 SEN, supra note 31, at 35 (describing and criticizing this conception).
44 SEN, supra note 31, at 13–14.
underestimates both the instrumental role of participatory freedoms in promoting democracy and the role of democracy in promoting economic development.

A robust media, which is dependent upon participatory freedoms, enhances democracy in at least three important ways. First, a robust media serves as a “watchdog on the government” by exposing official action to public scrutiny.\textsuperscript{45} In addition to increasing the likelihood that public corruption will be exposed, government awareness of the media’s watchful eye enhances transparency and discourages public corruption.\textsuperscript{46} Second, media provides a platform for communication between a government and its constituents. This function is extremely important because “the majority [is] in the periphery when it comes to politics and democracy” while government officials “wield the power and form the core of society though they are in the minority.”\textsuperscript{47} Because democracy derives its authority and legitimacy from public participation,\textsuperscript{48} good governance requires bilateral communication between the majority and minority. The media serves this need by informing the government of the periphery’s needs and alerting the periphery of the government’s activities.\textsuperscript{49} Finally, public discussion of official action increases public officials’ accountability to their

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\textsuperscript{45} Joe Brandford Nylnah, \textit{Democracy and the Journalist’s Role, in State of the Media in Ghana} 40 (Freidrich Ebert Stiftung, ed. 1994).
\textsuperscript{46} Id.
\textsuperscript{47} Id. at 38–39.
\textsuperscript{48} See \textit{Sen}, supra note 31, at 31.
\textsuperscript{49} Nylnah, \textit{supra} note 45, at 38–39.
The media’s ability to deliver accurate, unbiased, and complete information to the electorate both during and after elections determines voters’ ability to make informed choices.\(^{50}\) In Ghana, for example, commentators largely seem to agree that the media’s performance in this regard has improved with each election.\(^{51}\)

Perhaps more frequently underestimated is the role of democracy in promoting development. Many definitions of the term “development” focus narrowly on particular (and sometimes controversial) methods for enhancing substantive freedom such as industrialization, social modernization, or liberalization of markets.\(^ {52}\) These definitions fail to recognize “the ends that make development important,” and instead focus on “the means that . . . play a prominent part in the process.”\(^ {53}\) If attention is drawn to the goals of development rather than the means, development might be more broadly defined as “a process of expanding the real freedoms that people enjoy.”\(^ {54}\) According to this definition, development is achieved through “removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or inactivity of repressive states.”\(^ {55}\)

Participatory freedoms are inextricable from the overall goal of expanding substantive freedoms for two main reasons. First, political and civil rights provide an opportunity for public expression of social and economic needs. Second, public discourse ensures that government is held accountable for equitable distribution of public resources.

\(^{50}\) Id. at 40.
\(^{51}\) See, e.g., Interview with Audrey Gadzekpo, Sr. Lecturer, Sch. Comm., Univ. of Ghana, in Accra, Ghana (Mar. 13, 2013); PREMPEH, supra note 42, at 1.
\(^{52}\) See SEN, supra note 31, at 3.
\(^{53}\) Id.
\(^{54}\) Id. at 36.
\(^{55}\) Id. at 3.
Public discussion is important to development because it shapes society’s understanding of needs, deprivations, and feasible solutions.\(^{56}\) Because the topics addressed by news media are both reflective and constitutive of social reality, marginalization from public debate significantly increases the likelihood that a particular group’s “unfreedoms” will be ignored.\(^{57}\) Participation in public debate, on the other hand, provides a platform for “constructive impatience” by which individuals and communities can demand official action on their behalf rather than being “passive recipients of the benefits of cunning development programs.”\(^{58}\)

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\(^{57}\) HASTY, *supra* note 43, at 8.

\(^{58}\) SEN, *supra* note 31, at 11.
Robust political and civil liberties are also essential to development because of their
key role in preventing the “resource curse” from undermining both democratic progress
and economic growth.\footnote{PREMPEH, supra note 42, at 5.} The resource curse refers to “a political/institutional and not an
economic phenomenon” in which newfound wealth causes democracy to malfunction in the
absence of meaningful checks and balances on executive power.\textsuperscript{60} In response to this concern, Ghana’s Center for Democratic Development has advocated constitutional reforms that “redress the persistent deficit of constitutionalism, of a lack of credible and robust checks and balances, transparency and accountability in the working of government.”\textsuperscript{61} In contrast to the concept of democracy, which focuses on elections, “constitutionalism is concerned with regulating and disciplining the government’s exercise of its power . . . in the period between elections”\textsuperscript{62} and particularly with regard to “the use and distribution of public resources.”\textsuperscript{63} Meaningful oversight of official action is dependent upon free exercise of civil and political liberties and is critical to ensuring that economic development is not undermined by economic growth.

\begin{quote}
Ghana’s Oil Boom

In December 2010, Ghana began exporting oil and joined the ranks of Africa’s oil producers. Ghana’s sudden oil boom sprouted fears of a “resource curse.” For example, Nigeria’s sudden production of oil has brought wealth to very few while causing conflict and corruption in society. However, Ghana’s oil industry is regarded as one of the better-regulated oil industries in Africa. The Oxford Business Group reported in February 2013 that “the country is anxious to avoid the ‘resource curse’ that has affected other oil producers, and in recent years has invested considerable time establishing an appropriate regulatory framework.” For example, the Petroleum Commission Act of 2011 in Ghana established an independent body to regulate the oil sector, and a committee monitors compliance with industry law.

Companies with licenses in the nation’s offshore territory include both national and foreign companies, which brings up fears of foreign encroachment. Therefore, one of the government’s key goals has been encouraging domestic participation and boosting local content in the oil industry.

Sources:
\end{quote}
Ghana has made incredible progress in the areas of democracy and civil and political rights since 1992. The nation’s recent elections demonstrate the continuing vitality of democratic rule and the Ghanaian media. Nevertheless, there are “certain patterns and habits from the past,” including highly centralized power, significant unregulated discretion for the executive, and “rampant use of political patronage,”—problems of implementing constitutionalism—that have the potential to undermine Ghana’s economic and political development if not addressed.64 Given the essential role of participatory freedoms in increasing both the legitimacy and accountability of government, expanding participatory freedoms is one way in which Ghana can strengthen and prepare its flourishing democratic institutions to responsibly handle sudden oil wealth and other unforeseen changes. As intrinsically valuable human rights and essential elements of democracy and economic development, participatory freedoms must be a current priority for Ghana rather than being relegated to a time of economic wealth that may never materialize in their absence.

B. Free Speech and Press in Ghana’s Development

Ghana’s relatively recent past demonstrates the importance of media freedom for both political and economic development. Ghana’s eighty years of colonial rule65 and thirty-five years of post-independence non-democratic rule66 inform current proposals for reform in the areas of freedom of information and effective regulation of the broadcast media.

64 Id. at 2.
65 Great Britain ruled Ghana as the Gold Coast Colony from 1876 to 1957. NAYLOR, supra note 2, at 15, 18.
66 From 1957 to Ghana’s first democratic elections in December of 1992, Ghana was governed by a series of military regimes and largely unaccountable civilian governments. Id. at 19–30.
Many Ghanaians remember the years when the average citizen had no voice, a time in which there was neither the power of the ballot box nor the freedom to publicly express one’s views. During this time, the media served as a guard dog for the government rather than as a watchdog for the public. The government created and maintained this role for the media by instituting barriers to open speech and free media: it carefully monitored the press, interrogated and imprisoned journalists, and shut down private newspapers and radio stations.\footnote{For an account of one part of this period in Ghana’s history, see generally Yaw Twumasi, \textit{The Newspaper Press and Political Leadership in Developing Nations: The Case of Ghana, 1964 to 1978}, 26 \textsc{Int’l Comm. Gazette} 1 (1980).}

Since freedom of speech and independence of the media were enshrined in Ghana’s 1992 Constitution, these traditional barriers to speech and media rights have been largely removed. The press—both in traditional print and in newer forms—has flourished. The media is no longer limited to state-owned sources that function as the mouthpiece of the ruling political party. Instead, there are a variety of state-owned, community-based, and private newspapers and radio stations operating in Ghana. Reporters and individuals are largely free to openly express themselves. In fact, Ghana ranked third among African countries in the 2013 Reporters Without Borders Press Freedom Index, with a world-wide position in between the United Kingdom and United States.\footnote{\textsc{Reporters Without Borders}, \textsc{World Press Freedom Index} (2013), available at http://fr.rsf.org/IMG/pdf/classement_2013_gb-bd.pdf.} The Freedom House’s 2013 “Freedom in the World” rankings indicated that Ghana is a “free” country, characterized by “open political competition, a climate of respect for civil liberties, significant independent civic life, and independent media.”\footnote{\textsc{Arch Puddington}, \textsc{Freedom House}, \textsc{Freedom in the World 2013: Democratic Breakthroughs in the Balance} 4, 15 (2013), available at http://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet.pdf. To}
This Section describes Ghana’s move from repression of speech and state control of the media to its contemporary embrace of free expression. This historical trajectory explains the current state of affairs and sets the context for the potential reforms discussed in later Sections of the Report. For although Ghana has fostered freedom of the media and individual speech over the past two decades, further reforms are necessary to realize complete and equal access to information and freedom of expression.

1. Speech and the Media Before Democracy

Charles McCarthy, the British Governor of the Gold Coast colony, founded Ghana’s first newspaper, the *Royal Gold Coast Gazette*, in 1822.70 The paper, which catered to European merchants and administrators living in the colony, "served as an official organ of the British colonial administration."71 Over a half century later, Ghanaians founded the first locally owned and operated paper in Accra.72 Multiple Christian groups began printing newspapers, some with columns in local languages, in the late nineteenth century.73 From the late 1800s through Ghana’s independence, the well-educated Ghanaian elite and Christian missionaries dominated the newspaper business.74 The British did not re-enter the Ghanaian newspaper market until the British-owned Mirror Group bought out a locally

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73 Karikari, supra note 70, at 9. Some of these papers still exist today. *Id.*
74 *Id.* at 10.
owned paper in 1950. Their *Daily Graphic* quickly began to threaten smaller, regional papers due to its superior funding and modern facilities.

Even in the late nineteenth and early twentieth century, the press had a “political and partisan character” as the local media attacked the colonial administration and its policies. The colonial government maintained press-restrictive laws, from newspaper registration ordinances to harsh criminal laws prohibiting seditious conduct by the press. It often censored or suppressed the Ghanaian-owned newspapers, such as the *Ashanti Pioneer*, especially as the independence movement gained momentum in the 1950s. In addition to censorship of print media, the colonial administration established Ghana’s first radio station in 1935 with the purpose of serving the political and administrative goals of the British Empire. Because the media was initially founded as a state organ and then used for political purposes, this dual tradition—state ownership and media politicization—has continued for much of Ghanaian history.

Ghana gained independence from Great Britain in 1957; it was the first Sub-Saharan African country to do so. Its first leader, Kwame Nkrumah, was a former reporter who understood the power of the media. To Nkrumah, the media had a duty to support the government, because Ghana’s “independence was too important to be subjected to...
Western-style investigative reporting.” By 1962, Nkrumah had censored many independent newspapers. Laws such as the Preventative Detention Act allowed his government to detain newspaper editors (along with many others) without trial or charges and the Minister of Information was able to stop publications that conflicted with the government’s interests. When the government bought out the Daily Graphic and closed other papers, the de facto state monopoly on the media became official.

This state of media affairs continued through a number of military regimes and failed attempts at democracy between the coup d’état that ended the Nkrumah regime in 1966 and the beginning of a true republican democracy in 1993. Between 1966 and 1981, Ghana alternated between military regimes and short-lived civilian governments. As the National Reconciliation Commission noted in 2004, the “history of media repression, co-optation and resistance . . . [that] crystallized during [Nkrumah’s regime] . . . became an established pattern by successive regimes throughout the country’s history.” As a new regime shifted into power, it replaced newspaper editors. Often newspapers would self-censor under the watchful eye of military regimes, without much direct interference from the government. For example, the media generally supported each new coup d’état as if

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84 Id.
85 KARIKARI, supra note 70, at 9.
86 Id. at 9–11.
87 Id. at 11. The government also controlled the only radio station, the Ghana Broadcasting Corporation, during this period. Alhassan, supra note 80, at 213–14.
88 KARIKARI, supra note 70, at 11–12; Anokwa, supra note 71, at 5 (quoting General Ankrah, head of Ghana’s first military government, when speaking about state control of the media: “He who pays the piper calls the tune.”).
89 Anokwa, supra note 71, at 6.
90 GHANA NATIONAL RECONCILIATION COMMISSION REPORT 135 (2004).
91 Id. at 138.
92 Id.
there were a choice.⁹³ Even regimes that declared intentions of preserving a private press soon reneged on their promises.⁹⁴

Ghana’s 1979 Constitution purported to protect freedom of speech in various ways—proclaiming the right to free speech, prohibiting media licensing laws, ending press censorship, and establishing an independent press commission.⁹⁵ These guarantees remained unrealized during the Provisional National Defence Council (PNDC) rule in the 1980s and early 1990s. Licensing laws were reinstated and the state-owned media lost any semblance of independence from the government.⁹⁶ The government controlled the state-owned papers’ editorial boards and required the papers to portray the government in a positive light.⁹⁷ More subtle means of controlling the press were also available, from reducing official advertising support or newsprint availability to rewarding “good” reporters with expensive gifts or lofty promotions.⁹⁸ Given the restrictions of this period, “self-censorship was the rule in the media”⁹⁹ and a “culture of silence” developed.¹⁰⁰ Meanwhile, the state-owned Ghana Broadcasting Corporation (GBC) held a monopoly on television and radio.¹⁰¹

2. The Turning Point: Ghana’s 1992 Constitution

As Ghanaians began to oppose the PNDC regime and clamor for a greater voice in government, Flight Lieutenant Jerry John Rawlings, the head of the PNDC government,
concluded that “transition to democracy was the only long-term option.”  

On January 7, 1993, a new constitution ushered in Ghana’s Fourth Republic, the country’s fourth attempted democratic government. This document, drafted in 1992 and thus referred to as the 1992 Constitution, created a republican government consisting of a president, parliament, cabinet, Council of State, and an independent judiciary, each with divided powers to provide checks on the other departments. Chapter Five guarantees a host of fundamental human rights, including freedom of speech. Article 21(1) provides that “[a]ll persons shall have the right to (a) freedom of speech and expression, which shall include freedom of the press and other media. . . . [and] (e) information, subject to such qualifications and laws as are necessary in a democratic society.” Exceptions are allowed when they are “reasonably required for the purpose of safeguarding the people of Ghana against the teaching or propagation of a doctrine which exhibits or encourages disrespect for the nationhood of Ghana, the national symbols and emblems, or incites hatred against other members of the community.”

The freedom and independence of the media is reaffirmed later in Article 162 of the Constitution. The government is not allowed to interfere with the editors and publishers of newspapers by creating “impediments to the establishment of private press or media.” Additionally, media outlets are required to publish rejoinders made by those who disagree with the media’s views and state-owned media must “afford fair opportunities and facilities

102 NAYLOR, supra note 2, at 29.
103 BERRY, supra note 95, at 217.
104 Id.
106 Id.
107 Id. art. 21(4)(e).
108 Id. art. 162(1) (“Freedom and independence of the media are hereby guaranteed.”).
109 Id. art. 162.
for the presentation of divergent views and dissenting opinions.”\textsuperscript{110} Again, exceptions can be made when “reasonably required in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of other persons.”\textsuperscript{111}

The 1992 Constitution also provided for a National Media Commission (NMC), which was established by legislative enactment in 1993.\textsuperscript{112} The NMC is an eighteen-member body with representatives appointed by the President, Parliament, industry groups such as the GJA and the Ghana Bar Association, and religious groups.\textsuperscript{113} Its goals are to ensure “the freedom and independence of the media,” to establish “the highest journalistic standards in the mass media,” to “insulate the state-owned media from governmental control,” and to create publication registration regulations.\textsuperscript{114}

3. Post-Constitutional Legal & Practical Developments

In the two decades after the 1992 Constitution, democracy flourished in Ghana. In fact, as early as 1994, the reforms of the 1992 Constitution were taking effect: “the press ha[d] begun to enjoy a significant degree of toleration and freedom of expression.”\textsuperscript{115} Despite resource obstacles, hundreds of media outlets in Ghana began to operate. In the first ten years of the Fourth Republic, Ghanaians founded over two hundred newspapers and magazines—many short-lived. Of the hundreds of publications, approximately three

\textsuperscript{110} \textit{Id.} art. 162(6), 163.
\textsuperscript{111} \textit{Id.} art. 164.
\textsuperscript{112} BERRY, supra note 95, at 224.
\textsuperscript{113} CONSTITUTION OF THE REPUBLIC OF GHANA 1992, art. 166. Five seats on the Commission are political appointments (two by the president and three by parliament); the others are selected by civil-society groups such as those listed above. \textit{Id.}
\textsuperscript{114} \textit{Id.} art. 167.
\textsuperscript{115} BERRY, supra note 95, at 224.
dozen became stable newspapers. Although the state still owns some newspapers, these newspapers have editorial discretion—they are state-owned, rather than state-controlled. Commercial radio stations, such as JOY FM, and community radio stations, such as Radio Ada, have also become mainstays of the Ghanaian media. Furthermore, the media has played the role that development scholars urged; one scholar has noted that “the media has been instrumental in safeguarding the country’s democratic principles by performing its watchdog and monitoring functions.” This has enabled Ghanaians “to participate more fully in public life.”

The Supreme Court played a key role in this transition by ensuring that several of the mandates of the 1992 Constitution came to fruition. On July 22, 1993, the Supreme Court announced three decisions in favor of the New Patriotic Party (NPP), a newly formed opposition party, including one decision in a media rights case. These cases collectively symbolized the independence of the judiciary from the executive; substantively, they involved important aspects of media freedom. In New Patriotic Party v. Ghana Broadcasting Corp., the NPP challenged the coverage of the 1993 budget by the Ghana Broadcasting Corporation (GBC). After the Minister of Finance, Kwesi Botchwey, defended the budget for over two hours on radio and television, the NPP applied to the GBC to be given equal time

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116 Karikari, supra note 70, at 13. The papers support themselves through circulation sales and advertising; though advertising can be difficult. Id. at 18. Some of the independent papers receive funding from international organizations. Id. at 14.
117 Interview with Yaw Boadu-Ayebofoh, supra note 29.
119 Arthur, supra note 3, at 209.
121 Berry, supra note 95, at 231.
122 Id.
to voice its opinion on the budget.\textsuperscript{124} When the GBC refused the request, the NPP sued, citing articles 55(11) and 163 of the 1992 Constitution, which guarantee equal coverage for opposition political parties.\textsuperscript{125} The Supreme Court decided that the state-owned GBC was required to give the NPP “fair and equal access to its facilities within two weeks.”\textsuperscript{126} This meant that equal access had to be given to each political party by the state-owned media so that they could present their social, political, and economic platforms.\textsuperscript{127} The Court justified its decision in terms of Ghana’s budding democracy:

The free exchange of views is necessary to give the electorate an opportunity to assess the performance of the government in power against the potential of an opposition in the wilderness. It keeps the government on its toes and gives the neutral, apolitical citizen an opportunity to make up his mind. . . . In a truly democratic environment, this testing ground is \textit{sine qua non} to the survival of a free pluralistic society.\textsuperscript{128}

The Supreme Court also played a key role in allocating power between the government and the NMC, which had come into early conflict with the ruling government—an unsurprising development given Ghana’s long history of state control of the media.\textsuperscript{129} The Court upheld the NMC’s right to appoint the chief editors of the state-owned media.\textsuperscript{130} However, in a separate case, the Court maintained executive control over the distribution of radio

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{124}\textsc{Ernest Kofi Abotsi, Study on State of Media Rights and Press Freedom in Ghana} 10.
\item \textsuperscript{125} \textit{Id}.
\item \textsuperscript{126} \textsc{Berry, supra} note 95, at 232.
\item \textsuperscript{127} \textsc{Abotsi, supra} note 124, at 11.
\item \textsuperscript{128} \textsc{Maxwell Opoku-Agyemang, Constitutional Law and History of Ghana} 374–75 (2009) (quoting New Patriotic Party v. Ghana Broadcasting Corporation (1993)).
\item \textsuperscript{129} \textit{See Karikari, supra} note 70, at 21.
\item \textsuperscript{130} \textit{Id.} at 21–22; \textit{see also Constitution of the Republic of Ghana} 1992, art. 169 (“Editors of the state-owned media shall be appointed by the governing bodies of the respective corporations in consultation with the Public Services Commission.”); art. 172 (“Except as otherwise provided by this Constitution or by any other law not inconsistent with this Constitution, the National Media Commission shall not be subject to the direction or control of any person or authority in the performance of its function.”).
\end{itemize}
\end{footnotesize}
frequencies to broadcasters.\textsuperscript{131} After the government shut down an independent station in 1994, the station’s owner sued, citing article 162(3) of the 1992 Constitution which prohibits licensing laws.\textsuperscript{132} At the time, the Radio Frequency Control Board (RFCB),\textsuperscript{133} controlled by the executive, allocated frequencies.\textsuperscript{134} In \textit{Republic v. Independent Media Corporation of Ghana},\textsuperscript{135} the Supreme Court held that the regulation of radio frequencies was permissible under the 1992 Constitution’s exceptions to safeguard national security and public order.\textsuperscript{136}

Even after the Court ironed out these constitutional difficulties, the media still faced legal constraints, as many pre-1992 laws remained on the books. For example, between 1993 and 1996, there were sixty-eight court cases brought against journalists; by 1999, 120 court cases had been filed against the private press, most of them initiated by the government and the ruling National Democratic Congress (NDC) party.\textsuperscript{137} Often, these cases led to hefty monetary damages or even jail time;\textsuperscript{138} the simple threat of such lawsuits created an atmosphere that stifled journalistic freedom, despite the theoretical constitutional guarantees. In both print and radio, self-censorship remained the norm.

\textsuperscript{131} Karikari, \textit{supra} note 70, at 25.
\textsuperscript{132} Id.; \textit{see also} \textit{Constitution of the Republic of Ghana} 1992, art. 162(3) (“There shall be no impediments to the establishment of private press of media; and in particular, there shall be no law requiring any person to obtain a license as a prerequisite to the establishment or operation of a newspaper, journal or other media for mass communication or information.”).
\textsuperscript{133} This body was established long before the 1992 Constitution, but it continued to operate into the Fourth Republic, as did many other pre-1992 laws and bodies.
\textsuperscript{134} Karikari, \textit{supra} note 70, at 25
\textsuperscript{135} [1996-97] SCGLR 258, SC.
\textsuperscript{136} Abotsi, \textit{supra} note 124, at 13.
\textsuperscript{137} Karikari, \textit{supra} note 70, at 22–23.
\textsuperscript{138} Id. (citing a fine of about $16,000 imposed on the \textit{Ghanaian Chronicle} after a libel lawsuit was initiated by Minister of Transport and Communication Edward Saliah in 1997, and also noting that some journalists were sentenced to over a year in prison under criminal libel law in the 1990s).
during much of the 1990s, partially out of subtle government pressure and partially out of habit.\(^{139}\)

Tensions increased as the 2000 elections drew near. That year, police arrested a publisher and editor of the *Ghanaian Chronicle* and an editor of *The Independent*.\(^{140}\) A 1999 Freedom House report on global press freedom listed Ghana’s press as being “not free” because the ruling government arrested journalists, shut down opposition radio stations during election season, and initiated criminal libel suits against reporters who spoke out.\(^{141}\) In the most famous such case, *Republic v. Tommy Thompson Books Ltd and Others*,\(^{142}\) the Supreme Court upheld the criminal libel law as constitutional, citing the fact that article 164 subjects the freedom of the press to reasonable limitations.\(^{143}\) The newly-elected NPP government finally repealed criminal punishments for defamation in 2001.\(^{144}\) This development has been “celebrated as being pivotal in the harmonization of pre-1993 received laws and the Constitution.”\(^{145}\) The consequences of the repeal were so important that Professor Ernest Kofi Abotsi has declared that it “prompted an explosion in the media landscape,” especially for radio.\(^{146}\) The end of criminal-libel liability provided significant relief for journalists, though other legal barriers remain: reporters are still subject to civil

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\(^{139}\) *Id.* at 26 (noting that a private radio owner described “a regime of self-censorship in operation” at private radio stations in 1999 (internal quotation marks omitted)).

\(^{140}\) *Id.* at 4.


\(^{142}\) [1997-98] I GLR 611-644.


\(^{144}\) OPOKU-AGYEMANG, *supra* note 128, at 386.

\(^{145}\) ABOTS, *supra* note 124, at 3.

\(^{146}\) *Id.* at 26.
libel lawsuits, judicially imposed contempt of court, and criminal punishment for incitement of public fear.

4. Second Generation Rights

Both democracy and constitutionalism in Ghana have come a long way since the nation’s 1957 independence. Indeed, the media has achieved almost full independence from government control. To date, Ghana has held five successful elections—in 1992, 1996, 2000, 2008, and 2012—and witnessed peaceful transfers of political power in 2000 and 2008. The media has played an instrumental role in the country’s democratic elections and transitions. Even so, Ghana is still striving to make further improvements to its constitutional system. For example, from 2010 to 2011, a Constitutional Review Commission closely examined the 1992 Constitution and recommended amendments to better implement the Constitution’s overarching goals. The Constitutional Review Commission’s report on the media recognized that “these are indeed the best of times for the media,” but that “there are a number of challenges that militate against the lofty goals the Constitution seeks to achieve.”

Now that the media’s basic independence and efficacy have been established, a second generation of reforms may begin to take shape. “Second generation” reforms will

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147 OPOKU-AGYEMANG, supra note 128, at 390–92.
148 Criminal Offenses Act, § 208, Act 29, (1960) provides, “Any person who publishes or reproduces any statement, rumor 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, rumor or report is false is guilty of a misdemeanor.” Liability exists even if the person did not know or have reason to believe that the publication was false, unless he took reasonable steps to ensure accuracy. Id.
149 Arthur, supra note 3, at 207–09. The incumbent party won the other four elections.
150 See, e.g., KARIKARI, supra note 70, at 1–4 (praising the print, electronic, and broadcast media’s coverage of the 2000 elections).
152 GADZEKPO, supra note 120, at 9, 11.
allow Ghana to more fully realize the virtues of free speech as a human right and a tool of development. Going beyond formal independence of the press, second generation reforms must focus on continuing areas of concern: resource allocation, training and professional development of journalists, access to government information, and a regulatory scheme that ensures media’s substantive independence while also ensuring accountability. Ghana is well on its way to implementing these kind of second-generation reforms. To promote a more robust public sphere, one that respects the rights of citizens to both receive and share information—to hear and to be heard—two pieces of legislation have been introduced: the Right to Information Bill and the Broadcasting Bill. These proposed legal reforms attempt to translate free-speech values into public policy and are thus important vehicles for achieving the twin aims of democratic participation and economic development.

Sections IV and V of this Report analyze these legislative proposals for accessing and sharing information in turn. Each Section begins by exploring the theoretical underpinnings of the two proposals, discussing why they matter and how such reforms fit into broader international trends regarding the regulation of speech and information. Each Section then considers the obstacles Ghana faces to fully implementing such legislation, and finally, each Section concludes by offering some suggested solutions to the problems identified.
IV. Access to Information

A. The Importance of the Right to Access Information

Absent the ability to access details about the government and its dealings—how it spends its money, how it enforces its laws, or how it regulates its economy—political, legal, and economic life would be shrouded in mystery. In such an information-less world, citizens searching for answers about their government would confront nothing but silence; journalists, nothing but evasive answers or closed doors. Corruption, bribery, and abuse would run free, unimpeded by the people who—without information—would have no power to check the powerful themselves.

Perhaps American Founding Father James Madison had this nightmarish scenario in mind when he famously remarked, “[a] popular government, without popular information or the means of acquiring it is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors must arm themselves with the power which knowledge gives.”153 Speaking some 170 years later, it was the thought of a world without a right to information that led then-U.N. Secretary General Kofi Annan (himself a Ghanaian) to characterize information access as both “central to democracy”154 and a “condition[] for [economic] development.”155

International law surrounding the right to information has developed with these considerations in mind. In 1946, the first session of the United Nations General Assembly passed a resolution voicing support for a right to information, declaring “[f]reedom of

155 Id.
information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.”\textsuperscript{156} Two years later, the General Assembly enshrined the right to “seek, receive and impart information and ideas” in the Universal Declaration of Human Rights.\textsuperscript{157} Emphasizing its importance, the Special Rapporteur subsequently clarified this provision in an annual report to the United Nations Commission on Human Rights:

\begin{quote}
[T]he right to seek and receive information is not simply a converse of the right to freedom of opinion and expression but a freedom on its own. . . . [T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by the Government. . . .”\textsuperscript{158}
\end{quote}

This approach to information access has rapidly expanded into other international legal contexts. In fact, since its enumeration in the Declaration of Human Rights, the right to information has grown seemingly ubiquitous, especially of late. It has been codified in many international legal documents, including the United Nations Convention Against Corruption,\textsuperscript{159} the Rio Declaration on Environment and Development,\textsuperscript{160} and the Aarhus Covenant.\textsuperscript{161} Regional international bodies have also protected the right to information,

\begin{footnotes}
\textsuperscript{157} Universal Declaration of Human Rights, supra note 33 ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.").
\textsuperscript{159} United Nations Convention Against Corruption, 2349 U.N.T.S. 41, art. 13 (Oct. 31, 2003) (directing member states to provide the public with effective access to information).
\end{footnotes}
protections that can be found in the legal provisions of such diverse associations as the Council of Europe, the European Union, the African Union, the Southern African Development Community, the Organization of American States, the Organization for Economic Cooperation and Development, the Commonwealth of Nations, and the Commonwealth of Independent States.\textsuperscript{162} Indeed, the right to information has become so popular that at least eighty-six countries have passed some form of freedom of information legislation, with another thirty-five countries contemplating pending statutes.\textsuperscript{163}

Ghana numbers among those thirty-five. Since 2003, Ghana has considered passing a Right to Information Bill that would operationalize the guarantee provided in its Constitution protecting the right to access information.\textsuperscript{164} Despite having a constitutional provision on point, statutory reform is necessary to turn this abstract information right into a concrete reality for everyday Ghanaians. This task raises challenging questions about the relationship between the individual and the state, the virtues and the limits of transparency, and the framework needed to successfully implement what international law regards as a fundamental human right. To address these questions, this Section considers why a right to information matters in the first place. It then turns to how that right might be put into practice by drawing on the experiences of other countries that have implemented freedom of information legislation.


\textsuperscript{164} CONSTITUTION OF THE REPUBLIC OF GHANA 1992, art.21(f) (“All persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society.”).
1. Why Does The Right To Information Matter?

Legal scholars have long contemplated why a right to information is important, both as a matter of constitutional and statutory law. Drawing from these rationales, this Section offers a framework for conceptualizing the reasons for a right to information. Some of these rationales relate to democratic development; they explain the value of the information right in the context of broad notions about politics, legitimacy, and human dignity. Others relate to economic development; they provide on-the-ground justifications for how robust legal protections surrounding information access can reduce corruption, preserve private property rights, and improve public health.

a. Democratic Development

Access to information allows the public to participate in the democratic decision-making process. While such informed participation can facilitate better public policy that is more in tune with the needs of the people, it is also an end in and of itself; “democracy, after all, is not about the people necessarily being right, but about the right of the people to be wrong.” For citizens to exercise the right afforded to them under a democratic system to control their government, “[c]itizens [must] be fully informed and able to participate as

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166 Such categorizations should not be taken for more than they are worth. To be sure, democratic development and economic development are mutually reinforcing processes, and factors influencing one may very well influence the other. The aim here is simply to develop an analytical framework for thinking about why a right to information matters. To that end, the distinction between democratic and economic development is helpful, but that is not to suggest that those aims are somehow mutually exclusive—they are decidedly not.

167 Schauer, supra note 165, at 1349.
democratic citizens,”168 a condition that is only possible “if they are able to access information held about them and on their behalf by the government.”169 In this way, a right to information is an “initial condition”170 for citizen participation in the democratic process. Fundamental procedural political rights such as freedom of expression and the right to vote are rendered meaningless if the people remain ignorant of the internal workings of their government.171

Because access to information is a precondition for the exercise of other rights fundamental to the democratic process, it has the potential to strengthen relationships between individuals and between the individual and the state. More information encourages vibrant political debate among citizens, thereby increasing levels of social capital and facilitating social functioning. Possession of information access also suggests a duty, as a condition of citizenship, of the people to actively monitor the conduct of their government and to participate in politics.172 A right to information thus lays the groundwork for a civic revival, one where participation in politics is not just a right but also a responsibility.

In this way, more information in the hands of the public allows citizens to actively hold their government accountable. Knowledge is power, and freedom of information laws put authority back in the hands of the people. Because governments know that citizens can monitor their operations, freedom of information laws deter bad behavior in the form of

168 Ackerman & Sandoval-Ballesteros, supra note 165, at 92.
169 Id.
170 Peled & Rabin, supra note 165, at 360.
171 Id. at 361 (“The ability of individuals, interest groups, and organizations to actively participate in political debates deciding issues on the public agenda, as well as the very possibility of placing issues on that agenda, is tightly linked to their ability to obtain relevant information.”).
172 Ackerman & Sandoval-Ballesteros, supra note 165, at 90.
secrecy, corruption, bribery, and regulatory capture.\textsuperscript{173} For example, freedom of information statutes have played an instrumental role in revealing information about past human rights abuses, political scandals, and presidential secrecy.\textsuperscript{174} It should come as little surprise, then, that of the twenty least corrupt countries in the world,\textsuperscript{175} eighteen have implemented statutory rights to information.

\textit{Table 1: 20 Least Corrupt Countries and Freedom of Information Laws}

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<th>Country</th>
<th>Freedom of information law?</th>
<th>Country</th>
<th>Freedom of information law?</th>
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The ability of citizens to engage in administrative oversight that accompanies the passage of freedom of information statutes encourages public officials to make their decisions in the open.\textsuperscript{176}

\textsuperscript{173} Schauer, \textit{supra} note 165, at 1349; \textit{see also} Louis Brandeis, \textit{Other People’s Money And How the Banker’s Use It} 92 (1913) (“Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best of disinfectants . . . .”).


\textsuperscript{175} For a complete set of data on worldwide levels of corruption, see \textit{2013 INDEX OF ECONOMIC FREEDOM}, \url{http://www.heritage.org/index/book/chapter-2}.
decision-making processes more transparent. Citizen access and input into government policymaking can start an ongoing conversation between the government and the governed, one that in the long run allows politicians and civil servants to better respond to the needs of the people. Increased transparency on the part of government and increased participation *in* government can improve the legitimacy of the state in the eyes of the people, even when the government makes policy choices with which some individuals disagree. As such, a right to information can spark beneficial exchanges between the government and its citizens and can have concrete, practical effects on political stability by ensuring mutual respect and understanding between those with the information and those requesting it.\(^{176}\)

Additionally, freedom of information can facilitate the search for truth. Access to information “inclines toward knowledge . . . even if it does not guarantee it.”\(^{177}\) More information is preferable to less information because it leaves decisions about what is true and what is false in the hands of the people, decisions to be made on their own terms and free from government interference.\(^{178}\) Individuals must serve as the ultimate arbiters of truth, not the government “which will always attempt to impose an orthodoxy consonant with the frequently corrupt interests of the bureaucracy.”\(^{179}\) As such, a right to information preserves autonomy and free choice—central features of any democratic regime—by allowing individuals to make informed decisions *for themselves*, decisions that, without

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\(^{176}\) Ackerman & Sandoval-Ballesteros, *supra* note 165, at 92.
\(^{177}\) Schauer, *supra* note 165, at 1350.
\(^{178}\) See, *e.g.*, Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (“[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market . . . .”).
access to information, can never truly be free. A right to information thus demonstrates deep respect for human dignity by enabling free thought and by preserving the right of an individual to choose her own way, to find her own truth.

b. Economic Development

i. Decreased corruption. Reductions in corruption that flow from increased access to information can fuel economic development by attracting foreign direct investment, encouraging entrepreneurship, incentivizing innovation, and promoting fair competition. As such, free information can complement the free market by reducing transaction costs and fostering a more reliable, stable investment climate.

The relationship between economic development and freedom from corruption is especially stark in Sub-Saharan African countries. As Figure 1 demonstrates, there exists a strong, positive correlation between increases in freedom from corruption and increases in per capita gross domestic product. This relationship holds when analyzed globally as well. Ghana’s freedom from corruption score is a full ten points higher than the mean freedom from corruption score in Sub-Saharan Africa, but progress can still be made. For example, Ghana’s freedom from corruption score is slightly below the worldwide average, and Ghana ranks as the world’s seventy-first least corrupt country. A right to

180 Schauer, supra note 165, at 1350 (describing a right to information as “a necessary pathway on the road to truth”).
183 Feulner, supra note 181.
184 Id.
185 Id.
186 Id.
information bill could help change this dynamic by increasing public oversight of
government, reducing corruption, and, ultimately, increasing economic growth.

Studies have demonstrated, for example, that freedom of information statutes can
help corporations better assess the potential location of factories or headquarters, make
bids for government contracts, and adapt to future legal and regulatory changes, all
conditions that have the potential to spur both foreign direct investment and grassroots
entrepreneurial growth.\textsuperscript{187} On the other hand, a lack of transparency can impede economic
growth by creating conditions that permit poor government accounting procedures and
that allow private officials to pocket money that would otherwise be used to fund public
projects, such as infrastructure improvements, public health initiatives, or construction of
new schools. Angola’s lack of freedom of information legislation, for example, played a role
in permitting five years’ worth of oil revenue—$8.45 billion—to disappear into private
hands.\textsuperscript{188}

\begin{itemize}
\item \textbf{ii. Property rights.} A right to information can also serve important property interests.
Ownership and control of information is vested in the state acting for the public as a whole.
But information held by public authorities is ultimately the property of a state’s citizens;
after all, it was created and compiled by civil servants “considered to be public trustees
who carry out their mandate by means of taxes paid [by] the public.”\textsuperscript{189} Thus, the owners of
the information—those who financed its creation—have a proprietary stake in their ability
to access that information, which was produced to serve a public purpose. A right to

\end{itemize}

\textsuperscript{187} \textit{World Bank Initiative, Companies and the Right to Access Public Information} 5 (Apr. 26, 2007), \textit{available at}
http://www.accessinitiative.org/sites/default/files/Companies\%20and\%20the\%20Right\%20to\%20Access\n\%20Public\%20Information.pdf.
\textsuperscript{188} \textit{Colin Darchi \& Peter G. Underwood, Freedom of Information and the Developing World} 222 (2010).
\textsuperscript{189} Peled \& Rabin, \textit{supra} note 165, at 365.
information safeguards these property interests by ensuring that government officials, in their capacity as public trustees, do not step outside the terms that determine the trusteeship by artificially restricting access to information that is not theirs in the first place.\footnote{Id. at 366 (“The proprietary justification treats damage to the individual’s right to information as if it were, in effect, damage to the individual citizen’s property rights.”).}

Access to information also safeguards important interests in real property. A title registration system that provides a reliable record of land rights increases protection for landowners from arbitrary government takings and facilitates conveyances and other transactions.\footnote{See, e.g., Steven E. Hendrix, Myths of Property Rights, 12 ARIZ. J. INT’L & COMP. LAW 183 (1995).} Transparent documentation of ownership rights in a system accessible to the average landowner is an especially pressing problem for West African countries where only two to three percent of land is held by written title,\footnote{Camila Toulmin, Securing Land and Property Rights in Sub-Saharan Africa: The Role of Local Institutions, INT’L INST. FOR ENV’T & DEV. 27, 34 (2006), available at http://pubs.iied.org/pdfs/G00460.pdf.} despite the fact that West African economies rely heavily on agricultural and natural resource production.\footnote{Id. at 29.} While such a system must be carefully tailored to align with traditional customary institutions that have long regulated property rights,\footnote{See also Joseph Blocher, Note, Building on Custom: Land Tenure Policy and Economic Development in Ghana, 9 YALE HUM. RTS. & DEV. LJ. 166 (2006).} access to information about land ownership through a reliable and transparent title registration system could go a long way toward strengthening property rights for average citizens.
iii. Public health. Increased access to information can improve the health of citizens by improving public awareness about the nature and the risks of communicable diseases. For example, some scholars have attributed the rapid spread of HIV in Africa and the severity of the SARS outbreak in China to the failure of governments to provide the public with timely information about such diseases, their causes, their consequences, and their treatment.\textsuperscript{195} Economist Amartya Sen has argued that media access to information is central to preventing famines because the media has the ability to hold politicians accountable by raising awareness about an emerging food crisis.\textsuperscript{196} This theory holds particular salience in light of India's experience with its Right to Information Act, which was recently used to expose government officials who stole over four million kilograms of

\textsuperscript{195} DARCH \& UNDERWOOD, supra note 188, at 23.
\textsuperscript{196} SEN, supra note 31, at 51–52.
rice intended for distribution to the poor. And freedom of information statutes can improve public health by increasing public access to environmental data, including sources of pollution and environmental impact statements.

2. Limits on the Right to Information

This does not mean that the right to information has no limits. Right to information statutes around the world contain exemptions to protect individual privacy, national security, and trade secrets, among others. That said, access to information serves important aims, and right to information legislation must be carefully drafted so as not to impose limits that contravene the pragmatic and theoretical rationales outlined above. To better illuminate the nature of these challenges, this Section provides a comparative analysis of right to information statutes.

3. Who Should Give What To Whom? Central Features of Right to Information Statutes

While Ghana has a constitutional provision ensuring a right to information, such a provision can be difficult to translate into practice without appropriate enforcement legislation. Crafting such legislation requires those involved to answer the fundamental question confronting any freedom of information law: who should give what to whom?

In evaluating the efficacy of the current Freedom of Information Bill before Parliament, it may be helpful for legal scholars, politicians, journalists, and everyday citizens alike to have a sense of the common features freedom of information statutes share and the way they have been implemented in other countries across the globe.

198 DARCH & UNDERWOOD, supra note 188, at 24.
199 See generally Banisar, supra note 162.
Scholars have outlined nine central features shared by the majority of freedom of information statutes. These are listed in Table 2. A comparative analysis of freedom of information regimes can be found in Appendix III.
<table>
<thead>
<tr>
<th>Principle</th>
<th>Description</th>
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| 1. Maximum disclosure             | a. Freedom of information laws *presume* access  
b. The mandate to provide information extends to *all* elected bodies as well as private bodies that carry out public functions  
c. Information includes records regardless of the form in which they are stored |
| 2. Obligation to publish          | a. Public bodies should disseminate key information even in the absence of a request  
b. New technologies makes it easier to disseminate more information at less cost  
c. Routine disclosure will minimize the need for individuals to request access |
| 3. Promotion of open government   | a. Public culture must recognize the need for information as a fundamental human right  
b. Steps must be taken to inform citizens about the right to information, why it matters, and how it can be invoked  
c. Those who willfully obstruct access to information should face legal repercussions |
| 4. Limited scope of exceptions    | a. Limits on access to information should be carefully circumscribed  
b. Exceptions should protect overriding public and private interests, including privacy  
c. Exceptions should apply only where there is risk of substantial harm to the potential interest and that harm is greater than the public interest in having the information |
| 5. Processes to facilitate access | a. Requests for information should be processed rapidly  
b. Reasons should be articulated for a denial of access to information  
c. Independent review of a denial should be available |
| 6. Costs                           | a. Fees should not deter citizens from making requests  
b. Fees should not exceed the costs incurred to produce the information  
c. The public should be on notice of such fees and they should be levied fairly and consistently across requests |
| 7. Open meetings                  | a. Meetings of public bodies should be open to the public to the fullest extent possible |
| 8. Disclosure takes precedence    | a. Laws inconsistent with the presumption of disclosure should be repealed or overridden by freedom of information statutes |
| 9. Protection for whistleblowers   | a. Individuals who release information on government wrongdoing should be protected from retaliatory action |

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B. Obstacles to Accessing Information

Ghana’s robust constitutional media protections have resulted in a proliferation of print and broadcast media that undoubtedly help achieve the information-related values discussed above. However, while Ghana has a constitutional provision ensuring a right to information for its citizens, legislation is necessary to realize this right. Access to information is clearly important to Ghanaians, but there are substantial obstacles standing in the way of a right to information in Ghana. Some of these obstacles can be addressed through statutory reform guaranteeing public access to government information, such as the Right to Information Bill that Ghana’s Parliament is considering, while others are extra-legal constraints that legislation may be unable to address. This Section seeks to identify the most salient barriers to access to information in Ghana. The obstacles identified include refusals to share information, lack of recordkeeping requirements, a disparity between state-owned and private media, inequalities across the country, and professionalism concerns.

1. Refusals to Share Information

The government’s unwillingness to share information is one of the most salient barriers to access to information in Ghana. Although such refusals have decreased since the ratification of the 1992 Constitution and the repeal of the criminal libel law, they still occur. At this time, no right to information law exists to guarantee public access to government information. Moreover, some government officials are required to keep information

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201 Constitution of the Republic of Ghana 1992, Art. 21(1)(f) (“All persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society.”)
confidential, while many government agencies are reluctant to release information even when it is unclassified.\textsuperscript{202}

Access to government information is hampered by a lack of enforceable disclosure requirements. For example, Bright Blewu of the Ghana Journalists Association notes that Ghana was forced to pay a number of judgments on contracts that the public did not know existed.\textsuperscript{203} Local agents had contracted on behalf of the state, kept their contracts secret, and then defaulted. With a right to information law, the public would have had access to information regarding those contracts.\textsuperscript{204} This lack of information from the government provides an excuse for journalists to do less digging and hampers investigative journalism.\textsuperscript{205} Yaw Boadu-Ayeboafoh, General Manager of Newspapers at the Daily Graphic, concludes that a right to information law is one mechanism for making public officials responsive to the needs of the public.\textsuperscript{206}

The media's reluctance to obtain and share information—a remnant of the "culture of silence"—is also problematic.\textsuperscript{207} Before ratification of the 1992 Constitution, commentators noted that Ghana's government fostered an environment in which journalists engaged in self-censorship and refused to share information with the public for fear of government reprisals, such as job loss and violence.\textsuperscript{208} While journalists are more likely to publish stories that criticize the government now than they were in the past,

\begin{flushright}
\textsuperscript{202} Interview with E. Kwasi Bandua, Chair of the Foreign Affairs Comm. of Parliament, in Accra, Ghana (Mar. 14, 2013).
\textsuperscript{203} Interview with Bright Blewu, supra note 26.
\textsuperscript{204} Id.
\textsuperscript{205} Interview with Audrey Gadzekpo, supra note 51.
\textsuperscript{206} Interview with Yaw Boadu-Ayeboafoh, supra note 29.
\textsuperscript{207} See Lusike Lynete Mukhongo, Can the Media in Africa Shape Africa's Political Future?, 2 J. AFRICAN MEDIA STUDIES 339, 345 (2010) ("In a majority of African countries today, the media not only sets the agenda of the people and the nation as a whole but the media also influences public opinion with regard to elections, constitution making and corruption.").
\textsuperscript{208} Temin & Smith, supra note 25, at 588.
\end{flushright}
journalists from the state-owned media continue to refuse to publish certain stories and instead hand them over to journalists in the private media, who have more freedom to publish critical material.\footnote{HASTY, supra note 43, at 77; Interview with Yaw Boadu-Ayeboafoh, supra note 29.} To be sure, the state-owned media will cover events that negatively portray the government, but they rarely go as in-depth as the private media does.\footnote{See HASTY, supra note 43, at 73 (“As a witness to the actions of the state, the [state] journalist is expected to faithfully record the events, asking questions only for clarification . . . . I never heard a state journalist pose a critical question while on assignment.”); Interview with Audrey Gadzekpo, supra note 51.} However, the private media are also not entirely free to publish what they wish due to other laws on the books that prevent robust information sharing with the public, such as civil libel laws and Section 208 of the Criminal Offenses Act.\footnote{Interview with E. Kwasi Bandua, supra note 202.}

2. Record Keeping

A second major obstacle to access to information in Ghana is the failure to maintain relevant records, even when the law requires it. The Ghana Public Records and Archives Administration Act, 1997 (Act 535) “[i]mposes on public bodies the duty to maintain records”\footnote{COALITION ON THE RIGHT TO INFORMATION - GHANA, CONCERNS ON THE RIGHT TO INFORMATION BILL 19 (last accessed May 6, 2013), available at http://www.rticampaignghana.org/concerns/.} and established a Public Records and Archives Administration Department (PRAAD), but it is unclear to what extent this law is enforced.\footnote{Interview with Audrey Gadzekpo, supra note 51 (reporting that there may be a statute requiring organizations to keep records, but implementation is another issue).} The Coalition on the Right to Information reported, “Proper recordkeeping has been on the backburner of many organisations.”\footnote{COALITION ON THE RIGHT TO INFORMATION - GHANA, CONCERNS ON THE RIGHT TO INFORMATION BILL 19 (last accessed May 6, 2013), available at http://www.rticampaignghana.org/concerns/.} A right to information law cannot be useful unless the holders of information keep accurate records.

Resource constraints perpetuate poor record keeping. In July 2012, the Daily Graphic reported that national records at PRAAD were deteriorating due to poor

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\item \footnote{HASTY, supra note 43, at 77; Interview with Yaw Boadu-Ayeboafoh, supra note 29.}
\item \footnote{See HASTY, supra note 43, at 73 (“As a witness to the actions of the state, the [state] journalist is expected to faithfully record the events, asking questions only for clarification . . . . I never heard a state journalist pose a critical question while on assignment.”); Interview with Audrey Gadzekpo, supra note 51.}
\item \footnote{Interview with E. Kwasi Bandua, supra note 202.}
\item \footnote{COALITION ON THE RIGHT TO INFORMATION - GHANA, CONCERNS ON THE RIGHT TO INFORMATION BILL 19 (last accessed May 6, 2013), available at http://www.rticampaignghana.org/concerns/.}
\item \footnote{Interview with Audrey Gadzekpo, supra note 51 (reporting that there may be a statute requiring organizations to keep records, but implementation is another issue).}
\item \footnote{COALITION ON THE RIGHT TO INFORMATION - GHANA, CONCERNS ON THE RIGHT TO INFORMATION BILL 19 (last accessed May 6, 2013), available at http://www.rticampaignghana.org/concerns/.}
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facilities. Moreover, the department has no backup records in case of a fire or natural disaster. PRAAD’s lack of financial resources for proper record keeping hinders the media and the public from retrieving necessary information, especially outside of Accra. Ghana’s eventual goal is digitization of records, which would remove concerns regarding poor record keeping facilities, but that requires investments of time and money.

Furthermore, there is no uniformity in record-keeping practices across government agencies. PRAAD is responsible for establishing national standards for record keeping, but it is unclear whether agencies are complying with those standards. Statutory reform could address these issues by reinforcing the Ghana Public Records and Archives Administration Act and establishing uniform standards for record keeping.

3. Disparity Between State-Owned and Private Media

Jennifer Hasty argues, “State and private journalists articulate different forms of professional rhetoric, deploy different tactics of newsgathering, negotiate different political pressures, and enjoy different forms of compensation and reward for their work.” Disparities between the state-owned and private media influence journalists’ access to information and how that information is disseminated to the public.

For example, information is more readily available to the state-owned media than the private media because the state-owned media have greater financial resources and

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216 Id.
217 See id. (“The department is starved of funds . . . leaving very little for operations in all the 10 regional offices.”).
218 Interview with E. Kwasi Bandua, supra note 202.
219 HASTY, supra note 43, at 28.
more access to the government for information.\textsuperscript{220} Journalists for the state-owned media are often invited to the government ministries, the courts, and embassies to report on state events.\textsuperscript{221} In contrast, journalists for the private press are sometimes turned away from assignments at state offices. Reporters and counsel for the privately-owned \textit{Daily Guide} stated that the private media cannot cover stories at Flagstaff House (Ghana’s presidential palace) and generally do not have as many sources from the government as the state-owned media do.\textsuperscript{222} However, the private media are expected to cover the same events as the state-owned media and must find a way to access information from the government without a right to information law.\textsuperscript{223} The government justifies its denial of access to the private press on the basis that the private media is unprofessional, does not report the facts, and promotes defamatory rumors in order to sell more newspapers or attract more listeners.\textsuperscript{224}

These issues of comparative professionalism, resource disparity, and access to information interact in complex ways. Some argue that the private media’s lack of access to information from the government and lack of financial resources contribute to sensationalism among the private media because they must be sensational to sell their papers and make a profit.\textsuperscript{225} Reporters and counsel at the \textit{Daily Guide} stated that private

\begin{footnotes}
\item[221] \textsc{Hasty, supra} note 43, at 72; \textit{see also} Interview with Yaw Boadu-Aveyofoh, \textit{supra} note 29 (reporting that journalists cannot refuse to go when they are invited to government events, although they can determine what to write).
\item[222] Interview with representatives from \textit{Daily Guide}, in Accra, Ghana (Mar. 12, 2013).
\item[223] \textit{Id.} (reporting that state and private media ”all do the same job; the private journalists must go beyond what they are told”).
\item[224] Interview with Ghana Broad. Corp., in Accra, Ghana (Mar. 12, 2013).
\item[225] Interview with representatives from \textit{Daily Guide, supra} note 222. The Editor said, ”We are selling a product and package to get attention. We have a competitive industry.” For more on the public-private media divide, see Audrey Gadzekpo, \textit{Is There a Place for the State Media in a Constitutional Democracy?}, IEA, OCCASIONAL.
\end{footnotes}
media must sell a product to stay afloat because they do not have a great deal of advertising revenue.\textsuperscript{226} Also, businesses are reluctant to place advertisements in the private press for fear of upsetting the government, and the private media worry about isolating Ghanaian companies through their news coverage.\textsuperscript{227} Despite financial difficulties, however, reporters from the private media feel that they have more freedom to publish what they wish and say that journalists often move from the state-owned media to the private media “because they want more independence, though they face more financial difficulties.” \textsuperscript{228}

4. Inequalities Across the Country

Inequalities across the country, particularly between the urban and rural areas, present another significant obstacle to the free flow of information. Disparities in literacy rates, spoken languages, and resources hamper Ghanaians’ access to information from both the government and the media, especially for rural areas of the country. As noted above, 77 percent of men and 63 percent of women in Ghana are literate,\textsuperscript{229} but literacy rates are much lower in rural areas of Ghana.\textsuperscript{230} This disparity in literacy rates furthers an urban-rural divide, where Ghanaians in urban areas are more easily able to retrieve information. Additionally, Ghanaians speak a variety of different languages and many do not speak English, which is the primary language used in print media and government

\textsuperscript{226} Interview with representatives from \textit{Daily Guide}, supra note 222; see also \textit{KARIKARI}, supra note 70, at 18 (“Circulation is the key to survival [for private newspapers] as advertising has not shown marked growth.”).

\textsuperscript{227} Interview with representatives from \textit{Daily Guide}, supra note 222.

\textsuperscript{228} Interview with representatives from \textit{Daily Guide}, supra note 222. The Editor of the \textit{Daily Guide} shared that a state editor called him the day of our interview to provide a story that the state editor could not run. \textit{Id.}

\textsuperscript{229} \textit{GHANA STATISTICAL SERV.}, supra note 12, at 12.

communications. Ghanaians in urban centers are more likely to speak English, thus furthering the urban-rural divide.

Ada, a town on the eastern coast of Ghana, provides a good illustration of how wide the information-access gap is between Accra, where most media outlets are headquartered and the population is largely literate, and rural towns, where many adults are illiterate and only understand their local dialect. People in Ada rely on the radio to access information because the major newspapers are printed in English. Although the proliferation of cell phone and radio use has helped to decrease the information gap between urban and rural areas, rural towns like Ada still have limited access to information through the print media.

In addition, disparities between the rich and poor perpetuate an elite-dominated media that hampers the ability of poor Ghanaians to access and influence information. For example, Seyram Avle discusses the “global cosmopolitans” or “Argonauts,” a small but growing cultural elite in Ghanaian urban centers. This group consists of Ghanaians who travel to the West to work and study and then return to Ghana to start-up companies, which are often major media businesses. Avle argues that this “educated and fairly wealthy group is defined by its education and access to information,” and that it now

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231 Temin & Smith, supra note 25, at 597 ("Shortly before the 2000 elections, the English illiteracy rate was estimated by the government to be 53 percent. Virtually all Ghanaian newspapers are printed only in English.").
232 See id. at 600 ("Along these lines is the finding that people in urban areas are much more inclined to read newspapers than rural inhabitants, perhaps because they have greater access to them and tend to be wealthier and better educated.").
233 Id. at 597.
234 See KARIKARI, supra note 70, at 3 ("Both privately owned and state-run newspapers influence the political debate, but their impact is limited by the low literacy rate, the high price of a single-copy newspaper—about half or a third of the daily wage in a country where annual per capita income is about $1,800—and poor circulation."). As noted below, broadcast media helps close the gap.
235 Avle, supra note 118, at 15.
236 Id.
determines what is heard by the nation. Thus, this new cultural elite has access to information that average Ghanaians do not, and as a result, the elite participate in agenda-setting and decision making that may enhance disparities in access to information by choosing to report on news that is more relevant to their class. This trend is likely to perpetuate the urban-rural divide.

5. Professionalism

Some journalists’ lack of professionalism presents an obstacle for public access to information from the media. Audrey Gadzekpo laments, “Many journalists display a lack of ethics, professionalism, and a weak commitment to democratic ethos.” The National Media Commission (NMC) is charged with “[t]aking all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards, including the investigation, mediation and settlement of complaints made against or by the press or other mass media.” However, the NMC is unable to sanction journalists for professional violations, which hampers its role in upholding high journalistic standards. Moreover, the GJA, which includes journalists from both the state-owned and private media, has created a uniform set of ethical standards, but these standards are not enforceable.

In addition, many stakeholders feel that the lack of training required to practice journalism is a hindrance to professionalism in the field. Despite the existence of training

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237 Id. at 16.
238 See id. (“No longer is it the sole purview of the political elite (read government) to determine what is heard by the nation. Instead, a young urban group of people may now have its voice heard, quite powerfully, over the airwaves.”).
239 Gadzekpo, supra note 225, at 11.
240 Gadzekpo, supra note 120, at 6.
242 Interview with Representatives from Daily Guide, supra note 222. According to interviewees, the primary means of enforcing these standards is through “name and shame.” Id.
institutions such as the Ghana Institute of Journalism and the University of Ghana’s School of Communication Studies, many Ghanaians feel they cannot trust journalists to report accurately or objectively on important issues. Training by qualified teachers is available, but some people become journalists because they think journalism is “glamorous,” and they do not pursue training because it is not required. The lack of training and professional requirements for journalists is one reason why some politicians suggest journalists should not be trusted with wide access to information.

However, this reasoning can also be employed as an excuse not to pass a right to information law, when in fact a lack of access to information likely perpetuates sensationalism, particularly in the private media. If the media cannot access information to verify their reports, they simply publish whatever they have. The Honorable E. Kwasi Bandua, MP for the Biakoye constituency, predicts that when a right to information law is passed and it is easier for media outlets to obtain information, there will likely be fewer false reports in the media.

6. Conclusion

Although statutory reform cannot address all of these obstacles, a right to information law is necessary to ensure that Ghanaian citizens’ constitutional right to information is realized. A right to information law can address governmental refusals to

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243 See HASTY, supra note 43, at 94 (“Indeed, since its reemergence in the early 1990s, the private press tended to emphasize personalities over policy, often preferring sensational and ad hominem stories at the expense of balanced reporting and policy analysis.”). Another important consideration regarding journalists’ reporting, particularly journalists for the state, is their relationship with their sources. Jennifer Hasty points out that “journalists are trained at a vocational institute, while their sources are university-educated, creating a status disparity that structures news assignments, especially invited assignments.” Id. at 352.

244 Interview with Ghana Broad. Corp., supra note 224. It is also important to note that university students rarely consider journalism as a career because it can be a dangerous profession, and it pays very little. HASTY, supra note 43, at 102.

245 Interview with E. Kwasi Bandua, supra note 202.

246 Id.
disclose information, poor record keeping, professionalism, and many of the disparities between the state-owned and private media by placing them on more equal footing. Such a law could also reduce inequalities across the country by ensuring that information is made available to all Ghanaian citizens, regardless of wealth and geography. A right to information law is a crucial first step toward strengthening Ghana’s media and democratic development.

C. The Right to Information Bill: A Promising Solution

1. The RTI Bill: Overview

Though Ghana does not yet have a statutory framework in place to address these obstacles to the free flow of information, many government officials and civil society groups—especially the Coalition on the Right to Information—have been pressing for legal reform. In the wake of the 2012 elections, there is cause for optimism that that a Right to Information Bill will finally be passed into law. Such a bill was last proposed in 2009, and that proposal—while imperfect—provides a good starting point from which to evaluate future reforms. To date, no other laws create a mechanism by which a citizen can realize the right to information enshrined in the Constitution. Thus, the RTI Bill is necessary to make the Constitutional right to information a reality for Ghanaian citizens. This Section explains the constitutional underpinnings and structure of the

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The Common Law

Ghana employs a common law system, meaning that if Parliament does not pass an RTI law, it would be possible for a citizen to seek a judicially crafted RTI system. However, such a judicially crafted remedy is unlikely. First, most of the affirmative guarantees of the Constitution do not create a direct cause of action. Second, judges would be hesitant to venture into an area of law traditionally seen as legislative. Therefore, if there is to be an RTI system in Ghana, it will have to come from Parliament.

1 Interview with Nene Amegatcher, President, Ghana Bar Association, in Accra, Ghana (Mar. 15, 2013).
most recent version of the RTI Bill,\textsuperscript{247} and offers various recommendations that might improve the Bill further.

\textbf{2. Constitutional Underpinnings}

Article 21 of the Ghanaian Constitution contains provisions protecting various personal liberties, including freedom of speech, assembly, and religion.\textsuperscript{248} Included in this vast panoply of liberties is a personal right to information: "All persons shall have the right to... information."\textsuperscript{249} This guarantee is, however, “subject to such qualifications and laws as are necessary in a democratic society."\textsuperscript{250}

The obvious question raised by this qualifying language is what limitations to access to information are necessary in a democratic society. The proposed RTI Bill is an attempt to answer this question, and to elaborate and codify that constitutional guarantee. The Bill’s preamble states that its purpose is “to provide for the implementation of the constitutional right to information."\textsuperscript{251} Moreover, the preamble directly responds to the Constitution’s call for such “laws as are necessary in a democratic society” by setting forth a series of exemptions that are “necessary and consistent with the protection of the public interest in a democratic society.”\textsuperscript{252} When passed into law, the Bill could give Ghanaian citizens a concrete way to realize their constitutionally guaranteed right to information.

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\item[\textsuperscript{247}] Currently only the 2009 version of the RTI Bill is publically available. While individual provisions or specific language might change, the principles of the 2009 Bill remain the backbone of an adequate RTI proposal. In any case, the 2009 version is the most recent version that the authors of this Report had access to.
\item[\textsuperscript{248}] Consti\textit{tution of the Republic of Ghana} 1992, art. 21(1).
\item[\textsuperscript{249}] Id. art. 21(1)(f).
\item[\textsuperscript{250}] Id.
\item[\textsuperscript{251}] Right to Information Bill (2010) (Ghana), pmbl.
\item[\textsuperscript{252}] Id.
\end{enumerate}
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3. Structure of the RTI Bill

The RTI Bill imagines a right to information that centers on citizen petitions to government agencies. In response to these petitions, the agency can divulge the information sought or, for cause, reject the petition. Much of the Bill describes certain classes of exempt information that falls outside the default position that all information should be divulged. The Bill further specifies an appeals process for denied petitions, as well as a fee structure for filing petitions.

Not all information disclosures depend on citizen petitions—the Bill places an affirmative obligation on government to “make available to the people, general information on their governance without application from a specific person.” However, this one-sentence imperative lacks specificity beyond a reference to Article 67 of the Constitution.

3. COALITION, supra note 214, at 5.
which requires the President to deliver a State of the Nation message to Parliament. It is unclear if this aspirational provision will have any practical effect.

Aside from the “general information” disclosure requirement, the heart of the RTI Bill is, as noted above, a system of citizen petitions for individual pieces of information. Requests for information must be made in writing to the relevant government agency.\textsuperscript{254} If an applicant is unable to write an application in English, the application can be made to a government officer who will transcribe the request.\textsuperscript{255} Government agencies must designate an information officer to handle all requests and must publish a manual detailing the request procedure for that agency.\textsuperscript{256} Upon receiving the request, the government information officer must decide whether to grant access to the information sought, grant partial access, or reject the petition.\textsuperscript{257} If the information sought is in the possession of another government agency, the information officer can transfer the request to the appropriate agency.\textsuperscript{258} If the appropriate information officer denies a request, the petitioner may appeal that decision to the Minister responsible for that government agency.\textsuperscript{259} The decision of the Minister can be appealed to the Supreme Court.\textsuperscript{260}

The default position of the Bill is that information should be granted.\textsuperscript{261} The Bill, however, carves out thirteen classes of exempt information that the government need not divulge in response to a petition. Some of these exemptions are agency-based: information

\begin{footnotesize}
\textsuperscript{254} Id. § 19(1)(a).
\textsuperscript{255} Id. § 19(2)–(3).
\textsuperscript{256} Id. § 3.
\textsuperscript{257} Id. § 23.
\textsuperscript{258} Id. § 21.
\textsuperscript{259} Id. § 38.
\textsuperscript{260} Id. § 42.
\textsuperscript{261} Id. § 1(1)–(2) ("In accordance with . . . the Constitution, a person has a right of access to information or part of an information in the custody or under the control of a government agency. . . . The exercise of [that right] is subject to the exemptions specified in sections 5 to 18 [of the RTI Bill].").
\end{footnotesize}
is exempt if it comes from the Office of the President or Vice President,262 or from the office of Cabinet Ministers.263 Other exemptions are based on the subject matter of the information sought: information is exempt if it relates to “law enforcement, public safety [or] national security,”264 if it would reveal economic information about third parties,265 or if it pertains to privileged legal, medical or personal topics.266 Finally, information can be exempted based on the consequences of divulgence: information is exempt if divulgence would affect international relations267 or national defense,268 or if it would “create undue disturbance in the ordinary course of business or trade in the country.”269

Further provisions of the Bill provide a timeline for rejecting or complying with a request for information.270 Petitioners are required to pay a fee,271 and may be required to pay an additional deposit if “the costs to the agency for dealing with the application are likely to exceed the amount of the application fee.”272 However, fees can be waived in cases of financial hardship.273 Finally, the Bill also lays out a mechanism for petitioning government agencies to amend internal records.274

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262 id. § 5.
263 id. § 6.
264 id. § 7.
265 id. § 11.
266 id. § 14–17.
267 id. § 8.
268 id. § 9.
269 id. § 10(c).
270 id. § 23.
271 id. § 19(1)(f).
272 id. § 25(1).
273 id. § 51.
274 id. § 30–37.
4. How the RTI Bill Addresses Obstacles to Accessing Information

The RTI Bill aims to provide specific guidance on how Ghana will fulfill its obligations to its people and the fundamental right to access information. Yet, lawmakers also recognize that the Bill must include sufficient language to safeguard the right to information, rather than create obstacles to full realization of this fundamental right. The current draft proposal is a positive step in safeguarding this right, but it is not perfect. Amending the latest draft proposal is necessary to create a framework that provides both the media and Ghanaians with meaningful access to information. This Report has already identified the most salient barriers to access to information in Ghana. This Section includes recommendations for addressing these barriers, with particular focus on provisions within the current proposal itself. For this reason, solutions to the extra-legal obstacles will not be addressed. This Section identifies eight areas in which lawmakers can add or amend language in the draft proposal to effectively provide solutions to the legal obstacles identified. After a brief analysis of each problematic provision, this Section highlights

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275 See supra Part IV.B.
276 See, e.g., supra Part IV.B.4.
possible amendments to each section. These recommendations draw on the work of the Coalition on the Right to Information.

a. Refusal to Share Information

As noted above, there is no law in Ghana guaranteeing public access to government information. At the heart of the RTI Bill is an attempt to overcome the government’s historic reluctance to disclose information to the public. Requiring government officials to comply with valid requests for information is a critical legal step to overcoming cultural and historical resistance to government transparency. The RTI Bill creates a system that mandates government responsiveness to citizen requests for information. Requiring compliance with a valid application is “one step towards making public officials responsive to needs of the people.” It is imperative that the RTI Bill limit the discretion available to government officials to deny requests “as necessary in a democratic society” or based on other qualifications.

The current proposal contains too many exemptions and grants too much discretion to government officials to deny requests. This is a significant obstacle and the exemptions must be limited. The most current draft of the Bill provides 13 categorical exemptions, as noted above. The broad scope of these exemptions has caused concern. Some lawmakers and other stakeholders believe the exemptions are too numerous and “would undermine the effectiveness of the Bill.” For example, the broad, categorical exemptions for the

277 See supra Part IV.A.
278 See Interview with E. Kwasi Bandua, supra note 202.
279 Interview with Yaw Boadu-Ayeboafoh, supra note 29.
281 See supra Part I.
282 Interview with Nene Amegatcher, supra note 23.
offices of the President, Vice President, and Ministers “enable government and public
officials to withhold information when there is no necessity not to make disclosure.”

Any exemptions in the bill should be “narrowly formulated and proportional to [a]
legitimate purpose.” Rather than providing blanket exemptions for the offices of the
President, Vice President, and Ministers, these offices should be required to demonstrate “a
direct causal link” between disclosure and a sufficient harm to the public interest or the
rights and freedoms of others.

Other exemptions include vague language that fails to provide a reasonable
limitation to the exemption. For example, Section 13 of the RTI Bill states that information
related to the internal work of agencies may be exempt from disclosure if disclosure would
reveal:

An opinion, an advice, a report or a recommendation contained,
prepared or recorded, or a consultation or a deliberation held in the
course of or for the purpose of making a decision in the public service
or an agency of the Government and which can reasonably be
expected to frustrate or inhibit the candid deliberative process of an
agency or between agencies is exempt information.

This exemption does not require any causal relationship to any potential harm and
provides the opportunity to exempt critical information from disclosure without sufficient
justification.

b. Record Keeping

The fundamental right to information presupposes that information is accessible as a
practical matter. Yet accessibility is a significant obstacle to realizing this right in Ghana. As

283 COALITION ON THE RIGHT TO INFORMATION – GHANA, supra note 212, at 6.
284 Id.
285 Id. at 5.
one lawmaker said, “Record keeping in this environment is very bad. This is central and it’s a major problem.” A central part of this problem stems from the lack of compliance with the Ghana Public Records and Archives Administration Act. Moreover, the current draft of the RTI Bill does not contain any guidance on how government agencies should comply with the Act. If this issue is not addressed directly, “the right to information becomes illusory.” In 2012, an editorial in the state-owned newspaper the *Daily Graphic* urged the government to amend the Public Records Act, stating that “the time has come for the government to take a critical look at record-keeping in the country and encourage all institutions to upgrade their record-keeping capabilities.” The RTI Bill should address this issue effectively and provide sufficient language to reinforce the Public Records Act.

### c. Oversight by an Independent Entity & the Appeals Process

The RTI Bill provides that the “Minister responsible for Justice has ministerial responsibility for the effective implementation of this Act.” This provision is potentially problematic. The Minister of Justice has obligations to the government, but would also be responsible for ensuring that the government adheres to its obligations under the RTI Bill. These twin obligations are in tension and may conflict. Instead, the RTI Bill should mandate oversight by an independent body in order to ensure fair and equitable treatment and effective implementation of the RTI framework. This independent organ could also serve

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289 *Coalition on the Right to Information – Ghana, supra* note 212, at 19.
290 *Id.*
as an appellate tribunal to adjudicate disputes arising from denied requests for information.\textsuperscript{293}

Ideally, any disputes arising under the RTI regime would be handled administratively rather than in the court system.\textsuperscript{294} This would provide efficient dispute resolution without unduly burdening the judiciary. The current Bill provides for administrative review by the minister responsible for the agency involved in the dispute.\textsuperscript{295} An applicant may then appeal the decision to the Supreme Court for further review.\textsuperscript{296} The review mechanism, while laudable in many respects, could create practical impediments for Ghanaians who lack substantial financial resources. Specifically, it could deter applicants from challenging ministerial decisions because appealing to the Supreme Court is costly and time-consuming.\textsuperscript{297} The review process can be improved by granting authority to a senior officer in every agency to conduct internal reviews and by including a right of appeal before the independent oversight organ prior to seeking judicial review.\textsuperscript{298}

d. Fee Requirements

The Minister for Justice is responsible for setting fee requirements for applications for information. The RTI Bill provides guidance on how the Minister should determine the fees. Clause 50(3) states:

The guidelines shall specify the amount payable for (a) a search for every hour or fraction of an hour of manual search required in excess of two hours to locate the information, (b) computer access and any other costs incurred in locating, retrieving, processing and photo copying the information,

\textsuperscript{293} COALITION ON THE RIGHT TO INFORMATION – GHANA, \textit{supra} note 212, at 9.
\textsuperscript{294} \textit{Id}. at 10.
\textsuperscript{295} Right to Information Bill § 8 (2010) (Ghana).
\textsuperscript{296} \textit{Id}. § 42.
\textsuperscript{297} COALITION ON THE RIGHT TO INFORMATION – GHANA, \textit{supra} note 212, at 11.
\textsuperscript{298} \textit{Id}. 
(c) the cost of preparing the information for disclosure, and
(d) the postage costs.\(^{299}\)

The Bill also requires an advance deposit if the cost of producing the information is likely to exceed the application fees.\(^{300}\) The Minister of the relevant agency may authorize a waiver of the fee in cases where the applicant would suffer financial hardship if required to pay the fee.\(^{301}\)

The proposal’s current fee structure is overly complex and would impose undue burdens on applicants. For example, the time it takes to retrieve information is a central element of the fee structure, yet this would penalize applicants for the government’s inefficient recordkeeping apparatus.\(^{302}\) At worst, fees should be limited to the “actual cost of reproduction of information.”\(^{303}\) In addition, the decision to waive fees in accordance with Clause 51 should not rest solely in the hands of the Minister. Rather, the information officer or other senior officer should have the authority to grant waivers in appropriate cases.\(^{304}\)

e. Timely Access

Full realization of the fundamental right to information entails receiving the information in a timely fashion. Applicants should reasonably expect public officials to process their requests “as expeditiously as possible.”\(^{305}\) Undue delay renders this right illusory, particularly in instances where the applicant, perhaps a journalist under the pressure of a deadline, is unable to obtain the requested information in time to file a story.

\(^{300}\) Id. § 25.
\(^{301}\) Id. § 51.
\(^{302}\) COALITION ON THE RIGHT TO INFORMATION – GHANA, supra note 212, at 12.
\(^{303}\) Id. at 12.
\(^{304}\) Id.
\(^{305}\) Id. at 13.
In this context, timely access to information would incentivize accurate reporting and reduce the number of false reports, thereby improving the quality of journalism in Ghana. But the need for timely access is not limited to journalists—all applicants have a right to receive, process, and act upon the information within a reasonable time.

The current Bill includes numerous time extensions. If all extensions were applied, it could take more than five months for an applicant to receive the requested information. This potential delay is unreasonable and subverts the right to information. Information Officers should be required to respond to applications promptly, and time extensions should be limited situations where they are strictly necessary. Their length, too, should be limited.

\textit{f. Inclusion of Private Entities}

A central tenet of the RTI Bill is that government should be held accountable to the public. This accountability should extend to all government actors, including private entities working on behalf of the government. As a consequence, the RTI Bill should provide stronger language mandating access to information related to private entities that are “funded by the public purse, carry out public actions, exploit the nation’s natural resources, or where the information is required for the protection of an individual’s fundamental human right or freedom.”

The current proposal makes inclusion of private entities dependent upon an additional legislative act. In this sense, the scope of the Bill is limited only to state-actors,

\begin{itemize}
\item [\textsuperscript{306}] Interview with Audrey Gadzekpo, \textit{supra} note 51; see also Interview with Nene Amegatcher, \textit{supra} note 23.
\item [\textsuperscript{307}] \textit{Coalition on the Right to Information – Ghana}, \textit{supra} note 212, at 14.
\item [\textsuperscript{308}] Interview with Yaw Boadu-Ayeboafoh, \textit{supra} note 29.
\item [\textsuperscript{309}] \textit{Coalition on the Right to Information – Ghana}, \textit{supra} note 212, at 15.
\item [\textsuperscript{310}] Right to Information Bill § 63 (2010) (Ghana).
\end{itemize}
even where private entities operate within the public sphere. The Bill should be amended to broaden the scope to include these private entities.

**g. Affirmative Duty to Disclose Information**

The Bill should provide greater clarity on the government’s affirmative legal duty to disclose information independent of a citizen petition. While the proposal would require disclosure of “general information” on governance, more clarity on what information is required, and at what intervals it should be disclosed, is needed. Providing Ghanaians with access to “accurate and timely information about important matters of governance” is an important foundational step to demonstrate the government’s commitment to realizing the fundamental right to information enshrined in Article 21 of the Constitution.

**h. Implementation**

Enacting the RTI Bill will impose myriad requirements on state actors. Ministers will have to create and distribute manuals on how the Bill operates within their respective ministries, and Information Officers will need to be appointed to ensure compliance with the Bill. Importantly, the government will have to improve its recordkeeping capacity in order to provide the necessary information to applicants. Given the magnitude of the Bill’s framework, implementation dates should be included in the Bill. Without a timeline for implementation, Ghana will run the risk of having ineffectual legislation and expose itself to liability for failure to comply with requests. Implementation dates could include specific phases of implementation as well as a maximum time limit for enforcement.

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311 *Id.* pmbl.
312 PREMPH, *supra* note 42, at 55.
313 COALITION ON THE RIGHT TO INFORMATION – GHANA, *supra* note 212, at 18.
The chart below summarizes the eight obstacles identified and briefly summarizes this Report's proposed solutions.

*Table 3. Obstacles and Solutions in the RTI Bill*

<table>
<thead>
<tr>
<th>Obstacles Identified</th>
<th>Solution</th>
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<tbody>
<tr>
<td><em>Refusal to Share Information</em></td>
<td>Limit exemptions and discretion granted to government officials; Require direct link between exemptions and the harm sought to be avoided</td>
</tr>
<tr>
<td><em>Record Keeping</em></td>
<td>Reinforce and strengthen the Public Records Act</td>
</tr>
<tr>
<td><em>Oversight &amp; Appeal</em></td>
<td>Create independent oversight body that has power to review decisions upon appeal by an applicant prior to appeal in the courts</td>
</tr>
<tr>
<td><em>Fee Requirements</em></td>
<td>Limit fees to the cost of reproducing the documents, rather than including costs for retrieval time</td>
</tr>
<tr>
<td><em>Timely Access</em></td>
<td>Amend time limit provisions to ensure timely access to information</td>
</tr>
<tr>
<td><em>Inclusion of Private Entities</em></td>
<td>Require compliance by private entities involved in state matters</td>
</tr>
<tr>
<td><em>Affirmative Duty to Disclose Information</em></td>
<td>Provide greater clarity on what the state must disclose independent of citizen requests, and how often it must disclose this information</td>
</tr>
<tr>
<td><em>Implementation</em></td>
<td>Provide clear timeline for implementation of the RTI Bill framework</td>
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</table>

The RTI Bill represents a significant step towards making Article 21 efficacious, and its passage would signal a victory for Ghana, for fundamental human rights, and for transparent governance. The RTI Bill would also bring the country into harmony with international norms. It would enable the media to pursue more effectively its goals of holding government responsible and informing Ghanaians of pertinent news in a timely
fashion. Lawmakers have been considering the RTI Bill for several years, and many stakeholders are optimistic a bill will pass through Parliament this year.
V. Sharing Information Through Broadcast

While the RTI Bill centers on the right to receive information, the right to share information is intimately connected. These two rights operate in tandem to influence democratic government. In Ghana, the right to share information is dependent in large part on the mediums by which Ghanaians receive news. Because radio is such a prominent source of information across the country, providing a sufficient legal and regulatory framework to guide the broadcast media is critical to ensuring information is shared effectively.

Lawmakers first proposed a bill to provide comprehensive broadcast regulation in 2007, yet efforts stalled without producing a legislative enactment. Recently, President John Dramani Mahama said that the government would prioritize the speedy passage of the Broadcast Bill. This Section takes a closer look at the theoretical foundation of the

Talking Drums

Talking drummers were the original Ghanaian broadcasters. They performed the critical task of communicating news amongst neighboring villages, using the airwaves, and their broadcasts would range up to five miles. And for many generations of Ghanaians, the talking drum was the primary source of news. In some rural villages, the talking drum was the primary means of receiving and disseminating news up until the last decade of the 20th century. Though the mode of broadcasting has changed, broadcasting’s importance to Ghanaian civil society has not.

1 ROBERT GARDNER & DENNIS SHORTELLE, FROM TALKING DRUMS TO THE INTERNET: AN ENCYCLOPEDIA OF COMMUNICATIONS TECHNOLOGY 276 (1997).
2 Id.
Broadcast Bill, as well as obstacles to effective implementation of the Bill and this Report’s proposed solutions to these obstacles.

A. The Importance of Sharing Information

The freedom to “impart information and ideas through any media” is recognized as a universal human right.\(^{316}\) The right to impart information has been recognized as “one of the most precious rights of man” for centuries.\(^{317}\) And, like generations before, the international community today deeply cherishes that right. It is codified in several international accords, including the African Charter on Human and People’s Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, and the International Covenant on Civil and Political Rights.\(^{318}\)

The right to impart information is so highly regarded because it is fundamental to a democratic society.\(^{319}\) The right to impart information facilitates citizens sharing and critically engaging with each other’s ideas. Democratic societies thrive when various viewpoints are expressed.\(^{320}\) The diversity of opinions and perspectives strengthens democracy because, within the marketplace of ideas, good ideas flourish and bad ideas fail.\(^{321}\) The right to impart information protects the ability of individuals to bring their

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\(^{316}\) Universal Declaration of Human Rights art. 19, supra note 33.

\(^{317}\) Declaration of the Rights of Man art. 11 (1789), available at http://avalon.law.yale.edu/18th_century/rightsof.asp.


\(^{319}\) Id.

\(^{320}\) Id. at 15.

\(^{321}\) Abrams v. United States, 250 U.S. 616, 630 (1919) (“[U]ltimate good desired is better reached by free trade in ideas.”).
unique ideas to the market. Without that right, the marketplace of ideas would be a dilapidated dump devoid of ideas.

Broadcasting plays a critical role in maintaining a thriving marketplace of ideas. Television and radio broadcasting command loyal audiences, filling the airwaves that circulate information around the globe. Both television and radio broadcasting facilitate the free flow of ideas, opinions, and information to citizens. These streams of information enable citizens to effectively exercise other democratic rights, including the right to vote. While radio and television broadcasting play an essential role in democratic development, radio is by far the most popular and accessible medium for most Ghanaians. For this reason, this Section focuses on radio broadcasting. The remainder of the Section will consider the relationship between radio broadcasting and the right to information by examining (1) radio’s exceptionalism, (2) models of radio broadcasting, (3) approaches to radio regulation, and (4) convergence.

1. Radio Exceptionalism

Radio broadcasting is an exceptional medium. It is among the world’s most popular broadcasting mediums, and there are no signs that radio’s growing prominence will slow down. Radio’s sustained preeminence amongst its peer mediums is a consequence of several factors. Unlike other electronic mediums, radio broadcasts are accessible in most parts of the world, from sprawling metropolises to bucolic homesteads. Around the

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322 Id.
323 E.g., Akpojivi Ufuoma, Community Radio Regulation and Its Challenges in Ghana, 4 JOURNAL OF AFRICAN MEDIA STUDIES 193, 195 (2012) (noting that, in light of high illiteracy rates and a stark urban-rural divide, “radio [is] the only alternative medium available to the marginalized 52.2 percent of Ghana’s population residing in rural areas”).
324 UNITED NATIONS EDUC., SCIENTIFIC & CULTURAL ORG., COMMUNITY RADIO HANDBOOK 6 (2001).
325 Id.
globe, there are more than 20,000 radio stations and 2 billion radio receivers.\textsuperscript{326} For the 775 million adults and 122 million youths around the world who are illiterate, radio is the primary means for receiving news and entertainment.\textsuperscript{327} Call-in programs have also contributed to radio’s primacy. Through these programs, listeners can phone their station to express their opinions about an issue.\textsuperscript{328} Economically, radio is affordable for both listeners and station owners.\textsuperscript{329} Because of radio’s reach, affordability, and popularity, radio broadcasts are a critical medium through which the right to impart information is realized.

\textbf{2. Models of Radio Broadcasting}

Within the world of broadcasting, there are three dominant broadcasting sectors: commercial, community, and public.\textsuperscript{330} Each sector plays a specific role in the realization of the right to impart information.

\textit{a. Commercial}

Private individuals or enterprises operate commercial radio stations. The rise of commercial radio is in part a reaction to a deep distrust of state intervention in broadcasting, which is seen as “dangerous” and a threat to the freedom to impart information.\textsuperscript{331} Private individuals, rather than the state, must have full control over editorial content to fully realize the right to impart information. In practice, private broadcasters can largely make decisions about content independent of the state. They do

\textsuperscript{326} Id.
\textsuperscript{329} Id.
\textsuperscript{330} Interview with Wilna Quarmyne, supra note 28.
not, however, have unlimited discretion to determine content. All programming decisions must be consistent with their country’s broadcasting laws. Additionally, the programming is driven in large part by concerns about how to attract more listeners.\footnote{Id.} Larger audiences translate into more advertising revenue. Broadly speaking, private broadcasting facilitates media pluralism.\footnote{Mukhongo, supra note 207, at 347.} As media pluralism increases, wider arrays of ideological and political viewpoints are reflected in the media.\footnote{Id.} Thus, private broadcasters are providing greater opportunities for “more voices to be heard.”\footnote{Id.}

\textit{b. Community}

In most cases, community radio stations are non-profit organizations that focus on the “special interests and needs . . . of the [communities they are] licensed to serve.”\footnote{U NITED N ATIONS E DUC., S CIENTIFIC & C ULTURAL O RG., C OMMUNITY R ADIO H ANDBOOK, supra note 324, at 6; Ghana’s definition of community radio varies slightly but significantly from that contained in the African Charter on Broadcasting, drafted in Windhoek in 2001, which defines community media as media “which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda and which is non-profit.” The NCA, upon urging by the GCRN, now defines community radio as “radio that is about, for, by and of a specific marginalized community, whose ownership and management is representative of that community, which pursues a participatory social development agenda, and which is non-profit, non sectarian and non partisan.” Interview with Wilna Quarmyne, supra note 28.} Community broadcasters draw directly on the support of their community members to participate in the management, operation, and programming of the station.\footnote{Id.} Community radio is different from a public service broadcaster, discussed below, because the targeted audience is much smaller. The public broadcasters’ intended target is the entire nation,\footnote{U NITED N ATIONS E DUC., S CIENTIFIC & C ULTURAL O RG., P UBLIC B ROADCASTING: W HY AND H OW, supra note 331, at 11.} whereas the community broadcaster is limited to its relevant, specific community.\footnote{U NITED N ATIONS E DUC., S CIENTIFIC & C ULTURAL O RG., C OMMUNITY R ADIO H ANDBOOK, supra note 324, at 9.} “A
community is considered a group of people who share common characteristics and/or interests."\textsuperscript{340} Those shared characteristics can be based on language, ethnicity, geographic region, or even economic livelihood. At its core, community radio is motivated by a desire to "treat its listeners as subjects and participants."\textsuperscript{341} To that end, community radio advocates have sought to ensure that members of the community contribute funding to the stations so as to maintain independence from political or economic interests.\textsuperscript{342}

c. Public

Public broadcasting has been defined as "a meeting place where all citizens are welcome and considered equal."\textsuperscript{343} State-supported or state-owned corporations generally oversee public broadcasting and seek to promote these laudable goals.\textsuperscript{344} The pillars of universality, diversity, independence, and distinctiveness underpin public broadcasting. Universality refers to securing access for every citizen in the country. Diversity is a commitment to varied program genres, target audiences, and discussion subjects. Independence underscores public broadcasting's commitment to a robust exchange of ideas. And distinctiveness "requires that the service offered by public broadcasting distinguish itself from that of other broadcasting services."\textsuperscript{345} These core commitments to universality, diversity, independence, and distinctiveness inform public broadcasting's primary purpose. Public broadcasting is intended to be an "information and education tool."\textsuperscript{346} Its goal is to further citizens' understanding so they can make informed

\textsuperscript{340} Id.
\textsuperscript{341} Id.
\textsuperscript{342} Interview with Wilna Quarmyne, \textit{supra} note 28.
\textsuperscript{343} \textsc{United Nations Educ., Scientific & Cultural Org., Public Broadcasting: Why and How, supra} note 331, at 7.
\textsuperscript{344} Id.
\textsuperscript{345} Id.
\textsuperscript{346} Id.
decisions. The state-owned corporations that run public broadcasting stations develop the broadcasting policies and programming and receive the majority of their funding from license fees. State supported broadcasters are not to be confused with government broadcasters. The duty of loyalty for public broadcasters is to the public, not to the presiding political party.

3. Approaches to Regulation

Because of its exceptional nature, radio broadcasting has been recognized as “the most powerful means of communication in the world.” Neither states nor private interests have overlooked the power of radio broadcasting. Since the inception of broadcasting, states and commercial interests have sought to harness its power for their own ends. To prevent monopolization by either the state or commercial interests, various broadcasting regulations have attempted to limit their influence. These regulations are premised on the idea that the radio airwaves are a public good. According to international treaties, nations are assigned a limited spectrum for broadcasting, making the nation’s airwaves a scarce and valuable good. Because radio broadcasters are taking advantage of a public good, they assume an obligation to use it fairly and judiciously for the public’s benefit. To ensure that broadcasters are fulfilling their obligation, states have utilized three different regulatory tools: frequency allocation, content regulation, and structural regulation.

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347 Id.
348 Id.
349 Cf. Interview with Yaw Boadu-Ayeboafob, supra note 29 (describing duties of publicly owned print media).
350 SALOMON, supra note 318, at 11.
351 Id.
352 KARIKARI, supra note 328, at 7.
353 SALOMON, supra note 318, at 14.
354 KARIKARI, supra note 328, at 7.
**a. Frequency Allocation**

The state’s most powerful tool is frequency allocation and associated technical requirements. Radio stations are mandated to transmit at a “certain power, wattage, [and] on a precise frequency within a particular market." The process that radio broadcasters must go through in order to transmit at a certain frequency is known as licensing. Licenses authorize broadcasters to transmit on a particular frequency for a specified period of time. Each country takes a different approach to licensing. Some countries sell licenses. Others hold competitions. And still others simply give licenses away. Though states have different policies regarding how a broadcaster can obtain a license, most countries decline to permanently sell airwaves because they would lose the power to use a related tool: content regulation.

**b. Content Regulation**

Content regulation is about “protection.” On the one hand, states protect the public’s right to share information without state interference, and on the other, they protect the public from being harmed and offended. States design content regulations to balance these dual objectives. Through standards that emphasize accuracy and independence, states can ensure that broadcasters remain accountable to the public. For those broadcasters that fail to comply with states’ standards, states have a gradation of

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356 Salomon, supra note 318, at 14.
357 Id.
358 Id.
359 Id.
360 Id.
361 Id. at 57.
362 Id.
disciplinary procedures that they can exercise. Generally, states will first fine a broadcaster for noncompliance, then suspend the broadcaster’s license, and, finally, revoke its license.

c. Structural Regulation

States employ structural regulation to keep broadcasters from abdicating their responsibility to the public. Scholars have noted that monopolies pose the gravest threat to public interest in the broadcasting realm.\(^{363}\) Though not all owners will interfere in a broadcaster’s editorial decisions, “ownership always implies a degree of actual or potential control and it can be an obstacle to pluralism and diversity.”\(^{364}\) Structural regulations are designed to promote diversity of ownership and to prevent the rise of broadcasting monopolies. Structural regulation achieves this goal by limiting both where and when media companies can enter certain markets. The restrictions imposed on when players can enter certain markets have an added benefit: diversity of broadcasting ownerships encourages diverse programming.

Countries that have an independent broadcasting sector generally have an independent regulator to monitor that sector.\(^{365}\) Having an independent regulator ensures that the state will not interfere in the licensing process.\(^{366}\) In some countries, however, the ruling government oversees the licensing process.\(^{367}\) In many of these countries, the broadcasters who are appointed tend to overwhelmingly support the ruling government.\(^{368}\) An independent regulatory body avoids this political quicksand.\(^{369}\) If the independent

\(^{363}\) Salomon, supra note 318, at 14.

\(^{364}\) Mukhongo, supra note 207, at 347.

\(^{365}\) Salomon, supra note 318, at 23.

\(^{366}\) Id.

\(^{367}\) Id.

\(^{368}\) Id.

\(^{369}\) Id.
regulatory body is established by statute, then it will shore up public confidence in the regulator and licensing process. This, in turn, reinforces the public’s faith in the accuracy and objectivity of the information being broadcast.

4. Future Developments: Convergence

Convergence is transforming the broadcasting landscape. Convergence is the combination of “all types of media in digital form.” Before digitization, television, radio, telephone, and the internet each utilized a distinct band to transmit their frequencies. The meteoric advancements in 4-G technology have allowed different television, radio, phone, and internet waves to be transmitted on a single frequency. The blurring of boundaries between traditional mediums has changed how radio broadcasters communicate to their audiences. Radio broadcasts can be heard on computers, mobile phones, televisions, and tablets. Convergence accelerates this integration. It has changed not only how broadcasters communicate to their audiences, but also who is communicating to those audiences.

There has been media consolidation at the international, national, and local levels, which has led to a decline in ownership diversity. The rapid changes wrought by convergence in broadcasting have left regulators in a quandary, challenging the fundamental assumptions that underlie present regulatory frameworks. The digitization of media is transforming the spectrum of airwaves from a scarce public good into an

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371 Interview with George Sarpong, supra note 241.
372 SALOMON, supra note 318, at 99.
373 Id.
abundant one. Regulators no longer have exclusive control to allocate frequencies.

Broadcasters can circumvent regulatory authorities by broadcasting online. 374

In response to the convergence revolution, many governments have empowered a single regulatory body to tend to the new broadcasting landscape. 375 Ghana’s most recent proposed broadcasting legislation fails to heed this international trend. The wisdom of Ghana’s decision to depart from the international community on regulation is yet to be seen. What is certain is that lawmakers’ decisions regarding convergence and other issues of broadcasting regulation will have lasting implications on Ghana’s marketplace of ideas.

B. Obstacles to Information-Sharing

As previously discussed, more than 35 percent of the Ghanaian population is illiterate, 376 meaning that a significant number of citizens do not have access to the country’s increasingly robust print media. 377 Radio, as a consequence, is one of the fastest growing instruments of mass communication in the nation 378 and the most trusted form of

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374 Id.
375 Id.
376 GHANA STATISTICAL SERV., supra note 12, at 2.
377 KARIKARI, supra note 70, at 3. Poor coverage is not just a literacy and language problem, however. Peter Arthur notes that “[c]ommercial imperatives have led to a situation where most of the private newspapers and broadcast stations are located within, and promote the interests of, urban city dwellers to the relative exclusion of the majority rural population.” Arthur, supra note 3, at 214. Yet there is reason to think that radio broadcasts in local languages can more easily and efficiently reach rural regions than can print media. As Temin and Smith argue, “[b]ecause there are so many local languages spoken in Ghana, radio stations, unlike newspapers, have the advantage of being able to broadcast in the vernacular.” Temin & Smith, supra note 25, at 597. In fact, recent evidence seems to indicate that “the entire country is covered with radio stations, public and private, all using the VHF-FM format.” DAVID GHARTEY-TAGOE, THE BROADCASTER’S COMPANION 11 (2010).
378 See KARIKARI, supra note 70, at 3 (stating that “[r]adio is the dominant medium among the 19 million people” of Ghana); id. at 24 (“Radio is the dominant source of information in the country.”). The broadcast sector in general has been experiencing pronounced growth alongside the print sector. See Gadzekpo, “1992 Constitution and State of the Media,” at 8 (“The broadcast sector also has shown incredible growth. Since 1996, 47 authorisations have been granted for operation of free-on-air television, although only 19 are currently on air and another 217 authorizations [sic] for the operation of radio of which about 206 are currently on air.”). Though other media continue to expand at the same time, empirical research confirms that “radio has by far the widest reach and largest audience of any form of media in Ghana.” Temin & Smith, supra note 25, at 598.
media for most Ghanaians. The majority of Ghanaians are dependent on the broadcast sector for crucial information concerning state affairs and local politics. Thus, obstacles to the free dissemination of information are particularly salient in their impact on radio broadcasting.

Nevertheless, there exists a troubling absence of constitutionally adequate means for allocating frequency to radio stations. This absence not only endangers the viability of broadcasters themselves, but also imperils the necessary access to information that forms the bedrock of a constitutional democracy. The need for rational and effective broadcasting regulation in Ghana has never been more crucial. On its success hangs the possibility of lasting growth and stability. This Section outlines the most pressing obstacles confronting the ability to share information through radio broadcasting in Ghana.

1. Inequalities Across the Country

Though radio is by far the most popular medium in Ghana, the population’s access to radio—and broadcasters’ ability to establish broadcasting stations—varies significantly across the nation. There are a number of obstacles to radio penetration across Ghana. For one, most Ghanaians, particularly outside of urban centers, do not speak English, which is the primary broadcast language.

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379 Temin & Smith, supra note 25, at 602. Newspapers are more widely read in Ghana among the urban, educated elite. Id.
380 Interview with Ghana Broad. Corp., supra note 224. See also Arthur, supra note 3, at 210 (“Furthermore, the FM stations, together with newspapers, have provided enormous information about governance in Ghana and helped the general population to understand the agenda, manifestoes of the political parties and their candidates, as well as helped expose corrupt practices in government.”).
381 Interview with Wilna Quarmyne, supra note 28; see also Broadcast Bill (2007) (Ghana) pmbl.
382 Cf. Temin & Smith, supra note 25, at 597 (“Virtually all Ghanaian newspapers are printed only in English, so even if people are able to get their hands on a newspaper, there is a good chance that they are unable to read it.”)
Moreover, the rural-urban divide erects significant hurdles to establishing and sustaining broadcasting networks throughout much of the country. With 52.2 percent of Ghanaians living in rural areas, these hurdles affect the majority of Ghanaians.\footnote{Ufuoma, supra note 323, at 194.} One reason for limited broadcasting viability in rural regions is that private radio stations are dependent on advertising revenue, but most advertisers target the urban centers of Greater Accra, Kumasi, and Tema.\footnote{Avle, supra note 118, at 12. This challenge is also true in the publishing sector. For example, the premiere state-owned newspaper, Daily Graphic, established a community newspaper called Nsempe. This publication was eventually cancelled due to its inability to obtain advertising revenue.} In 2002, ten years after the broadcast sector was liberalized, four of the nation’s ten regions had two or fewer on-air private radio stations.\footnote{Avle, supra note 118, at 13. The regions are Northern, Upper West, Upper East, and Eastern. As of 2002, the Northern Region had one private community station outside Tamale, but that station did not have its own transmitter. Temin & Smith, supra note 25, at 603.} These disparities in broadcast coverage remain largely unchanged today.\footnote{Temin & Smith, supra note 25, at 603.} Community radio is an important tool for addressing these obstacles and for protecting rural populations’ right to communicate. However, legal hurdles to the successful dissemination of community radio remain entrenched.

2. Lack of a Clear National Regulatory & Policy Framework

The current regulatory regime is primarily a result of historical happenstance rather than considered legislative or constitutional judgment.\footnote{Interview with George Sarpong, supra note 241.} Broadcasting is regulated by two agencies whose authority seems to conflict—the National Media Commission (NMC), an independent constitutional body tasked with the appointment of state-owned media management and regulation of broadcasting content, and the National Communication
Authority (NCA), a state agency overseen by the executive that has authority over frequency allocation but does not regulate content.\textsuperscript{388}

Unlike the independent press, “independent broadcasting was born in controversy, litigation and political tension.”\textsuperscript{389} After the 1992 Constitution created the NMC, the military regime, unhappy with the NMC’s authority to appoint the management of state-owned media institutions, created the Frequency Registration and Control Board (FRCB) to handle media appointments.\textsuperscript{390} The FRCB managed the transition from a single-media state to democratic governance and was given the authority to assign broadcast frequencies. The Supreme Court eventually upheld the NMC’s right to appoint state-owned media management, but the FRCB retained authority to allocate frequencies.\textsuperscript{391} With the passage of the National Communication Authority Act in 1996, the FRCB became the NCA, which absorbed the FRCB and its functions.\textsuperscript{392} In short, the NCA is an agency born out of government opposition to the NMC’s mandate.\textsuperscript{393}

Today, both the NMC and NCA exercise control over the broadcasting sector, but there is no formal legal framework for their interaction or cooperation.\textsuperscript{394} As Professor Audrey Gadzekpo bemoans, “more than 14 years since independent broadcasting became

\textsuperscript{388}\textit{GADZEKPO}, supra note 120, at 16.

\textsuperscript{389}\textit{KARIKARI}, supra note 70, at 24.

\textsuperscript{390} Interview with George Sarpong, supra note 241.

\textsuperscript{391}\textit{KARIKARI}, supra note 70, at 21–22; see also Republic v. Independent Media Corporation of Ghana, [1996-97] SCGLR 258, SC.


\textsuperscript{393} Interview with George Sarpong, supra note 241. It should be noted that the NCA’s frequency allocation responsibility is much broader than broadcast media and extends to such highly technical realms as aviation frequencies. Interview with Margaret Amoakohene, Director, Sch. Comm., Univ. of Ghana, in Accra, Ghana (Mar. 13, 2013).

\textsuperscript{394} Interview with George Sarpong, supra note 241; see also \textit{KARIKARI}, supra note 70, at 26 (“While debate continues over who controls the broadcasting industry, independent stations share the airwaves with state-owned broadcasters, without any clear national regulatory and policy framework.”).
an integral and vital part of the social and political environment, Ghana lacks a comprehensive broadcasting law that sets out clearly the legal framework to regulate this important resource.”

This is not for a want of plausible comprehensive proposals, which can be traced back to at least 1993.

Under the status quo, the NCA authorizes and assigns radio frequencies, while the NMC creates content standards for broadcasters and monitors the performance of the sector. Though the NMC nominally regulates broadcast content, it has no legal authority to issue fines or sanctions or to terminate frequency authorizations. According to many in the sector, the majority of content problems within broadcasting are related to professionalism. Without enforcement power over professionalism standards, the trend of “media practitioners . . . refus[ing] to co-operate with institutions such as the National Media Commission set up to protect and regulate them” will continue unchecked. Yet the NMC has no means of enforcing professional standards. Currently, it is merely a hortatory body whose directives can be ignored by broadcasters with impunity. The NCA, on the other hand, is a powerful regulatory authority that has nearly unchecked discretion in its

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395 GADZEKPO, supra note 120, at 13. She goes on to note that this absence creates “a lack of clarity on the fundamental principles and objectives of broadcasting and responsibilities of broadcasters” that allows the broadcasting sphere to be “inundated by unprofessional conduct.” Id.
397 See GADZEKPO, supra note 120, at 16; see also Ufuoma, supra note 323, at 204 (listing the myriad problems with the unclear relationship and overlapping authority between the NMC and the NCA). It should be noted that the NCA does not solely oversee the allocation of broadcast frequencies, but all frequencies, including aviation. Interview with Margaret Amoakohene, supra note 393.
398 Ufuoma, supra note 323, at 204 (recognizing that the NMC “cannot enforce professionalism on the airwaves . . . because, although they are mandated to monitor content, they do not have the capacity (frequency) to carry out this function”).
399 Interview with George Sarpong, supra note 241; Interview with Ghana Broad. Corp., supra note 224.
400 GADZEKPO, supra note 120, at 11.
401 Interview with Margaret Amoakohene, supra note 393. Journalists who have been called to appear before the NMC have refused to appear, aware that the NMC has no means of enforcing its own directives. Id.
allocation of frequencies through a process lacking transparency. The troubling reality is that there is currently no mechanism in place to appeal a decision of the NCA denying (or failing to act on) an application for a frequency authorization. For example, a number of community radio stations have had frequency applications pending with the NCA for over two years with no action or explanation. The laws governing the NCA establish criteria for the issuance of broadcast frequencies, but individual applicants cannot compel the NCA to grant an application upon satisfaction of these criteria.

Combined with the fact that the NCA “lacks autonomy from the Executive because most members of its board, including the chairman, are appointed by government,” this unreviewable authority is particularly worrisome. A widely followed private radio station, Oman FM, has experienced unexplained, long-term jamming and transmission interference over the past few months, which it attributes to the NCA. These incidents illustrate the unworkability of the current NCA regulatory regime.

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402 Interview with George Sarpong, supra note 241.
403 Id.
404 Id.
405 Interview with Wilna Quarmyne, supra note 28.
406 GADZEKPO, supra note 120, at 16.
While the NCA has authority to review applications and assign broadcast frequencies, it does not have any authority over content, and thus does not revoke licenses when content standards are violated. The conflicting roles of the two agencies and their collective inability to monitor broadcast content has prompted some to point out that “you can’t divorce content from technology,”\textsuperscript{408} because “frequency acts as the platform on which content is carried.”\textsuperscript{409}

\textsuperscript{408} Interview with Wilna Quarmyne, \textit{supra} note 28.
\textsuperscript{409} Ufuoma, \textit{supra} note 323, at 204.
This incompatibility is particularly confusing in the realm of community radio regulation. Because “the body (NCA) that formulated the guideline for community radio is different from the one (NMC) implementing the guideline, it is difficult for the regulatory body to regulate community radios as all they can do is work within the available framework (which is ambiguous).”

Ambiguity in terms of which stations can be classified as community radio based on urban or rural localities, broadcast language, content, and ownership structure creates complex tension between the NMC and NCA.

Informal cooperation between the two bodies has recently emerged. Some in the broadcasting sector attribute good election coverage by the media in 2012, in part, to this

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410 Ufuoma, supra note 323, at 202.
informal cooperation. While this trend is positive, it points once again to the lack of any formal mechanism for cooperation between the two agencies that would ensure the two bodies work together to monitor content and to allocate frequencies in a consistently fair and transparent manner.

3. Inequitable Frequency Allocation

Access to the airwaves is provided through the allocation of frequencies, a limited public good. It is incumbent upon allocating authorities to establish open and participatory means for equitably distributing frequencies. The 2001 African Charter on Broadcasting (the “Charter”) states that frequencies should be equitably distributed among the three broadcasting sectors – commercial, public and community. Ghanaian law adopted the three-tiered broadcasting structure and the mandate for equitable distribution with the passage of the National Media Policy in 2000 and the National Telecommunication Policy in 2005. All three media sectors are tasked with “meet[ing] the information, education, and entertainment needs of the public and promot[ing] national identity and culture despite their ownership structure.” However, public and commercial radio stations are largely unable to meet these public needs due to their funding and organizational structures. As a result, community radio has become the primary medium “for the empowerment of

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411 Interview with George Sarpong, supra note 241.
414 Ufuoma, supra note 323, at 195.
415 Id.
marginalized communities” and “has the potential of enhancing participatory democracy and bridging the information gap.”416

Community radio has become the principal news medium available to the 52.2 percent of Ghanaians who live in rural areas; it helps bridge “the digital divide between the ‘information haves’ and ‘information haves not [sic].’”417 In the context of the national inequalities noted above, the community radio movement seeks to vindicate the rights of rural and marginalized populations to receive information and to communicate.418

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416 Id.

417 Id.

418 Interview with Wilna Quarmyne, supra note 28. The right to communicate encompasses not only an individual’s right to express herself and her opinions, but also one’s right to have her opinions taken into account. “Community radio plays an indispensible role in media because it responds to the needs of the community.” Interview with Ghana Broad. Corp., supra note 224.
Unlike most public and commercial stations, community radio stations broadcast in rural and remote communities, primarily in local languages. Community radio programming, determined by community members, attempts to address needs and issues specific to the targeted communities. In many communities served by community radio stations, the stations are the primary source of news and information from the rest of the country.\(^\text{419}\)

Despite legislation calling for equitable distribution of frequencies among the three broadcasting sectors, community radio stations in Ghana continue to struggle to obtain a fair distribution of frequencies. The Ghana Community Radio Network (GCRN), founded in 1999, seeks to cover all ten regions of Ghana with community radio stations, particularly in resource-rich areas of the country where vulnerable communities tend to be excluded from discussions over resource use and distribution.\(^\text{420}\) However, only eight of Ghana’s ten regions currently have community radio stations.\(^\text{421}\)

Community radio stations have historically faced significant regulatory and political obstacles to their establishment and operation. When broadcasting was first liberalized in Ghana, all frequencies were distributed to commercial broadcasters.\(^\text{422}\) In 2005, the National Telecommunications Policy stated that any community radio station with a pending frequency application with the NCA should receive an expedited review of its application and obtain a frequency within six months.\(^\text{423}\) Before the 2005 act, broadcasting

\(^{419}\) Interview with Wilna Quarmyne, supra note 28.  
\(^{420}\) Id.  
\(^{421}\) Id.  
\(^{422}\) Id.  
\(^{423}\) Ministry of Comm., National Telecommunications Policy § 2.3.
guidelines for community radio significantly restricted their reach.\textsuperscript{424} For example, community radio stations were prohibited from broadcasting any political information, including the names of political officials.\textsuperscript{425} Additionally, community radio stations could not earn any revenue and had to limit their coverage to a five-kilometer radius.\textsuperscript{426} NCA guidelines have since been recast to adopt the GCRN’s definition of community radio and to allow community radio stations to generate revenue.\textsuperscript{427} However, the updated guidelines retain the five-kilometer transmission restriction.\textsuperscript{428} The transmission restriction, if enforced, would render all community radio stations ineffective and unable to reach their target communities.\textsuperscript{429} It would require the nation’s most well-known and well-regarded community radio station, Radio Ada, to shut down.\textsuperscript{430}

The NCA’s community radio guidelines are not currently enforced. Thirty-seven of the currently designated community radio stations do not meet the definition enshrined in the guidelines. Despite the directive to grant community radio station applications within six months, many applications have been pending for years, while commercial station applications in rural regions receive prompt approval.\textsuperscript{431} Inequitable distribution has been exacerbated in part by confusion over the definition of community radio stations. Under the status quo, most rural stations are categorized as community radio stations and urban

\textsuperscript{424} Interview with Wilna Quarmyne, \textit{supra} note 28.
\textsuperscript{425} Id.
\textsuperscript{426} Id.
\textsuperscript{427} Interview with Wilna Quarmyne, \textit{supra} note 28; Ufuoma, \textit{supra} note 323, at 201.
\textsuperscript{428} Interview with Wilna Quarmyne, \textit{supra} note 28; Ufuoma, \textit{supra} note 323, at 201.
\textsuperscript{430} Interview with Wilna Quarmyne, \textit{supra} note 28; Interview with Isaac Djagbletey, \textit{supra} note 429.
\textsuperscript{431} Interview with Wilna Quarmyne, \textit{supra} note 28.
stations are commercial, regardless of the communities they serve. Similar confusion exists regarding stations that broadcast in local languages, which are widely classified as community radio stations regardless of broadcast content. This classification is particularly inaccurate in the wake of the 2009 Guidelines for Local Language Broadcasting (“2009 Guidelines”), after which most radio stations broadcast in local languages. The confusion makes it difficult for the NMC to effectively regulate community radio and causes broadcasters to complain about a lack of transparency in the frequency distribution process.

Inequitable frequency distribution remains a problem today. There are currently 247 authorized commercial stations, run by thirty-seven commercial broadcasters; twelve on-air community radio stations, with eleven stations pending approval by the NCA; and eleven public FM stations, in addition to the national GBC station.

4. Structural Obstacles

a. Media Consolidation and Foreign Ownership

A serious threat to the right to impart information in modern Ghana is media consolidation among a few corporate owners. For example, the Multimedia Company dominates the independent radio sector and presents a risk of monopolization of the

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432 Ufuoma, supra note 323, at 199.
433 Id. at 201.
434 Id. at 202.
435 Id. at 199.
436 Interview with Wilna Quarmyne, supra note 28.
437 Id.
438 These 12 stations are those that meet the GCRN’s “community radio” definition, which narrower than the NCA’s definition. The GCRN definition is “broadcasting which is for, by, about, and of a specific marginalized community whose ownership and management is representative of the community, which pursues a participatory social development agenda and which is non-profit, non-sectarian, and non-partisan.” Id. The 11 stations awaiting a frequency have had applications pending for over two years. Id.
439 Interview with Ghana Broad. Corp., supra note 224.
Some believe that the main threat to media freedom in Ghana no longer comes from government but from private media and media owners who dictate messages and can hire and fire at will.\textsuperscript{441}

Similarly, the prospect of foreign ownership of media outlets is currently the source of much debate in Ghana. On the one hand, some fear that foreign ownership and control of media messages and content threatens Ghana’s cultural autonomy. Others believe that foreign investment is necessary to develop Ghanaian media outlets and improve media quality.\textsuperscript{442}

\textit{b. Convergence}

Increasing digital convergence of broadcast frequencies raises new issues and obstacles for regulators. In the past, the limits of pre-compression technology sharply restricted the number of stations that could transmit over the airwaves. Today, as digital convergence increasingly becomes the norm, a new obstacle is emerging: transmission companies operate as bottlenecks to the ability to share information.\textsuperscript{443} Fewer transmission companies are now capable of controlling much more of the access to the airwaves and are capable of shutting down entire swathes of the media.\textsuperscript{444} This phenomenon is thought by some to pose one of the biggest dangers to freedom of expression in Ghana’s current media environment.\textsuperscript{445}


\textsuperscript{441} Interview with Ghana Broad. Corp., supra note 224.

\textsuperscript{442} Interview with George Sarpong, supra note 241.

\textsuperscript{443} Id.

\textsuperscript{444} Id.

\textsuperscript{445} Id.
Increased involvement in broadcasting by transmission companies also poses the regulatory issue of whether liability for content should lie with the content producer or the content transmitter (the transmission company). If liability lies with the content transmitter, transmission companies would assume the role of censoring content creators. This would require content regulators (the NMC) to legally insulate transmission companies from government influence and to clarify companies’ relationships with content creators.\(^{446}\) Convergence creates a power imbalance between transmission companies and broadcasting networks that risks echoing Ghana’s history of government control of the airwaves, but with a corporate twist.

5. Extra-legal and cultural obstacles

Many stakeholders feel that the lack of training required to practice journalism hinders professionalism, which in turn hinders the production of high-quality broadcasting. According to the current Executive Secretary of the NMC, 95 percent of problems with the media can only be addressed through training.\(^{447}\) In an era of burgeoning private broadcasting, the “problem is how to marry freedom with responsibility.”\(^{448}\) For example, some broadcasters with no journalistic experience are hired based on the appeal of their voices.\(^{449}\) Moreover, many radio anchors on non-English stations lack formal education and go on air without preparing a written program beforehand.\(^{450}\) It is common for newscasters on many daily radio shows to simply summarize the news headlines or

\(^{446}\) Id.
\(^{447}\) Id.
\(^{448}\) Interview with Ghana Broad. Corp., supra note 224.
\(^{449}\) Interview with Wilna Quarmyne, supra note 28.
\(^{450}\) Interview with Margaret Amoakohene, supra note 393.
important articles from major newspapers, or read them aloud to their audiences.\textsuperscript{451} Many politicians denounce private journalists as unprofessional sensationalists who promote defamatory rumors for the sake of attracting more listeners.\textsuperscript{452}

In the absence of enforceable professionalism regulations, some broadcast networks develop their own trainings and guidelines. Prior to the 2012 election, the GRCN and its membership established a community code of radio conduct as well as a “people’s manifesto” outlining party platforms, parliamentary candidate “scorecards” listing criteria for evaluating candidates, and a requirement that member stations give political parties equal air time.\textsuperscript{453}

The GJA and the NMC have created ethical guidelines for the private media, but complain that “the level of respect for these guidelines is zero” because private media ignores important issues in favor of sensationalized stories.\textsuperscript{454} Because the law does not currently permit punitive measures or sanctions, the only enforcement remedy the NMC and the GJA’s ethics and disciplinary authority has is “naming and shaming.”\textsuperscript{455}

Among the other informal obstacles to extensive media freedom is the residual self-censorship caused by the post-colonial decades of government oppression and control. This leads to a “culture of silence”\textsuperscript{456} in which journalists refrain from reporting stories that are politically damaging to those in power or that might be embarrassing to the ruling elites. The ensuing neglect leaves citizens uninformed about some of the most

\textsuperscript{451} Cf. Temin & Smith, supra note 46, at 596 (noting that the media “still lack in-depth examination of the events they report”).
\textsuperscript{453} Interview with Wilna Quarmyne, supra note 28.
\textsuperscript{454} Interview with Ghana Broad. Corp., supra note 224.
\textsuperscript{455} Id.
\textsuperscript{456} GHANA NATIONAL RECONCILIATION COMMISSION REPORT, supra note 90, at 185.
consequential political events affecting government operations.\textsuperscript{457} Like several of the other obstacles outlined here, the culture of silence is not easily resolved though legal reforms. Yet the proposed solutions that follow do offer hope that most obstacles can be remedied by effective regulations—concerns regarding professionalism, for example, might be mitigated if journalists had better access to information and better ways to share it without resorting to sensationalism.\textsuperscript{458}

C. The Broadcast Bill: A Needed Reform

Despite general agreement on the major problems identified, several fundamental disagreements lie at the heart of proposed solutions. This Section focuses on the ways in which proposed broadcast regulations affect radio broadcasters, though these proposals inevitably affect television and other broadcasting. While some obstacles resist easy legal solutions, many of those identified—involving agency competition and competence,\textsuperscript{459} media consolidation,\textsuperscript{460} and ideologically-motivated frequency allocation\textsuperscript{461}—can be squarely addressed by a coherent set of broadcasting regulations. This Section specifically focuses on a 2007 proposal for a broadcasting bill, which would address the two main tasks of broadcasting regulation—technical allocation and content monitoring (including

\textsuperscript{457} KARIKARI, \textit{supra} note 70, at 26–27 ("Pandering to a false notion that people do not like politics, private broadcasting stations are failing to deliver quality news and current affairs programs that offer diversity, pluralism and real information to people on important national issues.")

\textsuperscript{458} Interview with E. Kwasi Bandua, \textit{supra} note 202.

\textsuperscript{459} This is a constant source of contention, where "[a]dvocates of media pluralism have argued that, in accordance with the Constitution, the NMC has the responsibility for administering广播 frequencies; however the government has maintained that responsibility for administering all radio frequencies properly lies with a state administrative body." Heath, \textit{supra} note 392, at 513.

\textsuperscript{460} KARIKARI, \textit{supra} note 70, at 27 ("The independent radio sector is dominated by the Multimedia Company, owners of JOY FM.").

\textsuperscript{461} Interview with Wilna Quarmyne, \textit{supra} note 28.
structural regulation). After analyzing the proposal, the Section highlights the ways in which each addresses or fails to address the obstacles identified.

1. The 2007 Broadcasting Bill Proposal

The 2007 Broadcasting Bill Proposal presents several possible answers to the problems of regulating a quickly expanding broadcast medium. Though the proposal is slightly outdated and may no longer represent a live legislative option, it is important for several reasons. First, it is one of the few proposals (and the first one of which the authors of this Report are aware) to lay out in comprehensive detail the mode and manner of broadcasting regulation. This level of detail allows the kind of analysis that is impossible with threadbare outlines and incomplete regulatory aspirations. Second, through its specificity, the proposal addresses the issues at the heart of the debate and thereby enables assessment of whether the proposed solutions adequately address the obstacles identified. These two reasons undergird the in-depth analysis that follows. This Section analyzes the Bill and evaluates its effectiveness in addressing important obstacles.

a. The Proposal’s Regulatory Framework

The proposal in many ways formalizes existing regulatory practices, but also moves further to integrate and rationalize the process. For example, the proposal recognizes and codifies the three traditional sectors of broadcasting: public service, commercial, and

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462 Interview with George Sarpong, supra note 241 (recognizing these as the two main tasks); see also KARIKARI, supra note 328, at 11 (“Essentially, two categories of the elements comprising broadcasting require one or another form of regulation, namely: the Radio Spectrum (frequency) and the output of Radio Broadcasting, that is, the content of broadcasting.”)

463 See supra Part V.B (recognizing varying languages, inequalities across the country, limited broadcasting infrastructure, lack of clear framework for NCA/NMC interaction, cultural/institutional norms, media consolidation, and foreign investment as obstacles to the full realization of broadcaster’s freedom to share information).

464 The information concerning the proposal in this section is taken from the 2007 Proposals for a Broadcasting Act.
community.\textsuperscript{465} While each sector has unique obligations, rights, and responsibilities, a common framework undergirds the entire system: The NMC is responsible for all broadcasting authorization.\textsuperscript{466} In addition, the NMC grants authorization to operate in one of the three sectors of broadcast, which presumably means that an authorization cannot permit a broadcaster to engage in both community and commercial broadcasting, for example, at the same time.\textsuperscript{467} The proposal further details the rights and responsibilities of the three sectors individually.

The public service sector refers to state-owned or wholly state-funded broadcasting.\textsuperscript{468} Broadcasters in this sector are insulated from government control or influence and are free to exercise independence when making editorial decisions.\textsuperscript{469} With this freedom comes a responsibility, however, to provide diverse, informative, and educational programming.\textsuperscript{470} The proposal also sets strict guidelines on the composition of the boards of directors. These directors are appointed by the NMC and are responsible for operating the public service broadcasters.\textsuperscript{471}

Next, the proposal defines commercial broadcasters as “radio and television stations that are privately owned and operated for profit and controlled privately by independent commercial groups.”\textsuperscript{472} These broadcasters have a public interest obligation to provide diverse programming that highlights Ghanaian culture and identity, some of which must be

\textsuperscript{465} Proposal for a Broadcasting Act, 2007, 2.
\textsuperscript{466} Id. at 4.
\textsuperscript{467} Id.
\textsuperscript{468} Id. at 7.
\textsuperscript{469} Id. at 7(5).
\textsuperscript{470} Id. at 7(4).
\textsuperscript{471} See id. at 9.
\textsuperscript{472} Id. at 10.
broadcast in in local languages. They must also, within a reasonable time after authorization, “extend their services to ensure comprehensive coverage of the area for which they are authorised to provide services.” Beyond this, the formal duties of commercial broadcasters are left largely to later specification by the NMC.

In contrast to the broad definition of commercial broadcasters, community broadcasters are narrowly defined as “radio and television stations that are about, for, by and of a specific marginalized community, whose ownership and management are representative of the community, which pursue a participatory social development agenda, and which are non-profit, non-partisan and non-sectarian.” The proposal lists several requirements for community broadcasters, including that they steadfastly remain focused on the needs of their particular marginalized community. The proposal further empowers the NMC to issue minimum coverage requirements for programs in the local language and for those produced or created by the station or community. Moreover, these broadcasters cannot engage in substantial commercial advertising and must reinvest surplus revenue back into the venture.

After establishing the rights and responsibilities of the three sectors, the proposal turns to regulatory authority. It provides that the NMC shall have the power to grant frequency authorization and terminate such authorizations. In this framework, the NCA’s

473 Id. at 11.
474 Id. at 14.
475 Id. at 16.
476 Id. At 18.
477 Id. at 19.
478 Id. at 20–21.
479 Id. at 27.
authority extends only to technical matters.\textsuperscript{480} Even after the NCA plans and assigns the radio frequency spectrum generally, the proposal prescribes that it “shall thereafter assign the frequencies for broadcasting to the [National Media] Commission.”\textsuperscript{481} Though the NCA may terminate an authorization in the face of immediate harm, an appeal from this termination lies with the NMC.\textsuperscript{482} In addition to this quasi-appellate authority, the NMC is tasked with implementing broadcasting standards and regulations. It is empowered to enforce these standards by appropriate sanctions issued by a special committee established in the proposal (the Broadcasting Standards and Complaint Committee).\textsuperscript{483} Finally, the proposal mandates that a National Frequency Plan be established by the NMC and NCA within six months of the Bill’s passage that includes the number of available frequencies and plans for their distribution.\textsuperscript{484}

The proposal also requires the NMC to develop a policy on how frequency authorizations will be made, and to make that policy and its accompanying procedures publicly available.\textsuperscript{485} Applicants who meet the listed criteria are to be granted an authorization, assuming that frequencies are available.\textsuperscript{486} However, the proposal also creates several restrictions on ownership and control. No person may be awarded more than three radio frequencies and one television frequency/channel;\textsuperscript{487} a foreign person cannot be awarded a frequency, indirectly or directly control one, or have a majority

\begin{footnotes}
\item[480] \textit{Id.}
\item[481] \textit{Id.} at 28.
\item[482] \textit{Id.} at 29.
\item[483] \textit{Id.} at 27, 44. Paragraph 44 lays out a detailed list of reasons for sanctions and the type of sanctions that can and should accompany violations.
\item[484] \textit{Id.} at 30.
\item[485] \textit{Id.} at 36.
\item[486] \textit{Id.}
\item[487] \textit{Id.} at 37(1).
\end{footnotes}
financial interest in a broadcaster;\textsuperscript{488} and no political party, public official, district assembly, or religious body can be awarded a frequency.\textsuperscript{489}

\textit{b. Evaluating the Proposal}

The 2007 proposal answers many of the questions confronting the broadcasting sector. For example, the proposal incorporates mechanisms to ensure adequate programming in the local languages;\textsuperscript{490} addresses inequalities across the country by prescribing greater radio coverage;\textsuperscript{491} recognizes the nature of frequencies as a public good and plans for their equitable distribution;\textsuperscript{492} provides a clear framework for the interaction of the NMC and the NCA;\textsuperscript{493} empowers the NMC to establish guidelines for professional quality and the disciplinary tools to implement the guideline;\textsuperscript{494} limits the extent of media consolidation through a cap on the ownership of frequencies;\textsuperscript{495} and prohibits foreign ownership, control, and investment that would undermine Ghanaian independence and identity.\textsuperscript{496}

Though the proposal addresses most of the obstacles identified in this Report, it does not adequately resolve all of them. For instance, some critics fault the bill for failing to take into account changing technological advances, a major element in effective and efficient regulation moving forward. In particular, as articulated by the NMC Executive Secretary George Sarpong, “[w]hile the world is going convergence, the bill proposes

\textsuperscript{488} Id. at 38(3).
\textsuperscript{489} Id. at 38(5)–(6).
\textsuperscript{490} Id. at 11, 19.
\textsuperscript{491} Id. at 14, 16.
\textsuperscript{492} Id. at 1(4).
\textsuperscript{493} Id. at 27–28.
\textsuperscript{494} Id. at 27, 44.
\textsuperscript{495} Id. at 37(1).
\textsuperscript{496} Id. at 38(3).
Technological changes stemming from digitization require a convergence of broadcasting regulation. The allocation and regulation of broadcasting should not be distributed individually to one agency while authority over other frequencies is distributed to another agency. Nor should technical aspects be necessarily separated from granting an authorization in the first place. Progress in digital technology necessitates that one agency—like the Federal Communications Authority in the United States—regulate all communication media. The Bill heavily favors the NMC as the regulatory body in charge, but leaves much of the technical work to the NCA. So long as the NMC is legally empowered to issue sanctions for violations of broadcasting standards, the ownership and control of the frequencies need not be in its hands. More to the point, the proposal isolates particular broadcasting media, such as television and radio, and develops an independent regulatory framework for these media without integrating them into the whole telecommunications sector.

Additionally, other issues that are important in the midst of rapid technological change are unaddressed. The proposal is silent on important issues between transmission companies and content producers. This is an undeniably important component of broadcasting regulation in the digital era. Yet there is no mention of questions concerning the relationship between transmission companies and content producers, including the nature of their legal relationship, limits (if any) on transmission companies’ ability to screen content, and where liability for objectionable content lies. This is one more issue that needs to be addressed.

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497 Interview with George Sarpong, supra note 241.
498 Id.
499 Id. (recounting the problems with censorship by large transmission companies and the power imbalance between these companies and smaller content producers).
reason to think that the proposal lags behind technological progress and the changing landscape of broadcasting.

Finally, the proposal’s particular segmentation of the broadcasting sector may turn out to be problematic. The public service and commercial sectors are clear enough, but the stringent requirements and narrow definition of community broadcasting threaten to leave out an entire swath of broadcasters: ordinary non-profit broadcasters that may not exclusively serve marginalized communities, or, even if they do serve these communities, may not originate from them. There is no role in the proposal for non-commercially owned and operated private broadcasters that serve a broader audience or purpose than community broadcasters narrowly defined. While the narrow definition of community broadcasters serves a noteworthy goal, other kinds of privately owned public interest broadcasting ought to be cultivated as well.

Table 4. Obstacles and Solutions in the Broadcast Bill

<table>
<thead>
<tr>
<th>Obstacles Identified</th>
<th>Addressed?</th>
<th>If so, how?</th>
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<tbody>
<tr>
<td>Inequalities across the country</td>
<td>Yes</td>
<td>The proposal mandates that community broadcasters produce shows in the local languages, encourages public interest broadcasters to do so, and requires commercial broadcasters to comprehensively cover their authorized access areas</td>
</tr>
<tr>
<td>Lack of a clear policy framework</td>
<td>Yes</td>
<td>The proposal gives ownership and control of frequencies to the NMC and empowers the NMC to authorize and revoke frequencies</td>
</tr>
<tr>
<td>Inequitable frequency allocation</td>
<td>Partially</td>
<td>The proposal identifies equitable distribution as a principle guiding frequency allocation, but does not specify how equitable distribution is to be determined</td>
</tr>
<tr>
<td>Structural Obstacles</td>
<td>Partially</td>
<td>The proposal is designed to limit media consolidation and foreign ownership, but does incorporate changing technological developments into its regulatory scheme</td>
</tr>
<tr>
<td>Extra-Legal Cultural Obstacles</td>
<td>No</td>
<td>---</td>
</tr>
</tbody>
</table>
VI. Conclusion

Over the last six decades, broadcast and print media have played an important role in Ghana’s democratic development. Like the colonial rulers that preceded them, post-independence leaders such as Kwame Nkrumah and John Rawlings recognized the power of open access to information and a free press. Viewing information as a government-controlled tool for development, they stifled independent media outlets and maintained strict control over the state-owned press. The drafting of the 1992 Constitution and the dawn of the fourth republic ushered in a new age of freedom and democracy. The right to information, free speech, and a free media was enshrined in Article 21, and the criminal libel law was eventually abolished. Journalists no longer had to labor under intense fear and intimidation, citizens could more freely criticize their government.

Today, Ghana can claim enormous successes, but also faces a new set of challenges. No longer is direct suppression of speech widespread. And yet not all Ghanaians can take advantage of the rights to hear and be heard. Overcoming this new set of obstacles will require affirmative actions by the Ghanaian government. Two pieces of legislation in particular—the Right to Information Bill and the Broadcasting Bill—can serve as cornerstones for this next stage of development. The goal of this Report is to bring together the wisdom and insights of a wide range of Ghanaian stakeholders in an effort to help lay that foundation.
Appendix I: Schedule and Meeting List

Monday, March 11
- The Media Foundation for West Africa
  - Mr. Kwame Karikari, Director
- Ghana Independent Broadcasters Association
  - Mr. Gerald Ankrah, Executive Secretary
- Ghana Journalists Association
  - Mr. Bright Blewu, President
- Ghana Community Radio Network
  - Ms. Wilna Quarmyne, Co-Founder

Tuesday, March 12
- Daily Graphic
  - Mr. Yaw Boadu-Ayeboafoh, General Manager of Newspapers
  - Mr. Emmanuel Agyei Atha, Public Affairs Coordinator
- Ghana Broadcasting Company (GBC)
  - Mr. K. Monney, Director of Radio
- Daily Guide
  - Mr. Freddie Blay, Chairman, Daily Guide
  - Ms. Gina Ama Blay, C.E.O. of the Western Publications, Ltd.
  - Other Editors and Reporters of Daily Guide

Wednesday, March 13
- University of Ghana
  - Dr. Margaret Amoakohene, Director, School of Communications
  - Ms. Audrey Gadzekpo, Senior Lecturer, School of Communications
- GIMPA Law School
  - Mr. Ernest Abotsi, Dean and Professor of Law
  - Kwaku Agyeman Budu, Lecturer of Law

Thursday, March 14
- Parliament
  - The Honorable Mr. E. Kwasi Bandua, MP, Biakoye, Volta Region
  - The Honorable Mr. Alhassan Mumuni, MP, Slaga North, Northern Region
  - Mr. Ebenezer Djetror, Principal Assistant Clerk to Parliament
- National Media Commission
  - Mr. George Sarpong, Executive Secretary

Friday, March 15
- Ghana Bar Association
  - Mr. Nene Amegatcher, President
- Ghana School of Law
  - Administrative Officials and Faculty
Saturday, March 16

- Radio Ada
  - Mr. Isaac Djagbletey, Station Coordinator
- Dogo
  - Assemblyman and Village Elders
Appendix II: Works Consulted


23. Broadcast Bill (2007) (Ghana)


28. Criminal Offenses Act, § 208, Act 29 (1960)


43. Audrey Gadzekpo, *Street News: The Role of Posters in Democratic Participation in Ghana*, in POPULAR MEDIA, DEMOCRACY, AND DEVELOPMENT IN AFRICA 105–22 (Herman Wasserman, ed. 2011)


45. GHANA JOURNALISTS ASSOCIATION, STATE OF THE MEDIA IN GHANA (Friedrich Ebert Stiftung, ed. 1994)


47. Ghana Public Records and Archives Administration Act, Act 535 (1997)


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64. Steven E. Hendrix, Myths of Property Rights, 12 ARIZ. J. INT’L & COMP. LAW 183 (1995)
66. INDEPENDENT BROADCASTING IN GHANA: IMPLEMENTATION AND CHALLENGES 1–14 (Kwame Karikari, ed. 1994)
68. Yusuf Kalyango, Jr., Media and the Political Economy of Development, in AFRICAN MEDIA AND DEMOCRATIZATION: PUBLIC OPINION, OWNERSHIP, AND RULE OF LAW 185–205 (2011); Conclusion and Prospects, id. at 207–24
70. KWAME KARIKARI, FREEDOM FORUM, PRESS, POWER & POLITICS: GHANA (2000)
73. FRANZ KRUEGER, MEDIA COURTS OF HONOUR: SELF-REGULATORY COUNCILS IN SOUTHERN AFRICA AND ELSEWHERE (2009)
74. Letter from James Madison to W.T. Barry (August 4, 1822), in THE WRITINGS OF JAMES MADISON 103 (Gaillard Hunt ed. 1910)
75. LIBRARY OF CONGRESS, GHANA: A COUNTRY STUDY (1994)
76. ITAIMADAMOMBE, UNITED NATIONS DEP’T PUB. INFORMATION, COMMUNITY RADIO: A VOICE FOR THE POOR (2005)
81. Patrick D. Murphy, Media and Democracy in the Age of Globalization, in NEGOTIATING DEMOCRACY: MEDIA TRANSFORMATIONS IN EMERGING DEMOCRACIES 1–9 (Isaac A. Blankson & Patrick D. Murphy, eds. 2007)
82. NATIONAL ASSEMBLY OF FRANCE, DECLARATION OF THE RIGHTS OF MAN art. 11 (1789), available at http://avalon.law.yale.edu/18th_century/rightsof.asp
87. Joe Brandford Nylnah, Democracy and the Journalist’s Role, in State of the Media in Ghana 40 (Freidrich Ebert Stiftung, ed. 1994)
89. Maxwell Opoku-Agyemang, Constitutional Law and History of Ghana (2009)
91. HM Osagyefo Amoatia Ofori Panyin (the Okyehene), IEA Ghana, Con’l Rev. Series No. 9, Chiefs and Traditional Authorities and Their Role in the Democratic Order of Governance (2010)
96. Proposals for a Broadcasting Act (2007) (Ghana)
104. Right to Information Bill (2010) (Ghana)


120. UNITED NATIONS, CONVENTION AGAINST CORRUPTION (2003)
121. UNITED NATIONS, CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS (2001)
122. UNITED NATIONS, INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS (1966)
123. UNITED NATIONS, RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT (1992)
124. UNITED NATIONS, UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)
127. UNITED NATIONS EDUCATION, SCIENTIFIC & CULTURAL ORGANIZATION, COMMUNITY RADIO HANDBOOK (2001)

127. United Nations General Assembly Resolution 59(I) (1946)


## Appendix III: Comparison of Right to Information Statutes

<table>
<thead>
<tr>
<th>Date of enacting legislation</th>
<th>South Africa</th>
<th>Zimbabwe</th>
<th>United Kingdom</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2001</td>
<td>2002</td>
<td>2000</td>
<td>2005</td>
</tr>
</tbody>
</table>

### Coverage
- **South Africa**: Government bodies and private bodies where information is necessary for the exercise or protection of individual rights.
- **Zimbabwe**: Government bodies and Members of the media must be registered with the government to access information.
- **United Kingdom**: Over 10,000 public bodies.
- **India**: Government bodies at national, state, and local level and private bodies substantially funded by the government.

### Exemptions
- **South Africa**: 11 subject-based categories, All exemptions subject to public interest override.
- **Zimbabwe**: 8 subject-based categories, Press can be prosecuted for “abuse of free expression”.
- **United Kingdom**: 3 categories based on scope of exemption: Absolute, qualified, and limited exemption.
- **India**: 14 subject-based categories, All exemptions subject to public interest override.

### Fees?
- **South Africa**: Yes.
- **Zimbabwe**: Yes.
- **United Kingdom**: No fee if production cost is less than £600 for central government body and £450 for local government body.
- **India**: Yes.

### Time frame
- **South Africa**: Government agency must respond in 30 days.
- **Zimbabwe**: Government agency must respond in 30 days.
- **United Kingdom**: Public body must respond within 20 days.
- **India**: Public body must respond within 30 days.

### Appeals
- **South Africa**: First review: Cabinet minister, Appeal: Court system.
- **Zimbabwe**: First review: Government body, Appeal: Media and Information Commissioner, Second appeal: Administrative court.
- **United Kingdom**: First review: Public body, Appeal: Information Commissioner, Second appeal: Information Tribunal, Third Appeal: High Court of Justice.
- **India**: First review: Public body, Appeal: Senior public interest officer (additional internal review), Second appeal: Information Commissioner, Third Appeal: High Court of Justice.

### Enforcement
- **South Africa**: South African Human Rights Commission.
- **Zimbabwe**: Media and Information Commission.
- **United Kingdom**: Information Commissioner.
- **India**: Information Commission.

### Miscellaneous
- **South Africa**: Criminal fines for those who destroy records, Government bodies must publish access guides providing contact information.
- **Zimbabwe**: Widely criticized as an instrument of speech suppression and media control, Almost no citizen right of access in practice.
- **United Kingdom**: Some categories of information automatically released, All public bodies have access guides providing contact information.
- **India**: Fines for refusing, obstructing, or delaying access to requested information, Highly decentralized; states have most power.

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500 See generally Banisar, supra note 162.