

CHAPTER 4

SAFEGUARDING ONLINE FREEDOM OF SPEECH IN GHANA IN AN ELECTION YEAR: THE ROLE OF GOVERNMENT

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Abstract

The 1992 Constitution of Ghana guarantees all persons in Ghana the right to freely express themselves on any issue including political issues. This right is however subject to such qualifications and laws as are necessary in a free and democratic society and are consistent with the Constitution. Social media and other online platforms are some of the means by which the people of Ghana exercise their right to freedom of expression and speech. Against this background, this chapter discusses whether any person, entity or organisation has the right to block or ban the use of social media in an election period or any other time. The chapter argues that having been granted the right to freedom of expression which includes the right to participate in political activities, everybody in Ghana can express an opinion on any issue either through the traditional or electronic media. The chapter further proposes that working within the law, any abuse of the use of social media can be prevented or remedied. Besides, there are technological measures that the security agencies in Ghana can deploy to avert any online abuses. Therefore, banning or preventing access to social media for whatever reason without recourse to legal processes is unconstitutional. The chapter finally proffers recommendations on how online activities can be legally sanitised.

1 Introduction

The 1992 Constitution of Ghana guarantees all persons in Ghana the right to freedom of speech and expression subject to such qualification and laws as are necessary in a free and democratic society and are consistent with the Constitution. This right is exercised, among others, through the traditional media as well as electronic media with its attendant social media platforms. The twenty-first century has been touted as ‘information age’¹ and with the help of information communication technology devices, internet usage is on the rise across the globe. Ghana is alive and active in this information communication technology era. For instance, in

1 Information age is the ‘era in which the retrieval, management, and transmission of information, especially by using computer technology, is a principal (commercial) activity’ <http://www.oxforddictionaries.com/definition/english/information-age> (accessed 30 May 2016).

November 2015, 2,900,000 people out of a population 26,327,649 had subscribed to Facebook accounts.² The use of the internet and social media has revolutionised communication in recent times. The internet and other electronic communication devices are said to have substantially changed communication practices around the world, as a result of which a lot of people do not rely on the traditional mass media intermediaries³ for communication. This shows that electronic platforms are becoming preferable means of communication in this technological era.

Twitter, an online social networking site which was invented in 2006, enables its users to send and read text-based messages of up to two hundred and eighty characters, known as 'tweets'. As of 2012, it reportedly had over five hundred million active users.⁴ Twitter users include presidents, prime ministers and the Pope.⁵ Also, political campaigns, commercial advertisements, and friendly chats take place through the use of social media. Social media, like other technological developments, is a recent invention. It post-dates major international, regional and national laws and legal instruments that guarantee freedom of speech and expression both online and offline. Examples of these laws and legal instruments are discussed in the subsequent paragraphs.

1.1 Universality of the right to freedom of speech and expression

The Constitution of the United States of America, since the 18th century, barred the Congress from making laws '... abridging the freedom of speech, or of the press ...'⁶ In 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) of which Ghana is a signatory, it guaranteed the right to freedom of expression through *any media* and *regardless of frontiers*.⁷ In relation to article 19 of the UDHR, the Human Rights Council of the United Nations passed a non-binding resolution in June 2016 that aims at the promotion,

2 <http://www.internetworldstats.com/africa.htm#gh> (accessed 30 May 2016).

3 Human Rights Committee, General Comment 34 'Freedoms of opinion and expression' CCPR/ C/GC/34 (GC 34) 12 September 2011 at para 15.

4 L. Dugan 'Twitter to surpass 500 million registered users on Wednesday' <http://www.adweek.com/socialtimes/500-million-registered-users/460326?red=at> (accessed 15 September 2016).

5 DT McGoldrick 'Limits of freedom of expression on Facebook and social networking sites: A UK perspective (2013) 13 *Human Rights Law Review* 125 126.

6 Constitution of the United States of America 1787 Amendment 1 (also known as the First Amendment).

7 Universal Declaration of Human Rights 1948, art 19; International Convention on Civil and Political Rights (ICCPR) 1966, art 19.

protection and enjoyment of human rights on the Internet.⁸ This resolution was passed because, *inter alia*, more people around the world use the internet as an essential means of communication and that there exists human right violations and abuses on the internet. The Council, by the same resolution, admonished member states to take steps to prevent the disruption of access to the internet as well as other human rights violations over the internet.⁹ Consequently, member states were required to ensure that ‘... the same rights that people have offline must also be protected online, in particular freedom of expression, ... regardless of frontiers and through any media of one’s choice ...’¹⁰ and in terms of article 19 of the UDHR.

The European Convention on Human Rights (ECHR) also guarantees freedom of speech and expression regardless of frontier. It prohibits interference of the right to freedom of speech by public authorities.¹¹ The Foreign Affairs Council of the European Union has also adopted the European Union Human Rights Guidelines on Freedom of Expression Online and Offline.¹² The Council recognised that the use of the internet and other digital technologies has broadened the means by which individuals exercise their right to freedom of speech. Consequently, European Union member states are required to respect and protect freedom of speech online as well as offline. The Council, in the Guidelines, condemned any restriction on freedom of expression and censorship, both online and offline, in violation of international human rights law.¹³

The above instruments establish that the jurisprudence of international and regional human rights organisations is that online freedom of speech and expression should not be different from similar rights that are enjoyed offline. Within the African context, the African Charter on Human and Peoples’ Rights (ACHPR) provides that ‘[e]very individual shall have the right to receive information’¹⁴ and that ‘[e]very individual shall have the

8 Human Rights Council ‘The promotion, protection and enjoyment of human rights on the Internet’, A/HRC/32/L.20, 27 June 2016 https://www.article19.org/data/files/Internet_Statement_Adopted.pdf (accessed 15 November 2016). The Council noted: ‘that the exercise of human rights, in particular the right to freedom of expression, on the Internet is an issue of increasing interest and importance as the rapid pace of technological development enables individuals all over the world to use new information and communication technologies’; and upon becoming concerned about ‘all human rights violations and abuses committed against persons for exercising their human rights and fundamental freedoms on the Internet, and by the impunity for these violations and abuses.’

9 As above.

10 As above.

11 European Convention on Human Rights 1953, art 10(1).

12 EU Human Rights Guidelines on Freedom of Expression Online and Offline adopted at the Foreign Affairs Council Meeting in Brussels on 12 May 2014 https://eeas.europa.eu/delegations/documents/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf (accessed 15 November 2016).

13 Human Rights Council (n 8 above).

14 African Charter on Human and Peoples’ Rights (ACHPR) 2005 (also known as the Banjul Charter), art 9(1).

right to express and disseminate his opinions within the law.¹⁵ Expanding the scope of the right to freedom of expression and access to information in the ACHPR to online activities, the African Commission on Human and Peoples' Rights (ACHPR)¹⁶ in 2002 adopted the African Declaration on Internet Rights and Freedoms. This Declaration became imperative because of the intermittent denial of access to and use of the internet which was considered a violation of the right to freedom of speech.¹⁷ The Commission stated that a ban or denial of access to online platforms is a breach of the responsibility of States to respect, protect and fulfil human rights of all people.¹⁸ In line with its international obligations under the UNDHR and the ACHPR, Ghana has enacted provisions on freedom of expression in its Constitution. These are discussed in the subsequent paragraphs.

1.2 Freedom of speech and expression in Ghana

The 1992 Constitution of Ghana guarantees that all persons shall have the right to freedom of speech and expression.¹⁹ This right includes freedom of the press and other media.²⁰ These rights are only 'subject to such qualifications and laws as are necessary in a democratic society.'²¹ Additionally, every person in Ghana has the right to form or join any political party and also to participate in political activities.²² Consequently, everybody in Ghana is free to comment and express an opinion on political or apolitical issue through any media platform. A restriction on these rights will be valid if it is done in accordance with the relevant laws of the democratic state of Ghana.

2 Abuse of the right to freedom of speech and expression online

Online freedom of expression though very fundamental in the lives of individuals, it has its own excesses. Although 'freedom of speech should

15 ACHPR, art 9(2).

16 FP Tlakula 'Turning freedom of expression resolutions into reality' <http://www.dw.com/en/turning-freedom-of-expression-resolutions-into-reality/a-19198783> (accessed 16 November 2016).

17 African Declaration on Internet Rights and Freedoms http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Events/netconference_march2015_submissions/reference_from_africaninternetrighs_org.pdf (accessed 16 November 2016).

18 As above.

19 Constitution of Ghana 1992, art 21(1)(a).

20 Constitution of Ghana 1992, art 21(1)(f).

21 Constitution of Ghana 1992, art 21(1)(a) and (f).

22 African Declaration on Internet Rights and Freedoms (n 18 above), art 21(3).

never mean freedom to abuse,²³ some individuals abuse their right to freedom of speech online as though they were within a law-free zone in Cyberspace.²⁴ Social media played a significant part in the Arab Spring that led to the spread of democratic revolutions in the Arab World.²⁵ Social media messaging was also used to organise the riots and disturbances that took place in London and other cities in August 2011.²⁶ The then Home Secretary of Britain told the Home Affairs Committee of the United Kingdom House of Commons that investigated the riots that social media networking sites were used to 'coordinate criminality and stay one step ahead of the police.'²⁷

The nature and speed of growth of the internet and social media have not made the law keep up with regulation.²⁸ Consequently, some countries adopt measures that prevent their citizens from accessing certain online contents at certain times. Some of these measures include preventing access to specific websites, Internet Protocol (IP) addresses, domain name extensions, the taking down of websites from the web server or using filtering technologies to exclude pages containing some keywords or other specific content from appearing²⁹ on internet pages. These measures are adopted if the authorities in those countries are of the view that the online contents are not in the best interest of their political agenda. Some African countries that have gained notoriety in either banning or interfering with social media or the internet generally include Uganda, Congo Brazzaville and Chad.³⁰

2.1 Expression of intent to block or banning social media in Ghana on Election Day

In the run up to the 2016 presidential and parliamentary elections in Ghana, the then Inspector General (IGP) of the Ghana Police Service Mr John Kudalor in an interview with a broadcasting house in Ghana on May 26, 2016 said:

At one stage I was even saying that if it becomes critical, on the eve and [on] the election day we shall block all social media as other countries have done

23 D Jackson 'Freedom of speech should never mean freedom to abuse. As a victim, I welcome plans to unmask cowardly internet trolls' <http://www.dailymail.co.uk/debate/article-2158120/Freedom-speech-mean-freedom-abuse-As-victim-I-welcome-plans-unmask-cowardly-internet-trolls.html> (accessed 31 May 2016).

24 McGoldrick (n 5 above) 130.

25 McGoldrick (n 5 above) 130.

26 House of Commons Home Affairs Committee 'Policing large scale disorder: Lessons from the disturbances of August 2011' 27-30. <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/1456/1456i.pdf> (accessed 15 August 2016).

27 As above.

28 McGoldrick (n 5 above)

29 McGoldrick (n 5 above) 1.

30 BBC News 'How African governments block social media' <http://www.bbc.com/news/world-africa-36024501> (accessed 17 August 2016).

... If people are churning out the type of information which are quite false then why not? The security of this nation is paramount.³¹

As the former IGP said, other countries, including some African countries ban or block access to the internet or social media on Election Day. For instance, Uganda shut down social media on its election day on 19 February 2016. On that day, voters woke up to realise that access to their social media platforms had been cut; President Yoweri Museveni defended the ban as a security aimed at averting the spread of lies that can incite violence and illegal declaration of election results.³²

Fortunately in Ghana, there was no ban on access to the internet or social media prior to, during and after the 2016 parliamentary and presidential elections because social media ban is alien to Ghana. As beacon of democracy and rule of law in Africa, fundamental human rights and freedoms form the bedrock of Ghana. In the face of these rights and freedoms this chapter submits that without recourse to the relevant laws of Ghana no person, authority or organisation has the power to ban access to and use of social media in Ghana for any purpose.

2.2 Whether or not any person, authority or the Inspector General of Police has the power to block or ban access to and use of social media

Freedom of expression and speech, just like any other right, are not inherently absolute. As indicated earlier, the constitutionally guaranteed rights and freedoms in Ghana are subject to the prevailing laws of Ghana. This means that access to and use of social media can be banned or blocked only when the person or authority that intends to implement the ban establishes that the ban is in accordance with the laws of Ghana. It must also be established that the ban is in line with the fundamental principles of Ghana as a democratic state and its international obligations.

This chapter submits further that within the context of the prevailing laws of Ghana, online freedom of speech and expression can be blocked or banned only by an order of a court of competent jurisdiction. No person or authority can *suo motu* do that. This is because the Constitution of Ghana requires the three arms of government, all other governmental agencies and all persons to respect the fundamental human rights and freedoms enshrined in the Constitution.³³ These rights and freedoms are enforceable

31 Myjoyonline 'IGP considers blocking social media on election day' <http://www.myjoyonline.com/news/2016/May-26th/igp-considers-blocking-social-media-on-election-day.php> (accessed 16 August 2016).

32 B Duggan 'Uganda shuts down social media; candidates arrested on election day' <http://edition.cnn.com/2016/02/18/world/uganda-election-social-media-shutdown/index.html> (accessed 16 August 2016).

33 1992 Constitution of Ghana (n 19 above), art 12(1).

by the Supreme Court³⁴ or the High Court.³⁵ Consequently, it is one of these courts that have the power to take away the rights and freedoms from the people of Ghana. If any person or entity attempts to exercise this exclusive judicial power, he or she will be undermining the Constitution because judicial power of Ghana is vested in the Judiciary.³⁶

It is instructive to point out that the 1992 Constitution, the Police Service Act,³⁷ the Police Service Regulations³⁸ and the Electronic Communications Act³⁹ do not authorise an IGP, the Ghana Police Service or any other person or entity to block or ban access to and use of social media. If there were any such provision in any of these enactments, apart from the Constitution, that provision would be unconstitutional. Guided by the above principles, well-meaning Ghanaians, civil society groups and other international organisations that believe in the principles of rule of law and fundamental human rights openly opposed the IGP's expression of intent to block or ban social media. Some of their views are highlighted below.

2.3 Aversion for the blocking or banning of social media

Dr Ibn Chambers, the Special Representative of the United Nations Secretary General for West Africa and the Sahel, acknowledged that social media is for both good and bad. He however warned that a total ban would obviously not be something that the [United Nations] would encourage as that will amount to restricting the democratic space [and it] will restrict freedom of expression.⁴⁰ Dr Chambers' view resonate the international obligation on Ghana under the UDHR. To this end, the UN cannot sanction a manifest breach of the right to freedom of speech and expression.

Kofi Annan, a former Secretary General of the United Nations advised that banning or blocking access to social media is an exercise in futility because irrespective of the nature of the ban, people are able to circumvent the ban and access the internet and social media through other means.⁴¹ As subsequent discussions in this paper will show, technology has made it possible for internet users to circumvent online blockades. Therefore,

34 Constitution of Ghana (as above), art 130(1).

35 Constitution of Ghana (as above), art 140(1).

36 Constitution of Ghana, 1992 art 125(3).

37 Police Service Act, Act 350 of 1970.

38 Police Service Regulation of Ghana, Constitutional Instrument 76 of 2012.

39 Electronic Transactions Act of Ghana Act, Act 772 of 2008.

40 D Adogla-Bessa 'UN against social media ban on election day' <http://citifmonline.com/2016/06/18/un-against-social-media-ban-on-election-day-ibn-chambas/#sthash.PHKXZcce.dpuf> (accessed 16 August 2016).

41 GA Allotey 'Social media ban not worth it-Kofi Annan' <http://citifmonline.com/2016/06/24/social-media-ban-not-worth-it-kofi-annan/#sthash.vtshju6r.dpuf> (accessed 16 August 2016).

blocking online access is not always wholly effective; it does not worth the effort.

Likimani, a media and democracy activist, called on the government of Ghana and the police to be circumspect in their desire to streamline what happens on social media. Likimani recounted the democratic credentials of Ghana and further advised that the ban on social media will be an affront to the democratic principles of Ghana beyond trampling on the fundamental rights and freedoms of the people of Ghana. Likimani admonished Ghana not to subscribe to heavy-handed repressive tactics otherwise it will not be a democratic country. What Ghana needs is education of the citizens.⁴² She added that heavy-handed repressive tactics are not a democratic best practice and it does not suit the [democratic] path of [Ghana].⁴³ The opinions of Likimani are in tandem with the substratum of this paper. As a democratic country, Ghana has to adopt democratic best practices worthy of emulation internationally; online blockade is not a best practice.

The Police, other security agencies and Ghanaians owe a civic and legal duty to ensure peace and stability in the country. This duty is irrespective of whether or not there are elections. However, blocking or banning access to the internet or social media without recourse to laid down legal procedures is a short-sighted and overly simplified way of addressing a matrix of techno-legal, politico-legal and socio-legal challenges. This is because websites⁴⁴ are stored on servers that have internet protocol addresses.⁴⁵ The government can compel internet service providers and telecommunication companies to block access to a specific Internet Protocol address. Smartphone apps, like WhatsApp, will try to connect to its own server and they will not be able to if the internet service provider blocks connections. So it is fairly easy to pinpoint a specific site or app and block access.⁴⁶ This rather easy step can have awful constitutional and legal consequences.

42 M Ansah, <http://citifmonline.com/2016/05/27/social-media-ban-affront-to-1992-constitution-activist/#sthash.pX6Cgv6z.dpuf> (accessed 16 August 2016).

43 Ansah (as above).

44 A set of interconnected webpages, usually including a homepage, generally located on the same server, and prepared and maintained as a collection of information by a person, group, or organisation <http://www.thefreedictionary.com/website> (accessed 17 August 2016).

45 An Internet Protocol address (IP address) means 'the number identifying the point of connection of a computer or other device to the internet.' Sec 144 of the Electronic Transactions Act (n 25 above).

46 BBC News (n 30 above)

3 Consequences of banning online freedom of speech

Banning or blocking access to the internet or social media will amount to a breach of the inviolable right to freedom of speech that has been constitutionally guaranteed. The 1992 Constitution of Ghana embodies the soul, spirit and life of Ghana and it vests insurmountable power and authority in the people of Ghana. Article 1 of the Constitution provides: 'The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised in the manner and within the limits laid down in this Constitution.'⁴⁷ This is the bedrock of constitutionalism, democracy and rule of law in Ghana. No person in Ghana wields an isolated power that is superior, or even equal, to the collective sovereign will of the people of Ghana.

It follows therefore that no person or authority has a right to torpedo the fundamental right of the people of Ghana to express themselves either online or offline. The reality of today's world is that social media is a way by which people communicate.⁴⁸ Therefore, any attempt to block or ban access to and use of social media will be an unconstitutional denial of the right to freedom of speech and expression. The Constitutional Court of Turkey declared the blocking of social media as 'illegal, arbitrary and a serious restriction on the right to obtain information.'⁴⁹ If Ghana believes in constitutional supremacy, constitutionalism, rule of law and the protection of fundamental human rights, then it stands to reason that the Supreme Court of Ghana will not endorse an arbitrary ban on access to and use of the internet or social media.

The second consequence of online ban is that it will destroy the central pillars of the 1992 Constitution. The people of Ghana adopted, enacted and gave the 1992 Constitution to themselves based on some inviolable principles that are outlined in the preamble to the 1992 Constitution. Among others, the people of Ghana adopted the Constitution based on:

The Principle that all powers of Government spring from the Sovereign Will of the People; The Principle of Universal Adult Suffrage; Rule of Law; The protection and preservation of Fundamental Human Rights and Freedoms, Unity and Stability for our Nation.⁵⁰

47 Constitution of Ghana 1992, art 1(1).

48 *New York v Harris*, 2012 N.Y. Misc. LEXIS 1871 *3, note 3 (Crim. Ct. City of N.Y., N.Y. County, 2012).

49 C Yeginsu 'Turkey lifts twitter ban after court calls it illegal' https://www.nytimes.com/2014/04/04/world/middleeast/turkey-lifts-ban-on-twitter.html?_r=0 (accessed 9 June 2017).

50 Preamble to the 1992 Constitution of Ghana.

Judging from these foundational principles and the constitutional provisions discussed above, it will be an obvious unconstitutionality if without recourse to law, online freedom of speech and expression is blocked.

Thirdly, banning access to social media or the internet will be tantamount to trampling upon press freedom. The 1992 Constitution of Ghana guarantees media freedom and independence⁵¹ and also forbids media censorship.⁵² The internet and social media have become indispensable tools of journalism in the twenty-first century. Commenting on the IGP's threat to ban social media, Dave Agbanu, the General Secretary of the Ghana Journalists Association pointed out that because social media has become a tool for journalism, shutting it down could lead to blackout on news and information flow.⁵³ According to the Amnesty International, shutting down communication networks is a clear and unjustified attack on media freedom.⁵⁴ As has been discussed earlier, media freedom and independence are pivotal within the democratic structure of Ghana. Therefore, the merely likelihood of causing media blackout and also violating media freedom should be enough disincentives to banning access to online communication.

Fourthly, a ban on social media will cast an indelible slur on the hard-won reputation of Ghana as the bastion of democracy, good governance and rule of law. There is no available information that a country in West Africa has sanctioned social media blackout on an election day. Ghana cannot afford to ignite such an unconstitutional flame. Ghana should emulate countries like Nigeria, United States of America, Great Britain and Canada. in its democratic development. Ghana should not follow the infamous examples of governments that block 'social media during elections – most recently in Congo-Brazzaville, Chad and Uganda.'⁵⁵ Rather, Ghana should develop stronger institutions and leaders who can stand up to modern technological challenges and solve them in accordance with law.

Additionally, online blackout will lead to contractual breaches and economic losses. This is because; series of commercial activities take place over the internet. For instance, internet service providers and other online service providers pay huge fees before they are licensed to operate in Ghana. They pay these fees with the hope that barring any *force majeure* people will use their services at a fee and they will make profit. Also, businesses pay money to online content providers in order to advertise

51 Constitution of Ghana (n 19 above), art 162(1).

52 As above, art 162(2).

53 Adogla-Bessa (n 33 above).

54 Amnesty International 'Restraint in Congo Brazzaville needed as protesters clash with security forces' <http://www.amnestyusa.org/news/press-releases/restraint-in-congo-brazzaville-needed-as-protesters-clash-with-security-forces> (accessed 17 August 2016).

55 BBC News (n 30 above).

their goods and services on social media and other online platforms. This implies that banning social media even for a minute will cause financial loss to many online businesses. So if there is a ban on the use of, and access to, social media and the ban is declared as unconstitutional, Ghana will most likely be saddled with huge judgment debts. This makes the whole idea of social media ban unprofitable.

Finally, a ban on online communications may result in clashes and fight backs. Despite the good intentions of the IGP about banning social media, it is instructive to point out that the reactions of people whose basic rights to freedom of speech and communication have been taken away have not always been pleasant. For instance, when Congo-Brazzaville banned social media in October 2015, it led to civil unrests that resulted in the death of five people and several others got injured.⁵⁶ It will therefore serve no useful purpose if law enforcement agencies undertake actions that have the potential of jeopardising the security and safety of the country.

In order to avert the ills associated with the banning of social media that the following recommendations on how to sanitise online activities in Ghana are being made.

4 Social media and elections in a free and democratic Ghana: The way forward

The internet and social media are recent creations but they have come to stay. To make the internet and social media more useful in Ghana, the government should educate the citizenry on how to be responsible online. Information and communication technology is a course that is taught at the first, second and third cycle schools in Ghana. Through teaching and learning, the dangers of abusive use of the internet and social media can be curtailed. Modules on ethical use of the computer and internet should be incorporated into this course. This will equip the youth with the relevant knowledge on the need to be responsible both online and offline. Security agencies can use social media to their advantage because most governmental institutions have social media accounts. These platforms can be used to enlighten people on positive uses of the internet. Taking advantage of online platform, the Electoral Commission of Ghana for instance, developed a mobile app that gave real-time elections results during the 2016 presidential and parliamentary elections.⁵⁷ Likewise, security agencies can develop apps and other software to give information on the proper and efficient use of the internet.

56 France 24 'Deadly clashes in Congo Brazzaville as protesters defy crackdown' <http://www.france24.com/en/20151021-dead-unrest-congo-brazzaville-protesters-defy-crackdown-sassou-nguesso> (accessed 17 August 2016).

57 NewsGhana 'EC designs app for polls' <https://www.newsghana.com.gh/ec-designs-app-for-poll-results/> (accessed 9 June 2017).

Social media has been demonstrated to be an important interface between the police and the public and a significant crime-fighting tool.⁵⁸ It affords the police and other security agencies a lower cost and reasonably convenient means of disseminating information to the public during crisis or major events and presents a great opportunity for the police to engage the public in investigations and build relationships with the community.⁵⁹ For instance, The Home Affairs Committee of the House of Commons of Great Britain (hereinafter referred to as the Committee) that investigated the August 2011 rioting in London and its environs commended the police officers who used social media during the disturbances to spread messages to inform and reassure the public. The Committee also recommended that police personnel should make use of social media in their day-to-day activities. The Committee further observed that social media platforms cost and time effective ways for the police to connect to the public so the police forces should actively encourage people to sign up to their Twitter and Facebook accounts to receive the latest information.⁶⁰

With regard to banning social media, the Committee said that it would have been 'net negative to turn it [social media] off' and that 'it would be actively unhelpful to switch off social media during times of widespread and serious disorder and we strongly recommend that this does not happen.'⁶¹ If in the midst of rioting social media was an effective crime-fighting platform, it stands to reason that it will even be more relevant in times of peace. The government of Ghana should therefore invest resources to equip the police and other security services with modern state-of-the-art technological equipment so that they can effectively monitor what happens on social media. Banning online activities with the view to stopping abuses cannot be flawless because people can use other means to disseminate information whether electronically or otherwise. For instance, people may use virtual private networks (VPNs)⁶² to hide the location of their computer's connection to the internet. They can send text messages to over 100 people simultaneously or place conference call to about five or more people at the same time. If people intend to spread falsehood, they will no matter what. If technological means are rather used to monitor posts on social media and those posts are found to be in breach of the law that can be used as evidence for prosecution. This is because electronic evidence, under the Electronic Transactions Act (ETA) of Ghana, is admissible in a court of law.⁶³

58 NAA Asante 'Blogging Ghana, PenPlusBytes warns IGP: Social media ban breaches law' <http://citifmonline.com/2016/06/07/bloggingghana-penplusbytes-warns-igp-social-media-ban-breaches-law/#sthash.RGV7ZXC9.dpuf> (accessed 26 August 2016).

59 France 24 (n 56 above).

60 House of Commons Home Affairs Committee (n 24 above) 27.

61 As above, 30.

62 VPN gives extremely secure connections between private networks linked through the Internet. It allows remote computers to act as though they were on the same secure, local network. See <https://kb.netgear.com/1128/What-is-VPN-Virtual-Private-Networking> (accessed 11 June 2017).

63 Electronic Transactions Act (n 32 above), sec. 7.

There is currently no statistics to prove the number of people in Ghana who commit online abuses. It will be unfair for the majority of Ghanaians to be deprived of their rights to online freedom of expression, information and communication because of the few Ghanaians who commit online abuses. The police and other security agencies should use the powers at their disposal to effectively maintain law and order online. One of the powers is the take-down notification measure under the ETA. The ETA provides that any 'person who claims that an electronically published matter is illegal or unlawful shall notify the publisher'⁶⁴ to take down such publication. Upon service of the take down notice in the prescribed form under the Act, a publisher will be obliged to remove that illegal or unlawful material. Failure to do so makes the publisher liable for that publication. With active presence on the internet and social media, the police and other security agencies can readily truncate the spreading of abusive or unlawful online contents. Further, the police are authorised to act as 'Cyber Inspectors' under the ETA. This gives them much power to oversee online activities including what happens on social media.

The police should prosecute noncompliant users of social media and those who break the law on other online platforms. Admittedly, under the Criminal Offences Act⁶⁵ of Ghana, it is an offence for a person to publish or reproduce a statement, rumour or report that is likely to cause fear and alarm to the public or to disturb the public peace when he or she knew or had reason to believe that the statement, rumour or report was false.⁶⁶ Publication within the context of this provision includes posting online materials. If such publishers of falsehoods or disturbing materials are prosecuted and punished, it will deter others from committing similar offences. The police and other security services in Ghana can sanitise online activities without infringing the rights and freedoms of innocent internet users if they implemented these and other equally effective measures.

5 Conclusion

This chapter has established that freedoms of speech as well as expression and freedom of the media are some of the inalienable rights that the 1992 Constitution of Ghana guarantees. The Constitution also requires the government and all persons in Ghana to respect and protect these rights. These rights are not peculiar to the Constitution of Ghana. Many international and regional legal instruments reinforce the need for countries to guarantee these rights. This chapter has highlighted the need for Ghana to protect these rights whether it is in an election year or not. Social media is one of the oft-used means of communication in Ghana and

64 n 32 above, sec 94(1).

65 Criminal Offences Act of Ghana Act, 1960 (Act 29) as amended.

66 As above, sec 208.

other parts of the world due to its usefulness. The chapter has argued that the blocking or banning social media before, during or after elections or any other period without recourse to law will be constitutional. To curb the potential illegality of online blackout, this chapter has offered recommendations about how the police and other security services in Ghana can sanitise online activities.