



Ghana: “False information” prohibitions should be amended

ARTICLE 19 calls on the Ghanaian Government to amend provisions of the Criminal Code and the Electronic Communication Act 2008 that allow for the criminalisation of ‘false news’ as they fail to comply with international freedom of expression standards. The COVID-19 pandemic shows that independent journalism, citizen reporting, open public discourse and the free flow of information are indispensable in the global effort to counter COVID-19. It also showed that the punishment of individuals for unwittingly spreading false information casts a severe chilling effect on communication and heavy-handed approaches to misinformation to stifle the type of public reporting that can lead to early detection and effective mitigation efforts. The Ghanaian government should use this opportunity to bring its legislation to full compliance with international freedom of expression standards and adopt positive measures to address disinformation as a preferred alternative to problematic legislative norms.

Since March 2020, the President of Ghana and the Ghanaian Government adopted a series of regulations to deal with the COVID-19 pandemic. This included the adoption of the [Establishment of Emergency Communications System Instrument, 2020 \(E.I. 63\)](#) that put network operators and communication service providers at the disposal of the State for mass dissemination of information to the public in the case of emergency including a public health emergency. The Instrument has been [criticised as being overly broad](#) and opening for the possibility to be used to violate the privacy of individuals and groups in the future.

ARTICLE 19 shares these concerns. However, we also note that several provisions in the Ghanaian legislation prohibit the dissemination of “false news” or “false reporting” that violate international freedom of expression standards and could be used to stifle critical reporting on the actions of the Government. In this briefing, we analyse the provisions of the Criminal Code and the Electronic Communications Act 2008 and show how and why they should be abolished to bring the legislation to full compliance with international human rights standards.

Applicable international freedom of expression standards

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights and given legal force through Article 19 of the International Covenant on Civil and Political Rights (the ICCPR). Moreover, freedom of expression is guaranteed in the African Charter on Human and Peoples’ Rights (ACHPR) and in the Declaration of Principles on Freedom of Expression in Africa (African Declaration) as well as in Ghana’s [Constitution](#) (Chapter 5, Section 21).

While the right to freedom of expression is fundamental, it is not absolute. A State may, exceptionally, limit the right under Article 19(3) of the ICCPR, provided that the limitation meets a “three-part test.” This requires that the limitation must be:

- **Provided for by law**, any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly – *requirement of legality*;

- **In pursuit of a legitimate aim**, listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (ordre public), or of public health or morals – *requirement of legitimacy*;
- **Necessary in a democratic society**, requiring the State to demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat – *requirement of necessity*.

“False information,” “disinformation,” or “misinformation” are all terms that are not defined under international human rights law. Protecting persons from “false information” is not, as such, a legitimate aim for justifying restrictions on the right to freedom of expression under Article 19(3) of the ICCPR. As four special mandates on freedom of expression cautioned in their [2017 Joint Declaration](#), the label of “fake news” is increasingly being used by persons in positions of power to denigrate and intimidate the media and independent voices, increasing the risk of such persons to threats of violence, and undermining public trust in the media.

An important point of principle remains that “the human right to impart information is not limited to ‘correct statements’, [and] that the right also protects information and ideas that may shock, offend or disturb.” The four special mandates made clear that “general prohibitions on the dissemination of information based on vague and ambiguous ideas, including ‘false news’ or ‘non-objective information’, are incompatible with international standards for restrictions on freedom of expression.”

Prohibitions of ‘false information’ in the Ghanaian legislation

The Ghanaian legislation contains prohibitions of ‘false information’ in two laws.

The [Criminal Code](#) prohibits:

- **False reports injuring the reputation of the state:** Section 185 prohibits as second-degree felony communicating “by word of mouth or in writing or by any other means, any false statement or report which is likely to injure the credit or reputation of Ghana or the Government and which [s/he] knows or has reason to believe is false.” Not knowing or not having reason to believe that the statement or report was false is no defence to a charge unless the defendant proves that, before communicating the statement or report, s/he took “reasonable measures to verify the accuracy of the statement or report.” Ghanaian citizens may be tried and punished for this offence if committed “in or outside Ghana.”
- **Publication of false news with intent to cause fear and alarm to the public:** Section 208 prohibits as a misdemeanour publishing or reproducing “any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace knowing or having reason to believe that the statement, rumour or report is false.” Again, the lack of knowledge of the falsity of the information is not a defence unless the person took “reasonable measures to verify the accuracy of the statement, rumour or report.”

The [Electronic Communications Act, 2008](#) prohibits *inter alia* **giving false information** in Section 74 of the Act. Under these provisions, those who “knowingly give false or misleading information” to the National Communications Authority can face “a fine of not more than one thousand penalty units or to a term of imprisonment of not more than three years or to both.”

ARTICLE 19's comments on 'false information' prohibitions in Ghana

ARTICLE 19 finds that these provisions do not meet international freedom of expression standards for several reasons.

First, the provisions Section 185 of the Criminal Code, that protect the **'reputation' of the State** is an especially problematic restriction on freedom of expression. Under international human rights standards, the State as an abstract entity does not have any financial or emotional interest to defend; it is even questionable whether it has a 'reputation' of any sort which might be undermined by a false accusation of fact. Such provisions can prevent an open debate about the functioning of the State and prevent the expression of unpopular opinions, which are protected by the right to freedom of expression. Moreover, state institutions have ample non-legal means available to respond to criticism, for example through a public counter-statement.

Second, the **prohibitions of false information** (in provisions of Section 208 of the Criminal Code and the respective provisions of the Electronic Communications Act) are extremely broad and overly ambiguous, and therefore not "provided for by law" under Article 19(3) of the ICCPR. We also reiterate that the falsity of information is not a legitimate basis for restricting expression under international human rights law. As outlined above, international and regional freedom of expression mandates have stated that "general prohibitions on the dissemination of information based on vague and ambiguous ideas, including 'false news' or 'non-objective information', are incompatible with international standards for restrictions on freedom of expression."

As for the necessity of these provisions, it is not clear what pressing social need these offences responds to. For instance, while Section 74 of the Electronic Communications Act requires that the false information be shared "knowingly," it does require any likelihood of that harm occurring as a direct consequence of the accused's act. ARTICLE 19 notes that in a democratic society, "knowingly" creating or sharing "false" information may be in the public interest. For example, artists may engage in satire and parody, knowingly using imitation and fabrication to convey their opinions and ideas, or a blogger on social media may re-post a politician's "false" statement in the context of sharing to their audience the fact that they were made. Strong differences of opinion or anger over political wrongdoing, which may connect to feelings of dislike towards a person, for example, may be framed as evidence of a person acting "knowingly." Under these provisions, people could be penalised even if they shared certain information without any malign intent. For instance, they could share certain posts on social media as a joke or without any knowledge that the information was false at all. Such disposition favours an atmosphere of fear and could effectively suppress legitimate public conversation on important socio-political or health-related matters.

The absence of a pressing need for restrictions is underscored by the availability of a variety of non-coercive means to promote the public's right to know and increase the possibility of false information being countered with accurate information. These include efforts to support media pluralism and independence, to educate the public in media and digital literacy, and to enact policies to ensure government officials disseminate reliable and trustworthy information.

Prohibitions of false information are especially problematic in the context of the pandemic. In the fast-changing environment of the pandemic, people often shared information about COVID-19 in good faith while this information proved to be false later on and vice versa. For instance, facial masks are currently recommended as one of the tools to contain the spread of the infection, albeit their real efficiency overall is not yet uniformly confirmed. In earlier days of the pandemic, even the World

Health Organisation (WHO) did not recommend population-wide usage of face masks. The prohibitions of false information in the legislation do not reflect this rapidly evolving situation and could be used to suppress information that can later be found desirable.

ARTICLE 19 would like to underline the importance and impact of positive measures to address disinformation as a preferred alternative to problematic legislative norms. Proactively providing timely, accurate and comprehensive information by the government, including on issues related to public health, is ultimately essential in times of crisis. Ghana should maintain and expand its transparency obligations accordingly.

We also urge the government to adopt comprehensive measures on access to information and data relating to the impacts and efforts of mitigating the pandemic. These include information on health information; financial information; information beneficial to vulnerable persons, groups, and communities; governance information; human rights and law enforcement information. Open, honest and regular communication of the government with the society generates trust, diverts public attention from disinformation narratives and thus, helps to address the problem in a more effective way than opaque formal regulations.

