

# Ghana

## RestoreDataRights: Preliminary Mapping of Declaration Principles to National Laws and Practices

*As part of the RestoreDataRights project, Open Institute and DataReady are compiling a set of research briefs that explore how key provisions of the RestoreDataRights Declaration<sup>1</sup> are translated into law and practice across four jurisdictions: Kenya, Ghana, South Africa and Nigeria. The purpose of this series is to establish an evidence-base of current data governance and use practices and to identify where advocacy opportunities may arise for civil society to improve the transparency, inclusiveness and accountability of governments' pandemic response.*

*This brief explores data governance and protection issues as they relate to the pandemic response in Ghana. This analysis is based on independent qualitative research, complemented where relevant by a comparative legal analytical lens. This involved the collection of data from a diverse set of online resources including, among others, law reports, case law databases, news reports, publications by international organisations, government publications, government policy statements, and academic journal articles. The findings of this research are set out in Annex I below, with a list of the sources explored at Annex II. For certain analytical fields, no relevant online information was identified despite an extensive desk search of online information having been conducted. The desk search primarily relied on general and legal search engines, and derivative sources.*

### Summary of powers that the Ghanaian government has to use data as part of the pandemic response

In response to the COVID-19 pandemic, the Executive issued a series of regulations to mitigate the spread of the virus.<sup>2</sup> There was, however, no declaration by the President of a state of

---

<sup>1</sup> RestoreDataRights. 2020. *The #RestoreDataRights Declaration*. Online at: <https://restoredatarights.africa/the-restoredatarights-declaration/>

<sup>2</sup> The regulations were issued under the Imposition of Restrictions Act, 2000.

emergency which would have triggered a process through which Parliament would have been required to provide approval and oversight through a mandatory set of substantive and procedural safeguards. The President also issued the Establishment of Emergency Communications System Instrument (EI 63), 2020 which requires network operators and communication service providers to assist the State to disseminate Covid-19 related information to the public and to make certain information about their users available to the Ghanaian Government to assist with contact tracing. The nature and extent of these contract tracing efforts are, however, opaque. There also does not appear to be adequate oversight over these data gathering and processing activities.

The collection, use, disclosure and care of personal data or information is primarily governed in Ghana by the Data Protection Act of 2012. The Act seeks to promote the privacy rights of data subjects by imposing limits on the processing of personal data and requiring data controllers to take steps to ensure that people are aware of the purpose for which data is collected. The Act also establishes an independent Data Protection Commission with the aim of protecting the privacy of the individual and personal data by regulating the processing of personal information. The Commission provides for the process to obtain, hold, use or disclose personal information and for other related issues associated with the protection of personal data. It is, however, unclear whether the Act has been effective in protecting human rights in the online realm during the COVID-19 pandemic.

The Ghana Emergency Preparedness and Response Project has also sought to help prevent, detect, and respond to the COVID-19 pandemic using a US\$35 million emergency support package that was provided by the World Bank.<sup>3</sup> This project aims to provide real time disease

---

<sup>3</sup> World Bank. World Bank Group Supports Ghana's COVID-19 Response. Available at World Bank Group Supports Ghana's COVID-19 Response.

surveillance and reporting systems. The Ghanaian Government has launched numerous mobile applications which can be downloaded by healthcare workers to record cases of Covid-19 that have been identified in a national database. An innovative cloud-based digital tool for surveillance called the Surveillance Outbreak Response Management and Analysis System (SORMAS) has also been used by Ghanaian authorities to track the spread of coronavirus in Ghana.<sup>4</sup> SORMAS enables rapid analysis of cases, contact tracing and other disease surveillance functions. SORMAS also acts as a form of technical regulation by targeting messaging and instructions at officials across the Ghanaian healthcare system based on automated data analysis. While SORMAS was being updated to address a deficiency regarding geolocation, a partnership between the University of Ghana and US AID was able to develop a supplementary application to enable geospatial mapping of data using ArcGIS which is operated by a California based company Esri.<sup>5</sup> A data capturing tool ArcGIS Survey123, also operated by Esri, was also deployed to digitize the capturing of data from laboratories.<sup>6</sup> ArcGIS Survey123 allows for the collection of data via web or mobile devices, even when disconnected from the Internet.

The Government has also developed and promoted the use of an application that seeks to trace the contacts of persons infected by Covid-19 and analyse their movements using cell phone-derived data.<sup>7</sup> Identified persons are then linked to health professionals to allow for intervention. The application's data collection practices are, however, obscure. It is also unclear how the Ghanaian government stores and analyses the data.

### **Contentious issues**

---

<sup>4</sup> PHCPI, Utilizing Primary Health Care for Covid-19 Testing and Contact Tracing in Ghana: Covid-19 Promising Practices. Available at [https://improvingphc.org/sites/default/files/Ghana\\_Testing%20and%20contact%20tracing.pdf](https://improvingphc.org/sites/default/files/Ghana_Testing%20and%20contact%20tracing.pdf).

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> ITU News. "Ghana launches COVID-19 Tracker App". Available at <https://www.itu.int/en/myitu/News/2020/05/14/13/43/Ghana-launches-COVID-19-Tracker-App>.

The situation described above has revealed three particularly contentious issues: the bypassing of existing emergency laws by the Executive, the potential for misuse/abuse of mass communications surveillance, and the imposition of controversial COVID-19 passports.

#### The bypassing of existing emergency laws

The first contentious area that touches upon people's data rights and has emerged as a result of Ghana's legal and policy response to the COVID-19 pandemic relates to the passage of the Imposition of Restrictions Act<sup>8</sup> in March 2020. There have been numerous criticisms of the law, relating both to its substance and the procedures by which it was brought into force.

The law invokes Articles(4)(c) - (e) of the Constitution of Ghana which confer power to the government to restrict certain fundamental rights in the public interest if certain conditions are met. In particular, Articles(4)(c) - (e) confer power on the Executive to:

(c) "impose restrictions that are reasonably required in the interest of [...] public safety, public health [...] on the movement or residence within Ghana of any person or persons generally, or any class of persons."

(d) "for the imposition of restrictions on the freedom of entry into Ghana, or of movement in Ghana of a person who is not a citizen of Ghana."

(e) "that is reasonably required for the purposes of safeguarding the people of Ghana against the teaching or propagation of a doctrine which exhibits or

---

<sup>8</sup> Government of Ghana. 2020. *Imposition of Restrictions Act 2020*. Online at: <https://acts.ghanajustice.com/actsofparliament/imposition-of-restrictions-act-2020-act-1012/>

encourages disrespect for the nationhood of Ghana, the national symbols and emblems, or incites hate against other members of the community.”<sup>9</sup>

The Imposition of Restrictions Act itself is an extremely brief piece of legislation that ostensibly relies on the Executive powers above to justify its legality. However, legal commentators and scholars within Ghana have noted a number of substantive deficiencies with the law. An op-ed<sup>10</sup> in *The Conversation* by Dr Kwadwo Appiagyei-Atua, Associate Professor of Law at the University of Ghana summarises the criticisms aptly. Criticisms of the law include:

- that it is too generalistic and not specifically focussed on COVID-19, rather referring to “disasters” only in a general sense;
- that it does not include a sunset clause<sup>11</sup> or expiry date;
- that it concentrates the power to extend the state of emergency in the hands of the President, taking it out of Parliament, on the face of it, contrary to the provisions of the Emergency Powers Act 1994; and
- that it bypasses the requirement in the Emergency Powers Act 1994 for the Council of State to be consulted before any state of emergency is declared; instead, vesting this power in an undefined “relevant person or body”.

Generally speaking, the Emergency Powers Act 1994 already contained provisions that conferred power upon the President to declare a state of emergency. The Constitution also makes

---

<sup>9</sup> Constitute Project. 2021. *Ghana's Consistition of 1992 with Amendments through 1996*. Online at: [https://www.constituteproject.org/constitution/Ghana\\_1996.pdf?lang=en](https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en)

<sup>10</sup> Dr Appiagyei-Atua, Kwadwo. 2020. *Ghana's President has invoked a tough new law against coronavirus: why it's disquieting*. Online at: <https://theconversation.com/ghanas-president-has-invoked-a-tough-new-law-against-coronavirus-why-its-disquieting-135476>

<sup>11</sup> Stock, M. & Orrell, T. 2020. *COVID-19 Data and Data Sharing Agreements: The Potential of Sunset Clauses and Sunset Provisions*. Online at: <https://www.sdsntrends.org/research/c4dcsunsetclauses>

provisions for the declaration of a state of emergency. The fact that these powers already exist in Ghanaian law raise questions as to what the rationale and purpose of the Imposition of Restrictions Act really was. When read together, the above criticisms point to a law that creates the potential for abuse of power under the guise of COVID-19 by bypassing established checks and balances on the Executive's authority within the Constitution and Emergency Powers Act 1994. These concerns are not unfounded given that as of May 2021, there were reports that the Act was being used to suppress anti-government protests in Accra.<sup>12</sup>

### The potential for misuse of mass communications surveillance

Linked to human rights activists' concerns regarding the Imposition of Restrictions Act 2020, are concerns surrounding the passage of a number of Executive Instruments relating to COVID-19 which, by vesting further powers in the hands of the Executive, also create the potential for misuse and abuse.

Executive Instrument 63 (EI 63), the *Establishment of Emergency Communications Systems Instrument 2020* is particularly troubling from a digital rights point of view. EI63 was brought into force in March 2020 and requires mobile phone operators in Ghana to provide the National Communications Authority with anonymised passive mobile positioning data logs, ostensibly to facilitate contact tracing and the movement of persons.<sup>13</sup>

Criticisms<sup>14</sup> that have been levied against EI63 include:

---

<sup>12</sup> <https://www.myjoyonline.com/fixthecountry-dont-use-covid-19-to-suppress-peaceful-assembly-sammy-gyamfi/>

<sup>13</sup> Benoni Okine, Charles. 2020. *No breach of personal data, privacy of telecoms consumers - NCA*. Online at: <https://www.graphic.com.gh/business/business-news/no-breach-of-personal-data-privacy-of-telecoms-consumers-nca.html>

<sup>14</sup> *Ibid*

- that data collected and shared is not secure and that individuals' right to privacy may have been breached;
- confusion as to whether all mobile operators have complied with the order;
- confusion and misinformation on social media about the impact and implications of the order; and
- hearsay and allegations that the government may have abused the powers the order confers upon them to eavesdrop on the conversations of political opponents.

In addition to EI63, the President has issued instructions which require network operators and communication service providers to assist the State to disseminate Covid-19 related information to the public and to make certain information about their users available to the Ghanaian Government to assist with contact tracing. The nature and extent of these practices is, however, opaque. There has also been limited Legislative oversight of the Executive's Covid-19 related data strategy.

With the assistance of the World Bank and US AID, the Ghanaian Government has developed innovative digital tools such as SORMAS to help mitigate the effects of the Covid pandemic. The deployment of digital contact tracing may, however, have adverse equity implications for disadvantaged groups that have limited access to digital technology.

#### The imposition of controversial COVID-19 passports

The third potentially worrying area of Ghana's COVID-19 response, relates to its adoption of a controversial COVID-19 passporting system. Earlier in 2021, Ghana adopted a system for the

digital verification of COVID-19 PCR test results based on the African Union’s Trusted Travel and ECOWAS’s BIOMARS standards.<sup>15</sup>

On 20 April 2021, the Ministry of Health published a Press Release informing the public that the technology platform would be operated jointly by the Ministry and the PanaBIOS Consortium.<sup>16</sup>

In order to travel through Kotoka airport, travellers must set up an account with PanaBIOS to digitally verify their identities.<sup>17</sup> In effect, “the IT system becomes the third safety layer - beside the PCR test required for arriving passengers and the conduct of an antigen test upon arrival for all travellers.”<sup>18</sup> These impositions, and in particular the establishment of a digital system for ID verification, raise the risk of excluding many Ghanaians from being able to travel abroad.

### **Annex I: Ghanaian Covid-19 laws and practices mapped to the RDR Declaration**

Country	RDR Declaration Principle	RDR Declaration Principle components	Findings
Ghana	Transparency	Aggregated data and metadata are open to the public	<p>The Ghana Statistical Service publishes Covid-19 related aggregate statistics on its website. This information includes the new daily reported number of Covid-19 cases, the reported number of aggregate confirmed Covid-19 cases, the reported number of active Covid-19 cases (in regions), the reported number of aggregate recoveries from Covid-19 and the reported number of aggregate deaths. These reports are supported by the Data For Good Partnership between the Ghana Statistical Service, Flowminder Foundation and Vodafone Ghana, and are funded by the Vodafone Foundation and the William and Flora Hewlett Foundation.</p> <p>The Ministry of Health in Ghana sometimes also publishes Covid-19 related aggregate statistics on its social media platforms.</p> <p>The Ghana Statistical Service, in partnership with the Flowminder Foundation, also produces anonymised and aggregated data from Mobile Network Operators. This data can be analysed in near real-time and provide an overview of</p>

<sup>15</sup> GNA. 2021. *Ghana begins digital verification of Covid-19 test results*. Online at: <https://www.myjoyonline.com/ghana-begins-digital-verification-of-covid-19-test-results/>

<sup>16</sup> <https://panabios.org>

<sup>17</sup> Ghanaweb. 2021. *Government banks on PanaBios to avert third coronavirus wave, check fake results*. Online at: <https://www.ghanaweb.com/GhanaHomePage/business/Government-banks-on-PanaBios-to-avert-third-coronavirus-wave-check-fake-results-1250449>

<sup>18</sup> *Ibid*



			<p>mobility patterns across all of Ghana.</p> <p>The Ghana Statistical Service also publishes aggregated data and metadata about the capacity and utilization of Ghana's health facilities. The data, however, appears to be incomplete.</p>
		Open source software and algorithms are used to analyse data	No information found
		Information on what entities are collecting data, from what communities and for what purposes are made available to the public	<p>The World Bank provided \$135 million to Ghana in emergency support to help provide improved response systems to the Covid-19 pandemic. Under this emergency package, the Ghana Emergency Preparedness and Response Project seeks to help prevent, detect, and respond to the COVID-19 pandemic. This project aimed to help strengthen Ghana's National Laboratories by providing robust systems for the early detection of COVID-19 cases and provide real time disease surveillance and reporting systems.</p> <p>The government has launched numerous mobile applications which can be downloaded by healthcare workers to record cases of Covid-19 that have been identified in a national database. Clinical teams have used SORMAS. SORMAS was, however, reportedly unable to capture the geolocation of reports. While SORMAS was being updated to address this deficiency, a partnership between the University of Ghana and US AID was able to develop a supplementary application to enable geospatial mapping of data using ArcGIS which is operated by Esri. Esri is an international supplier of geographic information system software, web GIS and geodatabase management applications. The company is headquartered in Redlands, California.</p> <p>A data capturing tool ArcGIS Survey123, also operated by Esri, was also deployed to digitize the capturing of data from laboratories. ArcGIS Survey123 allows for the collection of data via web or mobile devices, even when disconnected from the Internet. Staff were trained on the use of ArcGIS Survey123.</p> <p>In response to the Covid-19 pandemic, the social protection authorities in Ghana have also modified existing data systems to help inform the design, implementation, and monitoring of the country's social safety system. A special high-frequency survey of social safety net program beneficiaries who receive small and regular cash benefits has been conducted in partnership between the World Bank and Ghana. The survey sought to gather information on the evolving effects of the COVID-19 crisis on the beneficiaries and their coping behaviors. The Ghanaian government has also adjusted the Ghana National Household Registry mechanism to focus on a rapid data collection exercise in Accra just after a lockdown was lifted. Data was collected from street and slum dwellers and the destitute poor who authorities felt would be worst affected by the lockdown. The data was used to enhance the targeting of emergency aid, including emergency housing, food, and other in-kind benefits. The Single Window Citizen Engagement Service, which is a citizen engagement and grievance redressal system run by the social protection authorities, was also expanded to enable it to process a higher number of requests for government social assistance. The data gathered from the service was also used to help map areas in</p>

			need of greater social assistance.
		Data sharing agreements and related documents are openly published	No information found
		Data suppliers and other private sector actors are procured through open and competitive tender processes	Public procurement in Ghana is primarily regulated by the Public Procurement Act 663 of 2003 as amended by the Public Procurement (Amendment) Act 914 of 2016. The guidelines issued by the Public Procurement Authority in Ghana regarding public procurement in the Covid-19 pandemic are, however, unavailable.
		Government Covid-19 related data strategies and plans are made publicly available	No information found
		Details of intra-governmental data sharing are made openly available and are subject to parliamentary, judicial and public scrutiny	No information found
	<b>Inclusion</b>	Decisions made around how Covid-19 data are used are taken through established democratic processes	<p>In response to the Covid-19 pandemic, the Executive issued regulations to mitigate the spread of the virus under the Imposition of Restrictions Act, 2020. There was, however, no declaration by the President of a state of emergency which would have triggered a process through which Parliament would have been required to provide approval and oversight through a mandatory set of substantive and procedural safeguards.</p> <p>The Electronic Communications Act, 2009 further permits the President to, by executive instrument, make written requests and issue orders to operators or providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security. Invoking this power, the President issued the Establishment of Emergency Communications System Instrument, 2020 to require network operators and communication service providers to assist the State to disseminate Covid-19 related information to the public and to make available all caller and called numbers, merchant codes, roaming files and location log files to the National Communications Authority to assist with contact tracing.</p> <p>Although the Executive have taken a central role in the promulgation of Covid-19 related mitigation measures, the Legislature is still operating and exercising oversight over the Executive's conduct.</p>
		The public is consulted on how sensitive data (e.g. location data derived from mobile phones) are shared and used to tackle Covid-19, and their responses are used to	No information found

		inform policy interventions	
		Any public-private data partnerships that are established to share and use Covid-19 related data should also include representatives from civil society and digital rights groups	No information found
		The needs of vulnerable groups are taken into account and steps taken to protect 'sensitive group data' are included alongside actions to protect individuals' data	No information found
<b>Accountability</b>		Appropriate steps are taken to protect data that could, either alone or when combined with other data, result in the identification of individuals or vulnerable groups within datasets to tackle Covid-19	No information found
		Data collected for epidemiological purposes shall not be shared or used by other parts of government, such as policy forces or Ministries of Interior	No information found
		Protocols shall be established to respond to potential data breaches of datasets containing sensitive data	The Data Protection Act requires that the data controller or a third party who processes data under the authority of the data controller shall notify the Data Protection Commission when there are reasonable grounds to believe that the personal data of a data subject has been accessed or acquired by an unauthorised person. Such parties must also notify the data subject of the unauthorised access or acquisition as soon as reasonably practicable after the discovery of the unauthorised access or acquisition of the data.
		Individuals or vulnerable groups who may be harmed by the misuse of their data in response to the Covid-19 epidemic - either intentionally or accidentally - shall have access to judicial redress and due process	No information found
		Governments and public bodies shall retain retain all intellectual property rights over databases and all derivative data outputs using African citizens' data as part	No information found

		of the Covid-19 response	
		Governments, private companies and other entities shall commit to engaging with civil society organisations and digital rights defenders in order to identify responsible and practicable ways of winding-down any emergency data collection, processing and use at the end of the pandemic, in accordance with local laws and in line with international best practices	No information found

## **Annex II: Reading List**

### **Transparency**

The website on which the Ghana Statistical Service publishes Covid-19 related aggregate statistics is

<https://statsghana.maps.arcgis.com/apps/opsdashboard/index.html#/a22ebfb6d9cb47ff9ce87619d53f68e5>

The Ghana Statistical Service reports regarding the anonymised and aggregated data from Mobile Network Operators are available at

<https://statsghana.gov.gh/gsspublications.php?category=MTkwMDE4MjI2Ny4xMDg=/webstats/90r897632o>

The aggregated data and metadata about the capacity and utilization of Ghana's health facilities is published by the Ghana Statistical Service at

[https://ghcovid19-statsghana.hub.arcgis.com/datasets/7e7344e58539470bb43d687baef6f20d\\_0?selectedAttribute=Capacity&showData=true](https://ghcovid19-statsghana.hub.arcgis.com/datasets/7e7344e58539470bb43d687baef6f20d_0?selectedAttribute=Capacity&showData=true)

The social media platform on which the Ministry of Health of Ghana publishes Covid-19 related aggregate statistics include Facebook and Twitter. See <https://www.facebook.com/MOHGhana> and <https://twitter.com/mohgovgh>

For information regarding the modification by Ghanaian authorities of social safety related data systems, see

<https://blogs.worldbank.org/nasikiliza/data-driven-social-safety-net-response-covid-19-crisis-ghana>

As explained by the World Bank, governments are not only ramping up their data collection efforts to respond to the disease related aspects of the pandemic. The Ghanaian government is attempting to expand its data collection practices regarding the socio-economic effects in order to improve its economic shock aversion mitigation measures. This dimension of additional data gathering during the Covid-19 pandemic is underexplored in the available online sources.

Information about the emergency support provided by the World Bank to Ghana to help provide improved response systems to the Covid-19 pandemic is available at

<https://www.worldbank.org/en/news/press-release/2020/04/02/world-bank-group-supports-ghanas-covid-19-response>

Public procurement in Ghana is primarily regulated by the Public Procurement Act 663 of 2003 as amended by the Public Procurement (Amendment) Act 914 of 2016. The guidelines issued by the Public Procurement Authority in Ghana regarding public procurement in the Covid-19 pandemic are, however, unavailable.

For an analysis of the use of digital tools and contact tracing in Ghana, including SORMAS and Survey 123, see

[https://improvingphc.org/sites/default/files/Ghana\\_Testing%20and%20contact%20tracing.pdf](https://improvingphc.org/sites/default/files/Ghana_Testing%20and%20contact%20tracing.pdf)

For information about ArcGIS and Esri, see <https://www.esri.com/en-us/what-is-gis/overview>

For information about ArcGIS Survey123, see

[https://www.esri.com/en-us/arcgis/products/arcgis-survey123/overview?rmedium=www\\_esri.com\\_EtoF&rsource=/en-us/arcgis/products/survey123/overview](https://www.esri.com/en-us/arcgis/products/arcgis-survey123/overview?rmedium=www_esri.com_EtoF&rsource=/en-us/arcgis/products/survey123/overview)

## **Inclusion**

The efficacy of the constitutional and legal framework for dealing with public emergencies under the Constitution of Ghana, and the approaches adopted by the Ghanaian government, are explored at <https://ancl-radc.org.za/node/627>

## **Accountability**

The data breach notification requirements in Ghana are analysed at

<https://www.dlapiperdataprotection.com/index.html?t=breach-notification&c=GH&c2=>

## **Additional Resources**

Ghana was the first country in the world to use autonomous drones for long-range haulage of COVID-19 test samples taken from suspected persons in the remote areas of the country to laboratory centers in the cities – drastically reducing round-trip day journey to under 30 min. See Sibiri H., Zankawah S.M., Prah D. Coronavirus diseases 2019 (COVID-19) response: highlights

of Ghana's scientific and technological innovativeness and breakthroughs. *Ethics Med Public Health*. 2020;14

Prior to the pandemic, the African Centre for Parliamentary Affairs in partnership with the Ghana Statistical Service and the International Network for the Availability of Scientific Publications implemented a project known as "Data for Accountability" This project, which also involves the promotion of the use of digital surveillance technology, aims to strengthen the use of statistics in parliamentary oversight and representation in Ghana. See <https://www.africaevidencenetwork.org/en/learning-space/article/47/>