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Public Access to Primary Legal Information in Ghana: Opportunities and Challenges

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Abstract

Information to a large extent can have economic, political and social impact on the lives of people globally. Information enables one to adjust in the global system through the effective utilization of local resources. It has become common that the fundamental human right to access to information is mostly interpreted in the legal frameworks of countries that support freedom of information. Citizens need to have access to information that is produced and held by governmental agencies.

The objective of this article was to establish and assess Ghana's legislation on making legal information readily accessible to the general public especially at the national level. Access to public primary legal information is important. In Ghana, certain provisions in the Constitution of the Republic of Ghana have inscribed the human rights and freedoms that the citizenry can enjoy and this is clearly stated under Chapter 5 of the Constitution. Provision has also been made for the Right to Information as well as the academic freedom elements in Ghana's 1992 Constitution under article 21(1)(f).

Some channels that enable the citizenry to have access to legal information include platforms such as E-Governance, Research4Life Partnership Program through GOALI, other free legal websites, digital repositories, the advent of Open Source Software and the role of law libraries . However, access to primary legal information in Ghana is beset with some challenges which include intellectual property, lack of funding, restrictive Ghanaian laws and inadequate research skills. Some recommendations have been made based on the challenges identified.

Keywords: legal research, legal information. Public access, Republic of Ghana

Introduction

Information to a large extent can have economic, political and social impact on the lives of people globally. Information enables one to adjust in the global system through the effective utilization of local resources. It has become common that the fundamental human right to access to information is mostly interpreted in the legal frameworks of countries that support freedom of information. Citizens need to have access to information that is produced and held by governmental agencies.

With the availability of information, it is expected that the citizenry in any democratic state, should be able to freely express themselves and equally participate in the democratic governance of their states, for a more transparent, accountable and an open society.

In Ghana, certain features in the Constitution of the Republic of Ghana have stipulated the human rights that the citizenry can enjoy and this is clearly stated under the Chapter 5 of the 1992 Constitution. Provision has also been made to the right to Information as well as the academic freedom elements in Ghana's 1992 Constitution under article 21(1)(f). In Ghana, one major attempt by the government to ensure that government data is made readily available to the public re-use was in 2012 through the Ghana Open Data Initiative (GODI). This Project was initiated by the National Information Technology Agency in collaboration with the Web Foundation (WF).

Objective of Study

The objective of this paper is to establish and assess Ghana's legislation in making legal information readily accessible to the general public especially at the national level. Much emphasis will be placed on Ghana's primary legal information. The work is in three sections. The first section looks at the general introduction and overview of Ghana's legal system. The second section of the study has established the legal framework as well as the efforts that have been made by previous governments and other agencies in respect of making legal information from the executive, legislature and the judiciary available to the public. In the final section, some opportunities have been identified. Recommendations have been made based on the challenges discussed.

The Ghanaian Legal Framework on Public Access to Primary Legal Information

Overview of Ghana's Legal System

Ghana's legal system is based on English common law, customary (traditional) law and the 1992 Constitution. Ghana operates on adversarial court system (Quansah, 2011; Apeadu, 2015:2-3).

In Ghana, the court structure comprises of two main layers. This consists of the Lower Courts (the Circuit Court, the District Court and the Juvenile Courts) and the Superior Courts. Within the Superior Courts, there are the Supreme Court, the Court of Appeal, the High Court and the Regional Tribunals.

- The Supreme Court is the final appellate body of the whole court system of the country. It has the original and exclusive jurisdiction in all matters relating to the enforcement or interpretation of the Constitution and all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution.
- The Court of Appeal has no original jurisdiction. The Court of Appeal has jurisdiction to hear and to determine appeals from any judgment, decree, or High Court order.
- "The High Court has jurisdiction in all matters, civil and criminal, other than those involving treason (Quansah, 2011; Apeadu, 2015:2-3).

Legal Frameworks of Public Access to Primary Legal Information

Ghana's 1992 Constitution

One major prospect of making accessible government information available to the public has been enshrined in the 1992 Constitution of the Fourth Republic of Ghana. The current Constitution is an improvement on the previous constitution's recognition of freedom of expression by recognizing, among others, specifically, the right to information and academic freedom as elements of freedom of expression that should be enjoyed under the Constitution.

Right to Information Bill

The Parliament of Ghana is currently considering the Right to Information Bill. This Bill was first drafted in 1999 and has had several reviews. The main rationale of this bill is to enable people have the right access to official documents that are held by public institutions as well as private bodies that undertake public functions and which are funded by the state.

Data Protection Act, 2012

The data protection Act also regulates the transmission of Personal Data in the country. The Act has established eight main principles to be followed when one is collecting, holding, using or processing personal data.

The Act covers a wide scope of both the public and private sector and offers a general level of privacy to uphold the data privacy rights of Ghanaians irrespective of where data is transferred and processed. The Act regulates organizations' and individuals that collect, handle or process personal data by providing key principles for safeguarding this fundamental right to privacy. It also confers rights on individuals and places obligations on those processing personal data.

The fundamental basis for Ghana's data protection law is Article 18 (2) of the 1992 Constitution which guarantees the following:

'No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others' (GhanaWeb, 1994-2018).

Data protection is the process of safeguarding personal information, in accordance with a set of principles laid down by law.

Other Platforms for Accessing Legal Information

Ghana Open Data Initiative (GODI)

One major attempt in 2012 by the government to ensure that government data is made readily available to the public re-use was through the Ghana Open Data Initiative (GODI). This project was started by the National Information Technology Agency (NITA) in collaboration with the Web Foundation (WF). The vision of GODI was to develop an open data "community involving the Government of Ghana, civil society organizations, industry, developer communities, academia, media practitioners, and the citizenry, to interact with one another with the aim of developing

an open data portal to bring about transparency, accountability and efficiency in government” (Wikipedia, 2018).

E-Governance

E-Governance has been introduced by several governments globally to enable the citizenry have access to accurate, real time information as well as quality services. The government of Ghana has collaborated with the First Digital Television and the National Information Technology Agency (NITA) and has launched the e-Governance Project to make legal information available to the citizenry.

Research4Life Partnership Program through GOALI

Members of the Consortium of Academic and Research Libraries in Ghana, have unlimited access to a number of legal documents through the Research4Life, a project in partnership with the WHO, FAO, UNEP, Cornell and Yale Universities, and the International Association of Scientific, Technical & Medical Publishers. In March 2018, Research4Life launched the Global Online Access to Legal Information (GOALI), which has given participating institutions of the Consortium access to a wide range of legal documents which were hitherto not available. This database provides access to free and low cost peer-reviewed content from academic, professional institutions as well as not-for-profit organizations in over 115 middle income countries. Among the beneficiaries of this resource include legal experts, judges, policy makers, not-for-profit institutions, law schools, librarians, universities etc. This database is expected to narrow the gap that exists in accessing scientific knowledge between developing countries and industrialised countries (Research4Life, 2018).

Opportunities

There is no doubt about the value of information to the citizenry. Access to public legal information is a fundamental right in the same way access to information is (Jones & Ilako, 2015:1). Kumado (2000) noted that, the tax payers’ money has been used to collect data or other information held or available to government, hence government information belongs to the people. Based on this premise, it is justified that government cannot hold back information that belongs to the people. Judges, lawyers, students and the public need legal information to take decisions to deepen research in Ghanaian and African law and to increase transparency and accountability in the administration of justice. There are a number of opportunities that exist in making legal information publicly available and these have been discussed below.

Improved ICT Infrastructure

Developments in digital and mobile technology have created the requisite ICT infrastructure that will enhance and promote the dissemination of legal information to the Ghanaian citizenry. New technologies are offering services that are key and which are able to connect the government to the citizens. Mobile penetration in Ghana currently stands at 45% which is the second highest in West Africa. The country has a literacy rate of about 77% (GSM Association , 2017). A lot of Ghanaians now possess mobile devices. Currently, telecommunication companies have expanded their network coverage area and Ghana now boasts of ‘about 34.57 million subscribers and a penetration rate of 119 per cent, while 10.11million— nearly one-third of the country’s population— are active internet users’ (Government of Ghana , 2018). These developments are a clear indication that, a public private collaboration can provide the requisite platforms that will publicly make legal information accessible to the general populace.

Existing Websites for Promoting Access to Legal Information

Even though Ghana is at its teething stage of providing free access to public legal information, there had been attempts by some individuals and some organizations to provide access to Ghanaian case law and government legislations on the internet. Notable amongst some are the Judicial Training Institute (jtighana.com), Ghana legals (<http://laws.ghanalegal.com/>) and Ghanalii (which aims at hosting legal materials from other countries which are obtained through partnerships and to provide online free-access collection of journals, judgments and legislation from Ghana).

Judicial Training Institute (JTI)

This website provides access to all information that relates to the judicial service of Ghana. Key governmental publications are also made available at the website. Among the services that are offered by the JTI are E-Judgement Web Portal where people can access case law from all the jurisdictions in Ghana; the E-Justice also known as the Paperless Courts or Electronic Case Management System (ECMS), which forms part of the Government of Ghana e-Transform Programme.

Ghana Legal Training Institute (GhaL II)

The objective of this institute goes beyond the borders of Ghana to a number of African countries. Legal information has been made publicly available and the objectives include the following:

- “To set up an online repository of legal information from Ghana, towards the promotion of Rule of Law, judicial accountability and good governance in Ghana and Africa.

- To make accessible parliamentary, legislative and judicial information in digital form to the general public.
- To provide online free-access collection to journals, judgment and legislation from Ghana.
- To host legal materials from other countries which are obtained through partnerships and collaborative efforts with governments, courts, law societies and other institutions in Ghana and Africa.
- To increase transparency and accountability in the administration of justice
- To deepen research in Ghanaian and African law” (Ghana Legal Training Institute, n.d.).

Thus, the citizenry can take advantage of the legal information that has been made available on the website. It was initiated by some individuals with the support of African Law Institute which is part of the Free Access to Law Movement. Currently they have populated their websites with up to date case law from the Supreme Court.

[African Law Library \(ALL\)](#)

African Innovation Fund (AIF) also initiated the process of collecting legal information from some African countries with the objective of providing free access to legal information for Africans.

The current Law Librarian at the Ghana School of Law, used to be a representative of ALL for Ghana, and at the moment, raw data (case law) is being collected from the courts to populate their website. AIF also supported some African countries to collect data and upload on their page as well as providing funding for scanning of print legal information such as journal articles, case law and government publications.

[Ghana Law Finder](#)

The Supreme Court of Ghana Librarian has also developed a database which is popularly known as the Ghana Law Finder. It is an individual venture hence it can only be accessed at a fee. Similarly, the courts in its objectives to enhance timely legal information have automated its courts. Access to case laws can be requested from the Registrars of the Courts but not available for free online. It is still unclear why they are not available on the Judicial Service page since it is government information.

[Advent of Open Source Software](#)

With the advent of open source software, it has become very easy for governmental and private agencies in countries and most especially Ghana to collect, manage and share legal information.

The introduction of ICTs has made it possible for the dissemination of legal documents which were hitherto not available. Commercial softwares are expensive and therefore institutions that opt for using open source software are able to save cost of acquisition as well as the long term maintenance of such

softwares. As such, the general public and intellectuals are able to access information just with a click of a button. (Phiri, n.d.:5).

Role of Law Libraries

Law libraries play a key role in providing access to primary legal information in Ghana and beyond. Tice (2011) describes the Law Library as the heart of the Law School. Cadmus (2016), posits that “the quintessential law library is not just aesthetically exquisite, but also renders top-notch services provided by well-trained librarians”. Some of the services include the provision of primary legal information and ensuring that users of the library are equipped with the needed research skills to access the needed information. For Hackerson (2010), access to justice begins in the library. Legal professionals as well as bodies that need access to legal documents need to acquire some form of skills that will aid them in the completion of their work. In the law libraries and institutions that are engaged in making access to legal documents, from time to time, provide varying degrees of training and support to law students, lawyers and parties so as to enable them to have effective and cost effective legal research skills. Law libraries also need to implement programs as part of the general curriculum to increase the requisite skills for lawyers (Hackerson, 2010).

Challenges

In spite of the numerous opportunities that exist, there are a number of challenges which also need critical attention. Amongst these are intellectual property, lack of funding, restrictive Ghanaian laws, and poor research skills.

Intellectual Property

Copyright is one major challenge that restricts access to primary legal information publicly. There are three levels of copyright. A creator may have the legal right to a work, some publishers may have some legal rights through transfer. A case in point is that, currently the reporter of the Supreme Court Law reports is an individual and has sole rights for the published law reports hence publishing the content may lead to breach of copyright . Another challenge with copyright is that , other users in an academic setting may also have certain rights in respect of some limitations and exceptions to creators’ rights. The rights that countries have in respect of copyright are unique. However, in Ghana it is very challenging for the general public to have access to certain information where authors/publishers rights are very strong. This has impeded the provision of legal information in Ghana significantly.

Lack of Funding

Funding is a challenge that has been identified when it comes to the dissemination of legal materials in Ghana. Even though the courts have been automated, funds allocated are inadequate hence populating website with up-to-date case laws have been deficient. Another challenge attributed to funding, is limited funds to train personnel to digitize records that have been produced over the years. Thus, financial sustainability from local sources is very crucial and this may be absent. It was as a result of the lack of funding from government that impeded the Government's law reporter (Council for Law Reporting) to discontinue reporting and was taken over by an individual reporter. Similarly the lack of funding impeded them from attracting quality editorial staff to edit the raw case laws for reporting. An interview with a staff of GHALii indicated that, the startup funds for the project was self-funded until African Law Institute came to their aid. It is therefore evident that funding is very crucial for the success of providing free legal information on the internet, even though some individuals have created webpages to disseminate legal information.

Restrictive Ghanaian Laws

Kumado (2000) noted that the "Ghanaian statute law is very restrictive as far as access to official information is concerned". That some parts of the legislations have criminalized giving access to information to unauthorized persons. Some of the legislations include:

The Criminal Code, 1960 (Act 29) especially sections 183 and 185; State Secrets Act, 1962 (Act 101); (a) Civil Service Law, 1993 (PNDCL. 327) (b) Civil Service (Interim) Regulations, 1960 (L.I. 47) 4 (a) Armed Forces Act, 1962 (Act 105) (b) Armed Forces (Court Martial Appeal Court) Regulations, 1969 (L.I. 662) 5 (a) Police Service Act, 1970 (Act 350) (b) Police Service (Administration) Regulations, 1974 (L.I. 880) 6 (a) Prison Service Decree, 1972 (NRCD 46). There have however been attempts by successive governments to decriminalize some provisions of the legislations.

At the same time, there were also other laws which regulated access to officially held information, some included:

"(a) the Public Archives Ordinance, 1955 (No. 35); (b) Copyright Law, 1985 (PNDCL. 110) and the High Court Civil Procedure Rules which contain some tools for accessing information generally e.g. interrogatories. Discussion of the statutory regime may not be considered complete unless one adds the Evidence Decree, 1975 (NRCD 323)' (Kumado, 2000).

A landmark decision in *Mensah-Bonsu and Others; Ex Parte Attorney-General* [1995-96] 1 GLR 377 (SC), was the main catalyst that restricted access to legal information. Thus, the Supreme Court of Ghana held

among others that though “freedom of expression was essential to the achievement and maintenance of a democratic society”. Thus, case law which was not obtained from the Court registry could not be tendered in as evidence in court.

The Data Protection Act also impedes access to public legal information. The Council for Law Reporting for government case law was short-lived in the 1990s after having suffered funding and personnel challenges. We have also an organization DATACENTA who seems to acquire some sort of rights to publish government legislations and case law. Given this premise putting information that have been published by commercial and individuals may breach the Data Protection Act. A close examination of our statute books reveals then, that one does not need to be a radical to realize that what we have here is a legal environment which is inhospitable to access to information.

Inadequate Research Skills

There are several benefits that are derived with the adoption and use of information and communication technologies globally and in Ghana. However, the benefits also come with some challenges in the face of making legal information readily available to the general public. It must be noted that some lawyers and law students do not have the requisite skills that are needed to access some legal information that are publicly made available through some of the ICT platforms. Thus, lack of training in digital literacy and the effective ways of using other ICT technologies will undoubtedly present challenges if one is to easily access legal information (Jones & Ilako, 2015; Kundishora, n.d.:3; Tuhumwire & Okello-Obura, 2010:9; Phiri, n.d.:5).

Recommendations

Intellectual Property

With the current changes in technology, the ability to reproduce, distribute, control and disseminate legal information publicly has seen massive changes. It is therefore important for all stakeholders, which includes representatives of the government, rights holders, publishers, libraries and other cultural heritage institutions, the public, and technology providers to come up with models that will allow the public to access legal information in the face of well-known licensing and technical protection services that currently exist in the Ghanaian context. The first is creating a visible platform that people can access to be connected to the myriad of legal aid.

Funding

Given that the government is unable to fund the digitization of print legal information, the government should partner with all institutions interested in the free access to public legal information. This will enable such institutions to scan the print documents and well as providing skilled personnel to support the

digitization of print legal information and providing up to date legal information. Perhaps the government publishers should delegate some of its authorities to institutions such as GHALII to support the objective of providing public legal information for free access.

Restrictive Ghanaian Laws

Given the successive change of governments, some of the restricted laws have been repealed or amended. Examples are the Repeal of Criminal Libel and Seditious Laws Amendment (Act 620). The Rights to Information Bill also supports the individual rights to access public information though yet to be passed. The Copyright and Data Protection Acts need to be amended.

Legal Research Skills

Legal research skills are not only important for practising lawyers but necessary for all researchers of legal information (Hackerson, 2010:481). Law Librarians need to prepare students on research skills as well as providing online guides for research instruction. Law Schools should include a credit hour course for both students and faculty to enable them grasp the skill for researching online.

Conclusion

Access to public primary legal information is important. In Ghana, there are a number of opportunities for making legal information accessible to the public. However, there are also challenges that inhibit this drive. Some recommendations have been made based on the challenges identified.

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