

FORUM Q&A: DEFENDING MEDIA FREEDOM DURING GHANA'S DIGITAL MIGRATION

George Sarpong is a Reagan-Fascell Democracy Fellow, lawyer, journalist, and recognized industry leader in media and communications policy in Ghana. He currently serves as executive secretary of Ghana's National Media Commission, which oversees more than 360 radio stations, 80 registered newspapers, 25 television channels, and various online publications. As executive secretary, he initiates and implements policies to ensure free, pluralistic, and diverse media and also works to address threats to media freedom and development. Before joining the National Media Commission, Mr. Sarpong served as coordinator of publications at the Media Foundation for West Africa, where he organized programs for the defense of journalists in West Africa.

Digital migration—the transition from analog television broadcasting to more efficient modern formats—is a seemingly technical issue with significant but often underappreciated implications for freedom of expression. As many African countries move through this process, civil society has raised important questions about protections for media freedom and other democratic values. Meanwhile, many countries in the region have contracted this process out to firms linked to the Chinese state without responding to key concerns.

Dean Jackson of the International Forum for Democratic Studies spoke with George Sarpong, a Reagan-Fascell Democracy fellow, about the impact of new technology and Chinese influence on media freedom in Ghana and beyond. (This interview has been condensed and edited for clarity. The views and opinions expressed within do not necessarily reflect those of the National Endowment for Democracy.)

Dean Jackson: George, you've been thinking about the intersection between media freedom and digital conversion, two issues most people might not immediately link. Can you explain why it's important for the digital migration of television broadcasts to incorporate key freedom of expression concepts?

George Sarpong: First, let's understand that within the communications field, technology has been a great driver for diversity and pluralism. So, whether you are looking at the invention of the printing press or at radio and television and their capacity to disseminate information at the mass level, technology always provides a good opportunity to reach people with information and for people to provide feedback on governance, thereby creating a public sphere for social dialogue.

So, technology is always at the heart of the question of free expression. In the current situation, the movement from analog to digital television creates an opportunity to expand media diversity and pluralism. With digital broadcasting, you need just a little bit of spectrum to carry more content. With traditional analog broadcasting, five megahertz of spectrum might carry only one television channel. In digital mode, that five megahertz can carry about ten to twenty channels. So it makes it easier to set up more television stations.

Digital broadcasting also eliminates the need for the infrastructure that traditional television relies upon. Unfortunately, almost all African countries are transitioning to an infrastructure model where there is only one platform for the distribution of content, which means that if somebody took hold of that one point then the totality of public expression could be compromised.

It's a choke point: it is almost like holding somebody's neck and strangling the whole space for public expression. And that is why I suggest that we need to develop policies and frameworks that take advantage of the diversity that digital migration allows, but also avoid the dangers it can present.

You've emphasized specifically that the broadcast signal distributors who operate that choke point should be regulated as media, not as technology or infrastructure. Can you explain why that distinction is so important to preserving free expression?

We need that distinction to determine who bears liability for offensive content and who can access constitutional protections for free expression. If we designate broadcast distributors as technology, they may not benefit from the constitutional protections available to the media. Ordinarily, technology and infrastructure do not benefit from constitutional protections for free expression. If you look at the analogy of the telephone, traditionally we've considered it as a common carrier: the telephone company will not be held liable for any offensive material communicated between two people over the telephone network.

The downside of this is that, as a result of the principle of mutuality, common carriers don't receive constitutional protections for freedom of speech and expression. In the case of digital migration in Africa, without policy clarity, this could create problems: what if, in the future, intermediaries are asked to enforce government content restrictions for reasons that are ostensibly related to public safety but in reality are politically motivated?

My suggestion is that because signal distributors stand at the gateway of public communication and have the capacity to choke public expression, it is important that they receive both freedom from liability for the content as well as legal protection from infringements on free expression. They should be given all the constitutional protections that are afforded to the media so that they are insulated from impermissible political encroachment. But as intermediaries, they also need to be free from liability for content. If they are not, distributors could be left vulnerable to lawsuits or government intervention and so may seek to limit their liability by refusing to broadcast critical content—effectively turning them into private censors.

The question of how to treat intermediaries between content creators and the public is thorny and persistent, reemerging with each major advance in communications technology. It is the same question about whether search engines and hosting sites should be held liable for the content of third parties.

Africa also needs transparent, democratic legislation that addresses the relationship between content producers and the broadcast platform because at present, that relationship is usually regulated by contractual agreement. This means that if the signal distributor chooses not to broadcast particular content, the content producer can only sue for breach of contract. Remedies for breach of contract cannot remedy the costs of censorship: for example, if during an election a TV station is critical of the government and is subsequently removed from the airwaves by the signal distributor, suing for breach of contract may provide financial restitution but cannot address censorship's political ramifications.

You've described previously how the Ghanaian government came to an agreement with Chinese telecom company StarTimes to manage digital migration in Ghana. What are the risks inherent in this approach to what is a sensitive process?

Let me start with the specifics: first, the government of Ghana signed a contract with StarTimes to manage the signal distribution. Then the government alleged that StarTimes was unable to deliver and **terminated** the contract. StarTimes **sued** the government of Ghana in the Ghanaian courts and lost the case. StarTimes then took the matter to **international arbitration**.

While the case was under arbitration, the sitting Ghanaian government lost an election. The new government reinstated the StarTimes contract under circumstances that have generated public controversy. The former communications minister **alleged** that the **contract was reinstated** after the President and the First Lady **visited the headquarters of StarTimes** while they were on a visit to China. Some opposition politicians **alleged** that StarTimes made a donation to the First Lady's foundation. Officials from the First Lady's foundation **have said** that the donation was made through the foundation to help children in need in Ghana and that the First Lady had no hand in the contract matter.

Meanwhile, there were **allegations** that as a result of the abrogation of StarTimes' contract, the Chinese government was refusing to release promised loans to Ghana. What's more, a **Ghanaian company** had been already been awarded the contract and had reportedly already built the required infrastructure almost to completion.

And so, the role of apparent Chinese government pressure in the decision to reinstate the contract became a matter of public controversy. If the Chinese government intervened in what was presumably a private matter between the Ghanaian government and a private Chinese company, then it suggests that these companies are not entirely private and that their dealings may not be entirely commercial. If these pseudo-private Chinese companies are given control over broadcast signal distribution or other media choke points, I fear they will also exercise some degree of censorship over media content.

Was the public controversy over this incident sufficiently deep, or was it lost in the daily news grind?

A mix, but more worrying is how it emerged. The controversy was not about the freedom of expression issues. Two groups raised two separate issues. The **Imani Center for Policy & Education**, a think tank based in Ghana, **challenged the contract** on grounds of value-for-money. The Ministry of Communications **disagreed** with Imani's position and explained they had acted in good faith and in accordance with law. The **Ghana Independent Broadcasters Association (GIBA)**, which is essentially an association for private commercial broadcasters, alleged that under the **reinstated contract** StarTimes was given the power to run their own content on additional channels through the signal distribution platform. GIBA's concerns were about competition; but it appears to me that in order to build popular support for their cause, they then roped in other concerns even though their main interest was very narrow and specific.

The Ministry disputed GIBA's allegations. It appears that there are two separate agreements between the government of Ghana and StarTimes: one is over the management of the signal distribution platform and the other is related to a project that the Chinese government is funding across Africa, called the "**10,000 African Villages Project**." Until the Ministry clarifies things, it is difficult to understand the relationship between these agreements, but we do know that StarTimes has been selected to take over the signal distribution platform and that it has been authorized to create channels in connection with a project by the Chinese government.

Ghana is not the only country in Africa undergoing digital migration. How are other African countries handling this process?

The same StarTimes that has drawn controversy in Ghana is present across Africa, and twenty-one African countries are also currently undergoing a digital migration process. It appears to me that all the questions that are emerging in Ghana can also play out in those countries, many of which do not have the strong civil society or relative media freedom that Ghana enjoys.

We are seeing that in some of these countries, China appears to almost dictate the rules. We've seen this in **Zambia**, and we have seen some signs of this in **Zimbabwe**. We have seen the influence that they are developing or have developed in **South Africa**. It's a particularly worrying trend.

To be fair, I do not argue that any country should be excluded from investment in Africa, including China. It appears to me that we create a better world when we create open societies where everybody can participate; that is how we will promote growth around the world. What I have concerns about are the values that drive engagement, and I want to insist that anybody who invests in African media must at a minimum subscribe to democratic values as part of the whole culture of their operation. For now, I do not see that with China.

Looking into the future, what do you think will be the most important priorities for preserving African media freedom?

I think the most important priority is to build coalitions around the issues. Civil society, regulators, friends of the continent, democratic thinkers, and all of us need to recognize that the future of free expression will depend in part on the nature and growth of communications technology. Increasingly, African civil society has retrenched itself from technology issues, often seeing them as somehow neutral toward freedom of expression.

Whether the issue is digital migration or internet regulation, it is important to improve civil society's understanding that the future of free expression will be shaped by emerging technology. Coalitions of stakeholders should work to increase civil society's capacity to analyze the interface between technology, public policy, law, and governance, and to expand its ability to engage critically on these issues.