

NIGERIA TAKES LEAD ON FREEDOM OF INFORMATION ACT

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Over 60 countries worldwide now have freedom of information acts, opening up government and public offices to scrutiny by the public and the press. So far, Ghana is not one of them - despite provisions made in the 1992 Constitution of Ghana for access to information. And existing legislation, such as the Whistle Blowers Act, is not enough, according to the Coalition of the Right to Information in Ghana. The passage of the long-pending Freedom of Information bill is essential if Ghana is to shake off the shadow of secrecy and corruption which continues to taint some public office holders.

This week, Nigeria looked set to become the first country in West Africa to pass freedom of information legislation – with hopes that new access to information there will help the sub-regional giant to work its way out of the endemic corruption which for years has tarnished its international reputation.

Elsewhere, freedom of information legislation is already making an impact in some other countries in which it has been passed, according to a report released by Transparency International, the global anti-corruption watchdog. "Corruption flourishes in darkness and so any progress towards opening governments and intergovernmental organisations to public scrutiny is likely to advance anti-corruption efforts," the report notes. The report, titled "Using the right to information as an anti-corruption tool," focuses particularly on the impact of freedom of information legislation across Eastern Europe – the former Communist bloc in which government was often a by-word for secrecy and deception. Although there have been some complex problems with implementation and in persuading the public and position holders to make use of the legislation, new access to information is making government more accountable – and there is a continuing drive to persuade governments across Africa to adopt similar measures.

In Ghana, a freedom of information bill was first drafted in 2003; since then, there have been several revisions – in what some civil society groups have called deliberate stalling on the part of a government too reluctant to open itself up to universal scrutiny. But, the passing of the Whistleblowers Act this year, another important legislation in the process of instilling transparency and accountability, can be said to show some political will in the fight for greater good governance.

28 September 2006 was International Right to Know Day. Dissatisfied with the progress towards free access to information here, the Coalition of the Right to Information in Ghana wrote an open letter to the president, stating its position that, "The pending legislation is overdue, and that the failure of Cabinet to adopt the Bill and send it to Parliament is unacceptable for the people of Ghana." The letter pointed out Article 21(1)(f) of the Constitution, which guarantees that all persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society. It also pointed out the African Union Declaration of Principles on Freedom of Expression in Africa and the International Covenant on Civil and Political Rights, which both expressly call for the right to access information to be protected by law. "The current failure to implement the Right to Information Bill, therefore, stands contrary to the above mentioned constitutional and international obligations," the letter stated. So far, there has been no official response to the Coalition from the Office of the President.

However, the Bill is now being debated by Cabinet, according to Kwamena Bartels, the Minister for Information and National Orientation. Speaking to The Statesman yesterday, Mr. Bartels said he was unable to comment about the exact nature of the discussions, but that these would be made known to the public once cabinet has approved or amended the Bill, and passed it on for discussion by Parliament. He was unable to give any clear timeframe as to when this might take place. He said that there are some "major issues" concerning the bill which may prove controversial in discussions. He pointed out, however, existing legislation in Ghana, which he

says is already opening up the way to greater accountability in government. He mentioned in particular the Whistle Blowers Act, which seeks to provide for the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or practice. "We already have in place structures to ensure that people can go out there and expose criminal acts," the Information Minister said. "The Freedom of Information Act will be useful – but it will complement legislation which is already in place."

The Coalition of the Right to Information in Ghana, disagrees, however – arguing that current legislation is insufficient and that a separate access to information law is imperative. Janette Kuarcoo Pome is the Programme Officer at the Media Foundation for West Africa, which is a member of the Coalition. Speaking to The Statesman yesterday, she said that access to information "cannot be boxed up with other rights," by being taken care of by the Whistle Blowers Act. "It has its own article in the Constitution, and it needs to be enshrined in its own law," she said. She pointed out that a freedom of information act should be seen as a tool for all Ghanaians – not simply as "another arsenal for the media to terrorise position holders."

People need to be educated about the bill, she said, which needs to be carried along by a popular awareness and support for the benefits it will bring. The finding of Transparency International in Eastern Europe is that freedom of information legislation has been most successful in those countries where the bill came about as the result of a popular groundswell of support, and needs to be supported by politicians, rather than simply thrust upon them: "To achieve full implementation of these laws, however, there has to be sufficient political will. Ideas should be pitched to esteemed and well respected political figures," it says. The report also shows that as well as legislative change, attitudes need to be softened. "There is a fear amongst office holders," according to Ms. Kuarcoo Pome. "People believe that information is power – and they are reluctant to give this up."

Several revisions to the bill also need to be made if an access to information bill in Ghana can work to effectively combat clandestine corruption. It is obstructive, for example, to attach a fee to any freedom of information legislation, as this will act as a deterrent to its utilisation. "If any money is to be charged, it should be only the fee of actually reproducing the material, such as the photocopy charge," according to Ms. Kuarcoo Pome. Other problems include the mechanism for appeal if an application for information is turned down. Currently planned to be the Attorney General, this should instead be the Commission on Human Rights and Administrative Justice, she recommended – a more independent body. "It will confuse the process if the same government officer is the ultimate arbiter of the appeals process as well as the main decision maker," the Coalition noted in their letter to the President. Other signatories of the letter include CHRAJ, the Ghana Center for Democratic Development, Ghana Integrity Initiative and the Ghana News Agency, amongst others.

Kwadwo Appiah-Gyei is the Legal and Constitutional Policy Fellow for CDD, and a law lecturer at the University of Ghana, Legon. He pointed out that a freedom of information act in Ghana is a constitutional requirement, which Government must act swiftly to operationalise. He described "a lack of political will," which has thus far held back the passage of the act, but called on government to recognise its advantages:

"A freedom of information act will even strengthen government by enabling people to engage with government, find out more about government policies and contribute to debate. It will promote good governance," he said.

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