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## Today's picks

- NCA's milestone: Communication revolution and transformation

## Absolutely no excuse for delaying Right to Information Bill

29/05/2007

"This government remains committed to the constitutionally guaranteed freedoms of speech, of expression and the independence of the media from state control. It is for this reason that one of the very first actions we took was the repeal of the Criminal Libel Law.

Subsequently, the Kufuor administration has ensured the passage of the Whistle Blowers Act and, currently, the Right-To-information Bill which is about to go to Parliament."

The above words were said by Information Minister, Kwamena Bartels in 2006. The statement above, used repeatedly to great effect by the NPP, shows the plodding progress this country has made over recent years.

Indeed, the readiness of senior government officials to respond to early morning calls from the Kwami Sefa-Kayis even before brushing their teeth and gathering their thoughts testifies to the openness Ghanaians are enjoying today.

Yet, there appears to be, unfortunately, a contrary posture gaining ascendancy that Government fears Ghana is on an expensive, impracticable slippery slope to transparency. The Right to Information Bill, which was first drafted in 2003, may now hold the record as being the longest ever considered bill by the Kufuor cabinet.

Now two major reasons being put forward to explain away the delay are: (1) Government is still considering its national security implications (2) the institutional structures are simply not in place. Though, it has not been said, we shall add a third reason: the cost of formalising public access to public records.

We at The Statesman join the Freedom of Information Coalition, on their call to Government to accelerate the passage of the Right to Information Bill and honour its promise to Ghanaians and the international community.

The decision by Government to use the predictable challenges the law would face as a 'legitimate' excuse for not implementing it is at best embarrassing and at worst fundamentally contradictory to the very principles that the Danquah-Busia tradition holds dear.

If, indeed, the NPP Government believes that the building of a national information management system and the promotion of a proper record keeping culture constitute a pre-condition to fulfilling its mandate under Article 21(f) of the 1992 Constitution, then what stopped it from building the institutional capacity in all those years it was using the Bill as one of its major plusses?

In our view, there are three major challenges awaiting the passing of the law: attitude, behaviour and weak structures. Nevertheless, it is usually the case that laws are passed and utilised effectively to change the very attitudes, behaviours and structures that created that particular mischief that the law seeks to remedy.

We hold that the passage of the Bill would rather speed up the enhancement process of institutional structures. It is not that the structures are not in place. The structures are there but inherently weak. The Bill can be passed but in a way that can make its comprehensive implementation be done progressively.

For instance, if the intention is to give state institutions three weeks to provide information requested, categories of information depending on the level of the readied availability can be given different deadlines.

What would, ceteris paribus, take 3 weeks can be extended to six weeks

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for the first three years of the Act, for example. If ROPAA could be passed because we held the view that weak structures should not cause a bar to the expression of a fundamental right then why can't the same principle be extended to the Right of Information Bill?

*The Statesman* has recently published an editorial in which we said that the biggest threat to the introduction of the Bill was the poor structural nature of access to information held by state institutions. But, we stated that as a *critique* not as an *excuse*. Indeed, there is nothing like a perfect legislation on freedom of information anywhere in the world - not even Sweden which has had such a law since the 18th century.

Once passed, its full implementation can be gradual and practical. For example, with all its strong institutions and information systems, the UK, which introduced its Freedom of Information Bill seven years ago was only able to, on the whole, successfully implement its Freedom of Information Act two years ago. Now, it even wants to rein it in and pull the brakes on aspects it considers frivolous because the exercise is costing the state about \$70 million a year.

Ghana's Information Minister was recently quoted as saying that Cabinet was still considering the national security implications of the Bill. With due respect, we certainly hope the Minister was misrepresented.

Over 70 countries around the world, from Albania to Zimbabwe have found a way round this. Indeed, a common reference point is the Johannesburg Principles adopted on 1 October 1995 by a group of experts in international law, national security, and human rights.

The Principles acknowledge the enduring applicability of the so-called Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Paris Minimum Standards of Human Rights Norms in a State of Emergency.

For example, Principle 1.2 states, "Any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest."

Principle 1.3 adds, "To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that: (a) the expression or information at issue poses a serious threat to a legitimate national security interest; (b) the restriction imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles."

Principle 2 defines what is legitimate national security interest and states, "(a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

(b) In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest."

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. This week, the International

Commission of Jurists, Kenya chapter, has called for a speedy enactment of the Freedom of Information Bill in its entirety.

In Ghana, a freedom of information bill drafted in 2003 is being inexplicably frustrated by unnecessary lack of courage on the part of a government that has shown more courage than any other on the continent and in our history when it comes to expanding the frontiers of freedom. President Kufuor has no fundamental or practical excuse to deny his government this extra credit, and the country's growing pursuit of good governance this crucial tool.

There can be absolutely no excuse available to this government for failing to facilitate the passage of the Right to Information Bill. Indeed, it would be most embarrassing to give the NDC an opportunity to criticise the NPP for showing lack of courage on this front.

Tony Blair, as opposition leader in the UK, observed in 1996 that information is power, and any government's attitude about sharing information with the people actually says a great deal about how it views power itself, and how it views the relationship between itself and the people who elected it.

Our fear is that the NPP is giving a dangerously undeserving tag to itself as being anti-transparent, when indeed it has done tremendously well on that front. It should not use the excuse of a bad system it inherited to devalue itself. Today, the right of information is there but it must be formalised and institutionalised.

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