

Cloud of secrecy hides the rot

The Protection of Information Bill will give greater power to a smaller number of people. Our MPs must act for us

FREEDOM OF SPEECH
Hennie van Vuuren
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In the historic setting of Cape Town's St George's Cathedral, more than 200 South African and international civil society organisations launched the Right2Know Campaign this week. This broad-based campaign, which seeks to defend and advance constitutional rights to access information and freedom of speech, has the support of inter-faith groups, advocacy organisations and think-tanks alike.

They have been galvanised by the belief that the Protection of Information Bill (dubbed the Secrecy Bill) and the proposed measures to curtail media freedom will take us back towards a past that many ordinary South Africans sacrificed much to overcome.

It is also born out of frustration that detailed submissions to Parliament by civil society groups on the Bill have largely been ignored. The cogent arguments calling for the Bill to be significantly overhauled have been treated with contempt by our elected legislators and their independent advisers, who have branded these concerns "hysteria". We view these glib responses in a serious light.

While the public are told that the proposed law is in the national interest, the proponents of this odious legislation seem to have forgotten that democracy, freedom and the right to know are inseparable. Block access to information and democracy suffocates. More accurately, it will be suffocated by the power given to the security establishment, which will suddenly have its tentacles in almost every aspect of public life.



Allison Tilley of the Open Democracy Advice Centre and member of the Right2Know campaign's working committee briefs the media in Cape Town. The campaign is an open challenge to those who have vested interests in a shadow state. Photo: David Harrison

The possession of information, possibly including parts of this newspaper, could be criminalised and journalists and researchers who contributed to the publication could face imprisonment of between five and 25 years. This naturally breeds withdrawal and fear and perpetuates social exclusion.

The concern of the Right2Know coalition is that ordinary citizens will soon be dominated by powerful predatory elites. The Right2Know is not a fight only for access to information by a diverse, independent and responsible media; it goes to the heart of the struggles that ordinary men and women face on a daily basis in communities across South Africa. The Bill seeks to disempower civic groups working in these communities and empowers officialdom to make secret that which should be public. It also assumes that officials are, by default, benevolent people and always have the best interests of citizens at heart.

Imagine burying family members who die of HIV/Aids only to be told

by a government official that records of the scale of the pandemic are confidential, or sitting in darkness while Eskom officials announce that they cannot confirm or deny power cuts. The impact is not only farcical; it could also be dangerous, for example, if municipalities suppress information about poor quality water before election campaigns.

Consider the way in which this will widen the gap between elected officials and the electorate, nullifying the notion of participatory governance that President Jacob Zuma has called on civil society to embark on with his government. The Bill undermines the basic principle of a social contract, so desperately needed, between the state and citizens.

Greater secrecy translates into greater power for a smaller number of people. When even mundane information is classified it will also contribute to what Nigerian Nobel laureate Wole Soyinka refers to as a "climate of fear". When this happens, he argues, "caution and calculation replace a norm of spontaneity

or routine. Often normal speech is reduced to a whisper, even within the intimacy of the home."

The Bill and related laws seek not only to silence but to create a culture of silence. This climate of fear, Soyinka argues, is the converse of "human dignity". It is programmed to centralise resources and power and stifle creativity and diversity, which is central to our post-1994 liberation.

While there is a need to replace apartheid-era secrecy laws, the question seldom asked is in whose direct interest is the Secrecy Bill and proposed media appeals tribunal?

There are three identifiable groups who will benefit from these measures:

- A group of securocrats and spies who have a natural tendency to want to suppress access to information;
- The venal politicians who are ashamed of the trinkets that have been bought using the public purse, such as cars, houses and evenings in five-star hotels and;
- The predatory power elite who

are involved in large-scale corruption and move with seeming ease between networks they have established in politics, business and state-owned enterprises.

The interests of these three groups conflate and overlap at times. They represent the shady end of public life — the shadow state.

If these are the primary beneficiaries of the Bill, then the victim becomes the "national interest". It is apparent that our leaders are walking down a path that could entangle them in the narrow interests of these three groups.

This is not, as a column in the *Sunday Independent* naively suggests, a case of the "ANC versus society". Rather it is these three interest groups who seek to undermine the legacy of freedom that the ANC and United Democratic Front fought for.

The time is now for ANC MPs and leaders who express disquiet about the law in private to speak out so that they do not become accomplices to efforts to capture and criminalise the state. They should do so in the same way that prominent individuals such as clerics (Archbishop Desmond Tutu), writers (Nadine Gordimer, Zakes Mda and André Brink) political activists (Kader Asmal and Mazibuko Jara) and academics (Jonathan Jansen and Max Price) have done.

But their responsibility is not to sign statements and march to Parliament during the week of action that the Right2Know campaign has scheduled for October 19. Rather their constitutional obligation is to use the power that we have given them within Parliament to ensure that the Secrecy Bill and all other efforts to muzzle freedom of speech are blocked.

Freedom is a common currency of all our people and should not be traded and subjected to speculative market practice — because it is priceless. A climate of fear will affect equally all who live in South Africa.

Our leaders must speak the truth to power or expect to be muzzled by machinations which will be of their own making.

Hennie van Vuuren is the director of the Institute for Security Studies (Cape Town) and Phelisa Nkomo is the Black Sash national programme advocacy manager. Both are organisers in the Right2Know campaign working group. To sign the statement go to www.r2k.org.za

Unusually severe penalties will silence the whistle-blowers

A responsive and accountable democracy that can meet the basic needs of our people is built on transparency and the free flow of information.

The gains realised by South Africans' struggle for freedom are threatened by the Protection of Information Bill before Parliament. We accept the need to replace apartheid-era secrecy legislation. But this Bill extends the veil of secrecy in a manner reminiscent of that same apartheid past. It fundamentally undermines the struggle for whistle-blower protection and access to information.

It is one of a number of proposed measures that could have the combined effect of fundamentally undermining the right to access information and the freedom of expression enshrined in the Constitution.

Our concerns

The Bill will create a society of secrets.

- Any state agency, government department, even a parastatal and your local municipality, can classify public information as secret.
- Anything and everything can

potentially be classified as secret at official discretion if it is in the "national interest". Even ordinary information relating to service delivery can become secret.

- Commercial information can be made secret, making it very difficult to hold business and government to account for inefficiency and corruption.

- Anyone involved in the "unauthorised" handling and disclosure of classified information can be prosecuted, not just the state official who leaks information, as is the case in other democracies.

- In some cases the disclosure of information that is not formally classified can land citizens in jail. This will lead to self-censorship and have a chilling effect on free speech.

- Whistle-blowers and journalists could face more time in prison than officials who deliberately conceal public information that should be disclosed.

- A veil is drawn over the workings of the intelligence services. It will prevent public scrutiny of our spies should they abuse their power or breach human rights.

Who will guard the guardians?

- Officials don't need to give reasons for making information secret.

- There is no independent oversight mechanism to prevent information in the public interest from being made secret.

- The minister of state security becomes the arbiter of what information must remain secret or may be disclosed to the public.

- Even the leaking of secret information in the public interest is criminalised.

- Unusually severe penalties of up to 25 years in prison will silence whistle-blowers, civil society and journalists doing their job.

- All these factors will limit public scrutiny of business and government, through Parliament or journalists. Accountability will be curtailed and service delivery undermined.

Our demands

The Constitution demands accountable, open and responsive government, realised through, among other things, freedom of expression and access to information. Our elected representatives

are bound by these constitutional values and any legislation they pass must comply. We demand that the Protection of Information Bill must reflect the following:

- Limit secrecy to core state bodies in the security sector such as the police, defence and intelligence.

- Limit secrecy to strictly defined national security matters and no more. Officials must give reasons for making information secret.

- Exclude commercial information from this Bill.

- Do not exempt the intelligence agencies from public scrutiny.

- Do not apply penalties for unauthorised disclosure to society at large, only those responsible for keeping secrets.

- An independent body, appointed by Parliament and not the minister of intelligence, should be the arbiter of decisions about what may be made secret.

- Do not criminalise the legitimate disclosure of secrets in the public interest.

For a list of signatories go to www.r2k.org.za