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SECRECY BILL: COULD THIS ARTICLE BECOME OUTLAWED?

Article by CGF Research

As a part of our 'freedom' struggle, many South Africans and indeed a great number of international supporters fought against 'apartheid' and its de-humanising approach which was imposed on all non-white people of South Africa -- classified as Bantu (black), coloured (mixed), or Indian -- by the previous Nationalist party government. The decades of oppression, and the passing of racist and class laws in South Africa were all mechanisms used to keep the vast majority of people uninformed, uneducated and removed from information which caused countless suffering and long term damage to our country and her people.

The outspokenness of stalwarts such as Steve Biko, Beyers Naude, Nelson Mandela, Helen Suzman, Oliver Tambo, Archbishop Desmond Tutu including many other notable brave struggle heroes all stood for a common goal; *freedom*. Whilst their approach to liberate our country was often unorthodox, these citizens knew the importance of liberation and that in order to set the country free from its shackles of apartheid, every citizen had to have the same basic rights -- now espoused in the Bill of Rights. Through exercising these rights, every citizen would be free to express themselves and citizens would be entitled to enjoy a Constitution where everyone is treated on a fair and equitable basis (instead of oppression, segregation and racial discrimination). These were in essence the principles for which many people sacrificed their lives. And as countless, brave citizens stood steadfast in these rights -- against the might of an unsympathetic, racist, arrogant and classist white dominated Nationalist party government -- these citizens eventually crushed the stronghold of oppression in 1994 and delivered all the people of South Africa a democracy that has become renowned across the world.

And so the approval of the 'Secrecy Bill' (known as the Protection of State Information Bill) last week by Parliament into legislation is not only bizarre, but it is also completely ironic and has been poorly governed since it was first introduced almost five years ago. The people who fought the liberation battle over decades, and who were eventually rewarded to become the new leaders of South Africa, are now the same people responsible for outlawing various freedoms pertaining to the access of certain information.

"There is evidence of steady erosion in trust for established authorities. As trust diminishes, so increases the demand for transparency."
Tom Delfgaauw (Shell)

There's a danger when a government refuses to listen to its people, and South Africa has first hand knowledge and experience of the consequences as found in some of the social uprisings such as;

- the anti-pass law campaign launched by the Pan-Africanist Congress in Sharpeville in 1960,
- the labour militancy and strikes in Durban in 1973,
- the 1976 Soweto June uprisings led by black high school students protesting against the introduction of Afrikaans as the medium of instruction in local black schools,



- the hunger strikes by political prisoners in 1989 resulting in the release of hundreds of detainees placed in detention without trial,
- the 2012 Marikana mining strikes and subsequent clashes with police,
- the 2013 farm worker's strikes in De Doorns, and
- the more recent stand-off between the teachers' union SADTU and the government.

Quite unlike the governance principles contained within the Codes for Governance in South Africa 2009 (King III) which calls for organisations to substantiate their corporate behaviour on an 'apply' or 'explain' basis, clearly the South African government has not taken heed of the dissatisfaction over this Bill, and which has been expressed by a large number of the country's citizens.

As far as the transparency that pertains to this matter is concerned, it hardly seems to exist. It is argued that it is for this very reason that the Secrecy Bill has become so controversial. The current ruling party -- the African National Congress -- do not want the citizens to be empowered with information it deems to be "classified" and therefore this Bill is being forced through on grounds that appear unconstitutional, and clearly against the main governance principles contained in King III.

Whilst there have been a number of positive changes made in the Secrecy Bill over the years through some very challenging lobbying, there are still quite significant and controversial areas that have remained in the Bill which government seems to be ignoring, and which could have dire impact upon not only the citizens in South Africa, but also businesses at large.

Some of these areas include the matter of knowing what in fact is "classified information" which a person or persons knew about, or ought to have reasonably known about that would directly and / or indirectly benefit a foreign state or non-state actor, or prejudice the national security of the country. In this example, who will classify this information and how widely ought people to reasonably have known what is classified and what is not classified? Of course, this area is so broad in nature that let's say for example a journalist were to be covering a story on corruption or tender rigging in a government procurement process, the current ambit of such a clause within the Bill would effectively see the journalist being exposed to a potential jail sentence of between 3 and 25 years if such information was considered "classified", notwithstanding the corruption being exposed. Demanding answers -- by implication -- of *who* issued the orders to shoot and kill the miners at Marikana may therefore be considered "classified". Accordingly, due to the sensitivities and potential embarrassment such an incident may have upon the South African Police, both locally and abroad, questioning and fact-finding missions to unearth the truth surrounding such events may indeed become outlawed to any citizen in South Africa. To this point, under the current provisions of the Bill, should any person -- for example a family member to one of the Marikana victims -- attempt to *intentionally* access such "classified information", such a person could be faced with a 10 year jail sentence. Another area of potential

"Secrecy robs us all equally of the opportunity for real social justice. Some secrets might be necessary – the criminal justice system and the state-security cluster do indeed keep secrets that save lives.

However, far too much information is withheld from public view by individuals who, with increased frequency, fail to live up to the values enshrined in our Constitution."

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“classified information” may be found in party political funding; trying to establish *who* is actually funding *who* and their real motives for such funding could become outlawed through the passing of this Bill.

Critics of the Bill -- who include a wide range of civil society organisations, COSATU (Congress of South African Trade Unions), SANEF (SA National Editor's Forum), various South African opposition political parties, as well as an international advocacy organisation called the Committee for the Protection of Journalists and Human Rights Watch -- believe that the Secrecy Bill will take South Africa back to the dark days of secrecy epitomised in the apartheid era, and one where only a few privileged people will benefit from this poorly conceived, soon to be implemented, piece of draconian legislation. Ironically, even some of the ANC veterans such as Archbishop Desmond Tutu and Professor Ben Turok are vehemently opposed to this Bill, believing that the Bill poses deep threats to the fundamental principles enshrined in our Constitution, furthermore threatening our democracy's foundational values by undermining access to information, freedom of speech, fairness and transparency.

Whilst the debates regarding the constitutionality of this Bill are expected to rage on, the activists are now relying on the Constitutional Court to reject it outright. Expectedly, the public have a right to know what their government is doing, more particularly how their hard earned tax money is being spent. To this extent, if the media is suppressed -- as yet a further example of how this Bill affects the average tax-paying citizen -- more sagas such as the President's Nkandla homestead where R205 million of taxpayer's money was spent, would never come to light. In its current form, the Bill's provisions have the ability to shield those government officials who engage in corrupt and or other dubious activities.

Perhaps one needs to question why the majority of the government officials, being elected by the citizens to serve the country as public servants, are so intent to bring about a law that has the ability to hide certain information from its electorate? Surely, if public servants are doing everything we expect them to do, and they are doing this in the best interests of the country as a whole, there should be no need to revert to the type of legislation envisaged in the Secrecy Bill -- and behavior -- which previously ravaged our nation.

As secrecy grows in South Africa, and a general lack of transparency prevails, the Secrecy Bill in itself is bound to entrench yet further dissatisfaction amongst the citizens of South Africa.

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“Business can only flourish in a society where the flow of information is free and unfettered by undue state control,” Gareth Ackerman, chairman of Pick n Pay Stores Ltd., South Africa's second-largest grocer, said in a statement. ‘The apparent haste with which our government appears to wish to push this bill through the House of Assembly will be damaging to foreign investment.’ ”

Sharon Green (From: What Does the ‘Secrecy Bill’ Mean for South Africa?)

