Joint Statement on Ghana's *Right to Information Bill, 2018*

2 July 2018

The undersigned international organisations are committed to promoting and protecting the human right to access information held by public institutions or the right to information. We welcome the fact that Ghana is moving forward with a Right to Information Bill, which is a very important piece of legislation. However, the Bill has shortcomings that should be addressed before it is passed into law. An assessment of the Bill according to the RTI Rating[1] indicates that it scores 89 points out of a maximum possible total of 150. This would put Ghana in 49th place globally out of the 111 countries currently on the Rating.[2]

Some of the key problems with the Bill include its unclear scope, significantly overboard regime of exceptions, insufficient protection for the independence of the oversight body, the Information Commission, and relatively weak proactive information disclosure obligations for public institutions.

We urge the relevant authorities in Ghana, including Parliament, to take our recommendations into account as the Bill is reviewed, with the aim of ensuring that the law which is passed provides as strong a basis as possible for Ghanaians to access information held by public institutions.

1. Exceptions

The Bill contains a significantly overbroad regime of exceptions. Our key recommendations regarding exceptions are as follows:

- **A primacy clause should be added** which makes it clear that the right to information law prevails over other laws in case of conflict.
- **The definition of a 'State secret'** in section 91 implies that the government has some discretion to decide what constitutes a State secret. This definition **should either be removed or clarified** so as to make it clear that secrets are as defined in the law, and not by government.
- **Sections 5 and 6**, which protect, respectively, information prepared for the Office of the President and information which has been submitted to Cabinet, **should be removed.** These are class exceptions, protecting an office or agency, as opposed to exceptions which are designed to protect a particular interest, such as the free and frank exchange of advice, against harm. Class exceptions are never legitimate. If section 5 is retained, **the 'Office of the President' needs to be defined narrowly**.

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[1] The RTI Rating is an internationally recognised methodology for assessing the strength of RTI legislation. See: http://www.RTI-Rating.org.

[2] 12 June 2018, the Centre for Law and Democracy (CLD) released an Analysis of Ghana's 2018 Right to Information Bill which included this assessment and made detailed recommendations for reform. Available at: https://www.law-democracy.org/live/ghana-analysis-of-right-to-information-bill/.

This Office incorporates many different ministries and agencies, including bodies like the Ghana Aids Commission and the Ministry of Special Development Initiatives, which should never be covered by an exception along these lines.

- Section 13(1)(a) provides for a class exemption for all internal advice, reports and recommendations. This should be replaced by a set of interests (such as the free and frank exchange of advice or protection of a policy where premature disclosure would undermine it) which are protected against harm.
- The following sections should be removed:
  - **Section 14(1)(a),** protecting information that can reasonably be expected to "infringe or contravene parliamentary privilege". International standards do not recognise parliamentary privilege as a legitimate exception.
  - **Sections 12**, protecting information relating to tax, **15(1)(a)(ii)**, protecting "communications between spouses", and **15(1)(b)**, regarding communications with doctors. These are unnecessary because privacy is already recognised as an exception in section 16.
  - **Sections 16(2)(b)** and **16(3)(f)-(h)**, which fall under privacy but are not related to this interest.
  - **Section 10(c)**, which exempts information which can reasonably be expected to disrupt business or trade. This is too general and could be used to hide information by arguing that its disclosure might disrupt trade.

2. Scope and Requesting Procedures

A key problem in terms of scope is the lack of any **proper definition of the key notion of a 'public institution'**, leaving this to be debated as the law is applied. This term should be defined clearly so as to include not only private bodies that receive public funding or undertake public functions but also a wide range of public authorities. Furthermore, **section 84, excluding application of the law to information held by the national archives and other bodies to which the public already has access, should be removed.** The Bill already addresses the issue of information which is available and this may be misunderstood as excluding these bodies more generally from its scope.

With respect to requesting procedures, our key recommendations are to:

- **Provide that no fee may be charged simply to file a request**.
- **Require public institutions to respond to requests as soon as possible.**
- **Require public institutions to provide a receipt to requesters when they lodge their requests**. Without this, individuals may not be able to prove that they made a request or when it was lodged.
- **Specifically require assistance to be provided to illiterate and disabled persons, where needed**.
- **Provide for a framework of rules on right of reuse** so that requesters may reuse any information they obtain under the law as they may see fit, subject only to very limited conditions.

3. Appeals

A key issue in relation to the system of appeals is that the independence of the Information Commission is not sufficiently protected. Independence of oversight bodies is of paramount importance if they are to be able to do their jobs properly. We recommend, in particular:

- **A more robustly independent system for appointing members which allocates less power to the President**
- **Prohibitions on appointing politically engaged individuals and requirements of professional expertise** for members.
- **A requirement to provide adequate funding** to the Commission, in a manner that is protected against political interference.

A number of procedural rules should be added to enhance the appeals process, including:

- It should be stated explicitly that **both the internal and administrative appeals to the Commission are free.**
- Proposals to **require citizens to show an ID** when they make a request for information **should not be adopted**.
- **The time limit for internal appeals should be reduced** to a maximum of ten working days and **clear time limits should be put in place for the Commission to decide on appeals.**
- Requesters should be **permitted to appeal directly to the Commission** without needing to exhaust the internal review procedures.
- **The Commission should have the power to impose appropriate structural remedies on public bodies** where this is needed to remedy systemic failures.

4. The Duty to Publish (Proactive Disclosure)

Section 3 requires public institutions to publish certain categories of information on a proactive basis, but its requirements are too general and unduly limited in scope. Public institutions should be **required to publish proactively a more extensive list of categories of information** which, at the very least, includes more onerous obligations regarding financial and budgetary information. Consideration should be given, in this area, to the provisions of Article 7 of the Model Law on Access to Information in Africa.[3]

5. Sanctions, Offences and Promotional Measures

The law should **prohibit more broadly the wilful obstruction of access to information.** The law should also **put in place a proper system for promoting better records management by public institutions**, including by having a central body, potentially the Commission, set records management standards.

[3] Available at: http://www.achpr.org/instruments/access-information/.

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