

Implications of the Secrecy Bill

The Secrecy Bill, which will probably be passed into law later this year, will require the organs of state that comprise the security cluster — the police, the military and the intelligence services — to classify documents and criminalize their unauthorized disclosure. Unjustifiable secrecy in the security cluster is dangerous, because it creates space for the abuse of the coercive capacities of the state. If the Bill in its current form becomes law, what would be the likely consequences for freedom of academics to undertake teaching and research on the cluster — that is, on university contributions that could assist in holding this most sensitive area of government to account?

Several academics researching the security cluster argue that there is too little academic work on the cluster already, resulting in various knowledge gaps. Reasons for the paucity of work are complex. Academics were heavily involved in the drafting of the white paper on defence in 1996, which was described as a consultative process. The current defence review, however, has undergone no such process. Academics further argue that there has been a rapid politicization of the military driven by an authoritarian, intelligence-minded and controlling minister of defence.

The following sentiments have been noted:

“The public doesn’t know about the processes. Academics have been pushed out of the system, which is being run by military bureaucrats. It’s fascinating to see how academics have been shut down.”

“There’s a fear in the defence force, a new-found fear, which is not so much fear that state secrets will become known but that bureaucratic ineptitude will become exposed. We have seen our body of knowledge shrinking and the number of people involved is fading away. We are losing our knowledge in this domain.”

Should academics simply take the easier way out? That is to conform and allow politicians to shape the debate around an issue they could determine how this country is going to be run going forward? The politicians seem to have seized the initiative and seem to brand anyone who questions way politics is being shaped as counter-revolutionary or anti-transformation. We need to understand that politics is inherently prone to corruption given that politicians hold the purse strings in the country. The broadness and vagueness of many aspects of the Bill, as well as the lack of an independent appeal mechanism and

the absence of a public interest override, all suggest that information may be withheld on potentially very subjective and unconstitutional grounds. This would represent a dilution of a progressive transparency framework that has sought to entrench the public's right to know about the governance of public affairs that directly affect the lives of people and important aspects of their wellbeing as well as research into the security sector.

The Protection of State Information Bill may be a necessary replacement for apartheid-era legislation, but in its current form would obstruct the access to information citizens need to ensure transparent and accountable governance. The Bill entrusts the power of classification, and the avenue of appeals against classification, to those who might benefit from the obscurity provided by classification. The Bill allows for 'national interest' to be invoked in justification of classification, but provides sufficient latitude of interpretation of what constitutes the 'national interest' to allow unscrupulous use of this measure. It remains silent on the 'public interest'. The current formulation of this Bill and the heavy penalties it mandates would impede both the right of the public to legitimate freedom of information and the intellectual enquiry that is the essence of academic work.

The proposal for a Media Appeals Tribunal, currently under consideration by the ANC, might enable direct State suppression of the freedom of expression. Accountable to Parliament, which is constituted overwhelmingly by the ruling party, the Tribunal could undermine the media's necessary role in informing society. The ruling party's antagonistic attitude to the print media has been illustrated by the public eviction of a journalist from a media conference and – very disturbingly – by the arrest and detention of a journalist at the order of a politician. Even in the absence of such provocation the proposed tribunal would represent an unacceptable intrusion into media freedom.

Taken together, the two initiatives attack key principles that underpin a democracy – access to information and freedom of speech – and threaten this country's widely admired constitutional order. Universities should express their deep concern at the implications of these measures for civil liberties and the pursuit of intellectual enquiry, and insist that, in their current form, they be abandoned.

The regime of racism in South Africa was maintained not only by brutality guns, violence but also restrictive laws. It was upheld by elaborately extensive silencing of freedom of expression. The Suppression of Communism Act of 1950 had definitions of communism that were vastly inclusive. What was forbidden included advocacy of industrial, political, economic, and social change. The military and intelligence services were shadowy institutions that researchers were forbidden to either write or talk about. The defence industry was the corner stone of apartheid system for it was used as both the stick to keep the restive masses in check as well as a source of funds because of weapons sales.

Fast forward to 2010, the re-emergence of the secrecy bill which was first introduced by Ronnie Kasrils, who has since has become one of its most vocal opponents during the Mbeki term. It is no coincidence that this has happened now. Securocracts have gained the upper hand with assuming of power by Jacob Zuma. We need to look at Africa in general. The reason why there have been so many coups in African can be attributed to the fact that after gaining independence most of Africa was ruled by regimes that were borne out of the military movements that had been fighting not mainly for the freedom of the ordinary but for sitting at the same table as the colonial master. As it was fashionable that a civilian face had to be put in power while the real power resided with the army Generals. So whenever the civilian entity deviated from agreed norms, the military would step in.

The Secrecy Bill has been and continues to be seen as an obvious means of concealing the corruption within the security establishment and has become a way of South African life for many, from high-placed members of the government down to menial officials. The tender—or bid to carry out government enterprises—has become the currency of much of this corruption. After the government calls for bids on projects from submarines to public buildings, the successful bid gets approved in return for bank deposits that end up in the back pocket of the official who has the power to award the deal. Sometimes the deposit is made to a firm where the wife of the awarding official is a partner. Some nosy person may subsequently reveal that the official himself benefited. And researchers will not be spared either for the bill

doesn't make any mention of whether research for whatever reason is to be exempted.

In the past the Constitutional Court has referred laws back to legislators because they had not been subject to sufficient consideration. The government arranged a series of open public hearings on the bill to meet this democratic requirement. The showcase of hosting the hearings has been used to allow MPs to express vociferous animosity toward the representatives of national protest organizations attending them. One of these organizations, the Right2Know, has gathered statements from members of the public that they were obstructed and harassed when they spoke up at a public hearing. The Right2Know also has asked for clarification about whether Parliament paid for public transport so that selected people could swell the ranks favouring compliance.

The silence within the Academia at large has been a source for concern. With the government embarking on another review of the security sector, researchers have been completely shut out unlike before in the 1996 review which was a consultative process. This can be attributed to the fact that now that the ANC seem to firmly entrenched in the corridors of power and it's dislike of the security sector has disappeared. This coupled with Jacob Zuma's contacts within the intelligence community which date back to his days when he was head of ANC intelligence, has seen steps towards the militarisation of the security cluster across the board.

Barring certain information as classified would greatly affect universities where military studies were taught. While South Africa was lauded the world over for having academic freedom enshrined in its constitution, this bill would compromise that. The other worry that the bill might be used as an instrument against foreign academics and students who may be deemed to produce unacceptable research by authorities. There is a need to contribute through research to enhancing democratic management of the security sector in South Africa and the continent through deepening understanding of the inter-relationships between the justice, public safety, intelligence and defence sectors and all this need access to information which will be classified when this bill becomes law. The roles of the executive, the legislature, ministries and government departments in governance, oversight and management, security

policy-making, implementation and monitoring and political transitions, peace building and reconstruction must be interrogated and only institutions of higher learning and able to meticulously do this.

Challenges in the areas of expenditures and procurement can only be tackled and overcome if there is greater transparency than is the case at present. So instead of increasing secrecy there is a much greater need than before for openness given the amount of wasteful expenditure experienced in this sector. The issue of rightsizing defence and security is a complex and emotive issues within the security sector. Planning, programming and budgeting principles, cycles and practices should be above board. One needs to look across the Limpopo where real security sector budget is unknown even by parliament. Procurement and acquisition for security institutions are examples of corruption have become pervasive in the sector. The arms deal quickly comes to mind. Issues related to military and police professionalism should never be left to powers that be. Africa is littered with armies and police forces that have been turned into party militias by ruling parties. This has been so because of the general lack of accountability. Research into these vital state institutions is very limited.

In South Africa`s case, there seems to a great deal of fear when it comes to these institutions among the academia. This can be partly attributed to issues of transformation within the institutions. As the face of academia has changed there has been a loss of skills as well. While not taking anything away from researchers present in many of these universities, one can't help but notice a general lack of experienced researchers in these institutions. This is in some quarters attributed to leadership that mainly appointed not on merit but other considerations that seem to have nothing to do with ability. As academics all aspects of your daily working lives depend on the ability to speak y our minds freely and to critically enquire into the fields that directly concern your disciplines. It is what you do and will be affected as your research interests could clash with the bill. So crucial academic research which can have important ramifications on research in the security sector as well civil society will be blocked. The media will not be able to inform the public of this, so we see a cycle of information suppression developing. Information that should be

kept secret to protect national security but the bill, as it stands, will restrict the process of knowledge generation and place academic freedoms in jeopardy.

Given the fact that for now the ruling party, the African National Congress, is assured of an electoral majority they has managed to make parliament a rubber stamp of the executive as opposed to holding the executive accountable. The media has increasingly held the ruling party to account by exposing corruption and incompetence in government .The passing of the information bill was therefore not merely an attack on the media, but an attack on the pivotal issue of accountability. Without accountability, there can be no democracy. What South Africans need is more information on what government structures are doing and how they are doing it with taxpayers' money, not less information, more so with the increasingly secretive military establishment. Universities have to audit the implications of the bill for their work by identifying projects that may be affected by the bill, and to develop positions for lobbying for changes that take academic freedom - and the related freedoms of expression and access to information.

The department of state security's position on a public interest defence clause in the Protection of State Information Bill blatantly disregards the multitude of voices, inside and outside Parliament, that have called for the clause, according to freedom of information activists. Amendments tabled by ANC MPs serving on an ad hoc committee of the National Council of Provinces on clause 43 of the Bill include an explicit exception for cases where disclosure of classified information reveals criminal activity have been rejected by the department. The moment such documents are classified, it becomes a crime to possess them. One strategy that could be used to keep corruption under wraps would be for state actors to affect such classifications of material supposedly in the "national interest" – thus creating an information impasse. It would be up to a commission whose make up is mainly up the minister, to make such information public – or not – at its own discretion. But the public would not be in a position to know whether crucial information was being withheld. It puts a heavy burden of trust and good faith on the commission. The amendments were seen as a flicker of light at the end of the tunnel, a small step in the right direction.

But the department, in its presentation to the committee, stated that “the Bill provides checks and balances to ensure there isn’t an abuse of authority to classify information, and provides for lawful means to gain access to the information. It does not countenance the principle of being an adjudicator in one’s own cause as implied by the public interest defence. The requirement of rule of law and the duty it imposes on all citizens, including the academia, is the duty to respect classification decisions until they are set aside. Hence, we believe that the Bill provides proper balance between competing interests in the public interest. There was also a proposal for a regulatory mechanism to be incorporated in the Bill that would provide a procedure to follow when government employees sought to make disclosures in the public interest. The public interest defence is not a cloak for the malevolent – we are asking that genuine disclosure of classified information in the public interest be protected, from civil servants, agency employees to journalists, readers, researchers and community activists. The SSA doesn’t seem to appreciate the real deterrent effect that will remain even if a public interest defence is included. People who use such a defence will still be taking an extraordinary risk when blowing the whistle. The concession by the ANC that disclosure of information that shows criminal activity should be protected from prosecution is a small step in the right direction and should be welcomed.