



Access-to-information legislation as a means to achieve transparency in Ghanaian governance: lessons from the Jamaican experience
Loi sur l'accès à l'information en tant que moyen d'assurer la transparence gouvernementale au Ghana et en Jamaïque

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Abstract:

Access to information and transparency are considered a vaccine for ensuring good governance and countries must gear up for this vaccine to ensure accountability and prevent corruption. This paper probes the anticipated implementation challenges of the freedom-of-information (FOI) law in Jamaica, and the lessons Ghana stands to learn to improve on its FOI bill, currently at a deliberative stage. The lack of transparency in government or the public sector as a result of lack of access to governmental or public information will be tackled in this study. After describing the background, context, framework and methodology of the study, the paper presents findings, makes a comparative analysis, and provides recommendations especially for Ghana, which is still in the process of passing a similar legislation.

Keywords: access, information, legislation, transparency, governance, Ghana, Jamaica, FOI

Purpose of the study

This study aims to examine the views of Ghanaians and Jamaicans on how access to government information could be and/or has been a means to transparency for governance in both countries. This will be done through examination of the operation of the Access to

Information Act (ATIA) in Jamaica as well as probing the anticipated implementation challenges of ATIA. The paper seeks to compare the Jamaican experience to the expectation of Ghanaians, who stand to learn to improve on a bill currently at a deliberative stage in the country. The paper describes the case study in which the researcher conducted interviews and relied on secondary data from documentation review for analysis.

Background

Democracy has held a place in human history for centuries, providing principles and procedures for governing. The concept is highly desirable and recommended not only by virtue of its principles, but also for the ideas emanating for peaceful co-existence. Freedom of Information (FOI) legislation, a tenet of democracy, works by conferring to the public the legal right to ask for and receive information held by public bodies. However, enforceability of FOI laws is what sets it apart from general pledges of access to information made by governments (Holsen, 2007).

In Ghana, the Right to Information (RTI) first reared its head in the Ghanaian public discourse since in 1999. By 2003, the government had already drafted the first RTI bill to operationalize the constitutional right to information under article 21(1) f of the 1992 constitution. This provision would suggest that Ghana has accepted, as a constitutional matter, the right to information enshrined in the constitutional document, and to all intents and purposes, the bill, when passed, will consolidate the rights of journalists and the public to access information from government officials and public institutions without hindrance. The bill is still at a deliberative stage, yet to become law.

Jamaica, on the other hand, passed the Access to Information Act (ATIA) in 2002, which came into effect in 2004. Passing ATIA came on the heels of a lot of agitation for government to open up, and much of the influence arguably came from the international system, particularly the United Kingdom (U.K.). Since Jamaica is a member of the Commonwealth of Nations, and a number of developed commonwealth countries had some form of access to information act, pressure would have been borne on Jamaica policy makers to act to pass ATIA.

Ghana and Jamaica are favorite candidates for this study because of their shared heritage, in spite of their geographical contrast. Located in different hemispheres, the two nations are former British colonies. The two nations have had stable democracy and need to be encouraged to improve upon their democratic credentials. Being commonwealth nations, it will be argued that the two countries, including other developing commonwealth nations, would have come under some form of pressure to commit to passing access to information acts to adhere to international standards as proof of their commitment to transparency and accountability. Coincidentally, the two countries started discussion of the bill in 1999, and Jamaica went ahead of Ghana to pass ATIA in 2002.

The study has been conducted within a human rights framework to keep it of manageable scope and size. It's an assumption of this paper that the information society be located within a human rights framework in order to advocate for unrestrictive access to information, especially public information held by government. The value of information as a human right is unquestionable, and the reason why information is read into the guarantee of a human right which is spelled out in many of the international treaties and in national constitutions. Freedom of information plays an important role in the following; first, in the aspect of human

dignity, second, in the best means of ascertaining the truth, and third, as a fundamental underpinning of democracy. The aspect of democracy is perhaps most crucial (Mendel, 2003) because at a more principled level, democracy is quintessentially about ensuring that governments perform in accordance with the will of the people.

Literature review

The following literature review provided help that supported this study. The research article of Callamard (2005) mentioned that freedom of expression is not limited to the right to express oneself, but also includes the right to seek and to receive information from others, including the right to obtain and read newspapers, to listen to broadcasts, to surf the Internet, and, of course, to participate in discussions in public and private as a listener. But the most revealing observation of Callamard (2005) which related to this study is the right articulated to include the right to access information held by public and private authorities. As such, it places a duty on these bodies to both disseminate information of key public importance and to respond to request for access to publicly held information. The views of Callamard reinforce international as well as national provisions in advocating for free expression and the right to public information held by government.

In another research article, Holsen (2007) compared and contrasted federal FOI laws in Canada, the United States and the U.K. She examined the costs of compliance, as well as the response rates, in each country and discussed the importance of recordkeeping to FOI laws. Holsen posited that exemptions are the key section of any FOI legislation because their breadth and depth determine how much information is actually disclosed. Holsen presented areas of FOI implementation worth examination to understand the complexity of dealing with the legislation. These cover from response process system to cost of compliance, from time spent processing requests to FOI training; they serve as model for other jurisdictions. This is of relevance to this study because countries stand to draw on the experience of many years of these three developed countries when writing and implementing their FOI laws.

A previous paper by Kirkwood provided thought provoking questions, which fleshed out the purpose of this current study. In his conference presentation in Addis Ababa that led to the foundation of Access to Information Network -- Africa, Kirkwood (2006) posed the following rhetorical questions; does the government have the right to hide information from citizens on grounds of national security or business confidentiality? Should African parliaments play a role in training citizens for democracy through proactive distribution of public information and invitation of public criticism? What is the economic impact of free public access to information on national development? Should governments be fired or lose office for violating public disclosure requirements? This current study seeks to complement the efforts of Kirkwood in addressing these questions.

The research article of Britz and Lipinski (2000) discussed access to information as a critical need in an information age. They observed that where all rights were fixed by law, access to information must be a critical need and should be guaranteed for every citizen. They suggested that any right of control over the information, adopted as an incentive to encourage creation and distribution of intellectual property, should be subservient to an overriding need to ensure access to the information (Lipinski & Britz, 2000). Their proposition embodied the intent of any legislation underlying FOI regimes. Their observation that the access principle has not always been paramount in judicial or legislative applications provided a thrust to this study.

A research article by Sturges (2007) discusses the concept of transparency by juxtaposing it with accountability. He relates transparency as a concept to be applied in a social context to the revelation of human activity in which there is a valid public interest. The article expresses how the lack of transparency could lead to corruption. Sturges postulates various ways in which citizens could make use of transparency to scrutinize the activity of others including freedom of information laws, accounting and audit systems, and the protection of public interest disclosure actions. This article provides a foundation for a new insight that this study contributes. The findings in Sturges's article suggest that the introduction of transparency into governance is almost universally offered as a key to eliminating corruption, usually along with enforcement measures and relevant practical changes in modes of governance. This observation needs to be explored further through research because some countries have enacted legislations, yet their governments appear to be corrupt and not transparent. This has significance when looking at how to track accountability in Ghana and Jamaica through the research problem under examination.

Another research article by Lord (2006) argues, in contrast, that predictions that transparency will lead inevitably to peace, understanding, and democracy are wrong. Lord investigates a model case of the government of Singapore's successful control of information, and explores the complex implications of growing transparency, paying particular attention to the circumstances under which transparency's effects are negative. The author provides a good survey of an important subject and a critical perspective that is very much needed in a climate where transparency is seen as an obvious good for governance. The case of Singapore illustrates how a government can control information successfully by using soft methods, and by weakening the link between information flows and political change; and yet Singapore's government is neither incompetent nor corrupt, two all too common pitfalls of secretive governments. Lord's finding is contrary to the universal view that people hold about transparency. Singapore's open but non-liberal society offers a cautionary tale for those who equate openness with democracy.

A research article by Osei (2007) indicates that global anti-corruption discourse and policy has become an unquestioned moral crusade since the 1990s. The article provides a critical examination of anti-corruption campaigns in which he argues that they often result in perverse and unintended consequences. He argues that campaigns which focus on eliminating corruption often have negative effects for good governance and political cultures across the developing world. The article examines how corruption has been addressed (and sometimes tolerated) in regions and countries of Africa.

The book of Darch and Underwood (2010) provided illumination to the present study. They make assumptions that citizens really do deliberate, that the press is neutral and informs, that deliberative citizens make better choices, and that liberal democracies are a just and efficient system. They question how far rights to information have progressed in Africa and other parts of the world. The two authors indicate that the conditions that make information access rights both important and hard to implement, are seen in their most extreme forms in Africa from Zimbabwe to Nigeria, Angola to Mozambique, and South Africa respectively. They contend that only a handful of African countries passed laws enabling access to information and in the event that some did, they made no pretence that these laws were intended to encourage a new kind of relationship between the state and citizen. Darch and Underwood cite countries that implemented access to information law but missed out on the intended purpose of the legislation. Obviously, their observation suggests conditions for implementation have been absent in the cited countries. The authors' observation provides justification that freedom of

information, as a piece of national or local legislation guaranteeing individual citizens and others access to government information, has not really caught on in Africa and other countries. This current study will specifically focus on Ghana and Jamaica to explore to what extent rights to information have progressed within the Ghanaian and Jamaican context.

Taken together, the results, the findings, and observations in this literature review provide a solid foundation for this case study. This literature review related the study to the larger ongoing dialogue in the field. So far, the literature review emphasizes the need for transparency in governance, and how its lack leads to corruption.

Ostensibly, what has been construed from this review is the idea that accountability is the reason why transparency is introduced into systems of public governance. This is because the concept of transparency allows examination of public authorities who are regarded as the custodians of public information. Hence transparency in government will be a key focus of this study. The study will specifically explore implementation challenges in Jamaica and the legal vacuum in Ghana which makes it difficult for people to access information and government services.

Research problem and questions

While Jamaica passed ATIA in 2002 (in force in 2004), Ghana, to date, lacks a legal framework to facilitate access and utilization of public information. The problem of interest in this study is two-pronged; the anticipated implementation challenges of the law and the lack of transparency in government or public sector as a result of the lack of access to government or public information. The lack of access to public information is of dire concern to Ghanaians, given the legal vacuum which makes it very difficult for them to access government information. As such, this study will focus not only on Ghana's lack of access to information law and transparency but will explore Jamaica's experience in the implementation process of ATIA which offers useful lessons for Ghana.

Five questions will be explored within this study:

- 1) Can an information law enable citizens to have access to government information?
- 2) How can the perceived right of access to information bring about transparency in governance?
- 3) How can the exercise of access to information encourage public participation in governance?
- 4) How does the exercise of right to information enable citizens to keep their government and public officials accountable?
- 5) Are there any anticipated implementation challenges?

The Case Study: Methods

The choice of a case study for this research is unambiguous. The intent is to bring to an understanding of the issue under examination to add strength to what is already known through previous research. This methodology has been preferred because it emphasizes detailed contextual analysis of a number of issues and their relationship. A case study is the

ideal choice because what has been examined is about a contemporary real life issue to provide the basis for the application of ideas. The issue tackled in this study is the lack of transparency in government or the public sector as a result of the lack of access to government or public information as well as the anticipated implementation challenges of an FOI Act. These boundaries have been deliberately identified for the case in an effort to provide for an in-depth understanding of it.

Methods of Data Gathering

Data were gathered through interviews and through documentation review. The use of documentation review allowed the researcher a complementary view of the phenomenon studied, and the process helped to converge findings to ensure validity. Table 1 shows the research techniques used in the data collection procedure

Research objective	Research techniques	Data sources
Can information law enable citizens to have access to government information?	Interviews	Key informants
Find out how access to information brings about transparency in governance?	Interviews/documentation review	Key informants
Find out how access to information can encourage public participation in governance?	Interviews	Key informants
Find out how the exercise of right to information enables citizens to keep their government and public officials accountable?	Interviews	Key informants
Identify anticipated implementation challenges	Interviews/documentation review	Reports, Memoranda, submissions from eminent scholars.

Table1. *Research objectives, research techniques, data sources.*

Interviews and reviews

Interview questions were in an open ended format, while documentation review relied on secondary data from memoranda, reports, and comments from authoritative sites. Interviews were set up through email correspondence. Upon reply from participants, questionnaires were emailed. A tape recorder was used to record participants' responses. It was suitable, as respondents did not feel intimidated that could have had a negative impact on the interviews. Profile of respondents included Masters and PhD students. Some respondents were lawyers, police officers, and University professors. Their ages ranged between 30 to 60 years old.

Data analysis

The data were analyzed by transcribing responses and reading through answers to identify the main themes. A strategy called triangulation was used by combining the answers from interviews and evidences from the documentation review to confirm the results of this study. The strategy provided validity and consistency for the study.

Findings

(1) Access to public information

Ghanaian respondents

The first issue raised in the questions is about access to information and the operation of an information law. Results indicated that although access to information was growing particularly with the proliferation of FM stations, the print media, and the internet some reservation still remains about government information. Analysis of results indicated people do not have information about government because information is simply not available to them. Results showed that information was treated as confidential and government officials wield so much power that it was difficult to have access to information held by government officials. Analysis of responses showed that even though there is some amount of information available through institution-based websites, people do not get detailed information because there is little information on the internet. Results revealed information documentation in Ghana is a very big conundrum and that where there is information, retrieval becomes a daunting task. The difficulty in obtaining public information has to do more with the rather low level of ICT development as results showed.

Jamaican key informants

Results indicated ATIA has helped people access government information and has been a very useful tool for enabling every Jamaican to realize the right to information. ATIA provides an avenue to use information to strengthen the access to all other rights. Analysis of results indicated ATIA enabled the public to obtain data and information related to the activities of governments. While key informants specifically revealed the Act has helped citizens' access to information about contracts, ministers' travel expenses, and details of the examination records of their children, results however revealed access to information has become expensive given the fees for the preparation of the data needed. Results also indicate that there are a number of exceptions which may reduce the scope of the information requested.

(2) Transparency in governance

Ghanaian respondents

Questions # 2 and # 4 were answered by examining the responses from interviews. Results showed Ghanaians' belief that access to information will enable everybody to know what is going on in government. Responses indicate that if there is no access to information, everything seems to be done under cover, irrespective of whether government is transparent or not. On the other hand, when people have access to information, public officials will have it at the back of their minds that they are being checked and this will make them become accountable. Analysis of results indicates that a vibrant mass media of communication can

help people keep government officials accountable for their stewardship. A vibrant mass media allows for critique of government policies and has the tendency of exposing corrupt practices and underhanded dealings in public administration. On the current state of government transparency, results were a mixed bag. In spite of the fact that some government policies are made public through parliament, the information ministry, public and private TV, results revealed the state of government transparency was difficult to tell because Ghanaians get to know about government issues through private media which sometimes are biased. Some respondents mentioned the difficulty there is for government officials to give out information to the public.

Jamaican key informants

Answers to questions #2 and #4 were determined by key informants' responses. Results show the general public has access to reports of ministries, agencies, and projects which are increasingly posted on the government websites. Parliamentary debates are televised, as well as the proceedings of commissions of enquiry. Key informants believed that the Act contributed to transparency in government, but there is not yet 100% coverage as some public authorities have not appointed access officers or begun to participate. Results revealed access to most of the things that have been outlined in the act have been made possible. Focusing on whether ATIA enabled Jamaicans to keep their government and public officials accountable, results indicated the process was not yet finished and that there was the need to go beyond access to information to further participation in government. Analysis of results indicated that ATIA has increased awareness even though not everyone was aware that they can have certain type of information. Transparency, as reported, has been enhanced in some sense, through contemporaneous development in the telecommunication sector, and the police have disrupted criminal activities thanks to the act. On the flip side, results revealed some negative developments about government transparency where the police withhold statistical data until they wish to release it and the cumbersome procedures involved in obtaining information.

(3) Public participation in governance

Ghanaian respondents

Question #3 was answered by examining responses from interviews. The analysis of the results revealed that public participation in governance was vital in any democratic dispensation. Results show that the availability of information rendered it accessible, and thus encouraged public participation in governance. Results indicate that people needed to be educated about governance and what it means to be in government. Since public participation in governance hinged on education there will be the need for civic education through the National Commission on Civic Education (NCCE) to re-double efforts in its information dissemination policy.

Jamaican key informants

In response to question #3 key informants revealed that the Act encouraged greater access to government information, but it was difficult to say how much participation there has been in governance because of the Act. Results indicate there has been some publicity on the radio, TV, and in some newspapers as part of making the general public understand the meaning and scope of the Act. The Access to Information Unit and some public authorities have used the World Wide Web to provide information on the Act and to enable the public to make use of the information offered by the agency as evidence of proactive disclosure of government information. Key informants indicated TV programs examined public policy and public

administration which actually allowed citizens to participate in the process of governance. Local radio talk shows dissect the work of government and citizens phone in to voice their disapproval or praise government for certain things done.

(4) Implementation challenges

Jamaica

Regarding implementation challenges, answers were determined by examining data from documentation review and interviews. The Carter Center (2006) hinted at implementation challenges which ranged from scope to follow-through issues and from public interest tests to enforcement. Excell (2009), in her submissions to the joint select committee on reform of the Jamaican Access to Information Act, reported two areas of concern regarding challenges. The first deals with the release of records by all public authorities under the act and the second challenge concerns compliance and enforcement of the right to information. Attention was drawn to the lengthy delays on the part of the Appeal Tribunal in handing down decisions following hearings. Key informants are also concerned about the procedure for requesting documents via the telephone, which was neither simple nor straightforward, and the need for trained personnel.

Ghana

Information from the Ghana government official portal indicates recordkeeping as being a huge challenge facing the country. It is clear that Ghana lacks in this regard and needs her archival system in the public sector to be in good shape in readiness for the law. Technology may or may not be the most urgent issue, but the possible lack of systems for records management and registries within government departments as well as the lack of personnel to help implement the letter of the law are serious concerns.

Conclusions

Over all the results of the research revealed some interesting issues concerning access to public information, transparency in governance, public participation in governance, and some implementation challenges in the two countries.

First, it was found that Ghanaians are concerned about the lack of operation of their constitutional right protected under article 21 (1) (f) of the 1992 Constitution. Results indicate a certain degree of optimism about how the bill when passed into law will make government information accessible to the public. This finding raises concern about information documentation in Ghana which has been a big conundrum. Much as findings indicate Ghanaians have high expectations of the bill, if information is not properly documented and kept, retrieval will be a daunting task which will threaten democracy in general and the operation of an RTI law in particular.

Findings on the accessibility of government information in Jamaica were a mixed bag. While results show that ATIA has been a very useful tool for enabling every Jamaican to obtain information related to the activities of government, the current study shows the operation of ATIA to be somewhat bureaucratic. Access to information has become expensive given the fees for the preparation of the data needed. The number of exceptions reduces the scope of the information requested and the procedures involved in retrieving the needed information

makes it cumbersome for the public. There have been great expectations about how an access to information law will enhance transparency in governance in Ghana. But such expectations need to be matched with a change in attitude, given the Jamaican experience.

Findings portray a not too good picture for Jamaica. In spite of the general public’s access to reports of ministries, agencies, and projects which are increasingly posted on the government websites, irrespective of the parliamentary debates being televised as well as the proceedings of commissions of enquiry, results of this inquiry indicate a low transparency trend in Jamaican governance. Transparency in governance in Jamaica seems to be on a downward slide, as corroborated by reports in the Gleaner newspaper (2010).

Results also show that Executive agencies in Jamaica are not operating at the maximum level that they can be. These agencies in the discharge of their duties have been allowed to charge fees for the services, rendering government public administration a lot more expensive for the citizens. From the analysis of results, the registrar general’s department has not been as efficient as it should and has not produced information in a timely enough fashion. A three-day service ends up taking a week or two, despite requesters having paid fees for expedited services.

The low transparency score in governance in Jamaica is corroborated by results from the table below showing the current and previous scores on transparency of the two countries from 2002 to 2010, according to Transparency International (TI). The index ranked participating countries according to the degree to which corruption is perceived to exist among public officials and politicians.

Country	Score	Year	Rank
Ghana	4.1	2010	62
	3.9	2009	69
	3.9	2008	67
	3.7	2007	69
	3.3	2006	70
	3.5	2005	65
	3.6	2004	64
	3.3	2003	70
	3.9	2002	50

Table 2. *CPI : Ghana*

Country	Score	Year	Rank
Jamaica	3.3	2010	87
	3.0	2009	99
	3.1	2008	96
	3.3	2007	84
	3.7	2006	61
	3.6	2005	64
	3.3	2004	74
	3.8	2003	57
	4.0	2002	45

Table 3. *CPI: Jamaica*

The Corruption Perception Index (CPI) drew on different polls and a survey to pitch these results. The numbers from Tables 2 and 3 provide interesting results to contextualize the law

in Jamaica and the not-yet-passed bill in Ghana. The results indicate a major drop in Jamaica's corruption ranking from 64th in 2005, 96th in 2008 to 99th in 2009 as compared to a slight rise in Ghana's ranking from 65th in 2005, 67th in 2008, and 69th in 2009 to 62nd in 2010. These results show that Jamaica's slide down the international corruption perception index is continuing while Ghana's rise is slightly progressive. Results from Tables 2 and 3 seem to confirm the findings of this study which show a deteriorating low transparent score for Jamaica and a slight progression for Ghana.

As a matter of fact the Corruption Perception results also confirmed the skepticisms of informants about transparency in governance in the two countries. For instance, in Jamaica, mention is made of slight attitudinal change with the passage of the law and there could still be a lot of resistance in the release of information. Some negative developments about the police withholding of statistical data until they wish to release it feed into the skepticism that people hold about government transparency. And yet Ghanaian respondents are basking in the hope that once RTI is passed transparency in government improves automatically! Ghana has to be a bit cautious about counting her chicks before they are even hatched.

But more essentially, the comparative results of Tables 2 and 3 are shocking because Jamaica has had a fairly advanced ICT policy environment which supports online access since the liberalization of the telecommunication sector in 2001 ([Jamaica Country Report](#)). The country also has a fairly high literacy rate as compared to Ghana. Given these entire strengths, one would have expected very good scores, especially since Jamaica scored 4.0 in 2002 with the highest rank of 45th in the table coinciding with the passage of the ATIA law. But that is not the case. The question to be asked is whether the Jamaican Act is making a difference? The response would have to be negative based on the results of this study.

The reasons for the downward-trending corruption score for Jamaica raise questions about implementation challenges for freedom of information. Simply put, these challenges include a host of factors such as resources, resistance, literacy, education, and IT access, which all combine to result in delays and failure to comply and or use the act effectively. The failure to comply and /or to use the act ultimately lead to the problem statement of this study, which is the anticipated implementation challenges of FOI law and the lack of transparency in government or the public sector as a result of the lack of access to government or public information. Much remains to be done to improve the operation of Jamaica's legislation, and the submissions made from scholars and international organizations on reforms for Jamaica will provide input for amendment to the ATIA.

What are the lessons for Ghana to learn? Ghana will have to focus on the implementation challenges in making sure that when its own FOI law comes into force, there will be adequate education campaign, considerable IT accessibility, frequent publication and disclosure of public information. When these challenges are taken care of and information released fully, promptly and proactively, then there is talk of more transparent decision making which will ultimately reduce corruption and improve index scores.

Limitation

Since this has been a small-scale research project undertaken by a single investigator, some limitations of the study must be noted. The results of the research are strictly related to the moment in which the case study was carried out. As the situation of transparency improves and progresses as a result of a combination of factors including ICT, frequent publication and

release of information, and e-governance, the same research undertaken in three years' time may give different outcomes.

Recommendation for further research

The analysis of the results revealed interesting new issues to be studied. As a matter of fact, future research should delve into international standards for FOI laws, and the effectiveness of e-governance in combating corruption. Future research could solely focus on implementation challenges of an information act. New investigation could be based on FOI law as a tool for literacy promotion. I recognize the inability to generalize the findings of this research even though it would have served as a baseline for further exploration of the issue. A phenomenological study is recommended in order to explore participants' views and perceptions on the issue under investigation. In this sense, the study would take place in a natural setting, and the process would be inductive and would benefit from a large sample size.

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