State Information Protection Laws and e-Transparency

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Abstract. *This paper discusses the manner to which laws meant to guide the use of state information can impede the implementation of e-transparency. It introduces e-transparency and transparency models for the information society. The discussion then proceeds by revealing the impacts of security concerns on the society, and how state information protection laws affect its implementation. The paper concludes by recommending things to consider in the formulation of laws aimed at providing guidance for information use.*

1. Background Information

Transparency in various financial and administrative procedures is one of the determinants of good governance practice in modern societies. Public institutions that embrace transparency encourage stakeholder participation in decision-making while enhancing accountability to public servants. Additionally, transparency incentivizes compliance by decision makers (Navarra, 2006), and as a result citizens and other stakeholders become more confident of the output from the government (Davies & Leigh, 2010).

It is accepted that the use of Information and Communication Technologies (ICT) in our societies advance the way information is shared. Users of ICT increase exponentially on an annual bases; for example in Tanzania, it is reported that the rate of increase of internet users between 2000 and 2010 was around 450 percent; there is more information on the web and the government has developed a national Network infrastructure and legislation to guide the implementation of ICT related projects(MISA, 2010).

The use of ICT tools enhances sharing of information through different facilities such as chat rooms, survey tools, forums, video and voice clips and other social media tools; these tools have transformed the way different decisions are arrived in government authorities. In Latin America e-Portals have increased the efficiency of public fiscal management (Solana, 2008); In South Korea, ICT tools are used by the government in soliciting feedbacks from citizens necessary for decision making (Im & Jung, 2001); In South Africa and Tanzania, Revenue Authorities set an example, while the implementation of e-voting by the USA in 2012 promises much in election transparency.

Although electronic media promises a greater ability to share information between the government and its stakeholders (citizens) it is equally important to admit that both players (citizens and the government) have different perspectives that link directly to how they wish the media to benefit them; this dichotomy gives rise to incidents like the 'Arab Spring' (Van Niekerk, Pillay, & Maharaj, 2011). Generally, government institutions want to classify information to be accessed and disseminated for public use. This weighs up state interests against transparency and freedom of expression; on the other hand citizens who are (democratically) the owners of the government demands the right to access the information that impact their lives more openly without constraints.

While the United Nations acknowledges the use of the Internet and access to information as a basic human right, existing and proposed government legislations have the effect of circumventing this right of access. The legislation promotes the access to information on the one hand and denies it with the other (Nyokabi, 2007).

In Britain, the Digital Economy Act was enacted to give the government the power to dictate the use of online tools (Forrest & BrüMmer, 2012). In America the Stop Online Piracy Act (SOPA) and Protect IP Act (PIPA) bills were introduced followed by the most recent bill known as Cyber Intelligence Sharing and Protection Act (CISPA) targeting online forums; however the bills received strong rejection from most of stakeholders (Beadon, 2012; Pepitone, 2012).

Generally, South Africa and Tanzania are two closely studied cases in Africa. In 2010 the Protection of State Information Bill was moved in the National Assembly of South Africa (Ministry of SA Security, 2010), then the bill was scheduled for discussion to the South African Council of Provinces before it get finalized. Having discussed the bill early in 2012, the council formed a team to amend the bill, a special consideration is to be taken to what is known as "public interest protected by the bill" and how journalists and whistleblowers are protected (Parliament of the Republic of South Africa, 2012). Generally, the adoption of the bill has been facing different challenges.

In Tanzania; the freedom of information bill was enacted by the parliament in 2006, however it received resistance from stakeholders the fact which made the government to withdraw it (Freedom of Information Bill, 2006). Stakeholders considered the bill to be too secretive to information, besides the protection to media was unidentified. Today, four years later the government plans to move a modified bill for the same purpose.

While information sharing is important in building trust between actors and their stakeholders the legislation which guides the practice has to be fair. Generally, there is the need to determine how these legislations can balance the need for protection while promoting transparency in the society.

2. Problem Statement

Any society that does not have access to accurate, relevant and timely information is in danger of being marginalized or worse still, dominated. It is clear that governments understand the value of information; to the extent of making legislative provisions for its use. In Tanzania, today, there are more web portals and websites that provide information to the public than ever before. Citizens are also using social networks to extend discussions about their livelihood (Government-of-Tanzania, 2011).   While the government of Tanzania is willing to share its information with its citizens in a manner it perceives to be secure and good for promoting national peace, calmness and unity (Nyokabi, 2007; Bishanga, 2010), it is unfortunate that some government secrets are available to the public without its consent. To prevent the possibility of public unrest, the government proposes legislation that governs the usage of online information known, as the freedom of information bill. Meanwhile, countries such as USA, UK, France and South Africa tabled their respective bills, some which became law (Bannister & Connolly, 2011; Forrest & BrüMmer, 2012). Generally; like bills/laws from other countries, the freedom of information bill received stiff opposition from its immediate stakeholders (Nagesh, 2011). It is established that the proposed laws restrict more information to citizens than it allows. This paper discusses the manner in which laws meant to guide the use of state information impedes the implementation of e-transparency.

2. Significance of the Study

While this paper discusses ways in which legislation meant to protect state information inhibits sharing of information in the society, it will reveal how the law:-
   i.)   Discourages innovative activities in ICT
   ii.)   Compromises the right of the public to access and share information

    iii.)   Compromises the right of citizens to work
    iv.)   Discourages learning and the right of research
    v.)   Affects the level of awareness of citizens to different issues of government hence compromise accountability

3. Methodology

This is a discussion paper with its information based on secondary data; sources of data used include conferences and journal publications, forum and research reports, together with speech from government and NGO leaders. Facts from the literature and examples were both within and outside of Tanzania.

4. About E-transparency

Transparency in management is characterized by collaboration and participation in matters which affect the lives of people in the society. A transparent government is open to its citizens, enhances communication while emphasizing accountability of its leaders. It is expected that this government is democratically elected, where citizens participate in activities carried out by their government. As a result citizens have the opportunity to ensure that their leaders act ethically while fulfilling their obligations (Onyach-Olaa, 2003). In order for the information to be useful it has to be current, accurate and available, while consulting the citizens in matters that require their input (Boyoung & Jinwoo, 2001).

Transparency in government activities is important because it supports collaborations and involvements of citizens, enhances accountability for resources, increases the understanding of government operations, promotes accountability, identifies new sources of information, and enhances accuracy in decisions (Worthington, 2010).

Transparency focuses on the quality of data to be acquired and used, which is reflected in the content, format and intended function of that information, especially for decision-making, (Rojnica, Milovcic, & Cicvara, 2004). Information and Communications Technologies make transparency in the public sector much more easily attainable, and this is also true of the private sector (Abu-Dhabi-Government, 2011).

At the basic level e-transparency protocols use websites and emails to reach out to their stakeholders. With the use of electronic media citizens can easily be engaged in public affairs, and this can be in support of or against the government (Ailioaie & Kertesz, 2003;Van Niekerk, Pillay, & Maharaj, 2011).

It is suggested a government can take advantage of these powerful tools in building its relationship with citizens thus garnering support. There are three levels for establishing a transparent leadership (Kiknadze, 2007); the first level involves providing information to the public through online media. Here the public is able to accesses information about governance matters but cannot react to such information. At the second level, the government provides online information to citizens together with consulting them for feedback about different issues. It can conduct online surveys, polls or even establish chat rooms which facilitate such interaction. Thirdly, governments can use an e-platform in facilitating various decisions. It can request feedback from citizens and business on government proposals, which in turn will have a direct impact on decision-making.

5. Transparency Model

Transparency refers to a behavior where an organization and its stakeholders share its information with total openness (GEMI, 2004). The information shared influences decisions to be made by stakeholders in favor of the organization; its absence may endanger the progress of activities in the organization.

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The availability of right information at the right time to the right people enables them to transform this information into action; results from these actions often differentiate between successful and unsuccessful organizations. In order to provide the right information to stakeholders; the information required has to be accurate, up-to-date, complete and available. Unfortunately research has shown that many organizations have little confidence in their information (Berg, 2011).

In 2006, the 'process and event model' of transparency was introduced by Heald (Heald, 2006). The model focused upon attributes that may be articulated in procedures that lead to obtaining certain results. Additionally, the model advocates openness in procedures so as to raise the level of customers' satisfaction while improving the rate of output. The model was further adjusted by Bannister & Connolly (2011), to form the 'data, process and decision model', which promotes public trust through better methods of sharing of information (Parigi, 2004).

Public data transparency should be a basic right of every member of society, which right is enhanced and exercised through e-transparency (Lubua & Maharaj, 2012; Boyoung & Jinwoo, 2001). Furthermore, citizens have the right to access statistical information, government business data and to some extent internal information such as public servant salaries (Bannister & Connolly, 2011).

Transparency in processes defines a series of actions that must openly be taken in order to achieve results desired (Cambridge-Dictionaries-Online, 2011). Processes differ from one another depending on the outcome expected; a good example is that of a person who applies for a visa and one who applies for University admission; processes involved in obtaining expected results in both cases differ. Even after the introduction of electronic systems in service provision, transparency in processes is required due to presence of associated manual work that have impact upon the expected output.

Decisions that are made by either the management or any other stakeholder are considered to be the output of processed data. Regardless of whether transparency was maintained at the data entry and data processing stages, a denial of openness at the output stage can result in dissatisfaction. Most of recent popular unrest by citizens against their government is linked to lack of transparency in government authorities in issues that affect the lives of the public (Van Niekerk, Pillay, & Maharaj, 2011). Transparency in the level of decision making in areas that have long term effects on citizens can be enhanced through online polls and surveys which form the basis for making decisions (Boyoung & Jinwoo, 2001). Figure 1 presents questions that need to be answered in the 'data, process, and decision' model:

Figure 1: Transparency type and kind of question

	What?	Who?	Where?	When?	How?	Why?
Data	✔	✔	✔	✔		
Process			✔	✔	✔	
Decision					✔	✔

Source: (Bannister & Connolly, 2011)

6. Impact of Information Security Concerns

Although online systems have proven to be successful in promoting information sharing, there are many threats (intentional or unintentional) that evolve and grow on daily basis that mitigate against the good intentions for using online systems. Threats against information systems emerge from different sources

such as foreign nations engaged in information warfare, criminals, hackers, virus writers, and employees working within an organization (Wilshusen, 2009).

Apart from above security challenges of e-transparency applications, the frequency of leakage of information considered to be confidential by government authorities has increased recently (Lessig, 2009; IPPMEDIA, 2011). A number of countries (including USA, Tanzania, Saud Arabia, Iraq and Britain) have been affected by this trend; in this regard Wikileaks is an example of organization which publishes and comments on leaked documents alleging misconducts by government authorities. In other cases the leaked information were useful in promoting accountability and hence promotes the value of e-transparency systems in information sharing and service provision (Lessig, 2009).

Although the government of Tanzania (and others) acknowledges the importance of e-transparency in promoting good governance (Onyach-Olaa, 2003), security challenges expose them to information warfare and hence they opt for defensive measures from time to time which measures include the development of defensive legislation. The question to be addressed during the formulation of these bills is how to balance democratic and security needs.

Security concerns affect the implementation of e-transparency programs in the following ways; these are:-
   i.) *Financial Implication:* additional funds may be needed to procure programs for software protections such as firewall and antiviruses; adding security measures in physical premises (buildings); training users of the system on security issues; regular checks and repair of affected programs.
   ii.) *Knowledge Implication:* Technical personnel require training so as to understand how to manage the system in secured environments.
   iii.) *Legislative implication:* Legislative measures taken to prevent the leakage of sensitive information while ensuring its availability to authorized personnel hinders the sharing information and knowledge.

7. State Information Laws and e-Transparency

The government of Tanzania understands the importance of electronic media in boosting its economy through transparent operations (Tanzania-ICT-Policy, 2003), however, the current trend of information leakage poses a new challenge to government authorities on how to manage its information for healthy sharing (Markey, 2010; Davies & Leigh, 2010; Retzer, 2010). The government of Tanzania introduced the Freedom of Information Bill which aimed at guiding the use of information, but there was opposition from other stakeholders claiming that the proposed law would jeopodize e-transparency. This section discusses how laws for protecting and guiding information use can affect the implementation of e-transparency systems:-

Vital information may be restricted to citizens.
Access to government information is a right enjoyed by citizens of most democratic republics, including Tanzania (Constitution-URT, 1998; Bishanga, 2010), thus allowing for informed decision making, (Boyoung & Jinwoo, 2001). Paradoxically, the introduction of Freedom of Information laws contradicts this right since it restricts citizens from accessing most government information. Whilst the government and governance should be transparent to its citizens (Bishanga, 2010), restrictive laws and regulations obscure this and deny citizens the information necessary to judge the government decision making process.

Place More Power in Government than in Citizens.
While the electorate is the source of power in all democracies, secrecy legislation provides that certain information may only be accessed after authorisation by the Cabinet is granted. In the case of Tanzania,

his authority is vested in the Cabinet of Ministers (Chaired by the President) (Bishanga, 2010; Media-Council-of-Tanzania, 2006). On the other hand, the inadvertent exposure of such information happens to be very useful for citizens in making their government accountable (Jeffery, 2010; IPPMEDIA, 2011).

Discourage innovation in the area of e-transparency.
Innovation is important for technology projects to address emerging challenges. For example, the government of Korea is able to collect citizens opinions before it make decisions which impacts their lives; systems are developed to enhence e-voting; government services are available online and so on (Zhang & Wildemuth, 2009). Restricting some information which are useful to citizens paralyses the quest for innovation.

Compromise the right of citizens to work.
Citizens of Tanzania have the constitutional right to work (Constitution-URT, 1998). Although the constitution grants this right to its citizens, information protection laws affects how it is exercised. For example, In the Republic of Tanzania, USA and South Africa, publication of information that affect the interest of the government (state interest) can lead to the closure of company's activities by the Minister or government official incharge (Jeffery, 2010). If (intentionally/unintentionally) an employee of a company publishes unauthorised information or infringes the copyright of a third party, the company and its employees are punished through the closure of the company's activities. In this case the legislation thought to protect infromation access rights compromise the right of innocent people to work.

Affect citizens awareness of government activities.
The access to information by the citizens of Tanzania is guaranteed by Article 18 of the Constitution of United Republic of Tanzania (Constitution-URT, 1998; Bishanga, 2010). The information to be received by citizens gives them a guarantee that those in authority comply with the ethics of good governance and hence promotes trust between citizens and government leaders (Nyokabi, 2007; Onyach-Olaa, 2003). The restriction of certain information from the public denies citizens the opportunity to know how leaders arrive at different decisions, this lowers their level of awareness of different government matters.

Discourage accountability to government officials.
Accountability is important in sustaining what the government is doing through promoting the spirit of compliance of government officials (Navarra, 2006). Restricting certain information to citizen narrows their understanding of issues which take place within different government organs. This compromises their ability to make decisions which would enforce accountability. However, information often is disclosed without permission or consent (IPPMEDIA, 2011; Retzer, 2010), and this information proves useful in making different government leaders accountable for their unethical behaviour.

8. Conclusion

Information empowers decision makers and decision making. The introduction of information protection legislation should consider the information needs of citizens. The proposed law should:
  i.   Create awareness in citizens about different spheres of their life, more especially information which helps them to know how different decisions are arrived by their government.
  ii. Affirm constitutional rights of citizens including the right to work and the right to access information.
  iii. Encourage innovative work in the area of e-transparency.
  iv. Make government leaders accountable to their citizens through information provision.

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