

Ignorance of the Law is no excuse; making Ghana's Legal and Legislative Information Accessible to All

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Abstract:

In its attempt to bring governance to the doorstep of its citizens and to promote participatory democracy, the government of Ghana has put in place some measures to make information accessible for its populace to exercise their natural and inalienable right. These measures include the use of ICT tools such as, e-parliament and e-judgment to make legal information and legislative data available.

Despite these efforts, the government of Ghana currently has not passed the right to information bill into Law in order to commit the government to provide free access to information. For this reason, there are many who have demanded that access to information be more accessible, open and timely. Citizens and civil based organizations continue to pressurize government to open up and enact laws which will confer to them the legal right to public information of which legal information and legislative data is no exception.

In order to help remedy the situation, libraries in Ghana are doing their best to make legal and legislative data free, timely and accessible to the public. However, the current legal deposit law which exempts legal documents and materials printed by the government's publisher for or on behalf of the government makes this a tedious task. As a result, libraries resort to direct purchase and donations as their main source of acquiring legal and legislative information.

This paper will therefore examine the accessibility of legal and legislative information in Ghana, with special focus on current practices, challenges and prospects available in this area. It also looks at the possibility of involving libraries in facilitating the process of accessibility to legal and legislative information online and how section eight (8) of the copyright Act, 2005 can be used as basis to provide free access to enactments and court decisions.

Keywords: legal information, legislative information, access to information.

Introduction

In most if not in all countries, citizens are expected to comply with and act within the laws of the land whether they have access to these laws or not. The general assumption in this case is that citizens are fully aware of all laws and statutes of the state and know the consequences of breaking them. This principle ('Ignorance of the law excuses no man'), which was coined by John Selden, has been used by most modern and democratic states to control society and prevent chaos.¹ For some, this principle provides a leeway and an excuse for not putting in place pragmatic steps to make legal and legislative information accessible to all citizens. Jeremy Bentham, a British philosopher and a jurist, said 'We hear of tyrants, and those cruel ones; but, whatever we may have felt, we have never heard of any tyrant in such sort cruel, as to punish men for disobedience to laws or orders which he had kept them from the knowledge of'.² The latter highlights the need for citizens to be knowledgeable about legal consequences of their action, their right and their responsibility and the role of law makers in making laws accessible to all. It also brings to play the irony of legal systems' injustice to citizens by making laws inaccessible to them whilst expecting them to completely adhere to these same laws.

The concept 'access' has been defined and used differently in literature. The variation in meaning is commonly found in literature which tries to distinguish access from the concept of property. Ribot and Peluso (2003) see access as the ability to benefit from things and property and therefore as the right to benefit from things.³ The difference lies in the use of the words 'right' and 'ability'. In the context of information, access is seen as the right of people. This has been accepted in the Universal Declaration of Human Rights and in the Constitution of Ghana. A society which is governed by the rule of law, by accountability and by justice should recognize access to information as a right. Access to Information therefore becomes a right when it is socially accepted or recognized by an enactment, as in the case of Ghana³. In this paper, access to information is defined as the right to benefit from any information which is necessary for one's participation in society.

This paper sets out current practices in making legal and legislative information accessible in Ghana, as well as the challenges involved. It also looks at prospects available in this area and the role of libraries in ensuring accessibility to legal and legislative information.

Overview of Ghana Legal and Legislative System

Ghana formerly known as Gold Coast is a democratic country on the west coast of Africa that shares boundaries with Burkina Faso in the north, Cote d'Ivoire in the west, on the east by Togo and on the south by the Gulf of Guinea. Its population is approximately 25 million people⁴.

The country operates three arms of government namely the executive, the judiciary and the legislature.

The focus for this paper is on the judiciary and the legislature since they produce legal and legislative information.

According to section 126 (1) of the 1992 Constitution of Ghana, the judiciary constitutes the Superior courts and the Lower Courts. Superior courts consist of Supreme Court (final

appellate court), the Court of Appeal, and the High Court. The Lower courts are made up of Circuit courts and District courts. Altogether, these courts administer Justice in the name of the Republic (the people of Ghana). Primary information mainly produced by the courts are judicial decisions or opinions⁵. Decisions made by the Supreme Court are final and cannot be changed or reversed by any enactment of parliament.

The Legislature in Ghana has been in existence for over 150 years. Ghana's legislative assembly began exercising its legislative powers in the form of ordinances in 1865 after the British took over the whole Gold coast from the Danes in 1850.⁷ Since becoming a republic in 1 July 1960 under the first republican Constitution, Ghana has subsequently had a second (1969), third (1979) and fourth (1993) Constitution promulgating republican Constitutional rule⁶. According to the 1992 Constitution, the legislative power of Ghana is vested in the country's parliament. The current Parliament is made up of 275 elected members from 275 constituencies in the 10 regions.

As Ghana operates a decentralised form of government, district assemblies, which are second-level administrative subdivisions below the regional level, have legislative functions. According to the 1992 Constitution and Local government Act, Act 462, district assemblies have the legislative powers to fix fees and model bye-laws for the people living within their area of jurisdiction.⁷

The Laws of Ghana

Section 11 of Ghana's Constitution provides that the Laws of Ghana shall comprise;

1. The Constitution
2. Enactment made by or under the authority of parliament. Normally Act of parliament,
3. Any orders, rules, regulations made by any persons or authority under the power conferred by the Constitution. These laws include Legislative instruments, Executive instruments, and Constitutional instruments.
4. The existing Law. These are laws made during the PNDC, the NLRC and what was in force before the 1992 Constitution.
5. The common law which comprises the rule of law generally known as the common law, the rule is generally known as the doctrine of equity, the rule of customary law including those determined by the Superior Court of Judicature.

Legislation on access to information

The framers of Ghana's Constitution were informed by the United Nation's Declaration of Information as a fundamental human right. Recognizing the importance of information in a democratic society, information, as a fundamental human right, has been guaranteed in the Constitution. Article 21(f) of the Constitution provides that all persons shall have the right to information, subject to such qualifications and laws as are necessary in democratic society.

Following the guarantee of information as a right by the Constitution in 1992, the operationalization of the provision in the Constitution started in 1999, when the bill was first drafted. This bill was reviewed in 2003, 2005, and 2007 and finally presented to parliament on 5th February 2010.⁸ The purpose of the bill is to give substance to the Constitutional provision in article 21 (f) by providing access to official information held by government agencies (Public institutions).

Clause 1 of the right to information bill provides that a person has the right of access to information or part of information in the custody of or under the control of government agencies (public institutions).⁹

Clause 2 provides that the government (public institution) shall make available to the people, general information on their governance without application from specific person. This provision however does not state the kind of information that is classified as general information on governance and whether legal and legislative information is general information on governance. Again it is not clear whether this information will be available at the offices of the various institutions for citizen to access them or whether it will have to be deposited at public libraries or published on the institution website.⁹

Clause 3 of the bill gives ministers of the various public institutions the responsibility to ensure that information within their institutions is made accessible to the public. This will be done by the compiling and publishing of an up-to-date manual on official information. The manual will contain the functions of the institution, its organizational structure, a list of the various classes of information in their custody and under their control, fees for access, contact information of information officer in charge of access and the place where this information can be found. This clause does not, however, state who will be responsible for access at the judiciary and legislature, which are independent institutions and do not have ministers.⁹

Although the right to information bill has not been passed into law yet, Constitutional provisions and other enactments ensure that legal information and some legislative data are available in the public domain and are accessible to the public.

Section (106) of the Constitution states that bills should be published in the Ghana Gazette at least 14 days before a bill is introduced to parliament. The Ghana Gazette is the official channel use to communicate government information to citizens. The electronic transaction Act, 2008 has created the platform for online publishing of bills by the government printer. The Act states that where a law requires publication in the Ghana Gazette, the requirement is deemed to have been satisfied, if published in an electronic format¹⁰. Section (2) of the official publication Act, 1959 amended the statutory instrument 1959, that publication by government printer of any Act, or Instrument otherwise in the Gazette shall, if notice of the publication thereof is given in the Gazette, have the like effect for the purposes of any Act requiring publication in the Gazette.¹¹ This means that once a notice (not the content of an Act or instrument) is published in the Gazette, it is assumed that the whole document which contains the information of the Act or instrument has been published on the date the notice appeared in the Gazette.

Since the section 106 (11) of the Constitution gives provision for a bill which has been assented by the president (Act) to be published in the Gazette and since the Act does not come into force unless this provision is met, the government printer prints the whole document for purchase by the public.

In relation to legal information produced by the judiciary, council for law reporting decree, 1972 (NRC 64), as amended by PNDC Law 194 and Law 234 has established a council for law reporting, responsible for publishing the Ghana Law Report which contains Judgments, rulings and opinions of superior courts in Ghana. Section 15 of this Act mandates every judge of the superior court of judicature to submit a copy of every judgment, ruling or opinion

delivered by him or her to the editor of the council.¹² Registrars of these superior courts are required to send lists of all judgments, rulings or opinions delivered by a judge in the court in which they operate.

Current practices in making legal and legislative information accessible

In the attempt to bring governance to the door step of citizens of Ghana and to promote participatory democracy, the government of Ghana has put in place some measures to make information accessible for its populace, in order for them to exercise their natural and inalienable rights. These measures are implemented by the various kinds of libraries. The libraries range from special libraries like the Parliament library and the Supreme Court library, Academic law libraries such as the University of Ghana Law library and public libraries like the George Padmore research library.

Parliament Library

As a special library, the parliament library provides services to the 275 members of parliament, speaker of parliament, clerks of parliament and other parliamentary staff. The library has two main sources from where it acquires legal and legislative data. These sources are external and internal. The external sources are the government printer who publishes all Acts of parliament, legislative instruments, executive instruments and constitutional instruments. The government printer is required to send copies of all this legal produce to parliament's library and to the superior court libraries. Both the Parliament library and Supreme Court library acquire copies of the Ghana law report from the council. The Parliament library acquires legislative data and information internally from the various departments of the parliamentary service. The committee reports of parliament are received from the various committee offices of parliament after the reports have been presented at the floor of parliament. The committees are grouped into Standing Committee and Selection committee. The standing committee consists of the Judiciary committee as well as other fourteen committees, whereas the Selection committee is made up of 16 committees according to the standing order of parliament. The daily parliament debate is received from the Hansard department.

All these data and information are catalogued and indexed for easy retrieval using software called Pro software. For example, when the library receives the Hansard, the software captures the debate title, date, area, serial number, volume, column number and edition. This helps the library to search for documents using different access point. The library sometime receives a software copy of the relevant data in addition to the printed copies.

With the advent of the internet and electronic governance, parliament is using their official website as a platform to disseminate legislative data and information to the public. This initiation started in 2006 when the Centre for Democratic Development Ghana (CDD Ghana), with support from the Canadian government, collaborated with parliament to publish the parliamentary Hansard on their website. CDD Ghana is a member of the Parliamentary Monitoring Organization (PMO) that advocate for greater access to government and parliamentary information¹³. As part of the programme, the parliament library is supposed to have its own webpage on the official parliament website <http://www.parliament.gh/>. The website publishes information on the history of parliament, leadership, parliamentary service, the function and role of parliament, committees of parliament and their members,

biographical information of members of parliament, bills, business statements and order papers.

Supreme Court Library

The Supreme Court library is the largest library, in terms of collections on legal information in Ghana. Established around 1876, the library provides services to judges, judicial staff, members of the bar, law students and researchers¹⁴. Law students have to prove their identity before they can have access to the library. The library has satellite libraries in the 10 regions of Ghana serving the appeal courts and high courts. The collection of the library consist of Acts of parliament, statutory instruments, law reports of Ghana and other common law countries. Historical legal materials like the Gold Coast Gazette, ordinances, proclamations, decrees dated as far back as 1910 can be found in their collection. Unpublished court judgments are part of the Supreme Court library collection. After judgment has been pronounced, an original or certified copy of the judgment is filed in a book called judgment book which is a property of the state. Litigants and the public can apply for copies of the judgment from the registrar of the court through a written application with the case number indicated on it. Fees are calculated according to the number of pages of the judgment.

Superior court judgment can also be accessed online. The website <http://www.jtighana.org/new/ejudgment/summarysearch.php> was established by the Judicial training institute and is accessible to the public. The judicial training institute has the mandate to promote effective judicial training for judges, magistrates and judicial staff. The website, which is part of the e-judgment program initiated by the judicial service seeks to make superior court judgment accessible to all.

Public Libraries

The Ghana Library Authority controls Ghana's sixty two (62) public libraries that are across the country. Out of these, 2 are based in Accra, the country's capital, 10 are regional libraries and 50 district libraries. Currently, there is no national library. The George Padmore Research Library in Accra is acting as a national library and is the only public library that has a sizable number of legal and legislative information in their collection. The library acquires these documents from the government printer and parliament.

Challenges in making legal and legislative information accessible

Since the inception of library automation in Ghana, one major challenge has been the conflict of roles between information technology (IT) professionals and librarians. This challenge exists especially in judiciary and legislature libraries. Librarians are seemingly not active in online provision of information to the public. In some countries, IT professionals provide the platform and infrastructure while librarians manage and disseminate legal and legislative data. This is however not the case in Ghana where the portals are strictly implemented and managed by IT professionals. . As a result, the online portals are poorly designed with respect to information retrieval. There is inefficiency in retrieving information whether through browsing or searching. This impedes recall and precision when retrieving information.

The current legal deposit law of Ghana exempts legal documents and materials printed by the government's publisher for or on behalf of the government to be deposited at depository's centres. The Book and Newspaper registration Act 1961 (ACT 73) as amended in 1968 by The Book and Newspaper registration (Amendment) Act 1968 (ACT 193) section 7 provide that, delivery of copies of books to selected libraries shall not apply to books printed by the Government Printer for or on behalf of the Government, except as directed by the Minister.¹⁶ This has made it a tedious task for libraries to build collections on government publication. Libraries particularly public libraries in Ghana are struggling to make legal and legislative data free, timely and accessible to the public.

In order to help remedy the situation, libraries have resorted to direct purchase and donations as their main source of acquiring legal and legislative information. However, a key challenge is funding. Public libraries in Ghana are poorly funded and therefore, they are not able to subscribe to primary legal materials from the government printer. It costs one library \$200 a year to place a standing order at the government printer to receive legal materials. Currently it cost \$1 per day, excluding transportation cost, to get the parliamentary hansard from Parliament's souvenir shop. Due to this, George Padmore Research Library has not subscribed for legal information from the government printer since 2008. This has created a vacuum in their collection.

Although the Parliament and the Supreme Court libraries have comprehensive collections on legal and legislative information, access to these libraries is restricted. Members of the public are not allowed to use these libraries. For a member of the public to have access to the Parliament library, he or she must first send an official letter to the speaker of parliament or clerk to be granted access. In the case of the Supreme Court library, members of the public have very limited access. It looks like legal and legislative information is a preserve of parliamentarian, the bench, members of the bar and law students.

Moreover, the index to statutes in force is hardly updated. The index which shows substantive statute laws in force in Ghana has been compiled up to 2005. Presently in 2015, this means that there is a backlog of almost ten years that needs to be added to the current list by the attorney general's office. This hinders the work of libraries since they heavily depend on it as a finding aid to retrieve legal information for their patrons.

Prospects and Role of Libraries in providing access to legal and legislative information

One of the roles libraries can play is to form a consortium at the national and regional levels for a common voice and to share resources for the provision of legal and legislative information to their patrons. In the case of Ghana, since section 8 (1) of the copyright Act, 2005 provides that copyright shall not be vested in any person in respect to enactment, a decision made by a court of tribunal established under any enactment for the administration of justice in Ghana, the consortium can purchase a single copy of these material and upload it on a digital library created by the consortium together with it metadata for the purpose of open access. This Digital Law Library will then be a hub and gateway to all of Ghana's statutes in force. Libraries and the public can then have access to this information. Creating a pool of resources will also reduce the cost of providing access by individual libraries.

Libraries should also collaborate with the ministry of justice and attorney in other to increase their collection on legal materials to serve the public. The ministry has the responsibility to

increase public awareness of the country laws and statutes. Part of the budget for legal education can be used to assist public libraries to provide these services. Libraries need to partner with international organizations, professional bodies and other institutions that are pacesetters in free access to legal and legislative information to tap from their expertise and share best practices. Regional and international standards on interoperability have to be adhered to so that data and information could be exchanged across the continent.

Librarians must advocate for policy makers to include legal and legislative data as part of the legal deposit Law. The ministry of information which is in charge and is supposed to implement books and Newspaper Act needs to enact the law that will amend the Newspaper Act to oblige the government printer to deposit every Act of parliament and statutory instrument at depository libraries. These can be achieved through awareness creation of the importance of legal and legislative information to citizenry and the state and its benefit to the country when these information are easily accessible by all.

Parliament and Supreme Court librarians have to be involved in managing their institutional website in order to organize and add Meta data to electronic resources on their website for easy retrieval. Librarian role in managing digital content should be clearly stated in policy documents.

Librarians especially those in public libraries have a role in repackaging legal and legislative information in the form of drama, posters, and oral media given the fact that only 25.0% of the population are illiterate and 7% can read Ghanaian language only.⁴

In Africa where various governments invest very little of its resources into public libraries, libraries need to be proactive and look for other sources to fund their library activities. Libraries can acquire fund from their patrons through fund raising and awareness creation activities for acquisition of legal and legislative information. Librarians must therefore sharpen their 'grantsmanship' skills in order to write proposals that meet the mission and objectives of local, regional and international organizations with a passion for good governance, rule of law and accountability. If librarians are able to demonstrate the benefit, impact of legal and legislative information on the public, funding agencies like USAID, open society foundations and the Parliamentary Monitoring Organization can support the libraries.

Conclusion

If ignorance of the law is indeed no excuse, then so is unavailability of the law. Ignorance arises when knowledge is unavailable. The knowledge to wash away ignorance must be provided and must be available. Public library (Physical or Digital) system is the best way to provide this knowledge and to make legal and legislative information accessible to all.

References

¹Selden, J. and Milward, R. (1818). The Table Talk of John Selden. Retrieved from <https://ia700404.us.archive.org/28/items/tabletalkofjohns00seldiala/tabletalkofjohns00seldiala.pdf> on 2/04/2016

²Bentham, J. (1838). The Works of Jeremy Bentham, now first collected under the superintendence of his executor, John Bowring. Edinburgh : William Tait p547

³Ribot, J. C., and N. L. Peluso.(2003). A theory of access. Rural Sociol.68(2):153–181

⁴Ghana Statistical Service (2012). Population and Housing Census: Summary Report of final result. retrieved from http://www.statsghana.gov.gh/docfiles/2010phc/Census2010_Summary_report_of_final_results.pdf on 2/9/2013

⁵ Ghana Constitution

⁶ Ghana Parliament Handbook, 2015

⁷Local government Act, 1993 (Act 462)

⁸ Report of the Constitutional, Legal and Parliamentary Affairs on Right to information bill, 2014

⁹Right to information bill, 2013

¹⁰ Electronic transaction Act, 2008 (Act 772)

¹¹ Official publications Act, 1959 (no. 85 of 59)

¹² Council for law reporting decree, 1972 (NRCD 64)

¹³G-RAP Annual Report (2008). Retrieved from http://www.grap.org/management_reports/annual_report_2008/ar2008_political.html on 2/2/2015

¹⁴Know More About Ghana Library History (2006). retrieved from http://www.ghanadistricts.com/home/?_id=42&sa=3640&ssa=182 on 2/2/2015

¹⁶The book and newspaper registration Act 1961 (ACT 73)

¹⁷ Copyright Act, 2005 (Act 690)