

# Secrecy Bill still looms - and is evil as ever



By Gill Moodie: @grubstreetSA

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Lift your eyes from the daily grind, *mense*, because there's important backtracking from the ANC on the Secrecy Bill that we all need to know about.

Last week, the Right2Know activist group warns, the ruling party's caucus on the Protection of State Information Bill (or "Secrecy Bill"):

- "...reneged on their promise to remove 'minimum sentences' from the Secrecy Bill's espionage clause 36, thereby forcing the courts to impose mandatory jail sentences of no less than 15 years, and up to 25 years, for offences that are so vaguely drafted that they can still be applied to legitimate acts of whistleblowing and disclosures of classified information that are genuinely in the public interest"; and
- Amended a section "to ensure that whistleblowers whose acts were protected by existing whistleblower law, including the Protected Disclosures Act, the Companies Act, and "any other law" has been rewritten so that only the Protected Disclosures Act and Companies Act are given such protection (the reference to "any other law" has been deleted). Thus, a law such as the Prevention and Combating of Corrupt Activities Act, which would require a person to report corruption, is now potentially undermined." (Read the [full statement](#) on Right2Know's website.)

The ANC has [denied that it has backtracked on promises](#) but the fact is that the Secrecy Bill is set to be signed into law soon - by the end of this month - and even with the concessions made by the ANC, it is still a Draconian piece of legislation that will affect the right to freedom of expression in this country.

## The problem hasn't gone away

Murray Hunter, the national co-ordinator of Right2Know, told Bizcommunity this week: "The reversals last week were an important indication to the public that, really, the problem of the Secrecy Bill hasn't gone away. But... these two reversals pale in comparison to the broader problems in the Bill.

"We have remaining problems of who gets to make secrets. Right now, even junior officers in the police and intelligence structures would still be given the power to classify information - for instance, station commanders and when you look at the crisis unfolding in Marikana, you see that this is not the kind of power we can entrust our police with.

"The second issue is what gets to be made secret. There's been a lot of changes (to the wording of the Bill) but when you look at the definition of national security - which is the justification for making secrets - you still see provision for economic,

scientific and technological secrets, which really aren't part of the strictly defined notion of national security.

"The third is that whistleblowers and members of the public are all still subject to a variety of penalties - and that includes possessing information that has already been exposed or is in the public domain..."

(For more information on the seven main problems with the Bill, it is well worth reading [this statement](#) by the Right2Know group.)

## A glimmer of hope

There is a glimmer of hope in that Deputy President Kgalema Motlanthe is [on record](#) as saying that he will advise President Jacob Zuma to refer the Bill to the Constitutional Court before he signs it into law but what will come of this remains to be seen. It could well amount to nothing more than savvy politicking on Motlanthe's part ahead of the ANC elective conference in Mangaung at the end of the year.

And for all of us thinking the Bill is unlikely to pass muster in the Constitutional Court if Right2Know and other organisations challenge it there, we need to remember that this legal route is far from ideal.

It is far better to try to fix a problematic Bill in Parliament. (Remember the Bill is now in the National Council of Provinces after the ANC used its parliamentary majority with two abstentions to [pass it](#) last November.)

Taking it to the Constitutional Court will be a lengthy, expensive affair while the government will in the meantime have the right to implement the Bill.

## Great skill and determination

My impression of what is going on is that the ANC is working with great skill and determination to clamp down on press freedom through this Bill and its [push for a Print Media Charter](#) (the next phase of the consultation process on this should be in October in Parliament) - and also through its proposed Media Appeals Tribunal.

Though many sighed with relief when the party appeared to back down on a tribunal earlier this year, it cleverly left room to bring it back when [Jessie Duarte said](#) the ANC was "quite satisfied to a large degree with what the Press Freedom Commission has done".

Duarte never said the ANC was dropping its proposal; just that it was on ice... for now!

So please keep your eye out for Right2Know's protests and campaigns, donate to its cause if you can, volunteer to help if you have the time, follow it on its website ([www.r2k.org.za](http://www.r2k.org.za)) or [@r2kcampaign](#) on Twitter.

The organisation really is doing a fine job but it can't do it alone. It's up to all of us to defend our right to freedom of expression.

## For more:

- Bizcommunity: [Why do we need to speak up for free speech?](#), Aug 2010
- Journalism.co.za: [Print-media indaba: another battleground for press freedom](#), July 2012
- Daily Maverick: ['Jacob Zuma and the second transition: The print media'](#), June 2012
- Journalism.co.za: ['PFC report has good ideas, but is no gold standard'](#), May 2012
- Journalism.co.za: ['PFC suggestions give too much away'](#), April 2012

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