Access to Public Information: Between Obstacles & Opportunities Towards Open Government in Benin

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Introduction

Open government in Benin has been on the agenda of politicians and civil society for the past five years. The concept aims at effective governance through transparency and accountability of public authorities. However, certain basic requirements for its implementation in our country continue to be the obstacle. Among them is the non-recognition of the right of access to public information – one of the pillars of open government.

The NGO Coalition of Benin for an Open Government¹, with support from NIMD (Netherlands Institute for Multiparty Democracy), brought together Beninese parliamentarians in Cotonou for an advocacy seminar on access to public information from 11 - 13 August 2020. This is yet another advocacy meeting whose objective was “to get the Beninese legislature to take charge of the content and challenges of Open Government and its score for a successful process” of Benin’s accession to the Open Government Partnership (OGP), specifically aimed at sensitising parliamentarians on the need to provide Benin with a law that effectively promotes access to public information.

The requirement for implementing access to public information has long been a hurdle since 2015, when Benin officially expressed its interest in joining the Open Government Partnership (OGP). A barrier that persists despite everything, because while the existence of an access to information law (automatically) makes it possible to count Benin among the countries that have met this criteria, citizen’s access to public information in Benin remains a challenge in practice. This has indeed been the rationale behind the decision of the NGO Coalition of Benin for an Open Government, since its inception, to address the issue in its fight to engage Benin in the implementation of an open government.

1. Unsuccessful Steps Towards Legal Recognition of the Right of Access to Public Information

In order to join the OGP, states wishing to join must meet four criteria: budgetary and fiscal transparency, access to information, publication of the income and assets of elected and appointed government officials, and citizen participation in public action. Benin’s ineligibility for the OGP five years ago was mainly due to two elements: failure to meet the criteria relating to access to public information and the publication of the income and assets of elected and appointed government officials. With regard to the first criterion, it is not that Benin does not have the access to information law. Often presented as a media law, the 2015-07 Act of 22 January 2015 on the Information and Communication Code in the Republic of Benin, serves as a law on access to public information.

Moreover, Article 7 of the Act provides as follows:

“Everyone has the right to information. The State is obliged, through its various structures and institutions, to guarantee everyone access to sources of information, particularly public information. The State services in charge of this mission therefore undertake to provide any information, to communicate any document and to ensure that, if necessary, a press file is compiled and made available to professionals on any subject of legitimate public interest”

¹ A network of more than a hundred non-governmental organisations formed in 2019 to accelerate Benin’s march towards open governance.
While the law lays down an unequivocal general principle, it presents limits on the conditions of access to public information. In other words, the quality of the law can be improved in accordance with the practices accepted by international standards. For example, in the ranking (2020) of the Right of Access to Information Index established by the Centre for Democracy and Law and Access Info Europe, which serves as a reference for the OGP, the Beninese law is ranked 121st out of 128 laws examined. This ranking is the global benchmark for assessing a country’s legal framework for the right of access to public information.

The review carried out by independent experts is based on seven evaluation criteria. These are, the right of access, the scope of this right, the conditions of access to public information, restrictions on the right of access, remedies in case of refusal, sanctions and promotional measures for the right of access. According to this evaluation, Benin’s Information and Communication Code scored only 52 points out of a maximum of 150. Benin’s law is ranked in the bottom 10 of the list.

Civil society organisations have been advocating for many years to improve the conditions of the exercise of the right of access to public information in Benin. In practice, the provisions of the law do not favour the work of media professionals and civil society organisations in conducting investigative journalism or citizen oversight of public action.

After several months of work, civil society organisations within the WANEP Benin network succeeded in convincing deputy Eric Houndété, then first vice-president of the National Assembly, to submit a bill to parliament on Thursday 12 January 2017 to amend the law on the information and communication code in the Republic of Benin. In February 2017, WANEP-Benin, in collaboration with the General Directorate of Media and financial support from OSIWA (Open Society Initiative for West Africa), organised a workshop on the subject with the theme, “Chapter IV of the Information and Communication Code relating to public sources of information: experiences of media professionals”. Personally, I noted the difficulties in implementing Open Data in Benin in 2018 following the absence of an access to information law worthy of the name.

However, all these steps are yet to result in the revision of the law on access to public information in Benin. The Amendment bill after being scheduled for several ordinary sessions of Parliament has never been examined. As a result, civil society organisations are still advocating in 2020 for the passing of a law that effectively enshrines access to public information in Benin. Although MPs seemed receptive to the voices of civil society actors at the 11-13 August 2020 workshop, it would still take time for change to take place.
2. The Reluctance of Parliamentarians to Pass the Access to Information Law

During the three days of workshop, civil society actors and parliamentarians exchanged at length about the access to public information in Benin. The two parties agreed on several points, particularly the fact that certain provisions of the current law deserve to be reviewed in view of technological advancement for instance. The enthusiasm, however, remains incomplete as MPs are still very reluctant to take the additional steps that civil society seeks concerning the issue of access to public information. There is still some work to do in this area, ranging from a lack of enthusiasm to a lack of knowledge of the principle.

Access to public information is a basic principle for transparency. It is even an attribute of good democratic governance. However, when the issue is raised with parliamentarians, one gets the impression that they are looking for more arguments to support withholding information than reasons to move towards greater transparency. For example, many parliamentarians during the discussions explained that the socio-political history of Benin gives room to the culture of secrecy. They did not hesitate to draw on national folklore (popular songs, sayings, and adages) to legitimise their reluctance to adopt the access to information bill as desired by civil society organisations.

In the light of these socio-cultural considerations, some believe that Benin is not obliged to follow the example of the countries cited to have adopted the principle of access to information.

Moreover, members of parliament get confused about this principle. On the second day of the workshop, a member of parliament drew a parallel with banking secrecy. However, banking secrecy cannot be compared to the principle of access to public information. The principle of access to public information also has internationally accepted restrictions such as data protection as well as classified information.

Another parliamentarian referred civil society actors seeking information to the official government website. “Everything is there”, he hammered, clearly confusing government communication with the principle of access to public information. For instance, the government has not published the salaries of ministers anywhere since 2016, even though this data is public information to which any Benin citizen should have access. The same is true for some strategic ministerial documents, as a well-informed internet user points out.

Benin has already obtained, automatically and it is necessary to specify, the four points conferred for meeting the “access to information” criterion on the eligibility table of the OGP. However, the country still needs to put in more effort to effectively implement open government. In West Africa, countries that can be cited to have best implemented the right of access to information are Liberia and Sierra Leone. These two countries have been members of the OGP since 2011 for Liberia and 2013 for Sierra Leone. Ghana, Burkina Faso and Côte d’Ivoire also have access to information laws that are relatively better rated than that of Benin. The other remarkable indicator is that unlike Benin, the law in each of these countries establishes an independent commission or authority to adjudicate on requests for access to public information.
Conclusion and Recommendations

The August 2020 workshop promises change in the near future. At the end of the workshop, the various stakeholders adopted a roadmap for the continuation of the process. The hope remains that change will come about quickly. In any case, until the current law is updated to meet the applicable international standards, each stakeholder must continue to act. However, the efforts will differ according to the categories of actors:

- Civil society organisations

Civil society organisations must strengthen and be persistent with their monitoring and advocacy activities. As a first step, they should continue to record evidence of situations in which access to public information is denied. In this respect, collaboration with organisations of media professionals (journalists) is essential. For even if access to public information is a right recognised for all, journalists remain the first actors to exercise this right in the context of their work. By carrying out such monitoring, the NGO Coalition of Benin for an Open Government can have access to evidence capable of touching the minds of public authorities.

Secondly, civil society organisations need to invest in sensitising and training citizens, especially the youth, women, civil servants, and local government officials on the right of access to public information. One of the barriers to the effective implementation of this right remains the lack of awareness of the concept and the relevant legislation. Thus, ignorance of one’s rights (and duties) makes it impossible to exercise them.

Finally, civil society organisations must continue advocacy campaigns towards the government, members of parliament and donors in Benin as well. The monitoring documents drafted should make it possible to create a considerable impact and call for concrete and precise actions in relation to each of the stakeholders mentioned above. Civil society organisations would also benefit from learning from the experience of their peers in the sub-region who have succeeded in getting laws on access to public information adopted in their respective countries. The examples of Nigeria (2011), Ghana (2019), Cote d’Ivoire (2013) or Burkina Faso (2015) can inspire CSOs in Benin.

- Members of Parliament

Parliamentarians have a crucial role to play in the implementation of any legislation. Not only do they have the prerogative of initiating legislation, but also have the power to vote for it to be passed. MPs, in turn, must act at two levels. First, they must update themselves on the principle of the right of access to public information. By doing so, they show political will and courage to adopt a sufficiently strong law on access to public information. As it stands, there is still a lot of confusion among parliamentarians about this concept, which some people blithely confuse with government communication.

The next step is for parliamentarians to show political will and courage to adopt a sufficiently strong law on access to public information. The access to information law will strengthen the power of citizens and civil society organisations to monitor the accountability of public authorities. Consequently, political will is often lacking when it comes to enacting such legislation.
The experience-sharing approach is also relevant for parliamentarians. Members of parliament in Benin can learn from the experience of countries that have already passed such legislation to accompany the process.

- **The Government**

In common with parliament, the government also has the possibility to initiate an amending law that takes into account the necessary corrections to the current Access to Information Act in order to make it meet contemporary standards. For this to happen, political action from the executive arm of the State is indispensable. It is also a matter of setting an example, even in the absence of a legislative provision in favour of the right of access to public information. By setting an example of transparency and guaranteeing access to public information, the Executive will facilitate the action of parliament and local government officials in this regard.

- **Development partners**

Donors and development aid agencies also have an important role to play in moving the situation in the right direction. They can use their persuasion power to push the government to pass a law that supports the right of access to public information. This can take the form of incentives. They can also demand that information on specific projects they finance be open and accessible to the public.