

DRAFT CONCEPT NOTE ON ACCESS TO INFORMATION

PROJECT: 'OPEN DEMOCRACY-OPEN DATA'

(August 2013 – for NWG Mid-Term Review Strategy meeting)

Background to R2K and Access to Information Work/Activism

One of the founding pillars of the Right2Know Campaign (R2K) is 'Information Access Now' wherein R2K seeks to be in solidarity with and practically support communities and groups both inside and outside the Campaign, to access existing information that is critical to their broader struggles for social justice.

Over the last two years, the R2K's pursuit of this grassroots-centred pillar of our work and activism has seen an intensification of our organising and mobilising of community organisations and movements for the free flow of information. From our intensive push to ensure R2K voices at the vast majority of NCOP provincial hearings, to ongoing solidarity work with various organisations and movements in their efforts to gain access to the information they need to win their respective struggles, R2K has continued to put down roots in our communities and to raise awareness of the centrality of the free flow of information in securing other rights and meeting peoples basic needs.

This crucially important pillar of our Campaign has not taken place in a vacuum. Our work takes place amidst a deepening inequality and an economic, social and ecological crisis that is testing the limits of our democracy. It is little wonder that many in R2K understand that the Secrecy Bill and other draconian and exclusionary legislation – as well as the alarming number of requests for access to information that go unmet - are not isolated cases of bad drafting or the work of unaccountable or incompetent public officials. It is becoming increasingly clear that as they increasingly fail to govern by consent, sections of the State are getting ready to govern by force – and force demands secrecy for its justification.

In many respects South Africa is in a de facto state of secrecy. The R2K's recent 2013 Secret State of the Nation report found that only 32% of Promotion of Access to Information Act (PAIA) requests for information are successful. Almost two thirds are ignored or refused. The rising number of protests across the country also speaks to the increasing sense of exclusion and alienation of many demanding a more responsive state and private sector. R2K sees accessing information as a critical component of the struggle to defend and advance the participatory people centred democracy envisioned in the Constitution.

Indeed, the broader struggle for access to information is critical for the success of many struggles undertaken by R2K activists, supporters and allied organisations across the country. This remains the pillar of R2K that has the greatest potential to deepen the rootedness of the Campaign in community struggles and demonstrate the enabling nature of openness in realising socioeconomic rights and meeting basic needs.

Context to Open Democracy/Open Data Project

To consolidate and further deepen and expand our access to information work/activism, the 2013 R2K National Summit resolved not only to continue to make use of PAIA as an

information access tool and raise awareness of the centrality of access to information in ensuring accountability and realising a range of basic human and constitutional rights but to embrace a shift from requesting single records to advocating for the proactive release of whole datasets. This can begin to lay the basis for demanding that the state proactively make information available on an ongoing basis through online publishing (i.e. advocating for and practically pursuing an 'open data' regime).

In this way, information can be used by residents of an entire area, constituency or community. A good example in this regard is the issue of land. In the centenary of the passing of the 1913 Land Act, we have the right to know who owns the land today. This requires not simply a demand for the release of the recent national land audit which the Land Minister is currently withholding from the public, but for a land registry to be constantly maintained and made publicly available on a website.

In order to take forward this expanded R2K mandate, the Open Democracy Advice Centre (ODAC), one of R2K's founding member organisations and a leading force in advocating for and promoting an open democracy/open governance initiative in South Africa and across the continent¹, undertook a research project in late 2012 to source a representative look at Civil Society Organisations (CSOs) and their access to information/open data ideas, experiences and needs.

The project involved interviews with senior members of a sectorally and geographically diverse set of CSOs (40 in total), inclusive of community organisations, social movements, and non-governmental organisations spread across four provinces (Gauteng, Kwazulu-Natal, Eastern Cape and the Western Cape). All of the organisations have either been active in, or in support of, R2K. Case studies were then compiled that detailed: the organisation's core work; use of information; experience with information generation and access; information and open data needs to take their work forward; and, why the data identified is of importance to them.² The research was then work-shopped (in early 2013) with representatives of those CSOs that participated as well as R2K staff and key activists.

Combined with R2K's ongoing access to information work and engagements, this first-of-its-kind research forms the basis for R2K's decision to seek donor support for an 'Open Democracy, Open Data' project.

The Basis for the Project: Summary of Research Findings

Key themes

1. *The importance of information and its pro-active release* - For all the CSOs, information is the heartbeat of their work and activism, a 'central component of the democratic project'. Access to information represents a three-tiered right: a liberty right (i.e. no interference to access); a welfare right (i.e. realisation by government); and a facilitative right (i.e. a platform for civil society action). However, in order to

¹ For further information on ODAC's work and advocacy on this front, see the Open Democracy Charter [http://www.opendemocracy.org.za/wp-content/uploads/010/10/ODCharter_DFT.pdf] as well as the Open Government Partnership [<http://opengovpartners.org/za>]

² The full Research Report in both hard and electronic copy, is available upon request

ensure that information can be effectively processed, best utilised and have the greatest positive impact, there is the need for its pro-active release. At present this is largely not the case (see related theme on PAIA below), with the result most often being that the information is either out-dated or of little practical use to the organisation, its members/ constituencies.

2. Secrecy - All of the CSOs engaged were unanimous in pointing to the general veil of secrecy that has become a hallmark of both the government and private sector when it comes to public access to information. More specifically, such a veil is particularly thick when it comes to those areas of information dealing with the coercive forces of the state (e.g. the police, the military and the security-intelligence services), nuclear infrastructure and project plans and information involving government-private sector business relationships (e.g. tenders, outsourced contracts, environmental impact assessments, mining permits/licensing and general procurement of government services). Linked to this, many of the point to a growing 'culture' of fear and intimidation within government that has catalysed self-censorship when it comes to releasing information to the public and created extremely difficult and often personally hazardous conditions for potential whistleblowers. Further, a great deal of information requested has been, and continues to be, wrongfully classified, with the most common 'reasons' for non-disclosure being 'national security' and '3rd party confidentiality'; and even when information is accessed it is often only partial and of poor quality. The veil extends to other, more practical levels as well: many of the CSOs have found it increasingly difficult to access government as well as private sector facilities in order to generate information and, government is increasingly turning a cold shoulder to information requests simply because some of the CSOs are perceived to be 'anti-government' and/or inveterate 'trouble-makers'. For most of the CSOs, this is all wrapped up in a lack of political will to embrace and catalyse the public's access to information.
3. Commodification - Despite there being more information 'out there' than ever, especially given the rapid rise in the more general availability and use of technologies such as smart phones and the internet, the practical ability to access and make effective use of it remains a serious problem for many community organisations and social movements. The first 'half' of this problem relates to infrastructural access wherein the base memberships and constituencies of such CSOs simply cannot afford to purchase the equipment necessary for access. This fundamentally developmental 'digital divide' potentially poses one of the biggest barriers not only to basic information access but also to open data use in a place like South Africa. And, the second 'half' of the problem relates to the generalised disjuncture between access (where and when that is possible) and the ability to use the information, to 'decipher' it for practical understanding and use – effectively a knowledge deficit. On both counts, it is a matter of the underlying commodification of information access.
4. PAIA's mixed bag - Even though PAIA has been in existence for over twelve years, there remain a surprisingly significant number of the CSOs who have never made use of it. Nonetheless, most of those organisations that have never used PAIA, actually would like to do so, either as a 'test' or simply because it would be a new way to try and access information. On the other hand, the majority who have made use of PAIA have not been successful in accessing the information requested. In those few cases

where there has been ‘success’, the information received has been partial/limited and often of poor quality. It should come as little surprise then that this has led to increasing degrees of cynicism about the entire PAIA process as the primary means of accessing information from both the government and private sector.

5. *Non-PAIA access avenues* - All of the organisations access a substantial amount of information through non-PAIA avenues. Besides both government and private sector information that is readily available to the public (what the CRC has called ‘uncontroversial information’), most of the CSOs access a substantial amount of information through: research, partnerships with other CSOs both domestically and internationally, specific organisational and/or individual relationships with government departments and personnel at all three levels but particularly at the local level, self-generation – for example by taking air and soil samples or physically visiting government and private facilities, whistleblowers (although as noted earlier, this avenue has been negatively affected by an intensified environment of fear and intimidation) and parliamentary hearings, committees, reports etc.
6. *Capacity problems* - There is a clearly identified problem of internal capacity when it comes to pursuing and sustaining access to information activities/processes. The most frequently cited component of this problem is human resources where there is simply not enough personnel/activists to give the necessary time and attention, especially when it comes to sustained follow-ups. Coupled to this is a lack of in-house expertise and financial resources to pursue the legal side of information access when necessary and the general state of poor in-house record-keeping and data management as well as a lack of primary data-gathering and a standardised means of sharing data. Further, organisations point out that the human resource capacity problem is also very much ‘alive’ within all levels of government, overlaid by high staff turnover and the generally low standards of operating procedures and quality.

Open Data

Creative visualisations - There are two sides to the open data environment ‘coin’: on the one hand, the supply of data largely by government but also more incrementally, the private sector; on the other, what can be termed the ‘creative visualisations’ of data (i.e., the creation, analysis, interpretation, processing and dissemination of data for the memberships/ constituencies of the CSOs and then also the broader citizenry). To their credit, the CSOs were able to clearly identify the ‘other side’ of the coin; how best to translate data into understandable and accessible formats. Examples include: work-shopping; public meetings; web and social media based written summaries; verbal communications both directly at community level and through the media; hard copy (standardised) formats distributed directly and housed in local libraries; and, physical, web and social media delivered audio and visual materials. For many of the CSOs, this would go a long way in addressing the widely identified problem/challenge of infrastructural access.

Identified information needs

- *Housing*: specific government data related to waiting lists for and the provision of, Reconstruction & Development (RDP) and related government project housing. Additionally, all data related to planned and completed evictions and relocations of people living in both urban and rural areas;

- Development plans: all Integrated Development Plans (IDPs) of government for every designated IDP area/district in the country; and, all data related to who is responsible for developing and monitoring them? Further, all of government's Service Delivery Agreements (SDAs) for every municipal area/district in the country as well as all yearly plans of government departments related to job creation, mega-projects and delivery outputs
- Municipal budgets and expenditure: All data related to Municipal budgets and expenditure as per each financial year, inclusive of under-spent and/or returned funds to National government.
- National departmental budgets and expenditure: All data related to the budgets and expenditure of each National government department as per each financial year, inclusive of under-spent funds;
- Minutes and Resolutions of all Municipal Council Meetings: this data need cuts across all specific organisational projects/programmes, whether directly or indirectly;
- Land/Property: All data related to the pricing, ownership, control and use of both government (state) and privately owned land and property in both urban and rural areas; with specific focus on mining communities; this includes all land claims lodged, processed and still outstanding;
- Social Welfare: All data on government support programmes and fund allocations related to social welfare, particularly involving women and children and specifically targeting community projects, skills development, SMME's and cooperatives;
- Government contact information: Contact databases for all government offices and personnel cutting across all departments and all levels of government, inclusive of national/provincial parliamentarians and local counsellors; with specific focus on government services provided to the public;
- Tenders: All data on government tenders awarded at all levels of government, but particularly at the local level. This includes outsourced service contracts vis-à-vis each government department;
- Energy/Environment/Food: All data related to: Eskom and Municipal electricity tariffs, expenditure on and pollution emissions of, coal-fired power stations, existing and planned expenditure on the nuclear programme, transporting and storage of nuclear radioactive waste materials, permits and operating licenses for water and waste disposal, genetically modified food/crop applications, agreements between mining companies & surrounding communities, environmental Impact Assessments (EIAs) and compliance data vis-à-vis regulatory requirements on all of the above
- Information directives/policies: All data related specifically to government departmental directives and policies on the ways which government data is collected, processed and managed as well as how, why and what information is classified
- Participatory processes: All data related to the criteria and decision-making processes followed by government departments/entities to ensure public and/or specific community participation in developmental plans of action and implementation
- Implementation of legal rulings and legislation: All data related to the implementation by government of court rulings won by CSOs as well as legislation passed such as the Sexual Offences Act and the Labour Relations Act

The Project Rationale and Idea

While South Africa civil society has travelled some distance in engaging, advocating and struggling for a truly open democracy, there remains a long way to go to achieve such a promise. While government (and the private sector) in South Africa, with some notable exceptions, have largely played a hostile role in this respect, civil society has far too often remained static and allowed itself to be caught in the embrace of mediocrity. In other words, there is a willingness but an overall lack of both strategic vision and practical/tactical nous to push forward an open data agenda.

Nonetheless, with the rapid global development of internet, communications and social media technologies alongside a renewed impulse towards making open data a lived reality for increasingly larger numbers of people, the opportunities are there, even if the challenges immediately ahead in South Africa - particularly infrastructural - are substantial. In order to seize the opportunities, CSOs in general and R2K in particular, therefore need to expand and deepen relevant education and knowledge generation and then to make the linkages between open data, current work, information needs and mutually beneficial work and activism within and amongst civil society.

The South African government has very little manageable data at present with many of the government's data sets (for example, on incidences of rape) not being disaggregated and thus not being particularly useful. However, there is a considerable amount of 'dirty' (raw) data that can readily be made available and accessed (e.g. in PDF formats) and there are also some standardised programmes for analysis (e.g. SQL). Further, there are no doubt some data sets that government has which could be useful and interesting, particularly for comparative purposes and cross-checking. These need to be identified in two respects; what exists (and the additional work needed on these) and what could be created?

Combined with the above, there is plenty of space for the government to pro-actively release a wide range of existing information immediately. This demands a more planned, collective activism and advocacy to creatively and collectively access, collect, interpret and use such information in practical ways that can assist communities in need. And here, it must be noted that the same space and opportunity exists – even if more limited - for the private sector; it too must be given a hefty shove.

The project idea then is as follows:

- An R2K-initiated and led consortium of progressive CSO partners (most all of which are already part of, or working with, R2K), informed by a principled and practical commitment to an open democracy, open data 'regime', will be formally constituted;
- The consortium will first identify existing (within the CSOs involved), and where necessary employ, information managers, data interpreters, data capturers and information disseminators;
- Grounded in access to information work already done, the consortium will set an information advocacy agenda. This agenda will then guide the initiation of a campaign to access existing information (making use of PAIA where appropriate but

prioritising pro-active release) and to find and access any/all relevant data-sets. Priority will be given to government-held information and data-sets but where relevant, the private sector will also be targeted;

- Grounded in research work already done, the consortium will set a research and information packaging agenda. This agenda will then inform the initiation of further research on existing open data projects globally as well as South African CSO information needs. Parallel to the research will be information packaging – i.e. the capturing, interpretation, disaggregation and presentation of information for popular access and use.
- All information derived from the above will be placed in an ‘information clearing house’, with relevant experience, expertise and technology being employed to ensure maximum accessibility and interpretability.
- Such information will, through existing and newly created channels and mediums, be shared first across the sector in South Africa and then, where appropriate, more widely throughout civil society, government, the private sector and the international community.

The project idea is captured in the organogram below:

