



# IN THE SHADOW OF GOVERNANCE

Evaluating 2019/20

## ABSTRACT

As we look at the evolution of our structure, one aspect has to be the lessons we have learnt from the past 18 months on the governance front

## Wrecking Ball – Miley Cyrus

We clawed, we chained, our hearts in vain  
We jumped, never asking why  
We kissed, I fell under your spell  
A love no one could deny

Don't you ever say I just walked away  
I will always want you  
I can't live a lie, running for my life  
I will always want you

I came in like a wrecking ball  
I never hit so hard in love  
All I wanted was to break your walls  
All you ever did was wreck me  
Yeah, you, you wreck me

I put you high up in the sky  
And now, you're not coming down  
It slowly turned, you let me burn  
And now, we're ashes on the ground

Don't you ever say I just walked away  
I will always want you  
I can't live a lie, running for my life  
I will always want you

I came in like a wrecking ball  
I never hit so hard in love  
All I wanted was to break your walls  
All you ever did was wreck me

I came in like a wrecking ball  
Yeah, I just closed my eyes and swung  
Left me crashing in a blazing fall  
All you ever did was wreck me  
Yeah, you, you wreck me

I never meant to start a war  
I just wanted you to let me in  
And instead of using force  
I guess I should've let you in  
I never meant to start a war  
I just wanted you to let me in  
I guess I should've let you in

Don't you ever say I just walked away  
I will always want you

I came in like a wrecking ball  
I never hit so hard in love  
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## Introduction

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The R2K occupies a somewhat unique place in the constellation of social justice organisations in the non-profit sector in South Africa. A chimera<sup>1</sup> of sorts, it is part NGO, part CBO, part social movement. And yet through its evolution it has shapeshifted throughout its 10-year existence. It has always been an experiment in participatory democracy, seeing whether there could be unity of purpose while holding a diversity of component parts. Is it able to hold the often-competing race, class, gender, age interests in a swirling bowl of competing political opinions and ideological perspectives? This has occupied much of the internal review of the organisation for the past 2 years.

This metamorphosis has put a strain on all parts of the organism: some parts have atrophied, other parts have rapidly multiplied, some other parts have been completely discarded. The organism in 2020 is a very different one from the one that was born in 2010.

One of the areas that has been under most strain over the past 2 years has been the issue of governance. That is the focus of this report.

## A New Dawn

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In a 2014 article, the challenges of serving on a board (the governance structure of an NPO) was outlined quite clearly:

“Non-profit organisations (NPOs) feature large in the lives of many South Africans. There are the multitudes on the receiving end, such as those benefiting from charities. But there are probably just as many givers: donors, which range from large corporations to anyone dropping a few coins in a collection tin, and the many who contribute time and expertise to run these organisations – and who form the backbone of the non-profit sector.

Unlike for-profit businesses, NPOs [like the R2K] rely heavily on unpaid volunteers. Volunteers can be found at all levels, [from pounding the streets] to sitting on the board. They may be retirees who have time to spare [or comrades rendered unemployed by capitalist exploitation and poor macro-economic choices], but they may equally be working people with full, busy lives.

Perhaps you are a volunteer, or are considering becoming involved in a cause that is dear to you. If so, you need to be aware – particularly if you are representing an organisation at board level – of the financial implications for you directly if something goes awry and the organisation and/or its board members is held liable for financial loss. The risk is greater than it used to be, but it can be minimised if it is managed correctly.

Although civil actions involving NPO board members are rare, the corporate landscape in South Africa has changed in line with greater global emphasis on good governance, increasing the likelihood of litigation in the future. Two developments, in particular, over the past few years have contributed to

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<sup>1</sup> The Chimera, according to Greek mythology, was a monstrous female fire-breathing hybrid creature of Lycia in Asia Minor, composed of the parts of more than one animal. It is usually depicted as a lion, with the head of a goat protruding from its back, and a tail that might end with a snake's head

the changed landscape: the release of the so-called “King III” report in 2009, which raised the bar for corporate governance in South Africa, and the promulgation in 2011 of the new Companies Act of 2008, which went much further than its predecessor in addressing governance issues. [In 2016 the King IV report was released, that went further in clarifying principles of good governance - also for the NPO sector].

...Because NPO board members are volunteers, they are likely to be people who are interested in the specific cause of the charity or organisation.

“Most organisations try to recruit someone with financial skills and someone with legal skills. In NPOs that are active in advocacy, civic activism, research, policy development, environment and other causes, board members are likely to be from a wide range of representative groups – for example, communities in which the NPO works, academics with expertise in the field and political leaders,” Gastrow says.

If you are a trustee or a director on an NPO board, you are bound by certain responsibilities and are obliged, under the applicable Act, to exercise prudence and care:

- The Trust Property Control Act requires that “trustees must, in the performance of their duties and the exercise of their powers, act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another”.
- The Companies Act, Wyngaard says, is more explicit about the duties of directors and their potential for liability. A director may be held liable for any loss, damages or costs sustained by the company in situations where there has been:
  - A breach of fiduciary duty;
  - A failure by the director to deal with a personal financial interest; or
  - A failure by the director to act in good faith and for a proper purpose.

The Inyathelo publication ***Governing Boards in the Non-Profit Sector***, by Gastrow, Mellet and Wyngaard, elaborates on the issue of conflicts of interest: “A conflict of interest ... is not limited to situations where a board member may stand to benefit financially from the affairs of the NPO, though this is the most common form. It may also arise when the board member, his or her family or business partners may directly or indirectly benefit as a result of that member being on the board. The existence of an actual or potential conflict may not in itself be a problem, but how the board deals with that situation is of the utmost importance.”

Society at large places special demands on those running charities and other NPOs. A paragraph from the Department of Social Development’s Code of Good Practice for NPOs, published in 2001, points out that there is a higher public expectation of NPOs to behave properly than there is of for-profit organisations. It states: “NPOs exist on the support they receive from others, given in trust and with the hope that problems and issues will be effectively addressed by the organisation’s mission and objectives. Because NPOs are expected to ‘do good’ with these resources, the public expects them to be beyond reproach. Any misbehaviour brought to light by enquiry or the media becomes a slight on the entire NPO community.”

Living up to certain standards is one thing, but it is another to live with a threat of financial loss if, perhaps through no direct fault of your own, someone decides to sue. Gastrow believes this issue of personal liability could affect the ability of NPOs to attract board members. Complicating matters is the fact that NPOs have problems unique to them.

She says: “There is a level of incapacity in the NPO sector that might be a threat to good governance. In addition, board members are volunteers, and the organisation is sometimes not a priority when their own work and personal commitments weigh heavily. This means that things could fall through the cracks if not well managed.

“In 2012, the Independent Code of Governance for NPOs in South Africa was launched, as it was felt that King III was too focused on the for-profit sector and had a very different values base, especially taking into account that non-profit board members are volunteers and unpaid.”

Gastrow says the sector recognised the urgent need to improve its levels of governance, and the resulting independent code is a key resource to guide good governance in the sector.

### Breach of duty

NPOs may not have shareholders, but they do have stakeholders. In fact, the independent governance code (which can be downloaded from [www.governance.org.za](http://www.governance.org.za)) points out that NPOs are accountable to a number of constituencies and stakeholders. These include:

- Donors, with respect to the organisation's integrity and effective use of funds;
- Beneficiaries, with respect to the organisation's awareness of needs, and deployment of resources;
- Members, with respect to democratic governance and fidelity to purpose;
- Employees, with respect to fair remuneration, employment conditions, transformation and empathetic human relations;
- Volunteers, with respect to their contributions of time, energy and skills;
- Government, with respect to legal and fiscal compliance, and effectiveness in allocating resources and addressing needs; and
- The general public, with respect to tax benefits and fiscal privileges.

Any stakeholder – particularly one such as a supplier, donor or employee with whom the NPO has a legal, contractual relationship – is a potential source of liability for the NPO and its board members.

Wyngaard says board members may also be held personally liable for failure to comply with specific legislation. For example, the Income Tax Act provides that failure to pay over employees' taxes may result in personal liability on the part of board members.

As far as their fiduciary responsibilities are concerned, NPO board members may be in breach of their duties if, for example, they allow donor funds to be misused or spent for a purpose that is outside the NPO's objectives, allow funds to be inappropriately invested, or fail properly to insure NPO property.

It is common practice for NPO boards to reach decisions unanimously, so it is unlikely that one board member would be singled out for liability. **But all the board members of an organisation could be held jointly and severally liable in the case of a collective breach of duty (*emphasis mine*)**

## The Companies Act

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**The R2K is a registered NPO. While it has not yet taken the step to also incorporate itself as a non-profit-company, in respect of governance it is still guided by the provisions of the Companies Act.**

S76 especially states that a director (or in our case the NWG members) must act honestly, in good faith, reasonably in the best interests of the and for the benefit of the company (or organisation). Directors are also required to act with a degree of care and diligence that can be reasonably be expected from someone carrying out the functions of a director (in terms of general knowledge, skill and experience).

In exercising their powers, the directors must:

- ▶ Take reasonably diligent steps to become informed about the matter
- ▶ Make a decision or support a decision of a committee or the Board
- ▶ Has a rational basis for believing (and did believe) that the decision was in the best interest of the Company
- ▶ **MUST** communicate any material information coming to his/her attention (unless already in the public domain / is confidential)

Directors (or NWG members) can be held liable – either individually or collectively – if they commit a breach of this fiduciary duty and it leads to loss, damages or costs sustained by the organisation. This is one liability that the directors cannot contract out of because it is the primary reason that they have been elected into office.

Other actions for which directors / NWG members can and must be held liable include:

- ▶ Acting without a mandate purporting to bind the company
- ▶ Falsely or in a misleading manner acting in the name of the organisation
- ▶ Knowingly or recklessly signing or publishing false/misleading financial statements or financial information
- ▶ Operating recklessly (in a manner intended to mislead creditors/donors)

These provisions were covered at the induction for the new NWG after their election at the National Summit in March 2019. The Induction was held in Cape Town in June 2019.

## The Principles of Good Governance

The King IV principles on good governance were introduced in 2016 in an attempt to move corporate good governance from a tick-box exercise to an expression of actual good governance. It seeks to promote ethical and effective leadership in organisations and strives to inculcate values such as integrity, competence, responsibility, accountability, fairness and transparency.



In terms of the King IV principles, R2K’s governance structure needed to ensure, among others:

- The balanced composition of the governing bodies and the proper independence of the members of the governing body;
- Proper delegation of authority to management;
- Proper delegation to clear sub-committees;
- Proper risk management; and
- Proper responsibility to institutional investors (donors)

The King IV principles are as follows:

Principle	Ethical and Effective Leadership
1	The governing body should lead ethically and effectively
2	The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.

3	The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen.
<b>Principle</b>	<b>Integrated Thinking</b>
4	The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.
5	The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance and its short, medium and long-term prospects.
6	The governing body should serve as the focal point and custodian of corporate governance in the organisation.
<b>Principle</b>	<b>Structure</b>
7	The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively
8	The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with the balance of power and the effective discharge of its duties.
9	The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, supports continued improvement in its performance and effectiveness.
10	The governing body should ensure that the appointment of, and delegation to, management contributes to role clarity and the effective exercise of authority and responsibilities.
<b>Principle</b>	<b>Managing Risk</b>
11	The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.
12	The governing body should govern technology and information in a way that supports the organisation in determining and achieving its strategic objectives.
13	The governing body should govern in compliance with applicable laws and adopt the necessary rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen.
<b>Principle</b>	<b>Managing Risk</b>



14	The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.
15	The governing body should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the organisation’s external reports
<b>Principle</b>	<b>Stakeholder Relations</b>
16	In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.
17 (n/a)	The governing body of an institutional investor organisation should ensure that responsible investment is practised by the organisation to promote good governance and the creation of value by the companies in which it invests

## The Capacity to Govern

**Principle 7 of the King Principles notes “The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively”.**

In March 2019, the National Summit elected the largest cohort of NWG members in the history of the R2K: 14 out of a possible 15 members. The political victory in March 2019 was that for the first time the vast majority of members were working class members, most of them unemployed. This was new in the history of the organisation, since until then we had ensured – *organically* – a diversity of class interests, of grassroots structures and NGOs, of political opinions, of race and gender and, to some extent, age.

The 2019/20 elected NWG was the most homogeneous in terms of race and class; we even achieved a gender parity (as we had consistently over many years. However, these are not automatic markers of competence to lead or capacity to govern. Capacity or experience – *the appropriate balance of knowledge, skills, experience, diversity and independence* – were not criteria for election. Elected members were not even asked or tested on their manifesto for leadership as would be done in a proper political process before the election. What resulted in March 2019 was a populist patch where the only justification for having a 14-member

NWG – a bloated Cabinet by R2K standard practice – was to ensure that “working class voices were heard” (Ashley Louw).

The practical reality was that on the governance side we had a leadership that was light on actual legal or financial management skills and so could give very little direction when it came to the operation of the law on R2K or on strategic direction in relation to funding or financial management. There was very little experience in running an organisation of a comparable budget and collectively very little person management skills and consequently very little practical understanding respect for hard-won worker rights.

The other area in which the NWG is asked to govern or give strategic direction is in

the programme focus areas. For the first time in a decade, the NWG was unable to fulfil this key role either since the overwhelming majority of elected members were superficially familiar with the focus areas at best and disinterested and distracted at worst.

In this way we reflected the macro, national problem as described in the National Development Plan (NDP2030). It identifies some of the key obstacles to the achievement of a capable state to include:

- ✚ *Deficit of skills and professionalism [and experience]*
- ✚ *Political interference in selecting, recruiting and managing Senior Staff*
- ✚ *At junior levels: Insufficient focus on a stimulating career paths that ensure a reproduction of skills and that foster a sense of professional [or activist] common purpose*

That we replicated a macro problem should not make us relax. We need to take responsibility for creating this situation. In computer programming circles there is the notion of GIGO – Garbage In, Garbage Out.

The lesson from this exercise is that the election process into the leadership structure must deliver leadership that is fit for purpose. If, in a fit of populist fervour, we elect comrades into leadership without even stopping to ask whether they have the capacity and competence to lead; where promises of patronage when they get their hands on the 7M<sup>2</sup> is good enough to secure the votes; where voting delegates are curated and canvassed to serve an agenda that does NOT have the organisational best interests at heart, then we should expect the hollowing out of institutions of processes and practices such as we saw in the wasted years of the Zuma regime.

The Strategic Review Report highlighted that we needed to revisit our structure. That includes revisiting whether the “NWG” is still appropriate. Should we have 2 different structures: one to give strategic direction on our programme of action and one to provide fiscal and institutional oversight and governance? With specific criteria for both? So that both are fit for purpose.

We should also look to whether elections are the appropriate mechanism for accessing those structures. And if we elect people, what is the process that can give the best mix of people to meet the demands of Principle 7.

The NDP prescribes the following medicine for curing an incapable state:

- Stabilise the political – administrative interface

- Make public service and [activist leadership] ... careers of choice
- Develop technical & specialist professional skills
- Improve the role division ...
- **Oversight:** setting Norms and Standards, not [interference in] daily operational matters
- Adequate experience must be a prerequisite for senior posts or [political] leadership

This would be a good start.

## An Absence of Trust

**Principle 10: The governing body should ensure that the appointment of, and delegation to, management contributes to role clarity and the effective exercise of authority and responsibilities.**

Some members on the new NWG had campaigned on the basis of “cleaning up the swamp” on the basis that there was gross financial mismanagement and systems failure. They came in with a suspicious orientation, and despite months of probing and investigation, found very little that was awry. There

<sup>2</sup> the 7 million Rand budget of the organisation

were multiple engagements with auditors and accountants; donor finance teams also were drawn in. All of these efforts showed no misconduct.

Nevertheless, this created tensions between the NWG and the Senior management team, especially the with the National Coordinator. The unsubstantiated lack of trust also led to a failure to deal with **3 comprehensive grievances** by the NC about the worsening relationship between him and certain members of the NWG; it also led to a failure to extend his contract when the term came to an end in February 2020. Notwithstanding that no handover was in place and promises of finalising the recruitment of the new NC had been delayed and was unfinished.

With the departure of the NC, attention turned to the Deputy National Coordinator and systematic arbitrary actions against him – from unsubstantiated allegations of fraudulent appointment processes, arbitrary action in relation to remuneration, reallocation of job functions and reporting lines without consultation. Many of these actions were only stopped when the issues were referred outside of the organisation to the CCMA.

This mistrust of the management and the breakdown in relationships is a significant factor in the stuckness that the organisation has experienced over the last 18 months. Much of the work that had been set in motion under the previous NWG (2018/9) was also effectively undone.

Good Governance cannot exist without trust. Good Governance depends on a healthy, critical eye in exercising oversight not a jaundiced one already convinced of an unsubstantiated reality.

**Clarifying to all parties the delegation of powers and the boundaries between operations and oversight will lead to a healthier governance regime. A time-table for policy review needs to be set.**

## Misunderstanding Governance: Player and Referee

**Principle 10: The governing body should ensure that the appointment of, and delegation to, management contributes to role clarity and the effective exercise of authority and responsibilities.**

One of the critical elements of accountability is a separation between oversight and implementation.

The R2K Founding Documents and Policy and Procedures manual authorise and detail the delegation of authority to sub-committees and very importantly, to senior management in the organisation.

The National Summit in 2019 had also confirmed operational responsibility for **staff and financial** management to the senior management team appointed in 2019.

On both scores, the 2019/20 NWG selectively misread their mandate, and in doing so caused damage to the systems of checks and balances and in some cases created, rather than mitigated, risk for the organisation.

The mismanagement of the staff consultation process around restructuring – including the arbitrary reassignment of people – as well as the attempt at instructing where programme funds should be directed (rather than overseeing the proper disbursement of expenses) by creating an expectation that stipends would be paid to activists contrary to our organisational policy are 2 examples.

The 2019/20 NWG was a dangerous mix of members who were inexperienced in governance practice, technically unskilled and a bloc who used its numerical majority to force decisions that were not in the best interest of the organisation.

The driving force behind the undoing of that work was the dominant faction (numerically) on the 2019/20 NWG, dominated by the

Western Cape members en bloc.

The key lesson here is that for the governance aspect of the organisation, the R2K must choose people who are able to govern an organisation whose budget is several million Rand. In the words of King IV Principle 7, the governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

In the current configuration, the National Working Group is responsible both for the Strategic Political and Programmatic Direction of the organisation AND the governance of the organisation. Those two functions require different skill sets. The political process of elections onto the NWG also has no criteria for nomination or consideration, not even a manifesto is required. So, the descent into populist (and even patronage) politicking is enabled.

**Recommendation:** *Separating the Governance function to a separately constituted structure that would take over the FinTeam and HR Team functions and include a number of other functions (like possibly discipline as well).*

*The NWG would then continue to be constituted of activist members whose primary function would be to set the national programmatic agenda and focus.*

**Clear lines between Strategy and Implementation and Implementation and Oversight must be drawn.**

## The Death of Democracy

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**Principle 16: In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.**

R2K has always maintained that it was an experiment in participatory democracy; we champion more meaningful engagement in the world with other stakeholders. Indeed, one of the programme focus areas this year has been Participating in Democracy.

The NWG has always been a collective of all nationally elected members, provincial elected members (coordinators) and all staff. Decision-making was primarily by consensus and only if consensus was not reached would the matter be put to a vote (by the elected NWG members). The voices of all three stakeholders carried equal

weight in the meetings and the decision-making process was as inclusive as possible. While it is true that a final decision rested (as per the Constitution) with the elected NWG members, all stakeholders had the opportunity to interact and engage meaningfully in the decisions that affected them. Where members did not feel their voices sufficiently heard, that stemmed from the human interactions. Nationally, participatory democracy is an aspirational goal; what we have is a representative democracy where the elected leaders are at a remove from the electorate and participation is largely reduced to a check-box exercise.

During this term, the NWG rather embraced the notion of representative democracy whole-heartedly. The elected NWG members arrogated all decision-taking to themselves. Internally even, the notion of equal voices was not observed and in practical terms decisions were made off the proposals of a handful of members – the ones in hierarchical power positions (the Chair and Acting Chair) and those closest to them. Decisions were taken to a cacophony of “I support” from other members without interrogating issues, considering alternatives or dissenting voices or very often offering reasons for decisions.

This is easily the biggest structural failure of this NWG. Whilst, rhetorically promoting feminist ideals, the practice spoke very much of strengthening patriarchal organisational structures and practices. Even in respect of representative democracy, elected NWG members who came from provincial delegations felt very little responsibility to report back to those provinces. This is similar to the macro-political weakness of MP accountability to their notional constituency.

Good governance requires good democratic practice.

#### Recommendation:

- We need to return to the value of participatory democracy where all voices matter. In this way we will practice the change we want to see in the world.
- This requires relooking at our meeting procedures (sharing rather than chairing), imbuing them with feminist principles and practices not just female bums on seats;
- It requires us to recognise ALL the stakeholders as equal partners, valuing the diversity of their contributions even though they may have different backgrounds;
- Consensus decision-making which is in our founding documents is a supremely feminist modus operandi and should be strengthened to be in line with our stated values;
- Collective decision-taking also speaks to accountability.
- All of these elements must be addressed in our framing values, policies and practice documents.

## Above the Law

### **Principle 6: The governing body should serve as the focal point and custodian of corporate governance in the organisation.**

Holding oneself accountable is an important starting point; however, in a collective structure, all members, staff and activists, are accountable to the collective. This means that where the collective (or a majority of the collective) takes a decision, one may still hold a dissenting view, but one is bound by the decision – and while you are part of the collective, you need to at least abide by that decision, if not promote it.

An example of this from the previous NWG was in the case of the disciplining of a staff member for a significant amount of unaccounted-for funds, the Disciplinary Committee found her not guilty on all charges; the NWG (excluding the 2 members who served on the DC) differed with that finding on the evidence tendered, but abided the decision.

On the 2019 NWG there have been numerous occasions where individual members have gone outside of the collective when they have not gotten support for their view inside the collective. The most recent of these is the sharing of NWG WhatsApp communications outside of the organisation and the creation of outsider support through an Open Letter and which has included petitioning the Human Rights Commission – before dealing with the matter internally. This has brought the organisation into disrepute, has spread half-truths and misinformation about the organisation and its staff and NWG. Without consequence.

Similarly, where the WC Provincial Summit process was challenged by some WC comrades, the NWG instituted an independent investigation into the election process and results. When the report was finally tabled, the WC elected members sought to distance themselves from the result which was not one that they had wanted. They did so loudly; they went so far as to claim that the NWG -initiated process was illegal and illegitimate. A process they had implemented.

This culture of **impunity** has been a feature of this NWG. It has been consistently unable to hold its members to account and in doing so has condoned theft, bullying

and allegations of sexual harassment against a senior member of the NWG.

Multiple grievances and complaints lie unattended including **3 (three)** comprehensive grievances relating to misrepresentation, bullying and obstruction filed by the former National Coordinator against the former Acting Chair and select other members.

The Western Cape members – Vainola Makan, Wendy Perkeur, Ashley Louw, Songezo “Lundi” Mazizi and Pupa Fumba – feature centrally in these complaints.

Equally untouched is another comprehensive group grievance by staff of the organisation on multiple counts listing the misdemeanours of especially the Acting Chair, Vainola Makan, and her partner, Wendy Perkeur – and calling for their immediate suspension and removal.

An allegation of discrimination and sexual harassment brought by the DNC against the Acting Chair has still not been touched – and the Acting Chair been allowed to continue – despite a referral to the CCMA under section 60 of the Employment Equity Act holding the organisation equally liable for the discrimination and harassment. There is a pending referral to the Labour Court in this matter. The risk here is that the organisation will be held liable for discrimination and harassment, while the perpetrator faced no consequence or sanction – not even an investigation.

Impunity is the very thing that good governance practices is meant to check. Impunity flourishes where the principle and value of accountability to the community is NOT a personal value.

A fish rots from the head and in this way the stench of corruption starts to pervade the entire body politic. In this case, of the R2K. Those who do not wish to be held accountable merely ensure numerical support among other members who then become complicit enablers of ongoing misdeeds. These include provincial elected members and even staff members. Patronage and opportunism flourishes in the compost of impunity, benefitting the few while destroying the whole.

## Sticky Fingers

**Principle 11: The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.**

The impunity spoken of above can be highlighted through a few serious cases:

- A former NWG and FinTeam member removed 3 laptops from the KZN provincial office, and refused to return them. No disciplinary action was instituted against him and he eventually resigned from the NWG by missing a certain number of meetings. The organisation did register a theft case against him. However, he is still at liberty to attend organisational events etc as an activist, because of the lack of being held to account.
- Allegations of fraud against 2 NWG members in relation to data transfers. 1 of the members is also a FinTeam member. The NWG took no precautionary action and delayed by nearly a month to take any action. A disciplinary enquiry has been established and we await the decision. The casual approach to allegations of misrepresentation, dishonesty and impropriety is of concern.
- Wasteful expenditure: The NWG, on the advice of FinTeam approved over R50,000 of Leadership Development funds to be spent supporting the Chair, Biko Mutswariru, to attend an artist's residency in Brazil that had some aspect of developing community radio in 2019. In the end, the Chair was unable to take up the opportunity because of issues relating to his status in the country. Expenses were incurred, some of which were reimbursed. However, there is some question about why half of the Leadership Development budget was spent on a personal activity that only had tangential connection to one of our focus areas.

The Acting Chair, Vainola Makan, and Wendy Perkeur have a close personal relationship that was undeclared until September 2019 and which has continued to overshadow many of the decisions that have taken place in the R2K before and since. Both of them have been party to the key committees where decisions were formed and sometimes taken. In this case the personal did become very political and

the conflict of interests deeply embedded in the subsequent actions.

## Too many cooks spoil the broth

**Principle 13: The governing body should govern in compliance with applicable laws and adopt the necessary rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen**

This NWG's treatment of staff in general – in their actions, in their utterances and in a strong anti-workerist attitude that is at odds with a pro working-class rhetoric – has led to actions that constituted Unfair Labour Practices in 2 cases, bordered on victimisation and discrimination in many other cases. Consultation with staff over the restructuring process also was unclear, irrational and delayed to the detriment of staff and the organisation.

Whether by accident or by design, much of how staff was treated violated the spirit and the letter of our labour laws.

## Recommendations

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1. R2K has been a registered NPO since 2014. It now needs to fix its status for tax purposes – Non-profit company (NPC), Public Benefit Organisation, Trust or remain a voluntary association.
2. The Governance structure should be separated from the Strategic political structure to minimise conflicts of interests;
3. As we become a more formalised structure, clearer delineation of roles and functions between Oversight, Implementation and Strategic direction must be made;
4. Those charged with oversight and governance MUST be selected on the basis of skills, experience and values.
5. Skills, experience and alignment with the values and common ideology of the R2K must form part of the foundation for election into political office;
6. Stronger accountability measures must be built into the fabric of the R2K. The internal landscape has changed; those changes require more explicit checks and balances.
7. There has to be consequences for those members who are responsible for the choices that brought us to the point where 3 major donors have put the organisation on notice of withdrawal of their support should we not deal with the organisational mess.
8. The members of the former NWG who have, through their actions, put the organisation at risk, have brought the organisation into disrepute in the sector and who have failed to be held to account should be granted their wish and be expelled from the R2K.
9. Summit should declare the following NWG members who were responsible for the governance failures, delinquent directors. The members of the two subcommittees, FinTeam and HRTeam in particular should be marked:
  - a. Daniel Byamungu Dunia
  - b. Wendy Perkeur
  - c. Vainola Makan
  - d. Stephen Chisuvi
  - e. Songezo Mazizi
  - f. Pupa Fumba
  - g. Ashley Louw

