



RIGHT2KNOW

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The Right2Know Campaign's Submission on the ICT Policy Review Framing Paper, 2013

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1. Introduction & context

While South Africa's broadcast and electronic communication systems have transformed in significant ways since 1994, there are ways in which they are failing to fulfil their mandate in our democracy: to enable the free flow of information, accountability, freedom of expression, and organisation for development.

Current legislative challenges to the free flow of information range from the Secrecy Bill (a.k.a the Protection of State Information Bill) to the ICASA Amendment Bill that threatens to undermine the independence of the regulator.

After 19 years the SABC still struggles to shrug off the mantle of state broadcaster with a systemic governance crisis, ministerial interference, and evidence of recurring political interference in editorial matters. SABC programming is under-funded and dominated by American consumerist culture. The legalisation of community radio and TV remains one of the most significant gains in the post-apartheid era, yet community radio and TV – like the

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SABC – are under-funded and left to rely on advertising as a source of income. The resultant commercialization of public and community broadcasting failed to deliver a diversity of views and news agendas, and led to a prioritization of middle class and politically centrist views.

South Africa has enjoyed a blossoming of the Internet, including online publishing and participation in social networks. Increasingly accessible broadband and impressive levels of access to mobile phones means that for many people the internet has the potential to be an important environment for the production and distribution of information and opinion. However, as a result of the failure to contain the profiteering of cell phone companies, the corporatisation of Telkom and the mismanagement of the digital migration process, we are failing to realize the democratizing potential of telecommunications.

It is in this context that the former Minister of Communications agreed to undertake a comprehensive review of all Information and Communication Technology (ICT) policy and appointed an Advisory Panel to support this policy review. In March 2013 the Ministerial Advisory Panel published a Proposed ICT Policy Review Framing Paper – a draft set of principles¹ to underpin the review - for public comment.

In early June 2013 the Right2Know Campaign convened Civil Society organisations to discuss responses to the ICT Policy Review Process and the Framing Paper. A list of participating organisations is presented as Appendix 1 below. After receiving presentations from the Chairperson of the Ministerial Advisory Panel, Joe Mjwara and two other Panel members, Libby Lloyd and Charley Lewis, participants identified the critical issues raised in the framing Paper. These are addressed in Section 3 of this document.

2. About the Right2Know Campaign

The Right2Know Campaign represents a coalition of civil society groups who are fighting against secrecy laws, for access to information, media freedom and diversity, and the right to communicate. We seek a country and a world where we all have the right to know – that is to be free to access and to share information. This right is fundamental to any democracy that is open, accountable, participatory and responsive; able to deliver the social, economic and environmental justice we need. On this foundation a society and an international community can be built in which we all live free from want, inequality and in dignity.

In March 2012 the Campaign adopted a Policy Statement on Media Freedom, Diversity and the Right to Communicate². The Policy Statement contains the following positions:

1. Defend Media Freedom:

A media independent of government or commercial interests/influence is critical to providing citizens with access to information and an opportunity to express opinions vital to the functioning of our democracy.

¹ See the Framing Paper here: http://www.r2k.org.za/wp-content/uploads/36408_24-4_Comm-ProefUit.pdf

² See the Policy Statement on Media Freedom, Diversity and the Right to Communicate here: http://www.r2k.org.za/wp-content/uploads/2012/07/R2K_Parly_submission2012June.pdf

- a) There should be no state or corporate censorship of editorial content.
- b) The various sections of the media should be supported to develop and improve voluntary media accountability mechanisms, to strengthen the accountability of the media to the ethics of journalism and to society
- c) The independence of the broadcast regulator (ICASA) from the executive arm of government and private sector interests must be defended and strengthened.
- d) The governance and management structures of the SABC and community media should be independent of the executive of government nationally, of municipalities, and private sector interests.
- e) The media must be entitled to publish/broadcast information without fear or favour.
- f) Journalists must be entitled to protect the identities of their sources

2. Expand Media Diversity in Ownership and Control:

A free media is a public good – a constitutional right that is the key to the realization and defence of other rights. If consumption and production opportunities are distributed by a market mechanism mainly, with a limited public service top up, they will continue to be enjoyed disproportionately by economically powerful sections of the population and ownership may continue to move towards greater concentration. In a country with such high levels of poverty, unemployment and inequality, it is untenable that the production and distribution of media goods should be dominated so overwhelmingly by market forces. There must be less concentrated ownership and control of the media and a greater diversity of commercial and non-commercial media, and forms of journalism, that can serve all sections of the population and enable a greater diversity of voices.

- a) Media ownership must be less concentrated and smaller media organisations must be protected and supported. Strengthening the Competition authorities, and other mechanisms should be explored to tackle the problem
- b) All people should have access to non-commercial media (alternative and community media as well as the public SABC). Such media should be funded from public and other non-commercial sources..
- c) Accountable mechanisms independent of the executive of government must be developed to facilitate the disbursement of public funding.

3. New media and internet access:

Technology is changing how media is practiced and received. These changes are exciting as they have the potential to make an unprecedented diversity of media much more accessible, to democratise communication and make it more interactive, given that they encourage more horizontal forms of communication. Potentially, they can blur the distinction between information producers and information consumers; they can also make the right to know easier to realize as these media can make information more accessible.

Yet at the same time, new media are being deployed in ways that are increasing rather than decreasing social and information inequalities. Conditional access threatens to reduce accessibility of media. Proprietary control of information through trademarks, patents and copyright is eroding the information commons. Indigenous knowledge and language diversity is under threat. Curtailment of rights through surveillance and

copyright is prevalent. All these trends threaten to make it more difficult for the right to know to be realised.

- a) Communications must be universal. Everyone has a right to communications that are available, affordable and accessible. While great strides have been made in ensuring the availability of communications, especially mobile communications, many users cannot afford to access the network to the extent that they need to, leading to an illusion of universality being created. Universality will be realized only once people can access the network whenever they want to.
- b) Communication must be ubiquitous: that is, users should be able to access information anytime, anywhere, anyhow, depending on the choice of the user. Currently, users are restricted in their choice of how to access information they need, either at home or on the move.
- c) Communications must also be dialogic: that is, users should have the ability both to receive and impart information. They should not simply reproduce old methods of communication where a few talk, and the majority listen.
- d) Everyone has the right to privacy and anonymous communications, which includes the right to encrypt their communications
- e) We must protect and advance net neutrality, to ensure that the internet does not fragment into different components run by competing public or private interests. The internet must remain open and interoperable.
- f) We must protect and advance internet freedom from governmental and corporate control
- g) We must promote access to internet by ensuring affordable broadband access – including on cell phone networks
- h) A free basic service for communications, cross-subsidised by the network operators, must be available to poor users. Pre-paid communications users, who are overwhelmingly from the poor and working class, should not cross subsidise post-paid users. We oppose a communications system where the poor cross-subsidises the rich.
- i) Free Facebook (Facebook Zero) should be made available in South Africa
- j) Intellectual property arrangements in communications tend to favour the wealthy. Information as a rule should be free, and not treated as a commodity and subject to proprietary control, and should be part of a commons that everyone has access to by right.

At the third National Summit of the Right2Know Campaign in April 2013 we resolved to actively campaign to Vula 'ma Connexion (open the connections). Details of our on-going campaign realize the positions outlined above are available at www.r2k.org.za/right2call.

3. Response to the ICT Policy Review Framing Paper, 2013

Participants in the Civil Society engagement welcome the effort made by the Ministerial Review Panel to consult Civil Society. After hearing presentations of Panel members and deliberating on the proposed principles we would like to submit the following feedback.

Participants largely welcomed the fact that the paper focussed on first principles in the communications sector, as this provided them with the opportunity to debate what they wanted out of the communications sector, rather than becoming bogged down in sector

specifics. They largely supported most of the principles as, in any event, they echo fundamental human rights listed in Chapter Two of the constitution, and are therefore foundational principles.

Participants also identified principles that they felt should guide the ICT sector going forward. These included the need for a diversity of content and views; the promotion of dialogic communications rather than communications where a few speak and many are spoken to; the need for communications users to access content anytime, anyhow, anywhere and on the platform of their choice; the need for affordable access to communications with recognition being given to the need for a free basic service; the promotion of innovation; access for the disabled; the promotion of open standards and open protocols; respect for civil liberties, especially the rights to freedom of expression, association and privacy online; user literacy should be promoted, and user agreements should be user friendly; regulation should be transparent and accessible; information in the public interest should be provided proactively; information should be treated as a public good and not as a commodity, and the communications space should be treated as a commons.

3.1 On the economic foundations

Like so many other post-Apartheid policy indicatives the Framing Paper does well to articulate the relevant principles contained in our Bill of Rights. Of the 14 proposed principles all but one is an elaboration on the rights to equality, freedom of expression, access to information, and a safe environment.

However, as so many South African commentators are fond of saying, the challenge lies in bridging the divide between noble policy and implementation. What few with this cynical view will acknowledge is that 'implementation' is itself a critical policy question.

As with many post-Apartheid policies – including the National Development Plan to which the Paper makes extensive reference – the question of the economic and social forces that will drive implementation are either obscured or policy is outright neoliberal.

Unfortunately the Framing Paper in its current form fails to develop clear principles regarding the role of the private sector, the state and non-profit or community agents.

Instead Section 3.5.4³ raises the goal of growing the Gross Domestic Product (GDP) to the level of a principle. This neoliberal formulation assumes that increased economic activity will ensure sustainability, redress historical inequalities, and ensure sustainable and universal service and access. Mounting evidence after decades of neoliberal dominance across the globe suggest that such policies serve only to increase inequality and exacerbate social marginalisation. South Africa is no exception to this trend.

The economics in the paper rely on the assumption that by creating a new black upper middle class through BEE policies, the wealth will inevitably spread across to the lower classes. However it has become clear that this approach has not delivered on its

³ Page 16, section 3.5.4.

promises.

The emphasis on economic growth and elite redistribution in the Framing Paper risk undermining all other commitments to the realisation of freedom of expression and access to information for the majority of those living in South Africa.

The tension between economic growth and the realisation of the right to communicate for all must be resolved. We cannot elevate both the level of principle because – as we have seen time and again – private sector lead growth wins out at the expense of equality and universal service.

We therefore feel that this section’s focus should be shifted from a GDP-oriented BEE promoting perspective to one more open to exploring policy that would best enable sustainability and economic inclusion. For example, we would like to see a shift from the sector simply looking at job creation, to looking towards ways of contributing toward full employment.

Further, it is important to ensure that the paper deals equally with those who can and those who cannot afford different forms of communication. This is evident in section 3.5.12, where the paper refers to “customer circumstances and needs”⁴ and “customer-oriented”⁵ services. These terms should be amended to incorporate all sectors of the population, including those who currently do not have the means to access these forms of communication, thereby serving the public interest, rather than simply the consumer.

As the paper refers to all scales of companies in both the public and the private sector, ranging from community media organisations to multinational corporations, we feel it is also necessary to develop principles that will guide the ways in which “equality of opportunity”⁶ and “fair competition and equitable treatment”⁷ will be achieved. This also highlights the need for state involvement in the process, which is evident in the process of making the ICT sector equally available to all in South Africa, rather than simply the current consumers. A strong public-sector intervention will be necessary to ensure universality, as fair competition will not achieve this principle of quality communication systems for all, but rather exclusively for the customers who can afford it. The argument that competition will drive down prices, and therefore increase access, is flawed, as competition will distribute communications services more equitably only in those markets that attract competition: users that are considered to be ‘uneconomic’ are unlikely to enjoy the benefits of competition.

3.2. On Content and Diversity (s.3.5.1; 3.5.3; 3.5.9)

The Right2Know wholeheartedly supports the principles of access to a free and broad range of diverse media represented in section 3.5.3⁸ of the Framing Paper. However, we would like to note the importance of the creation of common spaces that encourage and

⁴ Page24, section 3.5.12, paragraph 1.

⁵ Page24, section 3.5.12, paragraph 6.

⁶ Page 24, section 3.5.12, paragraph 1.

⁷ Page 24, section 3.5.12.

⁸ Page 15, section 3.5.3.

facilitate communication across language and cultural differences. This would enable the actualisation of not only the principles of diversity that are outlined in this section, but also of interaction and national unity. James Curran's democratic media model could be used as a point of departure in this regard, as it recognises the importance of common viewing and listening spaces to occupy the centre of the media system, which is public service and non-commercial, with different media sectors radiating out from the centre, such as the professional media sector, community media, NGO media, etc. This model is useful as it recognises the need both for unifying and diverse discourses. Further, the values embodied by these principles should also ensure that cultural hegemony is disrupted in our media, enabling a culturally varied and interactive space across broadcast and internet environments.

This section, along with section 3.5.1, is largely focused on the public sector. We would like to suggest that the standards that have been required of the public sector in this document also be required of the private sector. This would specifically apply to the access of information regarding the private sector⁹. While we support and appreciate the importance attached to the understanding of local content (culture, news, etc) and the resulting personal and community development possibilities, the sections of the paper relating the social development and community development have very limited reference to the global environment. International solidarity and the importance of an understanding of international relations and events should not be lost in the promotion of local and national content¹⁰.

The term 'citizen', used throughout this document, refers exclusively to those who own a South African Identity booklet, as opposed to the phrase "all those who live in [the country]" used by the constitution, thereby excluding all those in South Africa without Identity documents, including refugees. We believe that these rights should extend to all populations living in South Africa.

We would like to see a greater emphasis on innovation across the principles of diversity, including modes of diversification and the creation of interactive and cross-cultural spaces, access to community issues and community media, and universal access to telecommunications.

It is also important to emphasise a critical differences between the broadcasting and the internet structures. While Internet Service Providers should not be held accountable for the content that they provide access to, the same cannot be said for broadcasters, where both the creator of the content and the broadcaster who provides broader access to the content could be held responsible for the content.

3.3 On Infrastructure Access (s. 3.5.4, 3.5.7, 3.5.8, 3.5.11, 3.5.12)

The importance of access to infrastructure in the battle for access to information must be stressed. Without these building blocks, Freedom of Expression is not possible. We would therefore like to commend the inclusion of section 3.5.7¹¹ – South Africans have a right to

⁹ Page 14, section 3.5.1, paragraph 4 and page 16, section 3.5.3, paragraph 6.

¹⁰ Page 17, 18, section 3.5.5.

¹¹ Page 20, section 3.5.7.

equal universal access to communication services and infrastructure. However, we would like to recommend that adequate provision of public access points be included in these principles. This would create spaces in which communications services (internet, telephone, fax, television and postal services) would be publically available for use with reasonable waiting times and good maintenance in all communities. This would serve to allow “all sectors of the population... to equally enjoy and [equally] benefit from communication services”¹² in an attempt to redress the inequality that was bred by the apartheid system. We would also like to caution against the tendency of lumping women, the elderly, children and the disabled together, which suggests that gender, for instance, is a disability. The use of such language should be avoided. This section also tends to be based on neoliberal ‘trickle down’ economics, including the assumption that growth will lead to redistribution and ultimately, wealth creation. It also prioritised B-BBEE as the main driver of redistribution. We caution against taking these assumptions for granted for the reasons set out in the earlier section. Careful attention should also be paid to the terminology around children, who clearly need to be protected from harmful content, but also empowered to handle harmful content as a ‘nanny state’ approach to dealing with harmful content, where the state decides what content is desirable for children to access, is neither practical nor desirable, as it could lead in time to censorship.

3.4 Security and Privacy

The Right2Know Campaign is deeply concerned with the right to privacy and the protection of personal information. The provisions made in section 3.5.10¹³ are therefore welcomed. However, while they make reference to personal security, neither this section nor the rest of the document make reference to matters of state security. The document needs to reject attempts by the state to abuse national security to undermine the right to privacy of communications users and to make communications networks insecure through building communications surveillance capacities into networks, thereby introducing security vulnerabilities into networks. There is also no differentiation between the legal, illegal and unregulated interception of private communications. We also recommend that the document recognises that privacy is under tremendous pressure from public and private sources, as more user information is mined by companies and security agencies without their consent. Furthermore, the document should call for the review of laws and policies that mandate the monitoring and interception of communications in South Africa, as these largely do not have sufficient regard for the privacy of communications users; foreign signals intelligence, for instance, are entirely unregulated by law, which is probably unconstitutional as it allows users communications that originate outside the country or that travel outside the country, to be intercepted without a judicial interception direction.

4. In conclusion

The Right2Know Campaign would like to recommend that the Panel, as part of the process of consultation and participation, approaches community-based organisations and seeks direct input from them on the Framing Paper. In these public engagements it is also

¹² Page 201, section 3.5.8.

¹³ Page 22, section 3.5.10.

important that popular education materials be of a high standard and that mobilisation and awareness raising as to the process preceding the discussions are comprehensive and clear.

While we appreciate the engagement with our process, we would like to stress the fact that the consultation process involved in this Framing Paper has not been extensive enough. We would like to see engagement of the Panel in public meetings across the country, to allow for varied and widespread participation in the review process. We would also like to see a section on public participation and feedback in the diagnostic report.

Information is power and an informed people able to use information communication technologies to facilitate public discussion and raise their voices are a powerful people able to engage, ensure accountability, and even change power relations within their communities, with government and with corporate power.

Our right to know will remain incomplete if our struggle is limited to securing access to information alone. We must struggle to ensure that information flows across society and that information forms the basis of a social dialogue that deepens our democracy and advances social, economic, and environmental justice. Our right to communicate – to receive and impart information and opinions – is central to our right to know.

R2K also would like to see the panel approaching and seeking direct input from community based organisations, as well as a moratorium on Bills that impact on the ICT policy review. Furthermore, we would like to see in the diagnostic report a section on public feedback, and that the fact that there should be transparency and openness in the process could even be included as a principle in the framing paper.

APPENDIX 1: List of participating organisations

Association of Progressive Communications
Ekhuruleni Environmental Organisation
Mandela Park Backyarders
Media Monitoring Africa
Media Policy and Democracy Project
Open Society Foundation - South Africa
Right2Know Campaign
Section 27
SOS Coalition
South Durban Community environmental Alliance
Soweto Concerned Residence
Students Against Secrecy
Treatment Action Campaign
Unemployed Peoples Movement
Workers World Media Productions