

APPENDIX 2: 2012/13 Right2Know Narrative Report

Since our launch in late 2010, the Right2Know Campaign has continued to show a remarkable capacity to unite a wide range of people to defend and advance hard-won constitutional rights to access information and free expression. Without a doubt, our greatest strength remains the hundreds of activists across the country that - in their organisations and in R2K working groups – campaign for the free flow of information each day.

Many will remember the past year as the year that we pushed the limits of the National Council of Provinces (NCOP), forcing public hearings across the country and a number of important amendments to the Secrecy Bill. Others will remember the past year as one when we expanded our advocacy work beyond the Secrecy Bill and drew public attention to the draconian Spy Bill; demanded the list of National Key Points; intervened in debates on the regulation of press content, print media ownership and the commercialisation of terrestrial television; and demanded stronger regulation of telecommunications to end cellphone profiteering and deliver free, basic and affordable air time and data for all.

Few will be aware of all the grassroots work at the heart of the Campaign. 2012/13 saw an intensification of our organising and mobilizing 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 order to secure other rights and meeting peoples basic needs.

Of course our progress has not been made 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. 2012 will be remembered in history as the year when the democratic state massacred 34 striking miners in Marikana. The Marikana miners symbolise both the courage and determination of a people who will not be silenced or oppressed as well as a government that is increasingly willing to resort to violence and repression to maintain order and resist demands for inclusion and justice.

Many in the Right2Know 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 legislative drafting or the work of unaccountable or incompetent public officials. It is becoming increasingly clear that sections of the State are getting ready to govern by force and not by consent, and it is this force that demands secrecy for its justification.

At our 2012 National Summit, we committed to measure the success of our efforts by the extent that they contributed to strengthening a movement for the free flow of information on the ground. Looking back at the past 12 months since we gathered in Johannesburg at our second National Summit, we can all be proud of the ground we have covered and the foundations we have built to continue the defence and advance the struggle for information in South Africa today.

This report will provide a brief overview of the activities within the four legs of the Campaign, as well as progress made in strengthening our institutional capacity.

1. Stopping Secrecy

Right2Know has tracked the passage of the Secrecy Bill step-by-step through the deliberations of the NCOP Committee and the vote in the NCOP. We mobilised across the country for NCOP hearings, issued regular press statements and updates and ensured a R2K Activist presence at every sitting of the Committee in Parliament.

We held pickets and public meetings in our provinces and a week long Camp Out for Openness outside of Parliament. Throughout the year we often packed the NCOP committee room ensuring standing room only, and this sent a clear message to MPs that the public were monitoring their work.

Over the course of 2012, we witnessed the position of ANC members of the Committee shift from hostility and a full defence of the Bill adopted by the National Assembly, to criticism at provincial and national public hearings, to a more open posture as they publicly resisted the pressure from the Ministry of State Security. However, towards the end of their deliberations, the Committee reneged on a number of concessions they had agreed on and passed a Bill that still fails the Right2Know Freedom Test (our litmus based on our founding set of demands). This Bill was passed by the NCOP in late November 2012 and will now return to the National Assembly for debate/amendment and a final vote before being signed into law by the President (unless either the opposition parties or the President refers it to the Constitutional Court).

The Campaign welcomed the consensus reached in striking down the unacceptable special protections proposed for the Department of State Security and proposed minimum sentences, the exclusion of municipalities from classifying powers, as well as the commitment that the provisions of the Promotion of Access to Information Act (PAIA) will take precedence over the Secrecy Bill. However, there are a number of critical issues relating to the constitutionality of the Bill that the MPs have not begun to tackle. This includes the lack of a Public Domain Defense that will criminalize the population at large, a full Public Interest Defense, draconian sentences of up to 25 years in jail, proposed powers of the Minister of State Security to give classification powers to other state bodies and junior officials, and others.

Never before has the National Council of Provinces returned a Bill to the National Assembly with such contentious and far ranging amendments. As a result, the National Assembly has established an Ad Hoc Committee to consider the NCOP amendments with the aim of finalizing the Bill by June of this year.

Once the National Assembly has passed the Bill some opposition parties have pledged to send it directly to the Constitutional Court for review. Again this is unprecedented, and there are a number of procedural hurdles that the opposition parties may or may not be able to fulfill.

If the National Assembly passes the Bill without further amendments (or worse, reintroduces draconian elements removed by the NCOP) and the opposition parties fail in their efforts to send the Bill to the Constitutional Court, the Bill will go to the President to sign it into law. The President may choose to send the Bill to the Constitutional Court before making it a law.

If the President signs the Bill into law, the Right2Know Campaign is committed to challenging it in the Constitutional Court, and we have already briefed lawyers and begun to prepare our case to ensure we can act swiftly when the need arises.

A particular challenge in this period continues to be that of communicating a clear message around the Secrecy Bill as important victories have been won. There is a risk of compliancy creeping in as contested issues become increasingly specific and 'technical' in nature and the government communicates that the problems with the Bill have all been fixed.

The legal process we may face in challenging the Bill may span years, and it will be a challenge to maintain public vigilance as the process unfolds.

Beyond the Secrecy Bill, we took a number of actions to challenge other draconian Bills and Acts. In October, we submitted a PAIA application requesting a list of National Key Points which has now been denied. This Summit must resolve how best to take forward the challenge to this Apartheid era law that is now being used aggressively to deny the public access to information and suppress peoples' rights to protest.

We also continue to oppose the General Intelligence Amendments Bill (a.k.a the Spy Bill) that proposes further centralising the power of intelligence agencies under the Minister of State Security and gives the state powers

to monitor phone and electronic communication without any judicial oversight. After a long period of inactivity, the Parliamentary Committee is now pushing this Bill through and aims to conclude their work by the end of May. As with the Secrecy Bill, Right2Know cannot allow them to go unchallenged.

2. InfoAccess

The broader struggle for access to information is critical for the success of many struggles undertaken by R2K supporters across the country, and this remains the leg of R2K that has the greatest potential to root the Campaign in community struggles and demonstrate the enabling nature of openness in realising our socio-economic rights and meeting basic needs.

As we have said before, in many respects South Africa is in a de facto state of secrecy. Our recent 2013 Secret State of the Nation report found that only 32% of 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.

It is in this context that the NWG Mid Term Review proposed that we frame our struggles for access to information under the slogan: “Free information, full participation, and fair process.”

We see accessing information as a critical component of the struggle to defend and advance the participatory people centred democracy envisioned in the Constitution.

While R2K has done well to promote some of these struggles – issuing solidarity statements, facilitating PAIA applications, and participating in marches and pickets - we have not undertaken this work with sufficient clarity and focus. Our solidarity should not be seen as opportunistic ‘piggybacking’ on struggles. Our solidarity should be based on solid partnerships that are meaningful to respective struggles and are sustained over time. To this end, this Summit should aim to prioritize a limited number of issues to focus on in the coming year.

We must begin to embrace the paradigm shift from requesting single records or documents to requesting entire data sets, laying the basis for demanding that the state proactively make information available on an ongoing basis through online publishing.

For example, in the centenary of the passing of the 1913 Land Act, we have the right to know who owns the land today. We should not only demand the release of the recent national land audit which the Land Minister is currently withholding from the public, but we should demand that a land registry be constantly maintained and made publicly available on a website.

The recent ODAC report on Open Data in South Africa presents a survey of civil society information needs and identifies a number of areas that are strategic priorities for R2K supporters including seven “open data” demands that could be pursued. This Summit should consider these findings as a point of departure in crafting a more coherent strategy for the R2K's solidarity work.

3. Media Freedom, Diversity & the Right to Communicate

A vital part of the right to know involves the struggle to ensure that information flows across Society in order to inform asocial dialogue that deepens our democracy and advances social, economic and ecological justice. Our right to communicate – the Constitutional right to receive and impart information and opinions – is central to our right to know.

The Campaign continues to advocate for media that is free from government control and that is sufficiently diverse to serve the communication needs of everyone living in South Africa.

R2K continues to be concerned by the underfunding of public and community radio/TV. The failure to invest public funds in media diversity has resulted in a homogenisation and commercialisation of media content as all media orientates to the needs of advertisers and sections of the population that advertisers wish to engage.

Two major processes are currently underway that will redefine the broadcasting landscape in South Africa for many years to come. The first is The Ministerial Broadcasting Policy Review that aims to rewrite our broadcasting laws in the coming years, and the second is the migration from analogue to digital television that will give the SA public access to many more TV channels.

R2K succeeded in opposing proposals from ICASA, the broadcasting regulator, to further commercialise the airwaves. ICASA wanted to allocate the lion's share of new digital TV channels to the private sector, but have conceded to allocate an initial 40% to public and community channels. This is a huge victory for R2K! The final ICASA regulations have given 40% of initial allocation to public and community channels, which is a huge victory for the right to know.

In 2013 we will confront a major challenge of the migration to digital TV. Every TV in South Africa will require a new set-top-box (a decoder) costing over R1000, and TVs without this device will stop working. Despite plans to subsidise some poor households, there is a great risk that the most marginalised in society will be unable to receive TV in the future. Should this happen, the massive public outcry will be an opportunity for R2K to mobilise to demand that no one is excluded.

Print media continues to be dominated by four large corporations with Media24/Naspers controlling over 40% of all circulation. Parliamentary hearings on print media transformation are ongoing. R2K is arguing that it is not enough to focus on 'narrow' transformation of race and gender representation on the boards of elite organisations -- there must be broader transformation to ensure diversity of views and ownership models, with better public funding models for non-profit media, and monopolies must be limited.

In 2012, the Campaign also acted in defence of journalists who were threatened by the President's spokesperson for possessing secret documents classified under the National Prosecuting Act. The President's spokesperson responded by attacking R2K, and we responded in turn. The case is still under investigation.

The ANC's threat of a statutory Media Appeals Tribunal (MAT) still hangs over the print media industry. In 2012, R2K supported the work of the Press Freedom Commission (PFC) to review the non-statutory regulation of print content. The campaign made the case for self regulation of journalism along the same lines as other ethically guided professions and stressed the need to defend editorial freedom from both the state, media owners and advertisers.

The PFC acknowledged the need for greater media diversity to guard against undue influence from commercial interests. They proposed a compromise on regulation with a model of non-statutory co-regulation by a panel of professional journalists and 'members of the public' but weighted towards 'members of the public'. The proposal is silent on how and by whom these 'members of the public' will be selected.

While the ANC initially welcomed the PFC's proposals, the contest of regulation of print content will continue into 2013 as the Mangaung Conference reaffirmed the need for Parliamentary hearings on the feasibility of a Media Appeals Tribunal.

We have also witnessed increasing politicisation of the SABC and interference in editorial decisions by managers. We are working with the SOS Support Public Broadcasting Campaign to advance the integrity and independence of the public broadcaster.

Right2Know must continue to raise public awareness of the necessity for media freedom and diversity and intervene strategically where we can make a difference. However, it may be safe to conclude that the South African media will remain dominated by commercial interests and come under increased political pressure for

the foreseeable future.

In this context, one of the most important means for the majority of South Africans to exercise their right to communicate will be via access to the internet through their phones. However, the high cost of access to networks remains a significant barrier to realising this right.

In 2012, we concluded consultation and research on this focus of the Campaign and began advocating for free SMS, free basic and affordable airtime and data, and quality of services.

The super profiteering of cell phone companies has a serious impact on the public at large, and we can expect massive support for our work to put millions of rands back in the pockets of ordinary people and enable them to share information and opinions. We say “Vula 'ma Connexion” – open the connections now!

4. Defending Whistleblowers

The need to protect whistleblowers has been a driving principle since the Campaign was formed to protest the Secrecy Bill – no protection for whistleblowers could have far-reaching consequences for those who need to speak out against abuse of power.

At our first National Summit, we said that whistleblowers should be celebrated as the heroes of the Right2Know. To this end we produced a beautiful 2013 calendar profiling the contributions of 11 whistleblowers. The calendar will remain displayed around the country throughout the year as a daily reminder of the power and courage of our whistleblowers.

Producing the calendar proved more difficult than we anticipated because many whistleblowers are understandably resistant to publicity.

In the course of 2012/13, we have been approached by a number of whistleblowers for support and have responded by referring them to supporting organisations who have provided legal advice or media exposure deepening on the need.

In the course of this work, it has become abundantly clear that the legal framework – in particular the Protection of Disclosures Act – does not provide sufficient support to enable whistle blowing. For example, a whistleblower cannot go outside of an organisation to report wrong doing without first exhausting all internal avenues, which begins with raising the matter with their immediate superior.

In addition, there is very limited legal support available to whistleblowers who are often left to fight alone against institutions with massive legal budgets. NGOs working in this area with limited budgets are forced to take up cases on a very selective basis.

Most whistleblowers today will likely lose their jobs, battle to find work in their fields, face years of legal battles and expenses, and in some cases lose their lives. We have counted at least 14 whistle blowing related murders in recent years.

The Campaign remains committed to celebrate and defend whistleblowers for the critical role they play in the right to know. We are currently conducting research into the strengths and weaknesses of the enabling environment for whistleblowers and will shortly be convening a roundtable to engage the research findings and set an agenda to strengthen whistleblower support with a number of civil society partners.

5. Building the Right2Know

The Campaign has continued to grow from strength to strength in the past year with strong activist working group in KZN, Gauteng and the Western Cape, as well as working groups drawn from across provinces focused on various aspects of our work.

The Eastern Cape has encountered various challenges and recently held a meeting to reconstitute the Campaign. This Summit should engage with these experiences and develop an approach to build the Campaign in other provinces where activists have indicated a commitment to launch.

As per past Summit resolutions, we have established the Campaign as a legal entity, opened a bank account and adopted our constitution. Our financial report attests to the prudent management of our resources, and we have made good strides in moving from a reliance on ad hoc project funding to more stable multi-year support.

We have resisted the temptation to build a bureaucracy of employees and remain firmly committed to our stand that the campaign will sink or swim based on the commitment of our activist base. We currently employ a national staff of two (coordinator and administrator) and three organisers (based in Cape Town, Durban and Johannesburg). We are also in the final stages of launching a small internship programme to increase our dedicated research and coordinating capacity.

The National Working Group (NWG) elected at the 2012 Summit has met regularly and provided excellent strategic leadership and operational oversight to the Campaign. Patricia Dyata and Matilda Groepe resigned from the NWG because of demands of their organisation, and Murray Hunter was co-opted when he stepped down as National Coordinator.

In the course of the past year, we have greatly enhanced our capacity to conduct popular education and produce popular education materials. We've held trainings in provinces and run workshops in various aspects of the campaign in many communities. We've produced a series of pamphlets and activist guides to equip our supporters and the general public with information to promote the free flow of information. More work can be done to explore opportunities to present the Campaign's perspectives in a wider range of forums and to translate material into indigenous languages.

Our website, social media platforms and email lists serve as effective avenues for profiling, distribution and archiving. Our media liaison work has been exemplary. We've managed to reach consensus and release statements responding to developments in a matter of hours. Our team of spokespeople are known across the media as reliable sources, and we are regularly approached for comment on issues. Being named "2012 News Maker of the Year" by the Johannesburg press club is testimony to our success in this regard.

At the level of policy development and engagement the Campaign has been able to lead on many issues by drawing on many of the critical thinkers who contribute to national working groups focusing on various legs of the campaign. In the coming year we must work to expand these working groups to ensure participation of all provinces and that they become the training ground for new layers of leaders on the substantive issues we confront.

Here it is worth stressing again that the greatest strength of the Campaign is our activist base that offers unquantified (and priceless) resources, remains rooted in broader civil society and is responsive to the realities of marginalised communities. The limitation of this strength is that relying on democratic participatory decision making and voluntary capacity creates challenges in systematic planning as well as accomplishing certain tasks that may challenge the skill sets of activists or be perceived as overly taxing or unnecessary.

We must guard against the temptation to bureaucratise, leave important decisions to 'technical experts' and subvert our inclusive processes. Equally, we must guard against complacency and sectarianism and always strive to make the circle bigger by engaging more and more diverse groups. The right to know is in everyone's interest,

and the Campaign must continue to unit and lead society in the struggle for openness and democracy.

Conclusion

Looking back at 2012/13, we can say that most of our previous Summit Resolutions have been implemented in full or in part.

In recent months we concluded our third round of annual Provincial Summits and the levels of coherence and strategic consensus emerging for these Summits bodes well for our National Summit today.

The Right2Know's capacity has grown tremendously since it was formed – both in terms of our activist/community base, awareness/education activities, and credibility as a force in the public imagination. With the rise of authoritarianism, the Campaign will continue to be critical in determining the kind of society South Africans will live with for many years to come.

Our task at this Summit is to reflect on progress, draw lessons from our challenges, and refine our strategic orientation to embrace the many opportunities for struggle that wait head. As always, we must keep our eye on our central task of building a movement rooted in the people with the social force to shape history.

ENDS