



## (RE)CLAIMING THROUGH (RE)FRAMING: INTERROGATING POWER, INFORMATION AND DISTORTION FROM CIVIL SOCIETY

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The democratic space is, at its core, about dialogue. It is about fostering conversation. And so, when we think about democratic spaces, we have to think about *who* is having a conversation and *how* they are having it. Access to information (ATI), and how it is negotiated, is of vital importance for fostering real dialogue, not least of all as a mechanism to equalise imbalances in using and sharing information (and power) between participants. However, work on access to information at the Open Democracy Advice Centre has forced us to interrogate *how* the *who* behave when seeking to promote information. This has led us to an important discussion point: we should critically interrogate the role non-governmental organisations play in *translating* and transmitting information.



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FIRST WE WILL consider the role of ATI in democratic spaces, which will allow us an opportunity to address the key challenges to this role in the South African context. This forces us to consider transparency in a broader sense for ATI to be made effective, which has led ODAC to critically assess the traditional role of non-governmental organisations in the field. In this critique, we will first consider the *problem* of power, and describe the examples of how power can corrupt information.

Finally, we will discuss the role empathy and listening have to play in resolving some of the problems described.

### THE ROLE OF ATI IN DEMOCRATIC SPACES

Access to information is integral for creating real and informed dialogue in democratic spaces: we can't participate in a process when we are not fully informed. The responsiveness of government

is meant to ensure true democracy in a country marred by a history of violent and autocratic rule. The Constitution of the Republic of South Africa, 1996, expressly recognises the importance of public participation through enlivened democratic spaces such as National Assembly, and the importance of access to information (particularly through section 32). Meaningful participation is one of the key ways in which socio-economic rights can be advanced in contexts where there are limited resources. Access to information helps to give you a way to participate in state processes that may eventually result in these rights becoming real, but it is more than just *passing on information*, as the Constitutional Court noted in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others [2011] ZACC 8*:

The evidence suggests the frequent employment of a top-down approach where the purpose of reporting back to the community was seen as being to pass on information about decisions already taken rather than to involve the residents as partners in the process of decision-making itself. As this Court has made clear, meaningful engagement between the authorities and those who may become homeless as a result of government activity is vital to the reasonableness of the government activity.

Real participation can have real results, and information facilitates the equalisation of power relations in different conversations in a way that improves the authenticity of that conversation so it avoids a top-down distribution of power. As Michel Foucault notes: '[P]ower is tolerable only on condition that it masks a substantial part of itself. Its success is proportional to an ability to hide its own mechanisms' (Foucault 1976: 48). Power relies on secrecy to exert itself. So, information that can have, as its end, the capacity to create balance in power between the actors

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concerned is profoundly valuable. This does not mean that information that merely informs has no value (there is an inherent value to information), it is just not the type to ensure public participation in the way the Constitution envisions.

In 2006, in Sunder Nagri, New Delhi, an Indian businessman, Noshe Ali, used the Indian freedom of information law to find out the real infrastructure plans for the district, and the records revealed no sewers were to be dug, in spite of political promises that had been made. He then used the information to lobby the Chief Minister to allocate budget to dig the sewers, thus having a real effect on the decision-making process in his region (Dummett 2006). In this case, real participation in political processes could only be effective with this information. The story also reflects how we typically see the traditional roles of actors in this environment: civil society as champions of ATI, and government as implementers of ATI laws and policy.

## PROBLEMS IN THE ATI SPACE

As a vital component not only of participatory democracy, but also accountability and governance more broadly, we'd presume the implementation and encouragement of access to information would be a priority for the government of South Africa, however, actual practice appears to indicate otherwise. We can consider first the implementation of South Africa's main access to information law: The Promotion of Access to Information Act, 2000 (PAIA). In 2012, the South African Human Rights Commission (SAHRC)

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reported that fewer than 15% of audited institutions had specifically budgeted for PAIA implementation and compliance requirements since 2008 (South African Human Rights Commission 2015). This lack of prioritisation is reflected in the state’s subsequent performance in relation to PAIA: in the 2012 reporting period, the PAIA Civil Society Network noted that only 16% of requests resulted in the release of requested information, and more disturbingly, 54% of requests simply remained unanswered (PAIA Civil Society Network 2015).

In 2014, a statistics paper was completed on PAIA compliance, exploring the response rates to requests made to all local municipal offices (Van Der Mey and Eyal 2015). The object was to assess whether the language used in a request affected the response rates. This meant a neutral request was sent to half of the sample, and an aggressive request (so defined because of the use of highly assertive and legally based language) was sent to the other half. This method was conducive to assessing the experience of the everyday PAIA user, as the researcher was not a consistent requester to the municipalities before the project had been initiated. Her results were telling: across both request types, the number of deemed refusals, or ignored requests, was a staggering 86%. This means the most likely response for a request by a member of the public is no response at all. Even more worryingly, legalistic requests demonstrated a faster response time, indicating the particularly negative response environment for non-legally trained citizens.

When we look to broader transparency indicators as well, things are not promising. On the Perceptions of Corruption Index 2015 (Transparency International 2015) South Africa ranked a pitiful 61 out of 168 countries. Our neighbours do far better: Namibia ranks almost 20 places above us and Botswana almost 40. Not only are South Africans perceived as corrupt, we feel the direct costs of corruption too. Corruption and fraud in South Africa is estimated to cost citizens in excess of R100 billion a year (Shulz-Herzenberg 2009). Further, high profile corruption cases mar the top echelons of South African politics – from the president’s complicit involvement in the mis-expenditure of public funds in the redevelopment of his family estate in Nkandla, to revelations that the South African government paid bribes to FIFA officials to ensure we were awarded the 2010 Soccer World Cup (Smyth 2016). This has severely negative impacts on the transparency of the South African environment. For one, legitimacy in the state is eroded by high perceptions of corruption. While the Open Government Index ranked South Africa as the 27<sup>th</sup> most open government out of the 102 countries evaluated, it noted that South Africa performed worse at the level of sanctioning officials for misconduct than in other areas (Razzano 2015). This failure to hold corrupt actors to account threatens legitimacy, and expresses a lack of political will toward authentic transparent practices. It has worrying implications, too, for trying to reclaim our democratic spaces.

### CONSIDERING ATI MORE BROADLY

Trying to pursue transparency merely through the implementation of PAIA is not enough, not only because of shortcoming in implementation, but also because there are other mechanisms for advancing a transparent environment. An emerging trend for advancing access to information is through improving South Africa’s proactive disclosure with open data.

Open data portals of public sector information are emerging as a vital new avenue for access. However, South Africa is ranked at 54 in the world for availability of open data in the 2015 Global Open Data Index with a score of 34%, but with a disappointing drop in scoring from its previous index score of 48% in the previous year (Open Knowledge Foundation 2014).

Whistleblowing is also an ATI concern.

Whistleblowers access and distribute information in the public interest. In South Africa, forms of labour protection are offered to whistleblowers through the Protected Disclosures Act, 2000, but there have been renewed efforts to reform the law for better protections, which provide a significant advocacy opportunity. The PDA Amendment Bill B40-2015 is currently within the National Assembly for consideration. Perhaps most noticeable within the Bill is a tiny little paragraph, which extends protections to civil and criminal liability. This is actually hugely significant – whistleblowers are often threatened with civil claims (like defamation), which presents a significant chilling effect on information access.

Another important opportunity for broadening the advancement of transparency in South Africa is the establishment of an Information Regulator through the Protection of Personal Information Act, 2013. The Regulator will not only have oversight of that Act, but of PAIA as well. As an institution, it will have a potentially significant role to play in the advancement of open data. However, in its simplest, having a form of ombudsman for information issues will be a significant boon for the information activist community, given prohibitive costs of litigation.

We thus begin to understand some of the broader opportunities and problems within the South African information and transparency environment, which need to be considered when reflecting on how to engage in the democratic space.

## THE TRADITIONAL ROLE OF CIVIL SOCIETY

It was demonstrated in the examples of ATI facilitating participation that civil society actors typically stand as the agents of holding government, and other powerful figures, to account (Avle and Adunbi 2015). The government typically stands as resisting the release of information – either through keeping secrets, or disseminating misinformation. A recent article, for instance, espoused eloquently, and humorously, how politicians distort statistics and data to serve their political agendas, rather than prioritising truth (Harford 2016).

In some sense though, a naïve perspective of the influence of civil society still dominates. The role of civil society is a *prerequisite* for public participation processes – think for instance of the Open Government Partnership, which not only encourages civil society engagement, but in fact embeds civil society representation within its governance structures. So significant can such organisations be, that civil society and its organisations are in some senses more equivalent to public institutions than private institutions (Tandon 1991).

Many different types of actors constitute civil society: trade unions, international non-governmental organisations, and community and faith-based organisation, amongst others. All of these actors have a significant influence on their environments, and with their constituents. Trade unions in South Africa, for instance, have a very direct form of political power given the historical tripartite alliance between the Congress of Trade Unions, the South African Communist Party and the African National Congress. This paper will consider, in particular, the role of non-governmental organisations as an important agent of information in democratic spaces in South Africa and, when we refer to civil society, are considering in particular the role of non-governmental organisations.

## THE PROBLEM OF POWER

Reframing our perspectives to consider the power wielded by non-governmental organisations is important, because power imbalances can have a profound affect both on accessing, and interpreting, information. Power distorts in both the physical and political world, and we have to be cognisant of this in considering how we engage within democratic space.

Civil society organisations have traditionally been considered well placed to act as translators of information obtained by government that might be difficult to otherwise process by the public at large. The developments in open data, described above, have renewed the importance this role, as complicated data sets require translation into formats and messages that are easy to understand. Civil society has not, however, interrogated its own capacity to distort the information that is being disseminated to communities; this capacity is exaggerated by the significant power they have, but also by how perceptions of power *changes* our behaviours.

Increased levels of power bestowed upon human beings, examined through experimentation, have demonstrated direct increases in egocentric behaviour and a lack of empathy in the empowered participants (Robertson 2013). This cognitive perception increases the likelihood that the powerful will view others as a means to an end, and be less able to empathetically consider the needs of others (Robertson 2013).

It is worth considering too that non-governmental organisations are not accountable directly to the communities they are trying to serve, instead are accountable to their donors (and to government to varying degrees depending on the legislative framework of the country concerned), and thus the ability to truly align to the needs of their communities may be reduced.

## HOW POWER CAN CORRUPT INFORMATION

Being a translator of information renders civil society groups as proxies to the groups they are communicating to. And we cannot simply assume that, as translators, you will always be able to prioritise the most important aspects of information that the public you are communicating to require – either wilfully for want of a specific agenda, or through inattentiveness.

The organisation I work for, the Open Democracy Advice Centre, has experienced first-hand examples of this problem. In 2013 I tried to assist in a housing project with the Red Hill Community in Cape Town with a simple goal: help the community gain access to easy and simple information about the housing development being developed as the Dido Valley Project. There were many difficulties with the project, but one of the greatest issues that meant no significant gains were achieved was due to translation and power.

As is fairly typical, my first approach was to begin communicating with an organisation already working in the area. While the relationship started amicably enough, working through a proxy soon created issues. Even though the individual worked for a non-profit, she had various assumptions about how the community should be engaged and effectively shut down direct access to them, which meant tailoring solutions and information packets was impossible. All communication eventually broke down. Why did this happen? Because, unwittingly, and under the vestiges of *best interest*, the power that she yielded over that community distorted her ability to relay information reliably. When we think about the cognitive influence described earlier, the power she held as a communicator weakened her ability to promote other people's agendas and interests over her own.

This proxy problem is not unique. In a lengthy account of the success and failures of anti-corruption interventions in Afghanistan, covered by the New Yorker, Sarah Chyves noted how her work was significantly impeded by her initial quixotic attempts to begin her work through the use of proxies (Keefe, 2015). Not only did this result in a form of corrupt relationship developing, but also the power held by the proxy distorted her ability to communicate with the population whose needs she was hoping to serve. Without an authentic relationship to those communities, considered anti-corruption campaigns were impossible: you can't design solutions for people you do not understand.

Another way of thinking about it is in terms of prioritisation. When we receive vast quantities of information, but want to communicate a message about it, we prioritise parts of that information. How we prioritise, though, can be overly affected by our interests, rather than the interests of those we communicate to. It can also affect the information we seek to access in the first place. Traditional ATI laws, like PAIA, demand we ask for a specific type of record – if non-governmental organisations are using PAIA on behalf of communities, as they so often do in their traditional roles, the potential that their agendas will come first is significant. Look for example at the PAIA requests made through the Request Tracker<sup>1</sup>, hosted by a local non-governmental organisation in South Africa. Often, information is sought that is aligned with a specific focus: the South African History Archive naturally seeks historical documents; the Centre for Environment, environmental records. This is not a criticism, but it is a significant issue to be alerted to. If we know PAIA is not accessible to the public (as seen earlier), naturally non-governmental organisations will continue to take the dominant role of requester. Yet, if a significant number of requests that are being made are questionably not aligned to the broader priorities

of the populous, how can we ensure that PAIA can be more broadly significant moving forward?

## EMPATHY AND THE AUDIENCE

Positions of power, and the mere act of translating information affect what is communicated (we need only think of, for instance, the children's game of Broken Telephone). If non-governmental organisations hold positions of power, can information that they disseminate ever be useful? The answer is of course. And the utility of this information is significantly advanced when non-governmental organisations can be self-aware of their role, and empathetic to their audience.

If organisations can more authentically attune themselves to their audiences, their innovations and interventions will be profoundly stronger for it (Nemeth 2010). Developing hyper-local and specific solutions for those you are seeking to help is a concept borrowed from technology development that all non-governmental organisations would do well to learn by (Hobbes 2014). If we try and be more objective in considering what our audience might need to know, we will be better able to help them engage in democratic spaces.

A second tactic to assist is to try and relay information as simply as possible – which is different from selectively transmitting information. In order to understand what is simple and useful, organisations must engage directly with the needs of the groups they are hoping to assist, being careful not to automatically equate the organisation's interests with that of the public they are hoping to serve.

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## RECOMMENDATIONS

- ✦ The advancement of ATI for informed participation in democratic spaces must be insisted upon in any forum in which we engage.
- ✦ Civil society can actively promote transparency not just through utilising the ATI law, but also by promoting the use of open data and promoting information as a central component in participation exercises.
- ✦ For advancing traditional ATI concerns, parliamentary lobbying should focus on the establishment of the Information Commission and the amendments to the Protected Disclosures Act.
- ✦ Civil society should focus on the manner in which information is translated and disseminated to communities to ensure authenticity, and to properly contribute to the benefits ATI can provide to democratic spaces.
- ✦ Civil society should try and disseminate information as simply as possible, with a considered and authentic reflection on the needs of the audience they are seeking to engage.

## CONCLUSION

We have seen how ATI serves democratic spaces, but also described the key challenges for ATI that activists must be aware of if democracy is to be advanced. Emerging trends in ATI have also alerted us to new nuances in the ATI field for discussion and interrogation. We need to interrogate the role of all the actors in advancing ATI, if we want to truly advance ATI practice. When we seek to re-engage democratic spaces, we should do so in a considered and critical manner. This is necessary both to develop best practice, and also to adjust to a changing environment, increasingly influenced by technology and the changing role for civil society. The traditional role of non-governmental organisations as those that access and translate information requires them to be more critical of the power they wield in this role, and the manner in which they chose to communicate. Remaining empathetic to their audience will significantly contribute to advancing effective voices in democratic spaces.

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## NOTES

- <sup>1</sup> These can be viewed here [http://foip.saha.org.za/request\\_tracker/search](http://foip.saha.org.za/request_tracker/search).