TRANSPARENCY IN SOUTH AFRICA:

A civil society review to facilitate South Africa’s Open Government Partnership Interventions.

Edited by Gabriella Razzano

The Open Democracy Advice Centre
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Open Government Partnership

Introduction

The Open Government Partnership (OGP) is a global effort for improving governance. It is a new multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a steering committee of governments and civil society organisations. The South African government is a founding member and has already embarked on a process of determining their key commitments on open government, which commitments were tabled at the Heads of State summit that took place on the sidelines of the UN General Assembly on 20 September 2011. It was also at this summit that the heads of state from the 8 OGP countries adopted a declaration on Open Government. The process of determining South Africa’s OGP commitments was supposed to be fully consultative, involving civil society.

Aim

As part of South African civil society’s drive to support South Africa’s involvement in OGP, a review of the general transparency environment in South Africa has been compiled. This overview seeks to provide a substantive backdrop for discussing the OGP commitments selected by our government, assessing the applicability of those feedbacks and their likelihood of success given the context, as well as for providing a tool for future planning around the OGP. This document represents largely a collection of the current transparency issues. Obviously, the South African government has taken steps already to engage with some of these issues – the OGP commitments being one of the most significant. Further, discourse around corruption issues in particular remains fairly open. We believe though that by identifying specific issues in several key open government areas, we can provide assistance in perfecting evidence-based interventions.

To do so, we have invited key stakeholders in the transparency environment for their input and have incorporated this into the document. We have also reflected on
some key texts and included our direct observations from the Open Democracy Advice Centre experiences.

**Core Transparency Issues**

South Africa has some progressive pieces of transparency legislation, though implementation remains a concern. However, the South African Constitution has expressed in the Bill of Rights several fundamental human rights that support the pursuit of open government and transparency, including inter alia:

- Section 10: the right to human dignity;
- Section 16: the right to freedom of expression;
- Section 17: the right to assembly;
- Section 18: the right to freedom of association;
- Section 19: political rights;
- Section 32: the right of access to information;
- Section 33: the right to just administrative action; and
- Section 34: the right of access to courts.

These in turn are supported by the founding provisions which require a democratic government to ensure accountability, responsiveness and openness.

**An Information Commission**

A fundamental need in South Africa is the requirement of an independent information office, which as an ombudsman would be empowered to deal with issues around the Promotion of Access to Information Act (PAIA), the Protection of Personal Information Act (once passed), and possible even disputes arising from the controversial Protection of State Information Act (once passed). An alternative dispute resolution mechanism is sorely needed to give a real effect to the right of access to justice of citizens in realisation to transparency concerns.

At the moment, the Protection of Personal Information Bill currently in the legislative pipeline has promised a creation of an ombudsman from that law. However, the extent of its power, its proper allocation of resources, the reality of its independence etc. cannot yet be accurately defined.
Experiences in relation to PAIA have especially, however, highlighted the need for such an office. That Act provides no alternative dispute resolution recourse, which has resulted in real difficulties for persons attempting to utilise the Act in any real way. Instead, applicants for information held by public bodies are restricted in their right of appeal to the same body that refused access, followed by appeal to the High Court. Requestors who are aggrieved about the decision of an Information Officer in the private sector do not have an option to appeal internally within the private body at all but have to directly approach the High Court for relief.

In both these instances this is an extremely expensive and lengthy process that is out of the reach of the vast majority of South Africans. In addition, studies conducted by organisations such as the Open Democracy Advice Centre suggests that the internal appeal process currently mandated by the Act very seldom results in a changed outcome, indicating the value of an independent appeals mechanism.

The South African History Archive (SAHA), an NGO engaged in access to information work, has commented on this obstacle:

“The single most cited complaint about the implementation of PAIA is the lack of a cheap, accessible, quick, effective and authoritative mechanism for resolving dispute under the Act. What is sought is a forum which can be accessed after refusal of a request by a public or private body or rejection of internal appeal against refusal of a request by a public body, but before resort to court action.”

The creation of easily accessible dispute resolution mechanisms such as Ombuds, Tribunals or Information Commissioners in matters involving public & corporate governance, human rights and socio-economic justice brings dispute resolution within easier reach of the ordinary citizen. These mechanisms are less expensive than the normal justice system, flexible and have quick processes to ensure that those in positions of authority perform their administrative functions in accordance with accepted and fair rules and procedures. They have also proved to be exceptionally effective in other international jurisdictions, such as Scotland.

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There is a general under-resourcing and lack of capacity within Chapter Nine Institutions in South Africa. This diminishes the recourse avenues available to South Africans to implement their rights to open government, and has also been directly identified as one of the key reasons for the proliferation of service delivery protests in our country. This reinforces the need for independent form of recourse.

Further, even if entities are able to approach courts to exercise their rights of access to information, the state has displayed a pattern of obstructive resistance – this in spite of the majority of cases resulting in the order of the release of records and the placing of costs burdens for such strung out litigation being made against government. For instance, in the Brummer matter – in which a journalist was attempting to access records from the Department of Social Development - a procedural aspect of interpretation of PAIA was opposed by government to the Constitutional Court, even before the substantive issues were addressed. To this day the matter is still being opposed\(^2\), in spite of the fact Mr Brummer made a request for the information in 2006.

**Proactive disclosure:**

Proactive disclosure of information is something of a “mixed bag” in terms of specific departments, with some Departments like the Department of Basic Health and National Treasury performing well in terms of proactive disclosure.\(^3\) It is trite to restate the importance of proactive disclosure for giving real effect to the right of access to information in any country, but there do appear to be issues in this regard in South African context. Recent attempts to access annual reports of provincial departments (which are required by law to be publically available) led to the discovery that 58% of the ANC-led provincial departments failed to make these publically available on their website.\(^4\) It is also worth noting that the Government Communication and Information Services website has failed to have working links to the details of Information Officers for several months now. However, low levels of internet connectivity amongst ordinary South Africans must also necessarily be acknowledged when considering what constitutes “publically available” information.

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\(^2\) This is as of 18 April 2012.  
\(^3\) Dimba [2012].  
\(^4\) Onselen [2012].
in spite of the aims of universal access encapsulated in the Electronic Communications Act.\textsuperscript{5}

As the Centre for Environmental Rights has noted in regard in particular to the environmental context:

\textit{``... public bodies need to give proper consideration to (and ask for public input on) the significant expansion of records made available voluntarily through s.15 declarations, and through third parties like licence-holders or industry associations. Making disclosure of licences by licence-holders an enforceable licence condition - as is the case with environmental authorisations under NEMA - will significantly reduce the administrative burden on departments like DMR and DWA. It would also eliminate referrals of requests to private bodies back to public bodies, and attempts to avoid disclosure by citing an instruction from a public body not to disclose. Private bodies must give proper consideration to the significant expansion of records made available voluntarily, particularly licences. Not only will this reduce the administrative burden on those companies, but demonstrate a commitment to transparency and accountability to the public.''}\textsuperscript{6}

Low compliance with section 14 of PAIA, which aims to facilitate proactive disclosure as contained in section 15 through the open provision of a manual outlining information types freely available, is a concern as well, particularly at local government.\textsuperscript{7}

Open Data

There has been engagement on open data programmes, such as the myMpumalanga and AFRIdocs initiative. However, South Africa seems to be trailing in regard to the pursuit of open data projects, behind several of our fellow African countries such as Kenya, Morocco, Ghana, Tanzania, and Tunisia. Certain

\textsuperscript{5} For additional information, see also The Universal Service and Access Agency of South Africa (USAASA) which is a State Owned Entity of government established through the Electronic Communications Act, No 36 of 2005, to ensure that "every man, woman and child whether living in the remote areas of the Kalahari or in urban areas of Gauteng can be able to connect, speak, explore and study using ICTs". Their website is at [http://www.usaasa.org.za/](http://www.usaasa.org.za/).

\textsuperscript{6} Centre for Environmental Rights [2011].

\textsuperscript{7} See for particular results the South African Human Rights Commission [2011], pp.124-140.
government departments have displayed a progressive attitude toward forwarding the open data imperative – such as National Treasury, the National Planning Commission, and Statistics South Africa, but the issue is still very much in its infancy in terms of prioritisation.

Even once we begin proactively asserting open data initiatives, there will still be a distinct need to turn this data into tangible forms and stories that can make a real difference in people’s lives. This highlights the need for government and civil society to engage directly on these issues (and the translation of information) moving forward.

**PAIA implementation**

PAIA was passed in 2002 and was, at this time, an incredibly progressive piece of legislation. However, 10 years on there are many concerns in regard to the poor implementation of the Act, especially in regard to the significantly high deemed refusal right amongst requests. In a report compiled for the Golden Key Awards in 2011, it was revealed that 68% of requests made for information were met with no response at all – a statistic echoed by the PAIA Civil Society Network’s research. The CSN’s research actually demonstrated that we are seeing an increase in the number of deemed refusals by government.

These kinds of issues speak directly to the need for an ombudsman to enhance the accountability of entities in relation to transparency issues, as current mechanisms appear weak.

Many entities appear to lack the staff to adequately comply with the statutory obligations of PAIA. This is indicated by the fact that, when institutes did respond to the requests made under the Golden Key Awards they only averaged at a level of 55% - with compliance ratings being lowest for resource requirements. Records management compliance, an obvious essential requirement for realising the right to know, is also low – particularly within local government, but even within some national departments. Several requests for access to information arising from the Truth & Reconciliation Commission, which placed documents into the care of the Department of Justice and Constitutional Development for preservation, have been met with the response that the records could not be found. On the flip side,
departments that have invested significant efforts into their records management have become the best performers in terms of PAIA: with Limpopo Provincial Departments demonstrating this consistently.

**Corruption**

In terms of perceptions of corruption, in 2011 Transparency International ranked South Africa 64th out of 182 countries (with rank 1 being viewed as the ‘cleanest’). There are only a small handful of African countries ranked above us (such as Namibia at 57, or Botswana at 32). However, in 2009 in the same index we were ranked at 55 – a significant drop over a short period. This could directly affect investments. Increasing perceptions of corruption have knocked South Africa from the top slot in the UBS Governance Rank – a measure that rates corporate governance perceptions in 44 global emerging markets. The UBS research cautions: “that a continuation of this trend could threaten South Africa’s safe haven status”.

Actual corruption numbers, outside of perceptions, are significant. The Special Investigating Unit itself acknowledged that at least a quarter of state procurement is lost to overpayment and corruption (an amount of around R30 billion). All inclusively, there have been projected figure that R100 billion in total is lost in South Africa due to corruption and fraud.

**The State of Whistle-blowing**

The state of whistle-blowing in South Africa is necessary to note, especially after engaging on questions of corruption ODAC’s Ipsos Markinor survey results for 2011 show that there has been a significant change in statistics from previous years in regard to whether South Africans believe whistle-blowers should be protected – the former figure in 2010 of 69.6% has jumped to a convincing 87.5% in 2011 of those who believe that whistle-blowers should be protected. Further, almost 20% of those polled stated they have blown the whistle themselves which is a positive reflection on citizens taking the civic responsibilities seriously.

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8 Transparency International [2011].
9 Transparency International [2009].
10 Crotty [2012].
11 South African Associated Press [2010].
However, in spite of the clear civic support of whistle-blowing, the adequacy of the protections provided by the Protected Disclosures Act is deeply questionable. The Act only provides labour protections and is thus only applicable to employees. This means that independent contractors, volunteers and the ordinary citizens are left out of its ambit. While there is a growing recognition that whistleblowers provide an early warning system and that they are crucial to preventing corruption and other forms of wrongdoing by individuals or organizations, the practice of whistle-blowing has in fact become a dangerous endeavour that not only leads to victimisation and other occupational detriments but in some instances may have fatal consequences. For example, Moss Phakoe is believed to have been assassinated by the former executive mayor Matthew Wolmarans and associates for attempting to blow the whistle on corruption in Rustenburg. And ODAC has noted that, even when whistle-blowers attempt to utilise the protections of the PDA, they are still sometimes subject to harassment or protected efforts to enact the rights. In spite of this, funding pressure has forced ODAC to close down its whistle-blower assistance project and other assistance is limited.

It has been suggested before to government by ODAC (during the Access Initiatives 3D campaign) that they should:

a) Initiate programmes that create public awareness about blowing the whistle against crime and corruption in general, or wrongdoing in the management of our naturally resources specifically, being a patriotic duty of everyone.

b) Show demonstrable leadership by making positive pronouncements about whistle-blowing in order to shift in attitudes. Senior government leaders from the Presidency down to a local government councillor should explain to the public importance of having a supportive whistle-blowing culture in the country. This is a movement towards making whistle-blowing a normal activity, neither a heroic deed nor a villainous one.

c) Convene a meeting multi-disciplinary and multi-sectoral panel of experts from statutory anti-corruption agencies, civil society organisations and independent experts to advise government on how protection of whistleblowers can be enhanced. Such a forum should also consider how information regulation policy and law is harmonised so that no proposed by government and law passed by parliament applies “penalties for
unauthorised disclosure to society at large...or criminalises whistleblowers and journalists, [but provides] for protection of those that release classified information if that information is in the public interest”.12

d) Initiate a process of strengthening the PDA through:

i) Creating public awareness about the new guidelines on the PDA

ii) Supporting the adoption, at Nedlac, of a Code of Conduct on the PDA

iii) Promoting the amendment of the PDA to widen its scope to include non-employees.

Regulations of Gatherings Act

The Regulation of Gatherings Act has a profound effect on the right to peacefully gather and protest. However, violent service delivery protests have rocked South Africa over the past few years. In April 2011, the public was startled by footage of Andries Tatane, a protestor from Ficksburg, who was shot and killed by police while protesting. This instability directly implicates the Act’s efficacy.

The report on the Open Society Foundation’s sponsored roundtable on the Act identified several legislative inefficiencies in the Act which can be reviewed in their report; however it is implementation by government officials of the Act’s requirements that have been again identified as the main shortcoming.

Lack of specific information types

Outside of general access to information issues, there are also questions around certain information types, namely:

a) There is a lack of transparency in regard to political party funding in South Africa.

b) There is an identified need for easier access to disclosures of conflict of interests made by officials (as required in terms of the Public Finance Management Act), which should be proactively released.

12 This is a key demand of the popular citizen’s campaign, The Right To Know Campaign (R2K), which campaigns for amendments to the Protection of Information Bill (B6-2010) so that it is in line with our constitutional principles of transparency and openness. R2K’s statement is available at http://www.r2k.org.za/.
c) Parastatals present a specific open governance concern. Increasingly these entities stand as the frontline of the state locally and internationally. However, their management is notoriously lacking in openness, with much information remaining concealed due to commercial imperatives.

d) There is a lack of access to environmental information. Though the needs for openness here where expressly acknowledged in the National Environmental Management Act, and through PAIA, environmental organisations still find it difficult to access even information which is required to be publicly available.

e) Government tender processes should be made radically more transparent (an issue mentioned under considerations of corruption) through the expansion and proper enforcement of rules regarding the publication of all tenders, tender outcomes, tender adjudication details and full winning bidder identification – this was a sentiment echoed by Information Officers themselves at the National Information Officers Forum Event in 2010.

f) Section 84 of the Local Government Municipal Systems Act, 32 of 2000 (MSA) requires municipalities to make copies of all Service Delivery Agreements (SDAs) available at their offices for public inspection. For more than three months in 2011, Ndifuna Ukwazi requested the SDAs between the City and all external service providers responsible for solid waste and sanitation services in informal settlements. Despite the numerous submitted requests, it was only through the direct intervention of Mayor de Lille that they eventually started receiving the information sought. The difficulty that we experienced in obtaining these SDAs is extremely worrying not only from a transparency perspective, but from a compliance perspective as well.

g) Furthermore, section 75(1) of the Local Government Municipal Finance Management, Act 56 of 2003 (MFMA), requires all SDAs to be made available on municipalities’ websites. It appears that no municipality in the country (including the City of Cape Town) adheres to this requirement.

h) In order to monitor the delivery of basic municipal services by external providers appointed by the City, one needs to be able to access the SDAs between the City and the providers. Without such access it becomes difficult to hold local government accountable.
i) Concerns have been raised too in regard to crime data. The lack of statistics on things such as crime (disaggregated by offence, outcome and gender) severely hampers the ability to assess and evaluate the implementation of laws and development of policies to address security of the citizens.

j) There is also a lack of information in regard specifically to issues of gender activism, such as in relation to customary marriages (disaggregated by monogamous and polygynous) and customary estates. The lack of crime data has an impact here too.

k) There are issues in regard to court and justice information. This lack of openness may encourage the inherent issues in relation to missing evidence, lost dockets, etc. which have hampered access to justice for many individuals. Court records, while available in principle, are more often than not unavailable due to poor record keeping. Further to this, the Master of the High Court should allow full public access to the identity of the control and beneficiary details of trusts (as these are often used to bypass the greater transparency of other corporate structures).

l) The Johannesburg Stock Exchange should be prevailed upon to bring its reporting and transparency provisions on par with international best practice.

m) All information (even “sensitive” information) that should be available to the public through Parliament should be made available as required by law and the Constitution (as currently bodies such as the National Conventional Arms Control Committee and the intelligence services often simply ignore their duty to report to Parliament).

Legislative trends

There have been some retrogressive legislative steps in South Africa in regard to transparency, such as the open government weaknesses displayed in the Protection of State information Bill and the General Intelligence Laws Amendment Bill, both currently before parliament. A push for new regulation of the intelligence services may have had the unintended consequences of placing primacy on secrecy in the legislative discourse.

The Protection of State Information Bill has, however, also demonstrated the committed civil society push for transparency and the vibrancy of engagements in
this area. Significant concessions in regard to the drafting of the Bill have been made by government, and multiple organisations have made submissions before Parliament and the National Council Provinces.

However, regardless of the vigour of these debates, deep concerns remain, and not merely because of the continued failure of the government to include a defence for persons who legitimately disclose or hold information in the public interest. Some of the examples of these concerns as tabled before the National Council of Provinces have included:

- Continuing concern in regard to application. While the application of the Bill has been curtailed, the power of the Minister to opt-in agencies into its application should be more limited.
- A reverse onus is contained in the offence created in section 43.
- The inadequacy of whistle-blower protections in cases of non-employees.
- The criminalisation of mere possession of state insecurity information contravenes international principles.
- The inclusion of economic, scientific and technological information is potentially problematic.
- The public cannot approach the Classification Review Panel for any reason and recourse in terms of the Bill lacks adequate independence and accessibility.
- The Bill does not adequately align with PAIA, either procedurally or substantively.
- The burden on the National Archives is too heavy.

**Media freedom**

Issues of accountability necessarily need to consider the vital role of the media in the advancement of democracy. The relationship between media and government in South Africa is increasingly strained. Consequently, South Africa dropped in its 2012 ranking of the Press Freedom Index researched by Reporters without Borders, placing at 42 from its previous ranking at 38. Government has been openly hostile to the media, with quotes attributable directly to the government spokesperson. A particular issue which requires monitoring are the calls for new forms of regulation of
the media which are controversial at best; with governments previous call for a Media Appeals Tribunal not fully yet abandoned.

Other specific media concerns include the lack of independence of the public broadcaster. Further, there is a clear need for community media to be supported through funding mechanisms more effective than the current Media Diversity and Development Agency model, while the temptation to parlay government funding into government control should be resisted (as this sector is key to holding power to account at a local level). Currently, monopolisation of the media is drowning out significant voices in the South African discourse and reflects poorly on the disenfranchisement of the poor already felt as a result of our Gini Coefficient. Media diversity should be encouraged inter alia through a re-examination of competition laws and their application, as a diverse and vibrant media is the media’s best defence against accusations that it represents sectoral rather than the general public interest.

**Private sector**

The significant role the private sector has to play in transparency cannot be gainsaid. PAIA, uniquely at the time of its drafting, specifically extended the right of access to information to private bodies because of the requirements of our Constitution. In spite of this, corruption in the sector is marked. At a stage the audit firm BDO ranked South Africa as having the second highest corporate fraud rates in the world.\(^\text{13}\) The involvement, and deficiencies, of the private sector on this regard have also been remarked upon early in consideration of trust information.

In the coming months, the private sector will have a significant role to play in engaging on our OGP issues and it is essential that their role is actively facilitated by all concerned.

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\(^\text{13}\) South African Associated Press [2010].
The Open Government Partnership

The Process

The OGP has immense promise for expanding on South Africa’s pursuit of open government and transparency. As such, it should be considered how the process has unfurled up to this point.

In regard to South Africa’s participation so far in the OGP process, ODAC have been monitoring our progress since September of last year after we had been asked to assist government in identifying political champions on transparency. The South African government have identified their representative as the Deputy Minister of Public Services and Administration (DPSA), Ms Ayanda Dlodlo.

However, in spite of attempts to engage directly with government prior to the New York OGP meeting, communications were ignored. Civil society then issued an open letter in the media to the President calling for information on the public consultation progress and on the commitments. The response to this was that the DPSA were consulting, but that such consultation was occurring through SANGOCO, but it appears that information from these engagements is not filtering down to the transparency community in South Africa. While SANGOCO is representative of some of the broader grassroots communities that require engagement, the transparency community have significant and direct experience with open government issues that could facilitate government in their pursuit of their commitments.

The issue of inadequate consultation was raised in New York at the civil society parallel meeting, but this stance was not welcomed by government. Government’s position was that they would extend consultations when they returned to South Africa, and provided reflection on the inadequate time given to properly consult with civil society during their New York submission.

The next OGP meeting is scheduled for Brasilia in April and civil society is still not clear as to what consultation is happening. Civil society organisations were invited to engage in a meeting a few days before the Brasilia proceedings started, and were forced to carry the costs of these engagements themselves. Civil society believes that this lack of engagement is not only inadequate in terms of the OGP requirements, but also in terms of South Africa’s own notice and comment
procedures as outlined by the Promotion of Administrative Justice Act. We have even had difficulty on accessing any information as to OGP on the DPSA’s website.

However, civil society has begun consulting within itself and is laying the foundations for direct engagement between civil society and government moving into Brasilia and beyond. We have also begun discussing additional stakeholders who will be necessary to contribute to the SA OGP process such as:

- Corruption Watch (especially given commitments 4 and 5);
- Private sector entities, such as BUSA, BLSA, and Local Chamber of Commerce; and
- Trade Unions, such as COSATU, and SAMWU.

Beyond the process needing to more greatly involve civil society, we also fear there have been inadequate attempts to circulate information about OGP commitments and priorities within government itself.

The Commitments

In regard to a specific review of the current commitments, we note that they strongly reflect the role of the DPSA and their Batho Pele focus. However most of civil society’s main concerns in regard to transparency, as addressed in brief above, are not adequately reflected. Our role will be to keep these in focus while the commitments are progressing over the rest of the year.

There is a failure within the Commitments to place enough responsibility on Ministers, Heads of Departments and Members of Executive Council’s, who are the office bearer’s best placed to take forward transparency responsibilities (such office bearers are only properly identified as stakeholders in three of the commitments). The plan lacks the proper involvement of the Executive which is an issue in terms of ensuring that proper political will is created to enforce these commitments. We would suggest that, as we move forward into fleshing these commitments into a proper implementation plan, this issue of properly identifying the appropriate persons can be addressed. We submit that a revised Action Plan for SA should contain responsibilities and deliverables for Cabinet Ministers, Provincial EXCO’s and Mayoral Committees – these leaders should have responsibilities within a revised
Action Plan which should involve them beyond the mere formulation of policy, as our implementation has to be regarded is poor, in part because of an unwillingness in leaders to hold subordinates, and sometimes colleagues, to account for poor performance or non-compliance with laws which then manifest themselves via adverse audit opinions, increased service delivery protests, greater cadre deployment, corruption etc.

These commitments obviously do not constitute an enforceable plan as they stand. We hope to assist government in moving these commitments forward into an implementation plan that can be realised within the next few months. It is worrying that, prior to Brasilia, there seems to be little movement happening with regard to the OGP commitments.

We note government’s commitment to organising a regional meeting on OGP which we support. The Pan African Parliament has also expressed interest, and we will continue monitoring any developments in this regard while offering our assistance. It must be noted that civil society engagement must be ensured in regional meetings and deliberations as well. We would also like to raise concerns about budget, as the commitments do not reflect any particular funds being assigned for their fulfilment. Budget will be a key issue in regard to whether the SA government is able to fulfil their commitments or not.

**Conclusion**

The transparency civil society community feels it is their duty to assist and monitor government in the OGP process. There is a strong network of such organisations in South Africa who have dedicated their lives to advancing the rights of open and good governance for all South Africans, in spite of struggling with funding support issues over recent years. As such, we look forward to advancing the right to know through the OGP process in support, and a deep sense of pride, at South Africans inclusion as a founding member as the OGP. We welcome the OGP’s foundation upon broad, multi-stakeholder consultation noting South Africa’s agreement with the OGP to:

1. Make the details of their public consultation process and timeline available (online at minimum) prior to consultation;
2. Consult widely with the national community, including civil society and the private sector; seek out a diverse range of views and; make a summary of the public consultation and all individual written comment submissions available online;

3. Undertake awareness raising activities to enhance public participation in the consultation;

4. Consult with the population with sufficient forewarning and through a variety of mechanisms – including online and through in-person meetings – to ensure the accessibility of opportunities for citizens to engage; and

5. Identify a forum to enable regular multi-stakeholder consultation on OGP implementation.

As noted the main substance of the transparency issues before us in regard to implementation and compliance. However, implementation and compliance in turn directly implicate the drafting of laws themselves, as well as the proper establishment of infrastructure (in its broadest meaning) to facilitate laws for the full benefit of the South African people.

We look forward to South Africa’s engagements moving forward and will continue our monitoring processes for the furtherance of the rights of all parties.
Appendix A: Stakeholders Consulted

- Open Democracy Advice Centre (ODAC)
- The Democratic Governance and Rights Unit
- The Public Service Accountability Monitor
- Legal Resources Centre
- The Social Justice Coalition
- The South African History Archive
- Khulumani Victims Support Group
- The Institute for Democracy in Africa
- Rand University, Jane Duncan
- Corruption Watch
- University of Witwatersrand, Samantha Waterhouse
- Right2Know Campaign
- Alternative Information Development Centre
- AmaBhungane
- South African Litigation Centre
- Nelson Mandela Foundation
- Socio-Economic Rights Institute
- Legal Resources Centre
- Equal Education
- Section 27
- Black Sash
- Freedom of Expression Institute
- Adi Eyal
- Justin Arenstein
- Ndifuna Ukwazi (Dare 2 Know)
## Appendix B: South Africa’s Commitments

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<tr>
<td>Develop and implement an accountability/consequences management framework for public servants.</td>
<td>Accountability will be enhanced in that this framework will concretise “Batho Pele” (“People First”) principles and ensure that public servants are held accountable to the public and the communities they serve.</td>
<td>Department of Public Service and Administration. Civil society organisations will be encouraged to assess performance of public servants against this framework</td>
<td>Concretise “Batho Pele” principles and increase accountability of public servants to the public. Framework in place and implemented in the public service.</td>
<td></td>
<td>365 days</td>
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<td>Formalise partnerships with civil society organisations in all nine provinces to establish Service Delivery Improvement Forums (SDIFs) at local level to provide timely citizen report cards on service delivery levels at community level, especially in relation to primary health care, water, sanitation, environmental management and housing.</td>
<td>Accountability to the public regarding service delivery performance will be enhanced as well as greater citizen engagement in service delivery performance monitoring.</td>
<td>Department of Public Service and Administration. SANGOCO and other civil society structures</td>
<td>Increase citizen engagement and public accountability in service delivery performance monitoring. Partnerships formalised with civil society organisations and SDIFs established in all nine provinces.</td>
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<td>365 days</td>
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<td>Enhance the capacity and capabilities of communities to access and claim their socio-Citizen awareness of legal frameworks for accountability,</td>
<td></td>
<td>The Government Communication and Information Services (GCIS), Chapter 9 institutions,</td>
<td>Empowerment of citizens to understand and claim their rights. KYSR&amp;R workshops conducted in all.</td>
<td></td>
<td>365 days</td>
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<td>Action</td>
<td>Stakeholders</td>
<td>Outcome</td>
<td>Timeframe</td>
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<td>Economic rights through the roll-out of national public education</td>
<td>SANGONET, community and mainstream media, civil society constituency based</td>
<td>nine provinces including broadcasts through community radio stations in all official</td>
<td>365 days</td>
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<td>campaigns, specifically a public outreach campaign on Know Your</td>
<td>structures. The Department of Public Service and Administration will lead the</td>
<td>languages.</td>
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<td>Service Rights and Responsibilities (KYSR&amp;R) to inform citizens about</td>
<td>KYSR&amp;R Campaign.</td>
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<td>their service rights, responsibilities, and legal mechanisms available to hold government accountable.</td>
<td>with regard to accountability, transparency and citizen engagement in service delivery. To build an active, informed citizenry able to exercise their rights and hold government to account irrespective of their geographical location.</td>
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<td>Transparency and citizen Engagement will be enhanced.</td>
<td>Enhance accountability and strengthen public trust</td>
<td>NACF strengthened and all anti-corruption officials capacitated</td>
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<td>Enhance national integrity through institutional capacity-building of</td>
<td>Capacitating the anti-corruption mechanisms will enhance accountability and public trust.</td>
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<td>National Anti-Corruption Forum (NACF) and Anti-Corruption Hotline.</td>
<td>Department for Public Service and Administration and civil society organisations on the NACF.</td>
<td>Enhance accountability and strengthen public trust</td>
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<td>This will include the capacity development of anti-corruption</td>
<td></td>
<td>NACF strengthened and all anti-corruption officials capacitated</td>
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<td>officials and strengthening the Hotline’s advocacy and investigation functions.</td>
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<td>Approve guidelines on sanctions for corruption related cases</td>
<td>Department of Public Service and Administration</td>
<td>Guidelines approved and implemented</td>
<td>365 days</td>
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<td>Transparency will be enhanced in that the public will know the sanctions for corruption related cases</td>
<td>Enhance transparency in how corruption related cases are dealt with in the Public Service.</td>
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<td>Proposal</td>
<td>Description</td>
<td>Department of Public Service and Administration through consultative processes with community-based civil society structures and business.</td>
<td>Enhance citizen engagement in public service delivery and policy-making towards the delivery of efficient, effective and quality public services.</td>
<td>Guidelines approved and implemented in compliance with international best practices.</td>
<td>365 days</td>
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<td>Develop a Citizen Participation guideline for Public Sector departments that would ensure that every public sector department across all spheres have a functional, resourced and capacitated citizen engagement unit which regularly and proactively engage with civil society.</td>
<td>This guideline will give direction to Public Service departments on citizen engagement in service delivery and policy-making through, among others, the use of online and mobile technology. Participatory democracy will be enhanced.</td>
<td>All public sector departments, Treasury, business and national constituency-based civil society structures</td>
<td>To create a common understanding of the budgetary process in order to inform priority areas and produce pro-poor budgets.</td>
<td>Standardised framework for civil society participation in budgetary processes developed.</td>
<td>365 days</td>
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<td>Enhance the involvement of civil society at every stage of the budgetary process across all spheres of government to enhance the progressive realisation of socioeconomic rights and enable citizens to track public expenditure.</td>
<td>Enable citizens to plan and inform the strategic priorities of the budget, thereby ensuring transparency, accountability and citizen engagement at every stage of the process.</td>
<td>All relevant public service departments.</td>
<td>Strengthen data collection and information management on environmental issues.</td>
<td>Feasibility study completed</td>
<td>365 days</td>
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<td>Explore the feasibility of establishing a single agency mandated by Government to develop a comprehensive and publicly accessible portal of environmental management information.</td>
<td>Transparency will be enhanced if citizens have access to reliable environmental data on water quality and other environmental issues.</td>
<td>All relevant public service departments.</td>
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<td>365 days</td>
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</table>
Appendix C: References


Statute


Promotion of Access to Information Act, 2 of 2000.

Promotion of Administrative Justice Act, 3 of 2000.

Protection of Personal Information Bill [B9 2009].

Protection of State Information Bill [B6B 2010].