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School of Advanced Legal Studies

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Information without power? Exploring the challenges and opportunities in the usage of the Promotion of Access to Information Act no 50 of 2000 (PAIA) as a potent tool for advancing socio-economic justice in South Africa.

by

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Research dissertation presented for the approval of Senate in fulfillment of part of the requirements for the MPhil degree in Social Justice and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of MPhil dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

Cape Town, _____2011 _____

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DECLARATION

I, **Langton Miriyoga**, do hereby declare that this minor dissertation submitted for the degree of Masters at the University of Cape Town has not been previously submitted by me at this University or any other University, that it is my own work and that all referenced material in it have been duly acknowledged.

Langton Miriyoga

University of Cape Town

"A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." (James Madison 1751-1836)

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Abbreviations and Acronyms

ANC	African National Congress
ATI	Access to Information
MKSS	Mazdoor Kisan Shakti Sangathan
ODAC	Open Democracy Advice Centre
PAIA	Promotion of Access to Information Act no 50 of 2000
PIE Act	Prevention of Illegal Eviction From and Unlawful Occupation of Land Act No. 19 of 1998
RTI	Right to Information
UCT	University of Cape Town
UWC	University of Western Cape

University of Cape Town

Abstract

That there is power in information is not disputable. Information empowers marginalised and impoverished citizens to engage with the state thus ensuring their inclusion in the governance and policy processes culminating in the realisation of their socio economic rights. Conversely, in spite of the opportunities for the usage of ATI law as a tool for advancing social justice, the state often retains the power to defy requests for access to information hence power to deny access thereto. This phenomenon is attributable to deeply entrenched socio political and systemic barriers resulting in the disempowerment of the poor from using ATI law as a tool for the realisation of social justice. These underlying barriers also inhibit the poor from using the law and the entire legal system to seek recourse in instances of denial of access to required information. In this context, without strategies aimed at empowering the poor and marginalised citizens to be able to build collective demand for access to information held by the state, ATI legislation will be of little benefit to the poor in their day to day struggles against poverty. Therefore, for the poor, information provides power but without sufficient power to demand that information, the poor cannot gain access to that information. Thus the extent to which robust demand for information can be built in South Africa is also largely dependant on the extent to which citizens are empowered to use ATI law in their day to day struggles for survival. Thus, impoverished citizens become more appreciative of the value of ATI law in their lives.

A. Introduction & Objectives

The right to access to information in the South African constitution entitles citizens to access to state-held and privately held information.¹ The Promotion of Access to Information Act no 50 of 2000 provides the legislative framework for the usage of access to information as a tool for the poor and marginalised South Africans to gain access to information that they require from the state in order to engage with the state to ensure accountability and transparency towards the realisation of socio economic rights. However, there is growing realisation of the disjuncture that exists between this and other progressive laws aimed at social transformation on the one hand and the day to day realities and experiences of the acutely impoverished South Africans on the other hand.

The aim of this study is four-fold. Firstly, I will illustrate the interdependencies that exist between socio economic rights and the right to access to information in the South African constitution, with particular emphasis on the right to access to information as a “lever” for the attainment of broader goals of social justice in South Africa. Secondly, the study explores and explains the entrenched socio political and systemic challenges inhibiting the usage of access to information law as a tool for social justice in South Africa. Thirdly, using the experiences of the MKSS in Rajasthan as point of reference, I will illustrate some of the practical approaches and strategies that can be used by civil society to ensure that the access to information law is effectively used in the fight against social injustices in South Africa. The central premise in this section is that the law, PAIA in particular, can only be a potent tool for socio economic justice if the poor are empowered to use it to claim space to actively participate in governance and policy processes that culminate in the realisation of socio economic rights in South Africa. Fourthly, and lastly, with particular focus on the evolving right to access to adequate housing jurisprudence, I will highlight the emerging opportunities for the usage of access to information law in bolstering the power of citizens to engage with the state in the evolving constitutional and participatory democracy in South Africa.

B. Outline of the Thesis

Part A deals with conceptual issues underpinning this thesis. It explains the interdependencies between socio economic rights and the right to information, illustrating the pivotal role of

¹ Section 32 of the Constitution

access to information in holding the state accountable for the realisation (and failure) of these socio economic rights. The centrality of the active involvement of citizens in holding the state accountable for the realisation (or failure) of socio economic rights in post-Apartheid South Africa is emphasised in this section.

Part B highlights the space for state-citizen engagement that has been created from South Africa's evolving socio economic rights jurisprudence, particularly in the jurisprudence on the right to housing. The opportunities for using access to information in this democratic space are illustrated. A review of the selected right to access to adequate housing cases will demonstrate how information can be used to empower citizens in the 'meaningful engagement' with the state in ways that ensures results in sustained inclusion of the poor in policy and local governance processes.

Part C recounts the approaches and tactics of the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan in using access to information law as a tool in the fight against corruption. In this chapter, it will also be reaffirmed that the poor uses information as an instrument for broadening spaces for active citizen engagement with the state in governance and decision making processes culminating in the betterment of their lives. The approaches and tactics used by the MKSS in using access to information as an effective instrument in these grassroots anti-corruption initiatives will also be illustrated.

Part D explains the key socio-political and systemic challenges that constrain the poor and marginalised South Africans from benefiting from progressive laws such as PAIA to demand information from the state. The central argument in this chapter is that the legal-technical challenges that are often encountered by the poor in the usage of PAIA in South Africa, such as refusals to access to information, delays or lack of responses to requests by information holders, are symptoms of entrenched and pervasive socio political and systemic obstacles prohibiting the poor from using this law as leverage in their struggles for social justice.

In a recommendatory fashion, Part D broadly encompasses a sketch of empowerment and advocacy strategies that can be used in building an effective campaign for socio economic justice in South Africa using access to information law. In this respect, examples drawn from experiences of civil society organisations like ODAC's community intervention strategy will also be reviewed to see the extent to which civil society organisations have used or failed to

use PAIA to assist the poor in their struggles against poverty and deprivation in South Africa. It will be interesting to note that the grassroots approaches used in ODAC's community intervention draws inspiration from the tactics which the MKSS used to demand more transparency and inclusion in local governance processes in Rajasthan highlighted in Part C.

PART 1

Access to information and socio economic rights: Conceptual issues

In addressing the marginalisation and related social injustices that persists in post-apartheid South Africa, the South African state is obliged to take reasonable measures to ensure the progressive realisation of socio economic rights.² In this context, it has been noted thus:³

The fact that socio-economic rights have been included in the Constitution is a big change from the days of apartheid South Africa. But the real test lies in the manner that these rights are implemented and realised for ordinary people. Can ordinary people claim them and enforce them?

The above observation epitomises the importance of exploring the different strategies that are available to the marginalised and the poor to realise socio economic rights in South Africa. As will become clearer in the following sections of this paper, the right to access to information provide one such potent tool for promoting the active agency and empowerment of the disadvantaged and marginalised South Africans for the realisation of socio economic rights.

1.1 The Interdependency of rights

The interdependency of the right to access to information and other human rights is well established especially in the international human rights law corpus.⁴ It has been proclaimed that ‘freedom of information is a fundamental human right and... the touchstone of all the freedoms to which the United Nations is consecrated’.⁵ In this respect, it is important to see

²See Section 26, Section 27 of the Constitution

³ Community Law Centre ‘Advancing Socio Economic Rights in South Africa’ (2010) available at <http://www.communitylawcentre.org.za/clc-projects/socio-economic-rights/2nd-ed-of-resource-book/chapter%202.pdf/> accessed on 15 November 2010

⁴ GA Resolution 59 (1) of 14 December 1946 *Yearbook of the United Nations* 1946-1947, New York, 1948

⁵Ibid

the basis for conceiving the right to information as a tool that can be used in the struggle for human dignity and social justice in South Africa. In this vein, Liebenberg (2010) has enunciated the interdependency, indivisibility and interrelatedness of rights in the pursuit of a rights-based agenda for social transformation in South Africa by pointing out that:⁶

There are no watertight divisions between the different rights in the Bill of Rights. A substantive interpretation of human rights norms recognises how various forms of social injustices overlaps and interrelates with each other to create new forms of disadvantage and marginalisation.

The above assertion not only dispels the conceptual and practical debates on whether access to information is a civil and political or a socio economic right but also clarifies the understanding that runs through this thesis that access to information is an instrument to the realisation of the rights-based agenda for social transformation envisioned in South Africa's constitution.

The following section explores the conceptual and practical link and interrelationship between the right to access to information and socio economic rights. Unravelling this fluid interrelationship between socio economic rights and the right to access to information is crucial in that the content and scope of both rights evolves in ways founded on the holistic concept of human well-being endorsed by the Bill of Rights in the South African Constitution.⁷

1.2 ATI as “leverage” right

It is when the right to access to information is used as a tool for the protection and promotion of socio economic rights that its content develops in the context of a developing country.⁸

⁶ Liebenberg S “ Socio economic rights adjudication in a transformative constitution” (2010) 54

⁷ Ibid

⁸ Dimba M “Access to information as a tool for socio economic justice” (2008) in Pambazuka News Issue 372, 8 April 2008 available at <http://www.pambazuka.org/en/category/comment/47179> accessed on 15 September 2010

This realisation marks a shift in the theory and practice of access to information away from seeing it more as a companion of the right to freedom of expression only towards seeing it as a leverage right that can be used as one of the strategies for advancing social justice.⁹ In South Africa, an average citizen is entitled to access to information pursuant to PAIA, on, for example, what plans the government has to solve the ills of impoverishment that communities face.¹⁰ This can serve to ensure the effective monitoring of the delivery of public services by the government at all levels.¹¹ In this vein, information empowers citizens to be able to engage with the state on processes that culminates in the realization of socio economic rights.

The right to information has a dual benefit.¹² Apart from providing a solid foundation for a legal right to know about a range of government policies, decisions and activities it also empowers people to position themselves at the centre of political dialogue in a state.¹³ This ‘dual benefit’ identified above points to the centrality of information in inclusion of the poor in governance processes. At local level, when citizens fail to find out what local governments are doing and how they are spending public funds, governments have little incentive to improve performance.¹⁴ Therefore, international institutions such as the World Bank have also affirmed that the right to information is fundamental to improving local governance.¹⁵

The importance of the right to access to information to the poor and marginalized citizens is summed up in the UNDP in the following terms:¹⁶

⁹ Calland R “Illuminating the Politics and Practice of Access to Information” available at http://www.saha.org.za/resources/docs/PW_Chap1.pdf accessed on 15 November 2010

¹⁰ Op cit note 3

¹¹ Ibid

¹² Luyt D ‘Governance, Accountability and Poverty Alleviation’, A Paper delivered at the United Nations Social Forum on 2 September 2008, Geneva, Switzerland

¹³ Supra

¹⁴ Deepa Nayaran-Parker ‘Empowerment and Poverty Reduction: A Sourcebook’ (2002) 39 Washington DC World Bank

¹⁵ Ibid

¹⁶ Op cit note 8

Information can empower poor communities to battle the circumstances in which they find themselves and help balance the unequal power dynamic that exists between people marginalized through poverty and their governments.

It is discernable from the above assertion that access to information empowers the poor and is useful in reconfiguration of power relations between citizens and the state. The common strand in the above discussion is that the right to access to information acts as a lever for the poor in ways which broaden spaces for engagement with the state on governance and accountability issues. It is also through demand for access to information that the majority of the citizens are informed on what is happening in the government and be able to enter into conversation with the state on contentious issues of service delivery and the realization of socio economic rights. In all these ways, access to information bolsters the entrenchment of open and participatory democracy at all levels of the state based on transparency and accountability.¹⁷

I now turn to the idea that access to information strengthens social agency and citizen action and gives citizens the power to engage in dialogue with the state on policy and governance processes that culminates in the advancement of socio economic rights.

1.3 Transparency and the imperative for social accountability in South Africa

South Africa has an excellent Constitution with a progressive Bill of Rights, justiciable socio economic rights and generally pro-poor policies and at one point had over 29 966 government funded projects aimed at reducing poverty.¹⁸ Yet poverty persists in the form of illiteracy, inadequate water supply, unemployment, inadequate housing, crime, malnutrition, child mortality, limited economic opportunities, and general social insecurity among other social problems. What exactly has the government done to address these problems? What policies, plans, programmes and projects have been planned to address these problems? What has

¹⁷Colm, A ‘Accountability and Social Activism: A New Strategy for Achieving Socio-Economic Rights in a Democratic South Africa’ Public Service Accountability Monitor(PSAM) A paper delivered at the United Nations Social Forum on 2 September 2008 in Geneva, Switzerland

¹⁸ Op cit note 12

happened in the implementation of these interventions? The answer to these questions are diverse and complex, and increasingly the subject of intense contestation and even social protest and violence. The absence of information can make it difficult for the citizens to get adequate and serious answers to these questions. In other words, without access to such information, citizens become more and more marginalised and excluded from dialogue on these crucial processes and, thereby, more likely to resort to 'extra parliamentary' means to express their frustrations and discontent.

In South Africa, it is at provincial and local municipality level that the major part of the national budget aimed at alleviating poverty through the provision of housing, health and education services is spent.¹⁹ Yet, the continued existence of poor governance at all levels of the ANC-led government in South Africa makes it relatively easy for underperforming and corrupt politicians and officials to ignore their accountability obligations and responsibilities.²⁰ In this context, it is important for civil society to develop the capacity to hold government accountable at this level of governance. Information is required by citizens for the monitoring of the decision making and implementation processes in the delivery of services to the poor. In this respect, the evolving socio economic rights jurisprudence bellies opportunities for lobbyists, advocates, activists and different social justice and access to information practitioners engaged in social accountability and social justice work to utilize PAIA as a tool.

Corruption has been identified by the World Bank as one of the greatest obstacles to economic and social development and the need to combat corruption as an integral element of the strategies for combating poverty.²¹ Fundamentally, in South Africa, corruption and lack of transparency also present profound challenges to the realisation of socio economic rights as it masks poor performance of government officials in the management of public resources.²² Poor transparency and accountability mechanisms explain the eruption of these confrontations and often violent protestation around service delivery which has almost

¹⁹ Luyt op cit note 12

²⁰ Luyt op cit note 12

²¹ Commonwealth Human Rights Initiative 'Our Rights, Our Information: Empowering people to demand rights through knowledge' (2007) 10

²² Luyt op cit note 12

become a permanent feature of the South African social fabric over the years.²³ It is submitted here that this kind of citizen-state engagement is pervaded by a lack of explanations on what the government is doing to address the plight of the impoverished.

As asserted above, there is no doubt that lack of transparency and social accountability closes space for engagement between the state and the citizens at all levels of governance thus citizens take their grievances to the streets in a bid to draw state attention to their plight. In this context, citizens can use access to information legislation to find out what government's plans, programmes and activities are towards the progressive realisation of socio economic rights. Citizens then wield potent leverage to ask serious questions and have a 'voice' around the planning and implementation of those interventions while the state is called to provide serious answers to those questions.

1.4 "Information is power": Social agency and the realisation socio economic rights

It is interesting, at this juncture, to note that in many situations those invoking the socio economic rights in the constitution will normally be the poorest and most marginalised groups in the South African society.²⁴ These are also likely to be the people who lack the knowledge, ability and power to assert their rights effectively.²⁵ In this regard, Liebenberg has noted that:²⁶

A major factor contributing to a sense of powerlessness and a lack of autonomy is the absence of opportunity to voice our concerns in relation to decisions which have a major impact on our lives.

²³ Luyt op cit note 12

²⁴ Marcus Gilbert and Budlender Geoff 'A strategic Evaluation of Public Interest Litigation in South Africa' (2008) at 5

²⁵ Ibid

²⁶ See Liebenberg S 'The value of freedom in interpreting socio-economic rights, in AJ Banarde-Naude, Drucilla Cornell and Francois du Bois (eds) 'Dignity, Freedom and the Post-apartheid Legal Order: The Critical Jurisprudence of Laurie Ackermann, (2008) 167

It is discernable from the above observation that the empowerment of poor citizens is crucial in the interpretation of socio economic rights obligations of the state. For citizens, this points to the importance of information on measures taken by the state to ensure the realisation of these rights. In this vein, Kranich (2003: 3) explains the link between access to information and effective citizen action in the following terms:

...effective citizen action becomes possible when citizens develop the skills to gain access to information of all kinds and to put such information to effective use.²⁷

The provision of this information arms citizens to expand spaces for dialogue with the state to influence policy processes, decisions and actions (inactions) taken by the state towards the realisation of rights.

What is more, information gives an opportunity for citizens and different actors in society to play a full part in a vibrant society and economy in South Africa.²⁸ In this regard, Lathrop and Ruma (2010) maintain that:²⁹

Information is necessary to maintain an active citizenry, informed citizenry and accountable government. Yet govt information sources are often too complicated, poorly organized and legalistic for average citizens to understand.

It is submitted here that the effective realisation of socio economic rights in South Africa is dependant on the extent to which poor citizens and civil society use access to information legislation to claim spaces for engagement with the state in processes of governance and policy making in post-apartheid South Africa. More importantly, the effective realisation of socio economic rights also depends on whether the citizens are able to use information on the

²⁷ See Kranich in Corbah A ‘The Right to Access to Information: Civil Society and Good Governance in South Africa available at <http://archive.ifla.org/IV/ifla73/papers/135-Arko-Cobbah-en.pdf> accessed on 18 November 2010.

²⁸ Calland R “Prizing Open the Profit Making World” in Calland and Tilley “ The Right to Know, The Right to Live” (2002) 239 ODAC

²⁹ See Lathrop D and Ruma L ‘Open government: Collaboration, Transparency and Participation in Practice’ (2010) 156

government actions (or inactions) to push the state to account for the progress attained towards the progressive realisation of these rights.³⁰ This not only ensures that the citizenry is empowered to play an active role in initiating processes resulting in the realisation of socio economic rights but also the sustenance of their engagement with the state in these processes leading to social transformation.

³⁰ Section 26 and Section 27 of the South African Constitution impose an obligation on the state to ensure the progressive realisation of socio economic rights. This forms one of the bases for citizens to demand accountability from the state.

PART 2

Access to information as strategy for the realisation of socio economic rights in South Africa

2.1 Using ATI in broadening spaces for citizen engagement

The court's decision in the *Grootboom* case gave some insight as to how socio economic rights would be enforced and adjudicated upon in South Africa.³¹ In that case, the court held that the government was expected to devise and implement a coherent, coordinated programme designed to fulfill its section 26 obligations.³² The court's decision in *Grootboom* would have resulted in significant interest in and activity around the coherence, implementation and coordination of government's housing programmes and thus to requests for information on such plans and programmes.³³ In other words, the implication of this decision was to present opportunities for citizens and civil society to use PAIA for the empowerment of citizens to evaluate and determine whether plans of the state were coordinated and coherent.

The active role of the poor themselves, as citizens, in the enforcement of socio economic rights in South Africa has been recognized by Liebenberg who noted that:³⁴

The Courts should avoid interpreting socio economic rights in ways that position claimants as passive objects of state bureaucracy. Instead, they should develop a

³¹ Tilley A 'The Usage of the Promotion of Access to Information Act Experiences: Achievements and Challenges' (2010) A paper presented at the 2010 Open Democracy Review Meeting: The first 10 Years of implementation of access to information and whistleblower Protection Laws in South Africa, Cape Town, 12 March 2010.

³² Tilley op cit note 31 also see *Government of the Republic of South Africa and others v Grootboom and Others v Government of the Republic of South Africa* 2000 (11) BCLR 1169 (CC)

³³ Tilley op cit note 31

³⁴ See Liebenberg S 'Socio economic rights adjudication in a transformative constitution' (2010) 41

notion of rights that is empowering and recognizes people's agency in relation to the definition of their needs.

Furthermore, Pieterse and van Donk have attested to the need for an empowering conception of socio economic rights whereby the state institutions fulfill their responsibilities ways that recognize citizens and their representative organisations as 'rights-holders' and active agents in the realization of human rights and development.³⁵ There is inherent risk in promoting conceptualising socio economic rights as commodities conferred on passive beneficiaries by a neutral and benevolent state as this deflects attention to the primacy of social mobilization and struggle in achieving these changes.³⁶ It can be seen that a more empowering approach to socio economic rights enforcement would provide more opportunities for socio economic rights claimants to demand information in the process of dialogue with the state on the formulation and implementation of these interventions. Clearly, the right to access to information and administrative justice plays a pivotal role in facilitating citizen participation in these key political and governance processes that necessitates the realization of socio economic rights and broadening of South Africa's open and participatory democracy.

As indicated earlier, the South African Constitution provides a solid mechanism for engaging in a rights-based programme of social transformation and social activism for the attainment of social justice.³⁷ However, lack of information continues to frustrate citizens' ability to make choices, participate in governance and to hold government accountable for their actions or inactions.³⁸ It is interesting to note that in the same Constitution, Section 32 entitles South Africans to a right to access to information publicly and privately held to the extent that the

³⁵ Edgar Pieterse and Mirjam van Donk 'The politics of socio economic rights in South Africa ten years after apartheid', (2004) 5 ESR Review 12-15 at 12

³⁶ See Liebenberg op cit note 34 above where she discusses the limits of socio economic rights adjudication and enforcement which ignores the need for beneficiaries to participate in the conception and implementation of socio economic development interventions.

³⁷ Budlender G "A Paper Dog With Real Teeth: The TAC case has proved that the Constitution is a powerful people's tool", Mail & Guardian (Johannesburg) - July 12, 2002.

³⁸ Luyt op cit note 12

information is necessary for the exercise of a right.³⁹ This constitutional right place an obligation on information holders to store, organize and provide information in ways that make it easily accessible to the public, to provide information proactively and to respond positively to requests for information.⁴⁰ Clearly, as noted earlier, the entrenchment of socio economic rights together with the right to access to information in the South African constitution renders the right to access to information an integral element not only in the fight for human dignity and social justice but also in bolstering the evolving participatory democracy in South Africa.

A good example is of a group of citizens intent on finding out if the State is doing anything to counter discrimination in the education sector. It is necessary for citizens to have access to certain information related to those policies.⁴¹ It is also important for them to be aware of the content of said policies to enable them to analyse how those measures are considered in the budget and how budgetary commitments are delivered.⁴² Undoubtedly, in a constitutional and participatory democracy such as South Africa's, access to information law provides vast opportunities for the empowerment of citizens to be able to engage meaningfully with the state on the realization of socio economic rights.

2.2 Meaningful engagement and the right to housing in South Africa

The South African constitution promotes a democracy that is both representative and participatory.⁴³ In this sense participatory democracy entails democracy that is accountable,

³⁹ See Section 32 of the Constitution

⁴⁰ Dick A L 'Power is Information: South Africa's Promotion of Access to Information Act in Context' in Crestani F and Ruthven I 'Context; Nature, Impact and Role' 5th International Conference on Conceptions of Library and Information Sciences, CoLIS (2005), Glasgow 215

⁴¹ Article 19 'Access to Information: An Instrumental Right for Empowerment' available at <http://www.article19.org/pdfs/publications/ati-empowerment-right.pdf> accessed on 20 November 2010

⁴² Article 19 op cit

⁴³ See Lilian Chenwi and Kate Tissington 'Engaging Meaningfully with the Government on Socio Economic rights: A focus on the right to housing' (2010) 6

transparent, responsive and open.⁴⁴ This kind of democracy also makes provision for individuals and communities to take part in the service delivery decision making processes.⁴⁵ In this manner, state-citizen engagement in South Africa is premised on the notion of citizens as agents of social change highlighted in earlier discussion. To ensure that the delivery of public services effectively contributes to the amelioration of people's quality of life, it is important for engagement to take place between citizens and the government at all levels of the state.⁴⁶ It is important for information to be available to the citizens to make sure that citizens are empowered to engage meaningfully in dialogue with the state in policy and governance processes.

2.2.1 The concept of meaningful engagement

In South Africa, the concept of meaningful engagement has been around for a while but it was first properly defined in the *Olivia Road* decision by the Constitutional Court in 2008.⁴⁷ The Court said that meaningful engagement is a two way process in which the government and victims of eviction would talk to each other meaningfully in order to reach common objectives.⁴⁸ Therefore, in a broad sense, meaningful engagement happens when communities and government talk and listen to each other, and try to understand each other's points of view, so that they can achieve particular goals.⁴⁹ A situation where government officials meet with the community to simply announce and persuade them to endorse preconceived and predetermined decisions cannot be accepted as meaningful engagement. In a similar vein, conducting the engagement processes under secrecy with missing information on the contentious housing programmes and planned actions would also not constitute meaningful engagement. Clearly, the notion of meaningful engagement as developed and interpreted by the court have far reaching implications to the usage of access to information as a tool for

⁴⁴ Ibid

⁴⁵ ibid

⁴⁶ Ibid

⁴⁷ See *Occupiers of 51 Olivia Road, Berea Township, and Others v City of Johannesburg and others* 2008 (5) BCLR 475 (CC) para 14

⁴⁸ Supra

⁴⁹ Supra

making the engagement meaningful and, specifically, the empowerment of the poor as they enter into dialogue with the state.

2.2.2 Meaningful engagement: Law and policy

The South African government has promoted the active participation of the poor and marginalized citizens in the development of housing policy. In spite of the difficulties that arise out of the veil of secrecy that is pervasive in government in state-citizen engagement processes, the basis for meaningful engagement is well established in laws and policies in the areas of housing and local government in South Africa. It is instructive to outline some of those laws and policies that have created spaces for citizens to engage with the state. The Housing Act 107 of 1997 requires national, provincial and local government to consult meaningfully with individuals and communities affected by housing development.⁵⁰ The government is also required to make it possible for all relevant stakeholders to participate in housing development.⁵¹ The 1994 White Paper on Housing also emphasizes the need for housing policies and strategies to emphasize the participation of affected communities in planning and implementing housing developments. This legal framework in the housing sector provides opportunities for the usage of access to information law in South Africa to bolster citizen capacity to participate in the process of formulating housing policy in South Africa.

Furthermore, the government's fairly recent housing policy measure, *Breaking new ground: A Comprehensive Plan for the Development of Sustainable Human Settlements* (August 2004) also acknowledges the integral role of community participation and consultation in the development of housing policy.⁵² On the planning and management of specific housing projects, the citizens are invited to participate as provided for in the Social Housing Policy for

⁵⁰ See Section 2 (1) (1) of the Housing Act no 107 of 1997

⁵¹ See Section 9 (2) (a) of the Housing Act no 107 of 1997

⁵² See 'Breaking New Ground: Comprehensive Plan for Housing Delivery' available at <http://www.capecoast.gov.za/Text/2007/10/bng.pdf> Accessed on 18 December 2010

South Africa (2003).⁵³ This policy invites the beneficiaries of housing interventions to be involved in administering and management of their housing options.⁵⁴ The Constitutional Court also dealt with a number of eviction challenges made under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act no 19 of 1998 which protects occupiers from arbitrary eviction without engaging the victims who would be made homeless by the eviction.⁵⁵

In general, the South African local government framework also gives primacy to citizen engagement and participation, at least on paper. For instance, section 19(2) of the Local Government: Municipal Structures Act 117 of 1998 requires municipal authorities to review all its processes to include and involve citizens.⁵⁶ More importantly, section 16 (1) of the Local Government: Municipal Systems Act no 32 of 2000 obliges local government institutions to encourage and create conditions for the local community to take part in the affairs of the municipality including about the provision of services.⁵⁷ Furthermore, section 17 of the Municipal Systems Act requires municipalities to have appropriate mechanisms, processes and procedures including the holding of public meetings and hearings, consultative sessions and report back to the local community so that the local community can effectively take part in the affairs of the municipality.⁵⁸ The report back of the municipalities should be understood in the context of PAIA which requires the state to promote transparency by availing information required by citizens for the exercise of other rights.

It is important to comment that South Africa's housing law and policy provides a lot of opportunities for the inclusion of citizens in governance and policy processes around the right to access to adequate housing provided for in section 26 of the Constitution. Equally

⁵³ See Social Housing Policy of South Africa available at http://www.nhfc.co.za/files/Social_Housing_Policy_May_2005.pdf accessed on 18 December 2010

⁵⁴ Supra

⁵⁵ See *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC) paras 39-45

⁵⁶ See section 19 (2) of the Local Government: Municipal Structures Act no 117 of 1998

⁵⁷ See Section 16 (1) of the Local Government: Municipal Systems Act no 32 of 2000

⁵⁸ Section 17 of the Municipal Systems Act

importantly, a duty for the promotion of transparency through disclosure of information can be read into the legal and policy framework undergirding the citizen-state engagement in the realisation of the right to housing. Secrecy provides severe limits the spaces for engagement between the state and citizens. In summary, it is discernable that the legal and policy basis for meaningful engagement provides opportunities for civil society to use various tools and methodologies to empower citizens to engage with the state on matters of housing policy development. Access to information provides one such tool for empowerment.

2.3 ATI: Making engagement “meaningful”

Before taking any action that affects people’s right to housing, water or social security, the state must engage with the targeted community before taking the final decision on what action it wants to implement.⁵⁹ As citizens whose socio economic rights and entitlements are at stake, the targeted communities have to be afforded reasonable opportunities for their voices to be heard and to participate in the making of such decisions.⁶⁰ However, the ‘culture of secrecy’ that is pervasive in the government deters the poor from engaging meaningfully and in honest terms with the state.

Generally, secrecy has been identified as counterproductive to the sustenance of workable state-society relations.⁶¹ Similarly, if secrecy is allowed to raise its ugly head in the engagement process between the government and communities in the design of housing interventions by the state, then the engagement process will not be meaningful.⁶² Left unchecked, secrecy provides a veil behind which the government formulates unreasonable programmes which will be imposed on the poor without their involvement. Similarly, the engagement process will not be meaningful without adequate mechanisms for promoting

⁵⁹ See Chenwi and Tissington op cit note 43 at 9

⁶⁰ Ibid

⁶¹ World Bank, ‘State-Society Accountability Initiatives: Lessons for the World Bank’ available at http://www.worldbank.org/kh/pecsa/resources/state_civil_society_synergies_exp_from_latin_america.pdf accessed on 20 November 2010

⁶² See Ray Brian ‘Occupiers of 51 Olivia Road v City of Johannesburg: Enforcing the right to Adequate Housing through “Engagement”’, Human Rights Law Review, 8(4) 703-713

transparency for such engagement to take place. These tools include the provision of information on housing policy and programme decisions.

The famous idiom: 'information is power' holds true in the 'meaningful engagement' process. Deprived of relevant information on government's long term and short term housing plans and programmes, it is difficult to see how citizens will be able to provide any meaningful contribution to the engagement process. Relevant information to the engagement process must be accessible and proactively available so that the reasonableness of government plans can be assessed by all stakeholders in the engagement process. For instance, the engagement process would have been more meaningful if information on the positions of residents on the City's housing waiting list and future housing plans were requested and made available to the community and other stakeholders in the *Joe Slovo* eviction process.⁶³ If citizens and stakeholders from civil society had access to this and other relevant information, they would have been in a better positioned to raise serious questions on the eviction process.

It is in the above context that Ray (2008) explains the nature of the duty of the state to provide information to communities for the engagement process to be meaningful.⁶⁴ He noted that the court:⁶⁵

...established what amounts to a public reporting requirement following any engagement process.

It can be seen from the above statement that the government is under an obligation to provide information to citizens to create an enabling environment for 'meaningful engagement' to take place. This information need to be disclosed without wasting time and resources on the painstaking and sometimes frustrating process of requesting it as provided for under PAIA.

2.4 Civil society and the meaningful engagement process

⁶³ Supra note 43 at 19, also see *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* 2009 (9) BCLR 847 (CC) para 7

⁶⁴ Supra note 62

⁶⁵ Supra

In the *Olivia Road* decision, the court recognized the prominent role played by civil society in facilitating the participation of communities and representing them in the engagement processes.⁶⁶ The court acknowledged that ‘skilled and sympathetic’ people are needed to make the engagement process effective.⁶⁷ In this way, the court’s dicta on the ‘meaningful engagement’ process provides vast opportunities for civil society to come in with diverse interventions including assisting with requests for access to information from the state to level the playing field for the inclusion of citizens in policy processes. In this vein, the involvement of civil society in the meaningful engagement process makes it far easier for the poor to use their collective power to demand transparency using access to information law in the engagement process. In short, by recognizing the role of civil society in the engagement process on housing policy formulation and transparency, the Court has not only initiated an innovative mechanism for the enforcement of rights but also for the empowerment of citizens and facilitating citizen action against social injustices in South Africa.⁶⁸

In using access to information as a tool in the meaningful engagement process, it is important for civil society and other actors to be sensitive to the Court’s dicta on the timing of engagement process.⁶⁹ In *Olivia Road*, the Court held that engagement should not wait until matters are heard in court but before.⁷⁰ In this vein, in the *Abahlali* case, the Court said that starting engagement after the government has already decided to begin the eviction proceedings cannot be genuine engagement.⁷¹ The meaning of this is that meaningful engagement takes place when housing policies, strategies and plans are being planned, while they are being implemented and when they are evaluated.⁷² By implication, this also entails that the government is responsible for initiating engagement and, by extension, provide

⁶⁶ Supra note 62

⁶⁷ See *Olivia Road* Supra note 47 para 19-20

⁶⁸ See Ray (2008) op cit at 708

⁶⁹ See *Olivia Road* Supra note 43 para 30, *Abahlali base Mjondolo* para 119-120

⁷⁰ Ibid, also see *Abahlali base Mjondolo Movement of South Africa and Another v Premier of the Province of KwaZulu Natal and Others* CCT 12/09, 2009 ZACC 31 para 119-120

⁷¹ See Chenwi and Tissington op cit note 43 at 21

⁷² Ibid

information on its plans and programmes whenever contestations on housing policy, plans, programme or project arises between the government and communities.

Therefore, it will be important for civil society organisations working around the campaign for the right to access to adequate housing with poor communities in South Africa to sustain the demand for information without waiting until eviction proceedings are under way in court. This ensures that civil society including citizens uses the access to information to broaden the spaces for citizen-state engagement and other citizen participation in governance and policy processes around the realisation of socio economic rights.

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PART 3

Trends in the usage of ATI law in advancing socio economic rights: Socio-political and systemic challenges

3.1 Brief synopsis

South Africa's ATI law is viewed as progressive in that it can be used as a potent tool for socio economic justice. One of the objectives of PAIA is:⁷³

'...to give effect to the constitutional obligations of the State of promoting a human rights culture and social justice'.⁷⁴

It is a plausible democratic gain to have a piece of access to information legislation with such progressive objectives. Yet the poor have not been able to effectively use this progressive piece of legislation, PAIA, which is ostensibly available to them for them to use to pursue a social justice agenda. Instead of using the law as a tool for advancing socio economic rights, the impoverished have resorted to violence as a means to social change. How do we explain this phenomenon? Specifically, what underlying socio political and systemic challenges hamper the usage of PAIA in the struggles for transparency and social justice in South Africa? The former question is too broad to be addressed in this section of the thesis. This chapter proffers some explanations as to why ATI legislation has not been effectively used as a potent tool in the fight against poverty in South Africa.

3.2 The nature of information required for advancing socio economic rights

The nature of information that is often required for in the fight for the realisation of socio economic rights in South Africa deserves to be highlighted at this juncture. An understanding of the nature of this information enables us to have a deeper understanding of the underlying reasons for resistance against disclosure of such information by the state. Arguably, the information that is predominantly required in the fight for human dignity and social justice

⁷³ See Section 9 (c) of the Promotion of Access to Information Act no 50 of 2000

does not constitute a formidable threat to national security. Instead, information that is often required by agents for social justice relates to five key policy processes around the delivery of socio economic rights obligations to citizens.⁷⁵ Firstly, information is required to enable citizens to evaluate whether government departments and local authorities have their plans and budgets based on adequate analysis of what service delivery needs of the communities and citizens are.⁷⁶ Secondly, information is required that empowers citizens to track expenditure against outputs and budget allocations.⁷⁷ Thirdly, information is crucial that makes it possible for citizens to hold government at all levels accountable for the quality of their services.⁷⁸ In ensuring that this nature of information is accessible to citizens, it is crucial that this information and explanations on poor performance is documented.⁷⁹

For instance, the ODAC, in its community interventions to assist the poor with PAIA requests, submitted requests to the Emalahleni local municipality on the plans of that municipality to install electricity to houses that were omitted under the electrification programme in Mtyatya village.⁸⁰ To the Eastern Cape Department of Education, requests were submitted for information relating to the Department's strategic plans on addressing the problem of poor performance by grade 8, 9, 10,11and 12 learners at Phambili Mzontsundu High School.⁸¹ In Mpumalanga, ODAC also submitted requests to the Mpumalanga Department of Economic Development and Tourism for copies of the most recent plans and related documents by the Department of Economic Development relating to job creation and entrepreneurial opportunities for youth within the Standerton area.⁸²

The above examples not only shows instances in which PAIA can be used in the struggle for social accountability but also the political sensitivities of political and administrative

⁷⁵ See Derek Luyt op cit note 12 at 26

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Open Democracy Advice Centre 'The Right to Know, the Right to Live: Turning the Right to Information into a Living Reality (2010) Cape Town, Open Democracy Advice Centre

⁸¹ Ibid

⁸² Ibid

authorities at all levels of the state to the disclosure of this nature of information. Predominantly, the disclosure of such information exposes incompetence, corruption, negligence and other detrimental administrative and political defects in government's interventions. The politicians and officials in control of state resources and information thereon are always be wary and jittery over the disclosure of such information presumably because it damages their political credibility, leading to considerable loss of popularity in their constituencies. It can be discerned that disclosure of such information invites significant political risk for those information holders who are dependent on popular electoral support. It is clear that significant challenges for which inhibits access to vital information in the struggle for the realisation of socio economic rights are easily read into the nature of the nature of that information itself.

3.3 Challenges in the implementation of ATI law in South Africa

The following question has been posed: "Is PAIA worth having? If it is indeed like getting blood out of a stone to make PAIA work, why bother?"⁸³ Automatically, the answer to the first question is: Yes, PAIA is worth having! In essence, the above questions reflect the enormous challenges encountered in the implementation and usage of this piece of 'gold standard' legislation in South Africa. However, the question that is addressed in this section of the study is two-fold: Why is the usage of PAIA like 'getting blood out of a stone to make it work' for the poor? What explanations can be proffered to explain these challenges? It is posited that answering the above question requires an understanding of the entrenched socio political and systemic challenges hampering the usage of the law in general, and PAIA in particular, for the benefit of poor South Africans.

According to an ODAC/OSJI study in 2003/4, up to 64% of requests for information about service delivery made in terms of PAIA went unanswered, while in 2008, 60% of local

⁸³ Richard Calland 'Illuminating the Politics and the Practice of Access to Information in South Africa' in K Allan (ed) *Paper Wars: Access to Information in South Africa* (2009) available at

http://www.saha.org.za/resources/docs/PW_Chap1.pdf accessed on 10 December 2010.

institutions failed to respond to such requests.⁸⁴ Systemic blockages of this nature not only have serious implications for the promotion of a rights-based culture but also lead to frustration in communities as evidenced by the growing prevalence of service delivery protests in South Africa in recent years.⁸⁵ In 2004, the Open Democracy Advice Centre went on and laid a complaint with the Public Protector after a five country study on access to information placed South Africa last on the rankings on ignoring requests for access to information held by the state.⁸⁶ The reasons for these problems are located deep in the socio political fabric of South Africa and will be canvassed later in this chapter.

However, the above diagnosis does little to explain the underlying systemic and socio political constraints facing requesters who require information as a tool for holding the state accountable for the realization of (or failure) socio economic rights in South Africa. It is submitted in this chapter that the challenges often cited such as the lack of a cheap, accessible, quick and effective mechanism for resolving disputes under PAIA, poor record keeping and voluntary disclosure of information, frustrating time limits for release of information among others,⁸⁷ are symptoms of far more entrenched socio-political and systemic barriers that deter citizens from using ATI law as a lever in the fight for social justice.

3.3.1 Supply-side challenges

The tendency has been to look for fault lines within the institutional and legislative framework for the usage of PAIA to find problems hampering the effective implementation

⁸⁴ ODAC Report 'Evaluation of ODAC's Right to Know, Right to Live Outreach Strategy 2001 to 2005, (2006), Cape Town, Open Democracy Advice Centre

⁸⁵ Supra

⁸⁶ Dick op cit note 40 at 215

⁸⁷ See Freedom of Expression Institute 'An Analysis of Weaknesses in Access to Information Laws in SADC and in Developing Countries' A Report prepared by Mzi Memeza for the Access to Information Programme of the Freedom of Expression Institute (FXI) available at http://www.fx.org.za/PDFs/ATIP/AIP_Progress%20Report.pdf accessed on 15 November 2010.

of PAIA in South Africa.⁸⁸ These have been termed the ‘supply-side’ challenges in the access to information equation.⁸⁹ However, the implementation of ATI law has been seen as a matter of co-responsibility between the state and citizens.⁹⁰ In this respect, not all the burden lies with government: citizens, civil society and community organizations, media, and the private sector share responsibility for monitoring government efforts in complying with PAIA and also the general usage of the law.⁹¹

In broad terms, South Africa’s is still a fragile democracy that inherited endemic problems—corruption, oppressive state apparatus, institutional secrecy, ethnic divisions and poverty.⁹² It then follows that legislative measures only will do very little to transform this closed governance environment into an open democracy geared towards the attainment of social justice.⁹³ The underlying institutional problems that inhibits the evolution of a genuinely transparent society in South Africa includes the entrenched bureaucratic cultures of secrecy, inconsistent between transparency and other related secrecy legislation, process and systems constraints and a lack of understanding of the law itself by the officials charged with implementing PAIA and other legislative measures to promote transparency.⁹⁴ These are some of the institutional hurdles encountered by citizens in using PAIA in using access to information in charting the road from secrecy to open democracy based on openness in state-society relations.

⁸⁸ Calland Richard and Neumann Laura ‘Making the Law Work: The Challenges of Implementation’ in Florini Ann (ed) ‘The right to Know: Transparency for an Open World, (2000) at 181

⁸⁹ *ibid*

⁹⁰ *Supra* at 3

⁹¹ *Supra* note 88

⁹² See UNDP ‘Making the Law Work for Everyone Volume 1: Report of the Commission on Legal Empowerment of the Poor (2008) available at

[http://www.undp.org/publications/Making_the_Law_Work_for_Everyone%20\(final%20rpt\).pdf](http://www.undp.org/publications/Making_the_Law_Work_for_Everyone%20(final%20rpt).pdf) accessed on 30 November 2010

⁹³ Rodrigues Charmaine “Implementing access to information: A practical guide for operationalising access to information laws” (2008) 15 New Delhi, Commonwealth Human Rights Initiative,

⁹⁴ *Ibid*

The widespread ‘supply-side’ challenges that limit the implementation of access to information laws are summed up by Calland and Neumann in the following terms:⁹⁵

The implementation of an access to information law is complex, and common challenges may include difficulty in adjusting the mindset of the bureaucracy and people who hold the information; a lack of capacity in relation to record keeping and record making; insufficient resources and infrastructure; inadequate staffing in terms of training, specialization, and seniority; and a lack of capacity building or incentive systems.

The challenges noted above not only illustrate the frustrations encountered by individual information requesters but also illuminates the institutional hurdles that explain the limited usage of PAIA by social agents pushing for the realization of socio economic rights in South Africa. The sum effect of these ‘supply-side’ challenges is to completely close down opportunities for the inclusion of the poor in those institutional spaces and governance processes that lead to the realization of socio economic rights.

Furthermore, it has been observed that the state does not have the institutional capacity and resources to ensure the effective implementation of the ATI legislation in South Africa.⁹⁶ This poses severe challenges for citizens considering that, for generations, South Africa has had neither the expectations nor the skills to ensure that PAIA is utilized optimally.⁹⁷ The severity of this challenge for the usage of PAIA is heightened for the poor and civil society actors working with marginalized sections of the society who have had no right to access to information for successive generations. Thirdly, the inefficiencies in the creation and subsequent management of records in the state institutions also results in difficulties for the retrieval and release of such information.⁹⁸ These weaknesses in the institutional framework

⁹⁵ Supra note 88 at 4

⁹⁶ Lange Claudia and Wessels Jackie (eds) ‘The Right to Know: South Africa’s Promotion of Administrative Justice and Access to Information Acts’ (2004) at 181

⁹⁷ Ibid

⁹⁸ Ibid, also see ODAC ‘2010 Golden Keys Awards Report’ available at <http://www.opendemocracy.org.za/wp-content/uploads/2010/10/2010-GKA-REPORT.pdf> accessed on 15 November 2010

not only maintain a veil of secrecy on the state but also make it more difficult for the poor to transcend these barriers thus crippling the implementation of PAIA in South Africa.⁹⁹ It is now becoming clearer why using PAIA is like ‘getting blood out of a stone’ and more so for ordinary citizens and civil society elements working for social justice.

a) Culture of Secrecy: The legacy of Apartheid

Generally, entrenched cultures of secrecy in the political and bureaucratic hierarchies have slowed down the drive towards openness and transparency in South Africa.¹⁰⁰ As noted earlier, resistance towards disclosure of information, often deeply rooted in environments where secrecy has allowed officials to remain unaccountable, is difficult to overcome.¹⁰¹ This holds true in building demand for information required in combating corruption and the ensuing social injustices. In secrecy, the state is under no obligation and pressure to explain or justify its decisions and actions. This sad reality of both the apartheid and post-apartheid state in South Africa has also been acknowledged in the Preamble of PAIA.¹⁰² This entrenched culture of secrecy results in severe challenges for those without the power to topple these vested interests masked in secrecy using PAIA procedures to demand information that supports change in their livelihoods.

The severity of the challenges posed by the obsession with secrecy were clearly illustrated in the experiences of *Abahlali baseMjondolo*, a grassroots social movement fighting for the realization of the right to housing in South Africa. In this case, with the assistance of ODAC, a community facing eviction from an informal settlement under the Ethikwini Municipality in Durban made PAIA requests for access to information on the municipality’s housing plans.¹⁰³

⁹⁹ Charmaine Rodrigues et al “Implementing Access to Information: A Practical Guide for Operationalising Access to Information Laws” (2008) 2 New Delhi, Commonwealth Human Rights Initiative,

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² See the Preamble of the Promotion of Access to Information Act no 50 of 2000

¹⁰³ See ODAC ‘The Right to Know, the Right to Live: The fight for Open Democracy in South Africa’ ODAC/Green Delta Documentary Film, (2007)

It took a period of not less than six months before the ‘plans’ were released.¹⁰⁴ During the protracted struggle for information between the community and the municipality, the City Manager gave various reasons for denying access to the municipality’s plans. The reasons for refusing to disclose the information epitomized the prevalence of the culture of secrecy in post-apartheid state institutions at all levels of government.¹⁰⁵ In many ways, the City Manager’s values and conduct were clearly inconsistent with the values espoused under PAIA.¹⁰⁶ The experiences of *Abahlali base Mjondolo* illustrate the difficulties often encountered by civil society organisations assisting communities in using PAIA as a tool for advancing social justice. It can be discerned that resistance to transparency was not only found in institutions themselves but also the underlying beliefs, values, norms and cultures of the people working in these institutions who are reluctant to embrace a culture of openness, transparency and accountability.

Clearly, the institutional legacy of apartheid and its damaging socio-political and psychological impact among other effects of impoverishment and disempowerment have also become devastating challenges facing information requesters in South Africa.¹⁰⁷ The institutional legacy of the past serves still to undermine the capacity and agency of the marginalised citizens to use the law to engage in systematic and collective demand for access to information required to facilitate the improvement of their livelihoods. The following section, therefore, aims at digging into some of the deep-seated systemic and socio political challenges that explain the collective denial of access to information of the poor and the salient hurdles that needs to be overcome to ensure easy access to information required for the benefit of the poor.

¹⁰⁴ Supra

¹⁰⁵ See ‘The Right to Know, The Right to Live’ op cit note 103. Mr Sutcliffe justified secrecy by arguing that giving access to information would be dangerous and likely to create unnecessary service delivery expectations from citizens. He also explained that giving information to the citizens makes it difficult for the municipality to govern.

¹⁰⁶ The Preamble of the Promotion of Access to Information Act which seeks to foster a culture of transparency and accountability in all public and private bodies by giving effect to the right to access to information.

¹⁰⁷ Dick op cit note 40 at 221

3.3.2 'Demand-side' challenges of the ATI equation

Fundamentally, the deep rooted socio-political and systemic obstacles inhibiting the usage of PAIA on the “demand side” of the implementation equation falls under the scope of this study because of the limited uptake of PAIA by agents of social change in South Africa. If inadequate attention continues to be paid to these ‘demand-side’ challenges and without effective strategies for bolstering citizen demand for information , then ATI law in South Africa is likely to ‘wither on the vine’ beyond any doubt.¹⁰⁸ In line with the inextricable conceptual link between the right access to information and socio economic rights discussed earlier on in this study, it is posited here that an effective agenda for social justice bellies the struggle for transparency in South Africa.

a) **Systemic alienation and disempowerment of the poor**

It is apparent that citizens and civil society face enormous difficulties in reorienting bureaucratic practices and cultures towards openness.¹⁰⁹ At this point, the question is: Does creating robust institutional arrangements and developing institutional capacity for the implementation of PAIA implementation result in pro-poor processes for the release of information? One of the persistent challenges relates to the general distrust of state institutions and the entire legal system by the impoverished in South Africa. These are still remnant features of the devastating impact of apartheid state institutions and legislative regime which perpetuated the marginalization of the poor from the law and state institutions on racial lines. The nature of state-society relationship that developed during this still serve to undermine the capacity of the majority of impoverished citizens in South Africa to use the legal system and state institutions for their benefit.¹¹⁰

The plight of the poor in South Africa has been rooted in state institutions by which the poor have been actively denied a voice and the government has had little obligation to answer to

¹⁰⁸ See Calland and Neumann supra note 88

¹⁰⁹ Supra note 40 at 212

¹¹⁰ Supra note 92

its citizens.¹¹¹ Therefore, almost invariably, the impoverished South Africans still suffer from a lack of voice, representation and influence in the post-apartheid state resulting in lasting political exclusion which has hardened into resignation and fatalism on the part of the majority of the citizens in relation to state institutions.¹¹² This alienation of the poor from institutional spaces also partly explains why citizens still encounter difficulties in requesting for and getting access to information from the state. In this context, it is not clear how ATI legislation can be used as an effective tool around which demand for information required to bolster the fight for social justice in South Africa develops. No doubt, the systemic alienation that marginalizes citizens in state-society relationship in South Africa poses severe threats to the building of an effective grassroots anti-corruption movement in South Africa.

A common idiom also runs: 'Information is power'. In practice, the realisation of access to information also requires a large degree of power on the part of citizens. The flip side of the idiom attests to the reality that without power, marginalised citizens continue to face difficulties to gain access to state-held information.¹¹³ This is a reflection of the enormous barriers to the usage of ATI law relating to the asymmetrical power relations between citizens and the state. The majority of impoverished citizens find themselves in a trajectory in which they have limited power to use the law, ATI law in this case, which is meant to protect them.¹¹⁴ Consequently, impoverished citizens fail to take greater control of their lives through organising themselves to defend their common interests without external support and efforts to empower them.¹¹⁵ Even with NGO assistance, the state in South Africa has power to deny and defer requests for access to information from citizens and civil society.¹¹⁶ It is in such contexts that there is very little that marginalised and powerless citizens can do to challenge impunity and secrecy in the state. As highlighted earlier, citizens have to grapple with non-compliance, bureaucratic ignorance and hostility in following the procedure and manner of

¹¹¹ Supra

¹¹² Supra

¹¹³ See AL Dick op cit note 40 at 212

¹¹⁴ Supra note 92

¹¹⁵ Ibid

¹¹⁶ See Dick op cit note 40 at 215

access to information set out in terms of Part 2 of PAIA.¹¹⁷ ODAC, for instance, monitored 100 requests by a diverse group of requesters to a range of government institutions. The study showed that information officers ignored 52% of the requests.¹¹⁸ In the same vein, George Dor says:¹¹⁹

Where people have tried to access information they have faced delays and found it to be expensive. Government and business have often found delaying tactics for meeting request for access to information.”

It is only possible to imagine that these challenges seem to be more severe to for marginalised communities who have much less influence and power over these institutions which hold information. Without effective strategies that bolster the collective power of citizens to challenge impunity that perpetuates the active denial of information, it is difficult to see how agents for social change will be able to engage in struggles for information. Without exercising power to demand access to information, no doubt using PAIA will be like ‘getting blood out of a stone’ for citizens and civil society.

b) The politics of ATI in South Africa: How popular politics prevents grassroots demand for information

The usage of ATI law is indeed a struggle and has political dimensions.¹²⁰ These salient political complexities surrounding the usage of PAIA culminate into serious obstacles for civil society actors working with poor communities. Illuminating on the inescapable need to be mindful of the politics that pervades the implementation of ATI law, Calland (2009) says:¹²¹

¹¹⁷ Chapter 3 in Part 2 of PAIA stipulates the manner in which requesters of information request for information from information-holders, the procedure starts with the completion of

¹¹⁸ Supra note 40 at 212

¹¹⁹ Supra note 87

¹²⁰ Supra note 40 at 212

¹²¹ Supra note 83

'Political? Why so?' many people might ask. Isn't this just a technical issue? Is it not simply a question of processing a request for a record: get the mechanics right and all will be well? But, to use another cliché, information is power. Hence, getting access involves issues of power relations and the insecurity that accompanies them.

The above assertion is significant here in that it reflects the naivety of ignoring the political context in which the usage of access to information law as a tool for socio economic justice occurs in South Africa. This political context becomes more significant in light of the recent political trends in South Africa indicate signs of a shift away from openness and transparency of the early post-apartheid period towards more secrecy.¹²² Thus far, the little success that has been recorded with the implementation of PAIA has mostly been achieved through pressure and struggle for information waged by progressive forces in civil society.¹²³

The popular electoral support for the ANC, if juxtaposed with compromised mechanisms of internal and external accountability, also creates serious barriers for the usage of ATI law in efforts to deepen social accountability in South Africa.¹²⁴ In many cases, evidence of poor governance publicised by media is often brushed aside by ANC politicians as 'anti-government' or, by extension, 'anti-poor' sentiments.¹²⁵ In this context, for a ruling party buttressed by popular electoral support, compelling evidence of poor governance obtained through the usage of PAIA is insufficient to ensure improved transparency and accountability in the ANC led government. In other words, it will be difficult to sustain the usage of PAIA to extract accountability from this government which enjoys a lot of popular support from the impoverished at grassroots level. This challenge has been explained in the following terms:¹²⁶

...the demand for social accountability is for the majority of citizens, either subordinated to political authority (in the hope that such subservience will be

¹²² Supra note 40 at 218

¹²³ Ibid

¹²⁴ See Derek Luyt 'Seeking Social Accountability in Provincial Government in South Africa' in Claasens M and Lardies C A (eds) 'Social Accountability in Africa: Practitioners experiences and lessons', (2010) 28

¹²⁵ Ibid

¹²⁶ Ibid

rewarded with the desperately needed services) or supplanted by confrontational and often violent community-based service delivery protests.

Clearly, civil society demand for access to information has not been developed into strong foundation of robust popular demand for social accountability but rather more parochially focussed demands to be included in the policy development processes of the state.¹²⁷ It is apparent that this political loyalty of various communities poses severe political challenges not only to the communities themselves but also to civil society organisations assisting communities in using PAIA to promote transparency and social accountability at local level.

Clearly, these challenges also partly explain the limited socio economic rights, and by extension access to information, mobilisation and litigation by poor communities in ANC controlled areas considering that all the three spheres of the government are in most areas ANC controlled.¹²⁸ In this context, ODAC designed a programme (Community Intervention) on assisting communities on using PAIA to request for information and pursuing cases concerning water distribution, housing and zoning.¹²⁹ Importantly, ODAC's Community Intervention programme shows how best PAIA can be used as a tool by poor communities but also the enormous political challenges are likely to be encountered at grassroots level in using PAIA for requesting information.¹³⁰ One can speculate that community members who support or sympathises with ANC at local or national level may be reluctant to join hands with ODAC during community meetings to prepare requests for access to information. These members of the community may not want to be seen as opponents of the government and ruling party during this conflict-ridden process of demanding information from local government. It is clear that the limited uptake of PAIA by the poor and marginalised should be seen as a part of deeper socio-political challenges facing South African communities explained above. These constraints probably also partly explains the difficulties in building a robust and

¹²⁷ Ibid

¹²⁸ Gilbert Marcus and Geoff Budlender 'A Strategic Evaluation of Public Interest Litigation in South Africa' (2008) 113

¹²⁹ See Tilley Alison and Calland Richard (eds) 'The Right to Know: A Handbook on Policy, Law and Practice' (2005) 8

¹³⁰ *ibid*

vigorous social movement around access to information and social accountability in the model of the MKSS in India South Africa.

c) **(In) access to justice and the enforcement of PAIA**

Broadly, research on the functioning of the law and legal systems in developing countries has indicated that legal reforms, even when they aim to benefit the poor, do not always produce expected results as asymmetrical power relations work to their disadvantage.¹³¹ The problem has little to do with the law itself but the inaccessibility of the justice system. For instance, in South Africa, there have been reforms to make ATI law work for the poor particularly such seemingly positive steps as the recent designation of Magistrates Courts giving them jurisdiction to adjudicate PAIA matters.¹³² However, such opportunities for the usage of PAIA through the courts should not blind us to the fundamental and underlying barriers that militate limits the poor from getting access to the legal system in its entirety.

The broader inequities that inhibit the poor from benefiting from the post-apartheid South African justice system have been lamented by Theunis Roux posed the following question about South Africa's Land Claims Court:¹³³

Why has a specialist court that was purposely established to adjudicate claims made under pro-poor legislation come to play a minor role in the adjudication of the claims?

¹³¹ Ineke van de Meene and Benjamin van Rooij "Access to Justice and legal empowerment: Making the poor central in legal development cooperation" (2008) 9

¹³² See Jonathan Klaaren 'Three Waves of Administrative Justice in South Africa' in Hugh Corder (ed) 'Comparing administrative justice across the Commonwealth', (2008) 381, also see Rules of Procedure for Application to Court in Terms of the Promotion of Access to Information Act 2 of 2000, Government Notice No. R. 965, Government Gazette No. 32622 (9 October 2009) ('The Promotion of Access to Information Rules').

¹³³ See Theunis Roux 'Pro-Poor court, anti-poor outcomes: Explaining the performance of South Africa's Land Claims Court' in AJ van Der Walt(ed) 'Theories of economic and social justice' ,(2005) 199 Stellenbosch, Sun Press

Roux's rhetoric above epitomises the widespread systemic challenges facing the poor in seeking redress from the law and other judicial mechanisms in instances where their rights are violated in South Africa. The inaccessibility of the justice system by disadvantaged citizens pose severe challenges to the usage of ATI law in the fight for social justice.

The South African courts have not been accessible to aggrieved PAIA requesters seeking legal redress.¹³⁴ This challenge to the usage of ATI law has been explained in the following terms:¹³⁵

“Access to court is a privilege for most South Africans. The legislation and the way in which it is drafted masks socio- economic issues. The inability of ordinary South African to have easy and quick access means that only blue- chip or well funded civil society organisations are capable of realizing this right. There are therefore huge institutional and practical difficulties for the poor in accessing information.”

Access to justice remains an acute challenge for the poor in South Africa because of the inadequate provision for access to free legal services to the poor.¹³⁶ Despite the existence of a clear agenda for transforming the socio economic fabric of South Africa through progressive measures and legislation, the law remains a scarce resource in South Africa.¹³⁷ For instance, there is a deficit of lawyers who are able and committed to pursue effective pro-poor legal strategies.¹³⁸ This is true for access to information and socio economic rights lawyers who are committed to work with the poor to facilitate social change processes. This is one of the real obstacles explaining the ineffectiveness of ATI law towards the realisation of the agenda for social transformation in South Africa.

Furthermore, there are challenges relating to the limited legal aid and funding for litigation.¹³⁹ There is a system of state legal aid for indigent and disadvantaged persons in criminal and

¹³⁴ Op cit note 132 at 381

¹³⁵ See remarks by Dale McKinley op cit note 87

¹³⁶ See Liebenberg op cit note 6 at 92

¹³⁷ See the reasoning of Cameron JA in the *Nqquza* decision cited in Liebenberg op cit

¹³⁸ Op cit note 133 at 200

¹³⁹ Ibid note 133

civil cases through the Legal Aid Board.¹⁴⁰ The establishment of ‘Justice Centres’, which are modelled as ‘one stop legal aid shops’, has been one step towards alleviating these challenges.¹⁴¹ This system, however, still excludes a large proportion of the impoverished due to the strict financial means test, lack of physical accessibility, particularly in rural areas, and also the excessive bias towards funding and assistance for criminal over civil matters.¹⁴² It is clear that marginalisation of the poor continues in the post-apartheid legal system making it difficult for the poor to benefit from ATI law in the fight against impoverishment.

There is a host of other psychological and motivational barriers to access to justice including fear and distrust of the courts and other state institutions by the marginalised. This is a result of social and cultural distance and the negative experiences of the apartheid past.¹⁴³ This raises severe challenges for civil society organisations offering legal services to the rural poor. These organisations face difficulties in changing the socio-cultural and psychological orientation of the impoverished and ordinary South Africans towards the law.¹⁴⁴ Even though legal services are offered free of charge in these contexts, the poor are still locked in such cultural trajectories and tend to shy away from engaging with modern legal institutions and services.¹⁴⁵ Other practical barriers relates to the costs of litigation, geographical distance, language barriers and lack of information.¹⁴⁶ Moreover, legal texts are rarely translated into local languages which are often spoken and understood by the poor and ordinary citizens.¹⁴⁷

¹⁴⁰ Ibid note 6 at 141

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ Albie Sachs “The judicial enforcement of socio economic rights: The Grootboom Case” in Perris Jones and Kristian Stokke “Democratising development: The politics of socio economic rights in South Africa” (2005) 159

¹⁴⁴ Brendalyn P Ambrose “Democratisation and the Promotion of Human Rights in Africa: Problems and prospects.” (1995) 91

¹⁴⁵ Ibid

¹⁴⁶ Ibid

¹⁴⁷ Helena Grandvoinet “ The rule of law and poverty reduction: Some Issues” in Peter Robson and Asbjorn Kjonstad(eds) “Poverty and the Law” (2001) 160

This makes the use of “official” language a tool for the exclusion of the poor from the benefits of the legal system.¹⁴⁸

In summary, the implication of these factors which makes the justice system inaccessible by the poor is to alienate the poor from the formal legal system and its institutions.¹⁴⁹ This explains the limited usage of a progressive piece of ATI legislation as a tool in the fight against poverty in South Africa. It is also possible to assume that the development of jurisprudence on access to information as a leverage right in South Africa largely hinges on whether adequate mechanisms are in put in place to make the justice system effectively pro-poor or not.

c) Lack of awareness

According to South African History Archive (2002), another challenge to explain the limited usage of ATI law is based on the fact that South Africa has had generations of the majority of its citizens without the right to information.¹⁵⁰ In this context, the enactment of PAIA came as a surprise to many but was also not widely publicized. To support this observation, ODAC observes thus:¹⁵¹

PAIA has not been properly or consistently implemented, not only because of the newness of the Act, but because of low levels of awareness and information of the requirements set out in the Act.

It is naïve to assume that everybody is aware of the existence of PAIA in South Africa. There is a lack of widespread knowledge on the values and objectives of PAIA, the benefits of PAIA to the poor, how to request for information, the appeals procedures and other key provisions in the legislation. This makes it more difficult for people to be aware of the

¹⁴⁸ Ibid

¹⁴⁹ Op cit note 131 at 9

¹⁵⁰ Dale McKinley ‘State of Access to Information’ at http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/southafrica/McKinley%20-%20FOI%20in%20South%20Africa.pdf accessed on 15th November 2010

¹⁵¹ Op cit note 87

existence of such a radical piece of legislation as PAIA.¹⁵² The above observation by ODAC shows that the public education mandate of such institutions as the Human Rights Commission as mandated by section 10 of PAIA has been ineffective, particularly in targeting South Africans in impoverished communities.¹⁵³ This limits the extent to which citizens use ATI law as a tool for extracting accountability from the state.

A strategy of compiling an easy-to-read guide on how to use PAIA is met with two potential limitations: Firstly, not all South Africans are able to read as noted above. Secondly, the guide is only compiled in 'official' languages, thus leading to the exclusion of minorities whose languages are not official. This, in addition to other barriers to the fulfillment of this mandated by the Commission has compelled civil society organisations like ODAC to work on the ground with communities, using local languages, to translate and interpret PAIA provisions and educating the marginalized on how to request for access to information using PAIA. Moreover, ODAC has also been working with the National Community Based Paralegal Association and other community based organisations to raise awareness on PAIA.¹⁵⁴ It is ironic that those are the people who happen to be unaware are the ones who really need to use PAIA to improve their socio economic lives and these are the people who should be targeted in awareness raising strategies and campaigns.

Moreover, the media has given paid inadequate coverage of PAIA in South Africa.¹⁵⁵ There have not been programmes on the electronic and print media to target the ordinary South Africans to ensure that awareness is raised on the existence of PAIA and the procedure set out therein for access to information.¹⁵⁶ It has, therefore, been noted that constant newspaper reporting of issues surrounding the Act will enlighten the citizens about the efficacy of ATI law.¹⁵⁷ This observation, however, ignores the fundamental question on whether the poor

¹⁵² Ibid note 150

¹⁵³ ibid

¹⁵⁴ Ibid

¹⁵⁵ Ibid lange p182 (SAHA case)

¹⁵⁶ Supra note 96 at 181

¹⁵⁷ See Corbah Arko 'The Right of Access to Information: Civil Society and Good Governance in South Africa' available at <http://archive.ifla.org/IV/ifla73/papers/135-Arko-Cobbah-en.pdf>

would afford adequate access to the media because of the income disparities among South Africans. This creates severe structural barriers which culminate in the exclusion of large sections of the South African population in remote areas where access to information and communication technology is limited.

The following example illustrates the point above: If radio and television programmes to educate the public about the usage of PAIA are introduced, the poor and marginalized often have limited access to radio and television to enable them to get the message on how to use PAIA. Furthermore, the mainstream print and electronic media is, arguably, yet to actively pursue a social justice agenda in South Africa. For instance, a review of the news coverage of some of the major media houses will indicate not only that PAIA is not being inadequately publicized but also that most news items tend to pay lip service to the struggles of the poorest in marginalized areas of South Africa. However, there are still ample opportunities for the media to contribute in raising awareness of the existence of PAIA thus contributing to the struggle for transparency, social justice and social accountability in South Africa.

d) Explaining the unequal usage of PAIA in South Africa: Socio economic challenges

Trends in the usage of PAIA indicate that those with adequate financial means including well constituted and well resourced organisations have invoked PAIA to protect their private interests. These trends points to the formidable barriers located in the socio economic status inequalities reproduced across generations, leading to severe incapacity and, subsequently, paternalistic treatment of the poor.¹⁵⁸ This poses constraints on the ability of the poor to be able to gain access to the benefits within the legal system. The rich tend to have unequal access to legal remedies and institutions compared to the poor. For example, if one looks at the socio economic profile of access to information litigants in the courts, it emerges that the rich had higher social and economic status. On the contrary, more than ten years after the promulgation of PAIA, we are yet to see PAIA litigation for the poor and marginalised black South Africans in townships.

Accessed on 15 December 2010

¹⁵⁸ Larry Diamond and Leonardo Morlino (eds) “Assessing the quality of democracy” 2005 xxv11 Maryland, John Hopkins University Press

i. Illiteracy

Darch and Underwood identified the low levels of what they termed the ‘information literacy’ of the potential ordinary users of access to information law in South Africa as a barrier.¹⁵⁹ In this vein, it has also been observed that:¹⁶⁰

...not much emphasis is placed on citizenship education and allied teachings in democratic governance, including the promulgation of PAIA. Although public servants and information officers are being trained on the Act, the bulk of the population remains unskilled in carrying out this exercise.

Relating to the above, the manner in which records are made accessible may not be intelligible to these disadvantaged citizens. This challenge was clearly illustrated in the experiences of ODAC and Abahlali baseMjondolo in their request for access to housing plans from the Ethikwini Council in Durban.¹⁶¹ The members of this community were unable to complete and submit the prescribed PAIA forms in order to request for the records without external assistance.¹⁶² ODAC assisted Abahlali, a grassroots shack-dwellers movement for housing in requesting for the aforesaid records from the municipality. In response, the municipality released, through fax, hundreds of pages of the ‘plan’ which was written in administrative and policy jargon. This ‘plan’ was no intelligible to the leaders of the movement, let alone ordinary members of the movement who were involved in the process of requesting. Eventually, ODAC had to rely on policy and technical experts to interpret the ‘plan’ only to realise that the ‘plan’ provided by the municipality was not only

¹⁵⁹ See Darch, C. and Underwood, P. G. 2005. Freedom of information legislation, State Compliance and the Discourse of Knowledge: The South African Experience. *The International Information & Library Review* Vol. 37 at 77-66.

¹⁶⁰ *ibid*

¹⁶¹ *Supra* note 103

¹⁶² See Section of PAIA which provides for the Prescribed Forms which need to be completed and submitted to the relevant departments to initiate the process of requesting for information.

incomprehensible but also incoherent.¹⁶³ It is seen that literacy is important in ensuring the effective usage of PAIA in the struggle for the realisation of socio economic rights.

Also, generally, in contemporary legal systems, as opposed to traditional legal systems, the law is written. This makes the accessibility of the ATI legislation intrinsically difficult for the poor to understand, who often lack formal education.¹⁶⁴ For instance, ODAC documented experiences of illiterate women who were given a run-around and harassed by officials with a lot of questions on why she required the information.¹⁶⁵ Clearly, illiteracy is a significant barrier that prohibits the impoverished illiterate South Africans from using PAIA as a tool for improving and gaining control of their lives. And without expert advice, assistance and legal representation, the poor face severe disadvantages in the process of requesting for access to government records and the subsequent procedural requirements for access to be granted.

ii. Economic constraints

The direct costs of access to information serves as a potential barrier encountered by the poor individuals in pursuing PAIA requests for access to information. For instance, charges for access to information, according to section 22(1) of PAIA, can be inhibitive to disadvantaged citizens without viable income sources.¹⁶⁶ These charges associated with access to information include access fees, search and preparation fees, and copying fees.¹⁶⁷ Clearly, the release of information by the state comes at a great price that the most disadvantaged ordinary citizens cannot afford.

The severity of financial barriers becomes more pronounced in the context of PAIA litigation. Poor litigants may end up being deterred from taking legal action against their opponents in cases of failure to gain access to required information.¹⁶⁸ One can also imagine the difficulties faced by South Africans in rural and remote parts of the country who have to incur travel expenses visiting offices, and other costs that arise in the process of requesting for access to

¹⁶³ Supra note 103

¹⁶⁴ Supra note 96

¹⁶⁵ Dick op cit note 40 at 218

¹⁶⁶ Ibid

¹⁶⁷ Ibid

¹⁶⁸ Ibid

information. These barriers have prompted civil society organisations ODAC to work with ordinary South Africans to ensure that they use PAIA as a tool for improving the lives of the poor in this context.

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PART 4

4.1 The right to information campaign in Rajasthan

The right to information is a part of an international campaign for transparency, accountability and participation demanded by citizens from governments especially in decision making and public affairs.¹⁶⁹ In this campaign, social justice advocates, citizens and their groups, trade unions and NGOs have all asserted the right of citizens and communities' right to information which they need for the betterment of their daily lives and long term livelihood goals.¹⁷⁰ This brief section aims at reviewing the experiences of the MKSS, a movement that built an effective grassroots campaign for transparency in Rajasthan, India.

The importance of this case study is not only that it shows the effective approaches and strategies of making ATI law work for the poor but also illustrates how the campaign for access to information is located in broader struggles for better governance and social justice in developing countries including South Africa. The principal argument in this chapter is that without social action and agency by the poor themselves, ATI law in Rajasthan would not have been useful tool for citizens to expand space for engagement with the state in governance and policy processes. In other words, the effectiveness of the MKSS was centred on the movement's innovative empowerment and grassroots mobilization strategies to bolster the agency of impoverished citizens. This culminated in effective bottom-up demand for information as a basis for engagement between citizens and the state in Rajasthan.

4.2 The failure of state-initiated anti-corruption initiatives in Rajasthan

Broadly, the Indian state provided space for corruption to take root while also providing space for the progressive for the institutionalisation of mechanisms to combat corruption.¹⁷¹ The Indian state instituted various anti-corruption measures ranging from anti-corruption

¹⁶⁹ See Pablo Shiladitya Bose 'Right to Information Movement' in Tim Forsyth(ed) 'Encyclopedia of International Development' (2005) 598

¹⁷⁰ *ibid*

¹⁷¹ See Harsh Mander 'Corruption and the Right to Information' in Tandon R and Mohanty R, 'Does Civil Society Matter: Governance in Contemporary India' (2003) 160

laws to pro-people administrative reforms.¹⁷² For instance, the Indian Penal Code and the Prevention of Corruption Act of 1998 had a number of legal provisions aimed at the control of corruption.¹⁷³ However, these measures have largely been patchy, providing inadequate means of dealing with corruption and the arbitrary use of state power in the various stage governments in India.¹⁷⁴ In many cases, administrative officials and civil servants treated breaches to these laws as breaches to their internal codes of conduct rather than treating them as criminal or human rights matters.¹⁷⁵ Moreover, because of the weak and ambivalent mechanisms for the detection, investigation and pursuit of corruption in the public domain including the courts, only a few cases came to public attention.¹⁷⁶

In addition to the weak institutional mechanisms for combating corruption, the ordinary and impoverished citizens were largely unaware of such measures.¹⁷⁷ In some cases, fear of political reprisals hindered citizens from ensuring corruption-free and realising administrative justice in state governments in India.¹⁷⁸ Citizens had no information on what the state was doing and the central challenges facing impoverished citizens in the fight against corruption was the lack of legislation providing for public access to information both at national and at state level. The fundamental weakness in the government's approaches to transparency adopted by the state is that they did not provide an enabling legislative environment for the active engagement of the citizenry in efforts to combat corruption and promotion of open government.¹⁷⁹ Moreover, the effectiveness of these initiatives was solely dependant on institutional mechanisms and the goodwill of the political and administrative authorities responsible for checking this malaise.¹⁸⁰ The absence of ATI legislation deprived citizens of a potent tool and a legal basis for the active involvement of citizens at grassroots in the battle for transparency, accountability and inclusion in governance. The underlying assumption in

¹⁷² Ibid

¹⁷³ Ibid note 171 at 152

¹⁷⁴ Ibid

¹⁷⁵ Ibid

¹⁷⁶ Ibid

¹⁷⁷ Ibid

¹⁷⁸ ibid

¹⁷⁹ Ibid

¹⁸⁰ ibid

state-initiated anti-corruption approaches was that citizens were powerless in the fight against corruption.

4.3 Grassroots transparency initiatives in Rajasthan

The MKSS, a grassroots movement for social justice based in Rajasthan's centrally located Rajasmand District, developed interest in the right to information in its important work in the late 1980s and early 1990s on livelihood issues.¹⁸¹ There was rampant corruption in Rajasthan which manifested in many ways including the failure of the state government in enforcing minimum wage regulations on drought relief works, failure to ensure the availability of subsidized food and other essential commodities through the Public Distribution System and failure to prevent the illegal occupation of government land by powerful local interests.¹⁸² The MKSS mobilised villagers to demand information so that they know what happens in the management of these and other poverty alleviation programmes. Operating under the slogan *Equality and Justice for All*, the MKSS became one of India's and the world's most effective social justice movements and has been famous for its right-to-information campaign.¹⁸³

The MKSS fought the real battle for transparency in the villages of India to illustrate the argument that access to information has not been an issue too sophisticated to be grasped by the illiterate, poor and marginalised rural masses.¹⁸⁴ The experiences of these grassroots

¹⁸¹ Rob Jenkins and Anne Marie Goetz 'Accounts and Accountability: Theoretical Implications of the right-to-information in India' *Third World Quarterly*, Vol 20 No 3,(1999) available at

<http://www.archonfung.net/docs/pal218/JenkinsGoetz.AccountsAccount.pdf> accessed on 16 November 2010.

¹⁸²Supra

¹⁸³ Vivek Ramkumar 'The Right to Know Movement in India' available at

<http://www.justassociates.org/MKSS%20Case%20study%20Section%20I.pdf> accessed on 15 November 2010

¹⁸⁴ Singh Shekar 'India: Grassroots Transparency Initiatives' in Florini Ann (ed) 'The right to Know: Transparency for an Open World, (2000) 25

initiatives in India also makes it apparent that the right to information is not a concept that was to be refined in debates and seminars in the cities of India but was to be used by impoverished citizens who developed its content.¹⁸⁵ The age-old political, bureaucratic and other vested interests promoting secrecy were to be attacked by the poor in the marginal areas of India. It is interesting to see how the MKSS made the right to information a useful tool in the fight against corruption and poverty in Rajasthan.

In the space of less than a decade, this burgeoning movement for RTI in India significantly expanded democratic space by using ATI law to curb corruption in the management of public resources and the arbitrary exercise of state power.¹⁸⁶ The initiatives of the MKSS not only marked the growth of a new dimension to the empowerment of the poor using ATI as a tool, but also the enlargement of spaces for citizen engagement in relation to structures of the state.¹⁸⁷ The initiatives also led to the rapid institutionalisation of bottom-up social accountability mechanisms. The most important feature that distinguishes the movement for the people's right to information in India from that in most other countries, whether of the North or the South, is that its initiatives were deeply rooted in the struggles for survival and justice of the impoverished.¹⁸⁸ In this vein, the MKSS received a strong impetus from a courageous and powerful grassroots struggle of the rural poor for the right to information, to combat rampant corruption in famine relief and other anti-poverty efforts in Rajasthan.¹⁸⁹

4.4 Transparency and the struggle for social justice

Primarily, the MKSS developed from the recognition that official secrecy was an obstacle to obtaining records necessary to establish the legitimacy of the wageworkers' claims.¹⁹⁰ Under

¹⁸⁵ Ibid

¹⁸⁶ Harsh Mander and Abha Josh' Movement for the Right to Information: People's Power for the Control of Corruption' available at

<http://www.humanrightsinitiative.org/programs/ai/rti/india/articles/The%20Movement%20for%20RTI%20in%20India.pdf> accessed on 20 November 2010

¹⁸⁷ Ibid

¹⁸⁸ Ibid

¹⁸⁹ Ibid

¹⁹⁰ Supra note 183

the slogan '*our money, our accounts*', the MKSS workers and villagers organised themselves to demand that their local administrators provide them with an account of all the expenditures made in relation to development work sanctioned in the area.¹⁹¹ The MKSS used innovative grassroots advocacy strategies based on peaceful social mobilisation to increase pressure to the local administration for the release of copies of requested official records.¹⁹² They organised sit-ins, hunger strikes and demonstrations among other strategies to apply pressure for transparency.¹⁹³ As a result of enormous pressure, and also increased media attention, the administration relented and provided the information requested.

The MKSS's efforts around wages and prices generated widespread belief that access to official documents was an essential part of the struggle for greater social accountability and inclusion in local governance from local authorities.¹⁹⁴ Therefore, the link between access to public records and the exercise of human rights became firmly established in the MKSS work and in that way the right to information provided a rallying call for thousands for different actors fighting for social justice in Rajasthan.

4.5 Approaches to 'social auditing': The *jan sunwais*

There has been limited space for the participation of citizens in the evaluation and auditing of the distribution and use of public resources in Rajasthan. The barriers to citizen involvement in these processes revolve around the excessive secrecy that veiled the management of public affairs in Rajasthan and India at large. The exclusion of citizens in auditing the processes surrounding the distribution and use of public resources was clearly pronounced by Goetz and Jenkins in the following terms:¹⁹⁵

¹⁹¹ Reynolds Margaret 'Open Sesame :Looking for the right to information in the Commonwealth' A report of the International Advisory Commission of the Commonwealth Human Rights Initiative Chaired by Professor Margaret Reynolds, (2003) 67

¹⁹² Ibid

¹⁹³ Ibid

¹⁹⁴ Supra note 181

¹⁹⁵ World Bank, 'State-society Accountability Initiatives: Lessons for the World Bank' available at

There is almost nowhere on earth that citizens and their associations have either been given access to information on, let alone a more substantive role in, formal auditing processes... Citizen auditing strikes at the heart of practices that preserve the powers of bureaucrats and politicians: the secrecy in public accounts that can mask the use of public funds for personal advantage.

In the context of development and relief public work around which the MKSS was deeply involved for so many years, the struggle for the right to information translated itself into a demand for copies of all documents and records related to public works projects such that a people's audit would be conducted.¹⁹⁶ Using the obtained information, the MKSS organised 'social audits' through public hearings to audit the local administration's books to detect corruption and also asking difficult questions to local officials in light of the discrepancies that often arose out of the information on the management of public resources in the implementation development projects.

The MKSS introduced a new methodology in fighting corruption, the *jan sunwais* or public hearings.¹⁹⁷ The first *jan sunswai* was held in Kotkirana *panchayat* in Pali District, Rajasthan in December 1994 after a poor middle aged man approached the MKSS about underpayment of wages.¹⁹⁸ The underlying assumption guiding the public hearings was that citizens have a fundamental human right to information on acts and decisions of state government.¹⁹⁹ It was also assumed that public officials are motivated to be accountable if concrete evidence is available on their complicity in the misappropriation of public funds earmarked for development projects.²⁰⁰

http://www.worldbank.org.kh/pecsa/resources/state_civil_society_synergies_exp_from_latin_america.pdf accessed on 20 November 2010

¹⁹⁶ See Mander and Josh op cit note 186

¹⁹⁷ Ibid

¹⁹⁸ Corbridge Stuart et al 'Seeing the State: Government and Governmentability in India' (2005) 222

¹⁹⁹ Supra note 186

²⁰⁰ Supra note 195

At each *jan sunwai*, there was a description of the project under review, its budget, timelines, beneficiaries, outputs, implementation methods etc as well as records of employees in the projects, how long they had been employed and how much they had been paid.²⁰¹ Armed with information, villagers would then stand up and pointed out discrepancies- dead people were listed, recorded wages were usually higher than the reality, absent workers were marked present and their pay as given, and thump impressions that proved receipt of payment were found to have been forged.²⁰² In some cases public works projects such as roads constructions were reported in government books as completed yet in reality they were not.²⁰³ It is beyond doubt that information provided a potent tool in the process of conducting effective public hearings. It has been established in these public meetings that a large number of persons, some long dead or migrated or non-existent, were listed as workers and shown to be paid wages which were siphoned away, that as many bags of cement were said to have used in the 'repair' of a primary school building as would be adequate for a new building, and innumerable other such stunning facts of the duplicity and fraud of the local officials and elected representatives.²⁰⁴

4.5.1 Strengths and challenges of the public hearings

However, the *jan sunwais* was not without its fair share of difficulties. Firstly, many villagers were illiterate and through face-to-face public hearings they could scrutinise complex and detailed accounts, question their representatives, and make them answerable on the basis of hard evidence.²⁰⁵ In that case, there was conversation and exchange between the officials and the people of Kotkirana and the villagers become a jury under the conditions of court proceedings.²⁰⁶ The pressure was persistent to the extent that officials admitted corruption, pleaded guilty in public, returned the stolen money and on one instance, an arrest was made.²⁰⁷ Public pressure grew as the local and international media reported on the campaign

²⁰¹ See Reynolds op cit note 191 at 67

²⁰² Ibid

²⁰³ Ibid

²⁰⁴ Supra note 186

²⁰⁵ Ibid note 201 above

²⁰⁶ Ibid note 198 above

²⁰⁷ Ibid note 201 above

to the extent that the *jan sunwais* reached the state capital as a popular demand for access to information legislation

However, officials reacted badly in determination to undermine the campaign for transparency.²⁰⁸ In some instances local administration officials and local politicians resorted to class, clan and caste loyalties and sometimes resorted to threats, intimidation and sometimes, violence.²⁰⁹ While in some cases, the MKSS relied on their links with cooperative officials committed to transparency in the local administration to gain access relevant documents, sometimes copies had to be copied out by hand under the gaze of disgruntled office staff.²¹⁰ Facing fierce opposition from local politicians and goons, the MKSS pressed ahead with *jan sunswai* which had enormous attendance.²¹¹ It is discernable that the practice of *jan sunwais* was riddled with enormous challenges. Secrecy was the chief obstacle to the conduct of these transparent social auditing processes.

4.5.2 The significance of *Jan Sunwais*

The immediate significance of the *jan sunwais* approaches to social accountability was that it provided an opportunity for the impoverished citizens to use information obtained from state authorities to audit and evaluate the conduct of public officials in relation to citizens' suspicions, fears and doubts. Almost invariably, in the absence of access to hard facts and evidence, citizens and advocates of transparency were unable to take any preventive or remedial action.²¹²

Another positive impact of these public hearings is that it was an innovation in the promotion of good local governance. It also illustrated how transparency works for the empowerment of the poor and ensuring that they have a 'voice' in the struggle for social justice. Ordinary people spoke out fearlessly and gave convincing evidence against corruption, and public

²⁰⁸ Ibid

²⁰⁹ Ibid

²¹⁰ Ibid note 198 above

²¹¹ Ibid

²¹² Supra note 186

officials were invited to defend themselves.²¹³ Clearly, as disadvantaged citizens asked sharp questions they felt empowered in subjecting the government to intense pressure to reveal more and more information on the planning and implementation of development works to the villagers in Rajasthan.

4.6 Campaigning for the RTI in Rajasthan

What started as a quest for explanations on distortions in public works programmes wages in Rajasthan resulted in the enactment of state level Right to Information Act. Without legal basis for the empowerment of the people to control and fight corruption directly through a law on access to information in Rajasthan, the potency of the public hearings in particular would be negligible. For this reason, the MKSS put pressure for a cast-iron right to information law.²¹⁴ Concretely, this meant that the citizen would have a legal right to obtain documents such as bills, vouchers and muster rolls, connected with expenditures on all local development works.²¹⁵ As a result of mounting pressure at *jan sunwais* and other advocacy strategies, the government reacted by issuing administrative orders to implement the right to access to copies of local records.²¹⁶ The opposition political party promised in its manifesto that it would create a state level access to information law that guarantees the right to information.²¹⁷

However, once in power, the government delayed the enactment of the legislation.²¹⁸ Rather, a committee of bureaucrats was appointed to draft the legislation and this was met with criticism on the lack of citizen involvement.²¹⁹ The government then invited assistance from the MKSS and the National Campaign for People's Right to Information. They held series of public consultations which culminated into the Act.²²⁰ Clearly, beyond any doubt, popularity

²¹³ Supra

²¹⁴ Supra

²¹⁵ Supra

²¹⁶ Ibid note 201

²¹⁷ Ibid

²¹⁸ Ibid

²¹⁹ Ibid

²²⁰ Ibid note 201

and publicity surrounding the innovative *jan sunwais* provided the MKSS with an opportunity for developing a broad-based campaign for the right to information which ultimately resulted in the enactment of an access to information law in Rajasthan.

The reverberations of the MKSS's struggle for transparency and social accountability in Rajasthan culminated into widespread demand for ATI law to guarantee the right to information for every citizen. The demand for ATI legislation in Rajasthan was couched in bottom-up approaches to the empowerment of the poor, based on innovative grassroots mobilization and social organization by the MKSS in the struggle for transparency in the management of public affairs at local level. These grassroots RTI campaign strategies were supported by sustained advocacy efforts and widespread pressure from social activists, professionals, lawyers, and persons within the bureaucracy, politics and the media, who were committed to transparent and accountable governance in India.²²¹ The main point to note here is that, if it was not for the vibrant initiatives of the MKSS to empower and organize the poor to demand greater transparency and accountability through ATI law from the state government in Rajasthan, it is difficult to imagine whether legislative measures to provide for the right to information in India would have been instituted.

4.7 Explaining the obstacles to the realisation of the RTI in Rajasthan

At national level, the right to information was implicitly provided for in the Constitution of India but even so the dominant culture of the executive has been one of secrecy and resolute denial of access of information to the citizen.²²² While there is no specific right to information or even right to freedom of the press in the Constitution of India, the right to information has been read into the Constitutional guarantees which are a part of the Chapter on Fundamental Rights.²²³ Before the promulgation of legislation providing for ATI in

²²¹ Mander and Josh op cit note 186

²²² Supra

²²³ See Dr E Venkatesu 'The Right to Information Movement in India' Centre for Panchayati Raj available at <http://www.rti.gateway.org.in/Documents/Articles/RTIMovementinIndia-DrEVenkatesuNIRD.pdf> accessed on 20th November 2010

Rajasthan, public officials were used to excessive secrecy and never being questioned, dug in the villagers' heels and refused to provide information requested.²²⁴

Therefore, as shown in the experiences of the MKSS, this made the campaign for the adoption and enactment of right to information legislation a hard-fought political battle.²²⁵ Moreover, after its enactment, the implementation of the ATI legislation in Rajasthan was far more of a struggle for the expansion of democratic space for the government to be accountable and listen to its citizens.²²⁶ There were enormous difficulties in making progressive change towards transparency and imposing this change often led to resistance, normally in direct proportion to the magnitude of the change.²²⁷ In this context, inasmuch as the full realisation of the right to information in Rajasthan represented a radical change, significant resistance could not be avoided for the poor and marginalized to fully realize transparency and accountability using access to information law.²²⁸ Clearly, there were serious political and institutional barriers to the realisation of the right to information in Rajasthan.

4.7.1 Explaining the systemic denial of access to information

There is no doubt that the right to information has historically been difficult to achieve in Rajasthan.²²⁹ Those in power have often been reluctant to reveal their secrets and invoked administrative justifications to shield their actions.²³⁰ In many cases, security concerns and the national interest provide some of the common reasons that are often given for denying access to information to citizens. This obsession with the 'culture of secrecy' is also mirrored

²²⁴ Ibid note 201

²²⁵ Toby Mendel' Implementation of the Right to Information: Lessons for India from Canada, Mexico and South Africa' available at

<http://rti.img.kerala.gov.in/RTI/elearn/StudybyTobyMendel.pdf> accessed on 15 November 2010

²²⁶ Supra

²²⁷ Supra

²²⁸ Supra

²²⁹ See Pablo Shilatidya in Tim Forsyth (ed) Op cit note 169 at 598

²³⁰ Ibid

by a complex net of reasons for official failures to implement right to information legislation properly.²³¹ These range from sophisticated strategies leading to systemic denial of access to sensitive information – whether for larger political reasons or because it exposes wrongdoing – to hostility to openness, to indifference, to a lack of capacity, whether human, financial or administrative.²³² It has, therefore, been widely accepted in India that bureaucrats pose a significant obstacle to transparency and accountability.²³³ Their obsession with this ‘culture of secrecy, points to some of the severe difficulties encountered in efforts to change pre-existing official and institutional cultures in the Indian bureaucracy by law.²³⁴ In many cases, the impunity in the Rajasthan bureaucracy noted above is augmented by the fact that the right to information serves to alter the power balance away from officials and in favour of citizens.²³⁵ Clearly, ensuring citizen access to information in Rajasthan significantly undercut the ability of politicians and public officials to use spin to set the agenda, to control the timing and form of public communications, and to address problems internally, away from the glare of publicity.²³⁶

These challenges prompted the MKSS in Rajasthan to work towards the empowerment of citizens to demand an enforceable right to question, examine, audit, review and assess government acts and decisions and to ensure their consistency with the principles of public interest, probity and social justice.²³⁷ In this process, the MKSS demonstrated the significance of citizen empowerment and social agency of the marginalised citizens in the process of making the Right to Information legislation and the implementation thereof.

Lessons for South Africa

²³¹ Supra note 226

²³² Supra

²³³ Supra

²³⁴ Supra

²³⁵ Supra

²³⁶ Supra

²³⁷ Mander and Josh op cit note 186

The institutionalisation of the right to information in Rajasthan gave citizens a legal basis for fighting corruption yet providing an inadequate mechanism to check corruption.²³⁸ Rather, only through the proactive exercise of this right by the people can corruption be checked.²³⁹ Therefore, the MKSS and other organisations set about organising people to use this important entitlement to access to state-held copies of documents.²⁴⁰ However, they continued to face in a majority of cases an obstinate bureaucracy and recalcitrant local government representatives who still refused to supply copies of documents.²⁴¹ In this context, the MKSS, working with poor citizens and other civil society groups, have continuously defined and redefined the nature of the right to access to information through matching their resolve and actions with the inherent hesitation of the established systems of governance and influence to open up to public scrutiny.²⁴²

As pointed out earlier, the state-centred anti-corruption mechanisms and initiatives in India were spontaneous, ineffective and unsupported and sustained citizen action to fight the scourge at grassroots levels. In this context, it is not difficult to see why the MKSS, despite its local character, has had state-wide reverberations that shook the very foundations of the traditional monopoly, arbitrariness and corruption of the state bureaucracy resulting in perpetual deprivation of the poor.²⁴³ Without popularizing the right to information, it is difficult to imagine how the villagers in Rajasthan would have bolstered their struggle against corruption and social injustice.

It is also discernable that the right to information campaign in Rajasthan was indeed, broadly, a struggle for the expansion of political space.²⁴⁴ The citizens put pressure on the democratic system of the country to demand better governance and no longer were citizens in Rajasthan relying on elections to hold officials accountable.²⁴⁵ To put it in other words, the right to

²³⁸ Ibid

²³⁹ Ibid

²⁴⁰ Ibid

²⁴¹ Ibid

²⁴² See Shekar Singh in Ann Florini op cit note 184 at 19

²⁴³ Supra note 186

²⁴⁴ Ibid note 184 above

²⁴⁵ Ibid

information campaign had a significant impact on the nature of governance and the interface between the government and the people as illustrated in the *jan sunwais* processes.²⁴⁶ This was derived from the MKSS's success in building a broad cross-section of movements, and empowered citizens, to realise the right to information and the usage thereof in claiming space for citizen participation in public auditing processes. Consequently, the MKSS has profoundly influenced the national agenda and contemporary debates on governance and accountability in Rajasthan, India and globally.²⁴⁷ In this respect, the right to information campaign illustrates how access to information provided leverage for poor and marginalized citizens to claim more space for participation and voice in broader policy and governance processes.

Arguably, another implication of the MKSS's political evolution strengthens the impression that demanding access to documents and records from the state is indeed a messy and political process.²⁴⁸ It is clearly seen that the realisation and usage of RTI law by the poor in Rajasthan encompassed broader socio political strategies and processes. The right to information movement in Rajasthan has used these socio political strategies to empower the marginalised villagers and bolster their demand for information required in bigger battles for accountability and inclusive governance. Clearly that the robust socio political and citizen action by villagers was instrumental in the effective usage of ATI in dismantling secrecy and corruption which compromised social accountability and good governance in Rajasthan.

The MKSS innovatively responded to problems of systemic denial to access to information through strategies including complaints to authorities, from local levels to the state government, highlighting the illegal withholding of information in the press, and organising and mobilising people to mount peaceful democratic agitation and pressure on the authorities.²⁴⁹ In a similar vein, the MKSS also put up a conscious effort to integrate the diverse civil society elements into a strong, creative and diverse campaign for transparency in

²⁴⁶ Ibid

²⁴⁷ Amitabh Behar and Aseem Prakash ' Expanding and contracting democratic space' in Muthia Alagappa (ed) civil society and political change in India: Expanding and contracting democratic space ,(2004) 210

²⁴⁸ See Jenkins and Goetz op cit note 181

²⁴⁹ Supra note 186

Rajasthan and beyond.²⁵⁰ As a result, the use of innovative socio political strategies by the MKSS in building effective demand for information and transparency has become an integral part of the Indian and global socio political and citizen empowerment discourse.

One can see how the right to information is an indispensable tool for impoverished citizens in the fight against corruption and the promotion of social accountability at grassroots level. It is also important to observe from the experiences of the MKSS in Rajasthan that civil society is indispensable in the facilitating the usage of ATI law to activate and fighting for space for citizens to participate in governance at all levels.²⁵¹ Without using socio political and citizen empowerment strategies to bolster the demand for the right to information, the marginalised villagers in Rajasthan would not have had the power to dismantle the culture of secrecy. In other words, these approaches and strategies ensured that the poor claimed space for inclusion in the management of public affairs through *jan sunwais*. In this vein, it is submitted that the experiences of the MKSS proves that an active, vigilant and assertive citizenry is not only the most reliable and assertive barrier to corruption but also ensures that ATI law works for the inclusion of the poor in governance and the management of public affairs.²⁵² As demonstrated earlier, the impact of *jan sunwais* has been to break the passivity of disadvantaged and marginalised citizens accustomed to being powerless victims of corruption by enabling them to develop their 'voice' in confronting social injustices in Rajasthan.

²⁵⁰ Ibid note 184 above

²⁵¹ Supra note 186

²⁵² Supra note 186

PART 5

Conclusions and Recommendations: Making PAIA work for the poor

Transparency is important in the processes of social change and the broadening of democratic space for the inclusion of the marginalised in governance at all levels of society. The usage of access to information as a tool in broader struggles for social justice and better governance is often met with pervasive socio-political and systemic challenges at all levels. In this context, it is argued that while information empowers the poor and acts as a lever in citizen-state engagement processes, empowerment of the poor also provides the key to bolstering demand for access to this crucial information. In short, the main argument in this chapter is that while the idiom goes that ‘Information is power’, it is also important to invert that idiom and realise that ‘power is information’. If ‘power is information’, then approaches that buttress the effective usage of ATI law as a tool for socio economic justice are those that aim at the empowerment of the poor. This not only ensures that the power of the marginalised citizens is bolstered to effectively demand information from the state but also to use that information to expand spaces for participation and have a ‘voice’ in the process of social change. This is clearly illustrated in the work of the MKSS. Therefore, in this chapter I will provide a sketch of some of the socio political approaches and strategies that can be used to facilitate the effective usage of ATI law for the benefit of the poor in South Africa.

5.1 The nature of ATI strategies and the imperatives of empowerment of the poor

The right to ATI has been viewed as an empowerment right in the sense that it bolsters the capacity of the disempowered to realise other rights.²⁵³ However, gaining access to information and realising the right to information is also a struggle between those with information (the state) and those without but who desperately require it (the citizens). Therefore, the usage of ATI legislation in South Africa as a tool for social justice cannot be effective without the assistance of civil society working with the poor to bolster their power to demand and use that information. We have seen in preceding chapters how those who wield power deny the impoverished citizens access to information they require for the

²⁵³ Supra note 41

betterment of their lives. We have also seen how the state wields power to defy, ignore and sometimes disregard PAIA requests for information submitted in terms of section 53-60 of PAIA.²⁵⁴ As noted earlier, the enormous systemic and socio political barriers to the usage of ATI law by the poor results in the disempowerment and exclusion of the poor from the benefits of ATI law and the entire legal system in South Africa. Furthermore, the result is the failure of the poor to use their collective power and social agency to sustain effective demand for information from political and administrative authorities at all levels of the state. In this context, effective strategies for facilitating and promoting the usage of PAIA are those that empower this section of the citizenry to use the law to demand information from the state.

In its broadest sense, empowerment entails the expansion of freedom of choice and action.²⁵⁵ As noted earlier, the poor and marginalised in South Africa are in many circumstances deprived of their self worth, dignity and capacity to use the law to their own benefit.²⁵⁶ The question is: what strategies can be used to empower the poor for them to use ATI law in their struggles for the realisation of socio economic rights? Specifically, what legal services and other related activities can be used by civil society organisations using PAIA as a tool for socio economic justice in South Africa? In this context, an approach to empowerment that involves the use of an array of diverse legal services for the poor to advance their social agency as citizens provides a solid framework.²⁵⁷ These strategies ensure that the impoverished and marginalised consolidate their power to be able to not only demand information from the state but to use it in their engagement with the state on service delivery and governance issues.

An approach that is geared towards empowering the poor to be able to benefit from the law including PAIA and socio economic rights in the constitution should involve an emphasis on

²⁵⁴ Section 53 through to 60 of the PAIA prescribes the procedure for submitting requests for access to information and the manner of access.

²⁵⁵ See Golup Stephen 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative' Volume 41(2003) Rule of Law Series, Carnegie Endowment for International Peace at 25

²⁵⁶ Supra note 92

²⁵⁷ Ibid note 255 above

strengthening the roles, capacities and power of the disadvantaged and civil society.²⁵⁸ Also, the identification of issues and strategies for engagement with the state flows from the evolving needs and preferences of the poor rather than specialists and NGOs coming with predetermined programmes for the poor.²⁵⁹ This is true and pertinent for civil society organisations assisting impoverished communities with ATI requests for information on the delivery of socio economic services from the state. Although they need specialist advice from ATI lawyers, communities reserve vast knowledge of what their needs are and the nature of information they require to meet those needs. More pertinently, members of the community often have a deeper understanding of the underlying socio political dynamics that often poses challenges to community-based ATI practitioners.

For example, this approach was mirrored in ODAC's work with the poor communities in Ntambanana (rural Kwazulu Natal) and Abahlali base Mjondolo in Durban.²⁶⁰ In its work with Abahlali, ODAC sat down with members of the community to identify their pressing socio economic needs. ATI specialists from ODAC learnt from the community about the nature and scope of the housing problem and identified the required information. The PAIA request was drafted and submitted with the involvement of the community. In pushing for the release of the information, Abahlali base Mjondolo used social mobilisation tactics, demonstrations and protests, akin to those organised by the MKSS, on the municipality's door steps before the copies of the housing plans were finally released.

5.2 The role of civil society

In South Africa, ATI law has little benefit for the poor unless it is supported by civil society.²⁶¹ Civil society in South Africa has been involved in demand for ATI legislation, drafting and passing thereof.²⁶² For many reasons, it is robust civil society organisations which holds the key in ensuring that ATI law works as leverage for the realisation of socio

²⁵⁸ Ibid

²⁵⁹ Ibid

²⁶⁰ Supra note 103

²⁶¹ Illiff in Tilley Alison and Calland Richard (eds) 'The Right to Know: A Handbook on Policy, Law and Practice' (2005) 32

²⁶² Ibid

economic rights in Civil society interventions such as creative legal services to assist the poor are generally carried out by NGOs, often in partnership with CBOs, or occasionally by law centres and advice centres that effectively function as NGOs.²⁶³ Therefore, the effectiveness of PAIA is driven by NGOs, trade unions and other progressive groups working with and on behalf of socially and economically marginalized groups in South Africa.²⁶⁴

Specifically, generating a large number of PAIA information requests requires the participation of a broad range of cross-sector civil society groups which have the capacity to pursue legal redress in cases where PAIA is not appropriately applied to the benefit of the poor.²⁶⁵ Moreover, civil society groups can pursue legal redress for denial of access to information, if necessary through legal action.²⁶⁶ Clearly, civil society

Although some motivated state institutions, structures and agents have worked towards ensuring the effective usage of ATI legislation in South Africa, civil society groups demonstrate more dedication, flexibility and creativity in facilitating the usage of PAIA in South Africa.²⁶⁷ This will be illustrated by the experiences of ODAC in its community interventions in poor communities in KwaZulu Natal and other marginalised areas of South Africa.

5.2.1 ODAC's Community Intervention Programme

There are many civil society organisations facilitating the usage PAIA in South Africa. The ODAC is one such organisation that has developed strategies to the use of access to information as a tool for the realisation of socio economic rights.²⁶⁸ During the earlier years of PAIA enactment, ODAC designed an intervention to train paralegals and NGOs on how to

²⁶³ Supra note 255 at 28

²⁶⁴ See Illiff op cit note 261 at 1

²⁶⁵ Supra at 30

²⁶⁶ Ibid

²⁶⁷ Ibid note 263

²⁶⁸ ODAC Report 'Evaluation of ODAC's right to know right to live outreach strategy 2001 to 2005' (2006) at 1

use PAIA.²⁶⁹ The anticipation was an increase in the uptake and usage of this ATI legislation by disadvantaged and poor communities in identifying problems and making PAIA requests for information.²⁷⁰ This strategy proved ineffective and by 2003 ODAC revised its strategies and tactics.²⁷¹ Instead of crafting interventions that saw ODAC providing information and training to NGOs, the organisation started to have more presence in the communities and interact directly with the poor themselves.²⁷² This approach was explained plainly in ODAC's 2006 report as follows:

As opposed to teaching people in a formalistic way about the ATI law, they would spend more time on facilitating a community-based meeting at which local people would identify the issues they want to take action around, clarify how the access to information can take them closer to their development goals; and, having done that, ODAC sends off requests for information on behalf of the community.

This new approach deeply resonated with the MKSS's *jan sunwais* alluded to in preceding discussions in this study. This strategy of getting to the ground to assist poor communities in using PAIA led to immediate success in getting information from the state.²⁷³ Moreover, many of the access to information requests pertained to issues of state social accountability on the delivery of socio economic services and the use and management of public resources at local government level among other socio economic rights-related issues.²⁷⁴ Clearly, ODAC's approaches to the usage of PAIA as a tool for the realisation of socio economic rights shifted into being more focussed on the grassroots and embraced elements of social activism akin to the tactics of the MKSS in Rajasthan.²⁷⁵

²⁶⁹Supra at 2

²⁷⁰ Ibid

²⁷¹ Ibid

²⁷² Ibid

²⁷³ Supra note 103

²⁷⁴ See ODAC's 'Community Intervention Programme' available at

<http://www.opendemocracy.org.za/access-to-information/community-intervention/>

accessed on 10 January 2011.

²⁷⁵ ODAC op cit note 103

It is also important to highlight that ODAC's strategy has been underpinned by the notion of empowerment and active participation of the poor in the processes of demanding for access to information from local governments and other state entities. This comes out clearly in ODAC's 2006 report which explains that:²⁷⁶

While...other measures remain important, the real test is going to be the extent to which South Africa has an active and empowered citizenry with capacity to access rights, act responsibly, and ensure that resources are distributed equitably to all South Africa citizens.

The above statement provides a true reflection of the argument that without strategies aimed at empowering the poor to be able to use ATI law to demand information from the state, PAIA will not be used as a potent tool for socio economic justice in South Africa.

ODAC's community intervention strategy has, however, had its fair share of challenges in empowering communities to use PAIA. Firstly, the usage of PAIA creates huge expectations on service delivery on the part of the community. Communities in desperate circumstances are often under the false impression that the request for information is indeed a promise of service delivery. ODAC's field workers are therefore subject to intense pressure to explain to the community that they will only get information after submitting PAIA request to the government not the needed services. Moreover, communities are often heterogeneous entities which are often divided by political, ethnic, linguistic, gender, age among other factors. Therefore, ODAC field workers face challenges in instilling a sense of community among the community members to ensure that they work together in using PAIA requests to push for social accountability from the state. Clearly, field workers encounter enormous challenges in the process of assisting communities in drafting and submitting PAIA requests for information on the delivery of public services.

In this regard, the effectiveness of these interventions will not only be determined by merely looking at the number of requests submitted but also the extent to which the requested information is used to address the deprivations perpetuated by secrecy. Therefore, civil society organisations such as ODAC assisting communities in using PAIA need to go beyond

²⁷⁶ Supra note 268 at 46

merely drafting and submitting PAIA requests but should be able to guide communities on how they can use that information to have a ‘voice’ in policy and governance processes. This ensures that information is used effectively used as a tool for the empowerment of communities in holding the state accountable. This holistic approach to the empowerment of communities also ensures that the request for information develops into sustained citizen action and engagement with the state towards the realisation of socio economic rights as illustrated in the approaches of the MKSS in Rajasthan.

5.3 Strategies for building effective demand for information

5.3.1 Legal services for the poor

Litigation is not avoidable in the struggle for the realisation and enforcement of socio economic rights in South Africa. Although the evolution of socio economic rights jurisprudence in South African courts is still in its infancy, litigation remains one of the many strategies for the enforcement of socio economic rights and often constitutes a course of last resort.²⁷⁷ The importance of the RTI as a strategy for the realisation of socio economic rights has also been firmly established in preceding discussions. Why has there been little to no jurisprudence on PAIA as a tool for the realisation of socio economic rights. In light of the challenges related to the relative inaccessibility of the South African justice discussed above, most legal issues confronting the poor are not handled by judiciaries but by administrative entities, local governments, alternative and informal dispute resolution processes.²⁷⁸ In this context, it is important for civil society organisations working to ensure that PAIA is effectively used by the poor as a tool for transparency and accountability on the realisation of socio economic rights to facilitate access to affordable and accessible legal services for the poor and marginalised in South Africa.

Fundamentally, it is also important for civil society organisations to enhance the poor’s legal knowledge and skills through training, media awareness campaigns, public education, free specialist legal consultancy and advice and other mechanisms that lead to improved usage of

²⁷⁷ Supra note 255 at 26

²⁷⁸ Ibid

progressive legislation in the struggle for social justice.²⁷⁹ This will ensure that ATI law works effectively as a tool for in the fight against poverty and marginalisation. It is also important to develop paralegals, laypersons drawn from communities they serve who receive specialised legal training so that they provide various forms of legal education, advice and assistance to the disadvantaged in their poor communities.²⁸⁰ If these agents of social change are equipped not only with knowledge on ATI law but also on social justice issues, then the usage of PAIA by the impoverished at community-level will improve. The impact of such interventions will also be an increase in the demand for information from local government and other state entities as more people become familiar with the law and how to use it.

Other pro-poor legal services include test case, public interest lawsuits designed to affect policies, affect precedents and to benefit large numbers of people.²⁸¹ It is also important for civil society law-oriented organisations engaged in the struggle for the realisation of socio economic rights and PAIA litigation to give specialist legal advice to the poor on and building the poor's capacities regarding legal, regulatory and policy reform.²⁸² These law-oriented interventions will cultivate a close working relationship between ATI lawyers and communities thus closing the knowledge gap that exists between specialist legal knowledge and the lived realities of poverty by the poor. This also ensures that the law itself and civil society advocacy efforts are oriented towards the attainment of social justice and pro poor social change.

5.3.2 Access to information and social justice at law school

Law schools should also play a crucial role in breeding progressive ATI and socio economic rights lawyers who are sufficiently motivated to work for social justice in South Africa. Lawyers assisting the poor in their struggles for social change should play a supportive rather

²⁷⁹ Ibid

²⁸⁰ Ibid

²⁸¹ Ibid

²⁸² Ibid

than a leading role when assisting communities in their engagement with the state.²⁸³ This is also crucial for ATI lawyers assisting communities in demand access to state-held information. It is, therefore, important to expose prospective attorneys working for social change with impoverished communities to ATI and social justice perspectives and community-based experiential learning activities while they are still in law school.²⁸⁴ This enables prospective lawyers to develop the requisite perspectives, experiences and contacts in ways that enable them to work with marginalised citizens in their struggles for human dignity.²⁸⁵ Armed with these perspectives from law school, ATI lawyers become progressive lawyers and specialists who speak the same language with the poor and are able to assist them in their struggles against impoverishment.

There are a number of law schools such as the UWC community law centre and the University of Natal Durban Campus Law Clinic which operate as NGOs dealing more often with cases and issues that represent the interests of impoverished groups rather than individuals.²⁸⁶ The extent to which these institutions embrace ATI as a strategy for the realisation of socio economic rights is yet to be established. Through classroom instruction and community-based field practice, these institutions provide opportunities for students to familiarise not only with ATI legal issues but also the social realities outside the ambit of the traditional curriculum.²⁸⁷ South Africa needs such approaches to ensure that its sound ATI legislation works for the benefit of the poor.

Finally, it is proposed here that students of social justice stand to benefit if they are afforded opportunities to go out and work in assisting communities on the processes around the preparation and submission of PAIA requests. For instance, opportunities may arise if the University of Cape Town's Faculty of Law establishes a closer link between its LLM Human Rights Law programme with its right to access to information component on the one hand,

²⁸³ See Golup op cit note 255 at 36 who gives a detailed exposition of how knowledge and values of lawyers can be developed at law school so that they become effective agents for social change.

²⁸⁴ Ibid

²⁸⁵ Ibid

²⁸⁶ Supra note 255 at 37

²⁸⁷ Ibid

with the recently introduced Masters in Social Justice programme. This provides huge opportunities and exposure to students on the usage of PAIA as an instrument for social change. This ensures the expansion of the pool of ATI attorneys with an interdisciplinary understanding of the law and practice of ATI, yet also serving to expose them to ‘progressive lawyering’ thus equipping them for civil society work that results in far reaching impact on the lives of the poor.

5.3.3 Complementary ‘extra-legal’ activities

For PAIA to be used effectively as a tool for achieving broader social justice ends in South Africa, it is important for law-oriented civil society organisations such as ODAC, TAC, UWC community Law Centre, Legal Resources Centre among to integrate legal services with related, ‘extra-legal’ activities.²⁸⁸ These activities are not inherently law-oriented in nature but complement the use of the law, legal services and legal strategies to hold the state accountable for failing to deal with socio economic problems facing South Africans. These activities include but are not limited to community organising, group formation, social and political mobilisation and the use of the media.²⁸⁹ The MKSS relied on these strategies for the effectiveness of its campaign for the right to information in Rajasthan. The tactics may also include development initiatives such as livelihood development, analysis of micro credit policies and provisions, literacy training among other non-law activities.²⁹⁰ These activities will not only enhance the effectiveness of legal services but also acknowledge the multidimensionality of social justice problems and the need for multi pronged strategies for dealing with such problems.

5.3.4 Popularising PAIA: Reaching the poorest of the poor

As illustrated in the experiences of the MKSS which worked with poor and marginalised villagers in Rajasthan, it is vital for civil society using ATI law as a tool for poverty alleviation to reach out to the most marginalised and disadvantaged citizens. Though it is not easy to identify the poorest of the poor, the long road towards the poorest of the poor

²⁸⁸ Ibid note 277

²⁸⁹ Ibid

²⁹⁰ Ibid

achieving control of their lives include introducing them to the very notion that they have rights and the ways in which those rights can benefit their lives.²⁹¹ This is important in raising popular awareness on the constitutional right to access to information and socio economic rights. Training and legal education interventions regarding these matters should take account of the unique socio economic situations, needs and priorities of communities, levels of education, and the nature of the laws most relevant to them.²⁹² This will ensure that impoverished citizens, mostly those in rural areas, know their rights and effectively demand information about the realisation thereof.

This translates into the use of ‘popular education’ methodologies rather than structured law lectures.²⁹³ This premise was reflected in both the work of the MKSS and ODAC’s community intervention program designed to reach out to marginalised communities to assist impoverished citizens by raising their awareness and educating them about the usage of PAIA.²⁹⁴ Moreover, such interventions which target the poorest of the poor through the work of community development workers in organising community workshops are important in teaching communities about PAIA.²⁹⁵ Therefore, ATI lawyers working as agents of social change in different communities to facilitate the usage of the PAIA as a tool for poverty alleviation need to be make use of these methodologies and approaches so that their interventions produce real and meaningful change in people’s lives.

The Emkhandlwini case illustrates the importance of targeting the poorest in community interventions to promote the usage of PAIA. With the assistance of ODAC, poor villagers in a marginalised community in KwaZulu Natal used PAIA to request minutes of the council meetings and also copies of the municipality’s Integrated Development Plan and its budget.²⁹⁶ The community was deprived of clean and adequate water in contravention of their

²⁹¹ Supra note 255 at 41

²⁹² Ibid

²⁹³ Ibid

²⁹⁴ See ODAC op cit note 274

²⁹⁵ Ibid

²⁹⁶ See Mukelani Dimba “Access to information as a tool for socio economic justice” (2008) in Pambazuka News Issue 372, 8 April 2008 available at <http://www.pambazuka.org/en/category/comment/47179> accessed on 15 September 2010

constitutional right guaranteed in section 27(1) (b) right to access to sufficient water yet the municipality kept quiet on its plans to provide water to alleviate the suffering of this marginalised community.²⁹⁷ In light of this case, it is compelling for civil society organisations working with marginalised communities in facilitating the usage of PAIA to extract social accountability from the state to build the capacity of these marginalised groups so that they benefit from the law.

Targeting poor communities in facilitating the usage of PAIA attracts is associated with difficulties relating to organising and mobilisation.²⁹⁸ Communities are not neutral and uncontested spaces.²⁹⁹ It is crucial for agents of social change and their organisations working with poor communities to be aware of the inherent tensions and dynamics in communities.³⁰⁰ In this vein, Cleaver (2001) notes that:³⁰¹

...practitioners excel in perpetuating the myth that communities are capable of anything, that all that is required is sufficient mobilisation(through institutions) and the latent capacities of the community will be unleashed in the interests of development.

The above cynicism serves as caution to civil society actors adopting community intervention strategies in facilitating the usage of PAIA. Cleaver's concerns bears a semblance of truth in that the notion of community is sometimes problematic because of the heterogeneity in membership and interests.³⁰² It might be difficult for ATI practitioners working with marginalised communities to mobilise, discuss and draft PAIA requests together with community members from different walks of life in the same community. This requires those who engage with communities in assisting the marginalised with PAIA requests and advocacy to be aware of the challenges and dynamics that undermine the sense of community

²⁹⁷ See Mukelani Dimba supra , also refer to section 27(1) (b) of the Constitution

²⁹⁸ Chapman in Glyn Williams ' Evaluating Participatory Development: Tyranny, Power and (re)Politicisation' (2004) Third World Quarterly Vol 25 (3) at 22

²⁹⁹ See Frances Cleaver in Williams op cit note 298

³⁰⁰ Supra note 298

³⁰¹ Supra note 299 at 561

³⁰² Supra at 25

among the poor and the difficulties in mobilising their effort to demand information from the state.

5.4 Pro-poor RTI advocacy

A pro-poor ‘right to information’ campaign in South Africa requires a set of organised action aimed at influencing socio political processes that enable and empower the marginalised to speak for themselves.³⁰³ It is difficult to find a balance between promoting the leadership and voice of the poor and marginalised on the one hand, and speaking on their behalf in advocacy for the right to information and greater transparency in state-society engagement.³⁰⁴ This is a huge challenge for specialist organisations which embraces the primacy of empowering the poor in demanding for information from the state. In a way, right to information advocacy initiatives that are practiced only at the macro-level by ‘experts’ run the risk when a elites, equipped with information and skills take over the ‘voice of the poor. In this regard, it is important to bridge macro level policy reform initiatives and micro-level, grassroots social activism.³⁰⁵ This results in the development of the capacity of the poor to push for sustainable and pro-poor legislative reform and increased usage of ATI law by the poor and marginalised citizens.

According to Chapman, where it is dangerous and inappropriate for the marginalised to take the lead in advocacy, NGOs may speak and represent their interest.³⁰⁶ Yet at the same time such NGOs should support efforts of empowerment, organisation and leadership-building to strengthen the collective and potential power of the poor to challenge vested interests that deters the realisation of their rights.³⁰⁷ For instance, at ODAC, advocacy has been conducted locally in South Africa, regionally within the subcontinent and greater Africa, and internationally.³⁰⁸ In South Africa, the ODAC engages at two interdependent levels: at policy level, and at the level of encounter between, on the one hand, individuals and communities,

³⁰³ See Jennifer Chapman op cit note 298 at 8

³⁰⁴ Chapman op cit note 298 at 22

³⁰⁵ Ibid note 303

³⁰⁶ Ibid

³⁰⁷ Ibid

³⁰⁸ See ODAC op cit note 274

and, on the other, governance structures including the fraught relationships between poor communities and local government.³⁰⁹ Clearly, it is important for the advocacy initiatives of this organization to be premised on pro-poor advocacy approaches to have far reaching impact on local governance, policy reform and social change

It is, therefore, important for civil society actors working to bolster the demand for access to information for the realisation of socio economic rights to facilitate marginalised citizens' empowerment, leadership and organisation (citizen action) to address the social injustices to restore and advance their rights.³¹⁰ This is reflected in the work of the MKSS in India which reveals the importance of communities to organise, and use their collective power to sustain pressure on the government to engage with them, which proved successful in South Africa in the past.³¹¹ The success of this approach relates to the reverberation of the TAC which adopted some of the innovative grassroots organising, empowerment and mobilisation strategies in its struggle for HIV/AIDS treatment. It is submitted here that, as it worked in Rajasthan, this approach will work if it is used in the struggle for ATI in South Africa.

This approach to pro-poor RTI advocacy will also ensure that the 'right to know' campaign works for the poor in South Africa and is not subjected to 'elite capture'. It is important for NGOs working on ATI and socio economic rights law and policy advocacy to be cautious if their actions do not undermine the capacity of the poor and their groups at grassroots level. These strategies will ensure that RTI advocacy works to the aggregate benefit of the poor. Similarly, these strategies will challenge the entrenched socio-political and systemic barriers to the usage of PAIA are overcome by citizens.

5.5 Towards people-centred 'right to know' campaign in South Africa

³⁰⁹ Supra

³¹⁰ Ibid Jennifer Chapman at 9

³¹¹ See Tilley Alison 'The Usage of the Promotion of Access to Information Act Experiences: Achievements and Challenges' (2010) A Paper Presented at the 2010 Open Democracy Review Meeting: The first 10 Years of implementation of access to information and whistleblower Protection Laws in South Africa, Cape Town, 12 March 2010. The experiences of the TAC also illustrate the importance of social activism and agency in demanding social accountability on the realisation of socio economic rights.

In South Africa, specialist organisations have worked hard to build a demand for greater transparency through the usage of PAIA in South Africa.³¹² Yet the usage of PAIA as a tool for the realisation of socio economic rights in South Africa is not a ‘cold legalistic formula to be arbitrated by well meaning, well-educated and sophisticated experts’ on behalf of the poor.³¹³ Clearly, as illustrated in the MKSS ‘s right to information campaign, socio economic rights and the realisation thereof have been continuously articulated, defined and put into law and practice, by the collective efforts and struggles of citizens in South Africa.³¹⁴ Similarly, socio economic rights continue to evolve or be lost as such with time.³¹⁵ In many ways, as evidenced in the struggles of the TAC for anti-retroviral treatment, rights do not come in neat packages but rather forms part of dynamic, sometimes messy, processes of resistance and change that work to engage and transform relations of power.³¹⁶ This understanding of the notion of rights should inform advocacy efforts around the usage of ATI law as a strategy for the realisation of socio economic rights in South Africa.

In summary, Marcus and Budlender (2008) have noted that for the law to achieve maximum success in advancing social justice, it should take place in combination with three other strategies.³¹⁷ These relate to the conducting of public information campaigns to achieve awareness of rights by the poor, providing advice and assistance to persons in claiming their rights and making use of social mobilisation and advocacy to ensure that communities are actively involved in asserting their rights inside and outside the legal environment.³¹⁸ This leads to the conclusion that these strategies have deep resonance with those used by the MKSS in Rajasthan in its grassroots campaign for transparency and social accountability based on the right to information. It is also logical to conclude that it is through the use of

³¹² See Chantal Kisson ‘ Ten years of Access to Information legislation in South Africa: Some challenges to the effective implementation of PAIA’ available at <http://www.opendemocracy.org.za/wp-content/uploads/2010/10/Ten-Years-of-Access-to-Information-in-South-Africa-Some-challenges-to-the-effective-implementation-of-PAIA-by-Chantal-Kisoon.pdf> accessed on 19 November 2010

³¹³ Supra note 298 at 4

³¹⁴ Supra note 298

³¹⁵ Supra note 313

³¹⁶ Supra note 24 at 94

³¹⁷ Supra note 24 at 8

³¹⁸ Ibid

these approaches by civil society organisations in South Africa that the potency of PAIA as a tool for socio economic justice and pro-poor social change will be realised.

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