

# THE NEED FOR EDUCATION TO IMPROVE THE POWER OF PAIA AS A FUTURE AGENT FOR CHANGE

Tammy O'Connor – SAHA dialogue forum – 26 September 2012

## *What is the current state of knowledge?*

### **Civil society**

- Open Society Foundation for SA commissioned survey. Conducted by Citizen Surveys in November 2011.
- 86% of people have not heard of PAIA
- 7% of people are 'yet to have a chance to learn about PAIA'
- 7% have heard of PAIA

### **Information holders**

- 2010 Golden Key Award Report – considers compliance with ss 14 and 32, records management, internal mechanisms for implementing PAIA, allocation of resources SAHRC and ODAC found most public bodies:
  - Do not budget for PAIA delivery
  - Have weak or non-existent internal PAIA policies
  - Insufficient or non-existent training for personnel
  - Do not have personnel dedicated exclusively to promoting compliance with PAIA
  - Do not integrate information sharing into their routine activities
- disempowered officers fear 'getting it wrong'
  - Chantal Kisoona – 10 years of ATI legislation in SA – some challenges to the effective implementation of PAIA
  - "These implementers view PAIA as burdensome, confusing and complex, and they often defer decisions to grant access to their legally qualified peers or senior management".
  - "In most instances implementers tend to refuse access in the knowledge that a resulting appeal will safely escalate the decision to grant access to the head of the public body in question."
  - anecdotal examples

## **Why?**

- Implementation challenges earlier speakers discussed
- Historic lack of access – people don't have an expectation of the right and government view secrecy as safe
  - Apartheid regime relied on secrecy to maintain control
  - Liberation and exile movement forced to operate in secrecy

- Inherited socio-economic disadvantage – people don't necessarily have the skills to implement the right
- Lack of resources - S. 83 of PAIA – SAHRC given an educational mandate – however not given the resources to implement it.
  - Although the Commission's budgetary allocation from Government has been increased incrementally, no additional resources have been received from Government to discharge this mandate
  - As a result commission generally only provides training on request to information holders and can conduct a very limited number of community interventions each year.

### ***Need for education***

- If the power of PAIA as an agent for change is to be realised it must be broadly recognised and exercised by members of the public and not just the few organisations working in the ATI field

### ***Nature of the education – civil society***

- Remove the perception of PAIA as a tool of the elite or the exclusive purview of the media and opposition political parties
- Important that education is not conducted in the abstract - the relevance of the right to everyday issues faced by communities and groups struggling for change must form the basis of the education.
  - ATI as an enabling right
  - ATI as a strategic advocacy tool
- ATI as an enabling right example – Rhysmierbult community, North West Province
  - Typical of many historically disadvantage communities. Rurally located. Residents were subsistence farmers from time their forefathers first came into possession of the land in 1866. Apartheid – land seized and houses bulldozed and forcibly removed from land. Farms given to whites and blacks who had previously owned the land were left destitute, without housing or enough food
  - In 2006 the land was returned to the community under the Restitution of Land Rights Act and placed in the hands of a trust.
  - SAHA assisted the community and made a request under PAIA for:
    - A copy of the trust deed and the names of the trustees and beneficiaries
    - Also sought details of all land registered to the trust from Dept Rural Land and Development so could see exactly what land the trust is supposed to be managing on their behalf and how it is being used.
  - Communities were shocked by the information they received and noted that many beneficiaries of the trust were not the rightful

owners of the land and others listed as beneficiaries had no knowledge that they were listed as such and had received no benefits from the land.

- Community became determined to use the information to reclaim their land and the benefits flowing from it.
- CDW Stephen Mbewe approached Hawks and have now enlisted their help in obtaining and assessing the financial records of the trust with a possibility of introducing criminal proceedings.
- ATI as a strategic tool example – unfair discrimination in the LGBTI sector
  - PEPUA require public bodies to implement steps to eliminate unfair discrimination which includes the discrimination on the basis of gender, sex and sexual orientation
  - SAHA requested the plans and policies and practices in place to do so from a number of public bodies
  - Responses to the request revealed that very few public bodies have taken steps to proactively eliminate unfair discrimination of this nature in their workplaces. Few policies or plans that dealt with the matter were in existence.
  - Organisations in the LGBTI sector recognised the need and the opportunity this presented them in terms of advocacy work.  
Opportunities:
    - Development of educational materials on the needs and rights of LGBTI people
    - Undertaking workshops with public bodies explaining their legal obligations and the needs of LGBTI people
    - Offering the expertise within LGBTI organisations to public bodies in order to assist them in developing equality plans and ensuring other policies and practices of public bodies adequately address the needs of LGBTI people
    - Developing a media strategy for alerting the public to the failings of our public bodies to give effect to the equality protected by the Constitution.

### ***Nature of the education – information officers***

- Again, training must not be about the right in isolation but the right as interconnectedness of the right with the other deliverables of government.
- Kisoona - policy makers view PAIA as a competing priority, isolating it as a deliverable from the broader context of social delivery.
- It is necessary to locate the education in the broader context of informed public participation, active citizenry and service delivery

- It ensures policies being shaped by government are relevant to the communities they service and promotes public confidence in the actions of government

### **Conclusion**

The demand for and supply of information are necessarily connected. If there is not sufficient demand for information, information holders are unlikely to dedicate finite resources to its supply. Similarly if the supply of information is poor, the public are likely to become frustrated and disillusioned with PAIA as a means to obtain access to the information necessary to enforce their rights and abandon its use. It is therefore imperative that education be initiated at both levels simultaneously