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Opportunities and Challenges Affecting the Promotion of Good Governance, Open Data and Transparency Initiatives in South Africa

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Abstract: Open data and transparency initiatives are increasingly seen as public administration innovations that are essential for promoting good governance, accountability and public participation in government activities. These initiatives have the potential to promote efficiency, transparency and accountability in government activities while also empowering all persons to fight the scourge of corruption by elected public officials in South Africa. The article examines the current state of open data and transparency initiatives so as to unpack the opportunities and challenges they present to the promotion of good governance in South Africa. The article further explores the open data initiatives and the legal framework for the access to information that is provided under the Promotion of Access to Information Act 2 of 2000, the Protection of Personal Information Act 4 of 2013 and the Municipal Finance Management Act 56 of 2003. It is submitted that open data and transparency initiatives should be carefully utilised by regulators, government agencies and other relevant persons to improve governance matters in South Africa. Lastly, some recommendations to combat the aforesaid challenges will be provided to enhance good governance and public administration in South Africa.

Keywords: innovation; open data; transparency; governance; public participation

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1. Introductory Remarks

The South African government has over the years introduced some open data and transparency initiatives in through various government and civil society efforts aimed at promoting transparency and accountability in its governance activities (Ricker, et. al, 2020, pp. 359-371). These initiatives have numerous benefits including improved transparency, citizen engagement, service delivery as well as economic benefits (Ricker, et. al, 2020, pp. 359-371). Several open data and transparency initiatives were launched in a bid to enhance and promote good governance in South Africa (Bello, et. al, 2016, pp. 97-106). However, various challenges have impeded the effective implementation of these initiatives for the benefit of the poor and vulnerable members of society (Nkohkwo & Islam, 2013, pp. 253-260). This status quo exacerbated by the lack of a specific open data and transparency statute, a lack of political will, limited technical capacity, limited citizen engagement, privacy and security concerns and data quality challenges. While there is no specific regulatory framework for open data and transparency in governance, the Promotion of Access to Information Act 2 of 2000 (Access to Information Act, ss 3-92), the Protection of Personal Information Act 4 of 2013 (POPI Act, ss 3-113) and the Municipal Finance Management Act 56 of 2003 (“Finance Management Act”, ss 5-178) are discussed to examine how they could give effect to the government’s duties in respect of open data and the promotion of accountability and transparency. Accordingly, regulators, government agencies and other relevant persons should carefully utilise open data and transparency initiatives to improve governance matters in South Africa. Lastly, some recommendations to combat the aforesaid challenges will be provided to enhance and promote good governance and public administration in South Africa.

2. Open Data and Transparency Initiatives in South Africa

For the purposes of this article, open data and transparency initiatives refer to initiatives that promote the publishing of public sector information in open and reusable formats without restriction or monetary charge for the benefit of the public or relevant communities (Gao, et. al, 2021, pp. 1-17). Transparency is generally known as a bona fide principle, value, norm or behavior that counters corruption and promotes easy access and use of the relevant information by the relevant persons or members of the public. Transparency could also mean that the relevant information

about an individual or organisation is made accessible or known to other persons that might be directly and indirectly affected by it.

Open government data (OGD) refers to the relevant policies that promotes transparency, accountability, accessibility, value creation and the timeous dissemination of government data to all relevant persons (Gao, et. al, 2021, pp. 1-17). On the other hand, open data refers to any data that can be freely accessed, used, re-used and redistributed by anyone that is required to do so or not forbidden by the law to do so for the benefit of others. This suggest that the redistribution of the relevant data should only be done for the common good and/or for public benefit. Open data promotes transparency and public oversight of governments in order to combat corruption. Open data empower members of the public to effectively monitor government activities such as public budget expenditures, procurement deals and the use of tenders. Open data also enable members of the public to make informed decisions regarding government activities and their participation in such activities. Public participation refers to the voluntary participation of members of the public in the relevant government activities to address any challenges (Zani & Barrett, 2012, pp. 273-282). Public participation is generally a process that actively involves members of the public to make their inputs known in decision-making processes regarding any government activities. Public participation and open data initiatives are very important for the smooth operation of government activities in any democratic country.

In 2016, the South African government published the National Integrated ICT Policy White Paper in a bid to implement OGD initiatives (Department of Telecommunications and Postal Services, 2016, pp. 1-166). In this regard, open governance refers to the multilateral, political and social programmes which includes transparent, collaborative and participatory action by the government and all relevant persons in the administration and decision making-processes (Wirtz & Birkmeyer, 2015, pp. 381-396). The South African government has taken various steps to realize its goal of open governance. For instance, South Africa is a member country of the global Open Government Partnership which seeks to promote citizen participation, transparency, accountability and combat corruption in governance matters (Nel & Masilela, 2020, pp. 33-47). South Africa has also committed to implementing various open data and transparency initiatives in accordance with its Open Government Partnership membership. Furthermore, South Africa introduced the South African Local Government Association (SALGA) which provides for data-related aspects of local government activities (South African Local Government

Association, 2020, pp. 6-53). The National Treasury Open Data Portal was also launched to provide access to relevant financial data of the government (National Treasury, 2020, pp. 60-263). South Africa is also part of the African Open Data Network which is a civil society initiative that promotes open data and transparency in Africa. Moreover, South Africa utilises the South African Centre for Digital Citizenship which advocates for open government and digital rights to be consistently granted to all persons (South African Local Government Association, 2020, pp. 6-53).

The National Development Plan (NDP) outlines a long-term development vision for South Africa by identifying key goals and strategies to achieve this vision (National Planning Commission, 2012, pp. 23-484). The NDP emphasises, inter alia, the importance of citizen participation, transparency and accountability in governance matters (National Planning Commission, 2012, pp. 23-484). Notwithstanding the adoption of the NDP, South Africa has grappled with the implementation of open data and transparency in its government activities to date, owing to various challenges that are discussed below.

3. Selected Challenges to Open Data and Transparency Initiatives in South Africa

3.1. Limited Resources

The South African government departments sometimes do not have sufficient resources and the technical capacity to implement and manage open data and transparency initiatives. Adequate financial resources are required for data collection and management costs to effectively enforce such initiatives. Financial resources are also required for storage and maintenance of relevant data in formats that are useful for open data and transparency initiatives (Janssen, et. al, 2012, pp. 258-268). Additionally, limited financial resources and the lack of sufficient persons with the relevant expertise may lead to open data and transparency initiatives not being effectively enforced by the government (Mawela, et. al, 2017, pp. 147-171). The South African government should ensure that skilled personnel with sound knowledge in data analysis and management are employed for the better administration of open data and transparency initiatives so as to enhance and encourage the public to actively participate in its key decision making processes. The South African government should also deploy sufficient resources to acquire relevant technological equipment and Internet to effectively collect, manage and

depersonalise relevant data to enable it to be easily accessible to the public (Ebbers & Van Dijk, 2007, pp. 554-575). Adequate resources should be provided for the development and maintenance of technical infrastructure such as websites, website licenses, data portals and other online platforms. Adequate resources should be invested towards marketing, educational awareness, dissemination of information and engagement with the public so as to enable open data and transparency initiatives to timeously reach all segments of society. Thus, without sufficient resources, the citizens engagement and educational awareness on the availability and benefits of open data and transparency initiatives will not be effectively realised in South Africa.

3.2. Limited Citizen Engagement

The availability and effectiveness of open data and transparency initiatives is negatively affected by limited awareness, low levels of digital literacy and the digital divide among all persons which gives rise to poor citizen engagement by the South African government, policy makers and public officials (Mawela, et. al, 2017, pp. 147-171). The lack of educational awareness measures to promote the benefits of open data and transparency initiatives has negatively affected the use of these initiatives by all members of the public in South Africa. The low levels of digital literacy and the lack of Internet connectivity have also affected the use of open data and transparency initiatives by members of the public, especially in rural areas, townships and informal settlements (Kaisara & Pather, 2011, pp. 211-221). The presentation of the relevant data on open data platforms also affects how it is received and understood by the public (Cañares, et. al, 2016, pp. 69-98). Accordingly, the relevant data should be presented in simple and plain language to enable all persons to easily access and understand it better. Open data platforms should further provide the relevant data in different languages so that all people will understand it better (Shareef, et. al, 2011, pp. 17-35).

There is limited citizen engagement because open data and transparency initiatives do not always involve the public to participate in government activities and decision making processes. Owing to this, fewer or no suggestions, queries and/or inputs are obtained from the public regarding government activities and decision making processes. Thus, limited citizen engagement negatively affects the transparency and accountability of public officials. This status quo has hindered the participation of the public in governance matters to hold public officials accountable for their actions and/or decisions in South Africa. Consequently, more needs to be done by the government, civil society and relevant stakeholders to encourage all persons to

engage in government activities and decision making processes. This could be achieved through promoting digital literacy, providing affordable Internet and raising awareness about the availability and benefits of open data and transparency initiatives to all persons, especially those in rural areas, townships and informal settlements.

3.3. Lack of Political Will

The lack of political will has affected the effective enactment and enforcement of open data and transparency laws and regulations in South Africa (SAHRC, 2015, pp. 12-72). The government, public officials and policy makers have done very little to promote and allocate appropriate resources to open data and transparency initiatives. Consequently, the establishment and sustainability of open data and transparency initiatives are severely hindered. The lack of political will to invest and participate in open data and transparency initiatives could be caused by various reasons (McBride, et. al, 2019, pp. 3-31). For instance, open data and transparency initiatives may require the disclosure of sensitive political information which could be unfavourable to some public officials. This could further result in the selective disclosure and/or the release of incomplete and inaccurate information to the public. The desire to conceal certain data and information is exacerbated by lack of political will and it affects transparency and accountability on the part of the government, policy makers and public officials (Mcbride, et. al, 2019, pp. 3-31). Corruption is another major factor that directly and indirectly contribute to the lack of political will among policy makers and public officials. Accordingly, more needs to be done to increase political will and the promotion of open data and transparency initiatives in South Africa.

3.4. Corruption

Public sector corruption is a major challenge to the promotion of open data and transparency initiatives regarding the South African governance matters and decision making processes (Matavire, et. al, 2010, pp. 153-164). Corrupt public officials in government may selectively disclose relevant data and/or provide inaccurate information to conceal their corrupt activities. This undermines the accuracy and integrity of open data and transparency initiatives since inaccurate and misleading information is disseminated to the public. Information that could expose

corrupt activities may also be withheld by public officials under the pretext of it being classified, private or confidential information. In instances where there is rampant corruption, the right to access to information may also be deliberately suppressed by the government or public officials, making it difficult for members of the public and the civil society to access relevant information regarding government matters and the decision-making processes (Ganapati, et. al, 2019, pp. 55-84). The government and relevant stakeholders should adopt robust anti-corruption measures such as whistleblower protection and strengthen the chapter 9 institutions to increase transparency and accountability in government and among all public officials (SAHRC, 2015, pp. 12-72). The government should also foster a culture of integrity, openness and accountability by enforcing and promoting open data and transparency initiatives among public government officials.

3.5. Poor Data Quality

The non provision of good quality data is a challenge to open data and transparency initiatives because the credibility and effectiveness of such initiatives rely on the accuracy and completeness of the relevant data that is made available to the public (Mutula & Mostert, 2010, pp. 38-53). Incomplete, inaccurate or outdated data negatively affects government activities and the decision making processes. For instance, gaps in the open data and transparency initiatives restrict and impede the public from making inputs in the decision making processes of the government (Hulbert, et. al, 2019, pp. 1-4). Incorrect, inaccurate or outdated data may also lead to wrong conclusions and/or decisions which impede the public from correctly interpreting relevant information in relation to any pertinent developments in South Africa (Roos, 2020, pp. 72-108). Poor data quality may also lead to data bias when certain perspectives are over represented or underrepresented which leads to skewed conclusions (Taylor, 2017, pp. 1-14). Data bias also occurs where existing inequalities and misinformation are perpetuated to the detriment of other persons (Taylor, 2017, pp. 1-14). Moreover, compiling data from various sources is a complex process, especially if the data is not well structured and compatible and this contributes to the poor quality of the data that will be disseminated to the public (Janssen, et. al, 2012, pp. 258-268). Accordingly, data producers and users should be educated on the importance of data quality and its impact on decision making processes. Government departments should be mandated to timeously share updated data and collaborate well with each other in order improve the integration and standardisation process of the relevant data.

3.6. Data Privacy and Security Concerns

Open data and transparency initiatives could be maliciously abused by unscrupulous persons who misuse personal information of other persons for illicit activities such as money laundering, market manipulation, terrorist financing and corporate fraud (Janssen, et. al, 2012, pp. 258-268). Therefore, open data and transparency initiatives should be carefully utilised and regulated to curb all possible data privacy and security challenges. Accordingly, personal information should be anonymised to ensure that owners of such information cannot be identified from the data that is publicised in open data and transparency initiatives. Additionally, valid consent should be obtained from all individuals whose personal information or data could be used in any open data and transparency initiatives before it is published (Roos, 2021, pp. 387-530). Put differently, open data and transparency initiatives should be carefully utilised in accordance with the relevant statutes such as the Access to Information Act (ss 3-92) and the POPI Act (ss 3-113).

4. Overview Analysis of the Relevant Legislation

4.1. The Access to Information Act

The Access to Information Act gives effect to the constitutional right for anyone to access any information held by the state or another person in order to exercise or protect any relevant rights (ss 3-92 of the Access to Information Act; s 32 of the Constitution of South Africa, 1996 “Constitution”; also see Matavire, et. al, 2010, pp. 153-164). This Act plays a crucial role in the regulation of information and as such, it should be consistently applied to open data and transparency initiatives in all South African governance matters and decision making processes. This follows that access to information is a vital component of open data and transparency initiatives because it improves public participation, prevent corruption and promotes accountability among public officials and individuals (Hivon & Titah, 2017, pp. 99-118). The Access to Information Act promotes transparency and accountability of public officials, individuals and organisations by providing for the right to access to information held by public and private bodies subject to certain limitations (ss 11 & 50 of the Access to Information Act; Adams & Adeleke, 2016, pp. 79-99). The Access to Information Act also provides that certain categories of information should be disclosed without complying with the formal request procedures (s 52 of the Access to Information Act; Adams & Adeleke, 2016, pp. 79-99). The type of information that may be disclosed without a formal request includes government

reports, policy reports and budget review reports. Such information could be commonly used in open data and transparency initiatives to promote accountability among public officials and individuals. The Access to Information Act additionally obliges public bodies to disclose and/or publish certain information to the public (s 11 of the Access to Information Act; Adams & Adeleke, 2016, pp. 79-99). Therefore, notwithstanding the fact that the Access to Information Act does not specifically regulate open data and transparency aspects in government, it should be carefully applied to open data and transparency initiatives in South Africa. This enables the government to promote open data initiatives, transparency and accountability among all public officials and government departments. Although the types of disclosures that could be made by private and public bodies are statutorily limited by the Access to Information Act, such limitation is justifiable as long as the provisions of this Act are consistently enforced in accordance with the Constitution (Adams & Adeleke, 2016, pp. 79-99). This follows that the grounds for refusal to access to information are necessary to strike a balance between the right to access to information and other affected parties' constitutional rights such as dignity, equality and privacy (see ss 10; 9 & 14 of the Constitution respectively). The grounds of refusal are also necessary to ensure that the Access to Information Act is not arbitrarily enforced to illegitimately restrict other affected parties' constitutional rights. The Access to Information Act initially empowered the South African Human Rights Commission (SAHRC) as a regulatory body responsible for enforcing compliance with the provisions of the Access to Information Act (ss 83-85; Mojapelo & Ngoepe, 2017, pp. 28-55). Currently, the Information Regulator enforces compliance with the provisions of the POPI Act (s 39). However, it is not quite clear whether the Information Regulator is doing a better job than the SAHRC which was previously responsible for ensuring compliance with the provisions of the Access to Information Act. It appears that both the SAHRC and the Information Regulator are not doing enough to promote open data and transparency initiatives to increase accountability among public officials and government departments. For instance, the SAHRC and the Information Regulator have not provided sufficient education and awareness measures to promote open data and transparency initiatives in South Africa. This is also affected by the lack of political will on the part of the South African policy makers and public officials (SAHRC, 2015, pp. 12-72).

The Access to Information Act should be amended to adequately define the term "information". The Act currently defines the term "records of information" but it does not clearly stipulate the types and quality of information in question (see s 1 of the Access to Information Act; Mojapelo & Ngoepe, 2017, pp. 28-55). This Act

should be further amended to specifically define the term “promotion of access to information” to clearly indicate what needs to be done, especially in relation to open data initiatives. The Access to Information Act should be also amended to specifically provide for the storage and quality of any relevant information in order to improve open data and transparency initiatives. The Access to Information Act should also provide better penalties and/or sanctions for any non-compliance with its relevant provisions to enhance the promotion of open data and transparency initiatives. The Information Regulator should be adequately resourced and manned by persons with the relevant expertise.

4.2. The POPI Act

The POPI Act regulates the processing of personal information by public and private bodies to protect and promote the right to privacy for all persons (see s 2 read with ss 3-113). It is important to note that the POPI Act does not specifically regulate open data and transparency initiatives since it mainly deals with the protection of personal data for all persons in South Africa. The POPI Act provides certain conditions for the lawful processing of personal information (ss 4-9 of the POPI Act, Roos, 2020, pp. 72-108). These conditions are particularly important since they provide that personal data should be handled fairly, lawfully, and in a manner that does not infringe on a data subject’s right to privacy (s 9 of the Constitution; Swales, 2016, pp. 49-84). This implies that when personal data is collected and used to provide certain information or statistics, it should be anonymised to ensure that no personal information is exposed when it is disclosed to the public for open data and transparency initiatives. The POPI Act additionally provides that personal information should be collected for a defined, specific and legitimate purpose (s 13, Kandeh, et. al, 2018, pp. 1-9). Consequently, the government should ensure that the rights to access to information and privacy are equally protected through open data and transparency initiatives. The POPI Act also require parties responsible for the processing of personal information to have robust security measures in place to protect personal information from damage, loss and unauthorised access (s 19). Thus, the government departments should secure and anonymise personal information before it is publicised for open data initiatives through the Information Regulator (s 39 of the POPI Act; Botes, et. al, 2021, pp. 3-27). The Information Regulator is responsible for enforcing compliance with the provisions of the POPI Act (s 40; Botes, et. al, 2021, pp. 3-27). The Information Regulator should play a vital role in overseeing the utilisation of personal information for open data and

transparency initiatives by inter alia, investigating complaints, conducting assessments and imposing fines and other penalties for non-compliance against the offenders (s 40 of the POPI Act, Botes, et. al, 2021, pp. 3-27). The Information Regulator may review decisions taken by both private and public bodies in relation to access to information requests. The dual role of the Information Regulator to protect the right to privacy while simultaneously promoting access to information should be carefully utilised and enforced to combat inaccessibility, inadequate processes and human resource capacity challenges (Information Regulator, 2020, pp. 7-28). Additionally, the POPI Act provides that responsible parties should take reasonable practical steps to ensure that personal information is accurate, complete, not misleading and updated whenever necessary (s 16). This provision requires personal information to be used for its intended purposes to avoid possible abuse of such information by any unscrupulous persons. However, it is not certain how the Information Regulator will ensure that requested personal information is accurate, not misleading and/or updated timeously. Moreover, it appears that section 16 of the POPI Act is merely limited to personal information and as such, the quality of non-personal data is not covered under this provision. The Information Regulator is also not expressly and statutorily empowered to promote open data and transparency initiatives in South Africa.

4.3. The Finance Management Act

The Finance Management Act deals with the financial management of municipalities in South Africa. It does not regulate open data and transparency initiatives. However, it plays a crucial role in the publication of government data by obliging all municipalities to make their annual budgets public as soon as possible (s 22 of the Finance Management Act; Janssen, et. al, 2020, pp. 1-8). It additionally requires all municipalities to publish financial statements and other financial documents on their websites (s 75 of the Finance Management Act). Thus, municipalities should publish their budgets, annual reports, performance agreements, service delivery contracts, public private partnership agreements and all long-term borrowing agreements. It is hoped that the Finance Management Act should be amended to enact provisions that expressly promote open data, accountability and transparency initiatives in all municipalities. This approach could encourage members of the public to easily access relevant information and actively participate in their municipalities' activities and decision making processes.

5. Concluding Remarks

As outlined above, open data and transparency initiatives are not statutorily provided in South Africa. This approach has negatively impacted the promotion of accountability, transparency and public participation in government activities and decision making processes. Consequently, various challenges such as poor compliance, limited resources, limited citizen engagement, lack of political will, corruption, poor data quality as well as data privacy and security concerns have continued to affect the enforcement of open data and transparency initiatives in the South Africa. Accordingly, it is submitted that the POPI Act, the Access to Information Act and the Finance Management Act should be amended to enact specific and adequate provisions to promote open data and transparency initiatives in South Africa. In this regard, the government and other relevant stakeholders should actively promote adequate compliance with such provisions to promote accountability and transparency. The government and other relevant stakeholders should adopt appropriate measures to develop a culture of transparency and accountability by promoting the participation of all persons in the decision and policymaking processes of all government activities and open data initiatives (Mawela, et. al, 2017, pp. 147-171). Another option is to enact a separate and specific statute that deals with open data and transparency initiatives to increase public administration innovations that are essential for promoting good governance, accountability and public participation in government activities in South Africa. This could promote efficiency, transparency and accountability in government activities by empowering all persons to fight the scourge of corruption by elected public officials in South Africa. It is further submitted that open data and transparency initiatives should be carefully utilised by regulators, government agencies and other relevant persons to improve accountability in all South African government activities. The role of civil society organisations should be statutorily entrenched to promote accountability and transparency in all government activities and decision making processes through open data initiatives (Nel & Masilela, 2020, pp. 33-47).

The Information Regulator should promote appropriate educational awareness programs on the available open data and transparency initiatives and their advantages (Ekundayo, et. al, 2023, pp. 1-11). Additionally, the Information Regulator should promote and improve data quality by developing and/or adopting best practices in data collection, management and dissemination for all relevant information. The government and all relevant stakeholders should provide sufficient resources to the Information Regulator to ensure that it is manned by sufficient persons with the

relevant expertise to effectively implement, manage and promote open data and transparent initiatives (Brown, 2005, pp. 241-253).

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