

# CHAPTER EIGHT

## The challenges of sustaining public oversight: The rise and fall of anti-surveillance activism in South Africa

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### **Introduction**

This chapter focuses on the rise and fall of anti-surveillance activism in South Africa, from 2010 to date, as a form of public oversight of intelligence-driven surveillance. In 2010 the government attempted to introduce a highly controversial bill, the Protection of Information Bill (Protection of Information Bill, 2010), which threatened to give South Africa's civilian intelligence agency, the State Security Agency (SSA), the powers to overclassify huge swathes of government information and cloak it in a shroud of secrecy: hence, its critics dubbed it the 'Secrecy Bill' (News24, 2011). The campaign against the Bill by organisations such as Right2Know Campaign (R2K), a range of non-governmental organisations (NGOs) outside R2K, the media and the labour movement extracted major concessions from the government. Two successive presidents, Jacob Zuma (president from 2009 to 2018) and Cyril Ramaphosa (president from 2018 to date), failed to sign the Bill into law. Their reluctance to do so was a huge victory for public oversight of state intelligence, and particularly the SSA, which had ultimate responsibility for the Bill.

Activists took this campaign around the 'Secrecy Bill' and broadened

it to focus on the reasons why they believed the Bill had come into being in the first place. These reasons included attempts on the part of the Zuma administration to shield from public scrutiny the fact that it was relying increasingly on state intelligence and security institutions and their surveillance capabilities to maintain their grip on power. It also focused more broadly on the ways in which an increasingly authoritarian and exploitative political class globally was using intelligence-driven surveillance to contain dissent against austerity measures imposed in the wake of the 2007–8 global economic crisis and, in doing so, they moved beyond treating surveillance abuses as being exceptional cases involving a few rogue spies, and articulated them rather as systemic features of a failing neoliberal economic system (Right2Know Campaign, 2018b, p. 4). The coalition of organisations that campaigned around the 'Secrecy Bill' then went on to use innovative collective action using more transgressive repertoires of contention (McAdam et al., 2004, pp. 7–8) conducted through campaigns, pickets and protests, underpinned by popular education, documentation and legal advice. They used this momentum to push for greater transparency around incidents, suggesting the state was using surveillance to monitor and even disrupt critics of then President Zuma and the corrupt interests that had coalesced around him, and to force the formal oversight structures to perform their mandated roles of holding the intelligence agencies to account for these abuses.

However, once Zuma was removed as president and replaced by Ramaphosa, anti-surveillance activism shrunk, making it difficult to consolidate the democratic gains made during that period. At the same time, more contained forms of contention, using more well-established forms of claim-making (McAdam et al., 2004, p. 8), such as strategic litigation, has won ground. In 2021, the fight against abusive surveillance culminated in a major legal victory against the government won by the amaBhungane Centre for Investigative Journalism in the highest court in South Africa, the Constitutional Court.

Through the lenses of an emerging body of theory on democratic intelligence oversight and more well-established political process theory, and by synthesising the two in ways that bridge the false

dichotomy between top-down (or structural) and bottom-up (or agential) approaches to social change (Dawson and Sinwell, 2012, p. 10), this chapter examines the rise and fall of anti-surveillance activism in South Africa as a form of public oversight. Political process theory in turn draws on several theories, most significantly for the purposes of this chapter, resource mobilisation theory, which seeks to explain the resources that social movements need to mobilise effectively, and political opportunity structure theory, which examines the structural conditions in which social movements are likely to succeed or fail to mobilise (McAdam et al., 2004). These theories are relevant in that they provide basic tools to organise the empirical data. Political process theory provides a framework to examine the potential for what Kniep et al. (2023, p. 2) have referred to as more agonistic forms of oversight animated by more radical understandings of direct democracy as a means of challenging undemocratic surveillance practices, the factors internal and external to public oversight actors that make them likely to succeed, fail or achieve mixed outcomes, and how much autonomy they have in shaping accountability practices around surveillance. By merging these two theories and the analytical frameworks they offer, the chapter answers two main questions: what factors contributed to the rise and fall of the highly effective anti-surveillance activism during Zuma's presidency, followed by the success of strategic litigation? What lessons are to be learnt from this failure and success for emerging practices of public oversight of intelligence-driven surveillance?

This chapter draws on diverse sources of empirical data, including 20 in-depth, semi-structured interviews with the key actors in social movements, NGOs, the media, lawyers, the private sector, government and parliament, declassified SSA documents, parliamentary proceedings and formal inquiries into abuses of the SSA. Ethics clearance was obtained from the University of Glasgow and the University of Johannesburg. Most participants who were interviewed agreed to be named, with a few requesting pseudonymisation. Not all potential participants who were approached for interviews responded positively: notably the SSA and the Presidency did not accede to interview requests. It uses a case-study methodology to

explore the main research questions, as it allowed for an in-depth examination of the practice of oversight in its context using a mixed-methods approach (Micova, 2019, pp. 71–84), but with a bias towards interviews.

## **The campaign against the ‘Secrecy Bill’ and its evolution into anti-surveillance work**

The 2010 version of the ‘Secrecy Bill’ had its genesis in another Bill introduced to Parliament by then Minister of Intelligence Ronnie Kasrils in 2008, during the Thabo Mbeki administration. His intention was for it to replace the 1982 Protection of Information Act (Protection of Information Act, 1982), which was an anachronism in a democracy in that the then apartheid government used it to maintain inappropriate secrecy about its abuses of basic democratic freedoms. However, his own efforts became controversial in that media and civil society organisations criticised the Bill he introduced for giving the government too much power to overclassify information on national-security grounds, and thereby failing to depart sufficiently from the apartheid-era Act (Parliamentary Monitoring Group, 2008). He withdrew the Bill, leaving the next administration of Jacob Zuma to redraft and introduce the 2010 version of the Bill (amaBhungane Centre for Investigative Journalism, 2010, p. 1).

The 2010 Bill, too, proved to be controversial in that it intended to allow the government to overclassify state information on nebulous national-security and national-interest grounds, and people who disclosed classified information faced stiff penalties for revealing such information (amaBhungane Centre for Investigative Journalism 2010, pp. 1–5). In effect, the Bill threatened to cloak the government in a shroud of secrecy, behind which all manner of self-serving abuses by politicians and government officials became possible. The government department responsible for the Bill was the then newly established SSA. Making it the lead agency in government on information classification gave it the power to extend the kind of secrecy usually reserved for national security

matters to other areas of government, the state and even the private sector.

Parliament established an ad-hoc committee to consider the Bill in 2010, dominated by the ruling African National Congress (ANC) and chaired controversially by Cecil Burgess, a former chairperson of the only parliamentary committee that operated in secret as a matter of course, the oversight committee for the state intelligence services, the Joint Standing Committee on Intelligence (JSCI). By that stage, worrying signs had emerged of growing corruption in the government and public service. To cover up signs of corruption, members of the Zuma administration sought to draw a cloak of secrecy over government and state activities by increasing the power of South Africa's intelligence and security services in the country's governance, especially the SSA. Shortly after Zuma took office, his administration established the SSA irregularly by presidential proclamation, rather than through legislation, from an amalgamation of the foreign- and domestic-intelligence branches. This centralisation allowed Zuma to control its intelligence and surveillance capabilities more easily, to monitor perceived political opponents to his (mis) rule, and the Bill would have allowed him even more control over what information reached the public domain (Duncan, 2014, pp. 1–15; Commission of Inquiry into State Capture, 2022, pp. 8–15, 25–30). The Zuma administration also ensured that the JSCI, and the Inspector General of Intelligence, were unable to perform their watchdog roles independently by deploying individuals to these entities that were sympathetic to Zuma. The secrecy around JSCI meetings deprived the public of an important opportunity to participate in oversight by providing ongoing information about the (mis) conduct of intelligence agencies. The only glimpse that they gave into their oversight work was through the release of redacted annual reports via Parliament's National Assembly.

Organised responses to the Bill were extensive and broad-based. Many of the organisations opposed to the Bill coalesced into an information-rights campaign launched in 2010, called the Right2Know Campaign (R2K). It established itself partly as an NGO and partly as a social movement, in that it registered with the government as a donor-funded non-profit organisation, while bringing together a

range of social movements through an informal network based on the shared belief in the need for ' . . . a society and an international community in which we all live free from want, free from fear, in equality and in dignity' (Right2Know Campaign u.d.(2)), and where the freedom to access and share information contributed to this ideal. R2K attempted to straddle these two organisational forms to galvanise a broad range of social forces together to campaign against the Bill, with its founding statement couched very much in participatory democratic language using 'rights talk' (Madlingozi, 2012, pp. 223-5) – or framing its claim narrowly as a demand for access to the state-created institutions of participatory governance, rather than broadly as a demand to change the state-enabled power relations that thrived on secrecy – to demand the right of access to information as a condition of open, responsive and accountable government (Right2Know Campaign, 2010). Despite the narrow state-centric nature of their demands, these organisations used and transcended well-established and contained forms of opposition typically associated with opposition to legislation (McAdam et al., 2004, p. 7), such as making parliamentary submissions and seeking legal opinions. Rather, they expressed their opposition using a much more diverse protest repertoire, through media commentary, the production and dissemination of popular education materials to explain the problems with the Bill in plain, non-legal language, petitions, community meetings, pickets and protests, as well as street art, culture and film screenings (Voice of America, 2010).

This level of organisation meant that the ad-hoc committee considering the Bill was faced with a wall of criticism of the Bill (Parliamentary Monitoring Group, 2010). However, such was the public pressure that the ANC conceded some of the key criticisms of the Bill (Parliamentary Monitoring Group, 2011). Nevertheless, these concessions did not go far enough for the campaigners (Mabuse, 2011; Smith, 2012). Although some positive changes were made, Parliament eventually passed the still-flawed Bill in 2013, leaving Zuma to execute the final task of signing it into law (Corruption Watch, 2013).

However, the Bill remained unsigned on the desks of two successive presidents, Zuma and Ramaphosa, for a total of seven

years, strongly suggesting that neither of them dared to sign it into law out of fear of being taken to court by organisations challenging its constitutionality. Finally, in 2020, Ramaphosa decided to send the Bill back to Parliament to review it and address any constitutional deficiencies it found: a decision that was welcomed by several organisations (Media Monitoring Africa et al., 2020; South African National Editors' Forum, 2020).

In the wake of the successes around the Bill, the campaign extended to the other levers of government power that enabled Zuma's misrule, including anti-democratic uses of the state's surveillance capabilities. R2K, the amaBhungane Centre for Investigative Journalism and other civil society organisations ensured that the selection of a new Inspector General of Intelligence took place in public, after attempts to hold the process in secret. The appointee performs oversight of state-intelligence agencies and has been controversial for lacking structural independence. Parliament has failed to give the Inspector General powers to ensure that its recommendations are binding on the agencies it oversees, leading to the agencies ignoring most of the recommendations. Its budget, staff and information systems are also administered by one of the agencies it oversees, namely the SSA, which creates space for the agency to manipulate these processes to thwart oversight (Duncan, 2022) and leading to accountability gaps widening despite the existence of this office (Gill, 2020, p. 983). The appointment of a candidate that was deployed by the ruling ANC to neutralise the Inspector General was going to compound these problems. So when the time came to select a new candidate, R2K focused its energies on campaigning for the withdrawal of the ANC's preferred candidate for the post, Cecil Burgess, due to his having chaired the JSI in ways that encouraged excessive government secrecy and unaccountability (Right2Know Campaign, 2016a; Corruption Watch, 2016).

R2K also documented and publicised evidence of surveillance of journalists and activists and assisted them to lay complaints with the Inspector General's office, request investigations and ensure follow-up backed up by legal representation (Duncan, 2022). Much of this evidence related to trade unions, social movements and

journalists who had reasonable grounds to believe that they were under either physical surveillance or that their communications were under surveillance (Right2Know Campaign, 2016b; Right2Know Campaign, 2018a). R2K also extended its work into other areas of civic life and democratic space that were under threat (Right2Know Campaign, 2018b, pp. 8–10). By that stage, R2K had moved beyond the purely rights-based approach evident in its founding statement. Suggesting that it has adopted a more radical approach, R2K attributed these abuses to the former president's determination to cling to power, as well as the political elite's need to maintain social control in the face of '... a deepening economic and climate crisis accompanied by a rise of right wing populism and authoritarianism' and the political elite's commitment to '... a neo-liberal and unsustainable capital driven development path' (Right2Know Campaign, 2018b, p. 4).

One of the organisations affected directly by unwarranted state surveillance was amaBhungane. In 2015, it emerged through a court case involving Zuma that its managing editor, Sam Sole, had been placed under state surveillance from 2008, apparently to establish a source of information he had within the National Prosecuting Authority. The organisation, which had extended its activities beyond investigative journalism and into advocacy for conditions for such journalism, used this revelation to mount a constitutional challenge to South Africa's main surveillance law, the Regulation of Interception of Communications and Provision of Communication Related Information Act (Rica) (Quintal, 2021). While amaBhungane launched the application on its own, several of the organisations that had become central to the mobilisations against secrecy and surveillance applied to become recognised as *amici curiae*, or friends of the court, including R2K.

amaBhungane won its case in the Constitutional Court in 2021, forcing the government to redraft Rica to address its constitutional deficiencies. These deficiencies included the fact that surveillance subjects were never notified that their communications had been intercepted, the Rica judge responsible for granting interception directions to intelligence agencies lacked independence and their process was one-sided in that they only heard the agencies' version

of events. The judge was also never informed that the surveillance subject was a journalist or lawyer – who have a professional duty to maintain confidential sources of information – and there was insufficient detail on how the communications that were intercepted were processed. Lastly, the SSA's bulk interception capabilities were operating unlawfully because there was no law authorising this highly invasive surveillance practice (*amaBhungane Centre for Investigative Journalism NPC and another v Minister of Justice and Correctional Services and Others*, 2021). These reforms led to the strengthening of judicial oversight, in that they enhanced the independence and effectiveness of the Rica judge, and public oversight through the provision of information to surveillance subjects confirming surveillance and providing them with the information to contest the bases for surveillance if they were unlawful.

## **A multifaceted movement: R2K's strategic choices and organising style**

R2K made a strategic choice to locate the organisation in what they referred to as progressive civil society: a choice that became more pronounced as the organisation matured. They decided to identify and work with organisations that had a clear social justice agenda, in that they recognised oppression – including through the denial of information – as being inextricably linked to exploitation, and they strove to eradicate both. In other words, they recognised the link between '... the inaccessibility and unaffordability that is crucial not only to survival but to the ongoing struggle for equality and justice' (McKinley, 2021, p. 159). R2K also believed that adopting a social-justice agenda necessitated placing working-class voices and issues at the centre of the campaign, as the twin evils of exploitation and oppression was most heavily felt by this social class, which was also least likely to have a voice in policy and legislative debates on these issues. Centring working-class voices necessitated them engaging in working-class-led social movements and local struggles that advanced working-class voices and power (Right2Know Campaign, 2018b, p. 7) and combining

popular education with mobilisation, thereby bringing social power to bear on issues through protests, pickets and other forms of social action. At the same time, R2K also wanted to include NGOs that brought technical knowledge around information law and capacity for strategic litigation to the coalition. The organisation's founders recognised that these were likely to be drawn from a social base dominated by the middle class, but they steered clear of an approach that allowed NGOs to dominate.

In taking this flexible and eclectic approach to building the organisation, R2K used what then Interim Programmes Coordinator, Thami Nkosi, referred to as '... using the entire toolbox of strategies and tactics, so kind of really doing grassroots work to mobilise ordinary citizens'.<sup>1</sup> Doing so was a logical step for an organisation that was premised on recognising the interconnectedness of struggles for socio-economic transformation and democratic rights such as the right of access to information or the right to privacy free from surveillance. This recognition implied a need for R2K to straddle organisational and social divides that had become all too common in South Africa and transcend the silos in which social problems may be taken up. Nkosi explained:

What are the weaknesses in civil society organisations or at least social movements in the country? It's just how they create a false dichotomy [in] saying our activism for social justice has no connection with protecting the civic spaces that we operate in. You cannot divorce you fighting for access to sanitation, for example, and staging a protest at the government in a ... building and being subjected to all kinds of surveillance ... [And so that], for me, has been the weakness to say we are issue-based, and as a result we don't see just how connected our struggles are.<sup>2</sup>

1 Interview with Thami Nkosi, interim programmes coordinator, Right2Know Campaign, online on MS Teams, 30 May 2023.

2 Interview with Thami Nkosi, interim programmes coordinator, Right2Know Campaign, online on MS Teams, 30 May 2023.

Former National Working Group member, Dale McKinley, echoed Nkosi's views. McKinley explained that R2K decided to popularise the Bill and the issues it raised, namely excessive secrecy of information about how power is used and abused in South Africa, and in doing so consciously rejected the temptation to lapse into an organisational approach that relegated the issue to specialist-information rights NGOs. To ensure that social power was brought to bear on the government around the Bill, he argued, R2K needed to take a decision to build what he referred to as a multifaceted movement that consciously sought to straddle the country's massive legacy social divides along the lines of race, class, gender, nationality and geography. McKinley explained:

I would say first and foremost that the most powerful weapon in my experience . . . is massive mobilisation . . . [You need] collections of activists or community organisations, labour, middle class people, whatever it is. Right2Know was an attempt to do that, and I think it showed for a period of time, it showed what can be achieved when you combine a mass base with advocacy capacity with . . . [the capacity to] do research, the capacity to actually make arguments too, to engage in the battle of ideas, and then also to have a legal component, a legislative component to that, which is to take the state and those that are responsible to task in the court system, pushing for different kinds of changes. In other words [having] a multifaceted movement, that to me has proved to be by far the most effective and [offered] most and strongest possibilities.<sup>3</sup>

R2K adopted a horizontal, federated structure, with a National Working Group (NWG), but with no chair elected at a national conference on a regular basis. The NWG in turn was accountable to branches established in three provinces and coordinating by Provincial Working Groups. However, there was no formal membership:

<sup>3</sup> Interview with Dale McKinley, National Working Group member, Right2Know Campaign, online on MS Teams, 26 May 2023.

Individuals and organisations became involved if they associated with R2K's founding principles set out in its Constitution and elaborated in its national conferences as the organisation's plenary. By 2013, R2K listed 136 organisations as supporters, ranging from residents' associations representing informal settlements and back-yard dwellers to religious organisations and organisations of the unemployed (Right2Know Campaign, 2013). According to former National Coordinator Mark Weinberg, this novel approach to organising meant that the organisation had an energy and vibrancy. Weinberg explained:

It allowed for a lot of autonomy and gave a lot of space to grassroots activists to kind of set the tone and to present and advance their own issues and their own struggles and didn't impose a bureaucratic, top down, tightly managed attempt to control things. It also unlocked an energy from working class organisations.<sup>4</sup>

Given its commitment to ideological heterogeneity, R2K did not adopt an insurgent or insurrectionary programme, despite its strong base among South African social movements that were more likely to be open to insurgent ideas. Consequently, some of its constituents contested its collective identity, and attempted to narrow it.<sup>5</sup> However, R2K did face distinct challenges in turning surveillance into an issue that gained traction in the organisation. Mass organisations struggling to change how society is organised may well attract intelligence attention and become subjects of surveillance because they are threatening to political elites, and not necessarily because they truly threaten public safety and security. There are clear links between the erosion of democratic rights when surveillance extended far beyond the state's legitimate attempts to protect public safety and security from clear threats, and economic exploitation and

<sup>4</sup> Interview with Mark Weinberg, National Coordinator, Right2Know Campaign, Cape Town, 3 July 2023,

<sup>5</sup> Interview with Dale McKinley, National Working Group member, Right2Know Campaign, online on MS Teams, 26 May 2023.

struggles against it. Nevertheless, R2K still had to expend considerable energy on conducting popular education on state intelligence and surveillance, how it operated and how it was being abused, to create bridges between the problem and the everyday lived realities of its activists. The challenge was compounded by the fact that, as former Secrecy and Securitisation Coordinator Murray Hunter explained:

Many of the organisations that have been victims of state security abuse were not actually anti-repression organisations. They're not intelligence oversight organisations. They're doing other things and they came under pressure from state security for those reasons, but ultimately their primary mandate is not to fix the spooks.<sup>6</sup>

These difficulties meant that R2K had to undertake 'some delicate work to turn that [surveillance] into a bread-and-butter issue [as] it's pretty far removed from the core kind of work of on-the-ground activism'<sup>7</sup> which meant that much of the technical work around intelligence reform remained separate from R2K's organisational structures of democratic and consultative meetings.<sup>8</sup>

A perennial difficulty of anti-surveillance work is how to ensure that campaigns are built on credible evidence of surveillance, given how secretive intelligence agencies are about operational matters. The problem can lend itself to paranoia, where activists suspect they are under surveillance, when in fact they are not. R2K addressed this difficulty through constant campaigning and popular education, combined with documentation underpinned by legal assistance. The issues gained traction as social-movement activists began to interact with intelligence officers while they were organising protests,

6 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

7 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

8 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

and recognised that they posed a threat to their ability to organise freely, thereby making issues around surveillance and its oversight more concrete.<sup>9</sup>

R2K set about documenting incidents of intelligence harassment of activists and surveillance. They also developed a skill in turning the documentation into complaints that they lodged with the Inspector General of Intelligence, with the assistance of lawyers with knowledge of intelligence and surveillance law. Largely these efforts founded once the complaints were lodged, as the Inspector General failed to make findings on the complaints, although then Inspector General Setlhomamaru Dintwe did try to keep R2K updated on their investigations.<sup>10</sup> R2K also published handbooks documenting stories told by journalists and activists strongly suggesting that the intelligence agencies under Zuma were abusing their surveillance capabilities to monitor and harass his critics. Hunter explained what this slow-burning but systemic process of documenting these experiences and the filing of complaints about them led to:

It drew these sorts of secret abuses more into the public mind, and I think it probably played a significant part of creating an environment in which there was political pressure to start to clean up a bit. For me, certainly it was a new kind of approach to this problem, which is we document these cases, we try to create a seriousness around it. You know, [what information] feels legitimate enough that we can say this is a finding, and then we go to the oversight body and we submit a complaint and then we start to [push them] for a response. And it ended up running into all the dysfunction of that oversight body and sort of it just died away. But I do think that the work ended up being important, even if it was a very frustrating kind of specific outcome.<sup>11</sup>

<sup>9</sup> Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

<sup>10</sup> Interview with Thami Nkosi, interim programmes coordinator, Right2Know Campaign, online on MS Teams, 30 May 2023.

<sup>11</sup> Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

R2K aimed to relate these surveillance stories in ways that made connections between individual stories, building up a body of evidence pointing to systematic surveillance abuses. Then they aimed to act on that evidence, attempting to force oversight structures that had become used to operating in secret to respond more openly than they usually did. Despite the lack of response to these complaints, the process of lodging them created pressure on the institution and a focus on its inadequacies and those of the parliamentary institution it was meant to account to, the JSCL.

## **Cracks emerge in anti-surveillance activism**

Cracks began to emerge in R2K, which impacted massively on its ability to continue its distinct style of anti-surveillance activism. The organisation had what Weinberg described as 'self-selecting participation', which meant that individuals or organisations that subscribed to the organisation's mission could become involved with little screening.<sup>12</sup> These participants had the democratic space to bring any issues they wished for inclusion onto its programme, provided they related broadly to the mission, and the organisation's programmatic breadth meant that it was likely that these issues would be taken up. R2K's inclusivity became its Achilles heel, as it suffered from what Hunter described as 'weak organising principles'.<sup>13</sup> R2K became an organisation where '... no-one could get thrown out of the room' and '... a resting place for people who had been kicked out of every other organisation ... [or where] their organisation had ceased to exist and they were still coming to meetings ...'.<sup>14</sup>

R2K established itself on the vestiges of social movements established as part of the broader anti-globalisation movement – with

12 Interview with Mark Weinberg, National Coordinator, Right2Know Campaign, Cape Town, 3 July 2023.

13 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

14 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

many activists coming from movements aligned to the Anti-Privatisation Forum<sup>15</sup> – and much of the activist energy that had dissipated from these movements was transferred to the organisation. However, while these movements bequeathed a rich activist legacy that R2K tapped into, the fact that activists were drawn from movements that had declined or even collapsed (Runciman, 2015, pp. 961–79), created accountability challenges as they were not representing clearly defined memberships or constituencies.

Given that the participation model was so poorly defined, friction opened between NGOs tightly accountable to their boards and donors for their activities rather than memberships, and activists drawn from working-class movements with their own organisational challenges. According to former National Working Group member Julie Reid, as internal conflict emerged, NGOs slowly and quietly started filtering out of the organisation:

A lot of people just didn't have the time, [but] a lot of them, more grassroots activists and community organisations, felt as if they were treated as if they were just the sort of rent-a-crowd. There was a lot of contentious politics within the campaign itself because of these types of relationships. The community organisations . . . [wanted to] be able to express their views as well, and I think a lot of the people from the NGOs and the journalists and the media, they just didn't appreciate that . . . [so there was a lot of] speaking past each other between those two segments.<sup>16</sup>

Neither was R2K able to turn to more well-established social movements, such as the trade-union movement, for a more well-structured participation model, where activists represented clearly defined constituencies and could be recalled by those constituencies if they failed to do so adequately. Trade unions proved to be the most

<sup>15</sup> Interview with Dale McKinley, National Working Group member, Right2Know Campaign, online on MS Teams, 26 May 2023.

<sup>16</sup> Interview with Julie Reid, former National Working Group member, Right2Know Campaign, online on MS Teams, 1 August 2023.

difficult to organise, despite R2K having documented evidence of them being under surveillance by Zuma's SSA. For Hunter, this was due to them being '... busy, chaotic and under intense political pressure. [The unions that were the most targeted] were also the unions that seemed to have the most problems with internal democracy.'<sup>17</sup> This problem meant that these unions were least able to mount an organised response as they were unable to transcend their own internal divisions.

In the absence of a broader social movement that 'lifted all boats' in Weinberg's words,<sup>18</sup> R2K was forced into becoming that movement. Expectations piled up at its door in the wake of its successful campaign against the Secrecy Bill as it had developed an image publicly of being effective and was taken seriously by political elites. Consequently, its participation model came to rest more heavily on its own structures, anchored by its staff that were drawn increasingly from the organisation's activist base. The intention of doing so was a well-meaning one, namely, to recognise activists who had stayed the course in the organisation and remunerate them for their participation. However, in conditions of an unemployment crisis affecting the working class disproportionately, employment of a few activists while others remained unremunerated became a source of considerable friction, injecting the organisation with what Weinberg referred to as the 'politics of survivalism'.<sup>19</sup> R2K became '... an organisation whose primary objective was to self-replicate, which meant that the work that was happening was happening outside the democratic structures, as it had been crowded out by the internal discussions.' This happened because these increasingly toxic dynamics '... led to the organisation spending an extraordinary amount of time talking about its own structures'.<sup>20</sup> To address the very real challenges activists had in remaining

17 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

18 Interview with Mark Weinberg, National Coordinator, Right2Know Campaign, Cape Town, 3 July 2023.

19 Interview with Mark Weinberg, National Coordinator, Right2Know Campaign, Cape Town, 3 July 2023.

20 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

engaged as volunteers, R2K began to offer stipends for transport, air time and other expenses. However, doing so came with its own challenges, in that it created a perverse incentive to participate simply to claim the stipend (Right2Know Campaign, 2018, pp. 15–16).

What Hunter described as ‘insufficient internal housekeeping’ in a misguided attempt to achieve ‘pure democracy’ led to a situation where ‘people weren’t there for the same reasons’.<sup>21</sup> R2K’s programme became an accumulation of struggles that were increasingly difficult to relate to the core mandate, which itself had ballooned, as too few tough choices were made about which issues were included on the agenda. These problems became increasingly toxic and led to tensions developing along the lines of race, class and gender. Nkosi felt that some staff members were subjected to ‘vile attacks’ as they were remunerated for their work while activists were not, and in-fighting led to R2K being reduced to a media campaign, with less and less organising on the ground taking place.<sup>22</sup> As Nkosi explained:

What then happened is that the struggle for resources, I mean we can’t divorce the Right2Know, we are just a microcosm of what the society is in this country with the high levels of unemployment, lack of access to resources, inequalities and everything else. That played itself out within the Right2Know Campaign.<sup>23</sup>

Meeting agendas became crowded with too many items, and R2K’s success in fundraising, coupled with the fact that some key donors were interested in social movement-building in an environment where there were fewer and fewer movements to fund, meant that there was little financial incentive to pare back.<sup>24</sup>

21 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

22 Interview with Thami Nkosi, interim programmes coordinator, Right2Know Campaign, online on MS Teams, 30 May 2023.

23 Interview with Thami Nkosi, interim programmes coordinator, Right2Know Campaign, online on MS Teams, 30 May 2023.

24 Interview with Mark Weinberg, National Coordinator, Right2Know Campaign, Cape Town, 3 July 2023.

In 2019, the presidency declassified a report drawing on information brought forward to an investigation by whistleblowers in the SSA, confirming that the SSA had put R2K and other NGOs and social movements under surveillance, and a subsequent declassified SSA report detailed how it had paid sources to masquerade as activists in these organisations (State Security Agency 2017; Mufamadi, 2018). The report suggested that potential allies in the fight against unaccountable surveillance had emerged in the SSA in the form of the whistleblowers who were themselves concerned about surveillance abuses and these exposés within the SSA provided a democratic opening for activists to escalate their struggle. However, by that stage, R2K was in such a weakened state that the revelations deepened internal tensions, in that it created a whispering campaign about who in the organisation had acted as paid SSA agents. It did galvanise the organisation into action in that it started to screen who became involved. According to National Working Group member Bongani KaMthembu, they tried to '... tighten up the entrance of whoever comes. It's no longer an open book like before'.<sup>25</sup> However, by this stage the organisation was in a downward spiral that it has not recovered from. Its decline has meant that the anti-surveillance work has to be taken up by other organisations that remain in a stronger position to do so. At the forefront of these efforts was the investigative journalism centre and one of the founders of R2K, amaBhungane.

## **Strategic litigation overtakes anti-surveillance organising: The amaBhungane Constitutional Court case**

amaBhungane's challenge to the constitutionality of Rica was underpinned by a very well-planned and well-executed legal strategy, or as Hunter put it, a 'practical scaffolding that led to an outcome'.<sup>26</sup>

25 Interview with Bongani KaMthembu, National Working Group member, Right2Know Campaign, 29 May 2023.

26 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

The case was the culmination of what Nkosi described as a 'beautiful journey', where strategic litigation built on the anti-surveillance momentum started by R2K to force the government to reconsider its inadequate privacy protections in Rica.<sup>27</sup> The path from the anti-surveillance organising of R2K to strategic litigation was not a smooth one, however, with the latter overtaking the former as a strategy to continue the fight against unwarranted surveillance.

Possibly the most important factor that led to the success of the case was that the organisation had clear, irrefutable evidence, in the form of a court transcript, that its Managing Editor Sam Sole had been put under surveillance by the state. He was not the only journalist to make this discovery. Two former journalists from South Africa's largest weekly newspaper, the *Sunday Times*, Mzilikazi wa Afrika and Stephan Hofstatter, learnt that the Crime Intelligence Division of the South African Police Service (SAPS) had put them under surveillance to identify their sources of information, and they were tipped off by their sources as to this fact (Duncan, 2014, pp. 224–7). Evidence then emerged through a labour court dispute that confirmed the surveillance. Other journalists also learnt of surveillance through tip-offs (Right2Know Campaign 2018a), but they struggled to take material steps as they were difficult to organise as a group, even though their surveillance '... fell quite easily into the narrative of repression in the early 2010s'.<sup>28</sup>

amaBhungane was, however, able to take steps because they had the funding networks to raise funds for the case, and a legal network willing to represent them at reduced, non-commercial rates. They also ploughed any recovered legal fees from cases they won back into more litigation.<sup>29</sup> Another factor was that amaBhungane's founders, Sole and Stefaans Brümmer, had taken a deliberate decision at their launch in 2010 – the year of R2K's establishment – to

27 Interview with Thami Nkosi, interim programmes coordinator, Right2Know Campaign, online on MS Teams, 30 May 2023.

28 Interview with Murray Hunter, former Secrecy and Securitisation Coordinator, Right2Know Campaign, online on MS Teams, 2 June 2023.

29 Interview with Sam Sole, Managing Editor, amaBhungane Centre for Investigative Journalism, online on MS Teams, 14 July 2023.

depart from a conventional, positivist journalism of observation associated typically with the professional model of journalism and commercial media operations. Instead, they embrace a public journalism model with an advocacy component or, more specifically, accountability journalism, and their status as a non-profit journalism organisation gave them the space to do that. In doing so, they aimed to practise what Brants and de Haan (2010, p. 418) have referred to as empathetic responsiveness, where journalists side with a traditionally voiceless public and act as advocates of their cause to public authorities that included an advocacy component. The purpose of the advocacy was to ensure conditions for independent investigative journalism through defending and promoting information rights. Thus, 2010 was a period of innovation, with innovators experimenting with new organisational forms. The advocacy component of amaBhungane's work – which included pursuing access to information requests, litigation on information rights and submissions to various public bodies – had to be managed very carefully to ensure that it did not compromise the independence of the journalism, but for Sole, if one embraced a public journalism stance, then the two activities were not contradictory but complementary:

So, this was a brainchild of Stefaans and I and from the beginning. It was always conceived as being based on three legs, one being trying to do best practice investigative journalism. Two being trying to transfer some of the skills and knowledge and so on. So, training and sharing or skills transfer, that being the second leg and the third leg being advocacy. [Investigative journalism] is essentially . . . quite campaigning journalism. It's accountability journalism. It has a particular moral standpoint, I suppose . . . [advocacy] and journalism has fed into one another. We handled the potential conflict by keeping the two separate, with the advocacy person not being a journalist . . . [and] we clearly distinguish between the two in publications.<sup>30</sup>

30 Interview with Sam Sole, Managing Editor, amaBhungane Centre for Investigative Journalism, online on MS Teams, 14 July 2023.

amaBhungane contributed to R2K's establishment to achieve the objective of building more of a mass base for its work, and the advocacy coordinator represented amaBhungane on the National Working Group. However, the growing number of issues that R2K dealt with made it increasingly difficult for them to remain engaged in the organisation's leadership, and they stepped down from this role. This experience led Sole to conclude that they did not really have the capacity to be involved '... in something that was trying to be more of a movement, and so I think we've stuck to that'.<sup>31</sup>

The model of an investigative journalism centre contributing to an organisation that had some characteristics of a social movement worked well for a while. It allowed them to contribute to the victory around the Secrecy Bill, and to raise the profile of the campaign work around the independence of the Inspector General. This office had become a serious concern to amaBhungane because it was not willing to confirm or deny the existence of a surveillance operation against Sole, even though evidence had emerged of such, and highlighted its lack of robustness.

amaBhungane's attorney on the Rica case, Dario Milo, was used to operating on brief for clients and less familiar with aligning legal strategies with movement campaigns led by multiple actors that at times disagreed with one another. Nevertheless, he was pleasantly surprised by what he described as the vigorous and relentless campaign of civil society and the media – involving marches and protests and other forms of mass action – had the effect it did, and it was not just the legal submissions that were relied on to stop him from adopting the Bill.<sup>32</sup> Also heartening was the fact that Ramaphosa's legal team had indicated that it was open to a legislative review of the most problematic areas of the Bill and signalling a different approach to the Bill as compared to the previous administration. Milo said:

31 Interview with Sam Sole, Managing Editor, amaBhungane Centre for Investigative Journalism, online on MS Teams, 14 July 2023.

32 Interview with Dario Milo, media lawyer, online on MS Teams, 17 July 2023.

[Legal victories like Rica and the Secrecy Bill] depend upon a broad Church of like-minded organisations and media companies, who can collectively come to court to say, this isn't just an amaBhungane problem, or a Mzilikazi wa Afrika being surveilled problem. It is a systemic issue that affects the whole [journalism] industry, and that certainly played a huge role, I think, in the success against the Secrecy Bill . . . is that collective sense of we're in this together. [The court transcript confirming the surveillance of Sole and the non-committal response of the Inspector General] and being able to put all of that in a court application, I think certainly created the right atmosphere and conditions for a court to say this is a real problem.

The fact that the case occurred in an international moment, when state surveillance overreach was a major public issue following the abuses revealed by former National Security Agency contractor Edward Snowden, also worked to the advantage of amaBhungane and its legal team. It meant that it had available to it progressive international jurisprudence on surveillance reform, and organisations that had contributed it could be drawn on to contribute their expertise. One of those was London-based but international advocacy organisation Privacy International, which became a Friend of the Court in the amaBhungane case. Programme Director and Senior Legal Officer Ilia Siatitsa explained:

It goes without saying it's a landmark judgement that we have. It has been a great honour to even be a small part of [it]. In my view, one of the biggest achievements of the case as such to begin with was that it forced the government to admit to the existence of the [SSA's] bulk interception programme to begin with, it was not in the law and there are very few governments in the world . . . [That] is great.<sup>33</sup>

<sup>33</sup> Interview with Ilia Siatitsa, Programme Director and Senior Legal Officer, Privacy International, online on MS Teams, 14 July 2023.

## **Analysing the findings through a synthesis of oversight and political process theories**

This section uses the emerging literature on democratic oversight, synthesised with political process theory, to explore how public oversight of intelligence-driven surveillance has been organised in South Africa, to what end and its impact. Political process theory seeks to explain the conditions under which social movements are likely to succeed or fail to achieve their objectives. These conditions include the extent to which a political system is open or closed to challenge, the extent to which this system is stable or unstable, the availability of potential allies, leading to the formation of new alliances and greater political empowerment, and conflict among the elite (McAdam et al., 2004, pp. 3–72). A synthesis of the two allows for an examination of factors that are both internal and external to movements and their impact on movement success or failure. For the purposes of this analysis, R2K is being understood as a social movement, although as explained earlier, this characterisation is not without its problems.

The anti-surveillance activism discussed in this chapter qualifies as public oversight of intelligence-driven surveillance, and democratic oversight at that. The activism started out initially as a popular campaign against the 'Secrecy Bill', organised partly under the rubric of R2K, and escalated into an information-rights campaign with multiple legs. One of these legs focused on abuses of the security and intelligence apparatuses of the state, including its human and digital intelligence and surveillance capabilities. In articulating the problems, it was campaigning around as part of a broader systemic attack on progressive and popular democratic social forces (Right2Know Campaign 2018b, p. 4), increasingly R2K adopted a critical approach, moving beyond individualising and exceptionalising surveillance abuses and explained them as being a by-product of an exploitative and oppressive neoliberal economic system (Choudry, 2018, p. 3–16). While there was a strong element of 'rights-talk' (Madlingozi, 2012, pp. 222–39) in the campaign, they also broadened their analysis of pervasive secrecy and surveillance into a critique of neoliberalism. In doing so, they appealed to a broad range of

social forces across South Africa's myriad divides. They also moved beyond a narrow programme of oversight reforms that were vulnerable to reversal, by articulating the problem as one that would require lasting solutions that dismantled the root cause of the problem of growing authoritarianism, namely inequality. By the time amaBhungane took over the leadership of the anti-surveillance work, the conception of the problem narrowed again from a focus on a broader socio-political critique to the chilling effect of surveillance on investigative journalism and information rights as the lifeblood of such journalism (Quintal, 2021; Thakur, 2021). Nevertheless, its non-profit status allowed amaBhungane to operate with a conception of journalism that was public-facing and took its practices far beyond positivistic conceptions of the journalism of observation, and which allowed it to play this leadership role in ways that benefited broader society.

As discussed in the introduction (Duncan and Munoriyarwa, this volume; Caparini, 2007, p. 3), intelligence oversight could be understood as the superintendence of intelligence in a manner that is independent from the everyday management and practices of intelligence and the institutions that collect, analyse and store it. Conventional accounts of intelligence oversight would reduce oversight to the practices of formal oversight structures – which in the case of South Africa were the JSI, the Inspector General of Intelligence, the executive arm of government and the judiciary – and this chapter shows that it was precisely because of the deficiencies, including the lack of independence, of these structures that anti-surveillance activism as a form of public oversight became necessary. The participating NGOs, media organisations and social movements supervised the intelligence agencies by documenting and publicising what they believed to be unlawful surveillance, laying complaints and requesting investigations, providing a voice for surveillance victims and campaigning for greater independence of the formal oversight bodies they were forced to compensate for. The 2016 campaign for a transparent and independent appointment process for the Inspector General led to the withdrawal of the ANC's preferred candidate and public (as opposed to secret) hearings for all candidates: a major victory of public oversight. The publicised

cases of surveillance abuses did not result in meaningful redress for the victims, however, until amaBhungane launched its legal challenge. This case led to a major court victory with lasting, positive, international repercussions, in that it forced the government to rewrite the law, after having dragged its feet on legislative reforms for years, and setting an international legal precedent that other courts could draw on.

The South African case study amplifies a finding in the public-oversight literature that oversight innovations tend to occur, not necessarily in the ordinary course of events when stasis is likely to set in, but when activists use surveillance scandals to force the formal structures to change how they operate through public pressure, and after the responsible agencies have been delegitimised. These scandals become the real moments when intelligence oversight is practised (Kniep et al., 2023, p. 2). However, they also carry with them the risk that the oversight innovations that the scandals unleashed become institutionalised and, ultimately, neutralised through the establishment of 'legitimate' formal bodies and enabling laws that revert to minimalistic oversight once the scandal has died down. With regards to the particularistic verses generalising nature of the injustices claimed by the anti-surveillance activists (Aradau and McCluskey, 2022, pp. 1-19), amaBhungane pursued a particular complaint about one of its investigative journalists and journalists in general, which led to a court ruling adopting special defences for this occupation. However, the more generalised claims made by R2K about surveillance being part of a broader neo-liberal attack on democracy that necessitated a change in direction of the government's economic policies, failed to gain sufficient traction to force change. Consequently, the judgment could be institutionalised in the formal oversight structures more readily, although it cannot be said that its effects were neutralised: on the contrary, the legal case pushed the institutions to innovate and led to enduring, positive changes to the practices of formal oversight over surveillance.

However, the conceptions of the public and of democracy that galvanised this activism were contested and these contestations remained unresolved and an area of considerable weakness. Anti-surveillance activists clearly took democracy seriously and pursued

an ideal of 'pure democracy', or horizontalism, involving a conscious rejection of hierarchy with leaders at the apex, although not to the point of eschewing an elected-leadership structure altogether. Consequently, they experimented with novel organisational forms that enabled more radical forms of direct democracy, or the right to engage through non-institutionalised channels such as protests – and in situations where representative democracy had failed to deliver robust oversight. In doing so, they drew on South Africa's longer history of public protests to confront political elites, by mobilising the residual social-movement networks that still existed. In any event, parliament and government had limited the scope for participatory democracy relating to intelligence oversight by ensuring that parliamentary oversight took place largely in secret.

These activists attempted to transcend the socio-economic divisions in society and achieve a more inclusive definition of the public and how it was constituted for oversight. Such divisions had translated into schisms between mass-based, working-class social movements that may be relatively resource-poor and NGOs with expertise in litigation and policy advocacy, but with a social base typically limited to the middle class and with no real membership to speak of, but with access to donor funding. The case study exposes the difficulties of doing just that, and how activists were unable to sustain mobilisation around oversight practices as a result, leading to a conscious choice to reduce mobilisation efforts, limit the terms of engagement with the state and focus on litigation to keep the momentum going. The publics that were galvanised included media organisations, NGOs and social movements, but less so trade unions, and the relationship to the social movements that were mobilised through the campaign against the Secrecy Bill were difficult to sustain. However, even though R2K emphasised physical rather than digital networking – which meant that activists created stronger ties with one another than would have been possible had the organisation used a digital campaign – the organisation also suffered from the weaknesses of horizontalism, namely a lack of structure that created a vacuum that progressive forces were ill-equipped to take advantage of (Bevins, 2023). Not having a clearly defined membership with the right to recall and a tightly defined mandate opened

the organisation up to being pulled in too many different directions, and interpersonal conflict that, at times, was amplified by existing race, class and gender divisions, and opportunism.

The reasons for the faltering activism need to be understood in the broader national and global context, where the political system becomes more hostile and closed to challenges. The establishment and ultimate decline of R2K mapped over onto the rise and decline of social movements opposed to neoliberal globalisation in the early 2000s, or what Bevins has referred to as the mass-protest decade from 2010 to 2020 (Bevins, 2023). A new wave of social movements sprung up in the wake of the 2007–8 world capitalist crisis, triggered by persistent greed-induced overlending by United States financial institutions. This financial crisis was felt globally and led to increasing unemployment and homelessness, triggering opposition movements to the austerity political elites around the world imposed to stabilise the crisis. Those movements too declined as they were crushed systematically through police action or they unwound due to their own internal problem (Satgar and Williams, 2021; Bevins, 2023). While it worked impressively for a time, R2K's participation model failed to take these weaknesses into account sufficiently, forcing it to overcompensate for these weaknesses by attempting to become a social movement itself. However, without a clearly defined constituency and in a context of diminishing resources among the social base it organised, the resources it attracted became the focus of deep internal divisions that it was unable to transcend.

Another factor that presented an opportunity for anti-surveillance activism related to the divisions in the political elite and, specifically, the divisions in the ANC between Zuma and his supporters and Ramaphosa and his supporters. There can be little doubt that these divisions created an opening for surveillance reform, building on the victory around the Secrecy Bill. At the time of this contest for control of the ANC, the political system became unstable, but not necessarily to the point of significant political realignments in the form of new and significant political contestants. The ANC remained in power, albeit with a reduced majority, and stabilised once Zuma's contest for power was neutralised. The Zuma presidency lost the political will to sign the by-then hugely contro-

versial Secrecy Bill into law. Neither was Ramaphosa willing to do so, and in fact he indicated his intention to review the Bill. This is a legacy of R2K and allied organisations and left an information-rights movement in its wake that for a time galvanised a broad cross-section of South African society across the country's multiple social divides. Public perception, buoyed by media support for the campaign and opposition to Zuma's rule for its persistent attacks on media freedom, created conditions for heightened public oversight. This is because it fuelled a climate of profound mistrust in state intelligence and its surveillance capabilities, leading to the 'narrative of repression', as Hunter described it, dominating public discussions about intelligence and surveillance, as these capabilities became tainted and ultimately delegitimised by the Zuma administration's abuses for narrow political and corrupt purposes.

As abusive surveillance affected the highest levels of government, allies in the fight against such surveillance began to emerge in the intelligence agencies themselves. These events triggered an investigation informed by whistleblowers inside the SSA with insider knowledge of intelligence abuses against Ramaphosa's leadership bid, and political and society and social movements who were critical of the Zuma administration, followed by legislative reforms to disestablish the SSA and strengthen intelligence oversight: reforms that were unlikely to have taken place had it been ordinary political activists who were surveilled. The Constitutional Court case also forced reforms of Rica, which strengthened judicial oversight and created the potential for heightened public oversight through the user notification requirement. They also led to a formal oversight system that was forced to become more sympathetic to criticisms of abusive surveillance, including the Inspector General of Intelligence and JSI. Communications companies that are legally obliged to enable state surveillance, found it more difficult to sustain this role uncritically as abuses received more publicity, heightening the risk that they would become tainted with the associated controversies.

However, there are indications that these reforms are likely to be superficial, and not lead to substantial democratic openings. During the legislative reforms that followed the investigation initiated by Ramaphosa in the wake of the surveillance revelations, the mandates

of domestic and foreign intelligence were expanded to include a focus on national security interests and not just national security threats. Furthermore, in the wake of destabilising riots in parts of South Africa in 2021, Ramaphosa absorbed the SSA into the presidency and removed the Minister of Intelligence position, leading to a weakening of executive oversight: a problem acknowledged by the chairperson of the JSCI. These constraints to the oversight innovations that were won through activism followed by strategic litigation, strongly suggest that the democratic spaces for intelligence reform that have opened may close, unless there is a sustained public effort to keep them open.

## **Conclusion: The right people in the right room with the right agenda**

In 2018, R2K conducted an evaluation and mid-term review of the organisation. Both pointed to some key changes the organisation needed to make to maintain its momentum and prevent further decline. While the organisation had focused, correctly, on uniting progressive civil society and enabling broad-based participation, its participation model needed to change. The review and the evaluation floated a suggestion that was never implemented, namely, to restructure the organisation away from the provincial working groups that formed the engine room for participation. In their place, they proposed establishing Campaign Action Teams (CATs) around specific themes that aimed to 'get the right people in the right room with the right agenda' (Right2Know Campaign 2018, p. 13). The CATs would bring activists together in a more focused way on specific issues they cared about, such as surveillance, to enable depth of discussion, while drawing on the full range of capacities in the activist base. Priorities would be identified at national level and worked into provincial programmes of action at local level, with periodic meetings of all the CATs to ensure that silos did not develop.

The criteria for participation in the CATs were much more clearly defined than R2K's then model, as they included activists with a mandate to represent mass-based organisations or with a proven

capacity to draw over 50 people to a meeting, as well as activists – either representing an organisation or an individual – with useful skills and willingness to contribute these to R2K. While no agreement was arrived at on what the voting power of the second category of members would involve, what was agreed upon was that the organisation needed to include new members with the support of 60 per cent of the existing membership, keep a record of members, audit them regularly and remove members that did not meet the criteria. This new approach would mean working in fewer communities and on fewer issues but doing so in a deeper way (Right2Know Campaign 2018, pp. 11–15; Community Development Resource Association 2019, pp. 21–3).

The proposal for the establishment of CATs – which distil the learning of anti-surveillance activism into an organisational form that could be of more general application beyond the South African case and that, therefore, is useful for thinking through a model for enabling, defining and steering participation in public oversight – came too late to arrest the decline of R2K, but they appeared to strike a balance between the seemingly conflicting priorities of expanding participation while sharpening focus and narrowing programmes, defining membership and increasing accountability. They avoided the dangers of ‘pure democracy’, or horizontalism, and ‘rent-a-crowd’ approaches, while recognising that broad-based participation was necessary for the campaign to exercise social power. They offer salutary lessons for future attempts at public oversight of intelligence-driven surveillance and provide tools to make it more sustainable. These strategies could help to protect anti-surveillance work somewhat from harassment by the state and private actors supportive of surveillance, and in conditions where political spaces are closing. They could also create the organisational agility to build on openings when they present themselves in the state and private sector, and where sympathetic individuals identify with criticisms of surveillance measures.

These strategies could also insulate more mass-based forms of oversight from the ebbs and flows of social movements in the wake of the mass-protest decade, when mass movements are likely to be weaker. They also offer a clearly defined but still broad-based participation model for public oversight that could bring into the same

room social movements, NGOs, lawyers and journalists committed to public journalism, and keep them there. These participants could then contribute the best of what they have to offer based on solidarity and mutual respect, but united by a shared moral belief that a democracy free from unwarranted surveillance necessitates a fairer distribution of wealth and resources. What is clear from the case study, though, is that retreating from more participatory approaches to anti-surveillance work is not an option; rather, the challenges, complexities and contradictions of engaging in movement building should be embraced. As the evaluation concluded on a note that related to R2K, but that holds true for building a model for successful and sustainable public oversight of intelligence-driven surveillance, 'This is new territory and there are no readily available answers but to keep the questions and learning alive' (Community Development Resource Association, 2019, p. 22).

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