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## The ecology of civil society in post-apartheid South Africa.

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**THE ECOLOGY OF CIVIL SOCIETY IN POST-APARTHEID SOUTH AFRICA**

By

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215627870

Submitted in partial fulfilment for the requirements for the

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## DECLARATION OF ORIGINALITY

I, **Peter Motwa Mampane**, student number 215627870 hereby declare that the thesis titled “The ecology of civil society in post-apartheid South Africa” submitted for the Doctoral degree in Public Affairs at the Tshwane University of Technology is my own original work and has not previously been submitted to any other institution of higher education. I further declare that all the sources cited or quoted are indicated and acknowledged by means of a comprehensive list of references.

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**Peter Motwa Mampane**

## **DEDICATION**

Sincerest gratitude and appreciation to the Almighty for giving me the strength, courage and wisdom to complete this project. The study is dedicated in memory of my late parents for they are the bedrock and base upon whom I have been able to continue being the torchbearer of the family. Special gratitude to my late mother for she toiled her entire life to see to it that our family can eke out a living in the toughest of times. This dedication also goes out to all my late siblings and the only remaining brother Mamabolo.

## **ACKNOWLEDGEMENTS**

I wish to acknowledge and appreciate my supervisor, Professor Mukonza for his stewardship and support during the study. He personifies the concept of hard work in its fullest form. He provided invaluable support without which it would have been difficult to complete the study. I also wish to express my gratitude to my Co-Supervisor Professor Maserumule who was my initial supervisor before his elevation to higher leadership responsibilities in the university. He provided leadership at the embryonic phase of the study without which it would have been difficult to complete this project. Special acknowledgement to my wife Tshidi. Your patience, love and unwavering support is greatly appreciated. I hope I continue to live to be a good guide, idol and example to my kids Lerato, Malaika and Kgosi. May they derive lessons from their father that dreams are achievable if they are accompanied by hard work.

## **Abstract**

Bunbongkarin (2001) posits that one of the often-raised questions concerning democratization and democratic consolidation is whether elites or the public make and consolidate democracy. While the role of the elites has been well documented in the history of most societies, as the torchbearers of intellectual thought and as the creators of democracy and its institutions, the contribution of civil society as the representative of a significant number of the people, cannot be overlooked. The sector plays an intermediate role between the state and the citizens and as such contributes to good governance. The characteristics of good governance, i.e., state capacity, accountability, responsiveness and transparency, among others, reflect the need for the state and civil society to work together to consolidate democratic institutions. According to Arliff and Sarjoon (undated) civil society has two main functions, namely: precautionary role against the state to balance, reconstruct and democratize it and also to expand liberty and equality in societies.

The study provides a background of the historical evolution of civil society organizations in the context of South Africa particularly since the advent of democracy in 1994. An introductory study of literature, both historical and contemporary on the concept of civil society, the evolution of civil society movements in South Africa and other regions of the world, the legislative and regulatory framework that informs civil society are some of the pertinent areas the research looked at. The importance of civil society as a social partner in enabling the state to deliver on its service delivery mandate and in the same vein as a watchdog created to hold government accountable are areas that form a fundamental feature of the study.

The study is non empirical in nature, an approach which typically involves reflection, personal observation, and an extensive document study. This type of study is as much valuable for knowledge acquisition as that employing empirical data. Relevant empirical information in this regard was established through non-sampling methods, which can withstand scientific scrutiny. This includes among others, accessing research databases, legislative documents, conference reports and other available data in both print and electronic media. The main objective of his study was to investigate the role and influence of civil society movements since the advent of democracy in South Africa in 1994.

Concomitant with this main objective included focus on the following objectives: to contribute to the enhancement of literature and construction and production of new knowledge on civil society movements in the current socio-economic and political milieu, to make a comparative analysis/historical profiling of the role of civil society movements in different phases of the evolution of the state in South Africa, to ascertain whether funding has contributed in improving and enhancing democracy in South Africa and to make findings as to why civil society movements have now mainly changed their focus to the public interest litigation route rather than mass mobilization approach as was mainly the case in the past.

The study utilized the case study approach. In case study research, the researcher adopts an approach of selecting a subject which becomes a product of inquiry or the object of the study. The subject selected should be able to assist in providing detailed understanding to the phenomena being studied or alternatively enhance future research or the phenomena in question (Cresswell *et al.*, 2007). The focus was on four civil society organizations which are Equal Education, AfriForum, South African Democratic Teachers Union and the South African Council of Churches. This was done in an attempt to examine their contribution, establish their footprint and make meaning of their contribution to the deepening and consolidation of democracy in South Africa.

The study's main thrust was to analyze civil society and democracy in post-apartheid South Africa and to assess the role, impact and contribution that the sector has made (and continues to make) since the dawn of democracy. This is what the study sought to contribute to the body of knowledge. To that end, the researcher developed a model that is congruent with the study as a form of scholarly contribution on the sector going forward. This model referred to as the *State-Civil-society partnership model* seeks to highlight the importance of partnerships and collaboration between civil society organizations themselves and among the sector, government, labour and the private sector as important social partners in approaching the challenges faced by the post-apartheid state. Considering that the problems are structural, historical and enmeshed in the entrenched role of South Africa as a global political player which attracts millions of immigrants to these shores, it therefore stands to reason that a multi-thronged approach is required in approaching these massive problems. It is in that context that the study developed the partnership model as part of the solution to the challenges and problems confronting the post-apartheid state.

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## Acronyms

AB	Afrikaner Broederbond
ANC	African National Congress
APLA	Azanian Peoples Liberation Army
ASD	Alternative Service Delivery
ASIDI	Accelerated Schools Infrastructure Delivery Initiative
ATASA	African Teachers Association of South Africa
ATTAC	Association for the Taxation of Financial Transaction and Citizen Action
APRM	African Peer Review Mechanism
BBE	Black Economic Empowerment
BBBEE	Broad Based Black Economic Empowerment
BC	Black Consciousness
CASAC	Council for the Advancement of the South African Constitution
CBO	Community Based Organization
CCEJ	Citizens Coalition for Economic Justice
CCG	Concerned Citizens Group
CODESA	Convention for a Democratic South Africa
COSATU	Congress of South African Trade Unions
CSI	Corporate Social Investment
CSR	Corporate Social Responsibility
CSO	Civil Society Organization
CSD	Civil Society Diamond
DBE	Department of Basic Education
DFID	British Department for International Development
DSD	Department of Social Development
EE	Equal Education
EELC	Equal Education Law Centre
EMIS	Education Management and Information System
EPSEM	Equal Probability of Selection Methods

EU	European Union
EUPRD	European Union Programme for Reconstruction and Development
FEDSAS	Federation of Governing Bodies of South African Schools
FEDUSA	Federation of Unions of South Africa
FSAW	Federation of South African Women
FOSATU	Federation of South African Trade Unions
GDE	Gauteng Department of Basic Education
GEAR	Growth Employment and Redistributive Strategy
HSRC	Human Sciences Research Council
IDASA	Institute for Democratic Alternatives for South Africa
IDT	Independent Development Trust
ILGA	International Lesbian, Gay, Bisexual, Transgender and Intersex
IERI	Institute for Economic Research and Innovation
KZN	KwaZulu Natal
LRA	Labour Relations Act
LRC	Legal Resource Centre
MATU	Mamelodi Teachers Union
MEC	Member of Executive Council
NACTU	National Council of Trade Unions
NAPTOSA	National Professional Teachers Organization of South Africa
NDA	National Development Agency
NDP	National Development Plan
NEC	National Executive Committee
NEDLAC	National Economic Development and Labour Council
NEIMS	National Education Schools Infrastructure Management System
NEUSA	National Educators Union of South Africa
NGK	Nederduitse Gefeormeerde Kerk
NGO	Non-Governmental Organization
NBLS	National Basic Livelihood Security Act
NHLC	National Interfaith Leaders Council

NPO	Non-Profit Organization
NRASD	National Religious Association for Social Development
NRLC	National Religious Leaders Council
NSNP	National Schools Nutrition Programme
NUMSA	National Mineworkers Union of South Africa
NUSAS	National Union of South African Students
PAC	Pan Africanist Congress
PAIA	Promotion of Access to Information Act
PEC	Provincial Executive Committee
PIL	Public Interest Litigation
PPE	Personal Protective Equipment
PSPD	Peoples Solidarity for Participative Democracy
PBO	Public Benefit Organization
RDP	Reconstruction and Development Programme
ODA	Overseas Development AID
OECD	Organization for Economic Cooperation and Development
OUTA	Organization Undoing Tax Abuse
SAAYC	South African Association of Youth Clubs
SABC	South African Broadcasting Authority
SACC	South African Council of Churches
SACCOLA	South African Consultative Committee on Labour Affairs
SACE	South African Council of Educators
SACP	South African Communist Party
SADTU	South African Democratic Teachers Union
SAFTU	South African Federation of Trade Unions
SAIRR	South African Institute of Race Relations
SANCC	South African Native National Congress
SANCO	South African National Civic Organization
SANGCOCO	South African Non-Governmental Organization Coalition
SAPS	South African Police Services

SCA	Supreme Court of Appeal
SECC	Soweto Electricity Crisis Committee
SGB	School Governing Body
SIDA	Swedish International Development Cooperation Agency
SMT	School Management Team
SRC	Student Representative Council
TAC	Treatment Action Campaign
TRC	Truth and Reconciliation Commission
UDF	United Democratic Front UDF
UN	United Nations
UNCESCR	United Nations Committee on Economic, Social & Cultural Rights
UNDP	United Nations Development Programme
UNCAC	United Nations Office on Drugs and Crime
UNISA	University of South Africa
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

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## **CHAPTER: ONE**

### **INTRODUCTION AND BACKGROUND**

#### **1.1 Introduction**

This introductory chapter provides a background of the historical evolution of civil society organizations in the context of South Africa particularly since the advent of democracy in 1994. The chapter will do an introductory study of literature, both historical and contemporary on the concept of civil society, the evolution of civil society movements globally, the legislative and regulatory framework that informs civil society. The importance of civil society as a social partner in enabling government to deliver on its service delivery mandate and in the same vein as a watchdog created to hold government accountable are areas that form a fundamental feature of this study.

Without venturing into ideological discourses, the basic foundational understanding common across most societies is that the primary role of government and its related institutions is to promote the general welfare of citizens and to improve the quality of life of citizens. To this end governments, the South African government in particular relies on public administration which is the conveyor belt through which the state is able to achieve its constitutional and legislative mandate. An obligation is also placed upon government employees contracted by departments, institutions of government, state owned agencies and other related institutions to render services to the public using resources generated by the state through various forms of taxation. The government is obligated by provisions of the Constitution from the founding provisions which talk to the recognition of the injustices of the past as the basis on which to establish a society based on democratic values, social justice and fundamental human rights. Furthermore, the Constitution lays the foundation for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law (Constitution of the Republic of South Africa, 1996). To this end, the government recognizes the role that each individual can play in contributing to the ideals of a just, equal and a democratic South Africa.

Chapter two of the Constitution talks about freedom of association which emphasizes the fact that citizens do have the right to belong to any organization of their choice. Civil society organizations have been established using this Constitutional provision in an effort to contribute meaningfully to the improvement of the quality of life of the citizens and in the creation of institutions that are meant to buttress the nascent democracy. Among others, the government is expected to create an enabling environment for free and fair elections, provide basic quality education, guarantee property rights to the citizens and to uphold the dignity of citizens. It is on the basis of the protection provided by these Constitutional imperatives that civil society organizations exist. Their main reason for existence is to assist the citizens to uphold and protect the enforcement of these provisions and to strengthen South Africa's Constitutional democracy. In order to promote good governance, which Mafunisa (2004) considered to be the cornerstone of reconstruction and development, it is imperative for the government to acknowledge the pertinence and importance of civil society as one of the cornerstones of good governance. For the government to extricate itself from the debilitating challenges of underdevelopment, poverty and other related social ills, it is thus imperative to consider civil society as an important stakeholder without which the ideals enshrined in the Constitution will be difficult to achieve.

## **1.2 Background of the study**

The study is mainly about civil society organizations and democracy in post-apartheid South Africa. The role of the civil society sector in the pre-apartheid era and the post-apartheid period is analysed. In the analysis of the current state of civil society in South Africa, the evolution of the sector in the various historical epochs in South Africa provide valuable insights to enable a determination to be made as to the causal factors that have shaped the sector to be what it is in the current socio-economic and political milieu.

South Africa before 1994 which is the dawn of the democratic era, was characterized by repressive legislation. Political parties, except those belonging to white people, were outlawed and not allowed to contest for political office (Ottoway, 1991:15). This means that black people were disenfranchised. Pass laws and apartheid policies prohibited black people from entering urban areas without official police documentation. Black people were obligated by law to carry pass books for 24 hours. Failure to produce the passbook on demand by police resulted in imprisonment. Interracial sex, marriages and relationships were not allowed. Blacks could not set up businesses in white areas.

Education was restricted. In fact, all sectors of life were segregated (Blakemore, 2019). Social and economic imbalances and exclusion permeated all sectors of life. This created what came to be referred to as the ‘two nations theory’ (Bojabotseha, 2011:3-4). South Africa, according to former President Thabo Mbeki is “a country of two nations”. This reality of two nations, underwritten by the perpetuation of the racial, gender and special disparities born of a very long period of colonial and apartheid white minority domination, constitutes the material base which reinforces the notion that, indeed we are not one nation, but two nations” (Mbeki, 1988). This situation referred to as the legacy of apartheid remains largely unchanged 28 years since the first democratic elections were held in 1994. This is the situation in which civil society organizations are still confronted with.

South Africa before 1994 was a state largely characterized by the repression of the rights of the majority of the citizens. The universal suffrage was enjoyed only by a sectarian part of the population. Civil society formations whose activities were considered to be challenging the supremacy of the state were summarily banned and their leaders thrown behind bars. For instance, in 1977 the Black Consciousness Movement under the leadership of Steve Biko, along with critical newspapers like *The World* fell prey to the draconian law, the Internal Security Act No.74 of 1982 which effectively outlawed them. The advent of democracy in South Africa, the subsequent adoption of the 1996 Constitution and the enactment of a number of pieces of legislation has contributed considerably towards making the country’s democratic project an envy of most emerging democracies in the world as a global proponent of human rights (Freedom House, 2020). In particular, the reference to freedom of association, which is in Chapter 2, Section 18 of the Constitution has gone a long way in institutionalizing the culture of participatory democracy (The Constitution of the Republic of South Africa, Act 108 of 1996). Dahl (1989, 88-89) maintains that the fundamental goal of a democratic system is citizen satisfaction. This implies the empowerment of citizens so that their standard of life can qualitatively improve. It is postulated that enhanced participation of the people invariably leads to a more accountable and responsive government (van der Waldt *et al.*, 2007:25). The total transformation of the state cannot be left as the sole prerogative of the governors hence the centrality of the role performed by civil society whose responsibility is to act as watchdogs and custodians of the interests of the people. Civil society movements assume a critical function of holding the state to account and not be inclined to act arbitrarily in the pursuance of its fiduciary responsibilities.

Reference to total transformation of the state and society therefore also includes the role that is played by civil society as conveyor belts of the interest and aspiration of those whose rights are sometimes trampled upon by the governors.

The study also looks at civil society organizations in other parts of the world notably Sub-Saharan Africa, Brazil and South Korea in an attempt to show a comparative analysis of the civil society sector in those parts of the world and South Africa. This approach is necessary especially given that most developing countries were largely colonized by states in the global north. Civil society formations in countries which mostly were former colonies make for interesting comparisons as a result of an almost similar kind of political history. This however does not denote that political, economic and social context were also similar. Contextual differences are acknowledged in the study. Comparative analysis is an attempt to demonstrate how information of processes compare or relate to each other. This enabled the researcher to draw important insights depicting similarities and differences in the historical evolution, context, activities, and programmes of the various civil society organizations in the various countries under review.

### **1.2.1 Overview of civil society during the apartheid South Africa**

The state which extends beyond government covers a range of institutions, including the courts, security services, parliament, public companies (Greenstein,2003:6). The main enablers used to buttress the apartheid state were mainly the police and the army who were used to maintain order and to neutralize any hostility. These institutions were used by the apartheid state to buttress the state. Segregatory legislation was used effectively to maintain the apartheid state. This included laws such as the Population Registration Act of 1950, the Urban Bantu Councils of 11961, the Bantu Education Act of 1953, among others. This system of oppression and the attendant complex historical and inter-generational implications resulted in racial exclusion of the majority and heightened social conflicts and disharmony. Corruption was a commonplace with public funds being used for the benefit of the white minority so that they could have a buy-in into the system (Nolutshwana and Lebakeng, 2020:119).

The history of civil society in South Africa has largely been characterized by conflict and in some instances cooperation. This is not surprising owing to the fact that the apartheid government did not take kindly to any organization that adopted a posture that stood in opposition to what the state stood for.

In apartheid South Africa, the degree to which civil society organizations were recognized depended entirely on the pressure they were able to exert on the state, their usefulness in persuading the populace to accept state decisions and their importance in helping to abet the apartheid ideology. Instances of civil society organizations such as the *Nederduitse Gereformeerde Kerk* (NGK) having cordial relations with the state were a feature of apartheid South Africa, even though they were few and far between. The church was influenced by the doctrine of Calvinism which advocated for Afrikaners as a purified nation who should be proud of their own language, culture and religion. This resulted in the development of the apartheid doctrine which encouraged the development of separate races. Any discussion on the examination of relations characterized by cordiality and collaboration in apartheid South Africa is best embodied by the NGK-state relations. Kuperus (1999) describes the relations between the NGK and the state as those of mutual coexistence and moderate official interaction.

The NGK was a church that the first Dutch settlers brought with when they came to settle in South Africa in the 17<sup>th</sup> century. Despite its rich traditions of establishing many missionary schools for ‘natives’, special schools for the blind, the deaf and orphanages, and the establishment of mission hospitals and institutions for theological training, the church is synonymous with its support of apartheid policies. Although the church was later to denounce apartheid as a heresy with the influence of leaders like Beyers Naude after having justified it earlier, the NGK’s history is not covered in glory insofar as its relationship with the apartheid government is concerned. According to Kuperus (1999) the close collaboration between the church and the apartheid government around 1978 was largely characterized by the following:

- The dominance of mainly White Afrikaners in the political and social arena;
- Prosperity in the economic sphere through the protection of capitalist interests, and
- The implementation of apartheid racial policy that maintained ethnic purity and overcame the criticisms of ‘negative apartheid’.

The apartheid government and much of civil society organizations had mutual engagements which supported the supremacy of the Afrikaner race in political and economic terms. This seems to support the idea espoused by Marx that civil society is largely shaped by the dynamics of production and commerce (Atkinson, 1992).

This means that the Afrikaner state existed to defend and reproduce the capitalist mode of production in which the dominant class consisting of the Afrikaners lorded over the exploited class consisting of black people who did not enjoy any political nor economic rights and were just a labour reservoir used to maintain the capitalist and apartheid mode of production. The church leaders and the state's relations would sometimes change depending on the issue that affected the two parties although in the main, the relations were mainly characterized by co-existence and mutual respect.

An important civil society organization which other scholars like Bloomberg (1990: 32) regard as a secret society, the Afrikaner Broederbond (AB) also played a powerful role in helping the apartheid state to maintain its hegemony. The Broederbond had the following three objectives:

- To unite all Afrikaners who have the welfare of their people at heart.
- To foster national awareness.
- To implant a love of the language, religion and tradition and fatherland.
- To promote all Afrikanerdom's interests.

The AB's modus operandi was to infiltrate strategic organizations in the Afrikaner community and to take over leadership and gain control of such so as to influence the strategic direction of those organizations. O'Meara (1977) described the AB as a secret society with the professed aim of the 'promotion of the Afrikaner nation'. He regarded it as a service organization intended to serve the Afrikaner and its sphere of operations is the work of the Afrikaner people as a separate historical, Protestant-Christian language and cultural community. Matisonn (2022) posits that the organization worked through multiple clandestine processes to ensure appointments in the civil service, the judiciary politics, academia, the church, the police, city councils, town clerks MP's, sports associations and the all-important Bantu Administration Boards that regulated life in the black townships. This is just a demonstration that shows the extent of AB's tentacles in all facets and sectors of life in apartheid South Africa hence no discussion of civil society cannot be complete without mention of the role played by AB in apartheid South Africa, notwithstanding the debate as to whether AB is defined as an out and out civil society organization or a secret society organization.

The second group of civil society organizations in apartheid South Africa are those whose relationship with the state was largely characterized by antagonism, hostility and confrontation.

These organizations in the main were inspired and influenced by the desire to see an end to the policy of apartheid and the creation of a democratic dispensation. These civil society organizations existed in a period of repression, subjugation, discrimination, and despotic form of government. These are the civil society organizations which associated themselves with the ANC and serviced the United Democratic Front which as a mass-based formation whose aim was to weaken the apartheid state. Various pieces of legislation were used to entrench apartheid and to monitor and police the work civil society organizations. For instance, the Prohibition of Political Interference Act of 1968 was used as an instrument to discourage and prevent the racial integration of organizations including civil society organizations. In the same vein any civil society organization or any other formation could not receive funding from foreign sources. This legislation was meant to ensure control of the government over all sectors of society making the work of CSOs difficult under the atrocious conditions of apartheid. The Disclosure of Foreign Funding Act 26 of 1989 had the effect of ensuring that once a civil society organization is identified by the apartheid government as an organization of interest, or what they referred to as a 'reporting organization'. Such an organization was compelled to administratively disclose confidential information that would be of interest to the security police or any other government agency thereby exposing the organization to such things as banning or stringent restriction (South African History Online, 2022). This made the work of civil society organizations very difficult.

There was also another section of civil society organizations which, although largely white led, was anti-apartheid in disposition. According to Habib and Taylor (1999: 74) such organizations conceived of themselves as being liberal in orientation and positioned themselves somewhere between ideological extremes of Afrikaner and African Nationalism. Examples of such CSOs include Urban Foundation, Black Sash, South African Institute of Race Relations and Institute for Democratic Alternatives (IDASA). Despite the apartheid atrocities, repressive legislation, and existing in an environment of strict state security which included constant monitoring of the activities of civil society, the sector continued to play a meaningful role in exposing the lack of a civil rights culture in the apartheid state. Helped by 'democracy assistance culture' and 'democracy promotion' foreign governments provided targeted aid to the country's most influential, modern, advocacy orientated civil society organisations. These included women's organizations, human rights groups, national or sectoral NGOs, business associations, private policy institutes, youth and student formations and professional media associations (Hearn, 2000:816).

The sector can also be credited with having contributed a great deal along with liberation movements like the African National Congress (ANC), the Pan Africanist Congress (PAC) and the Black Consciousness Movement (BCM), among others, in the ushering of a more representative democracy in South Africa. The sector mobilized the international community to isolate South Africa. It also encouraged the declaration of economic sanctions against the apartheid South Africa. According to Reddy (undated), writers, musicians, artists and athletes, among others, were mobilized in support of the freedom movement, whose representatives were given observer status in the United Nations and participated in decision making. Notably, the imposition of a ban on international funding of civil society organizations did not have much of an impact on their activities and actions, but instead anti-apartheid activities increased in number culminating in the government being forced to the negotiating table (Kurtz, 2009).

For purpose of this study, the concept of civil society organizations and civil society movements will be used interchangeably. There are countless definitions and understanding pertaining to the concepts and their use. For instance, Daniel and Neubert (2019: 177) refer to the features of associations in a public sphere or arena and their role in politics and society while the concept of social movement refers to the processes of mobilization and action.

### **1.2.2 The legislative framework in post-apartheid South Africa**

Post-apartheid South Africa provided civil society organizations with a new range of challenges. The challenges were both positive and negative depending on how a particular organization viewed them. An assortment of radical changes took place in the political space. These included the adoption of the new Constitution in 1996 and a variety of pieces of legislation which largely created an enabling environment for the civil society sector to conduct its business in a less restricted environment. State institutions supporting Constitutional democracy were established through chapter nine of the Constitution. These institutions included among others, the Public Protector whose primary mandate is to investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in any impropriety or prejudice (Constitution of the Republic of South Africa, 1996). The office of the Public Protector should be accessible to every South African and should periodically provide reports on its activities to Parliament which is the institution which the office accounts to.

Another significant institution established as a Chapter Nine institution was the Human Rights Commission whose mandate, among others, is to promote respect for human rights as well as to foster a culture of human rights. The Human Rights Commission is given the mandate and power to investigate and report on human rights compliance, take steps to secure suitable compensation where an individual's human rights have been violated and should also take it upon itself to conduct education, research and training on human rights for the benefit of all South Africans.

An important chapter in the Constitution which includes a whole range of human rights is chapter two. This chapter is also referred to as the Bill of Rights. The chapter provides for rights such as equality, freedom of expression, human dignity, freedom of association, education, freedom of assembly, demonstration and petition. The principle of separation of powers was entrenched with the adoption of the principles such as the fact that judicial authority is vested in the courts which are independent and subject only to the Constitution and the law which they are empowered to apply impartially without fear, favour or prejudice. To this end, the Constitutional Court which is the court of final instance was created with powers to adjudicate on any Constitutional matter. Furthermore, chapter three of the Constitution outlines the creation of a cooperative government model with three spheres of government all with specific functions and powers to deal with matters within their sphere of jurisdiction. These spheres are distinctive, interrelated yet interdependent hence in certain instances they have concurrent functions to which they are supposed to jointly deliver. The enactment of the Intergovernmental Relations Framework Act 15 of 2005 was meant to effect cooperative relations, create bodies and structures to regulate intergovernmental relations and also to ensure that no one sphere should hinder the performance of functions of the other.

At the political level the democratic government adopted a policy document called the Reconstruction and Development Programme (RDP). This policy was largely aimed at reversing the effects of apartheid planning. White Paper on Reconstruction and Development Notice 1954 of 1994 became the guiding planning document of the democratic government with key objectives of:

- Integrating previously separate areas;
- Providing and maintaining infrastructure;
- Strengthening the capacity of local government to provide services;
- Ensuring equality, and

- Encouraging full participation and transparency on issues that affect peoples' lives.

It is largely the latter objective which created citizen participation as the cornerstone of democracy. Participation in decision making became central in enabling people to claim their democratic rights. These rights are also counterbalanced with the responsibilities of citizens. This Constitutional provision created an enabling environment for the mushrooming of the civil society sector whose intention was to play an educational and watchdog function in ensuring that government is held to account on its decision-making processes. The focus of the sector was also to bring government closer to the people and ensuring that members of the public were able to exercise their democratic rights in an informed manner (Van der Walddt, 2011:39). The government also legislated the White Paper on Transforming Public Service Delivery Notice 1459 of 1997 popularly known as the Batho Pele whose purpose is to provide a policy framework and practical implementation strategy for the transformation of public service delivery (White Paper on Transforming Public Service Delivery, 1997).

### **1.2.3 Synopsis of the place and role of civil society in post-apartheid South Africa**

Fostering a culture of public participation, institutionalizing democracy and transforming institutions of the state and civil society, nurturing the implementation of a human rights culture, ensuring that the government live up to its service delivery mandate, effecting national reconciliation, reconstruction and redress of the historical injustices of apartheid, to mention but a few, became the key focus of civil society organizations in the democratic era. For democracy to be entrenched and consolidated requires that civil society organization should continue to play the watchdog role which has always been a renowned feature of the sector. This became necessary so as to avoid the reversal of the gains of democracy. It also became important in ensuring that the democratic state does not commit the human rights abuses which are synonymous with those of the apartheid state. The institutionally complex relationship between the sector and government meant that the government's commitment to the sector was likely to be increasingly tenuous in the future hence the need for the sector to remain constantly vigilant and also ensure that capacity building is built into the operations of civil society organizations (Perrsend, 2002) in (Zhang, 2005:14).

The adoption of the Non-Profit Act in 1997 created an opportunity for the sector to operate in a legal rights-based environment. The Act made provision for Non-Governmental Organizations (NGOs) to register with the Directorate for Non-Profit Organizations housed in the Department of Social Welfare. This central depository of Not-for-Profit Institutions (NPIs) is available to the public. The sector could now independently go out and raise funds, and equally receive funds from government institutions and departments. The main sources of income for the sector comes from government subsidies, local and international donations and membership subscriptions. It is however required of the CSOs to periodically provide accountability in line with the Department of Social Development (DSD)'s reporting, control and evaluation instruments that comply with legislative norms and standards.

The sector's role and impact has had contrasting fortunes depending on the dominant political themes at a particular point in time. For instance, after the elections of 1994, Weideman (2015:2) argues that the sector was thrown into turmoil as it sought to redefine its relationship with the democratic state. Its roles, responsibilities, strategies and identity within the newly established democratic structure and associated liberties of the new dispensation created challenges which led to the sector's contraction and the decline of its impact on the South African state. Part of the reason for the decline can be attributed to the redirection of donor funding to the democratic state and no longer directly to CSOs. This led to most CSOs reorganizing their goals to meet the needs of the donor community. The sector would also go on to lose a substantial number of its skilled personnel to the newly established institutions of the state and even to private sector organizations. This bleeding of personnel weakened the sector considerably with a number of CSOs either being forced to close or redefine their roles in order to remain relevant. One scholar, Maharaj (2007) as cited in Leornard (2014:380) argues that the ANC was committed to the demobilization of civil society, and he says that "the state was worried about the high level of consciousness and mobilization of the sector by 1994. The new ANC administration was conscious that it lacked the capacity to deliver services, so it demobilized civil society by co-opting the leaders of the sector into government structures at different levels".

Other defining moments include the ANC's ditching of the RDP policy and its adoption of Growth, Employment and Redistribution (GEAR) strategy which was also to create new challenges for the sector. GEAR with its emphasis on the reduction of government expenditure, diminished role of government in the economy and as such led to the rise in unemployment and inequality levels (Le Roux, 1997:47).

This was to lead to the resurgence of the sector. The fact that the sector also felt excluded from the formulation of the new macro-economic policy and the rigid posture adopted by government that the adoption of GEAR was non-negotiable also widened the cleavage between the sector and government (Ranchod, 2007:4). Around the period of the 2008/9 global economic recession, the sector again experienced another turbulence informed by challenges of donor funding.

Civil society has also played an important role in the ousting of two of South Africa's former presidents, namely: Thabo Mbeki and Jacob Zuma. According to Gumede (2018) when Mbeki's government marginalized critics, his perceived lack of consultation and when he refused to make anti-retroviral medication for the treatment of HIV/AIDS at public health facilities, civil society organizations led by Treatment Action Campaign (TAC) mobilized communities across the broad spectrum of society including political parties against him. This was to culminate in Mbeki's ouster from office when he was not re-elected at the 2007 Polokwane ANC national conference. An almost similar fate was to befall former President Jacob Zuma when civil society organizations frequently launched public interest litigation cases against the state over numerous incidents of corruption and malfeasance.

During the period of the Public Protector's final report on the upgrades to the president Zuma's private home at Nkandla, civil society mobilized political parties and took this report to the Constitutional Court so that the court could rule whether the final report of the PP was legally binding or not (Basson and Du Toit, 2017). The Constitutional Court did rule in 2016 that indeed the report was legally binding, and that President Zuma had violated the Constitution by failing to implement its findings (Constitutional Court: 2016). This finding was to set in motion a chain of mass mobilization programmes championed by political parties and organs of civil society which was to finally result in the ousting of President Zuma from office.

The extent to which government does acknowledge the primacy of the role of CSOs is demonstrated with the statement in the National Development Plan, an important policy document of the South African government which states that; active citizenry and social activism are necessary for democracy to flourish. The State cannot merely act on behalf of the people, it has to act with the people, working together with other institutions to provide opportunities for the advancement of all communities (NDP 2030, 2013:27). Despite this commitment, there continues a growing distance between communities and the government.

According to Landsberg and Mackay (2006: 10) the violent service delivery protests over the pace of service delivery is evidence of the fact that citizens feel that the post 1994 government has adopted an exclusionary style of decision making from which key social communities and civil society are marginalized.

The Covid-19 pandemic exacerbated the socio-economic challenges faced by South Africa. It exposed the deep fault lines that characterizes the South African society (Buthelezi:2020). The institution of the lockdown, while lauded for having halted transmissions, also came with its own challenges. Peoples' incomes could not be safeguarded, their mental health was adversely affected, and the socio-economic impact of the pandemic outweigh the pandemic itself (Osborne and Choga, 2020). The corruption that was associated with the supply of Personal Protective Equipment (PPE) also dominated headlines. This invoked large scale anger in an environment which was largely characterized by increasing poverty levels, loss of thousands of jobs and other socio-economic challenges.

The pandemic thus also provided a significant challenge to the sector and its relationship with the government. Civil society bodies such as relief organizations like the Gift of the Givers responded through a range of intervention programmes by supplying much needed supplies of food parcels to obviate the hardships faced by millions of South Africans. The sector itself was not spared by the pandemic having to make significant adjustments to their operations in order to continue implementing their programmes where possible, and also to both continue to attract and efficiently manage donor funds (Eribo: 2020). The sector has, to its credit and despite the challenges of funding, been visible on the frontlines in helping vulnerable victims of the pandemic. Their credibility has been considerably enhanced by the strides and interventions made in response to the hazards brought about by the pandemic on society. This can only strengthen the role of civil society in consolidating their relevance, influence and demanding accountability from the public officials. The pandemic has also presented an opportunity to the sector to re-examine their sustainability models and the strategies that could be employed in strengthening Constitutional democracy in South Africa.

### **1.2.4 Civil society' role in strengthening democracy**

South Africa's nascent democracy still needs to be nurtured, strengthened, and consolidated so that a democratic culture is institutionalized. According to Keane, in Aliff and Sarjoon, (2019:27) civil society has two main functions: precautionary against the state-to-balance, reconstruct and democratize it, and advocating, to expand liberty and equality in civil society itself. South Africa's model Constitution is providing civil society with a good opportunity to can play an oversight role over democratic institutions, monitor human rights and to give citizens, especially the poor, vulnerable and excluded, the tools to know and assert their rights (Corruption Watch: 2019). The sector has played a key role in holding the government accountable. This has resulted in civil society activists like Sakhosiphi Rhadebe chairperson of the Amadiba Crisis Committee being killed in 2016 for opposing mining on the environmentally sensitive Wild Coast in the Eastern Cape. This is a testament of the importance of the sector in preventing the encroaching of government and private sector into the human rights of the vulnerable sectors of society (Corruption Watch: 2019). The protection of socio-economic rights as encapsulated in chapter two of the Constitution remains an important obligation of the state. The state must take reasonable legislative and practical measures within its available resources to ensure the progressive realization of these democratic rights. These are rights: the right to housing, water, healthcare services, fair labour practices, electricity, sanitation, a clean and healthy environment, education, and various children's rights, which are grounded in South Africa's Constitution. This is where civil society plays an important part in ensuring that those who are poverty stricken and suffer from inequalities are given the necessary support and resources to enable them to overcome the challenges confronting them.

The main function that civil society should play is that of ensuring that it plays a watchdog role as far as abuse of power by state officials is concern. To this end, it is important that an enabling environment that encourages whistleblowing in instances where officials abuse their authority is created. The sector should always lobby government officials to help foster good governance practices. This should include the consultation of citizens before critical decisions are taken. The sector, just like IDASA before its demise, should encourage civic education programmes to educate the public about democracy and its related practices, rights and obligations of citizens and how to hold government officials to account, among others. Existing institutions created to strengthen democracy should be popularized and their mandate be known by ordinary citizens. This should include Chapter Nine institutions, among others.

Practices such as the monitoring of elections, protection of citizens' human rights, encouragement of diversity of media and ensuring that the sector itself empowers citizens through advocacy, education and training. Malgrem (2021: 36) makes a point that for democracy to be consolidated, for a state to be fully democratic, such a state should conform to the arenas listed below, in respective order. In fact, he argues that South Africa is characterized by the actual situation as reflected in these arenas. These are listed in Table 1.1 below as follows:

**Table 1.1 The five arenas of consolidated democracy**

Civil society	A part of society that refers to a polity of different kinds of self-organizing groups, religious groupings, social movements, and individuals who are relatively autonomous from the state.
Political society	Political actors compete with each other for the power of the state apparatus and public policies through free and fair elections conducted under the principle of universal suffrage. The people participate and support democracy with the democratic institutions that are stable and transparent with existing checks and balances under a Constitutional arrangement.
Judiciary	Sub-society based on the rule of law with independent judicial institutions with sworn allegiance to the state and the law rather than the ruling party. Also exists to uphold the hard-won freedoms and civil liberties from abuse of state power.

Bureaucracy	A set of stable and efficient state institutions and agencies with the task of implementing democratic governance and the rule of laws. Plays a vital part in the safeguarding and upholding of the state institutions and basic services for the citizens even in a time of crisis and political instability.
Economic society	Economic institutions that operate under certain rules and procedures. Safeguarding against the potential risk of an uncontrolled market economy, but also against a complete state-controlled planned economy

Source: Malgren, 2021: 36

### **1.3 Specific civil society organizations to be profiled.**

For the purpose of this study, the researcher examined four different civil society organizations. These organizations are AfriForum, South African Democratic Teachers Union (SADTU), the South African Council of Churches and Equal Education (EE). These particular organizations were selected because of the tremendous strides and impact they have had in influencing the policy trajectory of government in so far as socio-economic rights in South Africa are concerned. These CSOs are diverse with some similarities in issues of interest. For instance, Equal Education and SADTU are mainly concentrated on issues of education while AfriForum's primary interest is on matters that affect the Afrikaner community. The SACC is an ecumenical body with interests in issues of religion, faith and social justice. The first organization which was extensively looked at is Equal Education.

### **1.4 Problem statement**

The demands on the modern state have become so vast, complex and developed to a point where the state cannot afford to implement policies and programmes without taking into account the citizens.

So important is public participation as the cornerstone of democracy that Tshoose (2018:16) contends that even the Constitution (1996) requires the National Assembly and the National Council of Provinces and provincial legislatures to facilitate public involvement in the legislative and other processes of the National Assembly and its committees. Facilitating public participation and active involvement of the people, forging political consensus through dialogue, devising and implementing public policies that ensures that all citizens benefit from the democratic institutions and the wealth of the country has become a *sine qua none* (Fung and Wright, 2001:3). South Africa celebrated over two decades of democracy in 2016 and the strides made by the government in enacting progressive legislation and deepening democracy through the creation of democratic institutions is indeed commendable. The researcher, however, contends that serious challenges do remain in ensuring that these democratic institutions are not only there as ivory towers but rather should be there to serve the broad interests of the citizenry. It is in this regard that civil society movements are necessary to serve as a bulwark against excesses committed by the state on the public.

The creation of an ethical, accountable and developmental government is premised on the Constitutional ideals of liberty and consultation, and public participation (Section 59 of the Constitution, 1996). The governors should be careful not to pay lip service to public consultation and inclusive decision-making. Consultation and inclusivity in public policy making should not just be an attendant consequence of adherence to statutory requirements but should rather be an outcome of a state that is deeply committed to mass participation in decision-making processes. In advocating for the centrality of the role of civil society in public discourse, it is equally important to acknowledge that not all these civil society formations are driven by altruistic intentions. As reflected earlier the nascent democratic state in South Africa is still experiencing a litany of challenges which will be highlighted in the succeeding paragraphs. Some of these challenges include the following:

- Public consultation processes not really as inclusive as they should be.
- The efficacy of civil society in agitating for pro-poor policy changes.
- The extent to which the state acknowledges, respects and considers the input of civil society formations in the process of policy making.
- The need for civil society not to focus on narrow sectional organizational interest but rather on the interest of the broader people of South Africa.

- The need for both the state and the civil society movements to cease viewing each other with suspicion and create synergies necessary to contribute to the creation of a truly democratic state.

The researcher herein, through a qualitative study approach, conducted an in-depth study of civil society movements with a view to demonstrate their importance in deepening democracy in South Africa. Though the problem has been explored before, a case study approach that involves selected civil society organizations went deeper into establishing how the evolution of the post-apartheid state cannot be complete without the critical importance of civil society in holding the state accountable by using a variety of approaches that include public litigation as a means to compel the state to live up to the ideals of the 1996 Constitution. More importantly, the study makes a proposal on the suitable model that can allow for a progressive co-existence between government and civil society organizations in the post-apartheid South African state.

### **1.5 Research Questions**

The study seeks to respond to the following critical questions:

- 1) To what extent do civil society organizations help in deepening democracy in South Africa?
- 2) What role have civil society organizations played in other countries in comparison to South Africa?
- 3) What role does funding play in enhancing the impact of civil society movements?
- 4) What could have influenced civil society to mainly opt for public interest litigations as a preferred strategy?
- 5) How can the development of a partnership model between civil society and other social partners assist in making the contributions of civil society an indispensable part of the post-apartheid democracy in South Africa.

### **1.6 Research Objectives**

The main objective of his study was to investigate the role and influence of civil society movements since the advent of democracy in South Africa in 1994. Concomitant with this main objective is a focus, albeit to a lesser extent, on the following:

- 1) To contribute to the enhancement of literature and construction and production of new knowledge on the role of civil society in consolidating democracy in the current socio-economic and political milieu.
- 2) To make a comparative analysis/historical profiling of the role of civil society organizations in other countries in comparison to South Africa.
- 3) To ascertain whether funding has contributed to improving and enhancing democracy in South Africa.
- 4) To make findings as to why civil society movements have now mainly changed their focus to the legal route rather than mass mobilization approach.
- 5) To develop a model that shows the critical importance of the role of partnerships between civil society and other social partners as an essential feature in improving constitutional democracy in South Africa.

### **1.7 Rationale of the study**

The nature of civil society organizations is such that they are neither static nor inflexible. Like organizations in an open systems environment, civil society organizations are dynamic, non-linear systems. This implies that interaction with other actors in the environment is multidirectional, outcomes are unpredictable and conditions which that are not in equilibrium can undergo structural transformation (Van der Waldt *et al.*, 2018:94). The role of civil society organizations should therefore be understood within the context of an environment, which is constantly in a state of flux. Civil society movements have played various roles in the ever-changing socio, political and economic phases of South Africa from the pre-apartheid era to their role in the current democratic dispensation. It is therefore against this background that civil society organizations, their role, their impact and their relationship with the state and other actors in the environment should be located.

The work of various scholars like Aristotle encouraged people to engage in what he termed ‘voluntary action’ as a means to enhance public life and contribute to the ideal of good society have contributed greatly in enhancing the modern understanding of the role of civil society (Sulek, 2010). It is important to note that the work of previous scholars like Aristotle was focused on the global world and not necessarily confined to particular geographical regions of the world.

Closer to home in South Africa, scholarly contributions of authors like Habib and Kotze (2002:3) who defined civil society as an organized expression of various interests and values operating in a triangular space between the family, state and the market, have also helped in creating a modern working definition of civil society. It is these definitions which have helped the government to enact legislation such as the Non-Profit Act, 71 of 1997 which has created a legislative environment that seeks to promote, enhance and support the capacity of non-profit-organizations to perform their functions (Chapter 2, Section 3 of the NPO Act, 71 of 1997). It is through this act that many civil society organizations were established and continue to play a massive role in helping to hold the state accountable in the exercise of their constitutional mandate. Various studies have been undertaken in the past to show and demonstrate the role that civil society organizations have played in the evolution of the apartheid state to the democratic breakthrough of 1994 (Weideman:2015). What is however still a gap in the literature is that the excitement and the subsequent euphoria brought about by the first post-apartheid elections, the election of Nelson Mandela as the first black president of a democratic South Africa has not explained the lull in civil society activism during that period and juxtapose it to the heightening and resurgence of civil society engagement during the Jacob Zuma administration. For instance, the demobilization of the United Democratic Front (UDF) had the effect of weakening opposition to unpopular government policies (Ngcamu, 2019).

Civil society organizations are by their nature and character organizations that are located closer to local communities to allow their effective participation in the affairs of the state. The study will therefore attempt to contribute towards understanding factors that contributed to the deepening of democracy in South Africa and why civil society movements have re-emerged to take their role in the centre of political discourse in the country. Civil society movements are pivotal in any society in that they contribute to the enhancement of citizen participation in the political and social life of a country. The engendering of a culture of mass participation in the affairs of the state is a direct contrast to the apartheid past wherein which a larger number of the people in South Africa were consciously prevented from playing a meaningful role in the in the political, social, cultural and economic life of the country.

The centrality of the role performed by civil society movements is premised on the historical background of South Africa which is that of colonialism, apartheid, deprivation and exclusion, hence in the preamble of the constitution, the primary intention is the need to heal the divisions of the past and lay a foundation for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law (*Constitution of the Republic of South Africa, 1996*).

Civil society organizations in the modern social and political arena are also referred to as advocacy, lobby or pressure groups in that they exhibit similar characteristics in the manner in which they are constituted but mainly in the causes for which they represent. They are a fundamental feature of the modern democratic state in that they have a significant influence in the social, political, economic and cultural life amongst others of a society. The prevailing literature on the subject reveals that, whilst in the main the *raison d'être* of civil society movements is the interests and aspiration of its members. For instance, Treatment Action Campaign (TAC) was able to set up offices throughout South Africa and was able to mobilize and operate at a community level (Taylor, 2016: 666). However, the continuous changes in the environment have changed the focus of these groups to become very important role players in the determination of public policy. For the purpose of these study, the definition of civil society organizations will include Non-Government Organizations, Not for Profit Organizations, social movements and any other voluntary organization that acts outside the state, the family and business. Where necessary in the study, the type of civil society organization will be mentioned specifically by its category/name.

The objective of the study was to undertake a comprehensive review of the development, eminence and the extent to which civil society in the context of the post-apartheid South African political landscape contribute to policy trajectory of the country. Equally important is the need to investigate to what extent are these movements influential in determining the extent to which the state adheres to the constitution, the rule of law and the culture of civil rights as enshrined in the various piece of legislation enacted since 1994. The researcher contends that there are two contending school of thoughts on the extent of the influence of the civil society movements pre 1994 and post 1994. The former view postulates that pre-1994, at the height of apartheid when South Africa was still a pariah state in the eyes of the international world, the role of the civil society movements was key. They took centre stage in exposing the excesses of the apartheid state to the international world. The latter view argues that since the dawn of the democratic breakthrough of 1994, the role of the civil society movements has diminished.

That they are there is not in dispute. What is a matter of contention is the fact that they are not as influential as they were before the dawn of democracy. This is a phenomenon that the researcher will seek to investigate in order to make a substantive contribution to literature on civil society movements. The legislative environment which regulates the existence, function and role of civil society movements was also become a key focus of the study. The study also provided a clear synopsis of the research problem and research questions. This is an approach necessary to justify why it is in the interest of the researcher to justify the need for the construction and production of new knowledge in this area which has not been widely investigated in South Africa particularly since the dawn of the democratic breakthrough/dispensation of 1994.

### **1.8 Research methodology**

The ontological basis of the study was to ascertain the extent to which civil society movements in South Africa are influential in the socio-economic and political arena. In the pursuit of information relating to this study, the researcher's main focus was a deeper analysis of the available literature on civil society movements. The information under question should mainly reflect current developments in the arena of civil society particularly post 1994. In the main, this is a non-empirical study. Relevant empirical information in this regard was established through non-sampling methods, which can withstand scientific scrutiny i.e., accessing research databases, conference reports and other available data in both print and electronic media.

Brynard and Hanekom (2006:29) define research methodology simply as the strategy of the research. This includes an indication of whether qualitative or quantitative methods of data collection are to be used. Bertram and Christiannsem (2017 :8) posit that research generally relies on empirical information. This implies that the research is based on the collection of data. It involves systematic inquiry, which means that research must draw on evidence from reality. According to Robson (2002:549) research methodology is defined as the theoretical, political and philosophical backgrounds to social research and their implications for research practice and the use of particular research methods.

Research methodology also has to do with the tools that the researcher employs to collect data. According to Denscombe (2012:93), some commonplace options include:

- Interview: Will the researcher use unstructured, semi-structured or structured types of interviews?
- Questionnaire: Will the questionnaire use open ended or close-ended questions? or will it include both?
- Observation: Will the research involve systematic observation or participant observation? What items will be observed?
- Documents: Will the research focus on documents-diaries, websites, minutes of meetings, official records, etc.?

The researcher herein used the qualitative research approach with particular focus on document study, which includes theoretical literature, official policy documents, websites and other relevant documents.

## **1.9 Research Philosophy**

Interpretivism sometimes referred to as the realism approach or the phenomenological approach argues that access to reality is only through social constructivism such as language, consciousness, shared meanings and instruments. This is an approach that aims to understand people (Babbie and Mouton, 2001:28). The approach maintains that all human beings are engaged in in the process of making sense of their worlds and continuously interpret, create, give meaning, define, justify and rationalize daily actions. The approach asserts that each reader brings his/her subjective experience to a text when reading it. Immersing oneself in a particular social context under study enables the researcher to have an enhanced view of the phenomena under study.

The researcher used interpretivism as the research philosophy of choice in undertaking the study on civil society organizations in South Africa. According to the University of Nottingham Helm team (2023), interpretivism is based on the assumption that reality is subjective, multiple and socially constructed meaning we can only understand someone's reality through their experience of that reality which may be different from another person's shaped by the individual's historical or social perspective.

Chowdhury (2014:434), citing Kaplan and Maxwell (1994) contends that interpretivism by its nature promotes the value of qualitative data in pursuit of knowledge. Chowdhury further argues that interpretivism as a philosophical and research paradigm is concerned with the uniqueness of a particular situation, contributing to the underlying pursuit of contextual depth. Riyami (2015) contends that interpretivists aim at adding richness to the data collected. Interpretivist epistemology according to Moustakas (1994) in Junjie and Yingxin (2022:10) is the study of the interconnection of between the research and the research subject, and it is more concerned with the meaning, voice, standpoint, experience, thoughts and feelings expressed by the individual. The choice of the interpretivist approach is also informed by the fact that its purpose is to study how particular social groups or individuals formulate different realities and give them meaning, as well as to demonstrate how these norms explain their behaviour. This applies to the choice of Equal Education as a case study that sought to enrich the study. To this end, the researcher herein had to ensure that the study is applicable to the context of the qualitative research. The approach with its primary focus on document study also had the advantage avoiding subjectivity borne out of prolonged personal contact between the researcher and the subject.

### **1.10 Research Approach and Design**

The study adopted a non-empirical approach method. According to Mouton (2001:175-179), this approach makes less use of primary data collection and entails among others, philosophical study, abstract analysis and literature appraisals. Mouton (in Brynard and Hanekom 2006:37) describes quantitative methodology as being associated with analytical research and its purpose as being aimed at arriving at a universal statement. It is underpinned by a distinctive theory as to what should pass as warrantable knowledge (Bryman, 1984:77).

Qualitative research study is defined by Christenson *et al.*, (2011:29) as a study that collects some type of nonnumerical data in order to answer a research question. Nonnumerical data consist of data such as the statements made by a person during an interview, written records, pictures, clothing and/or observed behaviour. The advantage of qualitative study is that the researcher makes findings and generalizations on the basis of the things that he/she has observed. The qualitative method allows the researcher to know people personally, to see them as they are and to experience their daily struggles when confronted with real-life situations. The researcher is then able to interpret and describe the actions of real people in a real-life setting.

According to Mouton (2001: 175-179), the following non-empirical research designs may be identified:

- Conceptual analysis- The exploration of the meaning of concepts by explanation of the various components of meaning.
- Theory building or model- building studies- the purpose is to develop new theories and models to clarify specific events.
- Philosophical analysis- These studies aim at determining viewpoints on various issues, like metaphysics, ethics and logic, by examining arguments about those issues.
- Literature reviews- movements and debates in a certain field of study are examined in order to provide an indication of scholarship in that specific field of study.

Primarily, the researcher adopted the document study approach which, according to Bertram and Christiansen (2014: 97) has mainly to do with analysing text for themes and patterns. According to Ritchie and Lewis (2003: 35) document analysis involves the study of existing documents, either to understand their substantive content or to illuminate deeper meanings which may be revealed by their style and coverage. The method of document study as a data collection method becomes very important if documents that are in the public domain are studied for scientific research purposes.

According to authors like Neuman (2000:395) there are primary and secondary sources. Primary sources are seen as original written material of the author's own experiences and observations, whilst secondary sources consist of material that is derived from someone else as the original source. Although they may be grey areas in the primary-secondary distinction, the difference between the two is generally clear. Strydom (1997:227) in (De Vos *et al.*, 2011:377) postulates that a primary source should be more dependable than a secondary source. Since secondary sources are always someone else's interpretation of primary sources, they should be analyzed more thoroughly.

The study employed the non- empirical approach which was found to be the most appropriate in the sense that the researcher was able to make findings on the basis of observations and interpretation of real-life events pertaining to civil rights movements' deeds and their programmes in pre- and post-apartheid South Africa.

The researcher followed this approach because it is the most appropriate to track the evolution of civil society movements in South Africa, their role in, their impact and to what extent have they assisted in the ushering of a democratic dispensation. The researcher also took an in-depth look at the role of civil society organizations in other regions of the world, Brazil and Zimbabwe in an effort to make a comparative analysis with the developments in South Africa.

### **1.11 Case Study Approach**

Although case studies have often been considered part of qualitative research and methodology, they may also be quantitative or contain a combination of qualitative and quantitative approaches. According to Starman (2013: 3) qualitative research is characterized by an interpretative paradigm, which emphasizes subjective experiences and the meanings they have for an individual. Therefore, the subjective views of a researcher on a particular situation play a vital part in the study results. Another characteristic of qualitative research is its idiographic approach which emphasizes an individual's perspective on the investigative situation, process, relations, etc. The interpretative paradigm, phenomenological approach, and constructivism<sup>4</sup> as a paradigmatic basis of qualitative research are closely linked to the definition and characteristics of case studies. A case study is therefore more qualitative than quantitative in nature, but not exclusively, for it can be qualitative, quantitative, or a combination of both approaches (with both represented equally or one approach prevailing and the other supplementing). Qualitative and quantitative results should complement each other to create a meaningful whole according to the object and purpose of the investigation (Sagadin, 2004: 89).

Sagadin (1991) states that a “case study is used when we analyse and describe, for example, each person individually(his or her activity, special needs, life situation, life history, etc.), a group of people(a school department, a group of students with special needs, teaching staff, etc.),individual institutions or a problem (or several problems), process, phenomenon or event in a particular institution, etc. in detail. If we remain in such analyses on the descriptive level, then a case study is considered as a form of descriptive method, but if we climb to the causal level, case study proceeds towards causal experimental method”. A case study of some civil society movements in South Africa was the approach adopted to complement and enhance the non-empirical study approach which was the main thrust of this study.

### **1.12 Sample Population**

Sampling is a technique employed to select a small group (the sample) with a view of determining the characteristics of a large group (the population). If selected discerningly, the sample will display the same characteristics as the large group (Brynard and Hanekom; 2006: 54). The usual goal of sampling is to obtain a representative sample, which is a sample that is similar to the population on all characteristics (except that it includes fewer people). When a researcher wants his/her sample to represent/mirror the population, the best way is to use an equal probability of selection method (EPSEM) which is any sampling method in which each individual member of the population has an equal chance of being selected for inclusion in the sample (Christensen; 2006:150). Whilst this in the main is a non-empirical study, however, a sample of civil society organizations that includes Equal Education (EE), AfriForum, South African Council of Churches (SACC) and South African Democratic Teachers Union (SADTU) was undertaken. These organizations are part of a larger representative body of existing civil society movements in South Africa. The intention is not necessarily to look at the numeric factor in so far as the civil society movements are concerned but rather at the influence, their role and impact in the body politic of South Africa.

### **1.13 Ethical Considerations**

Until recently, professional ethics and conduct have for the most part been ignored. De Vos *et al.*, (2011: 113-114) postulate that caring professions have increasingly realized that the recognition and handling of ethical aspects are imperative if successful practice and research are the goal. The fundamental ethical rule of social research is that it must not bring harm to the participants (Babbie, 2007: 27). In an effort to preserve the integrity of this study, the researcher made a concerted effort to comply with essential values and principles of copyright laws by acknowledging the work contributed by numerous authors to the body of knowledge on civil society movements. In instances where there was a need to acquire documents from an organization that forms part of the case study, informed consent was sought in order to ensure that appropriate processes were followed in securing and utilizing that information. Confidentiality and anonymity, where it was necessary, were respected as important considerations in the study.

According to Babbie (2013:39) in any rigorous study, more than anyone else, the researcher should be more familiar with all the technical limitations and failures of his or her study. A researcher should therefore have an obligation to make any shortcomings known to the readers. Researchers can best serve their peers and scientific discovery as a whole by telling the truth about all the pitfalls and problems experienced in a particular line of enquiry. This researcher will therefore make a concerted effort to comply with the expected ethical standards and laws of a research study of this magnitude.

#### **1.14 Summary of Chapters**

The objectives of the study will be realized by following a structured chapter-based approach which is outlined as follows:

##### **Chapter 1**

This chapter provides an introduction and historical context to the study. A general overview of the context of civil society organization lays the foundation for subsequent discussions that follow in the other chapters. The chapter also focuses on the problem statement, research objectives, research questions and the significance of the study. The research methodology and its motivation adopted for this study is outlined in the chapter. Ethical considerations which aim to ensure that the researcher is accountable for the contents of this study also feature in this chapter.

##### **Chapter 2**

The chapter focuses on an outline of the theoretical framework of the concept civil society and the etymology behind the concept. Conceptual and theoretical underpinning of civil society are elaborately discussed. This is to try and locate the study in a particular context. Categories, models and types of various civil society organizations existing in the world are critically examined in this chapter. The liberal and Marxist schools of thought on civil society also feature prominently in the chapter.

##### **Chapter 3**

The chapter provides a comprehensive theoretical overview of the role, influence and contributions of civil society movements during the apartheid era and in post-apartheid South Africa.

A study of selected cases of various categories of civil society organizations like the church, trade unions, women, the United Democratic Front (UDF) and their role both during and after apartheid is a focal point of the chapter.

#### **Chapter 4**

The focus in this chapter is on the comparative analysis of the evolution of civil society in South Africa and in other parts of the world. This includes a study of civil society in regions like Sub-Saharan Africa, South Korea and Brazil. This comparative analysis is important to provide an understanding of similarities and differences in social structures and political contexts that inform the development and role of civil society. This study is necessary to help in locating the historical context in which civil society functions in South Africa in comparison to their counterparts elsewhere in the world.

#### **Chapter 5**

The chapter provides an outline of the effect of funding on civil society movements. The chapter further outlines why the public interest litigation approach as opposed to the mass-based approach became a preferred tactic of civil society movements in post-apartheid South Africa.

#### **Chapter 6**

This chapter provides an analysis of the findings of the case study of the four civil society organizations as obtained during the study.

#### **Chapter 7**

Focus on this chapter is on the conclusions, recommendations, and limitations of the study. The conclusions are the synthesis of the study emanating from the discussions in the thesis while recommendations on how the sector can improve its operations and become more impactful are provided. Areas for future research arising out of the study are also highlighted.

### **1.15 Summary of the chapter**

A blueprint framework upon which the study is based has been provided in this chapter. This framework is the foundation upon which readers can be able to evaluate the theoretical assumptions of the study. The chapter provided the significance of the study and the theoretical justification thereof. The fact that the study adopted a non-empirical approach is also justified in the chapter. The chapter thus provided the reader with a general rundown on the structure and layout of the study. The fundamental objective of the chapter was to introduce the thesis with the intention of setting the stage, provide the structure of the dissertation and to provide the direction and focal point of the study. Reasons why the researcher opted for the non-empirical approach to the study were also outlined. The research philosophy as a basis upon which the study is based was also highlighted. The ethical issues which are also critical to a dissertation for purposes of credibility and integrity of the study were also emphasised.

The next chapter will focus on the etymological as well as theoretical issues relating to civil society.

## CHAPTER: TWO

### CIVIL SOCIETY: ETYMOLOGICAL AND THEORETICAL ISSUES

#### 2.1 Introduction

The primary focus of the chapter is to provide an elaborate study of literature, both historical and contemporary on the concept of civil society, the evolution of civil society movements globally and in South Africa as a particular focus of the study. Literature review or what Mouton (2001:87) prefers to call scholarship review is learning from other scholars in terms of how they have theorized and conceptualized on issues, what they have found empirically, what instrumentation they have used and to what effect. The scholarship review will assist the researcher herein to gather the theoretical understanding of the classical and contemporary views that scholars have on the subject in question. The intention primarily is to contribute towards enriching current knowledge available in the academic realm on the subject of civil society movements.

This chapter will provide a comprehensive review of the literature on the etymology and philosophical underpinnings of civil society. The Marxist and Liberal schools of thought on civil society will also be elaborated upon in greater detail. The chapter will also review the theories, principles, dimensions, characteristics and functions of civil society in an attempt to provide a deeper understanding of the concept. Types of civil society organizations will be studied with a view to understand the differences and commonalities between them. The chapter will close with a critique of the relationship between civil society organization and the state as well as the impact this relationship has on society. The character of global civil society movements will also be a focal point of the chapter.

#### 2.2 Conceptualization and Theoretical Underpinnings of civil society

The concept of civil society has had a chequered and interesting history. In the 18<sup>th</sup> century, a fundamental shift in the thinking about civil society occurred when liberal philosophers began to view civil society as a buffer against the state. Civil society emerged within a context of statism and centralized state control in many European countries in the 19<sup>th</sup> century. For instance, the root of the French civilization is grounded in the countless conflict between the central state against urban citizens.

French kings fought against regional governments and religious minorities in an attempt to assert the authority of the central government. French monarchies and republics closely monitored social movements that did not belong to the realm of the state, such as the labour movement, the Catholic Church or political organizations (Archambault, Priller and Zinger, 2013). It is against this background that citizens, especially those in urban areas, began to agitate for reforms and the need to be allowed to form voluntary societies with those with whom they shared common interests. This gradually gave rise and birth to the proliferation of civil societies.

In contrast to France, Germany which like most countries of the world in which statism was a central feature, intermediaries such as unions and societies, non-profit organizations and voluntary associations were not regarded as threats to the modernization of the state in the 19<sup>th</sup> century. In fact, parts of the emerging non-profit sector were smoothly and successfully integrated into modernizing strategies that were initiated and supervised by the state and its growing administration. Germany's non-profit sector in the 19<sup>th</sup> century represents a classic example of a sector which developed and flourished under the thump of the state. Germany stands for a tradition of third-party government or neo corporatism, which translates into a government cooperating closely with the non-profit sector with respect to policy formulation as well as policy implementation (Archambault, Priller and Zimmer, 2013). The sector provided room for the culture of private welfare and a number of related initiatives without threatening state authority.

Archambault *et al.*, (2013: 518) contend that the reason why a lively non-profit sector operated successfully in an authoritarian regime is closely linked to the ideas of the political philosophy of Friedrich Hegel. According to his logic and in sharp contrast to the ideas of the French Revolution, Hegel differentiated between the realm of the state and that of society. While the state was responsible for the commonweal, civil society or *burgeliche Gesselchaft* on the other hand constituted the space where citizens, through *Korporationen* and affiliate organizations, could follow their specific interests and aspirations. However, the state guaranteed that private interests would not threaten those of governors. Hegel endorsed the concept of a strong state and strong civil society. The Hegelian civil society operated under the tutelage of the state. The integration of non-profit organizations into the state on issues of policy formulation and implementation does not endanger the authority of the state.

This view is supported by Strachwitz (2010) who asserts that on the contrary, working closely with non-profits supports the development of state authority, 'because this creates initiatives of government to be legitimate in the eyes of society'.

Many different definitions of civil society exist and there is little agreement on its exact meaning, though much overlap exists among core conceptual components. Keane (1998) in | Anheier (2004) contend that some definitions focus on aspects of state power, politics and individual freedom, and others more on economic functions and notions of social capital and cohesion. Generally, most commentators and scholars would generally agree with the statement that civil society is the sum of institutions, organizations and individuals located between the family, state and the market in which people associate voluntarily to advance common interests. Peck (2019) says that while civil society remains ambiguous and difficult to define, its use in development discourses and practices has often been tied to 'westernized' framings of civil society which articulates ideas of development through liberal democratization, a minimal state as an effective welfare provider. In sharpening debates on civil society, Fowler (2012, 10) asks a question as to whether civil society is a community or a mere aggregate of associations. He contends that this question raises two issues of importance: the first is whether or not we like to fill the concept with a normative content, the second being what, if we take the former position, that normative content should be. He further contends that it is significant that a majority of analysts and observers have treated civil society as an aggregate of organizations rather than community with a minimum of agreed upon norms that define it. In short, civil society has been treated in a functionalist rather than normative manner (Pratt in Fowler, 2012: 10).

Scholars like Daniel and Neubert (2019) have articulated a problem that they have with the description of civil society as articulated by the Global North. They argue that the term civil society is often used for describing the same phenomenon. In a case of collective action, it is often hard to say at first whether it is the expression of a civil society association or network of associations, whether these associations are part of a movement, or whether the public protests were organized by a group of individuals. In addition, formal associations refer to themselves as a social movement in order to highlight their dynamic and unique character (Daniel, 2016: 12) in (Daniel and Neubert, 2019: 176).

Peck (2008) also demonstrates that the myriad of social relations involved in civil society work are spatially rich and operate simultaneously through multiple socio-spatial realms, thus contributing to broader debates on the socio-spatiality of civil society. In other words, Peck argues that in describing civil society, the transnational character of the concept must be borne in mind. The term or concept should not only be interpreted or defined from the lens of the Global North but also societies like Africa and the Arab world should also be considered in the definition. The terms civil society and social movement are often used interchangeably. According to Daniel and Neubert (2019: 176) the concept civil society refers to the features of associations in a public sphere or arena and their role in politics and society. The terms have several normative implications which influence our understanding of the respective phenomena (Daniel and Neubert, 2019: 176).

Hassan (2008: 93) further enriched the literature and understanding of the scholarly definitions of civil society in Africa and the Arab world which is largely influenced by the traditional Tocquevillian point of view of the concept. While the study in chapter one comprehensively did an in-depth examination into the definitions of the concept, it may serve a good purpose for this chapter to have a brief relook at this particular definition by Smitter (1997) who defines civil society as a system or group of self-organized intermediate association that:

- ❖ Enjoys relative independence of both public authorities, and private production units, i.e., family units and enterprises;
- ❖ Is capable of taking collective actions to advance and defend their interests;
- ❖ Does not try to replace the state institutions or take over the functions of government in general, and
- ❖ Accepts to operate within previously agreed rules that are civilian in nature and are based on mutual respect.

Some analysts in this regard tend to adopt an abstract systemic view and see civil society as a macro-sociological attribute of societies, particularly in the way that state and society relate to each other. Others take on a more individualistic orientation and emphasize the notions of individual agency, citizenship, values and participation, using econometric and social network approaches in analysing civil society. There is also an institutional approach to studying civil society. This approach looks at the size, scope and structure of organizations and associations as well as the functions that they perform.

These differing notions of civil society are not necessarily contradictory but are rather complementary as they just differ in emphasis, explanatory focus and policy implication rather than principle (Anheier, 2014: 336). Definitions of civil society are considered by Veltmeyer (2008:2) to be bewilderingly diverse and rooted in alternative social and political philosophies that are hard to reconcile. The origins of civil society are generally situated in the 18<sup>th</sup> century and are mostly attributed to secularization, enlightenment thinking, the birth of the public sphere and growing emancipation from oppressive structures such as the church and the state (Dijck *et al.*, 2017:1).

Despite the wide use of the term *civil society*, its definition remains unclear or at least in Cohen's words "there is no sufficiently complex theory that is available today" (Cohen and Arato, 1992). Some authors believe that fundamental differences do exist between civil society in the developed and in the developing world (Setianto, 2007:1). Some believe that civil society is a specific product of the nation state and capitalism; others see it as a universal expression of the collective life of individuals, at work in all countries and stages of development but expressed in different ways according to history and context. Some see it as one of three separate sectors, others see it as intimately connected or even inter-penetrated by states and markets (Edwards, 2005:3).

It can be argued that the changing definition of the concept of civil society over time is just part of the history of ideas notwithstanding the contextual polarities of the various transitional periods and societies in question. Equally, historical studies point out the different composition of classes in various regions of the world have certainly influenced the exercise of civil society all over the world. This means that there is no uniformity or consistency in the evolution of civil society throughout the world. Historical studies point to significant variations within and between countries. Equally, there has not been any significant studies around the origin of civil society in the African continent to warrant an acceptable linear understanding of the concept owing also to variations in the historical evolution of the countries in the continent, different political history, contrasting economies and differences in the impact of colonization on the countries in Africa. Even the United Nations (UN), despite the rich body of literature available on the concept, has struggled to maintain consistency on the topic. After it issued a report on civil society in 2004, a group of influential international Non-Governmental Organizations (NGOs) wrote back to the Secretary General complaining that the definition used was too broad as it assimilated "fundamentally different groups" (Monga, 2009: 8).

Though the term civil society is notoriously vague, and although the issue of whether the UN description also covers business entities is highly contested, we would argue that it certainly does not cover parliamentarians - in view of their direct participation in structures and processes of government (Monga, 2009: 8).

Lewis (2002:575) in reflecting on the concept and its relevance to Africa argued that yes, civil society is relevant to Africa based on the idea of a positive, universalistic view of the desirability of civil society as part of the political project of building and strengthening democracy around the world. He uses the example of CIVICUS, a global civil society network which aims to help advance regional, national and international initiatives to strengthen the capacity of civil society. He further contends that, in contrast, a concept which emerged at a distinctive moment in European history can have little meaning within such different cultural and political settings. From this perspective, civil society is just one of many attempts at misguided policy transfers from the West. He also posits an adaptive view which suggest that while the concept is potentially relevant to non-Western context it will take on local, different meanings and should therefore not be applied too rigidly, either at the level of analysis or in the implementation of policy where it should not be deployed instrumentally in search of 'predictable' policy outcomes. Lewis (2002: 575) also posits that another possible answer to the question of the relevance of civil society to Africa by saying that, this question is probably the wrong question to ask, arguing that the idea of civil society whether explicitly recognized as such or not, has long been implicated in Africa's colonial histories of both domination and resistance. This view takes a broader perspective on social and political changes, and analyses theses in historical and cultural contexts, whether or not there is explicit reference made to civil society concepts.

We trace the etymological foundation of the concept to a famed Greek scholar Aristotle. His phrase *koinonia politike* (occurring in his Politics) refers to 'community' - which is commensurate with the Greek city-state of (*polis*) characterized by a shared set of norms and ethos in which free citizens on an equal footing lived under the rule of law (Aristotle). Aristotle's analytical understanding of civil society in his words *koinonia politike*, powerfully shaped the thought of subsequent thinkers until the age of Enlightenment. Notably, the normative significance that Aristotle attributed to this concept proved to be influential for centuries to come.

In order to fully appreciate the Aristotelian input to the conceptual history of civil society, an important caveat is in place here. According to Forbrig (2004: 26-27) the use of political in the term of *koinonia politike* must not be misleading for contemporary readers. Aristotle is not concerned, as would be implied by a more recent and present understanding of this term with political or state authority, with the character of this authority and modes of its legitimation. Instead, political in his usage has a succinctly ethical connotation. In his works on ethics, Aristotle attempts to find answers to the question of good life, and it is only on the basis of his ethical conception that he develops his thought on human communities in general and on the one form of community that embodies the ideal environment for living a good life, that is, *koinonia politike* (Forbrig, 2004).

O' Brien (1999) puts it differently by positing that the Romans and the Greeks are the first people who spoke of '*societas civilis*' a term that was introduced by Cicero. They had a clear understanding of what it meant and were also clear about its etymology. Earlier conceptualizations could not distinguish between civil society and the state. Socrates supported the idea that public intellectual discussions and debates were needed to solve differences within society. Plato saw the ideal state as a society with people dedicating themselves to the common good. Aristotle saw the 'polis' as an association that enabled citizens to share in the virtuous task of ruling and being ruled (O'Brien, 1999 in Lerner *et al.*, 2000). This shaped the development of policies and institutions because it was seen as the civil form of society. This line of thought continued through the late Middle Ages, with scholars concluding that commonwealths, based on rights, laws, and social contracts, constituted civil society (Edwards in Lerner *et al.*, 2000).

According to Vujadinovij (2009) Adam Ferguson refers -by following Aristotle- to the "social disposition of man", to an individual's natural tendency to cohere in broad human associations. He differentiates the two modes of relationships among individuals: the communicative and the commercial. Communicative relations are crucial for the existence of a free society, whereas the situation in which members of a polity relate to each other predominantly by trade tends to undermine the possibility of collective freedom. According to him free collectivity requires a set of democratic institutions, but institutions have not been sufficient themselves for the preservation of liberty. Additionally, there is also a commitment needed by the people to obey those laws which are the output of free deliberation.

According to Vujadinovij (2009) civil communication is the basis for “public spiritedness” which he calls “the national spirit” and love of the public”.

Hegel developed a modern liberal understanding of the concept. He defined it as “a separate realm, a system of needs that is the stage of difference which intervenes between the family and the state”. Hegel opined that civil society was alternatively the realm of social and individual relations mediating between the private real and the political society (state), or a real either synonymous or dialectically related to the state as the ultimate suppression of natural society (Hegel, 157 in Pelczynski, 1984). Tocqueville asserted that independent groups provide the guarantee that the state will be unable to arrogate more power than an active citizenry is willing to grant. He believed that civil society also plays a key role in teaching civic virtues and likened it to ‘large free schools’ where all members of the community go to learn the general theory of association (Bodewes,2013:3).The essence of civil society from the Tocqueville liberal democracy perspective argues that civil society is characterized by high social capital, trust and cooperation necessary for the development of political and economic democracy and the desire to protect an individual from the state’s overwhelming character.

Definitions coming close to meeting the requirements have been offered by various authors with Schmitter (1997:107) stating that civil society can be defined as a set or system of self-organized intermediary groups that (a) are relatively independent of both public authorities and private units of production and reproduction, that is, of firms and families; (b) are capable of deliberating about and taking collective actions in defence or promotion of their interests or passions; (c) do not seek to replace either state agents or private(re) producers or to accept responsibility for governing the polity as a whole; and (d) agree to act within pre-established rules of ‘civil’, i.e. mutually respectful nature.

The African Development Bank (1999:8) also acknowledges the fact that the concept *civil society* is understood differently from different historical epochs. The bank, however, adopted a descriptive working definition in which civil society encompasses a constellation of human and associational activities operating in the public sphere outside the market and the state. It is a voluntary expression of the interests and aspirations of citizens organized and united by common interests, goals, values or traditions and mobilized into collective action either as beneficiaries or stakeholders of the development process. Though civil society stands apart from state and market forces, it is not necessarily in basic contradiction to them, and it ultimately influences and is influenced by both.

Cox (1999: 10-11) in Hearn (2001: 43) defines civil society as the realm in which those who are disadvantaged by globalization of the world economy can mount their protest and seek alternatives. His arena of political struggle includes different values. In his thought, for a just, fair and objective system to be realized, there is a need for a radical socialist revolution.

Diaz (2014) traces the origin of civil society in four phases. He refers to the first phase as the classical view. The actual organization of the ancient *civitas or polis* combined what we today call public and private, secular and religious dimensions. Citizens were engaged in this phase in public debates, in the election of a wide array of magistrates and in sharing the burden not only of political decisions but also of the fighting needed to implement those decisions. The second phase is Scots' broad view of civil society which was dominated by scholars from the Netherlands and Scotland as represented by the likes of Hume and Hutcheson. An expansion of overseas markets and deep demographic and agrarian transformations came along with far reaching, social, cultural and demographic changes, and a network of states. Governments engaged in a dialogue with groups in society, allowed a modicum of dissent from both political and religious segments of society, allowed the free flow of ideas and allowed commercial transactions. This led to the cultivation of manners which spread among increasing numbers of the sophisticated educated, wealthy sectors of society. It became the era of free government, free trade and free conscience.

The third phase of the origin of civil society was dominated by authors such as Hegel and Tocqueville who inherited the Scottish broad view of civil society but applied it to the United Kingdom or similar societies. Tocqueville was perhaps the first major theorist to perceive civil society as an indispensable complement to a stable and vital democracy, rather than an alternative to it (Vinod, 2006: 286). Civil society was placed in a larger historical context as a stage in a process leading to a superior kind of ethical community which is referred to by the name of the state by Hegel (Diaz, 2014:816). This state allows room for the markets to develop under its supervision and for a plural society in which social classes defined by their role in a division of labour, are the social basis for the development of corporations.

According to Forbrig (2004: 38) the thinkers of the Scottish Enlightenment with Adam Ferguson, David Hume and Adam Smith as their fountainheads, focused on civil society as the embodiment of the latest and highest form of material civilization. Preoccupied with the notion of development and progress, the Scots identified the economic interaction of the individuals to be the crucial driving force behind the advancement of society.

The highest stage of human development, according to this view, is characterized by a society that is based on commerce and industry, private property, division of labour, capital and accumulation. Lying at the understanding of history is the assumption that humans permanently strive to improve their position and work directed at material production and exchange is seen to be the basic means for achieving this goal. Although the intention of participants in economic relationships is individual self-interest, the interaction of all these elements is said to work for the good of society as a whole. Although this equation of civil society with capitalism was, indeed, to have a powerful impact on future thought on civil society, it would be grossly uninformed to reduce the contribution of the Scottish Enlightenment to this economic dimension. While asserting an economic centre of gravity in modern societies, the Scottish thinkers were well aware of the consequences and effects material relationships had for the proper functioning of communities.

Authors like Forbrig (2004: 54) contend that the Hegelian approach and theoretical exposition is considered the first modern theory of civil society. Hegel's theory of civil society is embedded in a larger philosophical and socio-theoretical framework that attempts, in the most general terms, to reconcile a universal ethic in the Aristotelian tradition with the modern emphasis on individualism. For the purpose of this overview, it suffices here to state that Hegel conceives of modern societies as a series of mediations between private and public. In acknowledging that, in the institutions of modern societies, both private and public are permanently at work and that they are closely related. Hegel moves beyond the perspective of earlier, as well as many later, thinkers. It is a complex and dialectic interplay between the two sides of the dichotomy that has to find its expression in social and political arrangements, if both individual self-fulfilment and social integration are to be secured. Civil society, then, is the institutional realm where these mediations mainly take place.

According to DeWiel (1997:7) Aristotle is credited with the first usage of the term civil society, although his meaning has been distorted subtly in the translation from Greek to Latin and then to English. The Greek phrase used by Aristotle, at the outset of his *Politics*, was *koinonia politike*. The noun, *koinonia*, has been translated by Liddell and Scott as communion, association, partnership and according to Riedel, means nothing else than association, union. With this transition, the word began to on new shades of meaning becoming somewhat closer to what we mean today by community or society.

The adjective *politike*, is a derivative of *polis*. A *polis* is in general a Greek civic republic, but more precisely means the city as a political community. So *koinonia politike* was translated by writers of Latin as *societas civilis*, and thus in English became civil society, or a political community or political association. Aristotle saw the political organization of the *polis* as natural, arising through the intermediate stages of the household and the village. For Aristotle man was an apolitical animal. There was an immanent impulse in all men towards an association of this order- the order that is of the *polis* in which human life has reached its highest form (DeWies, 1997: 8).

The origin of the term, civil society can be traced back to Aristotle with varying Lockean, Hegelian, Tocquevillian and Gramscian interpretations (Van Rooy, 1998:1). Van Rooy (1998:1) defines civil society as an observable reality (a collective of conflicting, interdependent, inter influential organizations, primarily outside the marketplace, performing particular functions, that is active in shaping of democratic and development goals in their country. The interest in the study of civil society revived in the 1990s aimed at reorganizing the state, expanding the scope of the market institutions, and promoting non- governmental initiatives in providing collective goods (World Bank, 1997:2-3). In fact, the World Bank, the United Nations Development Programme (UNDP) and other agencies of international development adopted the term civil society in their discourse precisely because it was inclusive, including within its scope the private sector (basically capitalist or multinational corporations governed by the logic of capital accumulation or profit making)

Aristotle first recommended that a state be governed by a middle class, those who are likely to strive for equality and who are moderate in their individual aspirations (Sentianto, 2007: 1). Later, though, he asserted that a government must exist to create common good in which public participation is encouraged. This suggests that democracy was preferable to oligarchy. Moreover, he stressed two aspects of liberty which are served by democracy, namely: the opportunity for the individual to participate in contributing to public policy formulation and adoption, and the individual's freedom, protected by constitutional law, from intervention by the state. Societal governance in his view, induced the lower units to achieve their goals through responsible, cooperative action, goals that they could not achieve by acting alone. He strongly stated that the individual as part of a collective, depends on the community in order to live a truly human life, and even that the state is a natural creation that precedes the individual (McClean,1997).

In this way, Aristotle identified the nature of the socio-political order as a *koinia politika*, or civil society. He presupposed that societies interacted in different ways for the achievement of the common good.

According to Harris (2005: 1) both Harbemas and Dahrendorf portrayed civil society as autonomous social and economic institutions outside the sphere of government. For Dahrendorf, in Harris (2005:1) a flourishing civil society was a practical embodiment of the legal, economic and legal and personal freedoms set out in FA Hayek's 'constitution of liberty' while for Harbemas, civil society had been the pre-condition for the emergence of a new kind of bourgeois public sphere which, since the late seventeenth century, had increasingly replaced the cultural, sociable, normative and taste-creating roles once performed by royal courts and kingly governments. Both accounts portrayed the evolution of civil society as closely linked to the growth of the markets and cities, the rise of public opinion, the genesis of new forms of privacy and self-awareness, and the burgeoning of a multitude of self-generating associations that performed a public function but operated largely without reference to the realm of the state.

Haberson *et al.*, (1994) regards civil society as an arena of society, the public space between the household and the state, where groups constituted at the level beyond family interact with each other and with the state to pursue their interests. He further describes the practical role of civil society as a mediating one which cannot be expressed in a number of ways, varying over time and depending on the political environment as well as by ideological considerations. He claims that civil society may act as a broker, buffer, symbol, agent, regulators, integrator, representative (Harberson, 1994). The most difficult dilemma of civil society is how to remain autonomous and still be involved in complex societal relations in order to maximize influence. It is therefore important that civil society is regarded relationally, both with the state and society at large (Vinod, 2006: 786).

Tester (1992) considers civil society as a way of conceiving a possibility of society that is peculiar to the experience of modernity. It refers to the voluntary associations and contractual arrangements that have become identified as the source of human civilization since the 17<sup>th</sup> and 18<sup>th</sup> centuries. The image of society is based on the condition of reflexivity by which human subjects are able to separate the social and natural worlds and act as authors of their own lives, from the dead weight of tradition and authority. Tester claims however that this is a precarious and ultimately an incoherent vision of human sociality that hinges on the unresolvable tension between the freedom to self-define and the need for social order.

In a more positive assessment, Walzer (1998: 143) contrast civil society with unrealistic conceptions of the good life that envisages a conflict free social order. Modern utopias, such as those based on the primacy of the market or the nation, are incapable of dealing with the inevitable divisions and complexities that such models entail. Walzer (1998: 143) claims that the idea of civil society implies that no such harmonious good life is possible, that all utopias will fail. The capacity to freely associate to form and continually reform one's attachments is, the peculiar type of a good life that the civil society argument offers. It is therefore uniquely appropriate to the fragmented, complex and conflictual character of the contemporary world.

The idea of civil society cannot solely be attributed to a particular author or country. It has had immensely complex variety of intellectual roots in Roman law, in medieval Christian theology, in early modern positivist jurisprudence, in classical political economy and in different strands of idealism, liberalism and Marxism. Resonances of all these ancestries can be heard in current uses of the term, but often in forms very remote from those intended by their original authors. Some of these lineages overlap or are closely linked together, whereas others entail totally different, even antithetical outlooks on such basic issues as the role and character of states, communities, markets, religion, families and self-governing private associations. Many nuances have been lost and added in translation with the Latin terms *Societas* and *Civitas*, the German *burgerrliche Gesseschaft* and *staatliche Gesellschaft* and the French *societe civile* all being anglicized and homogenized as 'civil society' Harris (2005: 5).

Defining civil society is not a simple task. In as much as there is evidence of similar experiences across continents and regions and more specifically groups that share similar cultural values and attributes within a country, have some distinct forms of social organization, cultural and political traditions, as well as contemporary economic structure. A proposed definition by Van Dijk (2017: 2) that represents civil society is "an ecosystem of organized and organic social and cultural relations existing in the space between the state, business and family. These relations build on indigenous and external knowledge, values, traditions, and principles to foster collaboration in a quest to archive specific goals set among citizens and other stakeholders.

The Gramscian understanding of civil society is argued from a Marxist school of thought which assumes a more direct political position. This view considers civil society as an instrument of resistance and activism that seeks to promote the creation and sustenance of social movements to negotiate or challenge political, social and economic hegemony.

Gramsci described civil society as an array of educational, religious and associational institutions that guaranteed the ideological hegemony of the ruling class. For Gramsci, civil society is located within society's superstructure, which in his works, pertains to institutions, forms of consciousness and political and cultural practices. The superstructure is the sphere of mass cultural and ideological reproduction, and it consists of two major levels; "one that can be called civil society, that is the ensemble of organisms commonly called private, and that of political society, or the state" (Katz, 1: 2010). Since the superstructure is distinct from the base, which consists of social relations of production of a predominantly economic character, and following Gramsci's critique of Marxism economism, it is often argued that Gramsci developed a three-way distinction between the economy (market), civil society and the state (government).

Gramsci identified the realm of civil society as a crucial space in which the state can dominate popular ideas, values and norms. The state according to Gramsci does not simply control society through coercive or regulatory means. It exercises ideological hegemony by manufacturing cultural and ideological consent in civil society. He argued that civil society embodied the potential for radical social transformation (Landau, 2008:246). He, like Marx saw civil society as being constituted by class divisions and market relations. He argued that the state's hegemony over civil society is a continuous process and does not end. Civil society is always an arena of constant competition, conflict and conflict of ideas. Whoever controls the arena of civil society succeeds in manufacturing consent for political domination.

According to Landau (249: 2008), there are three principal limits to Gramsci's theory. Firstly, neither Gramsci nor Ramasamy clearly define the state. For instance, in the context of a country like Cambodia which is used as a case study in this context, it is facile to say that the state is promoting one ideology and civil society promotes another. In this country there are strong indications that the segment of the state seeks to influence and limit civil society so that it does not constitute a veritable challenge to the state's hegemony. However, it must be acknowledged that the state is not a unitary actor. It can instead be regarded as composing a variety of institutions and actors with different agendas, values and ideologies and beliefs. Secondly, it is difficult to identify which ideology is the dominant one seeking hegemony and which one is secondary. While formally the values of good governance and human rights may be institutionalized and thus dominant, it is questionable to what extent these ideologies have penetrated society beyond those citizens who have been exposed to foreign NGO's.

Gramscian's understanding whereby citizens consent to their own subordination, it is perhaps more accurate to see indigenous ideologies and political values as dominant. Thirdly, one must ask whether Gramsci's theory of civil society, based on concepts he inherited from liberal and Marxist perspectives, proves useful in understanding Cambodian society because Cambodia has now adopted these styles politically and in its economic structures (Landau, 2008:249-250).

Cooper (2018) explains civil society as the realm of organized social life that is open, voluntary, self-generating, at least partially self-supporting, autonomous from the state and bound by a legal order or set of shared rules. It is distinct from 'society' in general in that it involves citizens acting collectively in the public sphere. Secondly, civil society is concerned with public ends rather than private ends. It is an intermediary phenomenon standing between the private sphere and the state. Thus, it excludes parochial society, individual and family life and inward-looking group activity and it excludes economic society: the profitmaking enterprise of individual business firms. Thirdly, civil society is related to the state in some way but does not seek to control it and does not seek to govern the polity as a whole.

Fourthly, civil society encompasses pluralism and diversity. It encompasses a vast array of organizations both formal and informal. This excludes economic, cultural, informational and educational, interest groups, developmental, issue-oriented and civic groups. In addition, civil society encompasses what Thomas Metzger calls "the ideological marketplace", the flow of information and ideas, including those which evaluate and critique the state (Gosh:2017).

According to Birks (2013: 12) civil society is related to citizenship, especially in terms of the cultivation of civility or civic virtues such as trust, open-mindedness and cooperation. Citizenship includes individual's duties to the state in return for the rights conferred by membership of the nation-state (such as payment of taxes, abiding by the rule of law, and to some extent voting), whilst civil society does not necessarily have such an instrumental relationship to the state, and need not involve political participation in this formal sense. In fact, civil society as shall be demonstrated in the paragraphs to follow, is a highly contested term that there is no agreement on whether it is a political entity at all, whether it makes demands on the state or defends against them, what values it needs, and in short how its legitimacy is defined.

Hendricks (2000: 1) postulates that civil society is one of the amorphous terms that float around with multiple meanings, each carrying different political connotations. There is no general consensus on the specific meaning of the concept. Attached to the concept are value judgements, which imply that the concept is defined according to an individual's ideological, political and or philosophical leanings. It depends on the context in which it is employed. Civil society theorists have over the passage of time and over countless generations made an effort to define the concept without any consensus being reached. Jensen (2006: 41) postulates that in order to enrich our understanding of the concept, it is important to reflect back on three rival concepts of civil society which bore no relation to each other, nor can they be reconciled. The various contestations around the concept are explored further in the discussion below, with a view to lend clarity and internal coherence to the argument/debate.

Batanda (2009: 2) posits that the notion of civil society can be traced back to Adam Smith, George Wilhelm Friefrich Hegel and Karl Marx, among others. These scholars conceptualized the state and civil society as two separate and sometimes conflicting entities, with the latter asserting that it is independent of the state and is based on economic interactions through mechanisms of the market. The Italian theoretician Antonio Gramsci characterized civil society as 'the realm of culture and ideology, or more concretely as the associational realm through which the state under normal circumstances perpetuates its hegemony or achieves consent from individuals and citizens as a collective. Rosenblum and Post (2002: 4) also recognizing the difficulty of the task with regard to an accurate definition of the concept postulate that it may be possible to arrive at a core definition of the concept by saying that "civil society is the realm of social life which, when viewed from the perspective of government is characterized by plural and particularistic tendencies. Government by contrast, is an inclusive sphere, which when viewed from the perspective of civil society, is characterized by overarching public norms made and enforced by official institutions. Civil society is a zone of freedom for individuals to associate with others and for groups to shape their norms, articulate their purpose and determine for themselves the internal structure of group authority and identity".

According to Bujra (2002: 35) the concept can also be defined by taking geopolitical contexts into account. He says that African civil society consists of small urban-based political parties, organized labour movements, rural workers and peasants, and civic non-governmental organizations which are mainly funded by external donors.

As Sub-Saharan African states shifted from authoritarianism to emerging democracies, civil society also slowly shifted but the elements of a civil society do not fall easily into one category or another. Habib and Kotze (2003: 260) offered the following three categories of African civil society:

- Firstly, formal non-governmental organizations are bigger, more sophisticated and well-resourced, have well developed collaborative relationships with the state and they adopt the language of neo-liberalism.
- Secondly, there is a group of informal community-based-organizations. They appear to have emerged within marginalized communities to enable their residents to simply survive the ravages of poverty brought about by neo-liberalism.
- Thirdly, there are more formal organizations and networks that are ‘starting to engage more critically with neo-liberal policies and their effects on the lives of ordinary people’, such as trade unions and churches.
- The fourth category that can be added is internationally aided NGOs.

Taking the debate further, Jensen (2006) identifies the following three concepts of civil society, namely: the Scottish concept, the Lockean concept and the Sphere concept. The Sphere concept opines that civil society is basically a sphere or realm. This implies that modern society is composed of spheres which are different from one another. These spheres are government and civil society. The fundamental distinction between the two is the fact that government is in the main characterized by an inclusive set of public norms whereas civil society is mainly characterized by an exclusive set of private norms (Jensen, 2006:41). Civil society is necessarily plural in character. It is what Rosenblum and Post (2002: 4) refer to as the “realm of pluralism”. This view suggests that modern democracy is mainly characterized by freedom of association in which members of the public feel free to identify themselves with any view or organization of their choice. This voluntary association means that membership of organizations is consensual and even when a citizen intends to exit from any organization, he can freely do so. No one is compelled nor forced to belong to a particular organization. The proponents of the sphere concept thus describe the arena in which citizens pursue individual and social goods. This creates an opportunity for the flourishing of a plurality of views. In the process citizens learn the principles, practices, and rules associated with citizenship in modern democracy.

The proponents of the Scottish concept led by Seligman (1992) in Jensen (2006: 42) postulates that what unites conceptions of civil society is the attempt to describe a space wherein private and individual interests are reconciled with public and social goods. According to Seligman (1992:201) three contemporary uses of the expression civil society are ;(a) it is a concrete political slogan; (b) it is a sociological concept that means the same thing as democracy; (c) it is a normative political ideal; a locus of ethical and social solidarity. The idea of civil society as a locus of ethical and social solidarity played a prominent role in the social and political philosophy of the Scottish Enlightenment in the eighteenth century. Ancient and medieval society argued that each person's moral, social and political standing is determined in light of her/his proper place within the whole. The latter view contradicts with the Scottish view inherited from the era of Enlightenment that, the individual is an autonomous source of value with legitimate private and individual interests-interests, which deserve the respect of others. In harmonizing the two views is the understanding that civil society is a public, ethical space regulated by laws, within which citizens pursue their private interests in harmony with the common good. Each individual has a sense of the duties of citizenship and acts on them out of conscious commitment to the common good.

A conception of civil society is discussed in John Locke's Second article on government. In that seminal treatise, Locke takes civil society to be a normative achievement: it represents a people's departure from the state of nature in order to establish legitimate coercive power. Locke says "whenever, therefore any number of men are so united into one society as to quiet everyone his executive power of the law of nature and to resign it to the public, there and there is a political or civil society" (Jensen, 2006: 44). Dunn (1996: 104) posits that Locke's definition of civil society is the only stipulative and most superior account of the concept compared to others. Civil society represents an advance over the state of nature. It is the condition that people in the state of nature want to achieve. It is important to see that for Locke, the practical aim of analysis is not to draw a sharp boundary between civil society and the state of nature. For Locke, according to Dunn, civil society is a success term; it describes a state of affairs that people attempt to bring about (Dunn,104 :1996).

Crain and Stivachtis (2009, 231) contend that Locke is the one who postulated a clearer separation between society - those living collectively by popular consent and civil society which is inherently involved in the ongoing activity of defining purposes and structures of both society and the state.

This was in building on the ideas of Hobbes who postulated the existence of a *civitas* or commonwealth, in which each individual mutually and voluntarily agrees to give up his or her personal quest for self-preservation through the appointment of a sovereign ruler or assembly charged with promoting a collective security. Mamdani in Crain and Stivachtis (2009:233) argues that it was Hegel who contributed the most influential understanding of civil society, locating civil society in the real between family and state wherein it mediates private interests across kingship groups. Mamdani (1996: 14) delineates the development of Hegel's notion of civil society through distinct, yet interrelated, processes that accompanied the rise of the Western state. First, the spread of economic commodity relations reduced the need for inter-societal extra economic coercion due to the binding effects of contractual relationships. Second, this reduction in inter-societal violence coincided with the centralization of state violence and coercion. Through these two processes, a system of law emerged in which the state provided the extra economic coercion necessary to enforce the contractual relations.

Hendriks (2006: 488) agrees with scholars that posit that the concept of civil society is indeed highly contested. She traces the debate from the late seventeenth century in Europe. In Western Europe, the leading scholars were Scottish moralists who conceived of civil society as a source of ethics, a place where norms emerged from the people rather than external institutions such as the church or the monarch. Subsequent philosophers like Marx, Hume and Hegel have however criticized this romantic notion of civil society. Hegel saw civil society as the dividing stage between the macro community (the state) and the micro community (the family). This definition therefore saw the entire gambit of activities that occurred outside of either the family unit or the state as part of the activities of civil society. Hume for instance challenged the notion of the universality of social norms, while Hegel argued that civil society should be embedded in institutions of the state, including the corporations. Hegel's definition was adapted by Marx to form part of his 'petty bourgeoisie' description. Marx argued that since the state has a class character and is a theatre of or a playing field for domination and control, there is every chance that its institutions may be manipulated by dominant voices at the exclusion of those on the periphery hence the need for a countervailing force to inhibit excesses (Dipholo and Tshishonga, 2013: 52). In contemporary debates, there are two broad uses of the term. The first gained popularity during the period of the anti- communist movements in Eastern Europe. This view asserts that civil society is organized formations of the people that are opposed to the state. In this period grassroots movements gained popularity and widespread momentum when they agitated for the overthrow of the repressive regimes.

The other use of the concept civil society, according to Hendriks (2006: 488) emerged in North America as a reaction and backlash to liberal individualism.

The concept is used interchangeably with other terms such as ‘the public sphere’ and the ‘community’. Other scholars refer to civil society as organized interest groups, voluntary associations or social movements. This terminological swamp makes navigating the territories of civil society a difficult exercise and sourcing an agreed-upon definition near impossible. Broadly civil society refers to formal and informal associations and networks in society, which exist outside the state. The civil society movements include all institutions and associational forms that require communicative interaction for their reproduction and that rely primarily on processes of social integration for co-ordinating action within their boundaries (Cohen and Arato, 1992: 429). Civil society refers to the realm of social affairs between private life in the family on the one hand and the political sphere on the other, a realm in which individuals voluntarily form associations of various kinds (Youngman, 2000: 202); the organized expression of various interests and values operating between the family, state and market (Habib, 2004: 228). Dipholo and Tshishonga (2013: 52) quotes (Monga, 1996: 148) as having conceived ‘civil society as birthplaces where the ambitions of social groups created the means of generating additional freedom and justice which includes:

All organizations and individuals whose actions have helped amplify the affirmations of social identity and the rights of citizenship, often in opposition to those in power, whose natural tendency is to suppress such identities and rights...in a nutshell, civil society in Africa is formed by all those who are able to manage and steer community anger.

According to Keane (1998: 6) civil society is defined as a complex and dynamic ensemble of legally protected non-governmental institutions (i.e., community-based organizations, social movements, non-governmental organizations) that tend to be non-violent, self-organizing, self-reflexive and permanently in tension with each other and with the state institutions that frame, constrict and enable their activities. He further views civil society as distinct from structures of the state, serving as countervailing force against domination by the state, but adds the important conception of Community-Based-Organizations (CBOs) as also being in tension with each other. Reitzes (1994:108) in Glaser (1997) posits that for the concept to be correctly understood civil society definitions need to be deconstructed, because an abstract notion of this concept fosters false assumptions of homogeneity and sameness in terms of identity, interests and norms. Deconstructing the concept requires a recognition of the diversity of organizations constituting civil society.

Civil society organizations not only differ in their scale of operation, functions, objectives and strategies, but also in their styles of governance. These multiple manifestations of civil society will become visible only when one starts to identify and describe the large variety of associational forms that make up the civil arena.

Leonard (2014: 374), weighing in on the debate around the topic, also notes that the concept civil society has been globally contested since the 1700s. Leibniz cited in (Hall and Trentmann, 2005) describe civil society as the power of the people uniting to create stronger communities. Sieyes (1789) paraphrased in Hall and Trentmann (2005) noted that the community as civil society needs a common will or else it cannot succeed in being a willing and acting body. Without the active participation of citizens in egalitarian institutions and civil associations, there will be no way to maintain the democratic character of social or political institutions. A common thread running through these definitions is people acting together to achieve a common purpose. The shortcoming of this argument is that it could mean that Non-Governmental Organizations (NGOs) acting together with government to promote neo-liberal policies that may affect the grassroots negatively and not contribute to realizing the leftist art of government. This would support the argument by Gramsci's analysis of hegemony that depicts social organizations as state proxies that ultimately protect and extend the status quo of property relations, implying a weak conception of civil society that does not genuinely realize the principles of an 'authentic' civil society (Bond, 2005). Thus, collective actions by civil society may appear to be supporting marginalized groups whilst not actually doing so. One therefore needs to distinguish which groups of people are acting in common (such as NGOs, grassroots, industry) and against what, and whether this supports 'authentic' civil society.

Zajontz and Leysens (2015: 5) point out that their understanding of civil society as a 'political space where voluntary associations deliberately seek to shape the rules that govern one or the other aspect of social life'. It incorporates the diversity of civil society actors encompassing faith-based-organizations, the media, non-governmental organizations, universities, social movements, trade unions and professional bodies. According to Scholte in Zajontza and Leysens (2015:5) conceptualization of civil society has several aspects that are regarded as an appropriate definition. Civil society is viewed as having a purposeful and active political orientation. Again, civil society a voluntarist element is incorporated and while political parties and corporate actors are not regarded as part of civil society, the close relationship between them and civil society actors is acknowledged.

A more recent definition in the 'International Encyclopedia of Civil Society' mainly combines the two notions of civil society and social movement: Civil society refers to the arena of unrestrained collective action, arranged around shared interests, tasks and values (Irish, 2010: 166). Examples given in the Encyclopedia refer to a wide range of associations such as charities, non-governmental organizations, community-based groups, women's groups, faith-based groups, professional and business organizations or trade unions but also social movements.

Daniel and Neubert (2019: 2) argue in their article 'Civil society and social movements: conceptual insights and challenges in African context' that in defining the concept civil society and social movement, we should be mindful that the majority of studies that use the concepts do so from the so-called Global North, especially North America and Europe. This therefore implies that the background of political and social realities prevalent in those regions should be considered as playing an important role in influencing the historical evolution of these concepts. It is difficult to transfer these concepts to a different context and expect to obtain the same results. Comaroff and Comaroff (2012: 113) argue that 'Western Enlightenment thought has, from the first instance, posited itself as the wellspring of universal learning' this statement in very simple terms argues that the issue of context should never be overlooked when defining concepts and the influence of the Global South should also be considered as an important player in the evolution of concepts and learning.

Despite the varying definitions of the concept, Van Dijck *et al.*, (2017) postulates that these differences should not result in the ultimate rejection of the concept. They, Dijck *et al.*, (2017, 17) adopted working definitions that is based on three elements, namely: (a) civil society involves physical face to face relations. This underscores that civil society differs from an imagined community; (b) The activities of this civil society are voluntary and relatively unrestricted by political institutions. This point makes it clear that civil society can arise in a period or a region without a central state. These are essential elements of a civil society because they can trigger the rise of democratic political values of representation, negotiation and responsibility (Hoffman, 2003: 269-270). – although even then civil society is part of a broader ideological framework and a governmental sphere; and (c) these relations and activities work towards the production or organization of a certain goal that transcends the individual needs and refers to shared values of the group. This point distinguishes civil society from everyday sociability, such as discussions in public houses or meeting of associations.

### 2.3 Models of civil society

One of the ways in which civil society can be understood is delineated by Kaldor (2003:10) who outlines five models of civil society, all both normative and descriptive, though the real-world description may not live up to the normative ideal. Two are historical versions: *societas civilis* and *Bürgerliche Gesellschaft*, and three are contemporary: neo liberal, activist, and postmodern.

*Societas civilis* is the earliest notion of civil society and the source of the notion of civil society as a goal with 'civil' used as a normative descriptor- a society that is civil. A civil society is characterized by peaceful stability as distinct from violent unrest, regardless of how democratic that stability is. This rests on the rule of law in governing relations between individuals, requiring the state to hold public monopoly over legitimate violence.

*Bürgerliche Gesellschaft* or bourgeoisie society, emerged with the rise of the modern nation as a mass society, democratic governance, and capitalist relations. This model was theoretically informed by the philosophers of the Scottish Enlightenment, for whom individual freedom was exercised through the market, but distinct from the state, and concerned with the balance between the two. Marx also understood civil society in these terms and therefore rejected it as expressive of bourgeois individualism and the exercise of capitalist power, whilst Gramsci argued that civil society was not intrinsically connected to hegemonic power and could be the site of challenge of state domination as a form of counter hegemony.

The neo liberal model has the clearest inheritance from the bourgeois society, defining individual freedom in terms of voluntary relations in the free market. In this model, civil society is descriptively limited to third sector organizations-charitable and not-for-profit organizations-as a substitute for the state, in particular state welfare but also public services. This is often characterized as the 'neo-Tocquevillian approach' (Powell, 2007: vii) as for Tocqueville civil society included the pursuit of individuals' private interests as well as the cooperative projects of groups, with both being oriented towards self-sufficiency.

The activist model in contrast, focuses on what could be termed 'public autonomy', of political process, engagement and participation-collective determination, over and above private autonomy of negative liberties (Baynes, 2000: 20).

The central participants in this model of civil society are those that engage in political participation outside of the formal political system, such as advocacy and protest groups and social movements and also for some proponents of the model, interest and identity groups but only those who are civic minded or public spirited (Kaldor, 2003: 10). It involves demands for a redistribution of power to accommodate political self-organization and pressure, as opposed, to in the neo liberal model a redistribution to markets and the consumer.

The postmodern model of civil society is defined more clearly in terms of what it is not than what it is. It opposes the liberal universalism of the neo liberal and activist versions, and the illusion of value consensus. Instead, it conceives civil society as a more antagonistic domain of pluralism and contestation, a source of incivility as well as civility (Kaldor, 2003: 9). Kaldor further argues that postmodernists accommodate nationalists and religious fundamentalists among the multiple identities that are a precondition of civil society although postmodernism itself rejects the nation state as a modernist project and religions as grand narratives. The main thrust of this model is its inclusion of other non-liberal models of society such as multiculturalism and communalism or communitarism.

Kaldor (2003: 22) further distinguishes between an activist civil society represented by social movements and a neo-liberal one, in which she local charities. She distinguishes five different ways of understanding civil society, which offer further helpful distinctions:

- *societas civilis*-based on the rule of law and civility;
- *burgeliche Gesellschaft*-encompassing all organized social life beyond the state and the family;
- activist-represented by social movements and civic activists;
- neo liberal-I which she includes formal third sector organizations, including charities and voluntary services; and finally
- the postmodern- in which she associates with nationalist and fundamentalist movements.

Civil society is therefore not intrinsically benign, philanthropic, or concerned with furthering social justice. The growth and forms of voluntary service organizations have been rationalized at various times as responding to both state and market failures to adequately address social welfare problems by offering alternatives (Murray and Milbourne, 2017).

In the context of countries that experience colonization particularly in the African continent, Kabalo (2009) argues that actors' conceptualization of civil society is not static by any stretch of one's imagination. He suggests that state-civil society relations in decolonized states are better explained, not only by past historical and social circumstances in Salamon and Anheier(1998)'s social origins theory but by also the different political, economic and social circumstances experienced by these states since decolonization. For instance, in Ghana, Whitfield (2003) and Shivji (2006) as explained by Atibil (2012: 48), donors' support for civil society often went primarily to organizations engaged in research, parliamentary lobbying, public education campaigns and entrepreneurial initiatives, with the most popular recipients of aid being professional, urban-based non-governmental organizations. Donors' references to civil society in Ghana generally covered the narrow urban sections of civil society, with rural organizations typically labelled as community-based organizations and excluded from the popular description of civil society.

Carothers (1999/2000: 18) says that according to him, NGOs are a small part of civil society. Properly understood civil society is a broader concept, encompassing all the organizations and associations that exist outside of the state and the market. It includes the gamut of organizations that political scientist traditionally label as interest groups- not just advocacy NGOs but also labour unions, professional associations, chambers of commerce, ethnic associations and others. The modern concept of civil society had an obvious moral, normative dimension compared to the 18<sup>th</sup> century definition which contrasted civil society with barbarism (Pockock) in (Diaz,2014). According to Schubert and Klein (2006) civil society is seen as a political philosophical term that tries to avoid both, the growing individualism of Western societies and the politicization of almost every dimension of social life that characterized for example the former socialist states in Eastern Europe. The authors argues that there should be a separation of the political and public sphere and the private/society sector should be completely separated. The Center for Civil Society (2004) postulates that civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. This means that in theory the institutional forms of civil society are different from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power.

Civil societies are often populated by organizations such as registered charities, developmental non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, business associations, coalitions and advocacy groups.

More recently Edwards (2005) while, exploring the ideas of modern philosophers who project the idea of civil society as the public sphere, concludes that the idea of civil society remains compelling because it brings out the best in us and establishes lasting solutions for issues of inequalities, social justice and poverty. The tendency of individuals to group themselves according to race, geographical location, and interest has been seen as natural by both historical theorists and contemporary political scientists. It is therefore not surprising that groups are viewed in this way by individuals who think about or study politics. Politics often require a basic recognition of the necessity of groups for political organization either as a single group of citizens, as factions of competing interests, or as separate races that share a common leader. Therefore, the interaction of groups and political actors in society is best conceived through a discussion of civil society, social networks and social capita (Civil Society Research Paper-Essay Empire, 2019:1).

The positive effects and impact of civil society on societies and democracies are highlighted as important by authors like Putnan (1995: 76-77). He argues that the growing political dissatisfaction and decreasing political participation in countries like the United States of America are connected to the decline of civic engagement. Civil society is thus essential for a successful and well-organized society in which citizens are more likely to approve. Social capital, which is the quality and quantity contacts a person have, is also deemed by Putnan to have a tremendous impact on civil society effectiveness. This view says that social capital is eroding. This therefore has an attendant negative effect and influence on civic trust and engagement.

As the complexities and diversities of modern societies expanded, new methods of conceptualizing civil society became a necessity. These methods sought to better capture the distinctions between civil society and other no-state actors. Kligman (1990:179) describes civil society as 'a web of autonomous associations independent of the state, which binds citizens together on matters of common concern, and by their existence or actions could have an effect on public policy.

Essia and Yearoo (2009: 1) also seem to share the modern view that ‘there is broad agreement that civil society organizations refer to a set of institutions and organizations that interphase between the state, business world and family. Modern literature generally links civil society to democracy. The link between and democracy has its roots in early liberal writings like those of Tocqueville but were developed in significant ways by 20<sup>th</sup> century theorists like Amond and Verba who both identified the significant role civil society can play in a democratic order. They argued that the political element of many civil society organizations facilitates better awareness and a more informed citizenry, who make better voting choices, participate in politics and hold government accountable as a result. Putnam in (Essia and Yearoo, 2009: 368) argues that even non- political organizations in civil society are vital for democracy. This is because they build social capital, mutual trust and shared values, which are transferred into the political sphere, and which help to hold society together by facilitating and understanding of the interconnectedness of society and the interests in it.

Along with the revival of civil society theories in recent years, new paradigms emerged in the discussion of the state-society relation. What is worth mentioning is the rebellion and harbour theories (Zhenglai, 2010: 36). According to Zgenglai (2010: 36), the rebellion theory simplifies the state as a political party or a government and preferentially regards the state-society relation as hostile or even confrontational. This theory stresses the resistance of civil society against the state through mobilizing the populace against officers, from whom can be seen its emphasis on the entirety, consistence and homogeneity of civil society. For this school of thought, such consistency also means also belligerence or rebelliousness on the part of civil society in encountering the state. The harbour theory maintains that it is meaningless to try seizing or sharing government power. For those living under a centralized system, the best strategy is to invest their energy in economy, religion, culture and other important activities while ignoring the tyrannical state. For this, civil society is regarded as a ‘harbor’ in a centralized system. When people are all in the harbour, the tyrannical state will be vacated and become an empty entity. This theory stresses passive evasion dealing with the state-society relation.

Cohen and Arato (1992:9) in Leonard (2014: 375) understand civil society as a “sphere of social interaction between the economy and the state, composed of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations) social movements, and forms of public communication such as the media”.

The value of this definition is firstly that civil society is not identified directly with capitalism and the free market but takes on the meaning of mobilized participatory citizenry to counteract dominant economic and state power engaging in free market ideology and practices that may lead to inequality. Secondly, this definition echoes the sentiments of Bryant and Bailey (1997) who maintain that civil society encompasses a diversity of social groups and interests suggesting non-class-based forms of collective action. Habib (2004) understands civil society as organized expressions of various interests and values operating in the triangular space between the family, state and the market.

Ranchod (2007: 2) contends that there are many different and sometimes contending definitions of civil society. Some classify civil society organizations as all institutions and organizations outside of government. These include trade unions, consumer organizations the formal and informal welfare sectors, non-governmental organizations (NGOs) and community-based-organizations (CBOs), religious organizations delivering welfare services, corporate social investment, employee assistance programmes, occupational social work and social workers in private practice. Others simply see it as groups or associations which are independent of the state, engage with it but do not seek to take over. The working definition that Ranchod (2007:2) prefers is that of seeing civil society as the arena of uncoerced collective action around shared interests, purposes, interests and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements' business associations, coalitions and advocacy groups.

The debate around the concept is further taken up by the 2001 issue of the *Economist* which notes that civil society is 'universally talked about in tones that suggest that it is a Great Good. The media is accused of using the concept haphazardly to describe whatever suits its agenda at any given point in time (Fioramonti and Fiori, 2010:24).

It is argued that NGOs themselves are further adding to the confusion by claiming to represent the genuine civil society vis-à-vis other social actors such as certain social movements or informal groups, which might not possess the same degree of formalization and ‘civility’ as the most professionalized associations, foundations and charities. On the academic front, the term has largely come to describe an array of non-governmental actors loosely sharing similar ideas, motives and values.

According to Harris (2005: 1) both Habermas and Dahrendorf portrayed civil society as autonomous social and economic institutions outside the sphere of government. For Dahrendorf, a flourishing civil society was a practical embodiment of the legal, economic and legal and personal freedoms set out in FA Hayek’s ‘constitution of liberty’. For Habermas, civil society had been the precondition for the emergence of a new kind of bourgeois public sphere, which since the late seventeenth century had increasingly replaced the cultural, sociable, normative and taste-creating roles once performed by royal courts and kingly governments. Both accounts portrayed the evolution of civil society as closely linked to the growth of markets and cities, the rise of public opinion, the genesis of new forms of privacy and self-awareness, and the burgeoning of a multitude of self-generating associations that performed a public function but operated largely without reference to the realm of the state. Habermas further postulates that civil society is made up of more or less spontaneously created associations, organizations and movements that find, take up, condense and amplify the resonance of social problems in private life, and pass it on to the political realm or public sphere. Haberson *et al.*, (1994) regards civil society as an arena of society, the public space between the household and the state, where groups constituted at the level beyond family, interact with each other and with the state to pursue their interests.

According to De Jager *et al.*, (2015: 174), civil society operates in the triangular space between the family, state and the market although the boundaries between these elements are often hazy, complex and negotiated. They, De Jager et al, (2015: 174), identify three categories of civil society functions:

- The first category includes functions that are adversarial in that they serve to limit state power - for example by exerting pressure upon the state and subjecting it to public scrutiny; challenging the state’s misuse or abuse of authority; monitoring civil liberties and the rule of law; and observing and enhancing the legitimacy of elections.

- The second category is more collaborative and involves the inclusion and integration of various sectors of society, such as augmenting state services; incorporating marginal groups into the political process (such as women and racial and ethnic minorities); and providing extra-state means for communities to improve the material growth.
- The third category sees civil society operating to enable communication within society and between the state. It does this by acting out as a platform for groups to forward economic and political reforms; enhancing the responsiveness of the state to societal interests and needs; and opening and pluralizing the flow of information.

A lot of scholars and observers agree that civil society refers to voluntary participation by average citizens and thus does not include behaviour imposed or even coerced by the state.

Haus (2003: 1) posits that civil society is characterized by the following:

- Political activity engaged in through by non-profit organizations such as NGOs. This includes voluntary participation in the political, social, public or private space.
- Civil society includes not just the individuals who participate, but the institutions they participate in-sometimes called 'civil society organizations or CSOs. Thus, civil society is strong to the degree that those CSOs are large and powerful.
- A civic culture in which most people think their governments can be trusted and enjoy popular legitimacy.
- Social capital, which is the human equivalent of economic capital. It is an intangible resource accumulated by civil society that can be expended when a society finds itself in crisis, as some would argue in the United States after September 11 terrorist attacks on the World Trade Centre.

Setianto (2007: 3-4) maintains that despite the fact that the concept of civil society might be considered vague or even ill defined, it can however be defined by three characteristics.

- Firstly, it operates under the rule of law, not the state of nature.
- Secondly, civil society lies somewhere between the state and the market, where state interests and market interests are contested. Civil society thus stands in opposition to the market as well as to the state, and civil society is also influenced by both forces. When a variety of civil society organizations emerge, some may be arms of the market, such as business associations and entrepreneur organization; other may be arms of the state, such as government-owned non-

governmental organizations. Salamon & Anheir (1997) terms this space between the state and the market - the Third Sector.

- Thirdly, voluntary associative relations dominate civil society. As a consequence, civil society is a sphere of free public debate. Civil society is thus more than associations, because any association might be influenced by the market or the state. Rather the members of civil society organizations hold different and varying interests. As a result, the heterogeneity and diversity of civil society is maintained.

Equally, Anheier (2004: 23) contends that civil society organizations comprise voluntary associations, non-governmental organizations, non-profit foundations, social movements, networks and informal groups that make up the infrastructure of civil society. They are the vehicles and forums for social participation, 'voice processes, the expression of values and preferences, and service provision. Of particular interest are civil society organizations (CSOs), which are defined as self-organized groups characterized by:

- Voluntary participation (which would exclude compulsory membership organizations);
- Relative independence from family, market and state; and a
- Capacity for co-operative action to advance mutual interests.

Anheier (2004:14) developed a very interesting model referred to as the Civil Society Diamond approach which is method used to present and interpret information in a more structured and systematic way. The purpose of this model is to serve as a tool for civil society practitioners, policy makers and researchers to:

- Assess core facets of civil society. This is done by providing indications of civil society's major contours, strengths and weaknesses, and thereby facilitates the identification and development of policy options; and also, to
- Assess the impact and potential contributions of civil society. This is possible through for instance, in terms of the overall well-being of society or economically and socially with respect to human development indicators.

According to Anheier (2004: 15), the ultimate aim of CSD is therefore to:

- Create a tool for an ongoing and systematic dialogue about the strengths and weaknesses of civil society at local, regional, national and international level.

- Raise awareness and consciousness across different population groups and stakeholders about civil society.
- Enhance the transparency and accountability of civil society institutions, organizations and representatives nationally as well as internationally.
- Enhance professionalism and raise leadership standards within civil society organizations as well as among corporations and government agencies dealing with civil society institutions.

Specifically, the operational definition of civil society includes separate component parts: institutions, organizations and individuals. Table 2.1 below lists those component parts as follows:

**Table 2.1 Types of Units Included and Excluded**

Institutions	Organizations	Individuals
<b>Included:</b>		
<ul style="list-style-type: none"> <li>▪ Freedom of expression, press association, assembly etc</li> <li>▪ Rule of law</li> <li>▪ Legislative process</li> <li>▪ Human rights</li> <li>▪ Democratic process</li> <li>▪ Philanthropy; charity</li> <li>▪ Accountability and Transparency</li> <li>▪ Citizenship</li> <li>▪ Independent media</li> </ul>	<ul style="list-style-type: none"> <li>- Civil society Organizations (CSOs)</li> <li>- Voluntary associations</li> <li>- Non Governmental Organizations</li> <li>- Non profit service providers</li> <li>- Foundations</li> <li>- Advocacy groups</li> <li>- Social movement organizations</li> <li>- Coalitions and Networks among CSOs</li> <li>- Community groups</li> <li>- Self-help groups</li> <li>- Corporate responsibility Programmes</li> </ul>	<ul style="list-style-type: none"> <li>- Activists</li> <li>- Volunteers</li> <li>- Members</li> <li>- Participants</li> <li>- Leaders</li> <li>- Managers</li> <li>- Employees</li> <li>- Users</li> <li>- Beneficiaries</li> </ul>

## Excluded

- |                       |                       |                    |
|-----------------------|-----------------------|--------------------|
| ▪ Institutions not    | - Government agencies | - Non members      |
| Directly related to   | and organizations     | - Non participants |
| Civil society (eg     | - For profit and      | etc                |
| Market exchange,      | commercial            | -Individuals       |
| Political process     | organizations         | outside realm      |
| And elections; family | - organizations       | of civil rules     |
| Forms;etc)            | outside of the realm  | and values         |
|                       | of civic rules and    |                    |
|                       | values                |                    |

Source: Anheier (2004:25)

A study by the National Development Agency (NDA, 2008:6) adopted a generally accepted definition of civil society as the sphere of organizations and /or association of organizations located between the family, the state, the government of the day and the prevailing economic system, in which people with common interests associate voluntarily. Amongst those organizations, they may have common competing or conflicting values and interests. Finally, the NDA agreed on a criterion for the definition of CSO that includes the following:

- ❖ For public benefit;
- ❖ Having a common purpose, usually (but not exclusively) around service delivery, social watch, advocacy, research or education;
- ❖ Private (occupying the space outside the state or market);
- ❖ Self-governing; and
- ❖ Does not distribute profit.

The World Bank (2016) has adopted a definition of civil society developed by a number of leading research centres. The term civil society refers to a wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil society organizations therefore refer to a wide array of organizations: community groups, non-governmental organizations, labour unions, indigenous groups, charitable organizations, faith-based organizations, professional associations and foundations.

Fine (1997:8) argues that to know what civil society is; it is insufficient to point this or that feature of the empirical world - be it commerce, free associations, social movements, non-governmental organizations, or less tangibly public spaces, public life, the life-world and so on. He further postulates that no such ostensive definition is adequate, for the meaning of civil society cannot be dissociated from the uses to which the concept is put in the language of social theory. For example, it is now well established that the use of the concept civil society in traditional natural law theory was significantly different from its use in modern natural law theory. In the former, civil society was equated with political society and contrasted with the state of nature. In the latter, civil society was reformulated as a middle ground between private property and the state and therefore detached from political society and the state. Fine (1997:9) equates civil society agency, creativity, activity, productivity, freedom of association to life itself.

A more contemporary definition was conceptualized in a study by Lester *et al.*, (2017:22-25) who came up with what they refer to as a consensus, structural and an operational definition of civil society that identifies five features that any entity has to possess in order to be considered in the scope of the civil society sector. Under this definition, the civil society sector is composed of entities that are:

#### Organizations

That is, they have some structure and regularity to their operations, whether or not they are formally constituted or legally registered. This means that their definition embraced both informal non-registered groups as well as formally registered ones. The defining question is not necessarily whether the group is legally or formally recognized but whether it has some organizational permanence and regularity as reflected in regular meetings, a membership, and a set of procedures for making decisions that participants regard as legitimate.

## Private

That is, they are institutionally separate from the state even though they may receive support from government sources. This criterion differentiates civil society organizations from government agencies without excluding organizations that receive a significant share of their income from government, as many civil society organizations do.

## Not-profit-distributing

That is, they are not primarily commercial in purpose and do not distribute any profit they may generate to their owners, members, or stockholders. Non-profit institutions can generate surpluses in the course of their operations, but any such surpluses must be reinvested in the objective of the organizations rather than distributed to those who hold financial stakes in the organizations. This criterion differentiates non-profit institutions from for-profit businesses and thus meets both the clarity and operationability criteria set.

In taking the debate further, particularly pertaining to the non-profit motive of civil society, Salamon and Anheir in (Ragin, 1998: 265) show the non-profit sector as being able to differ dramatically from one country to the other. In some countries, it is relatively small and skewed towards specific activities and funding mechanisms, while in others it is large in one sphere of activity, making it appear somewhat erroneously to be intermediate sized in the aggregate. Cross nationally the non-profit sector is diverse enough to support the claim that it is a different beast in every country.

## Self-governing.

That is, they their own mechanisms for internal governance are able to cease operations on their own authority and are fundamentally in control of their own missions and purposes. This criterion differentiates non-profit institutions from subsidiaries or agencies of other legal entities, including units of government.

## Non-compulsory

That is, membership or participation in them is contingent on an individual's choice or consent, rather than being legally required or otherwise compulsory. This criterion is useful in differentiating civil society organizations from kin-based groups whose membership is determined by birth rather than individual consent.

Many African scholars use the definition conceptualized by Larry Diamond commonly referred to as the 'conventional view. Civil society is defined by Diamond as 'the realm of organized social life that is voluntary, self-generating (largely) self-supporting, autonomous from the state and bound by a legal order or set of shared values. It relates to public and not private interests that involve citizens acting collectively in a public sphere to express their interests, passions, and ideas, exchange information, achieve mutual goals, make demands on the state, and hold state officials accountable. It is composed of a vast array of formal and informal organizations that are a) economic, b) cultural and economic, c) informational and educational, d) interest-based, e) developmental and f) issues and civic oriented.

### **2.4 Categories and views of civil society**

As alluded to earlier, the definition of civil society is so diverse that no one can exactly know it means. The following are some of the views pertaining to civil society:

#### 2.4.1 Civil Society is the Third Sector: A Development View.

Some writers contend that civil society is identical with the Third Sector as different from the government and business sectors. The view contends that society is not only a political order composed of governments, laws and courts but also a social order of voluntary groups and their social norms. This social order is composed of a vast network of associations that represent members in public interest groups, recreational clubs and civic organizations. The Institute for Development Research describes the Third Sector's own distinctive institutions as institutions of civil society that are concerned with the expression and preservation of core community values and beliefs.

#### 2.4.2 Civil Society is the Private Sector: The nonstatist view

Leaders who are closely associated with business see civil society as the ‘private sector’ or sometimes broadly, the ‘voluntary order’ and occasionally, the ‘independent’ sector. In this outlook, business is part of civil society. Fukuyama (1995: 4-5) shares the nonstatist view by arguing that civil society is a complex welter of intermediate institutions, including businesses, voluntary associations, educational institutions, clubs, unions, media, charities and churches...a thriving civil society depends upon a people’s habits, customs and ethics... attributes that can be shaped only indirectly through conscious political action and must otherwise be nourished through an increased awareness and respect for culture. Fukuyama contends that civil society is the whole private sector (including business) outside government (Fukuyama, 1995:4-5).

Other scholars like the sociologist Shils (1991: 3) also posit that civil society is the private sector. He says that “civil society lies beyond the boundaries of the family and the clan and beyond the locality; it lies short of the state”. He further contends that the space of civil society is the private sector of market relations and public settings established for the purpose of public discourse. In civil society, market relations and publics form an autonomous realm of private individuals “engaged in acts of self-determination”.

#### 2.4.3 Civil Society is the Public Sphere: A Humanist View

The adherents of this view are divided into those who emphasize the private vs. the state while the other emphasize view the personal vs. the impersonal spheres of life. Adherents of the first view oppose the growth of the state and its incursion of everyday life while philosophers of the second view celebrate personal life as opposed to the growth of the impersonal sphere, which could include corporations as well as the state. One of the philosophers argues for a hybrid approach in which the two views flow constantly into each other. This view imagines the public/private composite, which becomes the centre of meaning and change in the development of civil society (Arendt, 1958) in (Calhoun:2011).

#### 2.4.4 Civil Society is a Polity: A Revised View

The notion of polity after the fall of the Soviet Union conveyed the idea that authority should be shared among members of a diverse community. This means that the state is no longer the dominant institution even though it is crucial to the development of civil society. This notion sees a new set of beliefs, a new culture forming within society. The notions argues that power is central to the definition of civil society, but it is now forged through more democracy in the rest of society.

#### 2.4.5 Civil Society is an Order of Associations: A Post-Capitalist View

A lot of writers in America support Tocqueville's assertion that democracy is found through civic associations. Civic associations mediate between the individual and the state and offer public forums where opinion is shaped. Voluntary (not government) associations are a "bulwark" against the despot. These intermediate structures check the tendency of a centralized government to control society.

#### 2.4.6 Civil Society is a Symbolic Order: A Dynamic Opposition

Scholars like Seligman speak of a new society forged "in the tension of opposites. For instance, a great tension exists between the ideal and the real, order and freedom, community and individuality, public and private, universal and particular, secular and sacred". Civil society develops in the resolution of contrary (universal) ideas that become concretely realized in a new set of institutions (Seligman, 1992). This view is almost similar to Marx's view that a society should be organized in such a way that the humanity within each individual can be realized. The individual discovers his/her humanity through participation in the affairs of civil society.

Magure (2009: 28) quoting Ku (2002: 530) contributes a very interesting debate by positing that there are four principal schools of thought to civil society, namely: the associational, regime, neo liberal and the Post –Marxist schools. She argues that the first two stress the importance of human agency, while the last two offer a more cautious approach to civil society that is basically structurally driven. He further says that the associational school is mainly driven by Tocqueville and has been dominant in the US with its emphasis on the centrality of autonomous civil society in the strengthening of

democracy. In a sense, civil society promotes the development of a stable democratic polity through the creation of social capital defined in terms of norms and reciprocity and trust among individuals and between citizens and the state. Though the associational view has high expectation for the role civil society can play in consolidating democracy, at the same time it is cognisant of the attendant limitations in that regard (Magure, 2009: 29).

Magure (2009: 28-29) posits that the regime school of thought has John Locke as its leading proponent, and it focuses on how to institute constitutional and legal arrangements for the purposes of providing checks and balances in a political system. John Locke's liberalism did not make a distinction between state and civil society but between civil society and the state of nature. Another recent tradition of civil society is associated with the project of international cooperation for development. In this tradition, civil society is viewed as an array of social organizations representing 'stakeholders; in a process of economic development. It is seen as a strategic partner in the war against global poverty waged by the World Bank and other international development associations and agencies. In this context, civil society is viewed as an agency for bringing about a participatory and empowering form of development. Proponents of this conception of civil society generally share a liberal ideology in terms of them seeing, in civil society, the beneficial effects of globalization for the development of democracy and economic progress (Chan, 2001) in (Veltmeyer, 2008: 1). A detailed focus in the following paragraphs will mainly focus on the Marxist and liberal school of thought to civil society which have, in the main, become the dominant approach in the debates relating to civil society.

## **2.5 Theories of civil society**

Most theories of civil society are premised on liberal democracy. This implies that civil society theories to a larger extent rely on how civil society contributes to the institutions and practices of liberal democracy (Bignami, 2016). Some of the more prominent theories on civil society are as follows:

### **2.5.1 Liberal vs Marxist schools of thought on civil society**

Contemporary understanding and definition of the concept civil society may be broadly categorized into two schools of thought. The first is the liberal school of thought which points out the importance of the pluralistic institutions of civil society to the viability of liberal democracy itself. This approach is also expounded in the work of Locke whose vision of civil society resolves around the main flaw of the state of nature, which is lack of impartial judgement (Jailobaeva, undated). According to Locke, only civil society can resolve this inconvenience of the state of nature by providing equal and independent people with a legitimate political authority, which takes over the function of making impartial judgement on their conflicts (Dunn, 2001: 50-51). Khilnani (2001: 21-22) postulates that when Christianity was no longer a sufficient response to the problem of the community, theorists such as Adam Smith offered a new approach, the secular one. This approach argues that a crucial point in civil society was that relationships between people were based on trade needs and more importantly on private sentiments. The latter ones not only made a distinction between market exchange and private relationships, but they also introduced voluntariness and choice in relationships. They could enter into relationships with anyone they sympathised with. As a result, strangers were no longer enemies anymore. This gave birth to a community of indifferent citizens where there was now politeness and polish.

The liberal democratic approach by Putnan (1994) in Doyle (2016:247) argued that it was the difference in civic engagement (measured by voter turnout, membership in voluntary associations and newspaper readership among other indicators) that determined the quality and effectiveness of both the individual governments and of democracy in these states. Other scholars raise the view that civil society associations play a crucial role in influencing the political system, in facilitating transitions to democracy where democracy does not exist and in deepening democracy where it does. For liberals, the separation of civil society from the state is a given and this serves to understand the modern form of civil society that plays a pivotal role in checking the state's despotic tendencies (Ku, 2002: 530). A leading theme in the liberal tradition is that the state must roll back and just be there as a referee who provide the framework for the protection of private property, life and liberty. The hallmark of the argument is mainly attributed to Thomas Jefferson's idea of limited government - that government is best which governs least (Magure, 2009: 29).

In other words, state control and intervention, whether in the market, social or political sphere, is viewed as anathema to people seeking liberty. Civil society then becomes a means of counteracting despotism.

De Wiel (1997:5) posits that the original idea of civil society can be traced to the period of the French Enlightenment by declaring that ‘civil society began to change after this period. The shift away from the conception of seeing civil society as distinct from the state. Nations then emerged as cultural groups with their own organizing traditions, mores and ethos. Scambler *et al.*, (2014:211) quoting Scambler and Kellher (2006) suggested two sectors of civil society that might be distinguished. What they called the enabling sector of civil society located in the private sphere of the lifeworld. It is within the enabling sector that issues of potential concern are first delineated, typically as part and parcel of everyday discourse. The protest sector of civil society civil society is located within or is directed towards the public sphere of the lifeworld. It is within this sector that people come together are mobilized, in networks, campaign groups, social movements and other varieties of association in pursuit of influence for purposeful change.

Liberal authors like Edward Shils and Ralf Dahrendorf looked at the societal pre-conditions for the existence of civil society This condition is described by Shills as ‘civility’. Civility considers others as fellow citizens of equal dignity in their rights and obligations (Shils, 1991:12). This includes the willingness to solve conflicts without resorting to violence. In this understanding, civility can be understood as a mode of political action that ‘postulates that antagonists are also members of the same society. This includes, as stated earlier, the willingness to solve conflicts without violence. Dahrendorf (1992) also coined the concept ‘civic sense’ (*Burgersinn*) which underlines the fact that the existence of a space for the expression of interests and self-organization is not sufficient to guarantee a civil society. There is therefore the need for a critical mass of people who commit themselves to the idea of civil society and observe the norms of civil society in their everyday life (Daniel and Neubert, 2019: 4).

According to Harbemas who is said by Baker (2012:7) to be a proponent of the new left theorists on civil society, civil society is the source of self-reflexivity in society without which democracy will dry up. This implies that for democracy to thrive and be deepened the necessary fuel driving that is the extent of civil society organizations are active in a democracy.

The institutions of civil society must act to protect the autonomous development of public opinion in the public sphere from being undermined and colonized by state bureaucracy-the system of power and by the economic power of the market.

### **2.5.2 The Challenge of Radical democratic theory**

Scholars like Jon Rawls and Jurgen Habermas are part of the recent hegemonic position that is informed by the liberal procedural forms which argues that adherence to particular rules and regulations or procedures of political engagement can enable societies which are diverse to cohere, coexist and tolerate each other (Little,2002: 111). As long as diverse groups in society are able to participate in the decision-making process and there is no ingrained structural bias against certain groups, then a liberal society can develop on the basis of such principles as neutrality and tolerance. From this perspective, civil society tends to be viewed as the domain in society whereby individuals and groups freely associate and enjoy their difference privately. Recently there has, however, been a radical backlash against this view.

The radical view which is in stark contrast to the latter view was in the main influenced by the writings of Gramsci. The Gramscian view challenges the ambiguity of the concept in most theories and its assumed status as the panacea for the disagreement and conflict that emerge in diverse societies. The primary thrust of this view is that civil society is not a neutral space in which differences are harmoniously experienced. Instead, it is the site where different perspectives encounter and conflict with one another. Moreover, not only is a space for contestation, but the actual space itself is contested. Thus, what constitutes civil society is itself a matter of debate and dispute and the ways in which we engage with one another therein will be similarly contested (Little, 2002: 111). For the radical opportunists, civil society was itself the site of democracy. Currently civil society is now seen as external to, though not doubt important for, democracy understood as a political mechanism for controlling the state (Baker, 1998: 73).

### **2.5.3 Social Capital**

Bignami (2016: 328) posits that joining and participating in voluntary organizations is essential for constructing social capital and training individuals in the values and skills of citizenship. The theory encourages individuals to become active actors and players in community and civic organizations which then becomes an arena necessary for the production of attributes, skills and values that will endear them toward the needs of society. Henceforth this will lead to good relations between civil society organizations and the state. This relationship between good government and civil society organizations is what Putman *et al.*, (2009) refer to as social capital.

### **2.5.4 Multiculturalism**

There is a need to recognize and appreciate the fact that in societies there are different groups and associations within the framework of pluralism and democracy. The individual is expected to submerge his individual and personal in favour of the dominant and unique group and cultural position, view and idea of the cultural community. In a host of societies, the cultural communities can be constituted by groups such as Islam, the Khoi community in South Africa or the Maori community in New Zealand. The reality and fact are that modern democratic societies are characterized by a pluralism of incompatible beliefs, both religious and non-religious, liberal and non-liberal; the fact that no one of these beliefs is affirmed within a democratic society by all citizens generally; and the fact that this plurality of views on what the good life is, is a permanent feature of the modern world.

### **2.5.5 Cosmopolitanism**

This refers to the internationalization of civil society, the fact that it now spans the global arena. The associations and informal networks that are found globally, help to mobilize networks across national borders, target multiple countries, focus on issues of a global concern in an effort to achieve their goals. Bignami (2016:330) postulates that in cosmopolitan scholarship, transactional social mobilization is generally cast as the kernel of an emerging global civil society that is a necessary counterweight to both the forces of global capitalism and the unaccountable inter-state bargaining and international bureaucracies of the international realm. Examples of such organizations that operate on a global scale include organizations such as Greenpeace, Amnesty International and the World Wildlife Forum, among others.

The rise of such organizations is inextricably tied with the new world order where there is generally an increasing injustice in the social, political and mainly economic arena with international technocrats dominating international politics and global multilateral organizations. The agenda of world politics is determined by these powerful and dominant countries. For instance, forums like the World Trade Forum, the annual meetings of the G8, the G20 among others do indeed signify the reality of an unjust, uneven and unequal world much against the founding tenets of the United Nations which refers to equality of the democratic nations of the world. It is against this background that there has been mobilization of civil society on a global scale unprecedented in history. There is even a view that is gaining currency around the need to establish a world parliament referred to as Global Peoples Assembly which would represent civil society in international law- making and deliberating in policy positions around issues that face the poor and less privileged.

### **2.5.6 Effective Governance**

The relevance of governance as a concept related to civil society might appear perplexing in view of the fact that civil society organizations are not in power and governing nation states. They, therefore according to Stewart (2003: 78) offer the prospect of more effective governance for three main reasons. Firstly, the problems that are addressed by government are highly technical and require specialized forms of knowledge, which is often possessed by civil society organizations. Secondly, government policies require implementation, and to the extent that civil society and other non-state actors support the policy in question, cooperation and compliance is more likely. Lastly, in some cases, the experience and expertise commanded by the private sector can be so significant that government is advised to transfer policymaking functions to non-state actors with only minimum supervision from the state. These, governments can do without abdicating their constitutional responsibility as elected representatives of the people.

Lutsevych (2016:653) argues that much as civil society organizations expect effective governance from the state, they (civil society) itself must comply with principles of internal democratic governance based on accountability to their members, as well as having check and balances mechanisms built into their operations. This is especially important for groups that fight corruption. If they demand integrity from the state, they themselves should be implementing what they preach.

For instance, the Centre for Political Studies and Analysis in Ukraine, which advocated for a transparent budget and is a member of National Agency for the Prevention of Corruption, has no annual financial report available online.

### **2.5.7 Critical Theory**

According to Jensen (2006:52), critical theorists view civil society as predisposed towards providing the social basis for a democratic public sphere. The associations that together constitute civil society are viewed as interconnected elements of a democratic public space within which deliberation and democratic decision-making take place. To critical theorists the arena in which democracy, tolerance and consensus deliberations should find expression in civil society movements. For modern democracy to thrive, there is a need for a functional, vibrant, effective and democratic civil society.

### **2.5.8 Social movement theory**

Ballard *et al.*, (2006:3) define social movements as politically and/or socially directed collectives, often involving multiple organizations and networks, focused on changing one or more elements of the social, political and economic system within which they are located. Social movement theory refers to voluntary organizations of individuals who act in concert to make or block changes. They are power oriented groups rather than participation-oriented movements, meaning that the group actions of social movements are not necessarily of primary benefit to individual members but serve the larger group's interests. The structural –Strain theory below attempts to explain how social movements develop over time (Smelser, 1971):in Ballard *et al.*, (2006).

- ❖ Structural conduciveness- people come to believe that their society has problems.
- ❖ Structural strain- people experience deprivation.
- ❖ Growth and spread of a solution- a solution to the problems people are experiencing is proposed and spreads.
- ❖ Precipitating factors- discontent usually requires a catalyst to turn it into a social movement.
- ❖ Lack of social control- the entity that has to be changed must be at least somewhat open to the change; if the social movement is quickly and powerfully repressed, it may never materialize.

- ❖ Mobilization- this is the actual organizing and active component of the movement; people do what needs to be done.

A basic assumption of social movement theory is that a given challenger faces political opportunities and constraints, and that changes in these opportunities and constraints on the one hand determine whether a movement emerges and, on the other, shape the ebb and flow of movement activity over time (Grebe,2012: 54). The theory says that contemporary social movements are characterized by strategies, goals and membership distinct from traditional social movements.

Lewanika (2014: 24) came up with a very interesting summary in tabular form of the five intellectual traditions which have informed modern thinking around civil society. These are outlined in Table 2.2 below.

**Table 2.2 Five Major intellectual traditions on civil society**

	Hegel	De Tocqueville	Habermas	Foucault	Gramsci
Definition	The realm of difference, between the family and state, where individual aspirations are aggregated/universalized and transmitted to the state of action.	A part of society, the domain of voluntary association that assist in curbing the power of centralizing institutions, protect pluralism, nurturing contractive social norms which assist in building a stable	The site of progressive politics- the social basis of a democratic public sphere Through which the culture of Inequality can be dismantled,	A realm, which is subject to the power of the state in a new government rationality, which makes it both the object and subject of the state's power	An arena where ideological hegemony is contested; a spectrum of social organizations that challenge and prop up the existing order and the first phase in the struggle for hegemony

		democratic polity			
Main Ideas	Different interests are surveyed-Civil society moderates these conflicts and subsumes them to be realized through the ends of the state (actuality of the ethical idea).	Civil society as a safety net-a realm of altruistic activity and service provision aspects that the state and markets do not provide, and a way of strengthening development democracy through a strong society and weak state.	Society as steered by its Members Through Shared Meanings that are constructed democratically though the communication structures of the public sphere.	Civil society is interpellated with the state and markets, NOT independent of the power of the two. Its institutions constitute the paradigmatic terrain for the disciplinary deployments of power in modern society, producing normalized subjects	Civil society as the site of rebellion against orthodoxy and the construction of cultural and ideological hegemony. It is the mediating agent of the special to the general interests and cause for the rapture of this general interest as well.
Associated Ideas	Abstract labour, formal subsumption	Social capital, Public Private Partnership , NGOs	Communicative action, action, Discursive democracy And Colonized life world	Governmentality, Discipline, conduct, surveillance, informants and enclosures.	Hegemony, crisis, consent, coercion historical blocks, war of manoeuvre/position
Constituents	All institutions of capitalist society that organize abstract labour	Associations occupying the space between the partmen and the state+ market	Voluntary associations outside the sphere of the state and the Economy	The church, the school, the prison, the family, the union, the party etc.	Families, schools, universities, and the media as well as voluntary associations

Source: Lewanika (2014: 24)

## **2.6 Principles of civil society**

Peterson and van Til (2004) suggests that three principles: participatory engagement, Constitutional authority and moral responsibility are found in all societies regardless of cultural context. The first principle suggests that members of any given community should be free to participate in civic action and belong to various structures and organs created for the common good of society. The second principle of constitutional authority posits that citizens should feel protected by the laws and regulations governing society to such an extent that they participate as free persons in the affairs of community organizations. This will empower them to hold political actors accountable in the exercise of their legislative duties. The third principle of moral responsibility enjoins citizens in their individual capacity and as members of communal organizations to strive for the achievement of the common good of society and not any other interest of material gain.

The Human Security Partners for Peacebuilding Policy (2011) have identified six civil society organizations “Humanitarian Principles” which are as follows:

- ❖ Humanitarian imperative: To save lives, alleviate suffering, and uphold dignity.
- ❖ Independence: To make decisions, program plans and strategies free from others; political goals or ideologies.
- ❖ Impartiality: To provide resources regardless of the identity of those suffering.
- ❖ Neutrality: to not take sides in political or military struggles.
- ❖ Do not harm: to work without harming others.
- ❖ Accountability: to consult and be accountable to local people.

## **2.7 Characteristics of civil society**

According to Davids and Theron (2014: 65) the most common characteristics of CSOs can be summarized as follows:

- They are institutionally independent of government. They are privately set up and are normally under the control of an independent board of directors or trustees.
- They do not have a profit motive. Any surplus generated during the course of their activities is ploughed back into the organization.
- They are characterized by their voluntary association. This means that those supporting an NGOs’ development objectives should have the opportunity to join in its activities as partners in development.

- Their activities are financed mainly through grants from donors (domestic and international) based on their fundraising activities, with only limited government funding.

Further nine measurable characteristics of civil society as postulated by Peterson and Til (2004:2) are as follows:

#### 2.7.1 The Commons

Civil society is advanced when citizens share a social right of access to the commonwealth of resources produced, used, and exchanged through natural and social economies in a community and through a society. Access, in this context, includes the abilities both to contribute to the resources and to benefit from them. Broad community-based civic engagement in economic activities occurs in the arena of what is historically called “the commons” as in the Greek agora and the English market. Citizens are able to form networks, share the resources of the commonwealth and participate in the affairs of the community.

#### 2.7.2 Office

Civil society becomes entrenched and advanced when members of the public are able to exercise their civic duty of self-governance by participating in political structures that exhibit decentralized power and authority. Citizens have an opportunity to contribute to community structures by contesting and holding positions of authority in such civic organizations out of their free will.

#### 2.7.3 Associations

Civil society is advanced when citizens can voluntarily and openly participate in diverse social affiliations, groups, networks, and structures for self-governance and social transformation. “Association” refers to those social places where people gather and interact with others to exchange ideas, offer support, and receive a sense of belonging.

#### 2.7.4 Trusteeship

Civil society is advanced when citizens hold decision making power, work to strengthen and improve local and regional economies and exercise sustainable and socially transparent stewardship of societal resources (e.g., human, social, material, and ecological) on behalf of the “common good.

### 2.7.5 Sovereignty

Civil society is advanced when citizens have the right to be involved in all aspects of political governance and the authority to make decisions and perform actions affecting all levels of public life, without the institutions of public life being “captured” by the interests of specific groups or individuals. The presence and legitimacy of community-based civic authority through systems of political governance increase the ability of citizens to exercise sovereignty over policies and programs that can positively affect their lives and the quality of life in the community.

### 2.7.6 Accountability

Civil society is advanced when citizens acting through community-based groups and associations, are able to use basic civic freedoms and rights (e.g., fair elections, free speech, a press providing access to information, freedom to organize in groups) to hold economic and political actors responsible for the outcome of policies, programs and patterns of resource distribution, and the exercise of political power.

### 2.7.7 Equity

Civil society is advanced when each citizen is given equitable access to and use of resources required for constructing a satisfying and satisficing life. A moral condition of equity forms the foundation of activities that expand and strengthen economic conditions for all community members. Economic equity of resources is necessary for producing and sustaining and improved quality of life for all people especially the poor.

### 2.7.8 Justice

Civil society is advanced when citizens pursue social justice by (a) consistently and compassionately using the “rule of law” in fulfilment of their civic obligations, and (b) advocating for those excluded from the political process and harmed by unjust laws. In classical Greek thought, justice was accomplished by having people serve the city-state according to their status by birth. Gender, merit, rank, and wealth were all criteria for the role one was expected to play in the society, whether citizen or non-citizen. Justice is when notions of superiority, discrimination and inequality are dismissed as foreign to the principle of justice.

### 2.7.9 Reciprocity

Civil society is advanced when citizens (a) pursue social transformation through reciprocal, mutually dependent collaboration with others, and (b) negotiate, mediate, and resolve conflict through peaceful nonviolent means. The nature of civic environments requires that social relationships in communities be limited and conditional. Not everyone in a society is invariably viewed as legitimate member and given equal access to its resources. The term reciprocity highlights two interrelated moral issues of social relationships: how people treat one another, especially when conflict exist; and how group boundaries are defined and transcended.

Hause in Ndoping (2009:27) in contributing to the discourse also attempts to sort through a good number of characteristics of civil society by outlining the following:

- Civil society refers to voluntary participation by average citizens and thus not include behaviours imposed by the state.
- Civil society only includes political activity engaged in through non-profit organizations such as NGOs while other observers contend that civil society include all forms of voluntary participation, whether in the public or private sector, political or apolitical.
- Civil society includes not only individuals who participate, but the institutions they participate sometimes called civil society organizations or CSOs. Thus, civil society is strong to the degree that those CSOs are large and powerful.
- A civic culture is one in which most people think their government is legitimate and that their institutions can be trusted.
- Social capital is the human equivalent of economic capital. It is an intangible resource accumulated by civil society that can be expanded when a society finds itself in crises, as some argued in the United States after September 11 (Haus in Ndoping, 2009: 20).

### 2.8 Functions of civil society

One of the leading scholars and civil society advocates Larry Diamond in Bodewes (2013: 9-13) has identified a number of particular functions that civil society is able to perform to help deepen and consolidate democracy. The most fundamental function of civil society is to limit and contain the power of the government. Once a transition has occurred, civil society can support the democratization process by holding the state to greater accountability to both the law and public expectations of responsible government through a process of checks and monitoring.

An example could be in South Africa where civil society organizations have used legislation like the Promotion of Access to Information Act to compel government departments to reveal information, which ordinarily might not be readily available in the public domain.

The second function of civil society is democracy building. This is a function performed by civil society to supplement the role of political parties by stimulating political participation, increasing the political efficacy and skills of citizens and promoting an understanding of the rights and obligations of democratic citizenship. In this role, civil society organizations provide training grounds for citizens to gain practical experience in democracy. Organizations like the Council for the Advancement of the Constitution (CASAC) has participated in multi sector campaigns in South Africa as a means to rive social activism so that the public can be able to claim and protect their constitutional rights.

Thirdly, many civil society organizations have adopted democracy education as an explicit project in order to socialize young adults and young people to the values of a democratic political culture. To that end, countless initiatives of youth organizations in South Africa like the South African Association of Youth Clubs has to date trained more than 100 000 in various skills development initiatives and entrepreneurial initiatives precisely to ensure that the youth fully participate in the democratic political culture availed by the democratic transition of 1994 (SAAYC website, 2019:1).

The fourth way civil society organizations support democracy is by creating alternative channels, apart from political parties, for citizens to articulate and represent their own interests. It is in this advocacy role that civil society organizations mobilize the community to channel their demands directly to the government. An example is the Cancer Association of South Africa (CANSA) which advocates for balanced lifestyle, influencing positive behaviour among South Africans, encouraging regular screenings and generally doing all they can to reduce the spread of cancer amongst citizens (CANSA website,2019).

Fifth, civil society is able to gather and disseminate information that helps empower the community in their collective defence and pursuit of their mutual interests. Providing independent and accurate information about what governments is actually doing versus what is says it is doing and the impact it has on citizens at a local level is considered an invaluable function of civil society.

A sixth function of civil society is to recruit and train new political leaders. For most civil society theorists, the recruitment and training of leaders is a long-term by-product of the successful functioning of civil society.

A seventh democracy building function of civil society is the 'generation of a wide range of interests that may crosscut and so mitigate, the principal polarities of political conflict. The issue-based groups bring together people from different ethnic, religious and regional groups.

Ninth, civil society can deepen democracy by helping local communities to break the cycle of patron-client relationships whereby local authorities such as chiefs and landowners purchase deference and control of the citizenry through the dispensation of material rewards. If civil society is able to eliminate the fear of outside intervention or punishment, it can sever 'the psychological and structural bonds of clientelism that have historically locked them in dependant and subordinated status, isolated from one another and unable to rally around their common material and cultural interests.

A final overarching function of civil society is derived from the combined success of the above functions. "By enhancing the accountability, responsiveness, inclusiveness, effectiveness, and hence legitimacy of the political system, a vigorous civil society gives citizens respect for the state which can improve the state's ability to garner deference and obedience from its citizens.

Some of the functions of civil society which the World Economic Forum (2013: 9) rather classifies as roles of civil society include the following:

- Watchdog- the roles have to do with holding institutions to account, promoting transparency and accountability.
- Advocate –this has to do with raising awareness of societal issues and challenges and advocating for change.
- Service provider- the role has to do with delivering services to meet societal needs such as education, health, food, and security, implementing disaster management, preparedness and emergency response.
- Expert- civil society play a role of bringing unique knowledge and experience to shape policy and strategy and identifying and building solutions.
- Capacity builder- civil society playing a role of providing education, training and other capacity building.
- Incubator- civil society developing solutions that may require a long gestation or payback period.

- Representative- civil society giving power to the voice of the marginalized or underrepresented.
- Citizenship champion- civil society encouraging citizen engagement and supporting the rights of citizens.
- Solidarity supporter- civil society promoting the fundamental and universal values.
- Definer of standards- civil society contributing by creating norms that shape market and state activity.

## **2.9 Dimensions of civil society assessment: a framework for evaluating civil society**

While defining civil society is one thing, identifying empirical indicators for measuring and evaluating the presence, influence, and success of civil society is another. In order to assess civil society in a comprehensive manner, a multidimensional approach is clearly required, as there is no single indicator that can encapsulate the intricate nature of the concept (Uphoff and Krishna, 2004).

UNDP (2010, 37) singles out the following dimensions as critical:

- Capacity (human and financial resources, networking).
- Engagement (socially based and political).
- Environment (economic, political, and cultural context in which civil society operates).
- Governance (the commitment to democratic decision-making, fair labour practices, transparency, democratic governance, and environmental standards)
- Impact (on social and policy outcomes).

Malena and Heinrich (2007) propose the following dimensions:

Structure (composition)

- ❖ Explores the overall size, importance, level of organization, and resources of the civil-society arena in a given country; it also seeks to assess the main characteristics of civil-society actors, and the relationships among them.
- ❖ Sub-dimensions: breadth of citizen participation, depth of citizen participation, diversity within civil society, level of organization, interrelations, resources.

Environment (legal, political, constitutional, economic, social, and cultural factors)

- ❖ Environment for action; arena in which civil society exists and function.
- ❖ Intended to show how enabling or disabling the external environment is for civil society and citizen empowerment.
- ❖ Sub-dimensions: political context, basic freedoms and rights, socioeconomic context, sociocultural context, legal environment, relations between the state and civil society, relations between the private sector and civil society.

#### Values

- ❖ Assess the values/principles that are practiced, adhered to, nurtured, and promoted within the civil society arena; extent to which these values serve the common good.
- ❖ Civil society's values have often been considered positive, progressive, or democratic by definition; however, we must acknowledge that the civil society sphere is characterized by a plurality of social values and norms. Thus, consider the ratio of tolerant vs. intolerant, progressive vs. fundamentalist, pro-poor vs. anti-poor; prevalence of values such as democracy and transparency vital for measuring civil society's credibility and legitimacy.
- ❖ Sub-dimensions: democracy, transparency, tolerance, non-violence, gender equity, poverty eradication, environmental sustainability.

#### Impact (of civil society actors on people's lives and on society as a whole)

- ❖ Each sub-dimension represents an essential "core function" of civil society; assesses how active and successful civil society has been in fulfilling each defined role.
- ❖ Implies a broad notion of "impact" (refers not only to end result— influence, particularly regarding governance and developmental goals— but to the process—how actively civil society has engaged in its arena).
- ❖ Sub-dimensions: influencing public policy, holding the state and private corporations accountable, responding to social interests, empowering citizens, meeting societal needs.

Source: Pagoulatos and Kastritis (2013: 10-11).

## **2.10 Types of civil society organizations**

In a collaborative project funded by the European Commission, Augur (2012: 8) posits that civil society organizations can take various shapes and forms. The study concluded on the following types:

### **2.10.1 Religious CSOs**

These civil society organizations do not necessarily promote the worship of a given religion and most of the time their primary objective is not necessarily the promotion of the latter. These organizations are more or less linked to a given religion and act following a religious precept (ex-Christian charity). Their primary fields of intervention are education, health, emergency relief and basic assistance like food, clothing and shelter. A famous example of such CSO's is the International Red Cross. In the context of South Africa, the known CSO is called Gift of the Givers. In the African continent a lot of Christian churches tend to conflate the political stance of religious organizations with their political efficacy, and their relative autonomy from the state with their capacities to effect change (Kassimir, 1998:57). For instance, the Catholic Church in both Kenya and Uganda has declared itself "the conscience of the nation and society" respectively." However, whatever the intentions or degree of sincerity of these religious leaders, it is clear that they cannot, through the act of public discourse, will themselves into becoming the exemplars of civil society. Without the organisational capacities to take on the declared role of a leading institution, such pronouncements may only have the effect of creating expectations that are not met.

### **2.10.2 Community based CSOs**

The second type of civil society organizations are community CSO's in the main these are local organizations largely based on issues of solidarity with the common people. Other focal areas of these CSOs is resource sharing and community building. The areas that are of their primary focus is development, shelter, social services (such as child welfare, family services, youth welfare, services geared for the aged and other personal services for instance geared toward the handicapped. Community based CSO's also focus much of their energies on civic and legal assistance and on cultural matters. These organizations have an organized structure and mission and are typically registered entities and groups.

A CBO may be defined as a group of individuals within the same community, who come together in a group with a common interest and to achieve commonly agreed upon objectives. While it is convenient for the CBOs to pull resources by being in an association, it is also convenient to the providers of services. Besides, CBOs just like NGOs have developed along similar principles of voluntarism, participation and partnerships. This has resulted into a spontaneous structuration of CSOs in countries like Uganda, and it seems to determine the manner in which any kind of development support reaches the poor (Makokha:2002: 13). CBO's focus on improving infrastructure, institutions and the quality of life of their communities.

### **2.10.3 Philanthropic CSOs**

The third type of civil society organizations are referred to as philanthropic CSO's. These organizations serve a cause without any religious affiliation and are based on values such as generosity and humanism. Philanthropic culture is a subset of organizational culture. A culture of philanthropy refers to an organization's attitude toward philanthropy and fund development (fundraising). Some people define philanthropy as voluntary action for the common good. In the main Africa because of its historical disposition as a site of colonial conquest by the countries of Europe bears much of the stamp of activities that can be termed philanthropic activities undertaken by international foundations like the Bill and Melinda Gates Foundation. Philanthropy, however, should not be reduced to acts of generosity propelled towards the poor and facilitated by the rich. Philanthropy or the act of giving has always been part of the genetic makeup of so many societies.

Webson (2010: 12) argues that individual philanthropists in the Caribbean region began to mobilize friends around different causes in the early twentieth century. Families supported and opened schools, provided support for small-scale agriculture, supplied hot meals to persons who were indigent, and began to address the needs of persons with disabilities. Friendly societies or welfare organizations were formed in response to such needs.

One example of a philanthropist who sought to assist those fellow citizens affected by his own disability was Mr. James Alps. A Guyanese, he formed a friendly society to address the need for the education of children who were blind in Trinidad and Tobago and the eastern Caribbean. It might be said that Mr. Alps was one of the earlier pioneers of the consumer or self-help movement.

Following natural disasters, communities have been known to pool their meagre resources together in an effort to mitigate the effects of such disasters on the most vulnerable members of society.

#### **2.10.4 Expert CSOs**

The fourth type of civil society organizations are referred to as expert. These CSO's act in fields which require some level of expert or scientific knowledge. Examples include expertise in the areas of finance, environment, trade, technology or economic development. A perfect example of an international civil society organization with expertise in the area of taxation is called Association for the Taxation of Financial Transaction and Citizen Action (ATTAC). At its founding, ATTAC had specific statutory objectives based on the promotion of the Tobin tax. For example, ATTAC Luxembourg specifies in article 1 of its statutes that it aims to produce and communicate information, and to promote and carry out activities of all kinds for the recapture, by the citizens, of the power that the financial sector has on all aspects of Political, economic, social and cultural life throughout the world. Such means include the taxation of transactions in foreign exchange markets (Tobin tax). Another famous organization in the field of environment is Greenpeace International. Greenpeace states its goal is to "ensure the ability of the earth to nurture life in all its diversity" and focuses its campaigning on worldwide issues such as climate change, deforestation, overfishing, commercial whaling, genetic engineering and anti-nuclear issues.

#### **2.10.5 Trade unions**

These are organizations of workers who come together to achieve common goals, that include for an example improving the working conditions of workers, improving safety standards in the workplace, getting better salaries, increased bargaining power amongst other objectives. The purpose of these unions is to look into the grievances of workers and present a collective voice in front of the management. Regulation of relations, settlement of grievances, raising new demands on behalf of workers, collective bargaining and negotiations are the other key principal functions that these trade unions perform.

The nidirect website (2018) summarizes trade unions as organizations that are independent of any employer. However, trade unions try to develop close working relationships with employers. This can sometimes take the form of a partnership agreement between the employer and the trade union which identifies their common interests and objectives.

Trade unions:

- negotiate agreements with employers on pay and conditions.
- discuss major changes to the workplace such as large-scale redundancy.
- Discuss members' concerns with employers.
- accompany members in disciplinary and grievance meetings.
- Provide members with legal and financial advice.
- provide education facilities and certain consumer benefits such as discounted insurance.

Other civil society movements could be classified in recent times as online groups and activities which include social media communities that can be organized but do not necessarily have physical, legal and financial structures (Centre for Strategic and International Studies, 2017:3).

### **2.10.6 The Radical Type**

The radical theory of civil society as espoused by Little (2002:112) argues that civil society is not a neutral space in which differences are harmoniously experienced. Instead, it is a site where different perspectives encounter and conflict with one another. Moreover, not only is it a space for contestation, but the actual space itself is contested. Thus, what constitute civil society is itself a matter of debate and dispute and the ways in which we engage with one another therein will be similarly contested. This radical view implies that civil society is a multiple space. Rather than regarding it as a coherent area clearly defined by the absence of state regulation, radical democratic theory indicates that civil society is comprised of a number of different competing discourses that will involve not only those emanating from state but also those of markets. Civil society is a contested sphere rather than a closed sphere governed by consensually decided boundaries.

Related to this radical approach to civil society, is the concept of hegemony as espoused by Gramsci. His idea of hegemony is based on Marx's notion of 'false consciousness' which is a state in which the members of the dominated classes are ideologically blinded to their subordinate position in the social structure. This concept of hegemony was used to name the process of political domination through ideological domination. Gramsci showed how dominant elites use the state as well as the popular culture, mass media, education and religion to reinforce the ideology which support their position in society. Katz (2010 & Vaclav Havel in (Fine, 1997: 10) postulates that the abyss between the aims of post the post-totalitarian system on the one hand and the aims of life on the other. The presupposition is his radicalism was the contrast between life which in its essence moves towards plurality, diversity, independent self-constitution and self-organization, in short towards the fulfilment of its own freedom, and the post totalitarian system which demands conformity, uniformity and discipline and resembles a 'blind automatism' (Katz, 1997: 10).

### **2.10.7 The Sociological type**

The sociological-type theory desires for civil society to regain and maintain its rightful place and receive its due in the world. Traditional notions of civil society convey an idea of historical depth, in which communities, interpersonal bonds, public institutions and national cultures are created over long periods of time and thus become resistant to even the most oppressive political authorities. The forms of community, identity and association which they express appear as the historic bedrock whose foundations are too deep to be eroded by transitory political and economic forces.

### **2.10.8 The Economic type**

Fine (1997: 13-14) posits that bourgeois civil society is the bearer of moral as well as economic benefits and that the source of these benefits lay in the expanded division of labour to which the exchange of commodities give in. the reality of the modern world, South Africa included is that it is extremely difficult to dissociate wealth from political power. A politically and culturally civilized civil society possess both economic and political power and are able to use the power to effect structural changes in that society. The rise of civil society and the power of money is able to assist nations to counter centralized and oppressive regimes. This is more so because once societies taste civil liberties, it becomes difficult for them to imagine a life in which oppressive regimes dominated by the military are the norm.

### 2.10.9 General interest groups

It is difficult to make a distinction between the different types of civil society movements. This is owing to the many commonalities in their focus. Amongst that is the fact that all these groups seek to influence government policy to accommodate the needs and aspirations of the disadvantaged sectors of society. Generally, they also seek to have a narrow focus on representing the peculiar interests of their own members rather than the entire public. Largely they also do not harbour ambitions of contesting relations as a political force. Almond and Powell (1966: 77-79) list four types of interest groups, which are as follows:

- Y **Associational interest groups:** These organisations are created specifically to advance the interest of certain groups. These are sectional groups and are usually well organised.
- Y **Institutional interest groups:** Organisations formed for reasons other than interest promotion may from time to time undertake the promotion of their own interests or the interests of client groups. Organisations acting as interest articulators in this way are referred to as institutional interest groups.
- Y **Non-associational interest groups:** For Almond & Powell (1966), non-associative interest groups refer to smaller groups of people, such as tribal chiefs or other important people, who articulate the interests of a wider group on an ad hoc, unorganised basis. La Palombara (1974: 330), however, attaches a broader significance to non-associational groups: they are distinguishable in terms of their members' subjective orientations based on characteristics such as class, religion, race or age.
- Y **Anomic interest groups:** The distinctive feature of these groups is that they usually originate spontaneously in response to pressing events. Riots, demonstrations and strikes are characteristic of their tactics. They are marked by limited organisation and a lack of constant group activity. Examples are a group protesting outside a court against a child rapist or people coming together in a city to protest against the high crime rate in the country. Care must be taken to distinguish between, for example, spontaneous riots and riots organised by associational, institutional or non-associational groups.
- Y **Special interest groups:** They are sometimes referred to as pressure groups and function to lobby for or defend the common interest of their members such as refugees, people with disabilities etc.
- Y **Civic movements:** are referred to by De Jager *et al.*, (2015: 175) as customarily non-partisan. They aim to deepen the quality of life of democracy through efforts such as

monitoring human rights, educating and mobilizing voters and exposing corruption as exemplified by the Right2Know movement.

Political parties present some conceptual difficulty. They are sometimes seen at least in the liberal tradition, as part of civil society. But Veltmeyer (2008: 2) finds their conceptualization problematic in the sense that political parties usually serve as bridges between civil society and government. They also straggle the division between the two in ways that may undermine their loyalty and responsiveness to civil society. Since they often exercise state power and act on the imperatives of government, many of them are not strictly speaking representatives of civil society. They can also be part of or become involved in government efforts to control, repress, intimidate, marginalize, or co-opt civil society in ways that damage it. Some of the political parties are so entirely the creations of governments or states that they scarcely qualify as elements or representatives of civil society (Veltmeyer, 2008:2). The above list of interest groups is not by any means exhaustive. The common dominators as earlier indicated is the fact that these voluntary associations are part of the wider definition of the broad civil rights movement who are playing a prominent role in the body politic of South Africa post 1994. They help in the deepening of South Africa as a democratic state.

### **2.11 The relationship of civil society to the state**

Earlier mention of the fact that the concept has had a chequered history is as result of the fact that the socio-political context of countries evolved differently even though there might be similarities here and there. For instance, as result of anti-communist movements in Eastern Europe, civil society was viewed as any organized formation which was opposed to the state. This position grew out of the experiences of both Eastern Europe and Latin America over the past 30 years where grassroots groups gained wide public momentum to overthrow repressive regimes (Hendriks, 2006:488). This is especially so in Latin America due to the legacy of European colonialism.

An active civil society is an indicator of a functioning democracy. Civil society both works in partnership with the state to complement and supplement its capacity and to hold the state accountable for its responsibilities and transparent governance. Political sociologists make a clear distinction between the state and civil society.

The former is the sovereign organized single political community of all the people living in a definite territory who have an organized government which makes laws, enforces the laws, and have the judiciary helping to interpret the laws. Civil society pertains to all non-government, private, economic social, cultural, moral and recreational and other such associations and institutions of the people. Civil society functions outside of the state structure and belong to the realm of autonomous associations and groups formed by individuals in their capacity as private citizens.

Civil society is best conceptualized in spatial terms as an arena where distinct kinds of activities occur across a range of private, political and civic associations and networks (Young, 2000: 160). One of the defining features of civil society is its capacity to self-organize that is to develop communicative interactions that support identities, expand participatory possibilities and create networks of solidarity. Under this definition, civil society encompasses the private sphere of families as well as associations, social movements and other forms of public communication, such as the media (Hendriks, 2006:489).

Other scholars like Gramsci argue that there is a symbiosis or close relationship between the state and civil society. Buttigieg (2005) posits that civil society is not separate from or exclusively opposed to the state. The intricate, organic relationships between civil society and political society is what produces hegemony and thus make it possible for certain classes of society to dominate the state and maintain their dominance, perpetuating the subalternity of other classes. Thus, political society and civil society mutually reinforce each other to the advantage of certain classes, groups and institutions (Gramsci). In a constitutional democracy, state and civil society are, at least complementary rather than substitutes for each other or dedicated adversaries. The constitutional state based on the impersonal rule of law plays a crucial role in contemporary discussions around state and civil society. Civil society was at one point accompanied not only by the pursuit of individual interests but also by the development of a new type of associational life (Beteille, 2012).

Civil society plays an important role in maintaining individual rights, such as freedom of conscience, expression, and association, and serves as a bulwark against potential intrusion by the state. At the same time, civil society depends on a strong system of individual civil and political rights. In the absence of the most basic rights guaranteed by the constitution, including rights to free speech, assembly and privacy, nothing recognizably like civil society could possibly exist.

Where these rights are abridged, civil society exist in a cramped form, but crucially is never entirely extinguished. Even when formal associations are entirely banned, as in totalitarian regimes, informal networks among citizens continue to exist, secretly when necessary.

The evolution of the concept of civil society follows a richly variegated vein. Up until the end of the eighteenth-century civil society was synonymous with the state. Kumar (1993: 383) points out that, civil society is found by contemporary social philosophies, in the economy and polity, in the area between the family and the state, in non-state institutions which educate and prepare citizens for political participation, and even as a natural expression of the civilizing mission of modern society (Fforde and Porter, 1995:5).

Other authors like Klein and Lee (2019: 63) using the concept of infiltration, seek to define the state-society-economy boundary using the notion of a field. This theory postulates that the state and economic elites and their challengers in civil society infiltrate into the other's organizational realm via distinctive strategic modes and with diverse functional consequences. Civil society should be conceptualized not as a realm or sphere but as a set of diverse and intersecting projects prestructured by an existing field but constantly seeking to reflexively alter the structure of that field.

Klein and Lee (2019: 65)'s theory of civil society in terms of the politics of infiltration provides for four theoretical advantages:

- It specifies the processes through which civil society actors penetrate other social domains and generate hybrid organizations that provide the resources and personnel necessary to sustain social movements. In simple terms, this implies that civil society movements are not static but rather assume various forms depending on their interaction with other actors in society. While traditional views of civil society tend to present all such participation as necessary co-optation of movement forces, the authors contend that infiltration projects can lead to the generation of participatory institutions and mixed organizational forms. Klein and Lee (2019: 65) argue that in conceptualizing and theorizing the diverse organizational strategies civil society can pursue, they incorporated recent developments in social movement research.
- The notion of infiltration provides tools for better conceptualizing the interaction between civil society movements and political conflicts arising from the economy. The tradition of civil society as either the arena of private interests and associations or the

domain of discursive will formation independent of the formal economic and political sphere neglects the organizational and ideological alliances civil society forces create with more formal political and economic actors to pursue their goals. The authors also deploy the notion of the politics of infiltration to integrate civil society theory with power resources research in comparative political economy that emphasizes how social politics outcomes are the result of power and political strategies pursued by organized economic actors and their civil society allies.

- In emphasizing both forward and backyard infiltration, Klein and Lee (2019: 65) provide a unified framework that can also grasp the efforts to restructure civil society on the part of state actors- a prominent feature of authoritarian regimes. Established views of civil society stress the oppositional and critical activities of civil society actors vis- a –vis the state, yet they fail to fully appreciate how the organization of civil society itself can be the outcome of state building efforts. Their framework, drawing on the experience of civil society in authoritarian regimes positions civil society as the domain of competing political projects for the hegemonic control of key social institutions.
- Lastly, the authors in distinguishing the different modes of the politics of infiltration (influence, substitution and occupation) provide a framework for analysing the trade-offs between those different modes and the conditions under which social movements can achieve their goals through the politics of infiltration (as opposed to having their goals subordinated to the interests of incumbent power holders (Klein and Lee, 2019:65).

## **2.12 The global civil society movement**

The “recorded” historical origin of civil rights movements largely has to do with the history of segregation, inequality and apartheid in most parts of the world. The reference to the concept of “recorded” is an acknowledgement of the fact that organized resistance to excesses and injustices against the vulnerable groups in most parts of the world including South Africa, has always been there. The only anomaly is that the pockets of resistance launched by social movements to these injustices was in the main not documented for posterity hence much of the available literature traces the origin of the civil rights movements mainly to the African-American Civil Rights Movements in the period between 1954 -1968 in the Southern part of America.

What largely gave rise to the emergence of civil society formations were the attempts by the marginalized and oppressed people to reverse racial segregation and assert their birthright of freedom, universal franchise, equality and the restoration of human dignity. For instance, the era around 1954 to 1968 in the United States of America was characterised by the rise of social movements whose goal was to end racial segregation and discrimination against black people.

It must be pointed out however that the civil society was initially viewed with hostility in the United States (US). They were considered a threat to democracy and the structure of government was designed in such a manner as to mitigate groups who might threaten the rights of citizens. With many immigrant nationalities coming to the US, cultural and ethnic based sought to advance their economic, social and political rights as well as protect their culture (Thuysnsma, 2012:17-18). The civil society movement was characterized by major campaigns of civil resistance, which included acts of non-violent protest and civil disobedience amongst others. Even in contemporary societies, there has been a massive uprising in Egypt initiated by civil society movements. The revolution popularly referred to as the “Arab Spring” followed massive demonstration, marches, occupations of plazas, non-violent civil resistance, acts of civil disobedience and strikes. Issues which were central to the protesters included among others, grievances focussing on police brutality, state of emergency laws, lack of free elections, freedom of speech, high unemployment, corruption and other civil liberties. In almost all societies in the world, there is similarity in the issues, which sparked the massive growth and development of civil society movements. This clearly demonstrates that as long as there are instances of suppression of civil liberties, civil society will continue to occupy a prominent role in agitating for governments to inculcate a culture of democracy, freedom of speech and movements and other related civil rights freedoms.

In Europe the debate on the European Union’s (EU) legitimacy crisis led to the discovery of civil society by EU institutions. Finke (2007: 4) posits that with the waning of the permissive consensus, politicians, bureaucrats, and academics shifted their attention towards the input-oriented dimension of democratic legitimacy, which results from authentic participation and governance by the people. This placed the publics at the centre of any effort to democratize the state and its institutions. To this end the EU even adopted documents like White Paper on European Governance (EC, 2001) and the Constitutional Treaty (2004) which assigned a key function to civil society for the implementation of good governance by openness, participation, accountability, effectiveness and coherence (Finke, 2007).

The end of the Cold War with the mass protests of the late 1980s and the early 1990s, as well as the collapse of apartheid and the snowballing of many coloured revolutions in Eastern Europe, gave the impression that civil society could succeed where conventional party politics had failed (Diamond, 1994). In the last decade of the previous century, there was a strong interest in civil society per se, as phenomena of mass participation had led to important changes in political and social life. The images of common citizens gathering at the check points in Berlin in November 1989 had reverberated around the globe, leaving a profound mark on the social imaginary of the 1990s. It seemed as if nothing, not even the totalitarian power of the Communist regimes, could resist the bottom-up pressure of civil society. This is why, after the fall of the Berlin Wall, civil society came to be seen as the ‘magic bullet’, and NGOs came to dominate the civil society space (Edwards and Hulme 1996; in Carothers 1999). More recently, the public discourse and reflection on civil society have become more nuanced. There is a growing realization that there is a plurality of civil societies, with actors that may have different features and objectives, including contrasting internal dynamics (Heinrich and Fioramonti, 2007). There is now a general agreement that voluntary organizations are just a small group within a much larger environment: as a consequence, they can no longer be treated as key proxies for the whole civil society universe.

Although it is widely argued that civil society is an old notion rooted in the early experiences of Western Europe, Asia was also not to be left behind. The language of civil society also has a great appeal and is used as frequently to talk about the transition to democracy. Civil society is generally accepted as something desirable to have, for both promoting democracy and achieving a good society, and as an important barometer of modernity and progress in the third world. (Cho,2006: 40). For instance, the regime of Chu Hoo Hwan in South Korea was forced to surrender to peoples’ power as a result of the massive demonstrations led by civil society around the demand for political reforms. Civil society had become discontent with the authoritarian rule and supported the student-led democracy movements leading ultimately to the demise of military rule in 1987.

One of the interesting developments with regards to civil society is the concept of corporatism which is alive in most parts of the world. Corporatism is defined by Vinod (2006:788) as a system of social and political organization in which the state controls, limits and sometimes monopolizes, even creates the interest group or civil society.

The concept of corporatism has a rather long tradition in western political theory, organization and practice almost as long as that of civil society. By the 1880s Catholic Corporatism was a growing movement. During the decades leading to the First World War, the church sponsored many Catholic worker movements. Perhaps the highpoint for this form of Catholic Corporatism was during the inter-war period. Hence instead of producing democracy and stability, they often served to perpetuate corporatism, instability, fragmentation and national breakdown. These are just the opposite effects intended by civil society. There can both co-optive and cooperative aspects to corporatism that reflects both carrots and sticks (Vinod, 2006:788).

Another major threat to civil society can come not only from statism nor traditional particularisms, but also from majoritarian incivility generated by democratization itself (Whitehead in Vinod, 2006: 789). The threat could arise because of the gulf between civil society and the emerging citizenry, and the experience of many neo-democracies. In this context the role of a commercialized mass media, a disorientated electorate and speculative financial markets, money laundering, arms trafficking, drugs trade etc. could result in widening the gap between civil society and citizens. The scenario is even more acute in neo-democracies since the waters are still being tested. Hence the entity called civil society is always under pressure from all sides, even in a democratic polity whose commitment to civility may sometimes be questionable or is even absent (Vinod, 2006:789).

A current debate also seeks to reinvigorate the role that class politics can play in civil society. Neoliberalism and its attendant changes bring with it a decline in class-consciousness through a cultural shift (a tacit co-ordination) towards the vested interests of ruling elites. Habermas also seeks to take account of the global patterns of resistance that have emerged since the financial crisis of 2008, to consider what these developments suggest about the conflation of re-distributive politics and identity politics, and what opportunities this might offer civil society actors (Scrambler, Scrambler and Speed, 2014:212).

### **2.13 Summary of the chapter**

The focus of this study in chapter two went to great lengths in dissecting the etymological development of the concept of civil society, the theory and conceptual understanding thereof. Different dimensions of the concept, its characteristics and associated models became the focal part of the discussion herein. This broad discourse has greatly contributed towards enriching the literature on civil society and the understanding of the history behind the concept and its evolution. The study could not resolve the historical debate pertaining to the universally accepted definition of the concept and the historical origin of civil society organizations in the world. However, the common denominator or universal consensus in this regard is that the sector comprises of organizations outside the realm of the state and as such is distinct from the government and advances the interests, aspirations and the will of the citizens. The relevance of the theories of civil society are important in showing the thread that links the global civil society phenomena with the evolution of the sector in South Africa. The disposition of the civil society sector in South Africa traces a direct link to how countless civil society organizations evolved in many parts of the world. For instance, societies identified gaps in so far as the role of the state in fully addressing socio economic challenges and organized themselves into groups which sought to address this challenge sometimes in concert with the state and in other instances independent from the state and using independent sources of funding.

The next chapter will focus on the history of civil society in South Africa.

## CHAPTER: THREE

### HISTORY OF CIVIL SOCIETY IN SOUTH AFRICA

#### 3.1 Introduction

In the last 26 years of democracy, there has been an unprecedented growth in the number of civil society formations in South Africa. This phenomenon can be traced to a multiplicity of factors ranging from the opening-up of the democratic space for groups to contribute, deepen and strengthen democracy to instances where individuals and members of the public have become increasingly unhappy with the erosion of the democratic gains achieved since 1994. The non-profit sector has always been influenced by colonialist tendencies and white dominance. Civil society has been instrumental in the history of South Africa during the period of the struggle against apartheid and in the post-apartheid South Africa.

The South Africa's political history followed almost a similar pattern as that of a number of African countries. They all experienced a history of oppression of one racial group against the majority of their citizens. Black people, who are in the majority were oppressed by the White minority governments in many of the countries in Africa (McKenna, 2023). This gave rise to the emergence of political, social and religious formations who sought to challenge the status quo. In fact, the anti-apartheid struggle was in the main rooted in social movements and their opposition to gross socio-economic injustices and inequalities. These civil society formations gained prominence because of what was perceived as the moral nature of their struggle. Pityana (2004: 8) argues that "movements for justice throughout history begin their programme and sustain it by the moral statements of what they stand for". In the context of this study, this statement implies that one of the fundamental reasons why civil society gained prominence and international aid was as a result of the fact that there was ethical justification for the kind of struggles waged by the groups that were denied civil liberties. This aid was targeted at the country's most influential, modern, advocacy-oriented civil society organs, which include women's organizations, human rights groups, national or sectoral Non-Governmental Organizations (NGO), business associations, private policy institutes, youth and student organizations, professional and media organizations (Hearns, 2010:1).

The kind of aid given to civil society formations included financial, material, solidarity messages, human resource training etc. The chapter is twofold. The chapter will seek to explore the legal and institutional architecture of the pre-democratic era in South Africa in an effort to understand the contemporary life of civil society. The second part of the study seeks to explore the role, impact, influence and struggles waged by civil society in post-apartheid South Africa.

### **3.2 Brief synopsis of civil society and apartheid**

The proliferation and strengthening of civil society had much to do with the authoritarian culture of settler colonialism and apartheid and its dire impact on the majority of South Africans. Apartheid was a social and political system that sought to enforce racial discrimination and white minority rule against the indigenous natives of the country. Its main features were discrimination on the basis of colour, the refusal to extend universal adult franchise to the majority of Africans in South Africa, forcing separate development and the refusal to allow social integration between races through the outlawing of interracial marriages. Apartheid was institutionalized through the official enactment of various laws by the whites-only legislature. Some of the laws included the Group Areas Act of 1950 which enforced the physical separation of people according to skin colour (South African History Online, 2021). During this period of repression many innocent people died. The state could arbitrarily detain people without trial, for instance, statistics point out that in the 1980s blacks were about 19 million, while whites were just 4, 5 million in the country. Despite these facts, blacks were pushed to inhabit a non-arable land of just 13% of the national territory while whites relaxed on the 87% of the most fertile part of the land (Ndoping, 2009:13). General earnings and exposure to medical care and education between blacks and whites had an extremely wide margin as demonstrated by the statistics shown in Table 3.1 below.

**Table 3.1 Statistical comparison on the quality of life between Blacks and Whites**

APARTHEID AND THE PEOPLE OF SOUTH AFRICA		
	BLACKS	WHITES
Population	19 million	4,5 million
Land Allocation	13 percent	87 percent
Share of the National Income	20 percent	75 percent
Ration of Average Earnings	1	14
Minimum taxable Income	360 rands	750 rands
Doctors/population	1/44.000	1/400
Infant Mortality rate	20% (urban 40% rural)	2.7%
Annual expenditure on education per pupil	\$45	\$696
Teacher/ Pupil ratio	1/60	1/22

Source: Ndoping (2009: 14)

The concept of civil society in South Africa has generally been used to denote that sector in which there is relative space within which individuals and groups can exercise democracy. Implicit in this exposition of civil society, is an assumption that there exists a social structure in which political citizenship is vested in all individuals: society is structured so that individuals can influence the policies adopted by the government (Shubane, 1992:34). Although the many radical organizations which emerged to oppose the apartheid state in the 1970s and 1980s are identified as constituting civil society, there is however an opposing view that argues that these formations should not be viewed as part of civil society. They are rather part of the opposition that seeks to transform the current apartheid state into a democratic one. Once transformed, many of these groups may become the new functionaries of that future transformed state, thus forming part of the state rather than of civil society. In this sense, these formations must be understood as part of the liberation movements (Shubane, 1992:35).

Shubane (1992: 35) argues that the difficulty in coming to a common understanding about the existence or otherwise of civil society arises from the nature of the South African polity. This polity is based on the exclusion of a vast number of people from government institutions.

In deciding whether or not civil society does exist among the disenfranchised, the question is: can a people, already excluded from government institutions, ever be said to be in a position to form effective collectivities which operate outside of institutions from which they are in any case excluded? In posing this question, Shubane (1992: 35) says that it must be borne in mind that civil society contrast with the state and it serves to distribute power to as many social institutions as possible. Such a diversification of power is seen as a mechanism to enhance the quality of democracy in society and serves to check and counter the concentration of power in one institution. Some relationships between the state institutions and civil society actors will be adversarial and conflictual, while others will be more collaborative and collegiate. According to Habib (2005:672) under apartheid, the adversarial-collaborative divide largely took a racial form with the bulk of “white civil society” establishing collegiate relations with the state, and the majority of “black civil society” adopting a conflictual mode of engagement. For instance, a church primarily established to meet the spiritual needs of the Afrikaner people, the *Nederduitse Gereformeerde Kerk* (NGK) is an example of an organization that had collegial relations with the state. According to Kuperus (1999: xi) the church helped to legitimize the state during the years of segregation and apartheid through such things as the involvement of the NGK in constructing the ‘apartheid theology’ and their support for specific government policies. This racial divide eased up in the period of the transition as significant sections of the “white civil society” began to distance themselves from the apartheid regime. In the contemporary democratic era, the racial divide has all but disappeared, with adversarial relations extending across the entire ambit of civil society (Habib, 2005). It is hardly surprising that during the Convention for a Democratic South Africa (CODESA) multi-party negotiations to develop the Constitution for a new democratic South Africa, civil society movements that were in opposition to the apartheid state largely aligned themselves with the liberation movements, the African National Congress (ANC) in particular. They helped the ANC to develop policy positions and determined priorities for the state.

The concern however with the birth of a new South African democratic state is the failure of the post-apartheid state to ensure the deepening of civil society in the country by asserting its independence, diversity and its uniformity. This implies that attempts to maintain the plurality of voices in the civil society space must be encouraged. The idea of a strong civil society implies the right and capacity of associations to influence state policy and to compete for control over the state. Regardless of their motives, the advocates of civil society in the resistance camp may be preparing for its subjugation in a new guise.

They may, according to Friedman (1992: 84), prepare for a civil society starved of resources and power. The relationship between the state and civil society needs to be clearly defined in order to remove any form of suspicion of the true intent behind the establishment, role, strategies and influence of some civil society movements. This definition is important so that we defeat the notion that the state and civil society occupy separate realms. According to Friedman (1992, 90) liberals and socialists point out that a civil society free of state regulation is neither possible nor desirable. Shils (1991) notes that, while a free civil society ‘lays down limits on the actions of the state’, it is not totally separate from the state’ for if it were, it would not be part of society. The state, he notes, ‘lays down laws which set the outermost boundaries of the autonomy of civil society’ (Friedman, 1992:90).

### **3.3 Civil Society Organizations in South Africa**

Historically, civil society organizations in South Africa have tended to lean on the side of the victims of the apartheid state. This phenomenon is neither surprising nor peculiar to South Africa given the fact that all over the world interest groups always act for the underdog, the downtrodden and marginalized sectors of society. A vast array of civil society movements in South Africa was offered both material and moral support by the international world, owing to their work within the marginalized sectors of society. Hearn (2000) posits that the Nordic countries along with the European Union and the United State of America each contributed an unprecedented \$340 million to South African based civil society movements in a nine-year period leading to the 1994 democratic elections.

The worldwide shift and preoccupation with new models of governance, the need to undertake political reforms as a precursor to transforming the state and changing of balance of power in the North-South relations, precipitated the growth and influence of civil society movements in South Africa (Hearn; 2000:5). The gradual decline of Communism and the Socialist power blocs especially in Eastern Europe, including the collapse of the Berlin Wall in 1989 meant that the democratic project was given impetus with the injection of millions of Rands to the civil society movements so that they can play a pivotal role in influencing mass-based political formations to adopt democracy and Capitalism as the only ideological vehicle to a better world and a better future. For instance, organizations like the United Democratic Front (UDF) were provided with funding by the International Defence and Aid Fund in order to sustain the forces of resistance in the struggle to abolish apartheid (IDAF, 2017).

### **3.4 The role of civil society during the apartheid era**

To have a good understanding of the role and impact of civil society in post-apartheid South Africa, it is necessary to trace its historical evolution during the era of repression before 1994. The civil rights movement in the US led by, among others, Dr Martin Luther King had mobilized hundreds of thousands of Americans to oppose apartheid since the mid-1960s and did help in the building of successful behind-the-scenes links between African liberation movements and American activists, both black and white (Pityana, 2004: 15). The contacts that the South African civil society made with the international world which pledged solidarity with the oppressed people, ensured that the South African struggle for liberation gained massive international attention. This was to help in assisting civil society in South Africa to receive material and other support from the international solidarity network. The strides made by the civil rights movement in South pre 1994 was given added impetus by, amongst others, international events like the collapse of the Berlin Wall in Germany in 1989 which was preceded by a series of sweeping political changes which led to the liberalization of the Eastern bloc of Europe from Communist governments towards the adoption of democratic ideals. Various layers of society all had particular roles that they played in ultimately ushering in the current democratic dispensation in South Africa.

The relationship between the state and civil society during apartheid was characterized largely by conflict and adversarial conduct. In the main, white civil society organizations largely collaborated with the state and were characterized by the spirit of collegiality and co-operation, whereas black civil society movements adopted a conflictual attitude toward the state. White civil society movements were represented by organizations such as the South African Institute of Race Relations (SAIRR), Nederduitse Gereformeerde Kerk (NGK) and the Broederbond, among others. Civil society movements could be inclined towards either race-based issues, economic issues or just ethnic/cultural matters. One of the influential organizations during the height of the apartheid was the Afrikaner Broederbond which sought to win political influence and to influence the executive branch of parliament in maintaining the apartheid status quo (O'Malley, 2022). No significant policy proposal could be legislated by the South African parliament without being vetted by this group. Their tentacles, according to Matinsonn (2022) penetrated deep into the heart of South Africa.

This goes on to demonstrate that at times civil society movements could be inclined towards supporting the policies of the political party in power as long as the interests of that particular interest group are protected by the powers that be.

Black civil society movements which were represented by Black Consciousness-linked organizations and trade unions became very active in the country, especially in the 1970s. These organisations were continuously harassed and banned by the apartheid state through its use of oppressive legislation such as the 1978 Fund Raising Act, which limited the ability of such movements to raise money from local and international donor agencies (Adejei,1992). Organizations such as the United Democratic Front (UDF) gradually became the dominant element within the broader civil society sector. The UDF exerted a lot of pressure on the apartheid state and succeeded in uniting a diverse collection of various groups and individuals who were all committed to seeing the ultimate ushering of a democratic dispensation.

Fine (1992: 24) contends that if there was a decade of civil society in South Africa, it was the 1980s. In every corner of social life popular organizations were evolved. These were not just trade unions but all manner of youth, student, women, community, cultural and ethnic associations. Fine (1992:24) further argues that during that period there was “a veritable feast of civic activity with initiatives arising in every corner”. Majority of those civil society movements had an affinity towards the liberation politics espoused by the ANC. To some extent some of the civil society movements were predisposed towards the Black Consciousness ideology with a sprinkling leaning toward the ideology of Pan Africanism as espoused by the Pan Africanist Congress. The ideological leanings of civil society toward the banned liberation movement were a reality of South Africa which could not be denied. In some way or form, the CSOs were fronts of the liberation movements and did the bidding of the banned movements internally. In the main the disparate elements of civil society were contained within the ambit of the United Democratic Front and the Mass Democratic Movement which essentially was just the same thing disguised in different forms.

Civil society formations during the apartheid era in South Africa were based on race, ethnicity and class. They were largely involved in advocacy work that was aimed at opposing the apartheid state (NDA, 2008:15). They faced the challenge of dealing with the illegitimate apartheid government in a legitimate way. The primary mission of civil society was the toppling of the apartheid regime and to improve the lives of the poor and the marginalized groups.

In solidarity, organizations led by white South Africans emerged in support of the anti-apartheid CSOs. Among some of these white civil society organizations were those that campaigned for a strong culture of human and civil rights. These included liberal organizations such as the National Union of South African Students (NUSAS) and the South African Institute of Race Relations (Habib,2003:4). Some of these entities organized their struggle according to a range of issues such as working conditions, high rents, environmental degradation, urban services and agricultural productivity (NDA, 2005:15).

The liberalization of the political environment by PW Botha in the 1980s included reforms that gave rise to allowing the legalization of independent trade unions and the creation of space for civil society movements to organize (De Jager *et al.*, 2015: 176). The other major development came about with the release of political prisoners in the early 1990s and the relaxation of laws allowing non-political actors to source funds from international organizations. According to Habib (2005: 676) human resources increasingly became available in the early 1980s as university students and graduates came together in myriad of ways not only to organize communities and political activities but also to establish non-profit institutions to support their struggles. This is the youth that got politicized by the activities of the 1970s in the country. The second fiscal resources initially emerged from private foundations and foreign governments who were moved to act largely due to the fact that the June 16 revolt of 1976 and its consequences made their way to the television screens in the advanced and industrialized world.

### **3.5 Role played by some of the respective components of the civil society**

#### **3.5.1 The Civics**

South Africa's civics in theory represented a cross-class coalition of 'collective consumers' straddling the whole of urban space, at least outside white residential areas. As a spatial policy of segregation, apartheid caused the total reorganization of South Africa's towns and cities, which led to political and administrative fragmentation. The Population Registration Act 30 of 1950 and Group Areas Act 41 of 1950 were the two most significant pieces of legislation which provided a statutory framework for apartheid cities and towns (Van der Waldt *et al.*, 2015:14). The first significant steps towards political reform were taken with the enactment of the 1993 Constitution which provided for the promulgation of the Promotion of Local Government Affairs Act 91 of 1983.

The other significant piece of legislation promulgated was the Regional Services Councils Act 109 of 1985, which implemented councils to allow joint decision making by representatives of the different race groups. To offset from their exclusion from the bi-cameral system, a body called Black Local authorities consisting of handpicked councillors to represent the communities was created to represent urban blacks. It is this body which was largely frowned upon by residents owing to its decision to implement rent increases, which gave the impetus for new forms of protest and the emergence of popular, extra-state, political organisations. When considerable rent increases were announced in mid-1984 widespread demonstrations were ignited in many parts of the country against councillors. New civic organisations were formed to represent residents and often to negotiate with administration board officials, as an explicit alternative to the discredited councils (Seekings 1987 in Chakalson *et al.*, 1987: 50).

The absence of legitimate municipal government to represent black people politically gave rise to the emergence of the civic movement, which could 'legitimately' claim to represent communities or civil society. Civic associations emerged in the 1970s as local associations campaigning for improved living conditions in black townships and opposing municipal authorities foisted on townships by the white minority state (Glazer, 1997: 6). Civic associations organized communities around local issues like exorbitant rent and better provisions of municipal services. The broader political objective was the overthrow of the repressive apartheid municipal and national state.

According to Wolpe (1991:5) they (civic associations) can be conceptualized as the matrix of private organizations, standing outside of state structures and political parties, which embody different and often opposing special interests and as the institutional arrangements which sustain the autonomy and the capacity to act in furtherance of their interests. As watchdogs and initiators, civic associations ensured that power does not reside with political parties and/or state organs; the people have to be empowered. Civic associations played a pivotal role as watchdogs and incubators of the peoples' civil rights by taking a leading role in the events/revolts of civic associations against apartheid Black Local Authorities in 1984. The epicentre of the revolt led by civic associations was in Sebokeng a township in the Vaal Triangle, an industrial heartland of the Witwatersrand region (Botha: 63). The protests reached a high point when a two-day strike involving thousands of workers brought industries in the area to a standstill.

These uprisings were inspired by the contentious measures introduced by the apartheid government's Black Local Authorities Act of 1982 which imposed token councillors on the communities who in turn took a unilateral decision to increase service charges on the residents. In this regard, civic associations played a critical role in the removal of racial local government structures and their replacement by with a single tax base for townships and cities.

### **3.5.2 Role played by the church against apartheid**

Apartheid triggered different reactions in various sections of the South African society. This included faith-based organizations whose reactions were marked by the differences in the approaches used to fight the apartheid system. The divisions reflected themselves in the church, as they did not see things in the same way. The majority of churches were uncomfortable in maintaining silence when the Dutch Reformed Church provided a scriptural justification of apartheid, all in the name of Christianity. The Afrikaans Reformed churches and some Pentecostal churches also supported apartheid (Matison, 2022). The church saw its role as the conscience of government by testing the whole reality against the principles of the scripture. It eventually used this position to uphold the ideology of Christian nationalism with its support for the state. According to Boesak (2005: 144) in (de Wet, 2013: 5) the 'language of the church did not prove to be the passionate language of the prophet, demanding justice for all of South Africa's people, but the careful reasoning of the court theologian concentrating on justifying a privileged position for the Afrikaner people'. Churches began to emerge as a political force at an ecumenical conference known as the Cottesloe Consultations in 1961 when some of the church laws of the Afrikaners that had been used to justify the policy of racial segregation were challenged (Cowell, 1985:1).

The church played a significant role in creating an anti-apartheid bulwark against the apartheid state. The church is one of the pioneers of the anti-colonial struggle even before the formation of liberation movements. The resistance role of the church can be traced from as far back as the early 19<sup>th</sup> century. Several mission schools acted as education grounds for black people. The formation of the South African Native National Congress (SANCC) which was later renamed ANC came about as a result of emphasis from Christian resistance movements to anti-apartheid, combined with some liberal politics of the Cape (Ndoping, 2009: 23). The resistance of the church movement took a higher turn in the 1970s. This was championed by clergymen like Bishop Desmond Tutu, Reverend Allan Boesak, Beyers Naude, Trevor Huddleston, to name but a few.

The role played by the South African Council of Churches (SACC) was instructive in this regard. The SACC was an umbrella body that had diverse membership of about 21 churches representing about 12 million members. These churches were affiliated to the SACC. The SACC was unequivocal in denouncing their opposition to apartheid. In its own testimony, the SACC said that it was “committed to the sharing of resources and power-sharing in a unitary system of government”. It regarded this to be “an implication of the theological affirmations of the dignity and fundamental equality of all people before God”. The SACC was inspired and influenced by the Black Consciousness (BC) philosophy articulated by the likes of Steve Biko. Black theologians and activists applied the influence of the BC movement into their struggle against apartheid. In particular, the SACC applied their aims and objectives and developed a prophetic role as a black ecumenical organization.

According to Skinner (2017) individual priests such as Trevor Huddleston and churches such as the Anglican Church made bold declarations rejecting the apartheid ideology and calling for the establishment of universal suffrage and the elimination of discriminatory legislation in South Africa. For instance, the Presbyterian Church of South Africa in 1948 “criticized proposed legislations aimed at depriving Africans of their limited parliamentary representation as a retrograde step contrary to the claims of Christian responsibility (Masuku, 2014:43). In the same vein the Anglican Church of South Africa issued a statement in 1948 in which they indicated that they identified themselves with the Lambeth conference which declared that “discrimination between men on the grounds of race alone is inconsistent with the principles of the Christian religion “(de Gruchy, 1986:55) in (Masuku, 2014: 43). Mention should however be made that the church itself was not a homogenous unit in its opposition to apartheid. The Dutch Reformed Church supported, adopted and abetted apartheid as an acceptable ideology. They even declared in one of their Federal Missions Council that” it is the conviction of the majority of Afrikaans speaking South Africans and the majority of the members of the church that the only way of ensuring continued survival of the nation is by preserving the principles of racial separation. Racial integration, on an extended scale, on the one hand, must result in the lowering of standards, culturally, morally and spiritually” (Strassberg, 2001:190). Churches and Christian organizations that were opposed to apartheid could comfortably join the UDF. De Gruchy (2007:4) says that there was deep-rooted estrangement of churches on the issue of apartheid and an ecumenical discourse on this was lacking. However, many of the church movements threw in their lot with the UDF and added their voices to the call for apartheid to be abolished.

### 3.5.3 Women groups as part of civil society during apartheid

Apartheid's economic and social organization worked to destabilize black family units, separating spouses and family members as men were forced to migrate to metropolitan areas around which economic opportunities were concentrated. In addition to a lack of protection and recognition from the state, many women in rural areas faced the challenges of raising families by themselves as husbands and fathers went to urban areas to seek employment opportunities. They were restricted from moving as family units by apartheid policies. It is some of these experiences as primary caretakers and leaders that enabled women to lead some of the most successful mobilization efforts in resistance to apartheid. While mobilizing and actively resisting the apartheid regime, women also began to recognize the opportunity not only to gain national liberation, but also through which to further women's rights and visibility at both local and national levels (Thipe, 2010:39).

Women have since the turn of the century emerged as primary catalysts for the protest and change against the apartheid regime. They never lost sight of the fact that meaningful change could not be happen if they watch by the side-lines a game in which they were supposed to be playing. For instance, the establishment of the Federation of South African Women (FSAW) in 1954 which was said to represent in the region of some 230 000 women across the country, was a significant milestone. FSAW had two primary aims, namely: to work for majority rule and an end to the policy of apartheid and to build a multiracial women's organization that would also work for the rights and freedoms for all women (African National Congress, 1980:1-2). One of the largest ever demonstrations organized by women in the anti-apartheid struggle history of South Africa was the march to the citadel of apartheid power, the Union Buildings. This march took place on the 9<sup>th</sup> of August 1956. It is reported by the South AfricanHistory Online (2014: 1) that FSAW was able to rally close to 20 000 women across the colourline who presented a petition against the carrying of passes by women to then prime minister, JG Strydom. This march finally put to bed the chauvinist idea that a 'woman's place is in the kitchen'. Since then, the phrase '*wathinta abafazi, wathinta imbokodo*' (You strike a Woman, you strike a Rock) has come to represent the courage and strength of South African women. The fact that the day has been gazetted in the democratic South Africa as a public holiday is symptomatic of the significant role that women have played in the history of this country.

### **3.5.4 Trade Unions as a category of Civil Society**

Class differences has always been a major concern regarding the accessibility of economic, political and social power. Class has manifested itself across racial divides. The relationship between employers and employees, management and ordinary workers was defined by economic class barriers. This was visible in the mines, wine farms and in other industries. Class segmentation created superior mentality amongst those possessing wealth and power to permanently keep the lower-class dependent on them for their livelihood. It is in this context that trade unions emerged with the intention of establishing workers' labour rights. The South African workers trade unions' role and influence cannot be underestimated in the fight against apartheid. They sensitized, educated and mobilized members on the ills of apartheid. According to Ndoping (2009: 24) owing to the settler-colonial nature of the country, most of the resources were processed in the national territory in a bid to build the country's industry.

According to the (World Bank,2021) South Africa remains the most industrialized country in Africa and thus a country with such massive industrial build up was bound to have a massive and volatile trade union activity. The apartheid government always responded swiftly and with extreme force and brutality on attempts by worker to flex their muscles in riots and boycotts. Trade unions have formed a vital role in the socio-political and economic history of South Africa. They vigorously contested the unilateral determination of labour policy by the National Party government during the period of apartheid. For instance, the unilateral amendment of the Labour Relations Act (LRA) in 1988 invited a strike wave from trade union federations which ended with the signing of the Laboria Minute in September 1990 by the Congress of South African Trade Unions (COSATU), the National Council of Trade Unions (NACTU), the South African Consultative Committee on Labour Affairs (SACCOLA) and the Department of Labour (Hudson,2001: 27). The agreement stipulated that no future legislation on the LRA would be placed before parliament until all the major actors have been consulted. South Africa is awash with a number of organized revolts which were motivated by poor wags, bad working conditions, discrimination in the workplace, unsafe working conditions, amongst others. The most well-known strike began in February 1920 in the East Rand when dissatisfied mineworkers led by Commercial Workers Union were engaged in violent demonstrations with the police. Eventually about 71 000 workers became involved in a crippling labour dispute. The strike was eventually crippled by the police leaving 11 black miners dead and 120 others injured (Lewis, 1984: 2).

The enactment of the new Constitution in 1994, precipitated off the biggest and longest black uprising in the Vaal Triangle. Although not exclusively a trade union issue, the strike was a combination of civil rights, issues, service delivery grievances and trade union issues. The strike demonstrated the strides to which civil society organization can achieve if they work together.

Numerous other strikes were organized by organized labour. The predominant issue in most of those strikes was the conflict over appalling conditions of service for black labourers, however the underlying demand of the workers was the need to completely transform the political landscape of South Africa from apartheid to popular democracy. The union movement demonstrated over the years an uncanny ability to survive and grow. This was caused by the fact that unions were mainly organizing around bread-and-butter issues which were commonly facing the majority of workers on the shop floor. For instance, in 1979 talks between various unions led to the founding of the Federation of South Africa Trade Unions (FOSATU) bringing under one umbrella some 20 000 workers in an independent, non-racial federation (Baskin, 1996:25). From 1979 to 1985 the pace of union organizing accelerated finally leading to the formation of COSATU on the 30<sup>th</sup> of November 1985 at the University of Natal in Durban. This was to be a turning point in the history of trade unionism in South Africa since COSATU was to be at the forefront of championing workers interests and making sure that the underclass should not continue subsisting on poverty wages.

### **3.5.5 Non-Governmental Organizations**

Non-Governmental Organizations (NGOs) are highly diverse groups of organizations that are engaged in numerous activities. They range from faith-based organizations, human rights-based groups, to service driven organizations. NGOs are distinct from governments, are independent and seek to protect the interests of their members against excesses committed by the state or private sector interests. In some cases, they partner with the state and help with the formulation and implementation of government policy. They are likely to be active in societies with high levels of inequality, ethnically heterogeneous societies and where there is segregation of societies either on class or ethnic basis. South Africa is a perfect example of a country which exhibits characteristics of these kinds of attributes hence it has always had a vibrant culture of NGOs who have been tackling up the cudgels on behalf of the disadvantaged members of society.

In the context of apartheid South Africa, much of the NGO sector was primarily geared towards representing the interest of the dispossessed with the central focus being on issues of human rights, advocacy and monitoring (Stuart, 2013:2). A significant number of the NGO sector was focused on welfare activities. This was caused by the high levels of poverty particularly in communities comprising the disadvantaged sectors of society. These NGOs distributed food parcels to the indigent sectors of society on a continuous basis.

NGOs in apartheid South Africa served as an anti-apartheid force in that they took anti-government positions on a variety of issues that affected the Black, Coloured and to some extent Indian communities. The NGO sector largely derived their funding from fraternal organizations from the international community i.e., USAID and the European Union. Prominent amongst these NGOs was the Black Sash, Institute for Democratic Alternatives for South Africa (IDASA), the National Education Crisis Committee (Habib and Taylor; 1999). These organizations aligned themselves with political organizations like the United Democratic Front (UDF) in opposing the South African apartheid legal architecture.

The role of civil society organizations in promoting development and in building a democratic culture was initially affirmed by the Reconstruction and Development Programme (RDP). This was a policy adopted by the government whose foundation was pillared on the need to mobilize resources of the country in order to eradicate apartheid and to help build a democratic, non-racial and non-sexist future. According to Abrahams (2017) the closure of the RDP office created a vacuum in terms of a strategy that would structure the relations between government and civil society (Patel, 1998) in Abrahams (2017:10). In the post-apartheid era, NGOs continue to play a prominent role in filling the vacuum that in the past was the preserve of the liberation movements. Stuart (2013,2) posits that these organizations are influenced by the need to respond to citizens' needs at a human level and which can represent them in the face of the state's ever-increasing withdrawal from many areas of social support. The new generation NGOs has strong partnerships with the public and the corporate sectors and as such have innovative funding models and a variety of resource mobilization strategies. With the drying of financial aid from the international funding agencies, these NGOs have been forced to adopt these innovative resource mobilization models to ensure their survival but also to ensure that they continue to provide a service to the majority who are still on the sidelines of the market driven economy.

### **3.6 Towards Democracy, the emergence of the United Democratic Front**

The 1980s saw a rise in the frequency of anti-apartheid activities and the mushrooming of sheer numbers of civil society organizations thereby strengthening and deracializing the opposition to apartheid. These internal multi-layered civic actors shared the same goal, namely: bring down authoritarian rule and establish multi-party liberal democracy (Foramonti & Fiori, 2010:29). As a response, there was increased restrictive legislation from the government in an attempt to maintain law and order. Borraine (2008: 125) posits that the new Constitution adopted by the government in 1983 was unsuccessful because it was viewed by black people as a mere reshuffling of the chairs on the deck of the apartheid ship. The State Security Council ruled the country by fear with a policy of total onslaught against the 'enemies' of the state. This period was characterized by economic deterioration, power abuses by the state, violent protests and a civil war on the borders of the country (Vorster, 2015:3). Thousands of people were detained under the security laws and people were murdered by state security. In addition, there was increased pressure from the United Nations and from the financial sanctions against the South African government. There was increased military activities on the borders of South Africa between forces of Umkhonto we Sizwe, the military wing of the African National Congress (ANC) and Azanian People's Liberation Army (APLA), the military wing of the Pan Africanist Congress. Organized protests against the government were difficult because of the strong grip of the security police, the restrictive legislation and the arrest and murder of a number of political activists. It is in the midst of this social atmosphere that the United Democratic Front (UDF) emerged.

The speech made by Allan Boesak, a popular theologian and an anti-apartheid activist at the 1993 meeting of the South African Indian Council Committee, for a united front of churches, civil society organizations, unions, student movements and sport bodies, was one of the major turning points that accelerated the formation of the UDF. Although the UDF started as a regional organization, with the establishment of the Natal branch consisting of more than 40 organizations, it went from strength to strength with the establishment of more branches in Transvaal, and the Eastern Cape. According to Donaldson (1993,169) in Vorster (2015: 3), the national secretariat decided to formally launch the UDF as a national organization in 1983. The official launch took place on the 20<sup>th</sup> of August 1983 in Cape Town with 575 civil society organizations present.

The organizations in the launching meeting included student and youth movements, religious organisations, women societies, worker unions and sport and cultural organizations. There were more than 10 000 people in attendance. According to Vorster (2015: 3) the idea was that the body should form an umbrella organization that could coordinate the interests of all the complying civil organizations in a countrywide movement against apartheid and the promotion of an inclusive democracy in emulation of the Freedom Charter Manifesto of 1955.

The primary goal of the UDF was the establishment of a non-racial, non-sexist united South Africa in which segregation is abolished and in which society is freed from institutional racism. It focused on issues such as the exploitation of workers, the poor quality of education for black people, oppression of women, racially defined sport, migrant labour system among others (Vorster, 2015:4). Despite its national footprint, the UDF consisted of a decentralized structure with leaders based in local communities so that they can champion the socio economic and civic issues of local communities. The UDF exercised considerable influence on the issues of the day in South Africa. Some of the national campaigns undertaken by the UDF included the million-signature campaign. The campaign apart from collecting a million signatures had a focus message, which was to expose the organization to the people in townships, informal settlements and factories. The aim was to mobilize and conscientize communities against the apartheid government. There was some success achieved with the effective boycott of the elections of Black Local Authorities and community councils. Although only one third of signatures were attained, the campaign succeeded in raising the profile of the UDF to the people (Seeking, 1992).

According to Vorster (2015: 4) the loose structure of the UDF was an important recipe for success. Affiliates of the UDF did not sacrifice their unique identity and were not obligated to submit to a new set of principles. The loose structure also prevented competition and leadership struggles. The organization also had a wide representation from all corners of the country. From students, workers, etc. everyone was welcome to become part of this grassroots movement. The regional focus of the UDF was beneficial in the sense that they were also to take protests and campaigns of civil disobedience to all parts of the country resulting in the UDF entrenching its mass-based character but most importantly allowing communities to wage local struggles intensively in those areas. According to Donaldson (1993:181), the UDF despite its national character, was not able to successfully win all the struggles in all the regions although mention must be made that the impact was however considerable.

### **3.7 Civil society movements post 1994**

It is important also to make a comparative analysis as to what extent does civil society movements contribute to the deepening of democracy, nation building and holding government accountable in institutionalizing a culture of civil rights and in strengthening the rule of law in South Africa post 1994. Habib (2005: 678) outlines the post-apartheid period as comprising of three distinct blocs, each of which is a product to different degrees of separate transitional processes. He posits that the first one is the establishment of an enabling environment which was characterized by the permitting of protest and the easing of repressive regulations. This coupled with the enactment of legislation like the Non-Profit Act 71 of 1997 that officially recognized and permitted civil society organization to register and operate freely, created an environment which enabled the political environment to be receptive to free political activity. Institutions like the National Development Agency (NDA) and the Lottery Commission were established with a view to facilitate the funding of legitimate non-profit activity. The democratic legislative environment post 1994 in which civil society has also contributed significantly in building, has brought into sharp focus the role of these movements. The second and third constituent bloc was largely characterized by political and economic liberalization. This implies in simple terms the integration of South Africa into the global economy. The period is mainly associated with the leverage multinational corporations and the domestic business community has increased dramatically as a result of rapid technological transformations of the last two decades (Habib, 2005:681). The latter bloc will be scrutinized more in chapter five of this study.

Most of the pre 1994 civil society groups were absorbed into the dominant liberation movement, the African National Congress (ANC) which is now the ruling party in South Africa. For instance, organizations like the South Africa National Civic Organization (SANCO) which were critical in promoting the plurality, diversity and vitality of alternative voices to the state are now part of the ruling party. Many of the leaders of SANCO were absorbed into parliamentary politics thus rendering the organization moribund. It should however be mentioned that although it is virtually ineffective and invisible SANCO still continue to play an active role at branch level and in community life (Heller and Ntlokonkulu, 2001: 7). The information explosion has also helped in increasing the number of actors involved in public decision-making.

The emergence of the information society has increased the influence of the mass media, nurtured the development of a more educated and better-informed population and multiplied the number of civil society movements and other non-governmental agencies asserting the right to play a greater role in the government decision-making (Venter and Landsberg: 2007).

Some of these civil society movements which were powerful role players have ceased to exist. A case in point is IDASA which was liquidated in the North Gauteng High Court in April 2013 (news24, 2013). IDASA played a tremendous role in promoting sustainable democracy based on active citizenship, democratic institutions and social justice (Van der Waldt *et al.*, 2014: 40). O’Riordan (2013: 2) postulates that IDASA’s demise is largely as a result of trusting the good intentions of foreign donors. He argues that IDASA trusted these governments particularly Western governments who failed to put their money where their mouths were. The demise of some of these movements which became victims of the inability to adapt to the changing objective material conditions both internally and internationally has certainly left the civil society movement much poorer in advancing the interests of the common people/disadvantaged.

### **3.8 The role and impact of civil society**

The original historical conceptualization of civil society in modern societies was primarily influenced by the need to create an autonomous group, which is independent from the state, and which will offer a stabilizer of, and counterweight to democratic or autocratic state power. Glaser (1997: 5) contends that as valuable as civil society is, it cannot serve as a substitute for state power as an alternative to state democracy, or as a new form of non-state democracy. It is rather a kind of empty public space, protected by formal state guarantees of individual liberty and social order, and open to multiple uses by free and equal citizens. Sibanda (2011: 814) weighing in on the debate, refers to civil society organizations as the third sector which relates to the state in some way but does not seek to win formal control or position within the state. They mainly focus on ways of restructuring delivery of public services and reinvigorating participation in governance, to stimulate the emergence of an active, reflective citizenry.

Leonard (2014: 379) notes that the role of civil society organizations is to serve as support organizations by providing training, research and information resource, networking and alliance building support, financial resources or policy analysis or advocacy support.

In the context of South Africa the role of civil society organizations in the post-apartheid era, has become a contested terrain depending on the political ideology of the writer. For those on the right, civil society is a support and delivery mechanisms; while for those on the left, it is an agency to usher in a new order. The simple generalist view has always been that because they are close to the life worlds of the poor, civil society is assumed to be best placed and relatively well equipped to identify and realistically represents the actual needs of the poor.

This one-sided idea of interest representation has however been challenged recently. In her study of the everyday politics of a Philippine NGO, Hilhorst (2000) in van Driel and van Haren (2003: 535) shows how daily NGO practices are influenced by a multitude of actors. In the current development discourse, it has become increasingly important for NGOs to legitimize themselves I the government, commerce, targeted communities and other competing NGOs. When interacting with these actors, NGOs will display different images of the poor and needs and strategies for reaching them. Terms such as community participation, empowerment, and community building will be used abundantly in reports and policy documents to appeal to donors who can relate to these words. On the other hand, an NGO might put more emphasis on the actual services it delivers, i.e., building houses or providing HIV/AIDS education. Multiple interests, discourses and power positions account for the different images that NGOs present to beneficiaries, donors, municipalities and other actors to which they are related. Representation varies along with the audience that is addressed by the NGO.

Desse (2012: 5) in a study commissioned by the European Commission Research Unit, AUGUR project argues that civil society organizations basically arise out of the failures of national state, international institutions and markets. The state has historically been seen as the main actor dealing with market failures and negative externalities. However, because of political and administrative constraints, states are often not able to cover the full range of needs of the citizens resulting from these market failures, especially since the demand is believed to be heterogeneous and the state is especially efficient providing homogenous goods and services (thanks to economies of scale), but it is much less efficient in providing heterogeneous goods and services. Civil society organizations (CSOs) are created to fill the gap left by the markets and the states.

Under the apartheid dispensation in South Africa civil society organizations assumed an identity along ethnic, race and class lines. Largely these organizations were primarily disposed to opposing the apartheid state. Although they were well funded, they faced the challenge of dealing with the illegitimate government in a legitimate way. Their mission was primarily to topple the apartheid government, fight for the poor and improve the lives of the marginalized sector of the South African population. United Democratic Front (UDF) was the umbrella body of these civil society organizations that were opposed to state repression and the refusal of civil liberties to black people.

The eighties were an era characterized by increasing political protests and more restrictive legislation from the apartheid government. The government adopted a new constitution in 1993 in an attempt to allay criticism against apartheid and to set a new course (Borraine, 2008: 125). Unemployment increased and increased spending on the military put a strain on the fiscus. Increased pressure from the international community led by the frontline states, the Organization of African Unity and the United Nations which encouraged nation states to exert pressure on the government through financial sanctions, resulted in further tension and economic stagnation. Terblanche (2002: 310) posits that the conflict became so heated in South Africa between government and organizations of the oppressed, by the end of the 1980s, the country was virtually ruled by the State Security Council with its policy of 'total strategy' against the 'total onslaught' of the ANC and its partners in the struggle.

The United Democratic Front (UDF) emerged in the midst of this social atmosphere as a civil organization that aimed to promote human rights and challenge the excesses of the apartheid government. It (UDF) served as an umbrella organization which by the end of 1986 consisted of 700 civil organizations ranging from youth movements, groups from the training and education sector, community organizations, unions, professional societies and churches. The poor were strongly represented in the structures of the UDF. During its short existence the UDF exerted extensive pressure on the government of the day. The actions the UDF launched against the state led to consumer boycotts, strikes, protest marches by the youth, women's organizations and Christian leaders (Vorster, 2014: 5). The organization was largely curtailed by the restrictive conduct of the government, but its influence remained. The state could no longer stop the advance against the apartheid system, which was largely initiated by the UDF. Ultimately the political activities of the movement were formally prohibited in terms of the emergency measures of the state of emergency as of February 1988 (Walshe, 1997: 394).

The examples brought about by the short history of the UDF left the following lessons:

- ❖ Civil society can play a significant role in political policy change when the goal is clearly formulated, and organizations are organized around that goal. The UDF opened the way to such a practice. (Swilling, 1988: 110). Political policy is not immune against civil society.
- ❖ Christian churches, religious bodies and other organizations can to a large extent, despite differences in confession and ideology, cooperate with civil society if the common goal is directed establishing the general welfare of the community. In the moral edification of the South African society, churches and Christian organizations can contribute to the establishment of an ethos of human dignity, human rights, reconciliation and peace that can be introduced by civil society into the generalized discourse regarding moral regeneration. During the time of the UDF, Christians made a contribution in this regard.

### **3.9 The role of the church as part of civil society**

The church in South Africa has played an important role in the transition from repression to democracy. One can argue that without the participation of the church in the anti-apartheid struggle, it may have taken longer to achieve the freedom that South Africans obtained in 1994. Swart (2010) advanced the thesis that overtly political challenges by churches to the state were causally linked to the level of political repression of civil society. Churches were able to assume critical political functions when other civil society organizations that would normally perform functions have been actively repressed. During the period of apartheid, the church found itself drawn into a spiral of involvement (Borer, 1998: 1994). This involved increased repressive measures by the government. In is in this context that the South African Council of Churches (SACC) through a serious of progressively overt action, came to full confrontation with the state by the mid-1980s. This model by Bayat (2010) often termed a collaborative-complementary conflictual framework, asserts that the more repressive the state the more likely the church actors confront or conflict with the state. Conversely, in partially open societies, churches adopt either a complimentary or collaborative role.

Church leaders such as Desmond Tutu and Alan Boesak amongst others under the auspices of the South African Council of Churches (SACC) offered a prophetic voice speaking with a powerful, fearless and influential voice against apartheid, theocratic state theology and the church theology of the 1980s (Pieterse,2000:83). Initially the church employed the method of sending deputations and petitions as political leaders had in the 1920s to 1940s. On realizing the futility of such approaches, the church adopted more direct forms of engaging the public interest in the question of apartheid that would become synonymous with the anti-apartheid activities. In the same vein, the Africa Independent churches or Indigenous churches consisting of African founded churches with a traceable embeddedness in both traditional as well as Pentecostal roots, have also lent their voice to the call for apartheid to be dismantled. Their role however compared to ecumenical was not as pronounced. It was not easy for adherents of this religion to come out proudly like members of other faiths because of the stigma that was attached to them and their religion by missionary Christianity and the ‘Christian’ aligned apartheid state. The foundation of the stigma was laid during the early encounters between Western missionaries and indigenous communities in Africa. For instance, the latter’s religion was referred to as “heathen cultures,” “religion of the lower races” or “uncivilized” people and statements such as “the heathen in his blindness bows down to wood and stone” were common on the lips of missionaries (Setiloane, 1976:104). They were deemed “archaic, barbaric and backwards” (Masuku 1998:21 in Masuku: 2014). Muslims played an active role against apartheid through their organized religious structures. For instance, the Muslim Judicial Council (founded in 1945), was not only meant to promote Muslim unity, but also to “form a united front against oppressive laws of the day” (Kruger 1996:228). The Muslim Youth Movement of South Africa also made a mark against apartheid. Although this body initially encouraged self-and-group study of the Quran, “eventually, this group also became active in the political arena in the struggle against apartheid” (Masuku: 2014).

### **3.10 Civil society in post-apartheid South Africa**

The theory of corporatism which Nyang’oro (1994: 48) describes as a system of interest representation based on non-competing groups that are officially sanctioned, subsidized by the state. These groups undertake an intermediary role between the state and societal actors performing not only a representative function but operating as a regulatory agency on behalf of the state.

Under this model, society is organized not on individualistic basis but in terms of functional, societal or corporate units that make up the nation Wiarda in (Lehman,2008: 116). This theory is used to undertake an analysis of civil society movements in both Sub-Saharan Africa with particular focus on South Africa. Fiomoranti (2005:78) argues that during the 1990s many civil society organizations entered into corporatist pact with the state; and that the state offers financial advantages to those organizations registered to act as government partners in delivering services. In order to receive those benefits, these interest groups must enter into an institutional agreement with the state which includes being legally constituted as a non-profit-organization, to comply with registration procedures, to compile funding applications in required formats and to carry out annual audits. This corporatist model is tied very closely with what Andreason (Lehman, 2008:116) the theory of predatory liberalism. This approach of predatory liberalism required CSOs to participate in the policy making process of government. This participation in the policy making processes of government however mas a conscious, deliberate attempt by government to co-opt the CSOs by drawing them into state led decision making structures such as National Economic Development and Labour Council (NEDLAC). This approach came to largely characterize the state –CSO-relations in South Africa with significant repercussions for the civil society movement, i.e., along with loss of funding, they experienced a loss of highly skilled leaders who left civil society for government institutions.

Following the first democratic elections in South Africa, the civil society sector was thrown into turmoil as it sought to redefine its relationships (primarily with the government), roles, responsibilities, strategies and identity, within the newly established democratic structure and associated civil liberties The debate about a future civil society is basically informed by the deeper justification of the autonomy of the civics from political parties and the state. Kuperus 2011:281 in (De Wet, 2015:2) demarcates the ideal of a critical as well as a constructive role for civil society that tries to uphold an autonomous relationship with the state, that nurtures civility, that holds state institutions responsible for what has been entrusted to them and that provides an empowering environment for marginalized groups. Developments in post-apartheid South Africa provide a good illustration of the crisis faced by civil society. Swilling (1992: 25) envisages in post-apartheid South Africa an associational socialism' based on the civil society of strong voluntary associations. These associations would be capable of self-government and of negotiating with the state, business and other power holders on behalf of their constituents.

In addition to forming strong horizontal relationships with each other, associations would enter tripartite relationships with capital and an invigorated local government. Private economic power would need to be replaced by new forms of non-state collective ownership or else subjected to democratic regulation. Political power would be divided and decentralized, and politics refocused on the local since it is here that associational life is strongest. When in government, democratic socialists would use the state to bolster civil associations through fiscal measures and a supportive legal framework. Mzwanele Mayekiso, a participant in the civic politics of Alexander Township and leader of south African National Civic Association (SANCO), a civic body largely sympathetic to the African National Congress (ANC), envisaged in post-apartheid South Africa, civic associations as potential bastions of socialism who are primarily biased towards the working class and would act as a bulwark in circumstances where an ANC led government is pulled in a reformist direction. He sees civil society very much in class terms: as a terrain of struggle over, among other things, its class character (Glazer, 11: 1997).

Greenstein (2003:14) also contends that post-apartheid South African civil society has caught between the insistence by right wing forces on the supremacy of the market, and the insistence of traditional left-wing forces on the supremacy of the state. The former became starkly seen with the introduction in 1996 of GEAR by the government led by former president Thabo Mbeki. This macroeconomic programme set out to achieve ambitious targets for the state. For instance, a target of six percent annual growth rate, massive job creation of 400 000 annually, gross investment of between 20-26 percent of GDP and an inflation rate of below ten percent. (Lehman, 2008:119). According to Parsley (2012:12), GEAR prioritized the for-profit sector in economic growth and service delivery and the non-profit sector in poverty alleviation. As the limitation of the state became evident, new social movements and pressure groups began emerging. These included the Anti Privatization Forum and the Soweto Electricity Crisis Committee among others. These formations highlighted gaps in the provision of basic services labour practices, landlessness and homelessness, environmental destruction, gender equity, sexual minorities and issues facing refugees and migrants. Whilst these groupings exposed the shortcomings of government to live up to its promises, they did not however contribute effectively to the development of policy alternatives that could effect systemic change.

The failure of GEAR to achieve much of its broad objectives had an attendant effect on the civil society movement. CSOs were not able to achieve their own objectives since most of them were excluded from the policy-making plans of government.

The declaration in 1997 by President Mandela that CSOs were not democratically accountable and were in the service of foreign donors did not help their cause. President Mbeki was also in the habit of constantly launching missives at the mainly foreign funded international CSOs sector for their ‘lack of accountability and their influence of setting agenda for domestic CSOs (Lehman,2008:119). For those on the right, civil society is a support and delivery mechanism; while for those on the left, it is an agency to usher in a new order (Habib and Kotze, 2002 in Leonard, 2014: 380). They have been assisted in this task by growing international concern with the failure of established development paradigms, and the need to come up with creative alternatives to the conceptual dichotomies that have dominated the field for decades. Civil society has been celebrated as the answer to the inequalities generated by the market on the one hand, and the bureaucratic ossification generated by the state on the other.

Largely because of the apartheid history of South Africa, there was a biasness towards understanding the role of civil society as independent and autonomous from the state. This is more so given the history of nationalist or communist liberation politics elsewhere in Africa. The ruling party, the African National Congress (ANC) had initially established warm and cordial relations with its social partners in the form of the trade union movement, the civic associations and community- based organizations among others. They considered these actors as major assets for their role in pioneering the struggle against apartheid. A densely organized and independent associational sphere is necessary for a viable democracy. It provides a counterweight to the concentration of power in the state; it supplies a context in which governing institutions can be scrutinized and challenged; it offers a medium of popular political participation and training; and it enlarges the space available to self-directed human activity (Glazer, 1997: 11). With the passage of time, however the government began to see these organizations as mere instruments for implementing the government’s policies. There was according to Lehman (2008: 118) a growing reluctance from the government to visualize a role for the CSO sector as independent organizations that were free to influence decision-making or could play a constructive role in critiquing policies.

Equally, however another reality has emerged since the transition with well-established civil society organizations which are well resourced and have developed collaborative relationships with the state and industry, having had their accountability, support and credibility eroded from the marginalized communities that they serve. Leonard (2014: 371) argues that there has been a shift in the conception of civil society since the transition, with established forms of support for the grassroots remaining doubtful.

This collaborative relationship established with the state has led the government to demand accountability and transparency especially because of the funding allocated to such CSOs. This has led to the commercialization and professionalization of this sector. This increased professionalism affects the organizational culture of the organizations leading many to adopt expertise that is stipulated by donors. In addition, the emergence of a 'report culture' has developed, which places more emphasis on measuring and counting 'activities completed' and 'outputs achieved', performance indicators met' and outputs achieved' (Stuart, 2013:2). As such, demands for rigorous standards of accountability, transparency and financial self-sufficiency imposed by donors on the sector have the unintended effect of distancing these organizations from the very poor and marginalized communities that they are meant to serve. During the period of transition from apartheid to democracy, civil society organizations, many CSOs were uncertain of their continued relevance. Many civil society organizations remained active, others such as the civic movement failed to adapt and sustain support. With the dwindling of foreign funding many CSO were forced to closed shop. Habib and Kotze cited in Leornard, 2014: 381).

Another interesting dimension through which civil society can be analysed in post-apartheid South Africa is through the concept of power. This means that the operation of power is one of the crucial dimensions in looking at the interactions between social actors. The identities and interests of these actors are shaped in relation to contests over agendas, strategies, meanings and resources. Power thus has several dimensions, of which three are according to Greenstein (2003: 1) of particular importance. The first is social power which is the access by individuals and groups to resources and control over their allocation. The second is institutional power which has to do with strategies employed by groups and institutions in exercising administrative and legal authority. The third and last is discursive power which has to do with shaping social, political and cultural agendas through contestations over meanings (Greenstein, 2003:1).

The efficacy of CSOs has in the main been hampered and hamstrung by the loss of skilled personnel in post-apartheid South Africa. According to Boadi (1996: 125) some of the civil society movements have lost their leaders to political parties and the state bureaucracy; funding from abroad is in precipitous decline as such funds are now channelled directly to the government instead of to the NGOs; and they are having trouble defining a role for themselves in relation to the South Africa led by the NGOs erstwhile ally the African National Congress (ANC).

The consequent loss of capacity and skilled managers has had a negative impact on the effectiveness of the civil society sector and on its ability and willingness to critically engage government. Kotze (2001) posits that it has also increased staff turnover and contributed to a loss of institutional memory. Human resource capacity in the sector was depleted by the recruitment strategies and higher salaries of the increasing number of international NGOs, and international agencies such as the African Unions and its agencies, the Commonwealth and the United Nations that established themselves in South Africa. The other reality also is that few CSOs are able to provide medical or pension benefits to their staff. The transition essentially resulted in the fracturing of civil society leadership.

According to Leonard (2014: 380) Non-Governmental Organizations (NGOs) which served as the voice of the grassroots during apartheid changed their operations after the transition. Even the UDF, which had played a tremendous role in the opposition to apartheid, took a decision to disband in 1991 believing that it no longer had a role to play after the release of political prisoners and the unbanning of liberation movements like the ANC and the PAC among others. Debates ensued as to whether the decision was premature or not. Marais (2011, 447) with regards to the disbandment of the UDF, notes that “for some, this seemed perfectly natural after all; the custodian of liberation was ready to take up its duties. The demobilization of popular organizations is a fairly common phenomenon in democratic transitions; as political systems become democratized, extra-institutional mobilizing and organizing tend to flag”.

Habib (2005: 9) posit that the dawn of democracy has forced civil society to be reconstituted in two very distinct ways. The first involves the spread and proliferation of informal, survivalist community-based organizations, networks and associations, which enable poor and marginalized communities to simply survive against the daily ravages of neo liberalism. These associations according to the recently published study of the Johns Hopkins survey on the shape and size of civil society in South Africa, comprise 53 percent of 98 920 non-profit organizations and thereby constitute the largest category of institutional formations within the sector (Swilling and Russel in Habib (2005:9). The second bloc that has emerged within civil society in response to the effects of neoliberalism is a category of associations that have been described by some studies as social movements. This category is made up of a diverse set of organizations, not all of whom actually meet the criteria of social movements.

Some of them like the Treatment Action Campaign (TAC) are more nationally based associations, and in this case, focuses on challenging the state's AIDS policy and enabling the provision of anti-retroviral drugs to AIDS sufferers. Others like the Soweto Electricity Crisis Committee (SECC) and the Concerned Citizens Group (CCG) are concentrated at local level (Habib, 2005:9).

A theme that has given rise to the proliferation of civil society organization in post-apartheid South Africa is the issue of corruption. Corruption is a means of relocating public resources for the enrichment of a few. Corruption is a form of dishonesty or criminal offense undertaken by a person or organization entrusted with a position of authority, to acquire illicit benefit or abuse power for one's private gain. Although corruption also occurs in the private sector, the primary focus of this study is largely on corruption as it occurs in the public sector with the attendant effect on the budget of public sector institutions. Corruption has had a direct and serious impact on stability and on the fiscus of the state in South Africa. Challenges confronting the state such as growing inequality, poverty, unemployment have been largely exacerbated by this malaise of corruption. It is this problem that gave rise to organization such as Corruption Watch which was launched in 2012. "We investigate selected reports of alleged acts of corruption, in particular those cases that have the most serious impact on our society. For instance, these may be cases involving basic health or education services, which affect the most disadvantaged South Africans. Corruption Watch hand its findings over to the relevant authorities to take further action, and they monitor the progress of each case. They work with mainstream and community media to make sure that corruption is fully exposed through their investigative work (Corruption Watch website, 2020).

The civil society movement has seen the re-emergence of powerful coalitions of civil society, which have primarily used three main tactics. The first is litigation, through which civil society groups have successfully challenged illegal government decisions and appointments. The second is social mobilization, which is key in constituting new and diverse publics. Thirdly, and impressively, activists have built energetic and diverse political coalitions, drawing senior figures in the ANC itself into alliance with a broad range of other organizations. There is finally fire in the belly of civil society. Alongside high courts, media, and numerous public servants across the administration, civil society organizations have been able to bring to top of the national agenda in South Africa, the scourge of corruption.

According to Hyslop (2005) in de Wet (2015: 4), perceptions regarding corruption in post-apartheid political landscape were influenced by the ANC's notable shift in ethos from propagating a strict socialism in the mid 1980's to embracing the economic success of the black elite by the mid-1990s. Government policies encouraged black entrepreneurs to take advantage of state contracting and the opportunities posed by corporate ownership. The government in 1998 established the Black Business Council whose mandate was to help with the formulation the Black Economic Empowerment legislation. There was a further instituting of the Black Economic Empowerment Commission, which was charged with the responsibility to get empowerment policies on track. This ultimately culminated in the enactment of the Broad Based Black Economic Empowerment law which is now the legislative basis for Black Economic Empowerment (BEE) in South Africa (Freund, 2007: 665-666). For instance, by 2005 the state procurement budget was in the region of R120 billion which gave rise to a number of politically connected black entrepreneurs who were able to bid for state contracts and were successful on the back of the BEE legislation.

### **3.11 Synthesis**

The chapter sketched the historical development of civil society organization from two distinct eras. The first period under review was the role of civil society organizations during the period of apartheid. Civil society organizations such as the pro-apartheid church groupings like the *NG Kerk*/Dutch Reformed Church and the Broederbond played a big role in abetting the apartheid state. In particular the Broederbond worked through multiple clandestine processes to ensure appointments in the civil service, the judiciary, academia, politics, the church, city councils, sports associations and the all-important Bantu Administration Boards which regulated life in the Black townships (Matinsonn, 2022). It can be argued that without the active support of these organizations the apartheid state might not have sustained its dominance for such a long period of time. All facets of life apartheid South Africa bore the stamp of the Broederbond and the church. A review of the role of churches such as the Dutch Reformed Church in supporting the state was particularly important in view of the fact that South Africa is a predominantly Christian state with almost 80% of the population following the Christian faith (Statistics South Africa, 2011). The chapter also looked at the role played by the pro liberation church formations such as the South African Council of Churches (SACC) which was able to galvanize a plethora of churches in forming an effective bulwark against the apartheid state.

Their influence was such that the Security Branch of the police were found to have bombed Khotso House, the headquarters of the SACC in 1988 as a way to silence their activism (Truth and Reconciliation Commission Special Report, 2023).

The second layer of civil society organizations that the chapter analysed are several pro-democracy organizations such as women groupings, trade unions, NGOs, civic organizations and the UDF. It can be argued that without the active participation, involvement and activities of these organizations, South Africa's democracy could have been delayed. These organizations formed an important internal resistance core especially when major black liberation movements such as the ANC, PAC and the BCM were exiled. According to Lodge and Nasson, (1991) significant events that took place during apartheid like the 1984 rent boycotts which started in the Vaal and were to spread to most parts of South Africa resulted in 7000 troops being sent to quell the unrests. These boycotts and subsequent unrests following the formation of the UDF in 1983 spread throughout South Africa resulting in the declaration of a State of Emergency by the state in 1985 (Electoral Institute of South Africa, undated).

A post-apartheid feature of the role and activities of civil society also formed a significant part of the chapter. Part of the review focused on the geopolitical dynamics of the period and the impact on the civil society organizations. This includes the impact on the sector wrought by the decline in international aid previously enjoyed by the sector. For instance, the demise of IDASA which had to close its doors because of the funding crunch. The fact that the sector was now expected to operate within a new regime of legislative environment, the need to develop constitutions, open formal bank accounts, be registered and account for funds received required new methods and strategies of operation that the sector was unfamiliar with. This created complex challenges for the sector and led to existential crisis in civil society organizations. The dominant discourse was that the situation created a leadership vacuum and the subsequent decline of civil society (Weideman, 2015: 5). The reality however is that this period created a new challenge for the sector to embrace the challenges of the day and redefine their purpose and reason for existence. It can therefore be stated that civil society organizations found new issues of the day which led them to redefine their relevance.

### **3.12 Summary of the chapter**

The chapter discussed the history of civil society in South Africa stretching from the period of apartheid, which was largely characterized repressive legislation. The second part of the chapter focused on the type of prominent civil society movements that contributed significantly in organizing activities and ensuring that the apartheid state was always kept on its toes resulted in the relaxation of some of the pieces of legislation which made it difficult for civil society movements to function unhindered. The period of the transition to apartheid when the apartheid government started to release political prisoners and unban liberation movements is another period, which the study focused on. Finally, the study also investigated the extent to which civil society movements were active and their participation in enhancing and deepening democracy in the post-apartheid period in South Africa. The key thread that emerged from the discussions is that the current political, economic and social infrastructure of South Africa have an imprint of the centrality of the role that was played by civil society organizations. South Africa would not have successfully navigated its way to democracy if the primacy of civil society movement was to be discounted.

The next chapter will look at a comparative analysis of civil society in South Africa and other parts of the world.

## CHAPTER: FOUR

### COMPARATIVE ANALYSIS OF CIVIL SOCIETY IN SOUTH AFRICA AND OTHER PARTS OF THE WORLD

#### 4.1 Introduction

The approach on the subject under investigation in this chapter is somewhat refreshing as compared to the preceding chapter. This is more so because the focus in this chapter will not only be confined to the evolution of civil society organizations in South Africa but will also take a critical view of the development of civil society in the broader African continent and, to a limited extent, on Europe and Brazil in Latin America. This enables the enrichment and enhancement of the prevailing literature on the phenomena of civil society particularly in South Africa. While the thrust of this chapter is mainly focused on South Africa, Sub Saharan Africa which possesses similar characteristics in terms of its colonial and apartheid history is also examined.

The chapter will do a comparative analysis and examination of civil society in South Africa and juxtapose it with civil society in the Sub-Saharan African region, Europe and Asia and Brazil in Latin America. The specific area of interest is the participation of civil society in South Africa in the affairs of the state, issues of the struggle for democratization and also its maintenance, its role and influence, interaction with organs of the state, its reach in communities, the characteristics of civil society and related matters. The undeniable reality is that civil society organizations have gradually grown to occupy a central space on matters of governance, the deepening of democracy and somewhat also as agencies of employment and as custodians of civil rights issues. The participation of civil society is defined by Gerber (2010) in Reinold (2019:3) as the sphere of uncoerced human association between the individual and the state, in which people undertake collective action for normative and substantive purposes, relatively independent of government and the market. In certain instances, they have transformed into becoming political parties with a view to usurp state power and usher new dispensations. While the funding from international aid agencies has been shrinking, the confluence of civil society organizations at an international level has been considerably growing as a demonstration of their centrality and pertinence in matters of international governance.

The researcher will examine the issue of funding of civil society organizations in depth in the next chapter. In looking at civil society, the researcher will adopt a broad telescopic approach by including non-government organizations, community-based organizations, general interest groups and social movements or pressure groups as others may prefer to call them. This approach is informed by the fact that civil society movements are in themselves not necessarily static but are rather understood as a political and dynamic construct that generate and are generated by discourse among a heterogeneous group of individuals. Terrier and Wagner (2006: 232) posit that rather than just a collection of intermediary organizations or associations, civil society is a virtual space of deliberation that contains a plurality of undecided possibilities.

#### 4.2 Sogge’s Mainstream and Alternative civil society dichotomy

It may be useful to consider two main lineages in today’s *normative or value-driven* understandings of the term. As we trace and examine the historical development of civil society in Sub Saharan Africa, Table 4.1 below may assist in enriching the discourse pertaining to the issue around the similarities and differences in the characteristic features of civil society organizations. This will also help to provide the context in terms of the literature regarding the historical development and origins of civil society. Main features of both lineages can be summarized in Table 4.1 below.

**Table 4.1: Sogge’s Mainstream and Alternative Civil Society Dichotomy**

	Mainstream Lineage	Alternative Lineage
Membership of Civil Society	Local and intermediary NGOs, anti-government media non-profit services bodies such as missions, charities, professional and business associations	Social movements, non-establishment political parties, trade unions, activist community-based organizations, knowledge-based NGOs, independent media.
Main Problems for civil society to tackle	Imperative of markets, competition and modern life break natural social bonds, tensions increase, threatening political instability. Lack of trustful relations in society sets limits to exchange and security of private property-thus setting limits to economic growth. The state ‘crowds out’ private economic actors. Bad governance	Domination by national and foreign state and private sectors (often in collusion) generates socio-economic exclusion and insecurity. These set limits to equitable development and growth, weaken tax-based redistributive measures, frustrate democratic politics, and generate dangerous socio polarization. Bade

	stems from oversized state apparatuses and from behaviour of government elites	governance is a cumulative outcome national and global politic-economic and military forces.
Wider roles of civil society	Civil society fosters bonds of trust, thus lowers business transaction costs and widens market relations. It compensates for loss of traditional social bonds, strengthening social consensus and consent to rules, thus helping prevent conflict	Civil society promotes the ethic and practice of solidarity and emancipation, animating and inspiring action toward private business interests. (Nonviolent) conflict seen as necessary motor of social change.
Organization's positioning and tasks	Organizations together form a 'third sector' complementing the state and business sectors, though they are separate from the state in political terms. Via 'advocacy and lobbying' they hold the government to account. They promote decentralization and reduction of central state powers. Via 'public-private partnerships' some NGOs provide social services, conflict mediation and as alternatives to state providers	Organizations distinct from the state and from business interests. Social movements may however crystalize into parties contesting for state power. Otherwise, primary tasks are to aggregate countervailing power through mobilizing and forging alliances among group of the poor and excluded via routine and non-routine political, judicial and media channels
Level and scope	Mainly local and national	Local, national, and international
Political premises	Approach premised on notions of 'weak publics' where opinions are formed but no active political leverage is pursued.	Approach premised on notions of 'strong publics where opinions develop, and political leverage actively pursued
Contemporary origins and backing	Approach associated with family of ideas centred on 'community', 'social capital' and 'trust' promoted chiefly by US academics and large research projects based at US universities. Major financial and intellectual backing since around 1990 from the World Bank and USAID.	Approach associated with activist movements of 1970s and 1980s confronting authoritarian, often western-backed regimes. Latin American, anti-colonial and some European intellectual.

Source: Sogge, 2004:3-4

### **4.3 Public Participation and civil society in South Africa**

The issue of participation of civil society organization on issues relating to the state in South Africa is essential in assisting to provide a voice to the voiceless and the marginalized sectors of society. Civil society can enhance the participation of communities in the provision of services, in policy making, implementation and evaluation, in agenda setting and research analysis. According to Volmink and van der Elst (2017:12) civil society organizations provide a conduit for effective civil society engagement in matters of governance and national development. Moreover, they act as an independent voice of civil society and offer an open space where people can organise themselves around important issues. To give legitimacy and credibility to policy formulation processes, it is imperative that the government should demonstrate that civil society and communities generally have been consulted and involved as part of the organizations that represent the people. The consultative process will assist to give effect to the principles enshrined in the Constitution, 1996 such as transparency and accountability.

In an effort to give effect to the constitutional principle of participation, the government of South Africa enacted legislation governing civil society organizations in the democratic dispensation. The period during apartheid was largely characterized by major deficiencies in the legislative framework applicable to civil society organizations (Micou and Lindsnaes, 1993:86). Pertinent issues such mandatory registration and funding of the non-governmental sector was not given the respect and attention deserving of the major role played by this sector. In the main, most civil society organizations were not legally recognized by the apartheid government. This was mainly as a result of the posture taken by a lot of this organization during the apartheid period. CSOs were largely seen as an extension of the liberation, movement because of their anti-apartheid posture. In the democratic dispensation, civic participation therefore provides a satisfying and enriching socializing process. According to Loh and Civic Exchange (2003:132) studies have shown that there are four aspects of a vibrant civic culture that help to foster good governance. The first is engagement, where individuals and groups are alive to the interests of others. The second is a high degree of political equality, defines as a social context in which horizontal relations of reciprocity and cooperation predominate over vertical relationships of authority and dependence. The third is a high level of solidarity, trust and tolerance among residents of a community, which enables them to cooperate with each other.

Finally, there are a large number of civic groups and networks which serves to expand civic energy within the community thereby strengthening the bonds people have with one another. Owing to these factors postulated, the democratic space in the country thus become an enabling factor which gives impetus to broad and popular participation in the affairs of the state by citizens.

The Non-Profit Organizations Directorate was created with the purpose of keeping and maintaining a register of all non-profit organizations registered under the Non-profit Organizations Act 71 of 1997. The legislation largely seeks to provide an environment in which these organizations can flourish and also to establish an administrative and regulatory framework in which these organizations can conduct their affairs. Organizations can voluntarily decide to register themselves with the association as long as they comply with the registration requirement i.e. the organization may not be an organ of state, and/or it may not exist for the purpose of profit making. The Directorate issues a certificate and registration number for qualifying organizations. Annual financial reports must be regularly submitted to the Directorate to maintain the registration status in the database. Failure to adhere to the stipulated requirements, may render the status of the organization to be declared null and void which means that the registration status may be cancelled (International Charity Law:2004). In the main, the focus of this study was on the type of civil society movements referred to as voluntary associations which do not necessarily require a legal database or registry. As long as more than three people agree on the need to pursue some common objectives, they can summarily establish a non-profit organization.

#### **4.4 The Sub-Saharan African context**

The comparative study and analysis will also focus on the role, development and experiences of civil society organizations in Sub-Saharan Africa. Sub-Saharan Africa is, geographically and ethnoculturally, the area of the continent of Africa that lies south of the Sahara. Madichie, and Opute (2016) describe Sub Saharan Africa as geographically the area of the continent of Africa that lies south of the Saharan Desert. Politically they describe it as consisting of all African counties that are fully or partially located south of the Sahara Desert (excluding Sudan, even though Sudan sits in the Eastern portion of the Sahara Desert). According to the Arimoro and Musa quoting the United Nations (2022), Sub Saharan Africa consists of all African countries and territories that are fully or partially south of the Sahara.

While the United Nations geosphere for Africa excludes Sudan from its definition of sub-Saharan Africa, the African Union's definition includes Sudan but instead excludes Mauritania. Arab writers referred to the region south of the Sahara as bilad al-sudan, or "land of the blacks". The term was used to describe a larger area than modern-day Sudan, stretching roughly from Senegal to Ethiopia. Sub-Saharan Africa refers to the countries of the African continent south of the Sahara Desert. Geographically, the demarcation line is the southern edge of the Sahara Desert. Some countries such as Chad, Mali, Sudan, Niger, and Mauritania belong both to the Saharan desert region and sub-Saharan Africa region. For the purpose of this study, Sub-Saharan Africa as defined by Abadama (2018) will refer to all countries that are located geographically within the African continent.

Another case study undertaken for comparative analysis is that of Nigeria where, the legal, regulatory and policy environment in which non-profit organizations operate shapes their ability to obtain legal status, access resources, deliver services and engage in advocacy all of which are essential for civil society to flourish (ICNL,2017:1). A 2015 Enabling Environment National Assessment Report for Nigeria finds that civil society organizations operate with fairly few legal restrictions. The report also highlights that these NPOs face few non-legal restrictions such as burdensome bureaucratic procedures, barriers to access funds or difficulty in buying or leasing property. The report argues that the regulatory environment is relatively supportive of philanthropic activities. Oyebisi (2018: 1) however argues differently by stating that the recent bill (ill HB585) currently under consideration by legislators in the House of Representatives in Nigeria will if passed limit the freedoms for civil society. The bill seeks to establish once passed, a federal agency in charge of supervising, coordinating, and monitoring CSOs in Nigeria. If passed, it will give the government sweeping powers over civil society to the point of threatening its very existence. The bill will make it compulsory for civil society organizations operating in Nigeria to register with the government every two years and would require them to include details such as the location and duration of proposed activities as well as information on all sources of funding. The bill requires that projects identified by CSOs for implementation will first have to be approved by government. CSOs will also be required to provide 'additional information 'as requested by the Board during registration. This additional information is however not defined nor explained which means that it could potentially be any kind of information that could be used against the CSO.

The bill also does not place a ceiling on registration fees for CSOs but leaves the determination thereof to the Commission's (The Regulatory Commission and Monitoring of Non-Governmental Organization) discretion Gaebee: 2018). Individuals who violate the provisions of the law could face up to 18 months in prison or a huge fine and can if convicted, be prohibited from holding office in an CSO for a period of ten years.

Darren (2020: 38) contends that Nigerians have always been constantly forming organizations from a long time back. Regardless of ethnic, economic class, religion, age, gender or any other major cleavage, most Nigerians typically belong several different civil society groups, and often partake in creating one. Even the most politically disenfranchised Nigerian likely has some affiliation with a religious institution, belongs to an age-grade association, may partake in traditional groups for gender-based activities, and increasingly may have access to a development, a health, or even an advocacy NGO. Even in the darkest days of General Abacha's authoritarian rule, (1993-1998), Nigeria was replete with associational activity, such that activists were even complaining of the MONGO phenomenon|: My Own NGO: some of the reasons which created this situation is the economic devastation Nigeria was subjected to with the collapse of the oil prices in the 1980s, its quasi-adoption of structural adjustment programmes, and the ruinous rule of Generals Abacha and Babangida. The central theme in the politics of civil society is the overarching relationship this sphere has with the state, which encompasses more than political management of economic cycles and the authoritarian policies of military and colonial regimes (Darren, 2020:38). Oyebisi (2018) in support of the assertions by Darren, also postulates that Nigeria has always been home to many civil society organizations working in different sectors, including human rights, democracy. Good governance, corruption, peace and security, health, women rights, the environment and development etc. these organizations played an instrumental role during the transition from military dictatorship to democracy. Civil society continues to support the process of the consolidation of democracy by ensuring among others that elections are free and fair. They continue to promote and protect the rights of citizens and hold the government accountable for its human rights commitments.

An interesting study relating to the changes in the value patterns of the citizenry in Nigeria was done by Darren (2020:45). This study assists in discerning several remarkably consistent periods on the general perspective on how civil society interacted with the state. The central organizing principle is the fact the newly founded civil society groups restructure themselves based on a new dominant principle.

Central to this generational distinction is the relationship between the state and the organization. The middle sphere model of civil society explains the intertwined, mutually engaging interaction between civil society and state sphere such that the structure and culture of one can influence the other often with greater weight on the side of the state.

### Model 1

#### The Three Generations' Structural Orientation towards the State

Structural Orientation		
Generation	Type of Civil Society Group	Toward the State
First (precolonial)	Religious and traditional institutions	Neutral
Second (C.1900-1980)	Trade unions, professional Associations, chamber of commerce, Student associations, (voluntary Membership organizations	Positive
Third (c. 1980-present)	Non-governmental organizations (human rights, pro-democracy, women; interests, economic development, environmental, conflict resolution, etc)	Negative

Source: Darren: (2020:45)

The argument advanced by civil society organizations is that the requirement as pointed in the preceding paragraph will increase the administrative burden on CSOs and will also make it possible for CSOs that are deemed to be critical of the government to be denied or delayed if the government wants to restrict their activities. If passed, this law will be a democratic regression, leading to the curtailment of democracy and the freedom of association, assembly and expression. The CSOs which campaigned and fought so much and have been instrumental in fighting for the realization of the Millennium Development Goals will be severely restricted in carrying out their role as watchdogs and in holding government accountable for violations of human rights. The bill will most likely reduce the participation of citizens in the democratic process and also reduce their contributions in speaking out against corruption, malfeasance and other abuses of human rights which Nigerians gallantly fought for during the transition from military dictatorship to democracy (Oyebisi, 2018:1).

In response to a question as to whether civil society does exist in Sub-Saharan Africa, Makumbe (1998:308) was able to demonstrate that starting in 1990, there were 86 significant and major political development, an increase from the previous low of 20. African governments began to introduce reforms to guarantee civil liberties to a restless populace. A fundamental feature of this period was also the increase in the national elections from two to 14 in 1993. These political changes could not have occurred without the active and full participation of civil society. Selected events in some African countries are illustrative of the existence of civil society and some of the gains that have been achieved in the transformation of African societies are as follows:

- The protracted popular struggle for the liberation of South Africa from the clutches of a racist settler regime which culminated in the democratization of that country's political system in 1994 and the dismantling of apartheid.
- The national strike by workers in Swaziland operating hand in hand with other civic groups to demand that the political system be democratized. In fact, as recently as June 2021, the Swaziland Solidarity Network has been instrumental in bringing unprecedented nationwide political protests which have led to mass demonstrations, massive destruction of property, the death of more than 60 protestors the alleged fleeing of the political leadership includes the absolute monarch, King Mswati. The winds of change are about to engulf one of the last remaining dictatorships in Sub-Saharan Africa.

- The formation of Zambia's Multi-party Democracy in 1990 and its subsequent ascension to power in 1991.
- The rejection of a one-party system in Malawi in a referendum which resulted in the drafting of a new multi-party constitution, which in turn resulted in national elections which in turn led to the ousting of Kamuzu Banda who had declared himself the life president of Malawi.
- The overthrow of the government of the late Mobutu Sese Seko by Laurent Kabila with clear support of various civil society groups.

To the extent that various organized formations representing multitudes of people in Sub Saharan Africa can be found, implies that civil society is functional. The extent to which it is effective in holding governments accountable could be a study for another day. A focus on civil society in other parts of the world like South Korea will also enrich our understanding of this sector and its influence.

#### **4.5 The South Korean experience**

If we are to juxtapose the South African context with that of South Korea, interesting similarities and the influence of civil society movement is instructive. The interest in choosing countries in different regions is mainly because countries differ in social, economic and political contexts. The trajectory followed by South Africa may be different to that of South Korea, but it still makes for interesting analogy nonetheless for scholars to make comparative analysis of the development and evolution, role and impact of the civil society sector. South Africa is also part of the global world hence studies involving countries from different regions Korean civil society has been largely moulded by several episodes and factors in the historical development of the country; the long rule by the Confucian dynasty of the Joseon era and peasant movements, the colonial experience and the anti-Japanese resistance, the national division that culminated in the Korean War (Fiori and Kim, 2018). However, Korean civil society arose in its present form from the democratization movements of the 1970s and 1980s and the reorganization of state-societal relations during the subsequent democratic consolidation process, mainly in the 1990s (Fiori, 2018:145). The two most prominent groups to emerge were the Citizen Coalition for Economic Justice (CCEJ) in 1989 and the People's Solidarity for Participatory Democracy (PSPD) in 1994.

Citizens' movement groups permeated the political scenario, assuming a certain centrality as 'policy entrepreneurs' (Fiori and Kim 2011; Kim 2013), identifying new issues and sponsoring reforms in areas of public interest often undervalued by the state, such as economic justice, gender equality and environmental issues. The support of the general public towards citizens' movement groups widened constantly, primarily due to the chronic crisis of institutional politics (Ahn and Jaung, 1999). Political parties were the main object of criticism, being considered largely unable either to represent citizens' interests or articulate their demands. Therefore, citizens' movements started to play the role of "pseudo-political parties" (Cho, 2006: 82) or quasi-legislative organizations, often becoming alternative to political parties or replacing them in their conventional functions. In addition, the general public's trust in political parties and political institutions in general, like that in the National Assembly, has been very low, since these organizations were afflicted by problems such as 'party-bossism', inter-party conflicts, and the resultant immobility and diffuse corruption. By contrast, citizens' movement organizations started to be largely reputed as among the most trusted and reliable social institutions in the country (Shin, 2006).

South Korea was hit by an economic crisis in the early years of the dawn of the 21<sup>st</sup> century. The government of Kim Young was seen as repressive and undemocratic. In the main power and wealth was concentrated in the hands of oligarchies and small families termed *chaebols*. The president was forced to enact reforms in an effort to consolidate democracy and a market economy which was referred to as the theory of parallel development (Kim and Shin, 2004: 73). The powerful contributions played by civil society movements included the call for institutional, constitutional and policy reforms. This included the need for authorities to investigate the reasons which led to the economic crisis. Thereafter those culprits found to have contributed to the decline in the economy should be taken through a process of public hearings where they have to be accountable to the public. Those found guilty of gross human rights violations, constitutional violations should have lawsuits instituted against them and ultimately be punished by the courts. The dominance of the *chaebol* owners cum chairpersons and their families should be curtailed, and their powers and influence be massively reduced. To that extent in 1998 civil society movements such as the People's Solidarity for Participative Democracy (PSPD) and the Citizens Coalition for Economic Justice (CCEJ) made a call for the rich families to give up 10% of their share of stock to the people.

Companies such as Daewoo, Hyundai Heavy Industry, SK Telecom & Samsung Electronics, among others. Thereafter the campaign was to focus on the responsibility of management and to demand effective *chaebol* reform (Fiori and Kim, 2018: 150-151).

The second part of the civil movement campaign was to publish and blacklists a list of corrupt politicians, those found guilty of bribery/ theft and the violation of electoral laws and the destruction of the constitutional order. This was done with the intention to ensure that such politicians are not nominated to serve in the legislative assemblies of South Korea. Despite these efforts, some of the blacklisted politicians were still nominated by their respective political parties a situation which compelled the PSPD to campaign against the actual election of the blacklisted candidates. A major contribution and role played by the civil society movement was also the enabling of the promulgation of the legislation of National Basic Livelihood Security Act (NBLS Act). The PSPD and other civil society movements also tried their best to ensure that the government of Kim Dae Jung ultimately gave in and enacted the Bill into an Act in the year 2000. Despite resistance and other dynamics which also led to the PSPD establishing a new organization called the Solidarity for the enactment of NBLS Act. This was a watershed moment in the way in which South Koreans conceptualized and understood social assistance (Fiori:2010).

According to Fiori and Shin (2018: 152) one of the major and pertinent contribution by the civil society movements during the administration of Kim Dae-jung, was the enactment of a law affecting civil society. The NPO-Assistance Act whose main purpose was to ensure voluntary and autonomous activities of NPOs and to promote their development, thereby contributing to the public interest-promoting activities of NPOs and the development of a democratic society, was promulgated in 2000. Since the enforcement of this piece of legislation, hundreds of programmes proposed by various NPOs have been supported by government grants. Mention must however be made that the law has been a source of scholarly debate on the criterion to be effected in terms of which CSOs to fund and which ones to leave out. Issues of political bias have also been in the public domain as to which programmes to fund and which ones to ignore leading to issues of political bias. Despite these contestations of ideas, it must be stated however that the enactment of the NPO act has fundamentally changed the landscape of civil society- governmental relation in South Korea.

According to Greenstein (2003, 11) the relations between the state and civil society were not a major issue in the struggle for democracy in South Africa. The opposition forces did not challenge the prominence of the state as such, but rather the specific uses to which state power was put. Civil society organizations and structures positioned themselves outside the state, due to its inherently undemocratic and exclusionary character, but acted to change the distribution of power in society and bring about a democratic system of governance. It was the policies and priorities of state structures that were a primary source of concern, not their existence and powers in relation to society. In Eastern Europe in contrast, challenging the prominent role of the state in economic, social and cultural life was a major issue in the struggle for democracy.

The civil society sector has been growing rapidly in several countries in the last two decades. According to an empirical study led by John Hopkins University, it is now a major economic force employing on average about 5.6% of the economically active population in 2005. (This figure can reach up to 10% in several developed countries). This represents nearly 56 million full-time equivalent workers. In South Africa there are more than 100 000 Non-Profit Organizations (NPOs) (NDA, 2008). The sector plays a pivotal role in this country in providing a space for public voice, for the practice of citizenship and for the building of social cohesion. CSOs are imperative as a space for the building of identity in a world where citizens feel they have little control over their circumstances and where the nation state becomes too big for its citizens and too small in relation to the global order (Castels, 2000: 13).

Both in Korea and South Africa, there was a strong emergence of a multi layered civic actors who also shared the same goal of bringing down authoritarian rule and to establish a multi-party liberal democracy. The coalescence of the different civil society formations strengthened the popular resistance to authoritarianism especially given that civil society's protest was now cutting across class divides and at least in South Africa, racial cleavages. Below is Table 4.2 that shows the leading groups in who constituted the vast army of civil society formations in Korea and South Africa:

**Table 4.2: Leading groups within the civil society arena in Korea and South Africa**

	Soon before and during the transition to democracy	After the establishment of democracy
Korea	<p>People’s movements: urban poor, Students, blue-collar workers, white collar workers, intellectuals</p> <p>Anti-regime politicians, religious Groups.</p> <p>Citizens’ movements: professionals, White- collar workers</p> <p>Intellectuals.</p>	<p>Citizens movements: professionals</p> <p>New civic movements: students, middle class, intellectuals,</p>
South Africa	<p>Social movements: trade unions, Religious leaders</p> <p>Large NGOs: mainly white activists</p> <p>Progressive middle class</p>	<p>NGO’ and think tanks: white and black analysts</p> <p>New social movements: rural poor, township dwellers</p>

Source: Fioramenti & Fiori (2010:29)

The situation regarding the legislative requirements of civil society in South Africa and South Korea has been able to aptly demonstrate that the statutory environment support and encourage an enabling environment for the registration of civil society movements. Even in instances where civil society organizations are not registered with the NPO Directorate, the right to association as encapsulated in the Constitution still reigns supreme in the sense that CSOs can still be formed, exist have public programmes even without being officially registered. In Ethiopia, the constitution guarantees the right to free association as enshrined in Article 31 of the Constitution. This provision, according to Elone (2013:2) states that “everyone shall have the right to form associations for whatever purpose”. According to Elone (2013:2) the constitution of the Republic of Zambia safeguard fundamental rights and freedoms including the right to freedom of association under Article 11(b).

The same also applies to Zimbabwe. The catch is however the fact that in these countries, these rights are deterred and obstructed by prohibitions against unregistered groups, complex registration procedures, vague grounds for denial, re-registration requirements, and barriers for international organizations (Moyo: 2008). For instance, the 2008 Ethiopian Proclamation on Societies and Charities imposes severe penalties on individuals managing unregistered groups including a fine of US \$800 which can be combined with a prison sentence of up to five years. Such penalties have the attendant effect of discouraging free political activity, the proliferation of free societies, muddles alternative voices, creates insecurity and encourage a climate of fear and insecurity for unregistered civil society organizations.

#### **4.6 Case studies in selected parts of Africa**

Compared with counterparts in the continent, South Africa's legislative architecture largely has promoted and created an enabling environment of cooperation between civil society and the state. The NPO Act 71 of 1997 in the main encourages and promotes cooperation and shares responsibility. For instance, the preamble of the Act state that "to provide for an environment in which non-profit organizations can flourish, to establish an administrative and regulatory framework within which non-profit organizations can conduct their affairs" (*Non-Profit Act 71 Of 1997*). In most cases the right to association is guaranteed by national constitutions. Using a comparative analytical approach with some of the countries in Sub-Saharan Africa. Elone (2015: 3) contends that in Ethiopia, the right to free association is enshrined in Article 31 of the constitution stating that "Everyone shall have the right to form associations for whatever purpose" The Zambian constitution safeguards fundamental rights and freedoms including the right to freedom of association under Article 11 (b) She argues that the same is true for Zimbabwe. However, these rights are obstructed by prohibitions against unregistered groups, complex registration procedure, vague grounds for denial. Re-registration requirements and barriers for international organizations. For instance, in Ethiopia, the 2008 Ethiopian Proclamation ion Societies and Charities imposes severe penalties on individuals managing unregistered groups including a fine of US\$800 or a prison sentence of five years (Elone, 2015).

According to Moyo (2008:5) in Uganda, a five-year guerrilla warfare led to the National Resistance Movement regime to set the stage for the current relations between the state and civil society groups. The regime was concerned mainly with the security threats to its power base hence it (the regime) was overly suspicious of groups that claimed to be independent.

One of the ironies of democratization and the subsequent stability it brings, is that more and more groups mushroom and when they do, governments become more controlling and introduce repressive measures driven by the security and administrative concerns. In an effort to liberalize and encourage democratize spaces, the government led by Museveni promulgated the NGO Act (2006) as the main laws regulating civil society. However, the other pieces of legislation like the NGO Regulations (2008) and the NGO policy (2009) undermined the gains by coming with frameworks that impacted adversely on the operations of civil society. The NGO policy made provision for the establishment of a regulatory body, the National Bureau for Non-Governmental Organizations, NGOs Act 2016). The Bureau had the power to blacklist, suspend, or revoke the permit of an NGO. Although the affected NGO would be permitted to have a hearing before the drastic action, the Act was mum on what this actually entails. The Act also included a special obligations provision which among others required that NGOs not engage in any act which is prejudicial to the interests of Uganda. Any act deemed to be prejudicial to the interests of Uganda or the dignity of its people is an offense which upon conviction, is punishable by a fine and/or a maximum of three years in prison although the Act defines what would constitute this type of act (Library of Congress: 2021).

#### **4.7 The legal and statutory framework to civil society in Sub-Saharan Africa**

South Africa's civil society landscape is much more diverse, dynamic and assertive in holding government accountable, fighting corruption and supporting democracy and democratic institutions, than in many comparable developing countries. Gumede further contends that there has been a dramatic mobilization of civil society in South Africa and across Africa, against poor governance, not since the fight for independence and against apartheid South Africa. According to the Council on Foundations (2020), a philanthropic organization established in 1949, the legal framework for civil society organizations and Non-Government Organizations consists of four primary tiers.

The first tier (*establishment*) allows for the establishment under statutory and common law of the following three forms of NPOs:

- Voluntary associations, established under common law.
- Non-profit trusts, established under statutory law; and
- Non-profit companies incorporated for a public benefit objective or an objective relating to one or more cultural or social activities, or communal or group interests, established under statutory law.

The second tier of legislation (*voluntary registration*) allows any of these organizational forms to apply for the status of a “registered non-profit organization.” Among other requirements, registered non-profit organizations cannot distribute profits, and must meet certain governance criteria.

The third legislative tier (*partial tax exemption*) enables an NPO to apply for a partial tax exemption, most frequently by applying for the status of “public benefit organization” (PBO). Among other requirements, the organization’s sole purpose must be to undertake one or more public benefit activities, carried out in a not-for-profit manner and with an altruistic or philanthropic intent. PBOs may not use their resources to directly or indirectly support, advance, or oppose any political party, but are not restricted from lobbying. They are entitled to a broad range of fiscal benefits, including a partial income tax exemption, an exemption on donations tax, and, for some, an exemption on transfer duty on immovable property.

Finally, the fourth legislative tier (donor deductibility status) allows eligible public benefit organizations to apply for the right to receive tax-deductible donations (Council on Foundations: 2020). This is the reason why there are more than 10 000 registered organizations and a whole lot more that remain unregistered, but which are all playing a pivotal role in advancing the interests and aspirations of ordinary South Africans and in the process doing their part in helping enhance the socioeconomic conditions of the majority of those who remain on the fringes of the economy. A case in point is the dire situation in which many South Africans found themselves in during the harsh lockdown restrictions necessitated by the Covid-19 pandemic. Many South Africans struggled to access basic foodstuffs and a lot of households went to bed hungry. The print and electronic media was abound with stories and pictures of hundreds of people who braved all sorts of weather conditions in queues, some longer than the queues witnessed in the 1994 national elections. People were queuing for food parcels which were either provided by the various spheres of government but also in the main were interventions by multitudes of organs of civil society. The pandemic has also worsened South Africa’s unemployment situation. According to Dlamini (2021), quoting statistics provided by Statistic South Africa, the official unemployment rate increased in eight of the nine provinces with the largest increase recorded in Northern Cape (5.6%) followed by Mpumalanga (up by 5.2%) and North -West (up by 5%). Gauteng was said to have recorded the lowest increase of 0.4%. Women are said to bear the brunt of inequality and pandemics which is why there is a dire need for women to be at the forefront of finding solutions.

Propelled by the founding values and the Bill of Rights, civil society organizations in South Africa, despite the anti-democratic practices of a section of the leaders of the ruling party have continued to do their bit in holding government and its institutions accountable for the various transgressions and violations of the constitution. Sections of leaders of the ruling party have frowned upon the increasing posture of civil society movements especially when they take government to court and have labelled such organizations as appendages of the international governments that have always been against the African National Congress (ANC). Civil society movements have consistently stepped up the challenge to defend democracy and its institutions and the constitution. Various efforts, mass mobilizations protests, class action lawsuits, litigation has been some of the approaches deployed by civil society organizations in an effort to protect vulnerable South Africans. The development challenges of the country such as HIV-AIDS, land reform challenges and the general poverty levels has meant that at times civil society has had to engage the state in confrontational ways. Groups such as the Treatment Action Campaign, Equal Education, Section 27, The Right to Know, Council for the Advancement of the South African constitution among others have has sometimes adversarial and confrontation relations with the state, but also sometimes collegial depending on the context. Moyo (2005) contends that it is this fluidity in relations that has contributed towards some form of constitutional democracy in South Africa. Even countries with 'friendly' NGO legislation show a tendency to control and repress civic expression and agency, particularly through non-legal structures and tactics (Moyo: 2005).

#### **4.8 Civil Society and the African Peer Review Mechanism**

Another point of convergence and similarity in sub-Saharan Africa relates to how the structures and bodies created by the Africa Union make an assessment of civil society organization and their role in the democratization process in the region. The concern around the role of civil society in Africa arises within the broader question of how civil society should relate to governments in the African continent. Mathekga (2007: 36) contends that it is an established trend at least in African societies based on constitutional sovereignty -that the more independent civil society is from government, the more sustainable the process of democratization becomes. This simply demonstrates the inescapable interlink between the success of liberal democracy and the existence of a vibrant, visible and strong civil society.

Sub-Saharan countries had to subject themselves to the African Peer Review Mechanism (APRM) to prove and validate that governments do practice consultation when important decisions are taken and also to demonstrate that civil society is indeed considered an important stakeholder. A definition from the Master Questionnaire of the APRM makes reference to the role of stakeholders. The quote reads “all the representative constituencies in a community including but not limited to government, civil society, trade unions, youth, private sector; women’s groups and religious organizations (APRM Self-Assessment Questionnaire 2003, in (Masterson; 2007:7).

Although this author admits that the definition above might not be conclusive in accommodating all non-state actors, the definition however goes a long way in providing a framework to create collective minimum standards that governments have to adhere to as part of the oversight required by the APRM. What the review does is to encourage governments in the region to ensure that at least the final report of the Country Self-Assessment Report is wholly inclusive and a reflection of the views and ideas of citizens from all walks of life. For instance in the context of South Africa the Country Self-Assessment Report was a product of the involvement of four civil society organizations i.e., the now defunct Institute for Democracy in South Africa (IDASA): Democracy and Good Political Governance, The South African Institute of International Affairs( SAIIA) Economic Governance and Management, The Africa Institute of Corporate Citizenship (AICC) Corporate Governance and The Institute for Economic Research and Innovation ( IERI): Socio Economic Development ( Mathekga, 2007: 38).

While the author accepts the fact that there were more similarities and commonalities in the role and development of civil society, space is however acknowledged that not all African states can be bracketed into one monolithic one, which therefore leaves room for some differences in so far as economic, social and cultural history of the said states. For instance, in post-colonial Africa certain countries like Nigeria, anyone who violates the law (Same Sex Marriage Prohibition Act of 2013 is liable for a prison term of 14 years. A facilitator, meaning ‘a person or group of persons who administers, witnesses, abets or aids the solemnisation of a same-sex marriage of civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria’, can expect to be an inmate of one of the country’s notoriously shabby jails for a term of 10 years. Denunciation of the law was swift.

Across the international community, it was widely condemned for persecuting people for something as natural as their sexuality and for giving a veneer of legality to what is in essence nothing more than pure bigotry (Obadare, 2014:6). According to a 2020 global review by the International Lesbian, Gay Bisexual, Trans, and Intersex Association (ILGA), nearly half of the countries where homosexuality is outlawed are in Africa. In fact, out of the 54 African states, only 22 of them have legalized homosexuality. In some countries it is punishable by imprisonment, while it is punishable by death in four — Mauritania, Nigeria (in states where sharia law is applied), Somalia, and South Sudan. In 2006, South Africa became the first and remains the only African country to legalize same-sex marriage, with a constitution that also protects against discrimination based on sexual orientation. A bill was also introduced in 2018, to criminalize hate crimes and hate speech, and in 2020 South Africa's President Cyril Ramaphosa passed into law the Civil Union Amendment Act, which prohibits marriage officers from refusing to conduct same-sex marriages.

Neubert (2011: 9-10) contends that after independence, besides churches and other religious organizations, a socially active and significant civil society modelled on the European and North American pattern, mainly in the form of welfare organizations and certain special interest groups, grew up only in a minority of African states (for instance in South Africa, Kenya, and to some extent also Ghana). This situation changed from the 1980s onwards, when development politics started to promote African NGOs and encourage self-help through local community-based organizations (CBOs). The assistance provided helped to create dependence on international donors. All these voluntary associations can be regarded as the first expression of a slowly forming civil society in Africa. Nevertheless, its social significance must not be overestimated. In particular the political organizations and trade unions only involved a small, but politically active, group. Most people continued to be integrated in local, traditionally legitimated structures. With independence, the leaders of the independence movements took over the government or participated in political power struggles, and thus left the field of civil society.

#### **4.9 The relationship of civil society with the state in Sub Saharan Africa**

Another area of interest is the association of civil society with the various states in the Sub-Saharan region. The relationship between the state and civil society movements has largely been characterised by adversarial confrontations.

Mention must be made that this statement does not suggest that there have not been instances where the two parties have had cordial relations. Evidence and instances will be provided to demonstrate that there have been occasions where the state and civil society have cooperated in areas of common and mutual interest. The relationship between the state and civil society differs from one country to another. In the main civil society organizations were the bedrock of the struggles by the people to free themselves from colonial bondage occasioned by the partitioning of Africa into various enclaves by the European countries. These CSOs colluded and formed coalitions in an effort to solidify the struggle against apartheid and colonialism. Fighting for political and civil rights were the basis for the on which civil society organizations established coalitions. In certain instances, the civil society organizations established with the purpose of waging a struggle against a particular issue suddenly metamorphosed into political parties. A case in point is Zambia which illustrated that, 'civil society can become a source of counter hegemonic social movements that occasionally are sufficiently strong to effect regime transition. The same also occurred in neighbouring Zimbabwe where civil society organizations formed with the express purpose to agitate for a particular course, then transformed into a popular front agitating for regime change.

Glazer (1997:17-18) offers an interesting take on explaining the relationship between civil society and the state using three models, the radical corporatist model, the functional model and the collector-actor model of civil society. Radical political thinkers in South Africa and abroad have offered several models of state-civil society relations in which civil associations are able to gain access to the state's power and resources without compromising their autonomy. In these models, societal associations establish an equivalence with the state, directly enter the state as active agents or, in extreme cases, actually take the state's place. These models range widely from, at the one pole, various species of radical corporatism to, at the other, models of pure functional representation. Adherents to the Radical corporatist model would allow for the existence of a state alongside, but distinct from, civil associations. Civil associations and the state would enter a partnership, negotiating over certain kinds of policy or sharing out areas of jurisdiction. In this model both the state and civil associations are understood to represent distinctive and legitimate interests needing accommodation.

The point the author is raising is that in the main, the relations between the state and civil society has principally not been rosy nor genial. According to Asuelime (2017: 54) "the ANC has for some time objected to civil society organisations with the critique that nobody has voted for these organisations, and that they are therefore unaccountable". Collaborative relationship/s (sometimes adversarial) between the state and the various organizations have been either with corporatist institutions or allies such as the Tri-Partite alliance between the ANC, the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP) Ballard et al., 2005; Habib, 2005 in (Asuelime,2017:54). Corporatist institutions such as the National Economic Development and Labour Council (NEDLAC), civil society and the business sector have experienced some collegiate relationship with the state and thus are able to discuss matters concerning the functioning of the state and hopefully influence the policy processes of the state (Ballard *et al.*, 2006: 397). Meanwhile, it is somewhat of a struggle for CSOs to negotiate the necessary balance between being both a partner and a watchdog concurrently, especially because of their dependence on government for funding and support. In post-apartheid era however, CSOs are presented with a paradox in which "government supports civil society, particularly those involved in service delivery; and at the same time becomes increasingly wary of civil society, particularly of social movement type organisations that critique the government" (National Development Agency, 2008: 18). To adequately hold the state accountable and helps towards the consolidation of democratic development, CSOs require a meaningful independence from the government.

According to M'boge and Doe (2004:3) in Maseng (2010) after independence in Africa there was generally a good relationship between the state and civil society, the cooperative relationship did not last. The marriage between the civil society organizations, in particular trade unions and students' unions and religious leaders, with African governments did not last, as CSOs turned into forces of political opposition towards the state. This gave rise to confrontational and hostile relations between the state and civil society. This confrontational and hostile relationship between the state and civil society worsened with the increasing tendency towards political decay on the African continent. The political decay on the continent was characterised by decline in competitive politics, the establishment of regimes centred on personalisation of power and suppression of civil liberties (Chazan *et al.*, 1988; Matanga, 2000: 5) in Maseng 2010:37-38). Owing to the curtailment of political pluralism and the introduction of authoritarian regimes, one party state and personal rule, civil society found itself lacking political space to participate actively in the political realm.

Maseng (2010:37-38) further contends that this motivated CSOs to build up confrontational and opposition approaches toward African states, through becoming challengers to authoritarian African states. Mutanga (2000: 5) argues this clearly by indicating that civil society in liberal thought is believed to be a cornerstone of democracy, as it is seen to be capable of providing counterweight to state power through protecting human rights and expanding the political space. In this equation civil society thus is a challenger to the authoritarian African state (Matanga, 2000: 5).

A study of civil society in South Africa will not be sufficient and complete without an in- depth examination into the historical evolution of both the concept and civil society itself in the Arab world. Whilst the evolution of civil society in both South Africa and the Arab world shares some similar characteristics particularly owing to the almost common history of colonialism and apartheid. The theoretical origin of the concept is both a necessary and important aspect which will enhance the understanding of the role and the space that civil society currently occupies in both worlds. A comprehensive analogy of the concept and its etymology and the rise of civil society organizations in South Africa was undertaken in previous chapters. What is however missing is the need to juxtapose that with the historical developments of the concept in the Arab world. Hassan (2008: 90) points out four major reasons for this emergence. The reasons are as follows:

Reasons attributed to ideological orientations or fashion

What we cannot deny, nor dispute is the influence of the literature adapted from Europe on civil society hence a major reference point in debates relating to the emergence of the concept is largely traceable to scholarly literature from the Europe. Scholarly literature on civil society contains a huge influence of neo liberalism as the lens through which civil society is discussed. Two trends are that emerged relates firstly to the ideology of global capitalism which explains the close relationship between globalized scientific institutions in the countries of the centre and some compliant centres in the peripheries. The second takes a firm stand against the autocratic regimes in Africa and the Arab world and tries to strike a balance between the state and civil society.

## Reasons related to the role of the weakening of the State

According to Hassan (2008:91) the role of the state diminished in both the Arab and the African countries by the end of the 90s. from an essential central role. This diminishing role of the state was spurred on by the rapid emergence of civil society movements who occupied the space left by central governments. Some of the functions which were ordinarily those performed by the state were now undertaken by civil society organizations. For instance, in South Africa functions related to poverty reduction were mainly associated with the NGO's particularly the religious fraternity. Churches assumed the role of providing food parcels to the poorest citizens who the state may not be able to reach. The pastoral role of the churches grew in leaps and bounds as a result of the vacuum left by the state. This increased role of the CSOs was largely in response to the popularization of the slogan "Less state-more society". Woods (1992) notes the prevalent use of the concept of civil society in contemporary African studies and the probability of the emergence of new forms of political participation outside the framework of the official state structures. One can even argue that the fall of the Berlin Wall in 1989, the disintegration of the USSR and the rapid decline of the mainly despotic communist states accelerated the arrival of the civil society organizations. This gave impetus to the publics gathering the strength and ability to form and start civil society organizations with the intention to play a more prominent role in the affairs of the state and where possible assist in the delivery of certain services that ordinarily and historically belonged to the national state.

## International reasons

Significant developments in the global world had a large influence in the re-emergence of the concept of civil society. The rise of neo liberalism and democratization of most countries of the global south gave added stimulus to the rise of civil society. These deep changes that pushed most countries into adopting neo liberal policies, prompted many scholars to defining them as "globalization of democracy". A series of international conferences notably the 1990 Earth Summit in Rio, Brazil and the Conference on Human Rights in Vienna, Austria in 1993 among others were instrumental in widening the scope of action of civil society organizations. These international summits also had the effect of galvanizing members of society to openly defy autocratic states and posit themselves as the harbingers of hope in the free world. These CSOs started to create fraternal relations among themselves in the national states and openly agitate for change and reforms.

They also used the platforms offered by these internal summits to also enhance international networks such that their voices and influence grew on an unprecedented scale never seen before. That is why even in the contemporary world, civil society organizations are included in I such as the World Economic Forum and are being acknowledged as development partners by bodies such as the International Monetary Fund.

According to Noyoo (2013:14) in the last decade, the phenomenon of global civil society has also become prominent, especially when globalisation is brought into sharp focus. Undoubtedly, civil society organisations have transcended national boundaries and now confront issues (once perceived in the past as local) at a global level. It is not uncommon these days for civil society networks, from different countries, to work in unison around issues of global concern for example, the rights of indigenous peoples, environment protection or debt cancellation for the developing world. These coalitions are best exemplified by the current waves of anti-globalisation campaigns, which are visible at, for instance, meetings of the World Trade Organisation (WTO). In the recent past, protesters from different formations around the world have descended on these meetings to express disapproval of the WTO's neo-liberal policies and their harmful effects on principally the developing world: in December 2005, protests were mounted by these organisations in Hong Kong; also in Cancun, Mexico – 2003; in Doha, Qatar – 2001; and Seattle, USA in 1999. The expression of solidarity over a global agenda is not only confined to protest action, but to other forms of advocacy in regard to questions of social justice around the world. Recently in response to the attack by Russia on Ukraine, the global Democracy without Borders in solidarity with other CSOs in Russia not only released a statement condemning the 'war of aggression carried out by the Russian regime and its enablers' but also went a step further and organized protest actions as a demonstration of their displeasure at the war that they claimed is a "blatant violation of the UN charter and is against the principles of democracy, freedom and human rights" (Democracy Without Borders: 2022).

#### **4.10 Popular issues of convergence among civil society movements in Sub-Saharan Africa**

There are similarities and areas of convergence and universality regarding struggles and issues waged by most civil society organizations in Sub-Saharan Africa both in the pre-colonial era and post-colonial period. For instance, almost all African states were colonized by the West hence the dominant foreign languages remain English, French, and Spanish and Portuguese to a lesser extent.

In order to fully comprehend and understand the trajectory of civil society in Sub-Saharan Africa, it is important to highlight particular issues which are significant for the purpose of this study. Bratton (1994:6) postulated that on close examination Africa possesses cultural, and religious institutions that express collective identities such as clan. Age-set and brotherhood to which rural folk continue to grant allegiance. He further contends that African constructed fresh forms of voluntary association in response to the disruptive effects of urbanization and the market economy during the colonial period.

This approach assists in enriching and enlightening the discourse on civil society in the continent and discounts the notion by scholars like Boadi (1996) “that civil society is too weak for it to be democracy mainstay and that the ability of civil society to deepen and consolidate democratic governance and put in beyond reversal remain in serious doubt. African civil society derived newfound energy from the climate of political liberalization in most African countries in the 1990s. Civil society organizations took advantage of this liberalized space offered by the release of political prisoners and the gradual dearth of one-party states. This loose restrictions on the existence of civil society enabled governments to even allow the CSOs space to even perform some of the functions that historically were the preserve of the state.

The concept of Alternative Service Delivery (ASD) took root and gained prominence from thereon. According to Ford and Suzzman (1997: 6), ASD can be defined as “a creative and dynamic process of sector restructuring that improves the delivery of services to clients by sharing governance functions with individuals, community groups and other government entities.” It is a collaborative approach to the provision of public services by pulling together organizational resources, values and competencies to improve citizens’ welfare and overall public management. Makumbe (1998) contends that in most of Sub-Saharan Africa, civil society has been effective in bringing about social and political change. Some of the most active groups and coalitions were instrumental in the overthrow of authoritarian regimes and the installation of democratic governments.

These trends, in most pre-colonial African states were largely characterized by the formation of liberation movements which would establish some relations, partnership and coalitions that collectively were established as a front meant to overthrow the colonial regimes which were despotic, dictatorial and did not promote multi-party democracy and the culture of respect for human rights.

In chapter three, considerable attention was given to the participation, role and struggles waged by civil society organizations which culminated in the ushering in of a democratic government in 1994 in South Africa. Starting in 1990, the number of political protests in sub-Saharan Africa rose dramatically from about 20 incidents annually during the 1980s to a peak of some 86 major protest events across 30 countries in 1991. The following year marked the pinnacle of a trend of increased political liberty in which African governments gradually introduced reforms to guarantee previously denied civil rights. There was also a marked upswing in the number of competitive national elections, from no more than two annually in the 1980s to a record 14 in 1993. That the general direction of change was toward democracy is evidenced by the gradually increased availability of basic political rights, which climbed steadily from a low point in 1989 to a peak in 1994. There is thus little doubt that Africans experienced a broad and pronounced ferment of political change in the early 1990s (Makume, 1998:308).

Another brief case study is presented in Table 4.3 below to demonstrate a little synopsis of the areas of convergence and similarities as highlighted in the preceding paragraphs. The Table is extracted from the Southern African Regional Conference of 26 civil society organizations facilitated by the United Nations Office on Drugs and Crime (UNODC). The primary purpose of the gathering was to formulate a regional response for cross border collaboration to fast track UNODC implementation in the region.

**Table 4.3 An outline showing the convergence & similarities of civil society organizations in South Africa, Botswana and Zambia**

Botswana Centre for Public Integrity	Established in 2017, BCPI is a non-partisan, nonprofit civil society organization focused on contributing to the achievement of Vision 2036 Pillar 4 on Governance, Peace and Security, as well as contributing to the attainment of Sustainable Development Goal 16, which seeks to “Promote peaceful and inclusive societies for	Helen Suzman Foundation (South Africa)	The Helen Suzman Foundation promotes good governance, transparency and accountability through policies that translate the aspirations of South Africa’s Constitution into lived reality for all South Africans. The Foundation is not aligned to any particular
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	sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels		political party, but rather participate proactively in public debates to promote constitutional values.
Centre for Ethics and Public Integrity (CEPI) Zambia	CEPI – Zambia is a registered organisation focusing on anti-corruption, integrity, ethical compliance and awareness training. The Center also engages in Corruption Risk Management in both public and private institutions in Zambia. In the long run, the intention is to partner with Government and like-minded institutions with the aim of developing sustainable integrity and ethics awareness programmes aimed at reducing the scourge of corruption in the country.	Corruption Watch- (South Africa)	Corruption Watch is a non-profit organisation launched in January 2012 that relies on the public to report corruption. The reports are used as an important source of information to fight corruption and hold leaders accountable for their actions. Corruption Watch provides a platform for reporting corruption. Anyone can safely share what they experience and observe and can speak out against corrupt
The Foundation for Democratic Process (FODEP) Zambia	FODEP is a civic, non-governmental organization dedicated to the promotion and strengthening of democratic governance in Zambia through election monitoring, advocacy and civic education programmes on the electoral process, local governance and human rights. The organisation was formed in 1992 as a successor to the Zambia Election Monitoring	Freedom of Expression Institute (South Africa)	The FXI advocates for and protects the right to free expression and access to information. Through education, FXI promotes and disseminates information on the importance of freedom of expression as the right to protest and the right to access information. FXI encourages community

	<p>Coordinating Committee, a consortium of civil society organizations which was formed in 1991 to monitor Zambia's first round of multi-party elections.</p>		<p>members to actively participate in local government activities, question matters that affect them and acquire information from their municipalities. In cases whereby information is refused, the use of the Promotion to Access Information Act is encouraged.</p>
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Source: Civil Society: Southern Africa Platform, (United Nations): 2019

#### 4.11 Evolution of democracy in Brazil and South Africa

The concept of democracy in the context of the study on civil society entails the twin principles of popular control and democratic participation. Democracy according to Loh and Civic Exchange (2003: 17) entails the twin principles of popular control over collective decision making and equality of rights in the exercise of that control. Thus, a democracy is a jurisdiction practicing government by the people through elected representatives chosen by a universal suffrage system. To the extent that the principles of popular control and equality of rights are realized in the decision making of any association and gathering, we may refer to this as 'democratic participation'. A political system cannot be said to be democratic unless it incorporates the political instruments and institutions needed to give expression to this democratic culture. At the same time instruments such constitution, laws and elections provide the semblance of democracy if they are not underpinned by a culture of practicing democracy. Fioramonti and Fiori (2010:26) contend that the relationships between civil society and democracy has permeated the history of Western political thought.

The authors further postulate that historically there have been three traditions of thought on this relationship. The first which is articulated by Tocqueville and recently by Putnan (2001) in Fioramonti and Fiori (2010) argues that the civil society arena provides a breeding ground for democratic values. This implies that CSOs act as intermediaries between the state and individuals thus contributing positively to democratic governance.

The other two traditions view the relationship between civil society and democracy through a vertical perspective, in so far as civil society is understood as having a specific relationship with the political system and more directly with the state. The popular understanding in contemporary thinking views and understand civil society as a countervailing force against the excesses of the state against the citizens. In fact, the consolidation, deepening and entrenching of democracy is largely influenced and encouraged by civil society.

It is within this context of the evolution of democracy that the study makes a brief examination of civil society organizations, their rise and development which took different and at times almost similar approaches as informed by the material conditions of the different places in the world. A case in point is the development of civil society in South Africa and Brazil in Latin America. The rise of civil society organizations in Brazil and Latin America came as a result of the fall of dictatorship regimes in the 1960s and 1970s while in Sub Saharan Africa, the formation of CSOs was initiated by the need for democracy and equality (Noyo, Patel and Loffel, 2006:12). South Africa and Brazil share similarities in that the basic institutions and procedures of electoral democracy have now been firmly entrenched. For instance, Brazil's current constitution was promulgated in 1988 and in the next year held its first elections for president by direct popular ballot since the 1964 coup. Although as in any new democracy, there have been uncertainties, however, there hasn't been a total rupture to the constitutional order. The transition to democracy in Brazil was relatively painless. The military disengaged from power, assured by its privileged status. According to Hagopian and Mainwaring (1987:26) traditional political elites facilitated the transition to civilian rule and their support has undeniably helped to construct a democratic government. It is however acknowledged that the traditional political elite's significant role has at times placed obstacles in consolidating and broadening democracy as well as in making that democracy responsive to the real needs of the poor. They have also together with the military, industrial elites and landowners also blocked significant political and socio-economic reforms. South Africa has largely also followed the same trajectory.

The transitional and final constitution was adopted in 1993 and 1996 respectively which helped usher in a democratic government which was elected in a popular vote in 1994. Although it has been a painstaking effort to entrench and deepen democracy, establish and consolidate democratic institutions and resist the attempt by rogue paramilitary groups, landowners and the captains of industry who sought to counter and frustrate the transition, much has been done to make the process of democratization of the state irreversible.

To defend and protect human rights, the government established the Constitutional Court to advance the human rights. Masipa (2018) posits that the Constitution of the Republic of South Africa laid the basis and foundation for a democratic and open society where government is based on the will of the people and every citizen is protected by law. These measures helped to ensconce a culture of democracy and human rights, and also assisted in the establishment of democratic institutions which will help to make any attempt to reverse the constitutional order an impossibility.

According to Heller (2010:7) there are two shared general characteristics of democracy in Brazil, and South Africa that allow for comparison of their trajectories of democratic deepening. First, and most essentially, the comparison here is between two robust and fully consolidated democracies. Second, these countries share a similar class structure and economic system that sets limits to what is substantively possible under democratic regimes. Third, in both countries the path to democratic deepening is obstructed by high levels of social inequality and deeply entrenched practices of social exclusion. In summarizing the state of democratic consolidation in both countries, three points can be emphasized. First, the basic institutions and procedures of electoral democracy have been firmly entrenched. There are no significant social or political forces in South Africa and Brazil who do not accept the basic legitimacy of parliamentary democracy, including in each case well organized and ideologically committed workers parties. Each country has held multiple national and local elections (Heller, 2010:7).

Second, Heller (2010: 8) posits that the basic principles and institutions for the rule of law, including a forceful constitution and a sovereign judiciary are solidly grounded, and have acted as effective and significant counterweights to excesses of political power. It is notable that formal legal procedures in the two countries have been used to force a (President Collor in Brazil and Mbeki in South Africa) to leave power. In an extract authored by Weyland (2018: 1) Pedro Collor de Mello accused his brother and then-president of Brazil, Fernando Collor de Mello, of involvement in an extensive corruption scheme operated and directed by his former campaign manager, Paulo César Farias. Pressured by opposition forces, the Brazilian Congress set up a commission of inquiry to investigate the widely publicized charges. Despite a combination of both passive resistance and active harassment on the part of government, the commission began a searching probe into Farias' diverse and shady dealings.

Following leads uncovered by investigative journalists, the commission found conclusive evidence that Farias had, indeed, paid for many of the president's personal expenses, up to and including a \$2.5 million landscaping job for the Collor mansion grounds. This among a litany of other allegations led to the recall from office of the Brazilian president.

Civil society organizations had also played a significant role in the ultimate resignation of the late former president Collor of Brazil. For instance, about six months before the major corruption denunciations took place there was a surge of organized activity as a response to the mounting problems of recession, unemployment, poverty and inflation, accompanied by growing doubts about the morality of the government (Pousadela, 2010:16). It was then when the Movement Option for Brazil came into being, as a civic, non-partisan forum for cross-sectoral discussion that laid the basis for the formation, several months later, of the Movement for Ethics in Politics. As more information about governmental misdeeds became available, a Movement for Ethics in Politics (*Movimento Pela Ética na Política*) began to organize. In June 23 the nascent civic coalition held a Vigil for Ethics in Politics outside the National Congress in Brasília, in which professional, religious, labour, business and non-governmental organizations, as well as politicians and other “personalities” participated. The ultimate ousting of the president from office although not entirely attributable to the role of civil society alone, however, also bears the hallmark of the extent to which major changes can be effected if civil society organizations make their voice known, mobilize the citizenry and agitate for reforms and the transformation of state and state institutions.

Southall (2008) postulates that in South Africa the then President Thabo Mbeki chose to “relieve” deputy president Jacob Zuma of his responsibilities as deputy president (rather than dismiss him outright) – on the grounds that his standing over allegations that he was the recipient of money emanating from the arms deal. A close associate of the deputy president, Schabir Shaik lost his appeal over his conviction for fraud and corruption related to the arms deal. Shaik had, among other things, tried to use his influence with Zuma to secure contracts for the French arms company, Thint. At the time, Mbeki’s action – announced in a broadcast to the nation – received overwhelming plaudits from within significant sections of the ANC and throughout the media. Within days, however, the party’s national working committee issued Mbeki a sharp rebuff by confirming Zuma in his post of party deputy president. Mbeki has agreed to resign after the ANC announced that it would remove him from office before the end of his term.

Following the decision of the national executive committee of the African National Congress the Mbeki obliged a stepped down after all constitutional requirements have been met.

The two case studies are just classical examples of the fact that the strengthening and deepening of democracy and the creation of strong institutions in the two countries which act as shock absorbers in crisis situations helped to ensure that the abrupt changes in the political leadership in government did not in any way lead to the crumbling of the democratic order. Civil society organizations have also acted as a bulwark against the wrongs committed by the state. For instance, according to Gumede (2018) it was only consistent mobilisation by civil society organisations that compelled many ANC members and leaders to act against former president Jacob Zuma and many other elected leaders and public servants alleged to have been involved in corruption. ANC critics of Zuma leveraged the civil society mobilisation against him, to campaign to prevent Zuma getting his handpicked successor, his ex-wife Nkosazana Dlamini-Zuma taking over from him, and eventually forced him to resign as state president. Former ANC and South African President Thabo Mbeki faced long-running civil society opposition for his refusal to make HIV/Aids medicines available at public hospitals, his perceived lack of consultation and marginalisation of critics. Mbeki's critics in the ANC surfed the way of anti-Mbeki mobilisation by civil society organisations to mobilise and prevent him from being re-elected as ANC president at the 2007 Polokwane national conference (Gumede: 2018).

#### **4.12 Summary of the chapter**

The approach undertaken by the author in this chapter was a comparative study of the evolution of civil society in various parts of the world. The key focus in this chapter was the discussion of civil society in South Africa in terms of how it compares with its counterparts in other regions and countries such as Sub-Saharan Africa, Korea, Brazil and the countries in the Arab world. An important contribution noted in the chapter is the similarities between civil society struggles in despotic dictatorships like Korea before the enactment of democracy and an almost similar trajectory in South Africa. For instance, civil society organizations could not freely organize in South Africa as a result of the policies of apartheid. In Korea the reign by the families of the Confucian dynasty of the Joseon era, colonial experience, the anti-Japanese resistance, among others gave rise to powerful and strong pro -democratic movements which ultimately culminated in the complete reorganization of the state-society relations. The same could be said about an almost similar colonial experience of most of the countries in the Sub-Saharan region which ended with the rise of pro-independence movements and the subsequent victories of the pro-independence organizations in ushering new dispensations.

The subsequent relations between the post-colonial state and the civil society movements also made for an interesting feature in the chapter. For instance, the situation did not change for the better for the sector since most post-colonial administration retained some of the features of their colonizers in their approach and dealings with the civil society sector.

The next chapter will focus on funding of civil society organizations and its attendant effect on the ability of the sector to effect fundamental change in the lives of the people.

## CHAPTER: FIVE

### EFFECT OF FUNDING ON CIVIL SOCIETY AND PUBLIC LITIGATION ISSUES

#### 5.1 Introduction

While South Africa's democratic project appears to be institutionalized and irreversible as argued in the last chapter, it would be foolhardy for everyone including civil society organizations to rest on their laurels and assume that the war is over. The deepening, strengthening and reinforcement of democratic institutions remains very important like a race without finish. It is only when significantly important gains of the democratization project have been internalized and institutionalized that civil society organizations can breathe a sigh of relief. It is thus of critical importance that the issue of funding of civil society organizations be considered an essential ingredient in the growth and strengthening of democracy in South Africa. The need to counterpoise the tyrannical tendencies of governments is the fundamental reasons why civil society organizations should continue getting funding from various quarters in an effort support mass based civic society programmes, advocacy projects and legal warfare in an effort to provide the checks and balances that the democratic state require so as to remain on the straight and narrow. This chapter therefore seeks to examine the upshot of funding and its impact on the role that civil society organizations play in protecting the democratic gains. On the other hand, the second part of the chapter will also make an effort at studying the recent preponderance by CSOs to pursue the legal route as a preferred option of contesting some of the unpopular measures the state has taken against the citizenry.

In observing the issue of funding and legalities as two critical elements that define the existence of civil society, it is necessary to briefly look at the nature of the relationship between the state and civil society since these relations give a proper perspective in how civil society executes its mission of providing a counterforce to prevent the control of the state over all levers of society. Dipholo and Tshishonga (2013: 53-54) posit that from a Marxist perspective, in a society that is divided along various contradictions such as social classes, ethnicity, gender and race, the state cannot be neutral. In other words, the state cannot remain detached from the contradictions in any society.

By its nature and character, the state has a propensity to dominate, control and exert its hegemonic strength over society disregarding its own avowed pronouncements as a custodian of the democratic principles as encapsulated in the constitution and other pieces of legislation. The baseline point from which Marx looks and examine society is from a view of inequality. In other words, by its very character society consist of classes in which the dominant and more powerful sector seeks to exert control and hegemony over the less powerful members of society. Barrow (2020:73) posits that the development of the industrial capitalism and the behaviour of the state is seen as the stirring wheel to the social change. Individual's life and the political actions are determined by the relationship he or she have with the capitalist mode of production in other word bourgeoisie, which shows him as a member of a class rather than a citizen of a state. Marx argues that only with the development of capitalism will civil society emerge. This means that conditions which give rise to the emergence of civil society are ripe when inequality which is a twin feature of capitalism rises and grow in a capitalist setting. Civil society and its acrimonious relationship with the state should therefore be understood against this background of a monolithic state which always seek to control citizens and the institutions in the state to behave as extensions of the state. The history of States is, therefore, the history of such class domination and class struggle. As long as this dominator-dominated type of relation continue to exist between the state and the individual, civil society will continue to exist as a safety zone and buffer between the state and the individual. In other words, the success of democracy has as much to do with public participation activities and the centrality of the role of civil society in the affairs of the state. Putnan (1995:67) argues that membership in groups creates "social capital," or "networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit".

## **5.2 Perspectives on the role of the State**

According to the liberal perspective on the role of the State as espoused by Wetherly (2000:147), the argument for authority is based on the claim of liberty. In the liberal school of thought the state is regarded as 'a permanent necessary evil' whose central task is essentially to secure individual freedom or, more expansively, the 'life, liberty and possessions' of each member of society. Here we see that the argument for the state is derived from an account of the character of civil society (even though this may be a fictional 'state of nature'). It is this liberal perspective on the role of the state that gave rise to the conservative macro-economic model.

This model which is a central feature of multilateral bodies such as World Trade Organization and the International Monetary Fund, prohibits excessive expansionary fiscal expenditure to fund social development. The state must fund NPOs and donor partners that together can support its social development agenda by mobilizing financial and human resources that are a benefit and not a cost to the fiscus (Swilling and Russel, 2002: 73). Liberty requires that individuals should be able to go about their daily business – pursuing their own conception of the good in their own way – free from interference by others. This requires the observance and respect of the rule of law, hence the state, to secure a framework of mutual non-interference. In this sense the state is necessary to ensure the basic conditions for liberty and an orderly social life. Ehrenberg (1995:81) argues that like Arendt, Habermas traces the rise of the social to the same market society which the modern state developed to shield. The separation between civil society and the state resulted from the development of a market which made economic affairs the concern of private people left to themselves. But this same market has been inexorably eroding the material conditions which permitted the development of a distinct public sphere, and the interventionist welfare state was forced to look upon the interests of civil society as its own. As state authority was extended into the private realm as private power began to be extended into the public. Public and private began to penetrate each other as the state became socialized and society became ‘statized’ (Ehrenberg, 1995:81).

Civil society thus contributes greatly to a social, economic and moral order in the community. Notably, given the fact that South Africa is a democracy, individuals are able to voluntarily join and leave any organization out of their own volition. To sum up, according to Jailobaeva (2007: 5) the liberal approach to civil society can be defined as follows: it is a key basis for freedoms and rights of individuals. According to this school of thought, civil society is a space between the state and the individual. The state is occupied by different political associations and economic institutions, where membership should be exclusively voluntary. The state and civil society oppose each other. The role of the state is to frame civil society. It is supposed to conduct non-intervention policy towards a private aspect of people’s lives. The role of civil society is to check on the state to prevent its monopoly.

Having established the theoretical basis upon which the role of the state and its relationship with civil society from both the liberal and Marxist perspectives the chapter will attempt to locate the context through which issues of historical funding of civil society organizations should be understood.

This will then explain why in the recent past they (CSOs) have relied mainly on the institution of the courts (the legal approach) as a tactic and strategy to challenge the excesses of the state against the citizens.

### **5.3 History of civil society funding in South Africa**

South Africa has had a long-chequered history of international donor funding. As alluded to earlier, the international community was united in ensuring the advent of liberal democracy in the country. These funding organisations were mainly concerned about ensuring the promotion of the values, procedures and overall framework of liberal democracy. The levels of underdevelopment and poverty were also matters of deep concern to the international community. As a result, the European community adopted an 'easy and flexible' approach to funding CSOs in South Africa. Under these circumstances, the sector was exempted from the cumbersome and time-consuming procedures surrounding funding applications, project proposals and the monitoring of funded projects applicable in other countries. Notably, South Africa during the period before democracy had legislated mechanisms to control international donor funding. These laws were effectively meant to monitor the activities of the donor recipients and to exercise some form of control over these organizations. The apartheid government was convinced that most CSOs were aligned with the anti-apartheid organizations and the donor funds were being used by such organizations towards funding their anti-apartheid activities. The intentions of government were therefore to stifle, curtail and discourage the growth and activities of the CSO sector. According to Kihato (2001:6) some of the laws which were enacted to achieve this included the following:

- ❖ The Prohibition of Political Interference Act (Act 51 of 1968). This Act got amended in 1985 to become the Prohibition of Foreign Financing of Political Parties Act and was aimed at preventing any organisation which was deemed unfit by the state to can receive foreign funding.
- ❖ The Affected Organisations Act (Act 31 of 1974). This Act was aimed at preventing any organisation involved in anti-apartheid activities from receiving foreign funding.
- ❖ The Disclosure of Foreign Funding Act (Act 26 of 1989). This Act required that organisations report to the government on all funds they have received from donors.
- ❖ The Fund-Raising Act (Act 107 of 1978). This Act prevented organisations from receiving funds from the public, both within and outside South Africa, unless they had

an approved fund-raising number from the government. In addition, The Fund-Raising Act gave the Minister of Social Welfare and Pensions the power to prohibit the collection of funds by CSO if he/she deemed that this was in the public interest, thus introducing stringent political control over the process of obtaining a fundraising number.

Despite these draconian laws, donor funding to civil society continues unabated. Although the dominant discourse argues that civil society organizations are largely dependent on foreign and donor aid. O’Riordan (2013) argues that this is misleading. He argues that the Organization for Economic Cooperation and Development reports that between 2006 and 2011 official development assistance to South Africa increased by 40%. During the same period, governments and donors made repeated commitments to support civil society and accountability in Southern Africa. This view is supported by Hearn (2000) in Winkler (2009:8) who asserts that the support from countries like Denmark, Norway and Sweden, European member states and the USA amounted to an unprecedented \$340 million during the period in discussion. One of the now defunct civil society organizations in South Africa, Institute for Democracy in South Africa (IDASA) at some point in its existence had a staff complement of 140 and was among the most well-funded CSO in the country. According to Hearn (2001), IDASA received grants not simply of tens of thousands of dollars, but of millions of dollars. IDASA also regularly received a \$1 million grant from USAID for a two-year period. Other CSOs like the South African Institute of Race Relations and the Institute for Multiparty Democracy received similar grants from USAID over the same period. Hearn (2000: 819) posits that the USA is, by far, the largest overall foreign donor to South Africa. From 1994 to 1999 it provided a total of \$530 million in donor funding to South African civil society organisations. The EU is the second largest foreign donor, providing an EU Programme for Reconstruction and Development (EUPRD) of nearly \$420 million between 1994 and 1999. Between the two of them alone, nearly \$1 billion of international aid would have contributed to South Africa’s transition. Other significant foreign donors to South Africa are the Netherlands, the Nordic countries, Germany and the UK, providing between \$15 million and \$45 million annually since 1994. Canada is a relatively smaller bilateral donor, providing less than \$10 million per year. The largest actor in the international donor community world-wide, the World Bank, plays a minimal role as a lending institution. Nonetheless it has a significant presence in South Africa by presenting itself as a ‘knowledge bank’ which has provided the government with ‘lessons of international experience’ on every aspect of policy making.

For instance, during the period 1986-91 the European Commission (EC) donated R2 billion to South African CSOs – by far the largest amount given to any single country in that period. It is universally accepted that many civil society organizations received funding from international donor governments and aid agencies in order to advance the struggle against apartheid in South Africa. The highly conflictual politics of apartheid, particularly during the late 1970s and the early to mid-1980s, generated a ‘vast array of more or less popular, more or less institutionalized [civil society] organizations in broad opposition to the apartheid state (Aitkinson, 1996:4).

#### **5.4 The post-1994 funding narrative**

Following the 1994 elections, donors shifted their focus away from civil society preferring to formulate bilateral agreements with the new democratic government. Donors’ focus fell on strengthening the new government during the precarious transition period. In fact, organizations like the Independent Development Trust were set up by government to fund poverty relief, infrastructure development and delivery of services such as housing, and education. It is this establishment of bilateral relations with government and the redirection of aid that largely contributed to the CSOs sector finding themselves in financial distress. It created what Terreblanche (2004:14) refers to as a “survival crisis”. The classification of South Africa as a middle-income country by the World Bank (Eunomix: 2021) did no help matters. Kihato (2001: 11-12) argues that government policy documents proliferated as the new administration tried to articulate its social policies. It also began to implement programmes such as the RDP which were aimed at reversing the skewed distribution of resources brought about by apartheid. It is such programmes that attracted donor funding for the new government. During this period, donors focused on providing the government with ‘technical assistance’ – i.e., expertise, often provided by consultants from the host countries – aimed at strengthening its capacity to make and implement policy. These trends are reflected in the following agreements which were entered into with international donors: the British Department for International Development (DFID), Sweden’s International Development Co-operation Agency (SIDA), Australia’s AusAid, and USAID. During the period 1995-8 South Africa’s largest multilateral donor, the European Union (EU) targeted the Reconstruction and Development Programme (RDP) in terms of its funding of government projects. Key funding priorities included socio-economic programmes such as ‘health, education, good governance, urban and rural development, trade promotion, and the support of small business.

Thus, the increased flow in aid during the period 1995-7 can be attributed to a concerted attempt to help the new government formulate its new policies and to begin its efforts to implement them.

### 5.5 Effect of the global financial crisis of 2008/2009 on civil society

A factor that contributed to the financial problems besetting the civil society sector was the global financial crisis of 2008/2009 which had a severe impact on South Africa. This is a key area that must be mentioned especially since this sector contributes a great deal and in a lot of areas like health, education, food security etc. The economy went into recession in 2008/09 for the first time in 19 years. Nearly a million jobs were lost in 2009 alone and the unemployment rate continued to remain high, at 25% (Rena and Msoni, 2014). Table 5.1 below shows just how the global economic recession affected most South Africans. As shown in this Table women were the most affected vulnerable sector of society in this regard.

**Table 5.1: Unemployment by Gender**

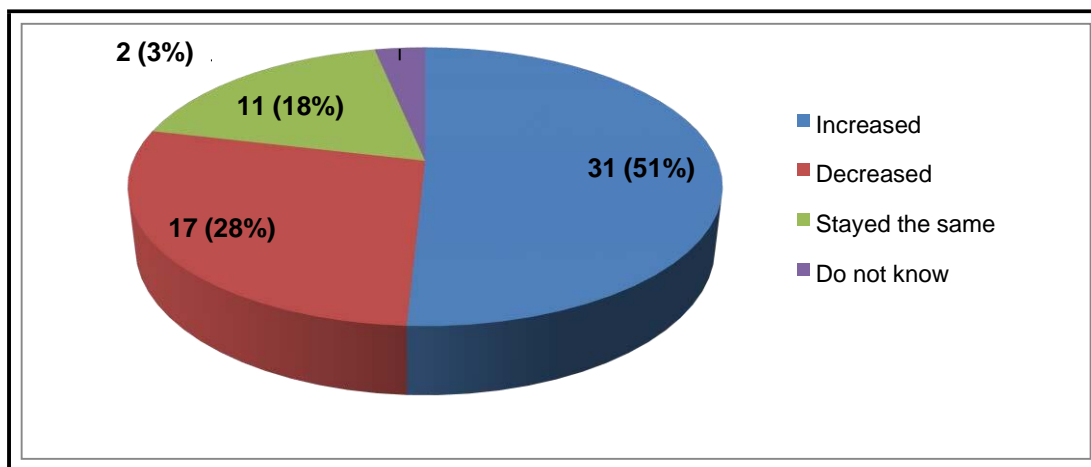
<b>Unemployed</b>	<b>Jan-March 2008</b>	<b>Oct-Dec 2008</b>	<b>Jan-March 2009 Thousand</b>
<b>Total</b>	<b>14 191</b>	<b>3 873</b>	<b>4 184</b>
Men	1 982	1 804	6 036
Women	2 209	2 070	2148

Source: (Statistics South Africa 2009 (a): p, viii) – Quarterly Labour Force Survey – Quarter 1: 2009

While Table 5.1 above gives a general view of the effect of the recession on an important segment of the country: men and women, the CSO sector as an essential component that works with the less privileged particularly women also have to be factored in when looking at the impact of the recession. The sector was negatively affected by this recession as demonstrated in Figure 5.1 below. This Figure shows the extent to which sources of funding which normally sustain the work of the CSO sector was hit hard by the recession. Although 51% of the polled SCOs indicated that the funding increased during this period, the majority of the respondent CSOs whose funding decreased had a substantial decrease of up to 32%.

This decrease adversely affected the operations of these entities to an extent that in certain instances staff had to be laid off. These findings contradict the findings of other studies, which reported a more substantial decrease in revenue. For an example, Alliance for Non-profit Excellence (2009:2) in Hago and de V Smit (2013: 113) found that 73% of respondents reported decreased revenues in their 2009 fiscal year and 18% stated that at least 50% of their budget could be cut, while half the respondents reported at least a 20% decrease.

**Figure 5.1: Status of income during economic recession**



Source: Hagos and de V Smit (2013:112)

### **5.6 Impact of the recession, case studies**

The redirection of funding to government largely contributed to several civil society organizations failing to sustain themselves during the transitional period, during the recession and later into the dawn of the new dispensation. As earlier highlighted, the redirection of international aid to government adversely affected the sector. A brief look at SANCO and TAC reveals some interesting findings. These are discussed in detail below.

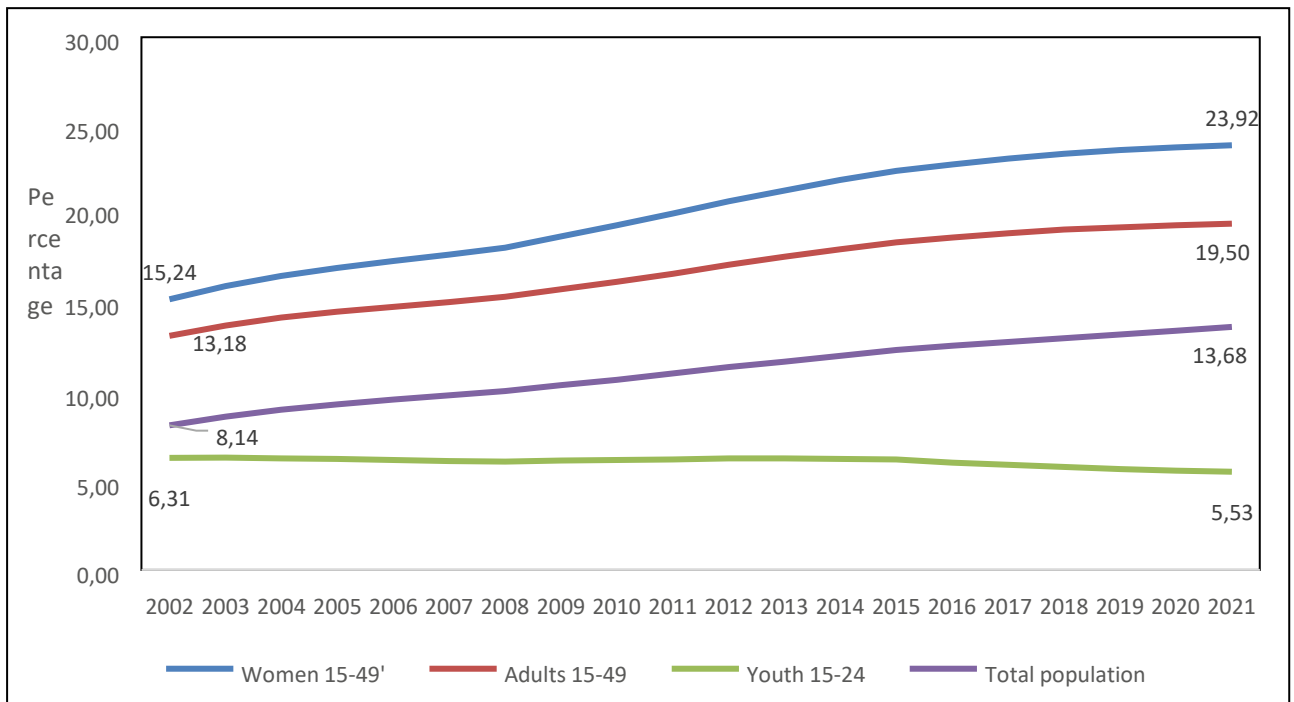
### **5.6.1 South African National Civil Organization**

While the author does not suggest that the funding crunch that afflicted most CSOs is the sole reason and determinant that contributed to the demise of a lot of CSOs, the lack or redirection of funding to government did however play an important role in the weakening and ultimate death of a number of CSOs. For instance, the famed civic movement, The South African National Civil Organization (SANCO) which is synonymous with organizing mass struggles in the 1980s and early 90s also leading consortium of hundreds of civil society organizations under its umbrella, lost much of its sting during the same period. Historically, the formation of (SANCO) had marked an important stage in the development of civic organisations in South Africa and, more broadly, of the political system as a whole. Since 1992, SANCO has also played a pivotal role in the negotiations that led to the ensuing reforms at local government. SANCO was always in the forefront of the mass struggles waged by the people especially in rejecting the imposition of Black Local Authorities on Black townships. Nthambelani (2008: 93) postulates that civil associations played an important role as localized grassroots organizational structures that are accountable to local constituencies and were able to mobilize and organize people around the concrete particulars of their everyday lives. The largesse that SANCO was receiving from international aid agencies and countries was mainly channelled through Kagiso Trust. Seeking (1997:7-8) posits that Kagiso Trust channelled about R14 million to the civics between 1987 and 1992. He further says that Swedish labour movement and USAID with a total income of over R0,5 million in its first eight months. Some of SANCO's provincial structures also received smaller grants from foreign church or developmental organisations. These funds were generally seen as contributions to the struggle against apartheid and for the creation of a more representative democracy. They therefore dried up rapidly as soon as an ANC-led government was elected in 1994, causing severe difficulties for the organization. Another organization which suffered a similar fate to SANCO was IDASA which was, according to O'Riordan (2013:1) one of the few internationally organized entities working in the realms of democracy and governance that not only monitored the quality of democracy but also held decision makers to account.

### **5.6.2 Treatment Action Campaign (TAC)**

At some point Treatment Action Campaign (TAC) was reported to be facing possible closure as a consequence of serious funding difficulties. The TAC is a civil society organization renowned for successfully mobilizing popular support for the state to drop the cost of medicines related to HIV/AIDS and also for compelling the government to end its AIDS denialism ultimately galvanising support to ensure government provide the HIV/AIDS sufferers with anti-retroviral drugs to fight the disease. The organization (TAC) has continued to play an important role in encouraging funding for HIV research, treatment literacy hence millions of South Africans continue to benefit from being on ARV treatment in South Africa today (Piot *et al.*, 2014: 32). The effect of the loss of funding to organizations such as the TAC would obviously have dire consequences for the continued investment in the research on HIV treatment, in treatment literacy, educating communities about the continued risk of HIV, the importance of adhering to the treatment regime. This is all the more worrying given the fact that according to Statistics South Africa, Midyear Population estimates (19 July 2021), the total number of people living with HIV is estimated at approximately 8,2 million adults which is about 13,7 % of the total population (Statistics South Africa, 2021). South Africa still has the highest number of people enrolled on Anti-Retroviral Treatment programme in the world. With the added devastation caused by Covid-19, the country cannot afford to adopt a lax and limp attitude in its attitude to issues of HIV/AIDS. It is against this backdrop that civil society organizations such as the TAC cannot be left to die if the statistics depicted in Figure 5.2 below are anything to go by.

**Figure 5.2: HIV prevalence by selected age groups, 2002–2021**



Source: Statistics South Africa (2021: 16)

### 5.7. Corporate Social Responsibility and civil society

There is obviously legitimate concern about the effect of the over reliance on government funding as a major source to sustain the programmes of civil society organizations. It is within this context that the private sector is urged to come on board and help in this regard. This will enable CSOs to undertake socio economic activities. The declaration of South Africa as a developing state should attract the private to contribute its fair share in the funding of the sector. This is what is referred to as corporate social responsibility. Corporate social responsibility is defined by Call2Care (2018) is a broad term which describes a business’ efforts to uplift or improve society. The World Bank’s working definition of CSR is as follows “Corporate social responsibility is the commitment of business to sustainable economic development – working with employees, their families, the local community and society at large to improve the quality of life, in ways that are both good for business and good for development” Ward (2004) in Abrahams (2015: 16).

As a philosophy, CSR maintains that businesses are members of the society they operate in (corporate citizens) and are therefore accountable to society for their actions. Major areas of corporate social responsibility activity by South African companies are education, social and community development, health and HIV/AIDS, environment, food security and agriculture, entrepreneurship and small business support, training and skills development. The activities mentioned herein are the core areas of operation for the civil society organizations in South Africa.

Despite the growing trend towards greater CSR, there still seems to be some resistance to it. Authors like Mersham, Rensburg and Skinner (1995:87) in Davids and Theron (2014: 75) put forward the following arguments in support of this resistance:

- Social service delivery and efforts to improve the quality of life of a society is primarily the responsibility of the state, not of business.
- A company has an economic responsibility only to its shareholders, that is to supply goods and services in a manner that will maximize profits.
- The financial cost of CSR is too high. This high cost may force certain companies to withdraw from the market, leading to higher unemployment.
- A company is a specialized economic unit which does not necessarily have the capacity to address social problems effectively.
- Public expectations regarding the social role of the private sector are unrealistic.
- Increasing pressure on the private sector for greater social responsibility may lead to the demise of the free market system.

In spite of the reservations espoused above, the private sector continues to contribute significantly in funding the civil society sector. Whether these contributions are inspired by philanthropic reasons, market related reasons or the need to get tax rebates is neither here nor there. The available statistics, which are shared elsewhere in the study, do demonstrate a considerable increase in the contributions of the private sector towards CSR.

## **5.8 Donor expectation and contribution to civil society**

Donors themselves in assisting with funding to the sector have a responsibility to provide support in the form of education, financial literacy, bookkeeping, adherence to corporate governance codes, among others. This support is important in view of the fact that a lot of civil society organizations were largely comprising of political activists who used the SCOs as vehicles to support the anti-apartheid activities of the ANC and were not necessarily possessing academic qualifications in finance and accounting which gave rise to the concept of ‘struggle bookkeeping’. According to Kabane (2011) the nature of CSO-donor relations in the past was largely shaped by the apartheid government’s hostility towards anti-apartheid organizations. Partly as a result of this hostile environment, the administration and expenditure of funds was not strictly controlled; few recipient organizations were required to keep books, undergo independent audits, or report back to donors on how the money was spent, as it was believed that this could expose those organizations to the attention of the state. As a result, most CSOs could not adequately account for funds that were allocated to them by international aid agencies. The much-publicized funding scandal that beset Allan Boesak’s Foundation for Peace and Justice NGO in which Boesak was charged for theft and fraud amounting to R1,3 million of donor funds is a case in point. As such much effort has not been made to ensure that office holders in the sector possessed the required academic qualifications and specialized skills necessary to use the funds allocated prudently. Capacity building skills is one area that donors can make a significant contribution to arrest this malaise of lack of the required skills set. The other important area of support is with access to data and information. According to McDonough and Rodriguez (2020: 6) CSOs require data and information about their issue areas to build their understanding and ability to communicate effectively, and donor support for this can range from creating data analysis tools to simply providing internet access.

The author went to great lengths in chapter three to track the historical development of civil society in South Africa. For instance, the historical conditions of apartheid colonialism provide a fertile breeding ground for the rise and consolidation of civil society formations. The tremendous role played by CSOs is one of the fundamental reasons South Africa is a democracy today. The adversarial relations between the apartheid state and civil society largely had to do with the policy of segregation. It is in that context that foreign governments either directly or through international donor agencies channelled millions of Rands to internal civil society organizations to aid the democratization project.

The ANC's ascension to power necessitated a marked and complete reconfiguration of the role civil society had to play in the new dispensation. Civil society's dependence on their historical ally the ANC had to be critically reviewed owing to the changing political landscape. The change in the historical relations between the ANC and the civil society organization is exemplified by the ANC's adoption of the neo-liberal Growth, Employment and Redistribution Strategy (GEAR) macro-economic framework. The civil society sector input as was the norm previously was not sought nor canvassed in the adoption of his policy. This had the attendant effect of creating a hostility in relations between the governing party and the civil society sector.

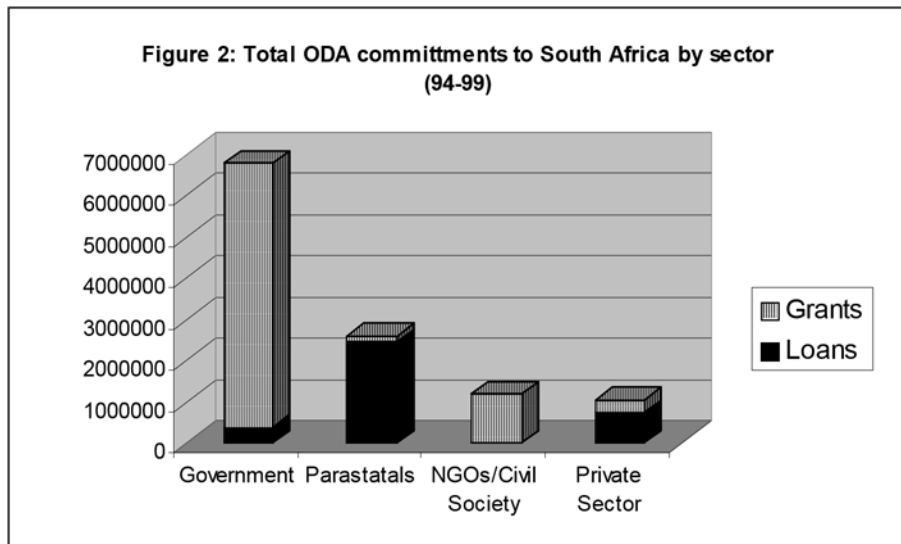
### **5.9 Factors attributed to the funding crunch**

The civil society sector experienced a significant decline in funding due to a litany of reasons. For instance, besides the sometimes-cumbersome registration process in certain states, "international civil society leaders have identified a more general decline in funding available for advocacy, rights-based activities, or causes that challenge the status quo" (World Economic Forum, 2013 :7) in (Asuelime, 2017:60). Among them was the fact that there was a proliferation of civil society organizations in South Africa which were now competing for the dwindling aid from abroad. According to Weideman (2015: 5) evidence suggests that the NPO sector has grown since the early 1990s. In the period 1998/9, the NPO sector was estimated to be a R9.3 billion industry, employing 645 315 persons, and consisting of 98 920 NPOs (Swilling and Russell, 2002). These were also no transient organisations, and, on average, South African NPOs had been in existence for 19 years (Swilling and Russell, 2002). To their defence a number of CSOs during the struggle adopted a secretive mode of operation. This mode of operation led to some organisations to have inadequate governance systems, deficiency in accountability mechanisms and a reluctance to share information. This could be one of the reasons that contributed to the decline in funding of such organizations post-1994. Some civil society organisations such as the Treatment Action Campaign (TAC), while still active today, have had to downscale because of declining income. Gumede (2018: 1) argues that this decline should not be celebrated nor encouraged and that South African civil society organisations should quickly find new sources of income within and outside the country so as not to deprive the country of one of its last lines of defence against rampant corruption, public service failure and abuse of power by elected and public representatives.

Many industrial countries have cut development aid to South Africa, arguing that it is a middle-income country which has made significant advancements in development over the past few years (Tjønneland *et al.*, 2008; ICAI: 2016). Although funding for Non-profit organizations declined after 1994 to a low point in 1995 as Overseas Development Aid (ODA) switched focus from civil society movements to government, by 1999 the levels of ODA for NPOs had returned to their 1994 levels (Swilling and Russel, 2002:59. In 2013, for example, the United Kingdom said it would cut R250 millions of development aid to SA over two years thereby threatening the survival of South African civil society organisations depending on its funding (ICAI, 2016). Gumede (2018) further postulates that there has also been a general backlash in Western countries against foreign aid to African and developing countries in general. An argument in this regard was that such funding should be spent at home rather than getting abused by African and developing country's governing elites (OECD, 2015; Devex, 2016) in Gumede (2018). One of the reasons that the made foreign governments to cut funding to the country largely had to do with the fact that some leaders emphasized the need for a close doorism type of domestic policy approach. For instance, under the Trump administration in America, the focus became "America First". Trump's administration had decided on cutting aid to Africa by 35 percent. The United States' foreign aid to Africa was US\$8 billion in 2015. Fast forward to 2018 the Trump administration has requested from Congress US\$5.2 billion in foreign aid to Africa for fiscal year 2018 (Himbara, 2017). Obviously, such an inward-looking type of foreign policy by a major funder (USAID) to the emerging democracies of the world like South Africa would have the effect of weakening the strength of civil society organizations which mainly rely on foreign funding for their programmes. Makumbe (1998:314) argues that foreign owned business enterprises operating in Africa are reluctant to support and strengthen civil society organisations since they consider their primary objective of being that of making a profit. They claim that they are not interested in politics and seek to be perceived by governments as good partners rather than subservices bent on destabilizing the state. These multinationals want to be seen as being on the right side of the government. It is this approach by foreign business enterprises which gave rise to the concept of corporate civic responsibility in which government acknowledge its inability alone to solve the socio-economic challenges facing South Africa and therefore relies on the contribution of the private sector to play their part.

Using the data released by International Organisation Development South Africa, this section attempts to provide a clearer picture of funding trends post 1994. Figure 5.3 below lends credence and statistical evidence to the fact that the redirection of funding from civil society organizations to the South African government did also contribute to the fading fortunes of CSOs. Overseas development assistance was mainly re-routed to the democratic government so that it could pursue its developmental goals and also to strengthen democratic institutions in the country.

**Figure 5.3: Grant allocation per sector from Overseas Development Assistance programme**



Source: P Daya & R Govender in Kihato (2001: 13)

According to Kihato (2001:14), Figure 5.3 above shows that the government receives 54,6 per cent (R5,804 million); parastatals 24,4 per cent (R2604 million); NGOs 11 per cent (R1,182 million); and the private sector 10 per cent (R1,182 million). Overseas Development Assistance (ODA) to civil society represents one fifth of donations to the government. Surprisingly, ODA to civil society and the private sector is almost equal, with the difference being the nature of the funding: fully 71 per cent of ODA to the private sector are loans, whereas 100 per cent of ODA to civil society are grants. While CSOs rank second lowest in terms of funding from overseas donors, they are arguably better off than both the private sector and parastatals whose funding largely consists of loans that have to be paid back.

By contrast, funding to CSOs is 100 per cent grants which the sector has no obligation to pay back. Although this does benefit the sector, the lack of obligation to pay back does not mean that no obligations exist. Funding often comes with conditions on how, where, and when it may be spent, and what outcomes are expected (Kihato,2001:14). The international donors often prefer to fund non-profit organizations rather than governments owing to high levels of corruption in many governments. The donors also believe that NPOs are able to effectively make use of the resources provided faster and more productively as opposed to the red tape and bureaucratic processes synonymous with governments.

Funding of the sector was not only the exclusive domain of international aid agencies. The South African government also contributed greatly to the funding of the sector. Swilling and Russel (2002:34) postulate that the South African government contributed significantly higher to the civil society sector than most international countries. Of the R.8 billion contributed by the western world, South Africa contributed about 42% of that amount. Not surprisingly the bulk of the funding from the government was mainly directed to sectors such as social, health, development and housing services. Table 5.2 below shows the patterns of funding as discussed herein.

**Table 5.2: Comparative profile of selected sectors**

	<b>Total number of FTEs per sector</b>	<b>Number of organizations per sector</b>	<b>Average number of FTEs per organization</b>	<b>Total government funding per sector</b>	<b>Average government funding per organization</b>	<b>Socio-economic categories in which the majority of organizations are concentrated</b>
Social services	144 202	22 755	6.3	R2.1 billion	R92 287	47% in category 4-7

Health	56 296	6 517	8.6	R1.7 billion	R260 856	42% in category 5-7
Culture and recreation	98 776	20 587	4.7	R50 billion	R2 428	49% in category 9-10
Development and housing	100 512	20 382	4.9	R1.1 billion	R53 969	51% in category 8-10

Source: Swilling and Russel (2002)

A study conducted by the NDA (2016:4) found that of the 40 national departments, only 24 had allocated funding for non-for-profit organizations. The NPO funding by national departments varies significantly. For an example, in 2013/14 the Department of Communications allocated about R399 thousands for NPOs whilst the Department of Sciences and Technology allocated about R533.5 million. The departments of Health, Social development, Sports and Recreation as well as Arts and Culture combined allocated about R600,2 million in 2013/14 and about R507.9 million the previous financial year. The results of this study, looking at only two financial years, has found that the government has allocated over R37.7 billion to NPOs over that same period. This suggests that the level of funding from various sources is significant compared to government funding. The NDA has, since its inception in 2001/2, contributed over R1,5 billion to the sector. This also implies that government is also playing a significant role in funding NPOs in South Africa. Although the funding to the sector has never been truly, objectively and accurately quantified, the sector does however receive substantial grants from the national and provincial legislatures as reflected in their annual budgets (National Development Agency, 2008).

The other form of funding which civil society received was from the private sector. The advent of the term Corporate Social Investment (CSI) in South Africa brought with it the ability for welfare and private and any interested party to evaluate the size, scope and impact of private sector donations to less fortunate people. CSI was lauded as a vehicle by which funds towards the CSO sector in South Africa would be delivered. The democratization project created millionaires in the form of the likes of Patrice Motsepe, South Africa's current president and Tokyo Sexwale, among others.

These multi-millionaires contributed substantially to the civil society sector as part of their CSI responsibilities. Bigger conglomerates like Vodacom, Nedbank, Old Mutual, Anglo American and the South African Breweries also chipped in with massive contributions to the sector. Trialogue in NDA (2016: 10) reported in 2012 that the private sector funded civil society organisations for R8 billion through corporate social investment schemes. Similarly with government, the private sector was also considerably biased towards sectors such as education, health and training (as part of skills development) in their funding of the CSO sector. Table 5.3 below shows these contributions in percentage terms.

**Table 5.3: Percentage of CSI budgets disbursed to development sectors between 2000 and 2012**

Sector	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Average
Arts and Culture	4	4	3	1	4	4	3	3	3	3	3	35	2.9	<b>2.9</b>
Community and Rural development	5	5	7	5	7	-	-	-	-	-	-	-	-	<b>5.8</b>
Education	38	38	36	39	39	37	33	31	31	38	33	38	43	<b>36.4</b>
Environment	4	4	4	4	4	3	3	6	6	6	6	4.5	4.5	<b>4.5</b>
Health	9	9	13	15	15	17	18	11	19	17	17	16.5	11.6	<b>14.4</b>
Housing	3	3	1	2	1	1	1	1	1	1	1	2.5	1.7	<b>1.5</b>
Job creation	10	10	11	14	10	8	12	13	13	7	8	-	-	<b>10.5</b>
Safety and security	3	3	2	2	3	1	2	16	2	2	2	1.5	2.2	<b>2.1</b>
Social development	7	7	10	10	7	15	15	2	16	9	14	17	15.3	<b>12.1</b>
Sports development	6	6	4	4	3	4	4	4	3	4	4	3.4	2.5	<b>3.9</b>
Training	11	11	10	10	7	10	12	13	6	13	12	-	-	<b>8.6</b>
Food security	-	-	-	-	-	-	-	-	-	-	-	4.4	6.9	<b>5.6</b>
Enterprise development	-	-	-	-	-	-	-	-	-	-	-	4.3	5.3	<b>4.8</b>
Other	-	-	-	-	-	-	-	-	-	-	-	4.5	1.4	<b>2.9</b>

Source: NDA, 2013: 29.

One of the outcomes of this new funding regime was the considerable revolutionary impact of the new approach on the sector. According to Habib (2003), one of the most obvious outcomes of the change has been the evolution of CSOs into three distinct blocs, namely:

(1) Formal NGOs, many of whom have moved into a collaborative relationship with the state;

(2) A growing number of informal survivalist Community-Based Organisations (CBOs), networks and associations, largely disconnected from the state, whose main role is to assist poor and marginalized communities in their struggle for daily survival, and

(3) A growing number of social movements, some nationally based (such as the Treatment Action Campaign) and some locally based (such as the Soweto Electricity Crisis Committee). These are more formal community-based organisations, which have a distinct leadership and membership, often supported by a middle-class activist base. Nthambelani (2008: 21) also argues that the attendant effect of the funding crisis led to the decline of the civil society sector. One of the points that he raised is the demobilization of the of the popular base once the goal of liberation had been met and the co-option of the leadership of such organizations into mainstream government. It is the latter point that has contributed to the decline in the fortunes of the CSO sector.

The high turnover of leaders from the sector joining government as civil servants and members of the various spheres and organs of government (and the private sector) had an adverse effect on the stability and flourishing of CSOs. This migration of leaders created a large vacuum within the ranks of civil society. Seeking (1997: 6) paints an interesting picture of the turnover of the leaders of SANCO by saying that “Of the original NEC, the president and one other member were elected to the national parliament in April 1994; the vice-president joined them in 1995 to fill a seat vacated by another ANC MP. Four other National Executive Committee (NEC) members were elected to Provincial legislatures in April 1994, and two more were appointed as senior provincial civil servants. SANCO’s Provincial Executive Committees (PECs) were also depleted through elections. In the Western Cape, for example, the provincial secretary was elected to the provincial legislature in 1994, and the vice-chairperson and three of the most active members of the provincial executive committee were elected to local government in 1996. Senior SANCO officials have had to be co-opted to fill vacant positions. Hlongwane, for example, was co-opted as national president in 1995. At the time he was not even a member of the NEC”.

The preceding quote is just but one practical demonstration of the high turnover of leaders from the civil society sector who left the sector *en masse* to join government which led to serious problems with regard to organizational capacity of the sector. Problems such as the mismanagement of funds, poor or non-existent financial recordkeeping, a lack of strategic planning and clear and cohesive goals are generally some of the factors that led to the collapse of many CSOs.

The challenges of the democratic era changed from fighting the apartheid state to having to relearn to confront new enemies such as poverty, landlessness and other socio-economic challenges. This meant that civil society has to review and remould its approach to the new challenges of the democratic era. The need for the consolidation of democracy, the centrality of human rights issues, effectiveness of institutions of oversight, integrity and relative autonomy of the judiciary, transparent and accountable governance, rule of law, are some of the reasons which have created a need for a vibrant and efficacious civil society including the independent press which has so far worked to counteract the overbearing power of the state post 1994. The questions of unequal access to opportunities, the slow pace of transformation, corruption, ethnic and racial discrimination, the need to prevent the country's descent into a one-party state and by extension a despotic state, are some of the reasons which created the need for civil society organizations in South Africa to continue being vibrant participants in ensuring that the country remains on track in fulfilling its Constitutional obligations to the public. Nhlapo (2012: 11) contends that in 2000, the United Nations Millennium Summit formulated the Millennium Declaration which outlined a wide range of commitments in human rights, good governance and democracy. As a member of the UN, South Africa also adopted this declaration. This resulted in the Millennium Development Goals that have been commonly accepted as a policy framework for measuring progress in the area of development. The Millennium Development Goals focus the efforts of the world community on achieving significant and very measurable improvements in people's lives. It is such commitments made by the government in improving the lives of the public that have continued to shape the need for a vibrant civil society sector in South Africa in an effort to strengthen democracy. According to Kapundu (2017: 31) CSOs became more popular during the last decade (2000-2010) and are regarded as more reliable agencies through which poverty and development can be addressed. CSOs have become a bridge to enable access to areas where ordinarily the state cannot provide sufficient services such as housing, water and electricity to its citizens.

## 5.10 State-civil society relations

Civil society has been demanding an increasing role in the area of public policy formulation and implementation, monitoring and evaluation of government programmes at all levels of the state as a means to counteract the increased market fundamentalism and liberal approach of the government in partnership with the private sector. The growing gap between communities and the government has created a fertile ground for violent community protests over the slow pace of service delivery. Lately, “many new social movements and civil society actors have accused the post-1994 government of having developed an exclusionary style of decision-making from which key social constituencies and civil society more broadly, are excluded” (Landsberg and Mackay, 2006: 10). The African National Congress (ANC)-dominated government has failed to consult widely and to include a wide range of key actors in the policy-making process. Civil society organisations have experienced the government as unfriendly, and sometimes hostile to those who thought differently on key policy issues. A key feature of social movements in South Africa has been the links which many have developed with anti-corporatist and anti-globalisation movements. Platforms like the World Social Forum (WSF) and the World Summit for Sustainable Development (WSSD) have become important organising forums for social movements (Landsberg and Mackay, 2006). South African activists have formed alliances with groups and individuals associated with these organisations. Notably, the Green Peace International movement is headed by a South African, Kumi Naidoo. Global networks are broadening and strengthening the interests and capabilities of local CSOs (Abrahams, 2017:11). The picture presented above is one among the many reasons which created conditions for adversarial relations between the sector and the ANC-led government.

Habib (1999: 76) posits that many NGOs, as part of the broader civil society sectors have since 1994, recast themselves in several ways. These include the following:

- ❖ Many NGOs have been absorbed into or fused with the institutions of the new state as such important policy positions, key personnel, and much funding have moved into the state.
- ❖ NGOs that were closest to the mass-based movements—and have survived the impact of assimilation into state structures—have, often by building on personal networks, repositioned themselves as NGOs with a complementary role to the new state by

undertaking partnerships with government departments, developing policies, or providing welfare and development services.

- ❖ NGOs that have been liberal in orientation have recast themselves as NGOs taking up a position as “watchdogs” of the new state, advocating various policy positions and asserting their independence from the state with the intent of strengthening civil society.

It is largely the latter approach that has characterized the state-CSO relations in the democratic South Africa. The state has had a very strange, inconsistent and self-serving approach in the conduct of its relations with civil society. The tectonic shifts which became a feature of the political history of South Africa in the last three and a half decades are instructive as providing a learning point in the understanding of this relationship. The CSOs, particularly during the transition period led by the then President Nelson Mandela, considered themselves essential players and partners. They were also given space to make considerable inputs in the early policy formulation process including the drafting of the Constitution. Additional funding conduits were conducted through the Urban Foundation which was funded and supported by the private sector and the Independent Development Trust (IDT) which was set up by the government to fund poverty relief, infrastructure development and services in the education, housing and welfare sector (Parsley, 2012:11). As and when civil society organizations support government service delivery initiatives, they would be heralded as important stakeholders and social partners. This inconsistent and self-serving approach would manifest itself in certain instances where the very government would chastise civil society formations for being controlled by foreign donors whose agenda is inimical to that of the democratic state. According to the Human Sciences Research Council (2019: 16), this approach would manifest itself in very ways, for an example, the increasing levels of criticism by government officials and political leaders directed at the CSO sector, particularly when they have played a watchdog role remains a serious issue. The South African Mail and Guardian newspaper (2012), for example, described how the South African Democratic Teachers’ Union (SADTU), an ally of the ANC-led administration accused education NGOs of pushing neo-liberal agendas through their use of foreign funding. SADTU’s General Secretary Mugwena Maluleke further accused NGOs of “working with other political parties,” and stated that “they are driving an agenda that education is a national crisis and using education to destroy the confidence of the public”. Accusing NGOs of working with other political parties implies that the NPO sector is perceived by some as being ‘anti-government’.

A leader of the ANC in government at one point also referred to civil society's work as a "a kind of neo-liberal assault on the people's democracy, suggesting instead that the state itself be socialized" (Mail and Guardian, 2014).

In certain instances, the ANC would criticize and object to civil society organisations with the critique that nobody has voted for these organisations. They would further characterise them as being unaccountable. A substantial proportion of funding for the CSO sector, particularly for service delivery, is derived from state sources. When NPOs are overly reliant on government funding, they can be co-opted by the government to no longer represent the interests of citizens (Naidoo, 2010) in HSRC (2019:74). Habib (2013) further argues that this has the potential to stifle innovation. Having the civil society organisations working exclusively on government-sanctioned programmes could have serious consequences for their independence. This fear therefore makes it even more imperative for the sector to ensure that it has sustainable funding. The distribution of state funds has also been criticised for being opaque, unpredictable, wracked by bureaucratic inefficiencies and characterised by favouritism, with few CSOs being able to benefit (CIVICUS, 2017). Countries like Zimbabwe also instituted legislation restricting foreign funding to local CSOs and prescribing the type of work local CSOs could participate in once they have received foreign funding. According to Elone (2010: 7) in Ethiopia the law restricts NGOs receiving more than 10% of their funding from foreign donors to engage in activities related to the advancement of human and democratic rights. This obviously limits the ability of these organizations from fully contributing in the advancement of their own programmes owing to these prohibitive restrictions. While South African legislation is generally open ended, it is however the attitude of the legislators that at times make the work of civil society to be difficult.

According to Asuelime (2017:58) another challenge in the post-apartheid era is when CSOs are presented with a paradox in which "government supports civil society, particularly those involved in service delivery; and at the same time becomes increasingly wary of civil society, particularly of social movement type organisations that critique the government" (National Development Agency, 2008:18). According to Kover (2021) the quality of CSO–government (State) relations can be gauged along the dimensions of autonomy, partnership, and inward and outward solidarity. These three factors – discussed by a great many social scientists – capture the deep characteristics of civil society, linking it to democracy.

Walzer (1992) identifies this as the “civil society argument”: “Only a democratic state can create a democratic civil society; only a democratic civil society can sustain a democratic state. The civility that makes democratic politics possible can only be learned in the associational networks”. (Walzer, 1992: 104 in Kover: 2021). This universally popular approach does not necessarily capture the type of attitude that speaks to the relationship between the post-apartheid state and civil society. In actual fact the approach in South Africa has largely been erratic and unreliable and sometimes being characteristic of a partnership approach.

In conclusion, Volmink and van der Elst (2017:7) postulate that if NGOs are to fulfil their development potential and contribute meaningfully to the implementation of the National Development Plan, it is critical that the negative cycle of funding insecurity and limited impact be addressed.

### **511. The regulatory framework**

The adoption of the Constitution and the plethora of pieces of legislation that characterized much of the work of the democratic state immediately after the 1994 elections created a new legal framework in which civil society had to function. Further evidence of the commitment of the democratic state towards creating an enabling environment for the thriving NPO sector is evidenced by the adoption of the National Development Plan. According to Greenstein (2003) the National Development Plan (Vision 2030), a policy document facilitated by the National Planning Commission and adopted by the South African government among others states that “Active citizenry and social activism are necessary for democracy to flourish. The state cannot merely act on behalf of the people. It has to act with the people, working together with other institutions to provide opportunities for the advancement of all communities” (NDP 2030, 2013:27). There is a belief in line with the NDP that civil society organisations have a role to play in fostering the inclusion of poor and marginalised groups (Albertyn, 2006). In addition to the sterling role played by civil society, what also helped a great deal is that the basic principles and institutions for the rule of law, including a forceful constitution and a sovereign judiciary are solidly grounded, and have acted as effective and significant counterweights to excesses of political power.

The Constitution of the Republic of South Africa which was adopted in 1996 contains an important chapter which gave the legal base for individuals to establish organizations. This chapter, the Bill of Rights speaks about the fundamental rights and freedoms enjoyed by all people. These fundamental rights cover equality, privacy, property, freedom of expression and freedom of association as well as several socio-economic rights, for an example, the rights to housing and education. To this end, parliament passed the Non-profit Organisations Act of 1997 which defines its scope to encompass trusts, companies and associations that are established for a public purpose. The Act is aimed at creating an environment which will enable NPOs to flourish. It further establishes a regulatory framework within which Non-Profit Organizations (NPOs) can conduct their affairs and encourage NPOs to maintain adequate standards of governance, transparency, and public accountability. According to Charity Law Template (2004) the fact that the right to freedom of association guarantees an individual's freedom to establish, join or take part in the activities of an association is of great significance to civil society in South Africa. This is so because it allows for individuals to associate themselves with others in order to achieve a common objective and the state may not prevent the establishment of associations. Broadly speaking, civil society organisations can be categorised into the following:

- Organisations set up for the personal profit or gain of their members, that is for commercial purposes. Sometimes these organisations are called for-profit organisations; and
- Organisations that are not set up primarily for the personal gain or profit of their members but rather to advance the public interest or some common interest of their members. These organisations are sometimes called non-governmental organisations (NGOs) or non-profit organisations (NPOs).

Over and above this, according to DSD (2016) in HSRC report (2019:8) “the Non-profit Organisation Act 71 of 1997 provides for a registration facility for an organisation to register as a non-profit organisation as part of the legal framework to regulate the non-profit sector. To register in the national database NPOs must proceed as follows:

- Lodge an application for registration as an NPO by filling-in a prescribed application form.

- Submit the form to the DSD NPO directorate with the following documents:
  - the organisation’s founding document, that is, a constitution for a volunteer association;
  - memorandum and articles of association with the company’s registration letter for a not-for-profit company; and
  - a deed of trust with the trustee’s authorisation letter for a trust.

According to Lupin (2022) while the issue of registration might appear, at first glance, to be merely a bureaucratic concern, registration can play a critical role in both enabling and protecting CSOs, and in problematic state control and oversight of CSOs. Registration can bestow legitimacy on organizations, recognizing their legal standing, facilitating their funding endeavours and improving their standing with government bodies and the public. On the other hand, states can use registration requirements to control what kind of organizations are allowed to operate in a country, and to hinder the activities of CSOs through overly burdensome fees and reporting requirements. In fact, registered CSOs can become powerful by virtue of their compliance with the regulatory framework which can even enhance their ability to access funding. The converse might not apply to organizations which are not registered. In a 2016 report, CIVICUS in Lupin (2022) found that the registration process was opaque and a process that “privileges NGOs in the capital [where the Directorate is housed] and its surrounding cities which have direct access to the NPO directorate”. Organizations have reported experiencing extensive delays of up to 18 months in their registration.

The Non-Profit Act further makes provision for the establishment of three different legal structures for non-profit organisations in South Africa, namely: voluntary associations, Trusts and Section 21 Companies. With regards to the voluntary associations, the only requirement to form one is an agreement between three or more people to achieve a common objective, primarily other than the making of profits. The agreement may be verbal or written. It is however customary, but not required, for the agreement to take the form of a written constitution. The voluntary association is a common structure for small or informal community-based initiatives. The second voluntary associations are referred to as Trusts. Trusts may be established for private benefit or public purpose. The purpose of the Trust is set out in the organisation’s Trust deed.

A Trust is an arrangement set out in a written document (Trust deed) in which an owner or founder hands over property and/ funds to a group of people (Trustees) who administer the assets for the benefit of other people (called beneficiaries) for a stated objective. A Trust lacks legal personality, and it technically holds property in the name of its trustees. The last voluntary association that may be established albeit not for gain but as a non-profit organization is a Section 21 company. Section 21 companies must have at least seven members, each of whom undertakes a guaranteed commitment in the event of the financial failure of the institution (Charity Law Templat, 2004). Another important piece of legislation, the Taxation Laws Amendment Act of 2000 exempts organisations engaged in ‘public benefit activities’ which covers a range of activities in welfare, education, health, and related matters. According to the Council on Foundations (2020) to be eligible for exemption from income tax and other taxes, an organisation operating for the public benefit first must qualify as a Public Benefit Organisation (PBO) under Section 30 of the Income Tax Act, as summarized in Section IV. Eligibility for tax exemption further requires the PBO to satisfy additional conditions on its governance and operations. For example, the organisation’s founding document must provide that at least three unrelated persons have fiduciary responsibility for the organisation, and that no single person can directly or indirectly control the decisions relating to the organisation.

Pieces of legislation such as the Lotteries Act 57 of 1997 which makes provision for the establishment of the National Lotteries Board. The purpose of this board is to advise the Minister on establishing and implementing a social responsibility programme in respect of lotteries (National Lotteries Act 57 of 1997). The proceeds generated through the activities of the National Lotteries Fund are disbursed to worthy causes which are obviously the domain of civil society organizations in South Africa. The government went a step further and also promulgated the National Development Agency Act in 1998 whose main purpose is to promote an appropriate and sustainable partnership between the government and civil society organization in an effort to eradicate poverty and its causes. In giving effect to the fundamental objectives of the Act, the government established the National Development Agency (NDA) whose duties are:

- To act as a key conduit for funding from the Government of the Republic, foreign governments and other national and international donors for development work to be carried out by civil society organizations.

- To develop, conduct and co-ordinate policy relevant to its objects referred to in Section 3.
- To contribute towards building the capacity of civil society organisations to enable them to carry out development work effectively.
- To create and maintain a database on civil society organisations, including, but not limited to, the scope and subject matter of their work and their geographical distribution, and share the information in that database with relevant organs of state and other stakeholders (National Development Agency Act 108 of 1998).

It must be noted however that establishment of these bodies while going a long way to regulate and organize the sector, it was not an instant panacea to the challenges of funding that the sector experienced. The NDA has been plagued by corruption and incompetence. In its first year, it distributed less than 10 per cent of its budget. Investigations into NDA spending found that the entity spent more money on marketing and building the profile of board members than it distributed to CSOs. The NDA's failure to distribute funds adequately resulted in significant decreases to its budget from both the state and outside funders (Lupin, 2022). Of similar importance to ameliorate the dependence on government funding is the need for civil society to establish deep rooted relations with the communities that they serve. Many scholars suggest that closing space correlates with weak links between CSOs, the local communities and the heavy reliance on government and external funding. This has a negative impact on development aid. One author Raine in Mendelson (2015:3) argues that "any organization that depends on a narrow number of donors and does not have a broad base of citizen support risks losing touch with the people whom it is trying to serve". This dependency syndrome on foreign funding also undermines the independence and internal decision-making capacity of the sector and contributes to further weaken of any social base CSOs may have thereby rendering them incapable of being held accountable to the communities they serve, or any other domestic constituencies but to the funder (Mendelson, 2015:3-4). An accountability mechanism put in place by the Department of Social Development requires these NPOs to periodically provide reports with regard to the monies disbursed to them annually by the Department. According to Bosman (2020) the Department has what they refer to as the Transfer Payment Agreement through which it enters into binding legal agreements with the NPOs. This entails the assessment of:

- Progress reports submitted by NGOs on a quarterly basis;
- Verification and validation of non-financial data such as the register of beneficiaries of each NGO;
- Targets, outcomes and activities prescribed in the contract;
- Income and expenditure per quarter, and
- Audited financial statements on an annual basis (September-December of a particular year).

The creation of an enabling environment for the establishment of CSOs in South Africa post-1994 is in stark contrast to the period under the apartheid regime. Historically, the apartheid Fundraising Act, which has largely been repealed by the Non-Profit Organization Act and which regulated public fundraising by NPOs, was misused by the apartheid state to monitor and constrain the activities of NPOs which opposed it. Fund Raising Act of 1978 made it "a crime to solicit or receive donations from the public unless this has been authorised by the Director of Fundraising. Any donation received from outside South Africa was deemed as coming from the public within South Africa" (Budlender, 1993:86 in Habib and Taylor, 1999:73). This forced anti-apartheid NGOs, most of whom received the bulk of their funding from external sources, to develop a range of administrative measures that would camouflage their funding sources. Secondly, the political and security environment was hostile to the operations of NGOs. Although the National Party's liberalization programme facilitated the emergence of anti-apartheid NGOs, it did not allow them to operate without any restrictions.

### **5.12 Public Interest Litigation**

A tried and tested approach which has gained popularity in recent years in South Africa is civil that of society organizations opting for litigation in order to exert influence and nudge the government to adopt policies that the CSOs are agitating for (Kathree, 2002). Public interest law is increasingly assuming critical importance in the length and breadth of South Africa. Saraogi and Kashyap (2021) says that on average the Supreme Court receives over 25 000 Public Interest Litigation (PIL) cases in a year. A total of 9 23, 277 public interest litigation cases were filed between 1985 and 2019 whereas in 2019 alone 70, 836 cases were filed in. This shows a substantial increase which is indicative of a rise in the trend of PIL.

Initially there was no need for the civil society sector to adopt this hostile approach. While in the past the courts mainly dealt with issues pertaining to the rights of prisoners, the trend lately has been on issues of socio-economic rights, the plight of migrant children and the need to update abortion laws (Sraogi and Kashyap, 2021). It must be highlighted that these statistics also contain what is referred to as letter petitions which ordinarily are filed more frequently by the public owing to the fact that they can be filed more easily without a lot of bureaucratic conditions.

During the period post 1994 the sector adopted a more conciliatory and collaborative approach. As a result of this many CSOs were seen working with the government in drafting Constitutionally aligned legislation and playing a more positive role in service delivery to complement the efforts of government. This was to change drastically with the unilateral decision to introduce GEAR by the Mbeki administration. The government even defined the sector's primary role as that of having to focus on poverty alleviation without affording the sector an input in that regard. Civil society was largely seen as an extension of the government's delivery machinery and its role as an independent mechanism to challenge, contradict and influence policy was largely overlooked (Ranchod, 2007). The new unilateral and individualistic approach began to define a new set of relations between the government and the sector, hence civil society started to adopt public interest litigation as one form of struggle to make their voices heard on issues of policy formulation and implementation. Terreblanche (2004:18) argues that what made it even more difficult for civil society during that period was the fact that the government enjoyed international legitimacy inspite of its inability to improve the living conditions of the poorer half of the population. The type of policy changes advocated by the CSO sector is consistent with the popular needs of many communities in South Africa. What is also striking about this approach is that the sector uses the Constitutional provisions and provisions of the various pieces of legislation to put pressure on the government on issues of service delivery and accountability. Litigation is a unique advocacy strategy because, while it is not a case of direct interaction with government officials and policymakers, it does allow them to truly see how certain policies could be strengthened or improved upon. This method has largely been seen as another strategy and tactical approach to complement the mass protests which were synonymous with popular struggles in South Africa pre-1994. This form of mobilization requires civil society formations to have deep pockets.

This is mainly because of the lengthy practice associated with court processes in South Africa. Kotze, Sunday World (1 May 2022: 16) refers to this focus on litigation by CSOs as ‘a warfare’. She further argues that this extra parliamentary politics forms part of a defence that, in her view, will give democracy more resilience in South Africa (Kotze, Sunday World 1 May 2022: 16).

### **5.13 Why public interest litigation became a preferred approach**

The litigatory approach which has taken root is in stark contrast with the populist mass struggles that have been a feature of both the pre and post democratic South Africa. The democratic dispensation did not change significantly to discourage the civil society sector to completely abandon the mass-based approach as a tactic to create popular awareness of the excesses of the government. The rise of protest action and mass mobilization organized in the early years of democracy by civil society organizations such as the Anti Privatization Forum, the Treatment Action Campaign, Jubilee South Africa, the Landless Peoples Movement, among others, did not necessarily herald a new era of protest politics. This was just a continuation of a tried and tested method that civil society used to demonstrate their unhappiness with the neo-liberal policies that largely were viewed as having negative consequences for the poor in South Africa. For instance, Ngwane (2010) lists, among others, the policy of cost recovery in the provision of basic services meant that the citizens had to pay steep rising prices for essential services such as water and electricity. It also meant less houses being built as government tried to keep cost down in line with neo-liberal’s fiscal discipline and austerity regimen. The numerous scandals of corruption since 1994, which also gained the ANC government notoriety recently with the procurement of Personal Protective Equipment (PPE) scandals associated with Covid-19, have increased the socio-economic problems in the country creating a lush environment for the struggles waged by CSOs. The fact that not much significant effort is made by the government to solicit the input of the sector in policy formulation processes has also created a gulf between communities represented by this CSOs and the government hence the rise in litigation against the policies viewed as anti-progressive.

Advocacy has thus become another popular approach by CSOs in an effort to bridge the rising gap between the two parties. Advocacy is not just about interacting with the government; it is about ensuring that the interactions between government and civil society are beneficial to ordinary citizens. Budlender *et al.*, (2014:9) posits that the coming into force of the interim Constitution in 1993, followed by the final Constitution in 1996, provided a wide array of mechanisms and machinery for public interest litigation. The socio-economic rights culture encapsulated and created by chapter two of the Constitution provided a base for the emergence of many human rights lawyers willing to take up cases of the suppression of these rights by government on behalf of the affected individuals and communities. These rights, which include among others, matters linked to land tenure, health, education increasingly became dominant themes under the new democratic dispensation. Inadequate attention given to the enforcement of these rights by government departments and entities created an environment where public interest litigation took centre space as a dominant discourse in the country. One of the advantages that comes with public interest litigatory firms, is that they endow civil society organizations with greater strength by training activists so as to become better advocates for their communities. One of the reasons why lawyers and the civil society sector were willing to take up the cudgels on behalf of communities was the realization that most of the aggrieved communities did not have access to resources in the form of capital to challenge decisions of government. Over and above that, the lack of human rights lawyers residing in the affected communities encouraged NGOs to avail their services in helping the communities to fight for their rights. The dogged determination by civil society organizations could also be an indication by the sector of a lack of faith in the political institutions such as parliament. Zibi (2023) contends that the current proportional representation voting system leaves voters powerless in holding members of parliament accountable hence public litigation becomes the only alternative left.

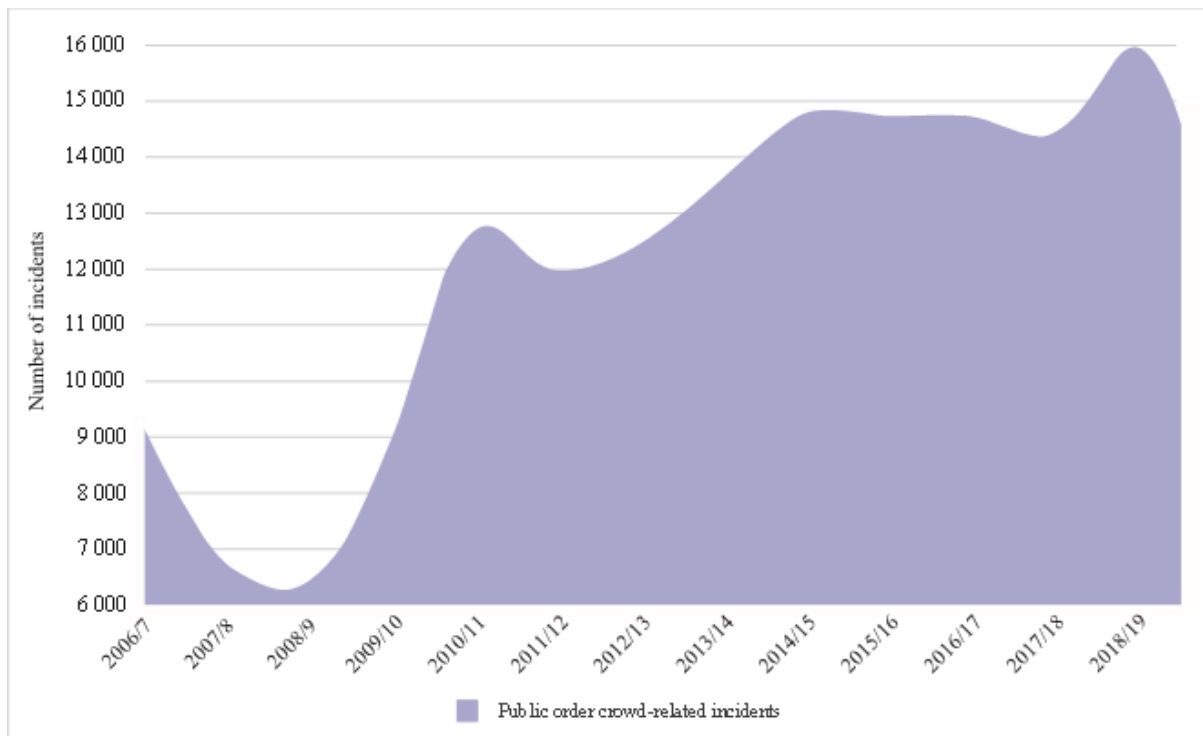
As earlier alluded to in the preceding sections, funding was also one significant challenge which made it quite difficult for NGOs and human rights lawyers to fight for the rights of poor communities. It was a daunting task to pool all your resources as a CSO and challenge the might of the state with all the massive resources at its disposal. Many lawyers were not willing to go all the way owing to the high cost of litigation in South Africa. South Africa remains one of the most unequal societies in the world, with skewed income distribution. The gap between the poor and the rich is growing each year.

Deputy Judge President Mojapelo in a speech to the Johannesburg Attorneys Association's Annual General meeting on 12 September 2018 is quoted as having stated that "the cost of litigation is depriving the poor from access to justice, that although there are organizations such as Legal Aid South Africa and Pro Bono organisations, there is still more to do, to make access to justice a reality for the poor". It is often the state's response in handling the socio-economic rights issues that has largely determined the action and direction taken by the civil society sector in this regard. And quite often the lackadaisical and appalling approach in dealing with this basic rights issues by the state has stimulated the sector to use these issues as a focal point for social mobilization and, as a last resort public sector litigation. For instance, the South African state's response on the HIV/AIDS issue came to encapsulate everything that was wrong with the health system. According to Pieterse (2008:369-69), in a society where the recently adopted Constitution proclaimed access to health care as a fundamental right, the visible and devastating consequences of the state's inability or unwillingness to curtail or ameliorate the impact of the epidemic further powerfully framed access to medicines as a life -or-death human rights issue. It is against this background that organizations like the Treatment Action Campaign's rise as a social movement must be understood. The modus operandi of the TAC, which included advocacy for access to treatment in various forums, engaging in high profile protests and participation in policy formulation processes, became a mirror image of the rise in prominence of extra judicial and legal strategies in the pursuit of the goals of the sector. The main thrust of the legal strategies has taken various forms and has invoked provisions in different legal fields including labour, administrative, competition, constitutional and human rights law (Pieterse, 2008:369).

The democratic space created by the 1994 democratic breakthrough has emboldened individuals and civil society sector to take up cudgels on behalf of distressed communities in the wake of instances where the state is not seen to be living up the aims of its own legislative undertakings and promises. This has invariably engendered an environment in which there is a spike in the number of protests in the country. While there is a litany of reasons which cannot be discounted and that have caused the protests, the main reasons are largely attributable to service delivery protests. This is an indication that the state has not performed as expected in the creation of a better life for all as has been the mantra of the ANC-led government. Figure 5.4 below is sourced from a study commissioned by a civil society organization called the Institute of Security Studies which has been tracking incidents of public protests in the country since 1991 and has become an authority in that regard.

You will realize from the chart that there has been a steady increase in these protests even though at some point between 2014 and 2017 when the incidents stabilized. The study concludes that service delivery and political economic factors are in the main the causes of the spike in these protests (Institute for Security Studies, 2022:7).

**Figure 5.4: Incidence of public protests between 2006-2019**



Source : SAPS

Source: SAPS in Institute for Security Studies, 2022:7)

Figure 5.4 is indicative of the fact that civil society organizations have engaged in all sorts of civic actions and engagements in an effort to compel government to respond adequately to the socio-economic and political needs of the society. The formation of the South African Non-Governmental Organization Coalition (SANGOCO) as a body aimed at coordinating policy inputs from non-government organizations played a key role in harmonising relations between the state and the civil society sector. The entity also served to ensure that the rich traditions forged during the resistance to apartheid continue to serve the South African people (SANGOCO web, undated).

This umbrella organization for NGOs in South Africa and its members who are from all over the region, working together on issues affecting the development of South Africa, was given an opportunity to coordinate the policy inputs and contributions of the NGO sector to the fourth chamber of the National Economic Labour and Development Council (NEDLAC). In spite of all these noble innovations, the sector has continued to feel marginalized despite the government's stated efforts of encouraging inclusivity in policy making processes. When civil society opts to resort to mass demonstrations and other forms of public protests, the response of government is to cite budgetary constraints as the primary reason why some of the issues leading to the protests cannot be satisfactorily addressed for the affected public. This has invariably led to civil society organizations opting to go the legal route to induce the authorities to respond sympathetically to the pressing challenges of poverty, crime, unemployment, illegal immigration and other related socio-economic issues that have characterised the activities and policies of the post-apartheid state. Countless cases abound of instances where the sector has opted to litigate against the state as a last resort to force the authorities to effect service delivery or comply with the provisions of the constitution.

#### **5.14 History and politics of public interest litigation**

It must be mentioned that public litigation as one of the terrains of struggle did not necessarily start with the advent of democracy in South Africa. Several public interest bodies like the Legal Resources Centre and the Lawyers for Human Rights, among others, were engaged in a great deal public interest litigation even before 1994. The legal system of apartheid made any meaningful political participation by the oppressed majority impossible. Since apartheid was also enforced through the law, it followed that the courts would be an important site of struggle. Public litigation was possible during apartheid and yielded outcomes that at the very least mitigated some of the excesses of the apartheid government. This became the base and springboard which made public litigation as one of the critical terrains of struggle to challenge the apartheid regime. For instance, the Centre for Applied Legal studies associated with Wits University was established to promote law reform and create an enabling environment for access to justice by the victims of apartheid pre-democracy. Organizations like IDASA and the Helen Suzman Foundation became known for their unflinching efforts to try and compel the apartheid state to reform, using the litigation approach.

Despite the repressive nature of the apartheid state and the fact that the litigation was mainly pursued by white and Indian counsels, the state had somewhat of an obligation to give space to such cases given the fact that the litigants were protected by the then apartheid government by virtue of the colour of their skin. What also helped the litigants against the apartheid state was that during that period the United Nations Special Committee found it essential to promote the establishment of funds and agencies outside the United Nations, with the assistance of committed Governments and NGOs, to supplement and support UN action, as they were able to do what UN organs could not.

Public interest litigation did not end with the formal demise of apartheid. Individuals, groups, social movements, and other civil society actors continued to use it as one strategy to secure the same goals as articulated in the Freedom Charter (Brickhill, 2018:36). A comprehensive and universally applicable definition of public interest litigation is hard to come up with as it varies in emphasis and strategy according to the various contexts it is used in. The Black Laws Dictionary (2013) defines public interest litigation as litigation in the interest of public in general. PIL is the power given to the public by the courts through judicial activism. Any person who believes that some form of injustice is being committed against society at large can approach the court for judicial remedy. Public interest litigation is the use of the law to advance human rights and equality or raise issues of broad public concern. It helps advance the cause of minority or disadvantaged groups or individuals. Spies (2016) postulates that there are many reasons why public interest groups decide to litigate. He identifies the following five general but often interrelated reasons why public interest groups choose litigation as a means to an end:

- Firstly, groups may turn to the courts when they lack access to alternative avenues such as the executive;
- Secondly, there are certain unique benefits that can be ascribed to judicial decisions, such as its precedent setting capacity, especially in relation to Constitutional decisions;
- Thirdly, litigation may be a means of protecting gains won through other avenues, such as defending a specific piece of legislation;
- Fourthly, groups may seek out the judicial arena to counterbalance their opposition's participation, and
- Lastly, organizations may use the court system when their goals predispose them to litigate.

Badwaza (2005: 37) posits that the South African Constitution has adopted a very liberal *locus standi* for those who seek to litigate in the public interest the rights enshrined in the Bill of Rights of the Constitution. Regarding access to justice, Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing in a court or, where appropriate, another independent and impartial forum. This explicit guarantee of the right of access to justice coupled with the relaxed approach to standing in rights litigation has the aim of making the courts accessible to the ordinary citizen either by self-representation or through public interest groups and individuals. According to Swanepoel (2016: 31) one of the substantive mandates for societal transformation provided by the Constitution is in Section 38, which has significantly broadened standing opportunities for litigants. Section 38 determines that a listed number of persons may approach a competent court “alleging that a right in the Bill of Rights has been infringed or threatened. The court, according to this section may then grant appropriate relief, including a declaration of rights.

It is within the context of a Constitution that provides for transformation that a lot of CSOs have taken advantage of and launched a countless number of court cases in an effort to enforce transformation which ordinarily would not be possible without court judgements. Organizations like Equal Education and Section 27 among others have been at the forefront of CSOs which have identified the courts as a terrain of struggle that can be used to enforce socio-economic rights for marginalized people in South Africa. Even then, it must be mentioned that structural features of apartheid and certain features of legislation still somewhat made it difficult for the socio-economic rights to be enforced. For instance, in an effort to enforce the National Water Sanitation Policy which promotes access to sanitation for all, Equal Education has been fighting the Department of Education in the courts to try and compel the Department to provide safe, reliable water sanitation in schools. Using the Constitutional provision that water sanitation is a human right and part of the dignity of individuals, Equal Education forced the government to ultimately adopt regulations pertaining to Minimum Uniform Norms and Standards for School Infrastructure in 2013 (M&G,2016:38). Despite this, tragic incidents like the death of learners Michael Komape and Lumka Mkhethwa who fell into pit toilets in Limpopo in 2014 and the Eastern Cape in 2018 respectively are still occurring in schools. This bears testament to the need for civil society organizations to continue being vigilant and in holding the government accountable for such gross violations of basic human rights.

Public interest litigation in the South African context popularized the concept of *amicus curiae* participation as a cost-effective and efficient method of representing the public interest. The literal translation of the concept *amicus curiae* is ‘a friend of the court’. It is further defined as an individual or organization who is not a party to a legal case, but who is permitted to assist a court by offering information, expertise, or insight that has a bearing on the issues in the case. Budlender (2018:1-2) argues that the new Constitutional order in South Africa introduced another form of *amicus curiae*; - a non-party request which is the right to intervene so that it might advance a particular legal position which it has itself chosen. Spies (2016) postulates that most public interest groups choose not to enter the legal arena and to concentrate their resources on engaging the executive and general advocacy. When they do decide to enter the legal arena, it is often not as a direct party to the litigation and the method of participation differs. They may set up a test case which usually rests on a Constitutional issue. Here, organised interests would want to challenge legislation or policy, or an individual could approach an organisation with the intention of challenging legislation or policy. This method is not often used, as it is time-consuming and requires a great deal of resources. Public interest groups may also decide to sponsor a case brought by others. The *amicus curiae* method has flourished in South Africa as many civil society organizations seek to influence judicial outcomes in favour of the poor. For instance, Equal Education was admitted as a friend of the court in a case involving the Federation of Governing Bodies of South African Schools (FEDSAS) and the Gauteng Department of Education. FEDSAS was appealing a judgement of the Supreme Court which found that the Department has the final say over schools’ admission policies and feeder zones. The appeal court set aside this judgement after FEDSAS successfully challenged the amended regulations. FEDSAS then took the matter to the Constitutional Court in an attempt to compel the courts to reinstate the original judgement that School Governing bodies must remain the sole determinants of schools’ admission policies and feeder zones. The Constitutional Court upheld the original ruling of the Supreme Court which decided that the Gauteng Department of Education through the MEC must set feeder zones for all public schools by 20 May 2017, in consultation with relevant stakeholders (CDH, 2016). Of particular concern to Equal Education was for the courts to prevent a situation where SGBs, particularly those in predominantly white suburbs, would seek to reinforce apartheid spatial planning by determining school feeder zones solely based on proximity to a school. Equal Education in its submission to the court said that “because geography and race are inextricably linked in Gauteng, black learners will primarily live in historically black areas.

They will fall into the feeder zones for historically black schools that continue to be poor, under-resourced and under-performing”. In contrast , it maintains ‘white learners living in affluent, previously white areas will fall into the feeder zones for historically white privileged schools, creating an admission system that indirectly discriminates on the basis of race and colour” (M&G, 2016: 6).Sunday Times of 10 April 2022 (10) reported a case of two kids Mojalefa and Modjadji Letswalo who since the beginning of that academic year had not yet been admitted at Northcliff High School in Johannesburg which was about 2kilometers from their place of residence. The matter was brought to the attention of Section 27 who assisted the family in this regard. This is but one of the numerous cases which ultimately end with the CSO sector opting for the legal route when they cannot find any joy in their interactions with educational authorities This is among others, the main reason why civil society organizations use the public litigation approach as a vehicle to effect fundamental social change in South Africa.

The high cost of legal representation means that a majority of South Africans will not afford to be represented thereby allowing authorities to take arbitrary decisions that are not in the best interest of everyone. This is why contemporary CSOs are able to report reserves in their financial statements so that they can convince donors of their financial sustainability in being able to finance the cost of programmes including public interest litigation. For instance, it was reported in Malawi<sup>24</sup> (2019) that Barry Roux who represented Prophet Bushiri and his wife who were charged with fraud and money laundering were paying daily legal fees of close to R3 million. Public interest litigation is necessary in view of the high number of poor and unemployed people in South Africa. For most, it is the only way that they will ever afford representation in their entire lives. South Africa has Legal Aid which is an agency created by legislation and operating under the Department of Justice. This entity has a responsibility of offering tax-funded legal assistance to those who may need it. It uses a means test to determine who qualifies for legal representation. For instance, if a person earns less than R7700.00 a month after tax, Legal Aid can be able to represent such a person (Legal Aid website: 2022). With an allocation of R1754. 394 according to the 2021/22 budget vote (National Treasury website, 2021) Legal Aid, despite playing a sterling role in assisting many people, will not be able to cover the large numbers of socio-economic rights related cases in which lawyers requires exorbitant monies to be able to handle those cases. Legal Aid can, on an annual basis, represent and provide legal advice to an average of about 450 000 and 300 000.

Another example of the inability of Legal Aid to cover huge numbers of litigants relates to the Marikana Commission of Inquiry where Legal Aid was hauled before the courts for its refusal to represent other members of the mining community on account of the fact that a commission's (Marikana Commission) mandate was to investigate. The Pretoria High Court had to come to the aid of some of the miners who were originally refused representation when judge Makgoka found that "it had indeed been arbitrary and unfairly discriminatory for Legal Aid to distinguish between groups that applied for legal representation before the commission". He ordered that Legal Aid "forthwith take steps to provide legal funding to the miners for their participation in the commission" *Mail and Guardian*, 12-18 September 2014: 14). While laudable in relation to the massive strides that Legal Aid makes in representing the poor, the complementary role also played by public litigation groups is very important in filling the existing gaps in the legal system. Public interest lawyers pursue cases that would otherwise go unrepresented.

The other criticism of public interest litigation is that litigation in itself does not lead to reform of social institutions or practices. The tangible change required is reduced to legal concepts and arguments effectively de-radicalizing the real change being sought (Tsutsui, 2013:2). Equally worrying is the fact that civil society may also be co-opted into being an extension of the state thereby de-radicalising the agenda, legitimize ongoing injustices, and divert energies away from more effective and transformative alternatives (Orly: 2007) in Tsutsui, 2013:4). Despite the criticisms above, public interest litigation is still the best approach to help civil society avoid shortcomings associated with the popular civil campaigns. While government sometimes delays or adopts a 'go slow' approach in implementing court orders, it is worth noting that no regime worth its salt can deliberately dispute or refuse to implement orders and verdicts reached in court in a functional Constitutional democracy.

## **5.15 Summary of the chapter**

The chapter has made an effort to examine the general history pertaining to funding of civil society movements in South Africa. The historical evolution of funding from the pre-apartheid era to the transitional period and when the new government took over is a period that was examined in the chapter. The study has also been able to demonstrate the importance of the link between funding and the ability of civil society to continue as important role players in advocating for the state to deliver on its Constitutional rights and obligations.

To continue to serve as the voice for the voiceless and for representing the legitimate needs of stakeholders; and critical role in ensuring good governance and in rooting out corruption, it is critical that CSOs continue to be capacitated in various ways. Donor support is predicated on the notion that a strong civil society is important in demanding a more accountable, democratic and transparent state.

Of equal importance in the study has been the demonstration of the reasons why civil society was transitioned from the popular mass-based approach and began to adopt a multi-pronged strategy in effecting fundamental change in South Africa. The mass-based approach, while still a cornerstone of the strategies of the sector, has now been coupled with the public interest litigation as a stratagem to try and enforce change from the authorities. Challenges faced by civil society with regards to funding for public litigation and the reluctance of government to move faster in effecting socio-economic changes are some of the reasons why public interest litigation has become a component part of the strategy used by the sector. The study has been able to demonstrate that public interest litigation based on socio-economic rights can contribute greatly to enhancing participative and inclusive decision making in a democracy. It was also demonstrated how this strategy could contribute in deepening the democratic project in South Africa. This is despite the countless hurdles created by the institutional impediments synonymous with a bureaucratic rule-based state.

The next chapter will focus on a critical analysis of selected civil society organisation.

## 6.1 Introduction

The researcher herein has primarily adopted non-empirical research as an approach in order to delve deeper into the subject being studied. This approach does have a place in scientific research. According to Innovation and Education Group (Non-Empirical Research, 2022) non-empirical research focuses more on theories, methods, and their implications for education research. Mouton (2004:57) asserts that empirical studies are observational or experimental rather than theoretical, whereas non-empirical studies are based on theory. Non-Empirical Research can include comprehensive reviews and articles that focus on methodology. It also relies on empirical research literature as well but does not need to be essentially data driven. According to Dan (2017) scholars using non-empirical methods must consider that reflection, personal observation, and authority/experience are just as valuable for knowledge acquisition as empirical data. Although it is said to be time consuming and expensive, the converse is also true if you adopt, in the main, approaches that do not require travelling to far flung destinations and concentrate on literature review, reflections, and personal observation. This study employs a literature review approach as a method for its data collection, examination and analysis.

The literature review method selected for purposes of this study is primarily linked to qualitative research. The intention of the researcher in electing to employ this method is to break away from a superficial definition that often reduces qualitative research to a number of data gathering techniques. In methodological terms, given that the case study approach has often been seen as being more of an interpretivist and idiographic tool, it has also been associated with a distinctly qualitative approach (Bryman, 2009: 67-68). However, as Yin (2009) notes, case studies can – like all forms of social science research – be exploratory, descriptive, and/or explanatory in nature. According to Cresswell *et al.*, (2007) qualitative research as a research methodology is concerned with understanding the process and the social and cultural contexts which underlie various behavioural patterns. This research method is mostly concerned with exploring the “why” questions of research.

Hatch (2002:148) in (Mathipa and Gumbo, 2015:132) postulates that an understanding of qualitative analysis is fundamental to the systematic search for meaning in data analysis. Qualitative research, according to Ngoatje (2006) aims to achieve depth rather than breadth on issues.

According to Mukonza (2015: 136) there are several limitations associated with the qualitative research method. These include its inability to use large samples of the targeted population. Another inherent limitation of qualitative research is that it positions the researcher as a subject (Mohajan,2018:40 in Morkel (2022: 60). This may have an influence on the analysis and discussion of findings. To alleviate this challenge, the researcher has to be conscious of this limitation and as such should adopt a reflexive approach during the analysis process. In addition, this method would be suitable in situations where participants are assembled in a small geographical area. For instance, while the four civil society organizations under review have a national footprint, they do not have offices all over the country. This is mainly due to resource constraints. The aim of this study was to delve deeper into the subjects of inquiry, namely: EE, SADTU, SACC and AfriForum particularly regarding their role and contribution in the deepening of democracy in South Africa. This in line with the objectives of the study.

## **6.2 Case Study method**

The researcher herein utilised the case study approach in conducting this inquiry. In case study research, the researcher adopts an approach of selecting a subject or subjects that become(s) the object of the study. The selected subject(s) selected should be able to assist in providing detailed understanding of the phenomena under study or alternatively enhance future research or the phenomena in question. The emphasis in case studies is the need to define a case that can be bounded or described within certain parameters such as a specific place and time (Cresswell *et al.*, 2007). The analysis of the case in question consists of an application of theoretical understanding to a given situation. This will assist the researcher to gain insight and understanding of the subject being studied and its effect on society. Algozzine and Hancock (2006:9) point out that a case study unit can be a group of people, a single person, a situation or even an organisation. The current study has examined the role of four selected civil society organizations. The first civil society which has been looked into is called Equal Education.

The issues which were looked at in this regard are the following: Equal Education's *raison d'être* (reason(s) for its existence), its role and strategies, funding issue, why at times it prefers public interest litigation and how it contributes to the enhancement of democracy in the country as well as its overall effect in enhancing the positive role of CSOs in a democratic South Africa. Essentially this implies that a case study should preferably be examined in its real life setting so as to enhance the ability to understand its significant impact on the phenomena being studied. According to McCom (2019), a case study is a detailed study of a specific subject such as a person, group, place, event, organization, or phenomenon. Case studies are commonly used in social, educational, clinical, and business research.

Using case study research helps in gaining particular understanding or insight into whatever subject of inquiry which usually is a contemporary phenomenon. Case study research allows the researcher to look at a phenomenon in context. Some advantages of a case study as explained by Yin (2009) are:

- Using a case study provides the researcher with a clear understanding as it enables him or her to have a connection of abstract ideas under study with actual specifics.
- This method also assists the investigator in measuring his or her intangible ideas against actual experiences and evidence accepted by many people.
- We can observe the case directly and relate it to theoretical part, data also can be gathered directly from the case and be analysed.
- Results obtained through case study are more practical than ideal. This is because a researcher observes and reads the case directly since it is a simple method.
- It is also a flexible method of doing research because researchers are free to discover and address issues as they arise in their experiments.
- Finally, case studies are good in generating best theories.

It must however be mentioned that one of the primary limitations of the single-case approach is the fact that it narrows the area of research in that it limits such a research to an individual or group of individuals. Yin (2009) asserts that results of such a study cannot be generalised as they are not universal.

This view is also supported by Gerring (2004:342) a case study should be “an intensive study of a single unit... a spatially bounded phenomenon – e.g., a nation-state, revolution, political party, election, or person – observed at a single point in time or over some delimited period of time”.

Despite all the limitations which are inherent in any scientific research approach, the author elected to make use of the case study approach in this study. This includes a comprehensive literature review approach, reflections, personal observations and experience as primary tools in gathering data on the four selected civil society organizations. The author was careful not to make wide generalizations emanating from the finding of this study, owing to the fact that only four subjects were chosen as a critical focus of this scientific inquiry. However, lessons learnt from these case studies can be applied in future.

### **6.3 Rationale for the selected cases**

The choice of the selected cases was a conscious and a deliberate one. This choice was largely influenced by the critical impact that these organizations have had in the various phases in the development of the post-apartheid State. Tocqueville, one of the first major theorists in tracing the origin of civil society, argued that civil society is an indispensable counterpart to a stable and vital democracy, rather than an alternative to it. He saw civil society as part of a larger whole. This means that the sector must be discouraged from only selfishly looking at their own private concerns but should rather be part of a partnership with the state in order to create an ethical, developmental and accountable state (Stid, 2018). This statement, in juxtaposition to the selected civil society organization under study, is corroborated by the fact that in instances where these organizations collaborated with the state, significant progressive victories were achieved. For instance, collaborative programmes undertaken by both the government and SADTU have greatly contributed towards the professionalization of the teaching profession in South Africa. The teaching fraternity and the students have been the greatest beneficiaries of such a partnership. Professionalizing the sector is not an event but rather a continuous and an ongoing exercise and as such the results will continue to be seen and felt with the passage of time. These collective victories contributed to the lessening of the inherent conflicts that often characterize the relationship between the sector and the state. Habib and Kotze (2003) categorized civil societies into four groups. One of the categories that they mentioned was the emergence of groups that have adopted an anti-liberal approach. Notably, organizations such as SADTU are increasingly adopting a hostile attitude towards the state.

This is evidenced by the attempt by SADTU to encourage the labour section of the tripartite alliance to convene a special conference which will discuss possibilities of labour withdrawing from the alliance and aligning themselves with the SACP, and in the process encouraging the SACP to contest the 2024 elections independently of the ANC (Mavuso, 2023). This is still an ongoing debate that is likely to be clearer as the country moves closer towards the 2024 national elections.

The liberal theory posits that as long as there is no ingrained structural bias against certain groups, civil society organizations are able to co-exist harmoniously among themselves and with the state in relations that are characterized by mutual respect (Little, 2002). Organizations such as the SACC have largely, since the dawn of democracy, had cordial and affable relations with the South African state. The cordiality of the SACC could be informed by the fact that the organization is a religious one. Religious organizations are generally characterized by peace-making and peace building missions. The Lutheran World Federation in its Interfaith Messengers Training reiterated the main reasons for the existence of the church as being that of “the nurturing of peace in society” (Joniel, 2017). The SACC also straddles another dimension of philanthropy. This is informed by the numerous charitable causes that the organization has historically been known to being carrying out in helping the poor that are in distress. The SACC has historically done good in holding the apartheid government accountable and at being one of the torchbearers of truth, ethical leadership and at being the conscience of the nation” (Dlwathi, 2011). The SACC of the apartheid era has largely been replaced by a docile and largely timid organization which has, in the main, cooperated with the state under the guise that the post-democratic government is democratic, inclusive and pro-poor. The liberal approach was mainly a result of the inner conflict and debacle that confronted the sector after the ANC assumed the levers of state power in 1994. This dissonance was mainly over whether the SACC should continue its critical stance as a watchdog and torchbearer of the socio-economic rights of citizens or it should play a supportive role to a government considered to be “pro-poor” and representative of the aspirations of the people. The adoption of neo liberal policies such as GEAR by the post-apartheid state and the marginalization of the SACC in favour of the National Interfaith Leaders Council made the SACC to revert back to its pre-democracy militancy. The organization can now be classified as belonging in the domain of the radical democratic theory which posits that state hegemony is achieved through the manipulation by the dominant classes that control certain institutions of civil society, co-opt others and infuse the rest with the *forma mentis* that they desire (Katz, 2010).

The SACC has now justified its original founding mandate. This befits the Gramscian description of civil society as a revolutionary group that should disable the coercive apparatus of the state, allow subaltern groups to gain access to political power, and create conditions that could give rise to a consensual society wherein no individual or group is reduced to a subaltern status (Katz, 2010).

Equal Education and AfriForum, while straddling different divides in terms of their constituencies, can be classified as community based CSOs. In enhancing the quality of the study, it was important to also factor in such organizations. This was due to the critical role that these two organizations have played at different epochs of the democratic era in South Africa. The roles and operating environments are constantly changing thereby necessitating the rise of new sets of CSOs. This changing context includes economic and geo-political shifting in Africa and South Africa, changes in technology which influence funding models, dramatically shifting social engagement and political pressures which are restricting the space for civil society organizations in most countries (World Economic Forum, 2013). It is the perceived indifference of the Department of Basic Education on issues of inequality as exemplified by provision of inadequate basic infrastructure to traditionally Black schools that created fertile conditions for the creation of organizations such as Equal Education. Equal Education (EE) utilized different approaches in holding the state accountable for the provision of equal opportunities in education. Central to these approaches includes public interest litigation as a powerful tool to effect social change especially since socio-economic rights such as education are encapsulated in the Bill of Rights.

The shifting external contexts in South Africa have largely given rise to the emergence of civil society organizations such as AfriForum. Some of the functions of civil societies discussed in chapter two argues that CSOs also perform specialist functions such as being citizen champions. Being citizen champions means that CSOs such as AfriForum encourage citizen engagement and the provision of unique knowledge and expertise in shaping policy and strategy and in building solutions (World Economic Forum, 2013). The advent of democracy in South Africa has meant that political power has shifted from the Afrikaner community to Black people. Promulgation of various equality legislation such as the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, Broad Based Black Economic Empowerment, Affirmative Action policies, among others, has largely created an environment in which the Afrikaner community feels marginalized from opportunities.

Citing “reverse discrimination” many white skilled professionals have migrated to overseas countries (Adams, 1997). It is such issues, among others, that created the need for the Afrikaner community to organize itself and create an organization called AfriForum which has been vocal in championing the interests and aspirations of Afrikaners in South Africa.

## **6.4 Selected Cases**

The discussion on the civil society organizations in this study begins with the CSO referred to as Equal Education (EE). This discussion focuses on a number of areas relating to this organisation, namely: the reason behind the formation of the organization, its role in post-apartheid South Africa, issues related to funding, the activities, strategies and programmes of the organization as well as its relationship with other civil society organizations and the government. The reason(s) why the organization prefers to engage in public interest litigation will also form part of the discussion. The successes and challenges faced by Equal Education will also form part of the discussion. The contribution of the organization towards deepening democracy in South Africa is also an area of focus in this study.

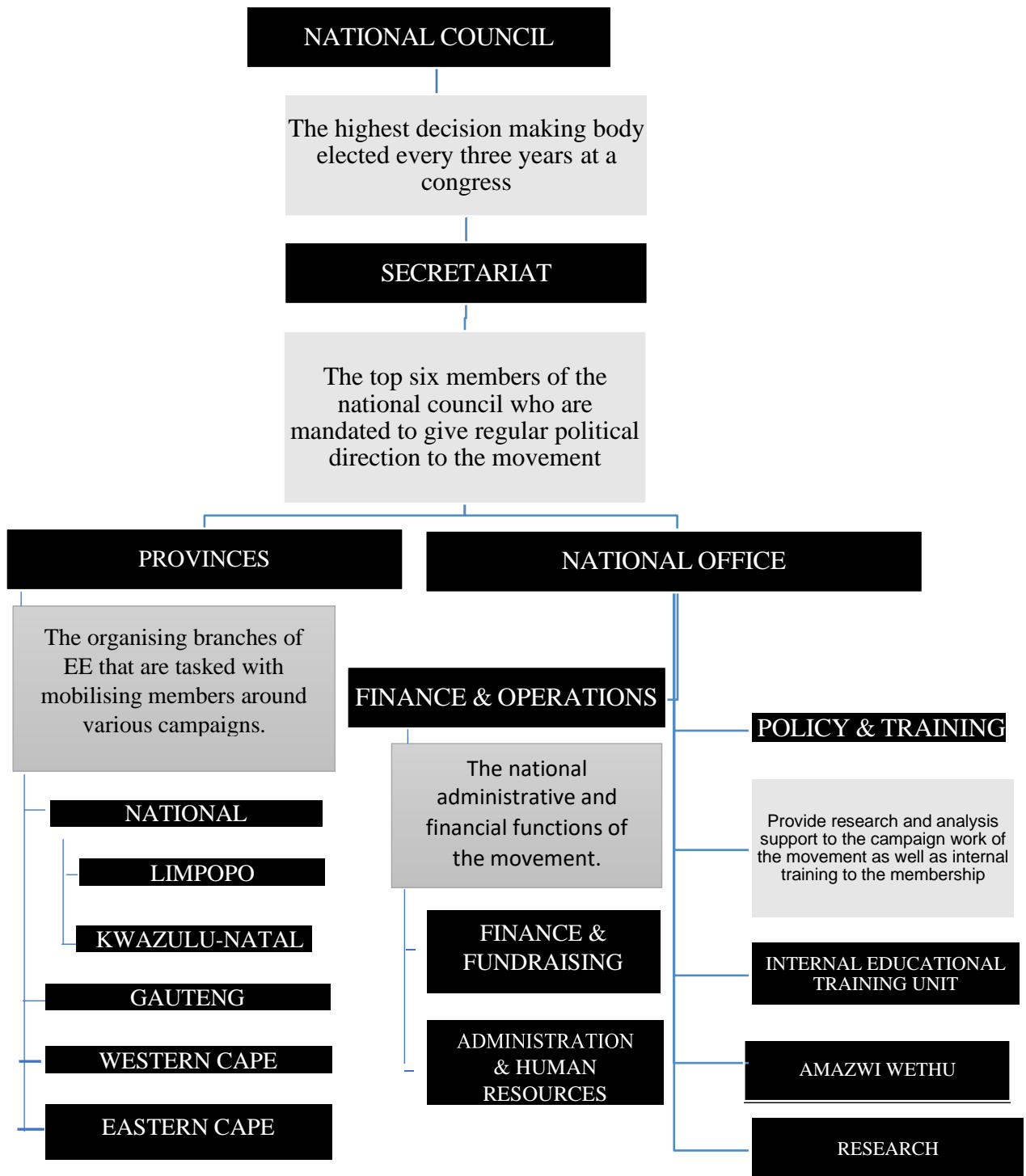
### **6.4.1 Equal Education**

Rather than deploying the spectacular politics of 2015 university students’ #FeesMustFall campaign, Equal Education employed what they refer to as more long-term organizational forms of ‘slow activism’ (Robbins, 2014). The tactics deployed by this organization to improve and reform public education appear to be markedly different from the spectacular protests of university students in 2015. What Equal Education may lack in ‘spectacularity’ they make up for in their sustained engagement with the need for improvements in education. While the organization retains the popular mass-based politics of civil engagement that includes protests, media spectacles, marches and other civil disobedience campaigns, it does still operate within what Robbins (2008) refers to as the ‘reformist logic of the law’. Their ‘reformist logic of law’ is characterized by working within the confines of Constitutional democracy and the bureaucratic state. Equal Education has been able to make use of the following avenues and methods in their quest to achieve an improved public schooling dispensation: courts, petitions, rallies, protests outside parliament, mass media, social media and alliances with trade unions. According to Robins and Fleisch (2016), Equal Education has been able to accelerate the strategic, tactical and the financial sophistication employed by earlier civil society organizations such as Treatment Action Campaign (TAC).

It has been able to place the issue of school infrastructure at the centre of public policy debates in South Africa more than any other civil society movement.

The organization is a mass-based formation with offices in a number of provinces in South Africa. The organizational structure of Equal Education is shared below.

## EE ORGANOGRAM



Source: Equal Education 2015/16 Annual Report

Equal Education is a registered non-profit organization and a public benefit organization with a membership base comprising of learners, teachers, parents and community members. The organization was founded in 2008 with its initial programme, as initially indicated earlier, being to help fix the broken windows at Luhlaza Secondary School in Village 1, Khayelitsha in the Cape Town metropole. The reason for the existence of the organization is to ensure the realisation of both quality and equality in South African schools through policy analysis, advocacy and activism. The organization conducts a broad range of activities. These include capacity development for the learners, teachers, parents and community members, with an intention of driving improvements in their schools. On its website Equal Education claims that it has won tangible victories in schools. These include the securing of school infrastructure regulations, billions in government funding for infrastructure, a scholar transport policy and actual scholar transport for over 3000 learners. EE has also been instrumental in defending the rights of students who face exclusionary policies in schools. It has also played an active role in the reformation of feeder zone policies which were seen to be entrenching segregation in schools in South Africa. EE has also prevented schools from being closed unlawfully and has worked towards ensuring that schools remained democratic and inclusive spaces when new policies are adopted (EE, 2015).

Equal Education has partnered with Equal Education Law Centre (EELC) which was established in 2012. The EELC is registered as a law clinic with the Cape Law Society and has a staff complement of social justice lawyers specializing in education policy, legal advocacy community lawyering and public interest litigation. EELC also engages in strategic litigation in individual cases arising from experiences of learners, parents and teachers. The organization works closely with Equal Education and provides legal advice and legal interventions. In instances where it is necessary EELC also provides strategic litigation to support the campaigns led by EE members (Equal Education Law Centre, 2022). The study does also touch on a number of other critical areas of dysfunctionality in the education sector which were tackled by EE, mainly in the area of school infrastructure.

## **Contextual background**

The post-apartheid public schooling system in South Africa is still characterized by visible remnants of the legacy of apartheid. According to O'Brien (2010:7) it would take a considerable period of time to undo this legacy and to achieve equality among all racial groups in the public education sector. O'Brien (2010:7) further posits that chronic poverty; substance abuse and community violence is the social reality for many of the students in the sector. These challenges include lack of quality education, shortage of proper infrastructure and lack of properly qualified educators, particularly in the natural sciences. During the apartheid era, the government deliberately stunted access to quality education for the country's black majority and passed a legacy of grossly unequal schools to the first democratic government. The anomaly between schools for blacks and schools for other racial groupings manifested itself in such a way that there were schools that were made of mud and could collapse in the rain, whereas others were built on lush campuses with state-of-the-art facilities. It is these kinds of conditions that created conditions for Equal Education to emerge and to primarily focus its energies on levelling the playing field particularly with regards to issues of school infrastructure. The initial objective of Equal Education was to help fix a school called Luhlaza Secondary School in Khayelitsha, Western Cape. At that point the school was characterized by 500 broken windows, a situation which became worse in chilly conditions in winter (Equal Education, 2013). Notably these windows had remained unfixed for a period of four years before the intervention by Equal Education. EE's campaign resulted in the organization initiating and galvanizing the communities in Khayelitsha to write a petition which got signed by more than 2000 community members and got submitted to the local offices of the Department of Education. Rallies, meetings with stakeholders including the very Department of Education, engagements with eminent persons like the former MEC of Education in Gauteng Province, Mary Metcalfe, mass gatherings and other forms of public consultative process were initiated. While all these meetings were taking place, members of the EE youth group which then had a membership of 150 Khayelitsha learners from over ten schools began to mobilise their school friends, explaining to them the situation at Luhlaza High School and enlisting their help. The campaign stressed the importance of schools working together to solve their problems. Although the campaign focused on Luhlaza, learners representing almost all high schools in Khayelitsha gave their active support. During youth group meetings, members discussed campaign methods and objectives.

In this discussion the importance of non-violence was highlighted. Youth group members had fun practicing poetry and songs as a creative way of putting their message across to the Western Cape Education Department. Members created placards with clear messages written on them in preparation for the rally. In the lead up to the rally, learners collected more than 30 kilograms of broken glass from the playgrounds of Luhlaza. These broken glasses were later washed and used with coloured beads to make necklaces, bracelets and other items. This action and activities resulted in an undertaking by the Department to invest R671 000 in the school. This money was used to fix the windows and other related infrastructure challenges (Equal Education, 2013). It is under these circumstances that Equal Education was birthed as a civil society organization ready to tackle issues of inequalities in education in South Africa.

Institutionalized racism in education is also a factor that continues to bedevil the sector in South Africa. For instance, former Model C schools which are historically white continue to prosper in comparison to historically disadvantaged schools. These discrepancies manifest themselves in areas like matric results, school infrastructure like science laboratories, sports facilities, computer facilities, shortage of textbooks, access to the internet etc. These problems are so manifold that it will take a herculean effort on the side of government to level the playing field for all young South Africans. According to Issacs and Maserow (2014) “the site of learning, that magical and precious space where the student and teacher engage in the presence of content, is a place that too often deepens inequalities of class, race, and language hence EE feels a duty to attempt to intervene constructively in this area, the heart of education”.

Various authors interpret the concept of school infrastructure differently, depending on a particular context. According to Fisher (2000) structural factors include building age, windows, flooring, heating, colour, student density and size of the site, while cosmetic factors include interior and exterior painting, graffiti, furniture, school grounds and landscaping. According to Marishane (2013: 3) the United Nations Children’s Fund has described school infrastructure as one of the five dimensions which are contributing to quality education. In the South African National Education School Infrastructure Management System (NEIMS), school infrastructure elements include the number of learners per teacher, availability of water on site, computers, communication technologies, electricity, sanitation facilities and furniture. The link between school infrastructure conditions and their effect on learning outcomes has been well documented.

For instance, the importance of school infrastructure is that it is directly linked to the learning outcomes (output) and the physical environment (input) in which teaching, and learning take place (Bullock, 2007; Higgins Hall, Wall, Woolner & McCaughey, 2005 in Marishane,2013:3). The Department of Basic Education's national policy on school infrastructure titled the National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment (NPEP) emphasizes the negative effects of poor schooling environment on learners. This includes irregular attendance, and higher dropout rates (Draga,2017 :238).

### **The Constitution, 1996 and related laws**

The need to enable improvement and equalization of infrastructure across the entire public-school environment is derived from the Constitution of the Republic of South Africa and various other pieces of legislation like the Promotion of Equality and Prevention of Unfair Discrimination Act. These are the laws which have emboldened Equal Education to take the fight to the Department of Education in order to compel the department to improve school infrastructure such that all racial groupings are on the same level. The other Constitutional Court judgment in the case of *Juma Mujid Primary School v Ahmed Asruff Essay NO (Juma Musjid)* distinguished the unqualified right to basic education from the qualified socio-economic rights. The court held that the right to basic education should be immediately realisable thereby compelling the government to take up measures to oblige in immediately making sure that the right is provided and implemented (Daily Maverick, 27 July 2018). The regulations also require Basic Education MECs to hand over to the Minister of Basic Education their action plans on how they intend to achieve the norms in their respective provinces. The plans are an important source of information and should contain details of the infrastructure backlogs at the district level, and a costing exercise pegged to the short-, medium- and long-term deadlines set in the norms and standards (Draga, 2017:240).

The Constitution of the Republic of South Africa is lauded throughout the world as one of the best. The achievement of equality is identified as one of the founding provisions of the Constitution. And the preamble to the Constitution acknowledges that the document must, among other things, 'lay the foundations for a democratic and open society in which government is based on the will of the people and that every citizen is equally protected by the law' (Langa, 2001: 1). This contains a guarantee that there will be equal protection and benefit through the law. Closely related to this important provision on equality is the clause from Chapter 2 of the Constitution which refers to human dignity.

This provision states that “everyone has inherent dignity and the right to have their dignity respected and protected (*Constitution of the Republic of South Africa*, 1996). That there is a Universal Declaration on Human Responsibilities whose preamble recognizes the recognition of the inherent dignity and the equal and inalienable right of all members of the human family, and which further declares in Article 1 that every person regardless of gender, ethnic origin, social status, political opinion, language, age, nationality, or religion shall be treated in a humane way (Goolam, 2000:5).

The provisions from the final Constitution and international clauses on equality are what inspired and influenced Equal Education to launch various campaigns in an effort to ensure justice in so far as enabling the practical realization of these equality clauses. The other most important provision is Section 9 of the Constitution which refers to:

- The right to equality before the law, and equal protection and benefit of the law (Section 9(1)).
- Gives permission for the state to take positive measures to protect and advance groups that have been disadvantaged by unfair discrimination (Section 9(2)).
- A prohibition on unfair discrimination by the state (Section 9(3)) and by private individuals (Section 9(4)).
- No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Connachie (2017,93) posits that added to these sections is the legislative provision on equality passed by parliament which is the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act). The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 intends to give effect to Section 9, read with item 23(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, so as:

- to prevent and prohibit unfair discrimination and harassment;
- to promote equality and eliminate unfair discrimination, and
- to prevent and prohibit hate speech.

The Act seeks to prohibit unfair discrimination by the state and all individuals. This provision coupled with Section 29 of the Constitution which states that ‘everyone has the right to basic education, including adult basic education’. The Children’s Charter on Basic Education Right adopted by the South African Human Rights Commission are some of the policies, declarations and laws which have created space for the emergence of Equal Education as a civil society movement prepared to advance the struggle of the underprivileged in enhancing the quality of education in post-apartheid South Africa.

Over and above the legislative provisions highlighted above, Section 9 of the Constitution enabled the creation of specialized courts such as the Equality Courts whose function is to hear matters relating to unfair discrimination, hate speech and harassment. Magistrates’ courts were also given the authority to handle such cases so as to bring access to justice to the marginalized and vulnerable citizens. This was mainly to enable the poor and the marginalised to enforce their rights. Since proceedings in the high courts are costly to the ordinary citizen, the Equality Courts are therefore created to enable all and sundry to be able to bring cases of injustice to the courts. In terms of the Equality Court Act, Chapter Nine institutions like the Human Rights Commission are mandated to assist complainants to take matters to the Equality courts (Department of Justice and Constitutional Development, 2022).

### **Selected studies of Campaigns undertaken by Equal Education**

The following are some of the campaigns that EE played a leading role in. The researcher only identified a few of such campaigns for purposes of this study.

#### **National School Nutrition Policy Campaign**

In 1994 the state, through the Department of Education instituted the National School Nutrition Programme (NSNP) to provide meals to indigent learners in both public primary and secondary schools. The objective of the NSNP is to provide nutritious meals to learners so as to improve their ability to learn. According to the 2013/14 annual report of the Department of Basic Education, the programme has now reached more than nine million learners in Quintile one, two and three schools. By the beginning of 2020, the NSNP provided a meal to every school daily to about nine million learners. The NSNP has a dual goal of fulfilling the learners’ rights to education and to food respectively (Department of Basic Education, 2013/14).

When the national state of disaster was declared on the 15<sup>th</sup> of March 2020 following the outbreak of the Corona Virus Disease 2019 (Covid-19, which was declared a pandemic by the World Health Organization in the world including South Africa, all schools in South Africa were closed and the NSNP was suspended. This resulted in widespread hunger. A national lockdown was implemented on the 26<sup>th</sup> of March 2020 in line with the stipulations of the Disaster Management Act of 2002. Learners were physically barred from attending school from the date of the lockdown until a phased return to classes was announced by the Minister. The Grades identified for a return to school on the 8<sup>th</sup> of June 2020 were Grades 7 and 12, with the other Grades given specific time tables for their return. Effectively learners from all Grades were permitted to return to school on the 1<sup>st</sup> of August 2020 under strict Covid-19 regulations such as the compulsory wearing of masks, observing social/physical distancing and having to be constantly sanitised. According to Shepherd and Mohohloane (2021: 6) the gazettes did allow for deviations from the phased return based on a school's ability to comply with Covid-19 guidelines as well as approval by the Provincial Head of Department.

During the period of lockdown, the Department encouraged schools to continue with remote/online learning. Well-resourced schools with the technical and institutional capacities embraced the new normal and were able to adapt. The same cannot be said about less resourced schools who could not cope with the demands of remote learning. These schools battled to quickly design, implement and sustain distance learning during the period of school closure. This was the case despite the intervention provided by government in providing educational content through the national broadcaster, the South African Broadcasting Corporation (SABC) as well as through the zero rating or provision of data-free educational websites by companies like Vodacom, MTN, Cell C and Telkom. Sadly, these interventions could not reach the poorest learners who have no access to satellite television which is the part of the mediums through which the educational content was provided. This period exposed the continued divide between the rich and the poor in South Africa's schooling system.

The Minister of Basic Education and the Department and Council of Education Ministers all made a commitment that when learners returned to school, the NSNP would be resumed for all learners including those whose classes had not yet returned to school. The Western Cape Education Department being the first province where learners returned to school, took the lead and made a commitment to work closely with the Department of Social Development in enabling the resumption of the feeding scheme programme and as a result no relief was sought against them in the subsequent court case that was to be launched by Equal Education and others against the Minister of Education and provincial MECs of Education. Seeing the scale of hunger necessitated by the lockdowns, Equal Education and the School Governing Bodies (SGB) of two Limpopo schools, Vhulaudzi Secondary and Mashao High launched an urgent court application against the DBE and eight provincial education departments. The SGBs and EE were basically challenging the failure of the departments to roll out the NSNP to all learners under the national state of disaster. The halting of the provision of meals according to the applicants was jeopardising the food security of the 9 million learner-beneficiaries. This exacerbated the severe hardship experienced within their households. The applicants were represented by Equal Education Law Centre (EELC) and Section 27 who argued that the failure of the DBE and provincial education departments to roll out NSNP to all qualifying learners is a regressive measure that violates learners' rights to basic nutrition, basic education and equality (Equal Education, SGBs of Vhulaudzi Secondary School, & Mashao High School v Minister of Basic Education and Provincial MECs, 17 July 2020).

According to Sing (2021) the legal question presented to the court was whether the Minister of Basic Education and the MECs of the eight provinces, in terms of statutory and Constitutional obligations, were obliged to provide meals in terms of the NSNP. The High Court ruled that the DBE violated the Constitution by not ensuring that all primary school pupils have access to meals. The High Court ruled on the argument that the government had an obligation not to impair a right protected in the Constitution i.e., by stalling the NSNP programme implementation. In its ruling, the High Court included compelling affidavits from numerous students in Grades seven to twelve in its discussion to demonstrate the impact of the affected rights. These learners expressed guilt at receiving a meal at school while their counterparts experienced hunger at home. The court held that all students who are eligible for the feeding scheme are entitled to a daily meal.

The NSNP was explicitly introduced to address both the right to basic education under section 29(1)(a) of the Constitution and the right of children to basic nutrition under section 28(1)(c) (*Equal Education and Others v Minister of Basic Education*, 17 July 2020).

### **The Michael Komape and Lumka Mtetwa case**

On the 20<sup>th</sup> of January 2014 South Africa woke up to a shocking news report of a five-year-old boy Michael Komape who drowned in a pit toilet at Mahlodumela Primary school in Chebeng village near Polokwane in Limpopo province. According to court documents on the *Komape and others v the Minister of Basic Education* (23 April 2018), on the day in question Michael went to the outside toilets situated on the school premises during break at about 10H00. He was unaccompanied. The toilets were pit toilets made of corrugated iron cubicles erected on a concrete base. Unfortunately, the boy died due to what the post-mortem results termed “aspiration of foreign material which is consistent with drowning”. The case attracted international attention and threw the spotlight on the provincial education department and the use of pit toilets in many schools across Limpopo and by extension other provinces in rural South Africa.

Although Equal Education was involved in this case as *amicus curiae* with the primary litigant being Section 27, a vibrant civil society organization also involved in the same space of education and socio-economic issues, its involvement assisted a great deal in drawing local and international attention to this case to a point whereby the state was compelled by a finding of the Limpopo High court to provide a list of schools with pit toilets within 90 days along with plans to eradicate them. The court while noting that the Limpopo Department of Education and the national Department of Basic Education may have financial constraints, however noted that the situation of sanitation in Limpopo is a “national emergency that must be treated accordingly” (Section 27, 2021).

Subsequently, another learner Lumka Mtetwa who was five years old also fell into a pit latrine at her school Luna Primary School in Bizana in the Eastern Cape province on the 12<sup>th</sup> of March 2018. The child’s body was only discovered on Tuesday, a day after her death when her parents could not find her. In a statement to the nation, the Minister of Basic Education said that “Lumka had died in an undignified manner that she found incredibly disturbing”.

The Minister then made commitments to the effect that government is “now more resolute of the continued need for the Accelerated School Infrastructure Initiative so that we can continue to fast-track these schools that are in desperate need of infrastructure and make them safe havens for our children” (Saba, Macupe & Pather, 2018).

In response to the public outcry spearheaded by countless, political parties and communities, individuals and civil society organizations such as EE, the Department of Basic Education undertook steps and commitments so as to live up to its fiduciary responsibilities. These responsibilities require that government undertake commitments to try and avoid such tragedies from reoccurring by making significant investments in improving school infrastructure in schools that have substandard facilities. This prompted Equal Education to launch campaigns such as radio and newspaper adverts, writing letters to newspapers pickets, sleeping outside parliament, lobbying of politicians, and engaging in one of the biggest marches to parliament on the 21<sup>st</sup> of March 2011, Human Rights Day. The other activity which was undertaken simultaneously with the campaigns mentioned above was the decision by EE to go to court. This step appeared logical since the Constitutional right to education is an unqualified right as compared to other socio-economic rights. It is for this reason that EE with its partner the Legal Resources Centre (LRC) filed an application in the Bisho High Court against the Minister of Basic Education, all nine provincial MECs of education and the Minister of Finance to secure national minimum norms and standards for school infrastructure (Equal Education, 2013). Below is a picture of pit toilets synonymous with most school in South Africa. This is the type of structure that is still prevalent particularly in rural provinces like Limpopo, KwaZulu Natal and Eastern Cape.

**Figure 6.1: Picture of a Pit toilet in Limpopo**



Source: The France 24 Observers: 2022

The efforts, campaigns and activities undertaken by EE are further reinforced by the General Comment 13 on the Right to Education issued by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) which state that “education must be accessible, acceptable and adaptable” (CESCR, 2017). The committee further states that functioning schools are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, trained teachers receiving domestically competitive salaries, teaching materials, safe drinking water and so on, while some will also require facilities such as library, computer facilities and information technology. According to Draga (2017: 241) the committed, by extension acknowledges that the right to receive an education entails the right to receive an education in a physical environment that is conducive to learning It is the concerted efforts of Equal Education inspired by these international conventions and other domestic stakeholders like Section 27 which convinced the government to relent and promulgate regulations relating to public school infrastructure.

## **No space for us campaign**

Equal Education launched another campaign to fight overcrowding in schools in November 2021. This campaign is still ongoing to date. Equal Education (2021) posits that the campaign is rooted in research conducted between September 2019 and June 2020 in nine selected schools in Etwatwa, Ekurhuleni. The data collected in this research was based on the South African context. This context is informed by the peculiar and unique situation in the country. For instance, in South Africa the law requires that for every teacher in class there should be a maximum of 40 learners. According to research conducted by De Lannoy and Hall (2010) in DBE (2010: 49-50), the learner-educator ratio directly affects the quality of schooling offered. The more crowded the classroom, the less educators are able to give personal attention to the learners to carry out the learning process. The overcrowding also puts a burden on resources, learning material and infrastructure. This means that educators are unable to reach learners with difficulties and barriers in learning which ultimately results in difficulties in creating order in the classroom environment. Moreover, in the context of a country ravaged by HIV/AIDS, the Covid-10 pandemic, high poverty levels, high levels of teenage pregnancy etc., an educator could play an important role in identifying and supporting children who are particularly vulnerable. This can be achieved by linking such learners to appropriate support services within or outside the school.

The research by EE (2021) on the nine schools in Etwatwa revealed that:

- All of the nine schools researched had some classes with too many learners. A total of 80% of the classes that were inspected had over 40 learners.
- Seven out of the nine schools had at least 15% more learners than the building was permitted to hold.
- A total of 66% of the classroom buildings that were measured were too small for the number of learners that they held.
- A total of 82% of the classroom buildings inspected had too little furniture for the number of learners inside them.
- A total of 65% of the teachers interviewed were overworked.

Interestingly, according to EE the statistics provided above are in stark contrast to the official data on the National Education Infrastructure Management System (NEIMS) and Education Management Information System (EMIS) which shows that of the nine Etwatwa schools surveyed none had classes with many learners. This data further revealed an average teacher-learner ratio as being at 30:1 and that only 35% of teachers were overworked. Only five of the nine schools had a classroom shortage. This disparity in statistical analysis between EE and the DBE could be as a result of the different interpretation of the formulas used to arrive at the conclusions. The ultimate reality however is that often when the DBE or the Gauteng Department of Education (GDE) is faced with challenges of infrastructure, they normally resort to focus on expanding the infrastructure by using mobile and prefabricated classrooms rather building new schools which is rather an expensive exercise. EE (2021, 64-66) in its final findings makes the following recommendations:

- That the GDE must publish a comprehensive list of overcrowded schools similar to the one contemplated in Sections 78-82 of the National Norms and Standards for School Funding to be used for targeted spending aimed at eradicating overcrowding in schools. When determining whether a school is overcrowded, the various components of overcrowding must be taken into account, namely: class sizes in different Grades and subjects, teacher workload and spread, predicted growth in learner numbers and school building capacity.
- On school infrastructure, the GDE must publish a comprehensive and a forward-looking infrastructure development plan which explains and justifies the GDE's decision to focus on adding new classrooms to existing schools as well as the steps it will take to prevent overcrowding and the overuse of infrastructure in those schools. This should also include predicted future growth in learner numbers and include measures for the placement and transportation of unplaced learners at the beginning of each academic year. This is important especially for a densely inhabited province like Gauteng.
- On school capacity norms, the GDE must develop and publish uniform minimum norms and standards for school capacity. These must be binding and include deadlines by which to meet minimum requirements and to measure overcrowding by taking into account the relational nature of school resources and the actual conditions in which learning takes place.

- To address the challenge of learner-teacher ratio unevenness, the GDE must ensure that 5% poverty redress posts are always allocated, and that the percentage of posts allocated are reported on and justified. The Department must also ensure that 15% of personnel funding is spent on non-teaching staff each year, in line with the School Funding Norms and that the majority of non-teaching staff are placed in schools that are in need of school-based administrative support. The distribution of non-teaching staff between schools and offices must be reported on and justified.

The intervention by the DBE in appointing thousands of unemployed youths as Education Assistants which is part of the Presidential Youth Employment Initiative has gone some way in addressing the last recommendation by EE. Mention should however be made that part of the reason for this initiative was to mitigate the devastating economic challenges brought about by the Covid-19 pandemic. The ‘No Space for Us’ campaign by EE is still an ongoing one and had, at the time of undertaking this study, not yet come to its final fruition.

### **Scholar Transport Campaign**

Equal Education also engaged in a relentless campaign in the province of KwaZulu Natal (KZN) particularly in the Nquthu region when learners, parents and the community raised concerns around the lack of transport to school being a serious impediment to education. The experience of learners having to walk long distances to school in Nquthu was just a microcosm of the reality faced by thousands of learners throughout South Africa hence EE through its KwaZulu-Natal organizer Sandile Ndlovu took up the cudgels on behalf of these learners brought the matter to the attention of the public and the government. EE and the EELC took it upon themselves in 2015 to visit numerous schools in Nquthu in an effort to highlight the adverse effects of teachers having to teach learners who are hungry, exhausted, arrive late at school and struggle to concentrate in class owing to the long distances they cover when walking to school. The problem of absenteeism was also raised as a consequence of exhaustion induced by travelling long distances on feet. In a meeting EE had with the directors of the education district in Nquthu, it was discovered that only fifteen out of more than 500 schools were provided with scholar transport (EE:2016).

The Mail and Guardian (20 February 2015) covered the story and corroborated the experiences of the challenges faced by learners in the Nquthu region. Among the effects of this long distance travelling as reported by M&G, the fact that the learners walk for more than three hours through treacherous territory which includes climbing over mountains, cross dangerous rivers and also face the threat of crime which include crimes of a sexual nature. Dangerous snakes, lightning and being locked out of the school for arrive late at school are some of the things the learners have to contend with. This experience flies in the face of the policy of government on public school transportation that “learners who travel a return distance of six kilometres to and from school are eligible for learner transport”.

As a result of the efforts led by EE which included the writing of letters to the educational department in KZN, marches to the department, sustained media campaigns, advocacy and legal interventions through the EELC, the department of Education at national level agreed to work with National Treasury to explore the introduction of a conditional grant to fund scholar transport. The department was also compelled to finally publish and ultimately promulgate the National Learner Transport Policy.

The strategic objectives of the learners’ transport policy are among others:

- To guide the implementation of a shared vision to improve access to quality education through a coordinated and aligned transport system.
- To improve the planning and implementation of an integrated transport service
- To ensure the effective management of learner transport service. (National Learner Transport Policy: 2015).

The campaign around the provision of scholar transport which originally started in the Nquthu region in KZN did not cease with the adoption of the National Transport policy. EE continued with their campaign in KZN to try and compel the department to also adopt a transport policy to cater for indigent learners who travel long distances to school. The sustained pressure from EE resulted in the immediate action taken by the KZN education department which was to avail scholar transport to three schools in the Nquthu region i.e., Mangeni, Esikhumbuzweni and Nhlalakahe High schools. Beyond the mass campaigns, EE also proceeded in 2017 to launch strategic litigation challenge against the KZN Department of Basic Education in the Pietermaritzburg High Court.

The remedy sought by EE includes a declaration of the violation of pupils' rights and a structural interdict seeking to compel the relevant government departments to ensure there is proper planning and budgeting for scholar transport (News24. 07 November 2017).

According to the founding affidavit of Equal Education represented by its Chief Operations Officer Ntshadi Mofokeng (EELC: 2017) EE was joined by Disabled persons organization called Siphilisa Isizwe who joined the court action as an 'amicus curiae supporting EE and arguing specifically for the rights of disabled scholars. The estimated 182 000 learners with disabilities argued the Advocate Veriava were not appropriately catered for in the plan by the KZN education department. The draft Learner Transport Policy document was finally gazetted by the KZN Department of Basic Education on the 16<sup>th</sup> of April 2020 after an order of the High Court determined that all learners from Grade R to 12 have a constitutional right to safe and secure learner transport to and from school. The order set out a criterion that learners who travel a distance of three kilometres to school qualify for learner transport. It further stated that learners with disabilities including visual impairment, hearing impairment, physical impairment, medical impairment and intellectual disability qualify for learner transport. While acknowledging the budgetary constraints of the department, the court ruled that the implementing authorities shall have to prioritize learners in each district in keeping with the intent and purpose of the KZN Learner Transport Policy (Inside Education: 27 April 2020). This is one of the victories secured by EE in its campaign to ensure that the government live up to its constitutional obligations.

### **Regulations Relating to Minimum Norms and Standards for Public School Infrastructure campaign**

The Regulations Relating to the Minimum Uniform Norms and Standards for Public School Infrastructure was promulgated in November 2013 (Mail and Guardian, 6-12 November 2015:30). The law was designed to make sure that no school has facilities like pit toilets and mud buildings, leaking roofs among others. Some of the objectives of these policy include the following:

- (a) To provide minimum uniform norms and standards for public school infrastructure
- (b) To ensure that there is compliance with the minimum norms and standards in the design and construction of new schools and additions, alterations and improvements to schools which exist when these regulations are published, and

- (c) To provide for timeframes within which school infrastructure backlog must be eradicated.

The policy also make provision for what is termed ‘universal access’ which states that all schools must adhere to the requirements and principles of universal design which applies to buildings, indoor and outdoor facilities and also ensure that school design must make provision for the specific needs learners, educators and administrative staff with disabilities as must as it accommodates those who are able bodied. These needs will apply equally to structures like libraries, sports and recreational facilities, laboratories, water and sanitation, classrooms etc. what is equally important is that there must be a periodic review of the norms and standards to ensure that, they remain current and serve the needs of the teaching and learning process (Regulations Relating to Minimum Norms and Standards for Public School Infrastructure, 29 November 2013).

Some of the commitments made by the Department of Basic Education are in line with the National Development Plan which speaks about the education system playing a greater role in building an inclusive society, providing equal opportunities, and helping all South Africans to realize their full potential, in particular those previously disadvantaged by apartheid policies namely black people, women and people with disabilities (National Development Plan, 2012: 296). The NDP on building more with the money government has taken to investigating the spiralling costs of building schools at a reasonable cost without compromising quality. This is important in view of the poor infrastructure in most schools located in black communities. The 2017 School Monitoring Survey found that only 72% of learners were in schools complying with basic infrastructure standards. These standards include the requirement that electricity and water supply be available. The survey also found improvements with respect to items such as availability of classrooms, and toilets. The report speaks about progress in school infrastructure being slowed by budget constraints. For instance, between 2015 and 2020 real spending on infrastructure dropped in real terms by 23% (Action Plan to 2024, 2020:16). To that end the department made an undertaking of arresting this decline by adopting the Provincial School Build Programme.

In fact, as recently as the 10<sup>th</sup> of June 2022, the Department of Basic Education (DBE) published in the government gazette proposed amendments to the Norms and Standards for Public Schools Infrastructure. The draft amendments among others proposed the following:

- The DBE must as far as practicable, facilitate and coordinate the responsibilities of the government agencies and entities who have a role in the provision of infrastructure and related services.
- Each Provincial Department of Education must annually on a date and in the manner determined by the Minister provide the Minister with detailed report on plans and progress on the implementing of the norms. These progress reports and plans shall be published on the DBE website and websites of all nine provincial education departments for access by the public.

The main concern of Equal Education and Equal Education Law Centre is that the DBE wants to take out the deadlines by when government must get rid of the pit latrines and provide basics such as water, electricity, classrooms, fences and libraries (Equal Education, 28 June 2022). This implies that without deadlines that are written into law, it may take a considerable period of time of up to 20 years for the department to fix infrastructure thus abdicating their moral and legal duty. EE also raised concern with the little time provided by the department for the public to make inputs to the draft amendments. The second long standing concern which made EE go to court in 2018 was pertaining to what they termed the “escape clause” which basically implies that schools can only be fixed if there is cooperation and resources from other institutions of government like Treasury, municipalities and Eskom. The escape clause was rendered unlawful by the courts although DBE is still trying to avoid accountability by inserting in the draft amendments the wording that DBE must “as far as practicable make sure that the different parts of government play their part in delivering school infrastructure”. With regard to the provision by provincial departments of education to annually submit progress reports on the norms, EE felt that it is an important victory while still however expressing reservations about why the draft amendments is removing the guidance about the details that should be in the reports including the size of the existing infrastructure backlogs and the amount Education MECs would have used to eradicate them (Equal Education: 2022). At the time of writing this study, the matter pertaining to norms was still being ventilated in the public domain. This is one of the key campaigns that EE has been synonymous with since its inception.

## The Provincial School Build Programme

The programme is meant to provide funding to the Accelerated Schools Infrastructure Delivery Initiative (ASIDI) has its primary objective as the eradication of the basic safety norms backlog in schools without electricity, water, and electricity. According to the DBE (2021) the scope of the ASIDI programme comprises the following sub-programmes:

### Sub-programme 1

Inappropriate structures: 483 schools that were built from inappropriate material in their entirety which will be replaced with new schools that meet the department' standards of functionality.

### Sub-programme 2

Providing sanitation facilities: 939 schools that previously did not have access to sanitation are supplied with a least a basic level of sanitation.

### Sub—programme 3

Providing electricity: 932 identified schools that are not serviced have access to electricity energy supply.

### Sub-programme 4

Providing water: 1145 schools that do not have access to water are provided with basic water supply.

Equal Education had also published the statistics below which demonstrates the progress made since the inception of the basic school infrastructure campaign and the promulgation of the school infrastructure law.

**Table 6.1: Statistics on progress of public-school infrastructure**

South African Public Schools	2011	2013	2016
No water	2,401	1,722	171
No electricity	3,544	2,925	569
No toilets	913	822	68
Pit latrines	11,450	10,915	9,203

Source: Equal Education: 2018

The Department of Basic Education was required by the court to periodically inform the public on progress made in so far as the implementation of the norms and standards on school infrastructure hence the table below which is the latest report. The issue of school infrastructure looks holistically at a number of areas such as access to portable water, sanitation, electricity, library facilities, fencing and security, sports facilities among others. For purposes of this study, only the latest report in tabular form of the progress made in so far as ablution facilities only, will be shown. The table looks at the entire national landscape of ordinary public schools as of 12 April 2021 in all the nine provinces. The table also looks at the number of schools polled and the types of ablution facilities still prevalent.

**Table 6.2: Statistics on progress of ablution facilities programme**

<b>Province Name</b>	<b>Number of sites</b>	<b>Pit</b>	<b>Enviro Loo</b>	<b>VI P</b>	<b>Flush Toilet Septic Tank</b>	<b>Flush Toilet Municipal</b>	<b>Mobile Toilets</b>	<b>Chemical Toilets</b>	<b>Alternative Sanitation</b>	<b>Without facilities</b>
Western Cape	1457	0	1	9	228	1389	3	0	0	0
Eastern Cape	5291	1473	282	2773	254	1048	8	4	1	0
Northern Cape	544	46	42	83	145	341	4	1	0	0
Free State	1084	127	30	116	129	733	5	1	0	0
KwaZulu Natal	5803	1000	472	2360	551	1582	63	65	4	0
North West	1471	108	81	309	499	697	16	7	1	0
Gauteng	2074	0	13	26	154	1945	101	7	0	0

Mpumalanga	1718	26 9	306	53 9	502	498	0	0	0	0
Limpopo	3834	21 44	1445	13 95	690	410	1	3	0	0
Total	23276	51 67	2672	76 10	315 2	8643	201	88	6	0

Note that one site can have a combination of different types of ablution facilities

Source: Department of Basic Education: 2021

### **Contextual realities despite legislation enacted**

On the 8<sup>th</sup> of April 2019, the Minister of Basic Education released the 2017/18 School Monitoring Survey Report which was an independent national representative sample of schools offering grade 6 and 12 respectively. Among others, this survey was looking at the progress and challenges relating to the provision of school infrastructure. According to the Department, “the survey notes that, nationally only 59% of schools complied with all the predetermined minimum physical infrastructure standards”. (Speech by Angie Motshekga, 8 April 2019). Only 76% of schools had running water and about 80% had adequate functioning sanitation. This was just a marginal improvement on the 2011 report. The report also indicated that the department has since completed the building of 100 state of the art schools and is in the process of completing 100 others which have been completed at the time of this study. the commitment that was made by the Department of Basic Education was that schools built out of mud, wood, zinc and asbestos would have been eradicated, fixed or replaced by November 2016.

Despite the notable progress made, City Press of (2022:9) reports that in the Eastern Cape for instance, more than 30 schools are still in existence which have been using inappropriate structures. 24 schools were still without water and 53 were without sanitation. Nine of the 24 schools are in the Eastern Cape and 15 are in Limpopo. This is a practical demonstration of the fact that much still needs to be done according to Equal Education. The organization still contends that although progress has been made, the department still hasn’t complied with its own deadlines since schools in provinces like the Eastern Cape, Limpopo and Kwazulu Natal are still using pit latrines that threaten their safety and violate their dignity (Statement by Equal Education, 25 November 2020).

Additionally, the Eastern Cape Provincial Education department was taken to court by the School Governing Body of a school in the province named Amasango Career school in Makhanda which had been operating from an unused railway building since 2001. The school contends in the court papers that the department returned R205.1 million infrastructure grant meant for the building of learning facilities and toilets. Although reporting on the challenges of provision of resources is largely concentrated in provinces like KZN, Limpopo and Eastern Cape, affluent provinces like Gauteng are not wholly immune to these problems. For instance, the Sowetan (20 May 2022, 10) reported on learners of Setumo Khiba Secondary School in Mabopane, North of Pretoria experiencing challenges of furniture which resulted in the learners shutting the school. The problem of lack of furniture along with overcrowding and dilapidated infrastructure means learners are forced to sit on the floor, writing with books on their laps among other challenges. The action of boycotting classes, closing of the school and public demonstration culminated in the Department of education providing the furniture urgently required by the school.

The other clause which pitted Equal Education and the Department of Basic Education in the Minimum Norms and Standards regulations which ultimately forced the hand of EE in ultimately taking the Department to court was what was referred as the ‘escape clause’. Equal Education was joined by Based Education for All represented by Section 27 another formidable civil society movement operating in the education space which intervened as *amicus curiae* (friend of the court) in support of the application by EE. This clause stated that infrastructure standards in schools need only be met if cooperation and resources are forthcoming from ‘other government agencies and entities responsible for infrastructure in general’. The implication of the clause was such that if entities like the electricity provider like Eskom, municipalities and Treasury failed to provide the necessary resources, generations of learners will continue to suffer the infrastructure legacy of apartheid. The Bisho High Court ruled in favour of Equal Education by compelling the Department to remove the clause. The court decreed that the sections are inconsistent with the constitution and the Schools Act and are therefore unlawful and invalid. It must be mentioned that the Department of Basic Education did appeal the Bisho High court judgment to the Constitutional Court which however ruled against the department by dismissing the appeal as having no reasonable prospects of success effectively reinforcing the decision of the Bisho High Court. These regulations assisted in providing an effective roadmap for improving school infrastructure in South Africa’s under resourced schools.

According to Veriava (27 July 201). The judgement further develops the evolving jurisprudence in respect of the right to basic education by its explicit acknowledgement of school infrastructure as an important component of the right. It also requires that the principle of public service accountability imbue and underpin legislation seeking to give effect to government's rights-based obligations.

Despite these harrowing cases, the Department of Basic Education has only committed itself to the eradication of pit latrine toilets as late as 2030. This is mainly due to budgetary constraints. However Equal Education argues that in its engagements with education departments "our analysis of the of the latest provincial school infrastructure reports, show that the departments still struggle with the basics such as accurate and accessible data, clear and coordinated planning, as well as making sure that the implementing agents and contractors that build schools on behalf of government are held accountable (Equal Education, 25 November 2020). For civil society organizations like EE to access the progress reports, they still have to submit a Promotion of Access to Information (PAIA) request to the Minister of Basic Education despite the 2018 court judgment that ordered the minister to make the reports public. Equally concerning despite the massive infrastructural backlogs is the fact that a total of R1,7 billion was cut from school infrastructure grants with another R4,4 billion of grant money used for new Covid-19 costs in the education sector. According to the report of the Auditor General (2019/2020) money is lost through mismanagement and wasteful expenditure. For instance, the Auditor General's presentation highlighted that R818 million was spent irregularly or in a fraudulent manner by the Department of Basic Education in the 2019 fiscal year. This is money that could have made a substantial difference in the lives of schools with limited resources.

### **Contribution by Equal Education**

Civil society plays an important function in initiating discussions processes about the path of development, questioning government policies and enhancing the capacities of within society for negotiation processes. The CSOs also play a fundamental role in supporting democracy, fostering human rights, social justice and preventing conflicts. According to the German Development Institute (1999: 1-2) posits that the role of civil society has assumed a more comprehensive role over the last years to the extent that the problem-solving capacities of traditional players have diminished considerably, and that strengthening civil society is an essential prerequisite for sustainable development.

Gumede (2018:1-2) argues that the impact of having a robust civil society has played a critical role in creating a vibrant democratic culture and addressing the gap between the state and local communities. South Africa's civil society organizations have increasingly become the last line of defence fighting on behalf of ordinary citizens against out-of-control corruption, public service delivery failure and abuse of power by elected and public representatives. For instance, civil society organizations such as the Johannesburg Welfare, Society, The National Prevention for Crime Prevention and Gift of the Givers to mention just a few have intervened on several occasions in providing essential basic services where the state is often absent. It is within this context that the study further examines the role of Equal Education in playing an oversight role over democratic institutions of the state.

### **Collaboration with other CSOs and the state**

EE has also collaborated with other organizations such as Section 27, the Legal Resources Centre, EELC, Southern African Litigation Centre and the Studies in Poverty and Inequality Institute in writing a Basic Education Rights Handbook which serves as a legal literacy tool that serves to empower communities, school governing bodies and learners to understand education law and policy, to know when learners' rights have been violated and know steps required to protect their rights. This handbook is a valuable resource in providing information on case developments and legal frameworks in key areas of education laws and policy (Veriava, Thom & Hodgson: 2016). The organization has also collaborated with other civil society organizations and school governing bodies in campaigns and activities that seek to hold the department accountable on their legislative mandate. For instance, EE, EELC and Section 27 collaborated on the school nutrition project. Equally also in the Michal Komape court case Equal Education was admitted as a friend of the court in a case brought by Section 27 against both the Limpopo Department of Basic Education and the national Department of Basic Education. EE also collaborated with SADTU when they took the Western Cape Department of Basic Education to court over the department's intention to amend Provincial School Education Amendment Act of 2018 (Steyn:2022). The amendment to the Act sought to introduce what is referred to as collaboration schools, donor schools and intervention schools in the province. Collaboration schools are defined as public schools where non-profit organizations collaborate with the education department to provide additional skills and resources.

The basis of the objection by SADTU and EE centred around governance issues, where 50% of the voting rights on the schools will rest with the School Governing Bodies (SGB) thus limiting powers of the SGBs and giving them to donors, effectively privatizing education and allowing the department to shirk its responsibility to manage and support schools (Thebus: 2022). This are but a few of the numerous collaborative actions that EE has been engaged in with other civil society organizations in South Africa to try and put pressure on government to compel it to eradicate pit toilets and generally live up to its constitutional obligations. These collaborations and synergies are necessary to increase the impact that the sector has and also prevent a replication of programmes by organizations that are found in the same organizational space.

Generally, CSO in post-apartheid South Africa have tended to partner with government for developmental purposes. These partnerships are generally meant to address the capacity problems faced by government. Government in the main does not have the reach in most instances to address the vast socio-economic challenges of the poor hence it has extended an olive branch to the sector to partner with it in order to help the massive challenges in South Africa. Davids and Theron (2014: 68) however argue that these partnerships have largely failed owing to the following reasons:

- Inadequate capacity in government to successfully implement the provisions of legal frameworks such as those contained in the National Lotteries Act, the National Taxation Laws Amendment Act among others.
- Complex tendering procedures which favoured the private sector over the civil society organizations.
- Fear of co-option. NGOs feared that they would be swallowed should they establish partnerships with the government.
- Attitudinal and bureaucratic obstacles manifested in distrust of NGOs by government administrators.
- Institutional capacity constraints-Lack of capacity in either NGOs or government departments to manage complex partnerships arrangements through mutually beneficial memoranda of understanding.

Generally, partnerships and not competition between civil society organizations is necessary in approaching the massive socio-economic challenges faced by the underprivileged class in South Africa. The individualistic and selfish ‘go it alone’ approach is egoistic and cannot help the poor in navigating the complex problems faced by the post-apartheid state. Equally it is important for the sector where possible to partner with government in the best interest of the citizens. It must be said however that the approach of EE towards government which largely appears to be adversarial, and hostile has much to do with the inability of government to demonstrate a commitment to solving the problems of the poor and the adoption of the neo liberal agenda as exemplified by the adoption of GEAR. The chasm between government and EE is thus a microcosm of the perceived or real marginalization of these sector from structures of governance. Also, the introduction of fees for basic services such as education and what Quijano refers to as the “colonial matrix of power” resulting in state control of gender and sexuality and control of education and control of knowledge are some of the factors which led to the relations between EE and the state that largely are characterized by antagonism and hostility instead of collaboration and partnership (Mignolo: 2007).

### **Policy and Training**

The role of civil society in policy formulation and implementation is extremely important in the context of governance and development Ntsebeza (2019) posits that civil society organizations act as positive connection among citizens, government and the non-government actors including development partners. The CSOs are well and strategically positioned to articulate the pressing needs and demands of the communities. They are also able to develop and promote alternative development solutions that can enrich the development discourse and contribute to the growth and development of the public sector. According to Graham et al. (2008) Even the Geneva Convention has recognized the significant role of civil society organizations in issues of public policy and development.

Equal Education is no different from a horde of many CSOs in the country who also play a pivotal role in contributing to the democratization process through sustained and organized pressure. EE has a Policy and Training Department which plays a significant role which is made up of its campaign research, internal Education and Training Unit and its film school. In undertaking campaigns and other mass-based programs, this department ensures that there is rigorous research and analysis which informs the decision making.

The department makes recommendations to the various legislatures and executive branches of government on how the existing policy and the law may be improved and seeks to produce new knowledge in order to critique interventions and anticipate policy shifts in the basic education sector (Equal Education Annual Report, 2017:36). These formal research reports and analysis generated by the department are made into shorter and more accessible readings for Youth Group activists and are communicated to staff, and the broader public in various ways like through media statements, pamphlets seminars etc. significant gains have been recorded through the involvement of this department in ensuring that legislators promulgate and adopt policies that will enhance and develop the lives of the people of South Africa. For instance, EE made submissions to the Commission of Inquiry into Higher Education and Training (The Fees Commission). In particular the recommendations were to the effect that poor students must be prioritized in the realization of free higher education in South Africa. This recommendation is consistent with the previous campaigns led by EE in the past in the basic education sector wherein which the organization has always been agitating for the downtrodden and indigent members of society in enabling them to have unfettered access to education. That in the ultimate, the government of South Africa did adopt a policy of fully subsidised free higher education and training for poor and working-class students at undergraduate level starting in 2018 was in no small measure to the significant contributions of many stakeholders who include among them EE.

### **Advocacy**

The concept of advocacy largely has to do with civil society organizations using their expertise and influence to advance the well-being of citizens through various ways which include making contribution to policy formulation processes of government or at any stage of the policy process. According to Policy Project in (Williamson and Rodd: 2016), advocacy is a set of targeted actions directed at decision makers in support of a specific policy. Ezell (2001) identifies that a client /agent relationship is necessary. Civil society organizations conduct advocacy on behalf of groups that they represent and try their utmost best to persuade their principals who in the main are the communities that they represent to accept the point of view of the advocate. The targeted audience also could be the decision makers whom the advocate tries to convince to adopt proposals suggested by the civil society organizations. Supporting and promoting a cause or the interest of a people is basically what advocacy is. The posture adopted by government in the main has got an effect on the levels to which civil society can participate in advocacy activities.

Where civil society is not repressed, civil society is able to play an active role in engaging and interacting with both its constituency and the authorities largely represented by government on matters of concern.

In the context of South Africa, the government as discussed in chapter 5 has created a legal infrastructure that enables and allows civil society to play a diverse and dynamic role in holding government accountable. The democratic landscape has allowed the mushrooming of both registered and non-registered civil society movements to contribute in playing an oversight role. Equally it must be mentioned that the state has also at times had a good rapport with civil society while at times it has adopted an antagonistic posture in their approach to civil society organizations that expose the excesses committed by the state against its citizens. Where relations, between such civil society organizations and government are characterised by hostility, there has been accusations that civil society is fronting for foreign governments and opposition political parties. For instance, the former Minister of State Security David Mahlobo at some point labelled NGOs as enemies of the state and counter revolutionary (Sali: 2017). It is within this context that Equal Education has since its inception in 2008 championed the cause of the vulnerable communities through advocacy activities, particularly in matters that largely have to do with access to education.

Using their considerable reach in at least five provinces and with a membership base of 5 200, Equal Education has since its inception played a tremendous role in advocacy activities. From engaging with the government on issues related to sanitation in schools, provision of libraries and textbooks, scholar transport and school infrastructure to mention a few, EE has been known to be one of the chief advocates for improvement in the quality of education especially for the previously disadvantaged communities. The members of EE who include the facilitators and parents regularly engage with communities in discussions on matters affecting the communities. These engagements usually result in resolutions that include inviting government officials to provide answers on their concerns. EE members have marched, written letters, held night vigils, met government officials and public representatives, advocated in the media, made submissions to parliament and where necessary taken legal action with the assistance of the EELC (EE: 2015).

## **Funding in generic terms and the challenges associated with it**

Considerable information was covered in the last chapter on funding of civil society organizations in South Africa. According to Ngandu (2019: 63-64) NPOs can draw resources from various sources which usually consist of a combination of international funding, corporate social investment, donations from Individuals, income generating activities, and government support usually in the form of transfers and subsidies. Voluntary labour is another significant contributor to civil society organizations along with in-kind donations. A lot of international foundations also play a role in providing funding and strategic support to dealing with domestic development priorities.

According to the 2017/18 annual report of Equal Education, many ordinary South Africans generously donate to the organization. 1650 individuals made small contributions in support of the struggle for quality and equal education. The majority of donors are in the main located in the Western Cape and the organization also goes out of its way to solicit pledges and support from communities in shopping centres and other public amenities. The organization also has a network of institutional donors who make annual grants. The institutional donors include a lot of foundations like the Bertha Foundation, Cameron Schrier Foundation, Claude Leon Foundation, Open Society Foundation of South Africa, Raith Foundation, European Union and others (EE, Annual Report, 2017/18:35). From the audited financials of the organization, the gross income for the 2018 financial year, EE was able to raise up to R28 million. Unfortunately, the statement is not so detailed as to reveal the amounts from individual donors so as to enable a determination to be made in terms of the difference in contribution from both external and internal donors. A significant amount is spent on employee remuneration and administrative costs of maintaining offices in five provinces. The EE also utilizes a significant amount, over R2 million when they host their periodic national conference. The other considerable expenditure is money used on campaigns undertaken by the organization in the various provinces where EE has a footprint. This is a significant amount particularly in view of the scarcity of funders who were adversely affected by the global economic recession.

In compliance with the section 18 of the Non-Profit Act of 1997, NPOs are required and obligated to submit their annual reports. EE has been consistent in providing the audited financials to the members of the organization, funders and the government as required by law.

This is part of the accountability mechanisms that are also directed by the Public Finance Management Act of 1999. The latest financial statement has not at the time of this study been made available. Accountability processes require that members of EE should first be reported to on the financials, have an opportunity to interrogate the report before it can be released for public consumption. This however does not preclude the organization from compliance with accountability and reporting processes as required by the laws of the country notwithstanding the challenges brought by the Covid-19 regulations which has not been the case owing to the Covid-19 pandemic and the associated regulations prohibit and which made the holding of a national conference impossible. According to the HSRC (2019:81) civil society organizations need to strengthen their internal governance arrangements and their capacity for evidence-informed implementation, a key requirement of donors. To enable CSOs like EE to embrace these challenges, there is a need to for capacity building for staff in areas like project management and financial management among others.

The first major significant challenge that Equal Education faces along with many other civil society organizations remains the issue of funding. Despite the almost R30 million generated as income by EE in the 2017/18 financial year and the host of international donors that funds EE, the organization still requires significantly more resources to be able to make an effective impact and influence on the fundamental campaigns undertaken by the organization. Equally important is the need to provide consistently annual audited financial reports on the funding that the organization receives from various donors.

Radebe and Nkonyeni (2020) identify the following as some of the negative impact that lack of funding has on the sector:

- CSOs are forced to underinvest in critical organizational operations such as financial systems, human resources and fundraising.
- Some funding only covers pragmatic costs and not the indirect costs associated with delivering an intervention programme.
- The unequal power relations between funders and NGOs means that CSOs are not positioned to challenge the rationale for underfunding indirect costs which would allow the sector to invest in the organizations and be sustainable.
- The pressure to demonstrate the impact of the sectoral programmes on society sometimes, in order to secure funding, sometimes undermines the core mission of the organization.

- The sector spends a considerable amount of resources in collecting data on selected indicators and targets as opposed to improving the quality of the interventions and programmes.

In the ultimate end, the losers are in the main the marginalized communities who depend on the critical interventions and services provided by the sector. To their credit EE while having financial challenges like other CSOs has to their credit has been producing in its national conferences audited financials as required by law such that the funders have continued to contribute resources to the organization.

### **Training as part of Capacity Building**

The increasing role played by civil society organization in policy processes, from policy formulation to policy monitoring, public service delivery, conflict resolution requires that significant attention must be given to issues of education and training as a means to enhance the capacity of these organizations to impact positively on the lives of the citizens. Most civil society organizations do not necessarily possess membership base of individuals with high technical skills, academic qualifications and competencies which enable them to take up the cause of members seamlessly without any hurdles. Leaders of these CSOs have to challenge big corporations, businesses and government institutions which is represented by *cream de la crème* of intellectual capital there is to it. Additionally, these institutions are loaded with big budgets such that these encounters with CSOs often result in court cases which can be drawn out to a point where the CSOs not only lose cases because of the strength of their position but rather because of lack of capacity and funds to challenge the ‘big brother’. This is one of the reasons why it is imperative that CSOs should be able to build their capacity so as to be able to engage government in a constructive bridge building way which can help to improve state responsiveness, accountability and help deepen democracy.

According to the HSRC (2020:8) under South African legislation, a specific responsibility for supporting CSOs lies with the Department of Social Development and the NDA as outlined in the in the Non -Profit Organizations Act (Act 71 of 1997) as amended and the National Development Agency Act 1998 (Act 108 of 1998, as amended respectively).

Recognizing the role of CSOs, Chapter 11 of the National Development Plan on Social Protection aims to ‘develop an enabling environment and create conditions for social partners to contribute and acknowledge the critical role of non-governmental or non-profit organizations in providing social welfare services, especially for improving the wellbeing of children (Human Science Research Council, 2020:3-4). The NDA Act further states that the primary mandate of the National Development Agency is providing grant funding to CSOs for purposes of implementing projects and programmes that meet developmental needs of poor communities and strengthening of institutional capacities CSOs that provide direct services to poor communities Similarly at a global level, in seeking to address the first of the Sustainable Development Goals and end poverty in all its forms, experts have called on member states to create meaningful multi stakeholder partnerships and an enabling environment for encouraging and engaging civil society in addressing the structural causes of poverty. Programmes like the National School Nutrition Policy Campaign by Equal Education should be understood within this context.

In a report published by NDA (2008: 27-28), it was generally found that staff capacity is considered to be one of the key concerns for many organizations because of the impact that high staff turnover rates an inability of CSOs to pay competitive rates has on organizations. In previous chapters the loss of skilled personnel by CSOs to government, the private sector was also highlighted as one of the challenges leading to CSOs bleeding capable and skilled personnel thus weakening the capacity of the sector to engage meaningfully on their primary mandates. Equal Education is no different in that although it has a considerable number of funders and donors, the kitty is never enough to contend with the challenges that the organization is confronted with. The establishment of EE’s Internal Education and Training Unit in 2014 was meant precisely to ensure that the training provided is useful in “supporting the autonomy of members, facilitators and local staff in directing issues while ensuring that we provide high quality content which has a consistent thread of emancipatory ideals and politics but does not unnecessarily duplicate the work of comrades” (EE Annual Report, 2017/18:30). For EE to be able to make a meaningful impact on its constitutional mandates, the organization needs to have competent personnel able to engage meaningfully in making policy submissions on matters of interest, the ability to also conduct credible research and scientific analysis, making presentations to high panel bodies in parliament and the various legislatures, and also to have a strong, visible and significant media department able to conscientize people around issues affecting the citizens.

For this to materialise, the organization therefore has to invest considerable resources in enabling education and training as part of capacity building. To this end the organization spent in excess of R3 million on its Policy and Research Unit which plays a significant role in matters of training and development (EE Annual Report: 2015/16 55). The National Development Agency expect the CSO sector to play an important role in the social, political and economic development of the country and to that end expect the sector to contribute to strengthening governance and transparency and therefore holding the state and the private sector accountable. For this to become a success it is critical that the sector contributes to developing and expanding tailored training for leaders and financial managers, increasing support for peer-learning and mentoring, and exploring independent structures for monitoring and handling or mediating complaints (HSRC: 2020:1).

### **Factors impeding achievement of EE objectives**

Civil society organizations require a safe and enabling environment in which they can operate free from hindrance and insecurity. For this to happen states particularly in the developing world should strengthen the rule of law, administration of justice, social and economic development access to information among others. Access to resources is an integral part of the right to freedom of association as defined in Article 22 of the International Covenant on Civil and Political Rights (United Nations Human Rights:1966). These resources are necessary to enable CSOs to help in defending the principles that support human rights and enshrining the right to solicit, receive and utilize resources to promote and protect human rights. The concept of resources is broadly defined to include financial assistance, material resources, access to international funds, solidarity, the ability to travel and communicate without undue interference, and the right to benefit from the protection of the state (European Union Agency for Fundamental Rights,2017:29). The latter statement whilst emanating from the experiences of countries operating in the European Union is also relevant to CSOs operating in developing countries and South Africa in particular.

### **Becoming a real mass-based organization**

EE's head office is based in Khayelitsha in the Western Cape where it traces its origin. The emphasis on retaining headquarters in a township largely under resourced was a conscious and deliberate decision to remain rooted in areas which still faces significant challenges in resource provision and service delivery from the government and private sector.

Although the organization has since expanded to having a footprint in five other provinces, it still retains substantial impact in terms of its programmes in the Western Cape province. The first national congress held in 2012 in Johannesburg was also an attempt to escalate the footprint of the organization to other provinces. In fact, one of the resolutions adopted was to expand the organization into becoming a mass-based movement (EE Annual Report, 2012:15). This include EE's resolution to organize at former Model C schools, at primary schools, organize a teacher's component and also organize parents who are School Governing Body (SGB) members to join EE. Despite all the efforts and resolutions, EE is still based in only three provinces with offices in the Western Cape, Gauteng, Eastern Cape and hasn't amassed the national mass base impact consistent with its resolutions. This seriously impedes the organization from having the kind of impact that one expects, in view of the huge challenges that still affect the basic education sector currently.

### **Gender equality and salary parity issues**

In the 2018 national congress a resolution was taken on intersectionality, that EE members must be educated on issues such as race, patriarchy, gender, sexual orientation both within the movement and society in general (EE, 3<sup>rd</sup> National Congress Resolutions: July 2018). The organization also resolved to increase efforts to ensure that there is no discrimination within the organisation, particularly on sexuality and gender and agreed that this must form a core part of the political agenda and political education of Equal Education. This resolution was in the main a response to a media expose that reported on EE members who revealed instances of sexual abuse against senior members of the organization and being forced to sign non-disclosure agreement or else they may not be issued with reference letters when they leave the organization and pursue their careers elsewhere.

The members informed the Mail and Guardian, Allison and Akkob, M&G (1-7 June 2018: 10) that "they felt like they were being used as black people and were told to turn up at marches and demonstrations they knew very little about and given slogans to write on posters". The members felt that they were just pawns in the organization's political games. The other bone of contention was the alleged disparity in salary scales between the lowest and highest paid members. The lowest paid workers were alleged to be earning R3500 a month while the highest earners were pegged at R25 000 a month.

For EE to continue making the kind of impact that it has made since its inception, it cannot turn a blind eye to such allegations and must be seen to be proactively involved in practical steps to root out any perceived and real cases of sexual harassment and racism and other abuses of power.

#### **6.4.2 AfriForum**

In stark contrast to the formation of Equal Education, conditions that led to the establishment of a civil society organization called AfriForum are different. AfriForum was established in 2006 in response to the need to “protect and grow the Afrikaner identity, culture, history and the Afrikaans language (AfriForum website: 2023). It was largely an initiative of the trade union movement Solidarity that led to the formation of AfriForum. The organization attracted significant controversy because of its views especially the denial that apartheid as declared by the United Nations was a crime against humanity According to the Du Toit (2017) AfriForum boasts a membership of 186 000 with the number said to be growing. The recent figures as communicated by AfriForum on its website was that by January 2022, the organization had 295 000 members. It is an organization that basically exist to preserve the rights of the Afrikaner community. The organization developed a Charter (AfriForum: 2019) which in its preface refers to itself as a “citizen’s rights initiative”. Some of the areas of focus in the charter include the following:

- The expansion and preservation of civil, minority, human and constitutional rights.
- The establishing of self-reliant and self-respecting communities
- The attainment of settlements in furtherance of peaceful co-existence and tolerance between communities
- The establishing and nurturing of mutual recognition and respect.
- The quest for a balance between economic development, the environment and globalization

#### **Campaigns undertaken by AfriForum.**

The Bill of Rights in the 1996 Constitution, provides for the protection of the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom. Further, chapter nine institutions supporting constitutional democracy were created in an effort to protect people from any form of abuse, violation or infringement of their rights.

Some of the institutions include the Human Rights Commission, The Public Protector and the Commission for the Promotion and Protection of the rights of Cultural, Religious and Linguistic communities.

### **Protecting the Afrikaans language**

Chapter one Section 6(1) of the constitution of the Republic of South Africa, 1996 provides for the recognition of eleven official languages. These languages among others include English, Sepedi, Sesotho, Afrikaans and isiZulu among a few. Despite this constitutional proclamation, the reality is that African languages have not been given the same airtime that has been accorded English and Afrikaans. Using the Public broadcaster as an example Afrikaans has historically been a dominant language in South Africa hence it has often been dubbed the “language of the oppressor” (Willemse, 2015). The new reality is that since the dawn of democracy in 1994, has meant that English has become foremost medium of communication and is largely seen in most quarters as the language of power (Davis, 2023).

Despite all these realities, AfriForum has been consistent in its defence of the Afrikaans language as being under siege and in continued decline (AfriForum, 2022: 11). To this end the organization took University of South Africa (UNISA) to court when the university adopted a language policy that sought to phase out teaching and learning in Afrikaans in 2016 (Bhengu, 2021). AfriForum’s case was largely centred on Section 29(2) of the Constitution, 1996 of South Africa which grants the right to receive education in the official language languages of choice where reasonably practicable. Unisa’s objective for the policy was to institute measures to enhance the status of indigenous African languages while also phasing out Afrikaans and therefore removing the guarantee that courses be offered in both Afrikaans and English. The Supreme Court of Appeal (SCA) set aside the resolution that removed Afrikaans as a language of learning and tuition at UNISA. UNISA appealed the SCA judgement, and the matter was subsequently taken to the Constitutional Court which upheld the decision of the SCA (Mabuza: 2021). The apex court in one of its findings said, “UNISA has failed to demonstrate that it was not reasonably practicable to continue with Afrikaans as one of the languages of instruction”. The Constitutional Court further said that it was a misconception that Afrikaans was only the language of whites and the language of the oppressor since today its spoken predominantly by black people. The judgement further directed Unisa to prominently publish on its website and in three Afrikaans newspapers, a notice including:

- A full list of the modules that were on offer in Afrikaans as of April 2016
- Offering all prospective students for the next academic year admission in such modules as presented on first year level; and
- Offering all existing students, if they were enrolled in any of the of those courses or would have enrolled for the subsequent year's course available in Afrikaans. But had to follow the module in English- a choice to enrol on the basis that they may follow the module in Afrikaans until completion of their studies.

A case almost similar to the UNISA one took place in the Bloemfontein High Court wherein AfriForum had brought the University of Free State to court to contest the university's decision that English would be the medium of instruction at undergraduate and postgraduate level across all its campuses. The court dismissed the university's decision and declared the Afrikaans will remain as the medium of instruction at the university especially since Bloemfontein in which the university is based has a "high concentration of Afrikaans speaking people thus it is only fair that students at the university be given the opportunity to learn in Afrikaans. The cases demonstrated the extent to which AfriForum's mobilization of public interest litigation was to become an effective tool in challenging decisions taken by state institutions which the civil society organization perceived not to be advancing the course of Afrikaners in South Africa.

### **Renaming of street names in Tshwane Metropolitan Municipality**

In line with the new democratic order which seeks to dismantle the remnants of the apartheid edifice and to reflect a shared heritage of all South Africans e, the City of Tshwane Metropolitan Municipality took a resolution to rename 25 street names. This renaming process was according to the former Mayor of Tshwane Kgosisentsho Ramokgopa "necessary to ensure social cohesion and to continue with the transformation agenda" (News24: 2016). The decision of the council followed a public participation process in several wards of the city. One of the reasons advanced by the City of Tshwane in pursuing the renaming process was that it was exercising its exclusive constitutional powers to govern the City in line with its vision for Tshwane/Pretoria to become a "new African Capital City, reflective of a common heritage, identity and destiny (Modiri:2019).

Following the council resolution, AfriForum approached the High Court seeking a restraining order against the decision of the City. The court ordered the City to keep the old street names below the new ones for a period of six months. In that time AfriForum was supposed to file an application to review the City's decision to rename the streets. The sixth month period elapsed. Despite this, AfriForum still pursued the matter to a point where ultimately the matter was taken to the Constitutional Court. The ConCourt (Constitutional Court) made a ruling that dismissed the appeal by AfriForum and upheld the decision of the City of Tshwane as reflective of the new inclusive dispensation notwithstanding the fact that not all wards participated in the consultation process (Constitutional Court: 2016). In the ruling, Judge Mogoeng Mogoeng said that "the sum total of AfriForum's case was the harm it was exposed to by gradual loss of place of belong and the sense of place and belonging contended for by AfriForum is highly insensitive to the sense of belonging of other cultural or racial groups" (Mabuza: 2016).

### **Farm attacks and murders**

One campaign that AfriForum has been consistent in waging is the attacks on farmers and in certain cases the subsequent killing associated with the attacks. The organization profiles the incidences, keeps track of the numbers of attacks annually, the statistics pertaining to the numbers of farmers killed. The organization has been raising awareness both locally and internationally about this farm murders. To this end AfriForum has even petitioned the South African government and the United Nations Organization so that they can recognize the farm murders as a priority crime (Nortje:2023).

AfriForum has provided a comprehensive and extensive information on the farm murders. This ranges from information about an overview of the murders by province, the monthly statistics, the type of premises in which the incidences occur, days and times on which these murders are committed, demographic information that relates to the victims like age and gender of the victims, common causes of death and items often stolen (Afriforum:2023). The number of arrests and convictions also form part of the information gathered.

### **Building of a college campus**

AfriForum in solidarity with its sister organization Solidarity commenced with a programme of construction of a new campus of an Afrikaans only private higher education institution in 2020. The institution which has been in existence since 2007 focuses on scarce practical skills like welding, fitting and turning, courses for millwrights, and electricians among others.

The technical college training campus is called Sol Tech and is located in Monument Park in Pretoria (Labuschagne:2001). The organization “decided to build this new campus to accommodate its growth and future demands” according to Dirk Herman chief executive of Solidarity (Labuschagne:2021).

The construction of the campus did not sit well with the MEC of Education in Gauteng, Panyaza Lesufi arguing that “the idea was started out of anger when universities across the country began changing their language policies to promote inclusivity (Eyewitness News :2012). The campus is said to have been constructed with donations from as little as R10 monthly contributions from members of Solidarity and AfriForum. The college’s medium of learning and teaching is Afrikaans. According to Deventer, Managing Director of Sol Tech, “despite their biasness towards Afrikaans and Afrikaans speaking students, they also accommodate English and black students and that their admission criteria, is that a prospective student needs to pass an admission test, need a proper understanding of Afrikaans and be able to pay the tuition fees” (Friedman:2021).

### **Funding for AfriForum**

In light of the huge sums of money AfriForum spends on public case litigation, the curiosity of many South Africans has been raised as to how the organization generates its funding. On its official website the organization maintains that it is funded by monthly contribution of up to R100.00 each month from members. The organization said that on “exceptional basis that we sometimes receive funding from private individual or constituencies for particular projects” (Khoabane, 2011). It is apparent from the countless cases and projects undertaken by AfriForum that the organization spends significant amounts of money. What the study was not able to reveal is the financial statements which would indicate the sources of revenue for the organization. This information would certainly help in bringing to light how the organization is able to sustain its numerous projects and campaigns. The lack of this information pertaining to financial record of the organization, unfortunately limits the study in making conclusions as to whether the monthly contributions are sufficient to enable the organization to undertake the kind of activities that clearly requires massive injection of capital for them to be a success. What the study cannot discount is the fact that some of the cases are conducted pro bono by its legal team this helping to alleviate the need for the organization to spend a lot of money on these cases.

## **Effectiveness of AfriForum as a civil society organization**

AfriForum has constantly demonstrated the efficacy of its approaches and strategies in fighting for the cause for which it stands for. This is what makes the organization one of the most powerful civil society organizations in South Africa. The extensive nature of the research it gathers before it takes up issues on behalf of its constituencies can only point to the ability of the organization to muster adequate resources to make this type of information available. That AfriForum also goes to great lengths to even undertake tours abroad including making petitions to the United Nations speaks of the commitment, dedication and the will to fight for the cause of their constituency. In the same vein, the considerable resources at the disposal of the organization enables AfriForum to travel the world in order to gain sympathy and global coverage for the cause of the Afrikaner nation. This is what makes AfriForum unique from the number of civil society organizations in South Africa. Also compared to many civil society organizations in South Africa, AfriForum has a much greater reach. The organization is rooted in all the nine provinces of South Africa and as such is able to make a significant impact in the socio-economic politics of the country.

The organization has also mobilized young people in the Afrikaner community and created the AfriForum *Jeug*/Youth which is Christian oriented organization that represents Afrikaner youth civil rights issues. This demonstrates the fact that the organization has a futuristic outlook in that they are already conscientizing the youth in the early formative stages of growth and development. This means that by the time the youth graduate into later phases of life, they will be exposed to the ideals and philosophy for which the organization stands for thus guaranteeing the longevity of the organization. The organization even has a footprint at universities such as Stellenbosch and Pretoria where they have been contesting elections for the Student Representative Councils (SRC). In fact, in the SRC elections in 2014 the organization's student wing won 50% of the seats at the University of Pretoria (*Deur AfriForum Jeug*: 2014). The win by the youth wing of AfriForum in the greater scheme of things in the context of South Africa's vast political landscape might not mean anything especially since SRC elections are largely contested over bread-and-butter issues confronting students at university campuses. However, it worth noting that the good performance by a largely right-wing party might represent a worrying shift by young people to politics of conservatism characterized largely by opposition to the politics of transformation blowing throughout all sectors of life in South Africa.

### **6.4.3 South African Democratic Teachers Union**

One of the largest trade unions in South Africa is the South African Democratic Teachers Union (SADTU) which was founded in 1990. SADTU is a product of an amalgamation of about 18 trade unions which dissolved to create one giant organization called SADTU. According to Kumalo and Skosana (2014:71), some of the organizations which dissolved in order to form SADTU include among a few The African Teachers Association of South Africa (ATASA), National Education Union of South Africa (NEUSA), Union of Teachers Associations of South Africa (UTASA) and Mamelodi Teachers' Union (MATU). The organization operates in the public sector space and is rivalled in terms of organising teachers by the National Professional Teachers Organization of South Africa (NAPTOSA). SADTU is the single biggest teacher's union in South Africa with a membership of about 260 000 since its formation (SADTU website). This are telling numbers considering the tough conditions under which the organization was formed. This includes hostility from the apartheid government, poor salaries, inequalities in salary parity between male and female teachers, victimization of members and poor conditions of service among the challenges faced by the sector (Kumalo and Skosana, 2014:71).

As part of the organizational development challenges just before the dawn of democracy, SADTU had to pay particular attention to some of the following:

- Setting up local site offices
- Conflict resolution and advocacy skills
- Negotiation skill, presentation skills for meetings and the media
- Education funding issues and budget presentation
- Funding
- Research and technological needs
- Professional development and
- Collective bargaining

Source: SADTU Journal (1994)

One of the biggest challenges faced by SADTU which continue to bedevil the organization is how to redefine its relationship with the ruling party the African National Congress (ANC). SADTU as part of the trade union federation Congress of South African Trade Unions (COSATU) continues to be an alliance partner of the ANC which is the governing party in South Africa. Historically and even today the trade union federation and the ANC have been in the trenches together as part of what they refer to as the ‘tripartite ‘alliance’’ which is an alliance that also includes the South African Communist Party. Since the dawn of democracy tensions and at times outright hostility has characterized the relations between the ruling party the ANC and its alliance partners. This tensions, makes collective bargaining process to be fraught with serious challenges. For instance, demands by SADTU for improved conditions of service and better salaries are often met with the response by government pointing to the bleak economic situation in the country, millions of unemployed South Africans, high levels of inflation, South Africa’s international debt commitments among others.

### **Campaigns by SADTU**

According to the organization’s 2010 vision document SADTU has registered sufficient progress in the among others the design of the teacher union recognition agreement, successful bargaining for better working conditions for teachers, better salaries for teachers in South Africa and its influence in the Tripartite Alliance owing to its growing numbers (SADTU,2010:5. Its national footprint is evidenced by the exponential growth in numbers with the numbers being reported to be in the region of 260 000 rendering the organization one of the biggest public sector unions (SADTU website). The fact that the Department of Basic Education has created a bursary scheme for aspirant teachers at institutions of higher learning called Funza Lushaka (Department of Basic Education, 2023) means that countless numbers of new teachers will continue to be produced and churned out by universities with SADTU and its competitors likely to continue to receive new recruits from the new coterie of teacher recruits.

### **Training of educators and principals**

Some of the notable programmes run by SADTU include the training of principals in programmes such as Professional Learning Communities, Instruction Leadership and School Governance and Management through the Union’s School Management Training (SMT) programme.

The training is important in that it equips the principals to become better managers with the ability to lead their schools better. In the same vein the establishment of the Curtis Nkondlo Teacher Development Institute in 2023 with the purpose to provide teacher training is a notable milestone that has the potential to make a difference in improving the quality of teachers and subsequently improve the quality of learning and teaching (SADTU website:2023). According to SADTU website (2023), the programme has learning theory development, leadership and management, the role of the principal as an instructional manager, lead and change management as some of the key components of the training.

### **Professionalization of teachers**

The organization has had countless engagements with stakeholders in education with the view to address the issues of the professionalization of the profession of teaching. This includes the creation of the Curtis Nkondo Professional Development Institute in 2006 whose purpose is to serve as a vehicle through the union will meaningfully contribute to the professional development of teachers. The institute will also seek to use” the facilitation and education skills to provide professional development training to SADTU members and other teachers (Curtis Nkondo Professional Development Institute:2023).

The professionalization of the teaching profession is important especially in view of how the sector is viewed by the public. The profession according to Perkin (1985) is noted to be characterized by a vicious cycle of low status, lack of competitive resources, inability to control their own selection, training and qualification and a degree of state interference leading to low bargaining power, low remuneration and low status. The issues of the professionalization of teaching are important in view of the negative public reviews that the fraternity normally receives especially because of non-adherence to ethical conduct. This includes teachers accused of having sexual relations with learners, administering corporal punishment and being accused of harassment of learners (SACE, 2017:24).The state established a professional body called the South African Council of Educators (SACE) in terms of the South African Council for Educators Act No.31 of 2000 and is accountable to the Minister of the Department of Basic Education for its mandate to register educators, to manage educators’ adherence to the Code of Professional Ethics (Jet Education Services:2017).

## **Eradication of violence in schools**

A worrying feature in public sector education has been the escalating violence in schools in South Africa. According to Ncontsa and Shumba (2013), research shows that school violence is escalating despite the measures put in place to address the problem by the Department of Basic Education and schools themselves. There has been widespread concern regarding violent incidences in schools in South Africa. This have received extensive media coverage. Due to the high incidence of school violence, schools are no longer viewed as safe and secure environments where children can learn, enjoy themselves and feel protected (Van Jaarsveld:2008.). The South African Police Services (SAPS) in November 2022 released crime statistics that showed that 19 murders had been committed at educational facilities across the country. This also includes report of 33 teaching staff members that were seriously attacked in the Western Cape alone (Shabalala:2023). UNESCO, 2017) also expressed a concern about violence in schools and stated that South Africa is not an exception. UNESCO stated that violence in schools is a global phenomenon affecting about 246 million children. It is against this background that SADTU launched the “I am a school fan” campaign.

The “I am a school fan” campaign was launched by SADTU was driven by deep concern over the increase in violence at and around schools. the campaign was launched in 2019 and is aimed at mobilizing all stakeholders including parents, teachers, learners and government departments to address school related violence in all its forms (SADTU:2021). SADTU’S call for corporate South Africa to come on board and support the campaign resulted in organizations such as Old Mutual who came on board and collaborated with SADTU in an attempt to ensure that the “education sector’s systemic challenges are addressed both holistically and collectively” ( Mapukutla Old Mutual General Manager in SADTU website: 2019).Despite this commendable effort by SADTU school violence continues to feature prominently in the media with reports of gang related activities dominating headlines. SADTU is however forging ahead with the campaign calling “for schools to be created as safe spaces and havens, stop violence against learners and teachers, stop vandalism in schools and keep schools safe and build a caring society” (Pillay, 2023).

## **Relations between labour and the state**

The waning influence of the public sector trade unions led by SADTU in collective bargaining was visible when in 2018 labour and the government signed an agreement containing clauses that regulated wage increases for the 2018/19, 2019/20 and 2020/21 years (Dlamini, 2023).

However, in 2020 government reneged on the agreement for the 2020/21 with the then Minister of Finance Tito Mboweni citing the fact that the increase would cost the fiscus R37,8 billion which it could not afford (Mahlaka, 2020). As such the state refused to enforce the agreement and launched a counter application disputing the legality of the collective agreement. This freeze on the salary increases in the public sector became a hot political potato with unions challenging the decision at the Labour Court and the Public Service Bargaining Council. The labour appeal court ruled in favour of the government which declared the enforcement of the agreement unlawful. The matter was escalated to the ConCourt which upheld the decision of the Labour Appeals Court and concluded that “if the clause 3.3 of the collective agreement were to be enforced, the amount available for service delivery would be significantly reduced and that in the present economic and health circumstances facing the country, it would not be just and equitable to require the state to make good the illicit salary increase it promised at the expense of far more pressing needs affecting the country” (Constitutional Court:2022).

SADTU is an affiliate union of the federation Congress of South African Trade Unions (COSATU) which is part of the Tripartite Alliance along with the ANC and SACP. The South African National Civic Organization (SANCO) was later included as part of the alliance. The alliance was formally established after the release of the former president Nelson Mandela from prison in 1990. It is a political alliance consisting of parties which collectively contributed to the democratization of South Africa. The broad consensus, which SADTU also supports is on welfare or social security policy and a general recognition and acceptance that the lives of the majority be improves (Cedras and Kuye, 2013:98). Relations among members of the alliance have been strained lately leading to a breakaway of COSATU with unions such as National Union of Mineworkers of South Africa (NUMSA) being part of the breakaway group that established a new trade union federation called the South African Federation of Trade Unions (SAFTU) in 2016. The express intention of SAFTU was to create an independent trade union movement that takes mandates from no one else but its own members only (SAFTU Constitution, 2017:10). Although SADTU remained in COSATU and did not join the new trade union federation, the extent to which relations are strained in the tripartite alliance was demonstrated when in the 2022 COSATU elective conference, SADTU sponsored a motion which deliberated on whether the alliance should throw its weight behind the ANC or the SACP in the upcoming 2024 national elections (Khumalo, News24: 2022). It must be stated that the tensions in the alliance are historical stretching back when the RDP was disposed of in favour of GEAR by the former administration of Thabo Mbeki.

It is lately however that the relations have been so sour to appoint where possibilities of a total breakdown might be imminent judging by the 2022 COSATU conference discussion which almost resulted in COSATU backing the SACP rather than the ANC in the national elections.

The bad relations between the state and SADTU have been further compounded by a litany of reports in City Press newspaper which reported that principals' positions were being sold for upwards of R30 000 and teachers posts were also being sold for livestock and cash amounts for as little as R6000. These reports prompted the Minister of Basic Education to appoint a task ministerial team led by Dr John Volmink. The task team produced a 285 report which largely exonerated SADTU and other Unions from the buying and selling of posts. The report however did not exonerate individual members of the Union from using undue influence of varying kinds to affect appointments to posts in education, a practice which is universally acknowledged to be endemic (Final Report, 2016:117). This report and the continuous media reports around teachers still meting corporal punishments, teachers reported to be having sexual relations with learners and a litany of other negative news reports have undermined the relations between the union and the government and has tainted the profession despite massive strides by SADTU to professionalize the teaching profession.

#### **6.4.4 The South African Council of Churches**

The SACC is universally renowned as one of the fiercest and foremost opponents of the apartheid regime during the years liberation movements were outlawed in South Africa. It has contributed and continues to play an immense role in the struggle for justice in South Africa. It has had key leaders banned, detained and in some cases injured for their opposition to the apartheid state. For instance, Khotso House, the headquarters of the SACC was destroyed by a parcel bomb in 1988. The Truth and Reconciliation Commission's findings were that the bombing was ordered from high up in the leadership of the cabinet with the then Minister of Law and Order, Adriaan Vlok and other security officials like Eugene de Kock formally being cleared by the TRC after they applied for amnesty for their involvement in the bombing (TRC Special Report:2023). The organization has had a checkered history with the highs of being renowned as the moral compass of society and lows such as when the leaders such as Allan Boesak were charged for their involvement in corruption relating to the misuse of funds meant for the Foundation for Peace and Justice organization. The SACP was a vehicle that united countless numbers of religious denominations into its fold as an umbrella body for the ecumenical churches.

Leaders of the SACP who gained prominence and worldwide acclaim as the prophetic voice of the poor and oppressed included the likes of Desmond Tutu, Allan Boesak and Frank Chikane among others (De Wet, 2015:7). Its advocacy for economic justice distinguished the SACC as a voice of the marginalized members of society. The role of the church in the pre apartheid era was discussed extensively in previous chapters. The focus largely in this chapter is the contemporary role of the SACC since the advent of democracy in 1994.

According to Womack and Pillay (2015:5) without the evil of apartheid there was neither clear opposition to speak out against, nor a clear imperative for ecumenism. Ecumenism according to Tachin (2022) is originally a Greek word *oikoumene* meaning the “inhabited earth” It relates broadly to the interfaith movement striving for greater mutual respect, toleration and cooperation among the world religions. Eregare, Ekpendu and Adesina (2017:51) posit that ecumenism is a paramount trend in the contemporary church due to the geometrical level of division in the Christendom which is contrary to Christ’s plan for the church. This ecumenical role of the church is what also created divisions within the Christian church in South Africa. The practice-based ecumenism that the SACC was accustomed to, suddenly found its *raison d’etre* gone and the SACC was in a crisis of identity. The lack of discussion on Faith and Order matters within South Africa, left the SACC with no theological underpinning to fall back on to motivate commitments to ecumenism in such a rapid change of context.

The dynamics of the new democratic environment presented the SACC with challenges such as the loss of key leaders who joined the government administration. Leaders like Frank Chikane served as a Director General in the presidency during the former president Thabo Mbeki’s first administration. According to Maluleke (2009) the result of this relation is that the church lost its prophetic voice, and their presence is disappearing in the state. This, coupled with the dwindling revenue from external funders left the SACC in hard times without a clear vision for the future and an identity crisis. The SACC became mired in what De Crutchy (1997) referred to as ‘the church’s critical solidarity with the state’ which involved the church remaining true and faithful to its prophetic vocation. According to De Crutchy (1997) there are three touchstones for determining the concrete meaning of critical solidarity. The first is to take sides with all who remain oppressed in one form or another in a new democratic society and to participate in the struggle for justice, human dignity and liberation. The second is the defense of human rights for all people, especially minority, cultural and religious groups. The third is its own self critique supporting those initiatives by government which may lead to the establishment not only of a new, but a just social order (Kim, 2017:65).

It is this stance of critical solidarity that created ruptures within the SACC with a strong body of opinion, arguing that critical solidarity meant that the church would maintain a critical distance from government in order to protect its right to support government and also to criticize it where necessary (Kumalo,2013:628). According to Kim (2017:66) it is this issue of critical solidarity that led to the formation of various religious groups such as the National Religious Association for Social Development (NRASD), the National Interfaith Leadership Council (NHLC) and the National Religious Leaders Council (NRLC). The government organized the interfaith organizations in the country to cooperate and work closely with them and in the process detaching themselves from their historic ally, the SACC. THE SACC's insistence on its critical solidarity stance with the government cost it many friends and its public profile and role in providing a voice for the voiceless was seriously jeopardized (Womackand Pillay,2019:7). In 2009, the government replaced the SACC with the National Interfaith Leaders Council (NILC) as the key advisory body on matters of faith in South Africa. The SACC argued that it was marginalized because of its refusal to cozy up to the ANC (Mataboge, M&G: 2009). The SACC according to Maluleke (2009) while it values its relationship with the ANC however felt it would be inappropriate for the council to have form an alliance with the ruling party and preferred to have a relationship of critical engagement with the ruling party since its membership cuts across the political spectrum.

Mass media has become a big part of the lives of individuals. The power of the mass media has become so strong that its undoubtedly significant role in the world today remains beyond any question. Churches have also invested time and money on broadcast media such as television and radio. According to Mateus (2017) sites such as Facebook, Twitter, Instagram, YouTube and WhatsApp have the potential to shape the way the world communicates. Statista (2023) posits that by 2026 the number of social media users in South Africa will have reached 30 million. In spite of this development, the SACC does not have a strong media presence nor footprint on social media. Despite the appointment in 2014 of a Communications Officer the SACC has not been able to market itself and engage with the general public nor has it been able to use these platforms mainly used by young people to communicate and engage with the world (Womack and Pillay, 2019:11). This lack of social media presence along with the wider challenge ecumenism is facing in the modern world presents a worrying scenario that if the SACC does not confront could easily lead to its extinction.

## **Campaigns led by the SACC**

Some of the notable campaigns undertaken by the SACC include the following.

### **National Convention**

In response to the death of miners in Mpumalanga, the death of people in Sierra Leone arising from natural disasters and what the SACC refers to as the capture of state organs in South Africa, in particular the allegations of the capture of state institutions by elements of the Gupta family the organization in its Triennial National Conference led calls for the Convening of a National Convention of South Africa (SACC: 2017). The organization raised a concern pertaining to declining standards of morality, issues of economic transformation, threats of political violence, poverty, corruption, inequality and a range of other maladies that characterize South Africa currently. It is in response to this challenges that the SACC called for a National Convention to address the myriad challenges confronting South Africa. The convention which consisted of a number of civil society organizations ranging from Organization Undoing Tax Abuse (OUTA), SAFTU, National Council of Trade Unions (NACTU) and Federation of Unions of South Africa (FEDUSA) among others had four focus areas which included healing, economic transformation, anchoring democracy and education was aimed at reaching a broad consensus on public values and standards to facilitate on building a just and equitable society. The convention established a steering committee whose focus and mandate was to oversee the tasks of the convention which included issues like the professionalization of the public service, the issue of transparency in party political funding, how to prevent abuse of public institutions, issues of reversing gross inequalities among others (Mlangeni, Daily Maverick:2017).

### **Corruption is not my heritage**

To a point of being an annual crusade, the SACC has been consistent in its call for stern action to be taken against those found guilty of corruption. This was largely in response to the slew of personal protective equipment (PPE) corruption scandals that engulfed South Africa during the 2020-21 Covid pandemic. Medical Brief (2023) argues that the pandemic corruption scandal continues to grow with R5 billion of the R10.38 billion spent in relief efforts under investigation. Parliamentary Standing Committee on Public Accounts also said that it is seriously concerned about the allegations of corruption relating to Covid-19 procurement and wants those implicated to be successfully prosecuted in order to turn the tide of corruption in government (IOL:2021).

To this end, on the 7<sup>th</sup> of August 2020 the organization along with six other civil society organizations who call themselves the ‘Moral Collective like the Ahmed Kathrada Foundation, the Nelson Mandela Foundation, the Desmond and Leah Tutu Legacy Foundation, the Foundation for Human Rights and the Council for the Advancement of the South African Constitution undertook an anti-corruption campaign (SACC:2020). The Collective decried the fact that at a time of the crippling effects of Covid-19 on South Africa’s social, economic and health care systems, the government allocated a R500 billion relief package which government officials looted for personal gain. The campaign included a virtual Sunday service that included prayers for the nation and against corruption. Webinars and grassroots programmes were undertaken urging citizens to take on ten commitments that refutes corruption and a pledge for every individual to act against corruption in their personal capacity (World Council of Churches: 2020).

## **6.5 Synthesis and analysis**

From the selected cases the study found a considerable contribution made to the consolidation of democracy. In an effort to create an accountable, ethical and democratic State, the study shone the spotlight on the efforts of civil society organization such as Equal Education, AfriForum, SADTU in holding the State accountable in the exercise of its fiduciary responsibilities. For instance, Equal Education has played a huge role in advancing the interests of the largely poor communities in schools in South Africa in ensuring that they also receive equal education as promulgated by various pieces of legislation including the constitution. Equal Education was found to have contributed a great deal in forcing the government to among others review and promulgate the Learner Transport Policy in South African Schools and also the adoption of the Regulations Relating to Minimum Norms and Standards on Public Schools Infrastructure among others. These policies have largely reshaped the narrative of inequality as unacceptable especially after more than 20 years of democracy in South Africa. The study has also been able to acknowledge and show the efforts of the government in improving the notion of equality in basic education. The pressure exerted by civil society organizations like Equal Education and the impact of solidarity strategies with other like-minded organizations in forcing the hand of government to live up to its constitutional obligations was also touched in the chapter. Challenges to the organization, Equal Education that includes funding constraints and lacking a mass-based character are shown to be impediments that could jeopardize the ability of EE to realize its founding objectives.

Any attempt to place EE in the domain of either the Marxist or Liberal domain will too simplistic a task given the constant evolution of material conditions in society and the fact that interpretations of the theories have also evolved with changes in societies. The fact that the concept of civil society is defined and understood differently from the Global North and South also adds to the need to be cautious in confining EE as a pro Marxist type of organization. Literature in the main refers to civil society organizations as either influenced by either of the two theories. For instance, Marx argued that since the State has a class character, it is therefore a contested terrain by various stakeholders who each want to exert their dominance and by extension influence the State towards their own interests. The liberal approach to civil society as expounded in the work of Locke who is a classic liberal posits that only civil society can resolve the fundamental flaws inherent in a State by providing equal and independent people with a legitimate political authority to help in the resolution of conflicts (Jailobaeva : undated). Equal Education has not been found to be an organization who seek to capture the State for its own interests. The organization has chosen one area of socio-economic rights which is basic education and has confined its programmes and contributions in effecting equality in that area. The study argues that the EE in its character straddles both sides of the dominant theories and should not be located in a particular strand without a critical analysis of the factors already discussed in Chapter two. In any economy driven by market fundamentals, issues of inequality are bound to arise. South Africa is an example of such a State with features of liberalism and an economy open to international trade and capital flows (Rodrik: 2008). This is the background which created conditions for the establishment of EE.

The selected cases also discussed also civil society from a racial dimension with a review of the activities of AfriForum. The organization has made a big impact in the post 1994 politics in South Africa. AfriForum has been unyielding and combative in taking up issues relating to the marginalization of the Afrikaans language, killings of Afrikaners farmers, high levels of crime and corruption, affirmative action, issues relating to Broad Based Black Economic Empowerment among a notable few. The organization has constantly been in the courts using public interest litigation to challenge some of the decisions of the state and has often come out victorious. Recently the organization after appealing to the Supreme Court of Appeal (SCA), challenged the constitutionality of the Department of Tourism's allocation R50 000 to small business as a relief grant using B-BBEE status as one of the criteria for funding (News24wire:2023).

The organization while mainly a pro Afrikaner organization is able to mask its partisan nature by often helping black South Africans when confronted with issues that require them to approach the courts. For instance, in 2018 after his land was invaded by a group of people, landowner Dr Maserumule having exhausted all avenues including approaching the police to evict the group on a charge of trespassing (Venter,2018). Only on approaching AfriForum for help did he succeed after AfriForum helping him to obtain a court order from the Gauteng High Court after which the group was successfully evicted. AfriForum has consistently demonstrated that they have a successful and effective recipe as a lobby group and an influential civil society organization.

Afriforum can be located in what was discussed in chapter two as the postmodern model of civil society. Modernity was seen as a monolithic whole that sought to place Europeans at the forefront of other cultures (Lotter, 2006). Kaldor (2003) in chapter two argues that postmodernists accommodate nationalists and religious fundamentalists among the multiple identities that are a precondition of civil society although postmodernism itself rejects the nation state as a modernist project and religions as grand narratives. AfriForum as a civil society organization largely exhibits character traits of such organizations who on the surface it appears to be non-racial, inclusive and accommodative of all racial groups. The actual reality is that the organization is an Afrikaner nationalist grouping whose primary focus is the advancement of the interests of the Afrikaner community. The organization as evidenced by the declaration by its leader Kallie Kriel that apartheid was not a crime against humanity (Khoza: 2018). The statement lends credence to the postmodern views by Kaldor (2003) in which she characterizes such civil society organizations as nationalist and fundamentalist movements. The statement is even more bizarre in view of the declaration by the United Nations in 1973 that declared apartheid a crime against humanity (United Nations General Assembly: 1966).

A key affiliate of COSATU and a significant component of the Tripartite Alliance, the mass based, SADTU also features prominently among civil society organizations which have been able to use their bargaining power, strength in numbers as the biggest teacher union in the public service to take up issues largely relating to conditions of service of educators. The organization has been able to use its proximity to COSATU and the governing ANC to push through a horde of issues including legislation that is meant to improve conditions under which teachers work in in South Africa.

SADTU has also contributed to improving the culture of teaching and learning in schools in South Africa with interventions such as the campaign for the professionalization of teaching and campaigns on the restoration of the culture of teaching and learning in schools. While in certain quarters SADTU, has been viewed as selfish and only concerned with issues of salaries and having had its image adversely affected by the 'jobs for cash' furore, the organization is however renowned as a critical stakeholder in matters concerning basic education in South Africa. This was recently acknowledged by President Ramaphosa who said that "more than any mineral or natural asset, more than any product or industry, the children of this country will shape and determine our fortunes" (SADTU website:2022). This effectively placed a greater responsibility on SADTU to take the issues of education with greater responsibility and commitment. Lately SADTU's militant stance and antagonistic attitude towards the State can be located within the realm of the rebellion theory which contends that relations between the State and civil society are in the main confrontational and hostile. Civil society's duty is to mobilize society against this hostile State. The attempt by SADTU to support the SACP as a counterforce against the historic alliance partner the ANC should be understood within this context. That the ANC government is no longer within the rank of the poor since it supports neo liberal policies that are anti Black and anti-poor. Therefore, civil society must agitate and organize against the State for the good of society.

While South Africa is largely regarded as a circular state, the overwhelming majority of people are Christian. StatsSA (2015:27), posits that 86% of South Africans were affiliated to the Christian faith. The SACC accounts for about 30 churches who are affiliated to it with a number of associate organizations who have relationship with the organizations. The SACC has also made its mark in the evolution of democracy in South Africa and as evidenced in the proceedings of the Truth Commission, was a targeted organization considered to be influential in agitating oppressed South Africans to undermine the apartheid state. since 1994, the emergence of the Protestant churches/charismatic churches and the subsequent formation of the National Interfaith Council of South Africa, the migration of the leaders of the SACC to government and the private sector, failure to properly define the organizations 'relationship with the ANC after democracy among others has contributed significantly to the waning influence of the SACC. Whilst still having an important footprint, as the custodian of a significant sector of Christian churches the SACC should seek to regain its place as the organization of choice in so far as Christian organizations are concerned in South Africa.

Both SADTU and the SACC have been historic allies of the ruling party, the ANC. The study went into great detail in showing the contribution of the two civil society organizations in the creation of the democratic State. In the same vein, the two CSOs have faced a similar dilemma encountered by a lot of CSOs which were part of the mass democratic movement before 1994. The dilemma classified by Seekings (1997: 1) as the changed institutional environment, in which many of the representative roles played by civil society at the local level hitherto have been ceded to political parties and elected representatives. The other factor that has thrown the two CSOs into turmoil continues to be the need to redefine their relationship with the State led by the ANC. Critical theory as discussed in chapter two posits that for modern democracy to thrive, there is a need for a functional, vibrant, effective and democratic civil society. SADTU and the SACC thus constitute an important constituency of CSOs who have ably demonstrated that despite your ideological leanings towards the governing party, the sector can still be formidable and critically engage the government. In profiling the selected civil society organizations, the study has answered a research question that sought to develop an understanding of the extent to which the selected CSOs have played in the various epochs in the evolution of the South African State.

## **6.6 Summary of the chapter**

The purpose of the chapter was to critique the role, impact and contribution to democracy of selected civil society organizations which are AfriForum, Equal Education, South African Council of Churches and the South African Democratic Teachers Union. These organizations are found to be playing an important role in holding the state accountable in the various sectors of society in which they participate. For instance, Equal Education in the arena of basic education has undertaken a number of campaigns and programmes that sought to highlight the litany of violations of socio-economic rights of the poor in various communities in South Africa. The same also applies to AfriForum which has effectively used public interest litigation among other approaches to expose the state as not living up to its Constitutional obligations. The chapter also showed an inextricable link between research questions and objectives on one hand and the content under discussion on the other. The theories and conceptual underpinnings of civil society as discussed in chapter two were also linked to the activities undertaken by the selected civil society organizations.

The next chapter will focus on conclusions, recommendations and the partnership model on state-civil society relations.

## CHAPTER: SEVEN

### CONCLUSIONS, RECOMMENDATIONS AND THE PARTNERSHIP MODEL ON STATE-CIVIL SOCIETY RELATIONS

#### 7.1 Introduction

South Africa, like a lot of countries in the continent, underwent a unique political trajectory that requires critical examination in order to assist future generations to avoid a repeat of the mistakes committed in the past. The country became synonymous with the racial policy of apartheid which was a complete converse to how democracy functions. The transition to democracy was a consequent outcome of the contributions by various stakeholders and role players. Among those role players were political organizations, the international community and most importantly the contribution of civil society organizations. The legitimacy that the state enjoys is partly a result of the fact that it recognizes and acknowledges the support and role played by civil society organizations. The fact that civil society organizations are located in close proximity to communities and are in touch with the daily realities and struggles of the people, makes them an important social partner that the government requires in responding to the challenges faced by the people.

It is within this context that the study makes a concerted effort to provide fundamental realities about the history, origin, role and impact of civil society organizations in South Africa. In particular a selected case study of Equal Education was undertaken with a view to demonstrating the extent to which these organizations are a necessary tool to help in holding the government accountable. The role of civil society organizations and their impact in contributing to the transformation of South Africa and the upholding and deepening of this democracy was also an area that the study examined in greater detail. The study also touched on the nature of the relations between the CSO movement and the state. Often the relations are characterized by mutual cooperation, respect and working together. This is evidenced by instances where civil society organizations have clubbed together with the state in helping communities particularly those in conditions of distress to try and help them to access services such as quality education and associated resources. The other reality that informs these relations is sometimes hostility and adversarial interactions as a result of them not seeing eye to eye on the best approaches to addressing the pressing problems faced by citizens.

The chapter also makes an attempt to contribute to academia and to the knowledge edifice by suggesting that a partnership model among civil society organization themselves and between civil society and the state could go some way in assisting towards enhancing and deepening of democracy, improving the policy enrichment process and in developing the lives of the largely poor communities in South Africa. Volmink and van der Elst (2017:12) remind us of the pertinent role of NGOs as part of civil society, by arguing that they are close to communities, can tap into social capital, and are able to mobilize communities into supporting national imperatives.

## **7.2 Summary of previous chapters of the study**

The purpose of this undertaking is to provide an overview of the findings from the various chapters in the study. The objectives of the study are integrated in the discussion on summary and conclusions to demonstrate the fact that the study made strides to realize those objectives. The chapters, while they individually focus on unique areas of the study, reflect a clear integration and a logical flow from one to the next. A summary of each of these chapters is discussed below.

**Chapter one** sets the scene ‘so to speak’ by providing an introduction and contextual background to the study. The study set out to examine the relationship between civil society and democracy in the post-apartheid South Africa. The chapter provided a structural outline of the study. This was done by looking at the problem statement, research questions and the significance of the study. The preliminary literature review delved into the circumstances and the historical context that gave impetus to the rise of civil society and its contributions towards the democratization of South Africa. Finally, the motivation behind the chosen research methodology was also outlined. The study adopted a non-empirical research methodology and the motivation and rationale for doing such was also explained in detail in this chapter.

**Chapter two** focused on an outline of the theoretical framework of the concept civil society and the etymology behind the concept. It must be mentioned that any research at this level requires extensive study of the available literature on the topic under consideration. This is necessary in gaining a comprehensive understanding of the existing research and knowledge on the subject. Literature review is essential in enriching the discourse and in knowing how each source used in a study contributes to the body of knowledge.

It is however critical for the author not only to rewrite the literature available on the topic but rather to critically evaluate sources of information on the study and to demonstrate the relevance of the various sources to the given topic. Mention must be made that owing to constraints of space and time, it is however a near impossible task for any study to do a comprehensive evaluation of almost all the information available on the topic in question, more so if the topic enjoys universal interest like studies on civil society organizations. This means that there is an abundance of empirical evidence and literature available on civil society.

The available literature has helped a great deal in providing various perspectives and dimensions on civil society. The existing literature revealed different stages of the development of the concept. For instance, during the first phase of the development of the concept, many authors understood civil society to refer to all institutions next to the state. The second level of development of the concept was introduced by a Karl Marx critique on the supportive function of civil society for capitalism as an oppressive system and simultaneously forwarding selfish private interest (Herbert, 2003:73; Beyers, 2011). According to Seligman (1992:3) the concept of civil society rests on two contradicting ideas, namely: the equality of the freedom of the individual and the autonomy of the community of individuals. This leads to constant tensions between the private and the public spheres in this regard.

The available literature also demonstrated that South Africa was not immune to international influences in that the dominant theories on civil society continue to be understood from both the Marxist and liberal perspectives. The liberal perspective of civil society is associated with the development of the market society, capitalist social relations and has traces of the Western political theory. This perspective considers civil society organizations as necessary to counterbalance the state and not allow it to be all too powerful to an extent of riding roughshod over the interest of the common man. The Marxist perspective was largely inspired by the need to constrain the market's destructiveness (Ehrenberg, 2008:76). Marx concluded that the network of material interests centred in property relations shaped politics rather than the other way round hence the need for a revolution in an effort to create a classless society. Marxists see the only solution to exploitation as lying in the reorganization of the macro-level socio-economic structure, namely, the rejection of capitalist market systems by creating a strong powerful central state whose role is to regulate civil society. Lastly, there is Gramsci who, building on the Marxist perspective proffered the following: What we can do, for the moment, is to fix two major superstructural 'levels': the one that can be called 'civil society', that is the ensemble of organisms commonly called 'private', and that of 'political society' or 'the State'.

These two levels correspond, on the one hand, to the function of 'hegemony' which the dominant group exercises throughout society and on the other hand to that of 'direct domination' or command exercised through the state and 'juridical' government.

The researcher was also able to confirm with the literature review process that the history of the concept and the dominant theories available in South Africa were just adapted from the dominant theories available from international literature sources. There wasn't any variation from the dominant theories to suit the local context hence most forms of literature on the concept are still a reflection of the theories from the global north.

**Chapter three** sought to examine the history of civil society in South Africa from the pre democracy era until today. The sector's growth, participation, and growth in the various epochs of South Africa's political history were the areas that the study focused on. Of particular interest is the contribution made by the sector in helping to usher in South Africa's the democratic dispensation. The fact that the state-civil society relations was mainly fraught with hostility, conflict and, to a limited extent, cooperation. This conflictual relation was mainly because of the policy of apartheid which was synonymous with the government of the day at that time. The chapter also made a review of the role, impact, and contribution of civil society in the post-apartheid era. The construction of regulatory environment created conditions for the mushrooming of thousands of civil society organizations - both registered and unregistered. Their relations with the government of the day were also a particular feature that was reviewed in this chapter. The study also confirms, supports and underscores the claim that democracy cannot be complete without the recognition of the role of civil society.

**Chapter four** sought to make a comparative analysis/historical profiling of the role of civil society movements in different phases of the evolution of the state in South Africa. The researcher did this comparative study of civil society in South Africa, Sub Saharan Africa and other parts of the world like South Korea in Asia and Brazil in South America. This comparative analysis sought to explain the relationship between causal conditions in South Africa and other regions of the world and how they impacted on civil society. The analysis assisted in helping to draw some conclusions on the similarities and differences behind the contribution of the sector in the areas under study.

For instance, conditions that gave birth to civil society formations in the continent of Africa were almost the same in the sense that almost the entire countries were colonized by various countries of Europe hence civil society organizations were primarily established not only with the goal of liberation in mind but also to fight for socio-economic rights for the oppressed people in those countries. Of course, conditions in Korea and Brazil were different, with civil society organizations in the former prioritizing their efforts and energy to dislodge from power the long rule by the Confucian dynasty while the review of the role of the sector in the latter country was concentrated on conditions in the recent past (1992 to be precise) when the then president of Brazil was forced by a powerful insurgence of civil society movements to leave office due to corrupt practices.

The chapter also reviewed similar issues of convergence and universality between South Africa and closer to home at countries in the region like Nigeria. While the researcher acknowledges that the context and the relations between civil society and the government does vary from one country to another, similarities also make for interesting scholarly reading hence the comparative analysis of a few countries in the region. In particular the review focused on the legal and statutory framework of civil society in Sub Saharan Africa. Largely, the laws regulating civil society became embedded in the constitutions of these countries. The emergence of the sector as a force to reckon with has meant that over the years there has been a move towards the middle way as a result of the state and the market (Moyo, 2009:1). This is one of the reasons that civil society has become a topical focus of research by a number of academics and scholars throughout the world.

**Chapter five** focused on providing an outline of the history and effect of funding on civil society movements. The chapter also outlined the reasons that influenced the sector to adopt public interest litigation as a preferred over the mass-based campaigns in post-apartheid South Africa. The need to create an effective bulwark against excesses committed by the state on citizens galvanized civil society movements to mobilize citizens. Tackling the enormous challenges faced by civil society requires a multi-pronged and dimensional approach in order for them to achieve their own set lofty goals. For effective mobilization to take root, civil society organizations needed massive resources to be able to massify and fortify their campaigns and to make their voices heard. The issue of civil society funding thus became a focal point of interest to the researcher. The study traced the issue of funding from a historical perspective.

This means from the period of the apartheid era to the post-apartheid period. The sources of funding were found to be mainly from international donors, particularly during the apartheid era. Other sources which contributed to civil society were domestic donors in the form of companies and individuals. The dawn of democracy saw government institutions taking over the function of providing funding to civic society organisations. The study confirmed that in the democratic dispensation the sector lost capable, experienced and skilled personnel to both the government and the private sector. Most civil society organizations would struggle to be effective in holding the state accountable unless they continue to receive adequate funding from both domestic and international donors.

The study has been able to demonstrate and confirm the centrality and importance of funding as a vehicle to enable civil society organizations to contribute to the enhancement of the democratic project. Democracy in essence cannot be complete without the direct involvement of organizations that represent the common people. For instance, IDASA which is a civil society organization that was renowned for its effective contribution in holding the state accountable on issues of democracy, good governance, transparency and citizen empowerment among others, had to permanently close its doors and ceased to exist in 2013 owing to serious funding problems that largely had to do with the 2008 global economic crisis. This had the attendant effect of robbing citizens of an important stakeholder whose contribution to the transition to democracy and the creation of democratic institutions is still a reference point on matters of civil society in South Africa. Civil society organizations should also be careful that their engagement of/with or by government agencies, especially on contracting service delivery which is reported to have closely *enmeshed* the civil society with the state, thereby making the demarcation between civil society and government rather blurred, should not be encouraged as it is likely to discourage civil society from acting as an instrument that checks governments' excesses and accountability requirements ( Fourie and Kakumba,2011 :60).

The second part of the chapter endeavoured to examine the strategy of civil society organization in using public interest litigation as a tactic to compel the state to formulate and implement policies that give effect to socio-economic rights that are enshrined in the Constitution. The study confirmed that in line with international trends, civil society organizations in South Africa opted for public interest litigation as a last resort. The sector is known to prefer mass-based struggles such as marches, sit ins, lobbying of power brokers such as politicians, making petitions and submissions to legislatures as a form of bringing to attention to the authorities' issues that require government attention.

Only in instances where the latter tactics do not work, did the sector opt to resort to public interest litigation in an attempt to eradicate the entrenched inequality, among other social ills, in every sphere of life which are mainly as a result of the legacy of apartheid (Badazwa,2005:34).

The unfortunate reality with public interest litigation is the fact that it requires the sector to have adequate funding necessary to pay lawyers. Most civil society organizations do not have the capacity both in terms of funds and skills set to pursue long drawn-out civil cases which in some instances take years before they reach finality. Unlike civil society, the state has the financial muscle and legal expertise to fund such lengthy court cases. Tsutsui (2013:4) argues that a worrying notable point however is that in the relationship between civil society organizations and legal advocacy organizations, the legal advocacy organizations usually do not seek help or solicit advice from their non-legal partners which leads to the perception that legal advocacy organizations worked entirely independent of organizations like EE. This lopsided dynamic leads to legal strategies not being in sync with political and legislative strategy and questions the legitimacy of litigation firms in accurately representing the sector's diverse constituencies. Notwithstanding the latter concerns, public interest litigation has been found to be the best approach in enforcing socio-economic rights and as a last resort for dispute resolution especially in a country with a government that at times is repressive or unresponsive to legitimate demands of the citizens.

**Chapter six** strove to examine, through a case study approach, the following civil society organizations: Equal Education, AfriForum, SADTU and SACC. The chapter provided new insights in the South African contemporary politics by dissecting the role played by these organizations. Of interest to the researcher is the extent to which EE (and SADTU to some extent) has been able, since its inception, to impact meaningfully in compelling government to formulate, adopt and implement policies that seek to effect equality of all learners in the South African education system irrespective of race, geographical local, sex or creed. AfriForum and the SACC were also studied with the view to show the extent to which they have been able to make an impact particularly in effecting policy changes on issues of socio-economic rights and on the lives of cultural communities in South Africa respectively. The case study approach as well as the unit of study in the main contributed to the choice of the methodological paradigm and data collection methods. The researcher chose these four civil society organizations as the unit of analysis due to its tremendous contribution and impact made in the arena of basic education since its inception in 2008.

To demonstrate this impact, one newspaper, namely, the Sunday Times (07 April 2016) even named Equal Education as one of the most influential civil society organizations that have contributed to changing South Africa's history in the last few years.

The researcher mainly opted for the document study approach as the most appropriate method for the study. Document study is described by Bowen (2009) as a form of qualitative research in which documents are interpreted by the researcher to give voice and meaning around an assessment topic. This includes analysing documents like public records, incorporating coding content into themes similar to how focus groups are analysed with a view to providing a confluence of evidence that breeds credibility. While a wide array of documents should ideally be reviewed, the question should be more about the quality of the document rather than quantity. To that extent, the researcher examined the most germane and enriching documents relevant to the study. The researcher also considered the subjectivity of the authors of the documents and biases that he may bring to the research. To that extent, in reviewing the plethora of documents of EE, SADTU, AfriForum and SACC that are in the public domain, the researcher made serious attempts to be as objective as possible so as to uphold the integrity of the findings. What made the review more manageable was the fact that the organizations under review undertook campaigns most recently and as such there is an ample availability of evidence of their contribution in the public domain. This evidence, which is in the form of internet sources, recorded interviews, video publications, parliamentary records, court records, news reports etcetera, is freely available for public consumption and scrutiny.

Equal Education for instance, has indeed made incredible strides since its inception in 2008. From dealing with the initial challenge of helping learners of Luhlaza Secondary School in Khayelitsha to fix broken windows, the organization grew to establish a bigger base such that it has established offices in three provinces and as such the impact of its programmes is felt on a national scale. That the government was compelled through the National School Nutrition Policy Campaign undertaken by EE to provide meals to learners who were at home during the Covid-19 enforced recess is evident of the influence of the organization in compelling government to prioritize the fate of learners who were relegated to the periphery and suffered greatly because of Covid-19. The 'No Space for Us' and 'Scholar Transport Campaigns' among others are just some of the campaigns which have permanently changed the landscape of how government approaches issues of socio-economic rights in South Africa. South Africa has EE to thank for selflessly fighting for the rights of the downtrodden in ensuring government practically demonstrates respect for its Constitutional obligations.

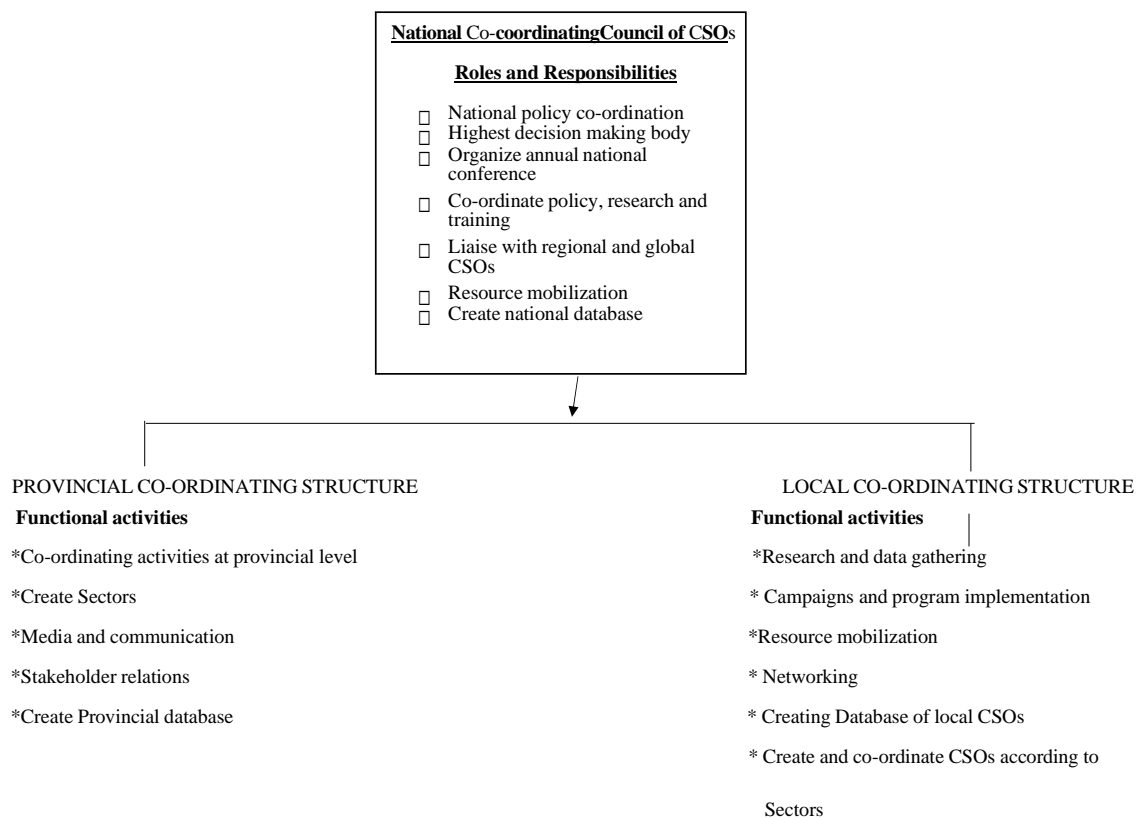
One of the findings in the study is that the government in the main prefers to work with organizations who could be co-opted as social partners and help the state with service delivery activities. This act inadvertently assists the state to consolidate its power. The organisations that get co-opted through such means end up becoming an extension of the state bureaucracy. The study has found that the government is uncomfortable with a constellation of organizations such as Equal Education who have a strong organizational efficiency, prefers a radical approach and also include legal action in their interaction with the government. The same applies to the other civil society organizations such as SADTU, AfriForum and, albeit to a lesser extent, the SACC who have proved to be a thorn on the side of government in so far as accountability issues are concerned.

### **7.3 The Partnership model of civil society**

The civil-to-civil society entente entails an approach that seeks to create an alignment, rapprochement and relations among civil society organizations themselves. Civil society, in the context of this study and as guided by the UN Guiding Principles Reporting Framework (2022), includes all types of CSOS with the exception of business or for-profit associations. These relations will essentially assist the sector to approach issues as a united, powerful and authoritative force, such that the state and private sector cannot take unilateral decisions that impact on the socio-economic conditions of the constituency that the sector represents. These organizations can achieve more when they are a united force playing a watchdog role over the activities of the state and consequently being able to lobby and make demands on the state to take decisions that are consistent with the needs of the ordinary citizens. This model depicts the various kinds of civil society organizations who are drivers of socio-economic change in communities. The model also places the South African constitution at the centre as a guiding document, particularly Chapter 2 which then informs the need for the state to meet the obligations encapsulated in the chapter on the Bill of Rights. The model also shows that there is more that unites the sector than issues that divides it. For instance, the areas of convergence as earlier indicated are socio-economic rights that are enshrined in chapter two of the Constitution. The model also shows that using forums like meetings as a form of consultation among themselves, the sector can be able to initiate and coordinate public policy inputs on critical issues facing communities.

The sector can use approaches like submissions and policy inputs on policy proposals emanating from the government, petitions, lobbying critical stakeholders in government and other forms of formal and official meetings with the state. These types of interactions can result in the sector achieving better outputs and outcomes for the citizens.

While the author acknowledges the existence of the South African National NGO Coalition (SANGOCO), as an umbrella body, the organization has become moribund and dysfunctional and as such there is a void that requires a new approach to tackling the challenges presented by current realities. SANGOCO's provincial structures are just non-existent and many CSOs have chosen not to align themselves with the organization. The current organizational structure of SANGOGO is an elitist approach to dealing with local issue since it requires resources which the sector does not have in abundance to respond to issues that take place in local communities. For any organization to be effective, it has to have structures where it matters most, at local government level. It is precisely for this reason that the proposed model emphasizes the need to develop coordinating structures for the sector at local government level. Radebe and Nkonyeni (2020) report that in the celebrations for World NGO Day, it was re-emphasized that the capacity of CSOs to innovate would be greatly enhanced if there was an opportunity to strategically collaborate and move away from working in silos. This is where the realities facing the communities happen and to expect a national or provincial body to quickly respond to challenges happening in communities is unrealistic. This is where the model that this researcher proposes comes onto fruition. The partnership model is illustrated as follows:



Source: Author's own mapping

The model, as illustrated above, emphasizes the unity of purpose for civil society organizations in approaching matters of interest. The unity of the sector will be able to ensure that in forums where the sector engages with other key stakeholders such as the state, labour, and the private sector, they do so from a position of strength. Considering that civil society organizations represent millions of the poor, mostly unemployed citizens with a registered base of more than 220 000 NPOs, it is the researcher's considered view that civil society should occupy and play a bigger role in decision making processes particularly on policy issues which will eventually affect the sector's constituency.

While the researcher acknowledges that the democratic dispensation has by and large created a fiscal, legal and political environment that has facilitated the establishment of collaborative interactions between the state and formal NGOs. This cordial relation, according to Habib (2003: 7) has been such that the NGOs have been contracted by the state to assist in policy development, implementation and service delivery. According to Ranchod (2007: 4-5) with the

adoption of Growth Employment and Redistribution strategy (GEAR) by the state in 1996 in which civil society played a limited role, relations between the state and the sector started to deteriorate. This gave rise to adversarial type of relations between the two parties. In fact, the dispensation led to the formation of new social movements opposed to what they saw as further entrenchment of poverty and inequality among South Africans because of policies adopted by the state. The adversarial relations will most likely lead to absence of trust, intimacy, connectedness, and a deep sense of power imbalances between the sector and the state represented by the Department of Social Development, which unfortunately may jeopardize the country's developmental, social welfare goals and ultimately the pursuit of a developmental state in South Africa (Morkel,2022:55).

The proposal of this model of rapprochement, collaboration and consultation permeating all spheres and sectors of society between civil society organizations, government, labour unions and the private sector is precisely to reduce tensions and conflicts that has taken root and seem to be a permanent characteristic feature of government, business-civil society relations. It is also in line with the World Economic Forum's New Social Covenant which is grounded in a social covenant between citizens, businesses and governments based on three core values: respect for human dignity, stewardship of the planet, and a commitment to the common good (Volmink and van der Elst, 2017:9). This is also in line with the NDP's call which recognizes civil society as important social partners without which the state will not be able to achieve its developmental goals.

It is within this context that the model below was developed with an emphasis on the recreation of the NEDLAC representation model in all spheres of government. Of course, to delineate an effective approach there is a need to adopt a sectoral approach to representation. This implies that CSOs that are involved in education, poverty alleviation, environment etcetera will have their own sub-committees that also includes the other stakeholders in government, business and labour. This will enhance effective decision making on matters where the involved parties have accurate knowledge and understanding of.

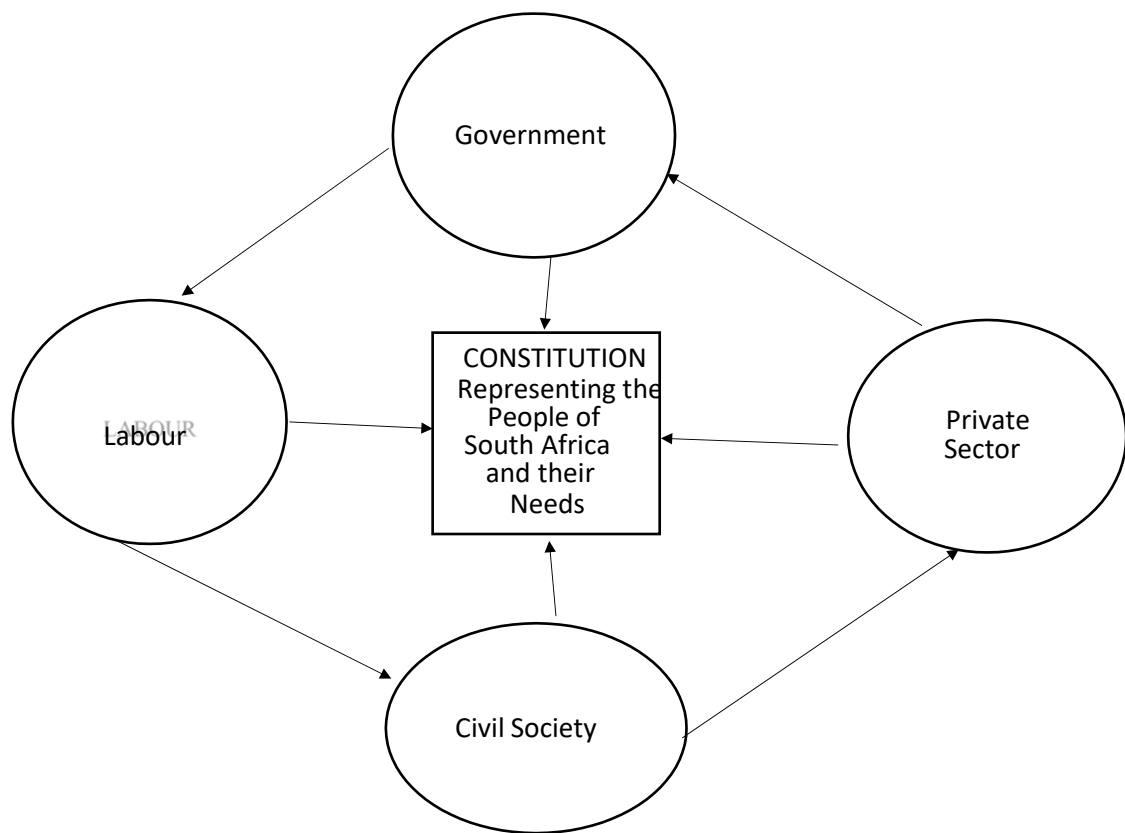
The reality is that where government, the private sector, labour and civil society have an open-door approach to issues, there is potential for collaborative and synergistic relationships. While a forum such as NEDLAC which was established as a key forum by parliament to among others promote the goals of economic growth, participation in economic and social equity is good, the researcher is not convinced that the structure gives civil society adequate space, time and

respect as an equal partner like government, the private sector and labour. In reaching consensus and concluding agreements on matters pertaining to social and economic policy, the researcher has an impression that owing to the loose coalition of organization, the sector is not considered an important and equal social partner with equal credentials accorded to other social partners. The restitution of inclusive forums such as the NEDLAC structure at other spheres of government and most importantly in local government which is at the coalface of service delivery will go a long way in ensuring that issues affecting the common people are elevated to a status of importance. This approach will play a significant role in reducing tensions that ordinarily flare up in local government as a result of perceived and real issues of non-consultation of the sector in policy and decision-making processes. According to Parnell *et al.*, (2004) the partnerships will, among others, help in the following ways:

- Assist the parties to collectively mobilize resource to achieve the developmental goals of the government at whatever sphere.
- Deepen and sustain participatory approaches to service delivery and infrastructure provision.
- Facilitate large scale government programmes.
- Contribute to policy formulation and socially responsive development interventions through structured and unstructured interactions.
- Institutionalize alternative service delivery systems where considerable coverage has been achieved through such systems.

The model is depicted as follows:

## Collaboration between social partners



Source: Author's own mapping

The study elucidated on Marxist and liberal theories underpinning civil society. The Marxist view on civil society emphasised the fact that civil society organizations in the main are an instrument of resistance who often challenges the status quo in societies. The theory further posits that for state hegemony to be entrenched, civil society must be used as an instrument to populate ideas, norms and values. The hegemony of the state over civil society is never complete since the sector is an arena of constant competition, conflict and a clash of ideas. This runs contrary to the liberal view of civil society which, according to Magure (2009:29) espouses limited government involvement in the affairs of society. The liberal theory further argues that the state must roll back and be a referee who provides the framework for the protection of private property, life and liberty. The model proposed in this study accommodates both the Marxist and liberal view and builds on the major underpinnings of these theories.

The model accommodates both views in so far as they both point to the undeniable importance of civil society in consolidating and deepening democracy in all countries of the world. Civil

society as a partner to the state in helping to address socio-economic challenges, is a central feature of the arguments by the two theories and this easily finds expression in the central thrust of the model where the model advocates for an entente in relations between all social partners in South Africa, being civil society, government, the private sector and labour. The fundamental basis of the model is thus drawn from both theories on civil society with a slight leaning towards the Marxist theory on civil society. It is from such collaboration between the social partners that challenges confronting the citizens can be overcome. From the comparative studies of the evolution of civil society in countries of the Global North and the Global South, the study was able to demonstrate almost similar trajectories followed in the major roles played by the civil society sector in helping to remove autocratic regimes and contributing to the democratization agenda of the countries under study.

The civil society organizations that the study highlighted include EE, AfriForum, SADTU and SACC. The study was able to demonstrate the importance of these organizations in holding the state accountable. The litany of public interest litigation undertaken by these organizations is demonstrable evidence of the largely hostile relations that characterize relations between these groupings and the state. The study was also able to show, with the model under review, that collaboration can be effective in changing the lives of the citizens for the better. This is evidenced with the number of positive interventions that the sector was able to contribute towards the consolidation of democracy in South Africa. Through the extensive extrapolation of the role played by the civil society organizations under review, the study sought to enrich the discourse on the fundamental importance of civil society organization in the democratic era. A dominant view in most post-liberation states sought to subsume civil society organizations to become an extension of the state. However, the study has been able to show that despite the lull in civil society activities immediately after the dawn of democracy in 1994, the sector was able to recover and contribute meaningfully in protecting socio-economic rights that define the daily lives of the citizens of South Africa. The discourse on civil society should benefit greatly from the unique contribution that this study has made to intellectual discourse on the role of civil society in South Africa. The multi-disciplinary nature of the study assists in making a unique contribution to a number of disciplines thus enhancing the body of knowledge in so far as civil society is concerned.

## 7.4 Conclusions

The summary of conclusions and reflections are discussed in line with the research questions that were posed in chapter one.

### Research objective one

The research objective that the study made a concerted effort at achieving was the enhancement of literature on civil society and the relevance of the said literature to the South African context. To this end, the study went to great lengths in dissecting the available literature on civil society and critiqued it at length. For instance, the conceptual thrust of the study was about looking at the theories of Marxism and Liberal perspectives as two dominant theories that inform the nature of civil society organizations. Without venturing into the perspectives which have been comprehensively explored in previous chapters, the study used the key ideological, conceptual and theoretical thrust of the two perspectives to develop a middle ground and to strike a balance in this regard. This middle ground took the experience of the two contending schools of thought to explain the development of the sector in South Africa. It was further used in demonstrating the extent to which these theories influenced the development of the sector in South Africa. For instance, the radical theory of civil society finds expression in the CSOs which are distancing themselves from what they perceive to be a neo-liberal doctrine that seeks to use civil society as an extension of the state apparatus. These types of civil society organizations in South Africa have demonstrated their independent streak by mobilizing communities and resources in an attempt to pursue socio-economic rights and to compel the state to live up the set Constitutional ideals. The study will contribute to the body of knowledge in showing the extent to which civil society organizations in South Africa have used the theories underpinning the global civil society movement and the experiences of the sector globally to carve out a niche of the sector in South Africa as an indispensable force that is required in forging and consolidating a non-racial, prosperous and truly democratic country.

One of the key research questions was: ‘to what extent has civil society organizations assisted in the consolidation of democracy in South Africa?’ The findings on the organizations under review will hopefully assist in enriching the discourse on the importance of South Africa having a vibrant CSO sector as a necessary tool in enhancing the democratic project and in holding the government accountable. The importance of civil society organizations as an important stakeholder body in assisting government to discharge its Constitutional responsibility particularly on issues of a socio-economic nature cannot be overemphasised.

This has been ably demonstrated by the noteworthy contributions made by SADTU, SACC, AfriForum and Equal Education to the discourse on civil society in South Africa. For any democratic state to thrive and succeed in achieving its Constitutional mandate, the role of civil society organizations remains critical as an important sector that represent multitudes of citizens who ordinarily get left out in the margins and in the periphery of state-led programmes.

#### Research objective two

The study undertook an analysis of the evolution, role and contribution of civil society in South Africa in comparison to other countries of Sub-Saharan Africa, South Korea and Brazil. Miri and Shahrokh (2019) contend that comparative analysis means describing and explaining the similarities and differences of situations or consequences among large scale of social units such as regions, nations, societies and cultures. A case study of selected countries such as Nigeria showed that civil society organizations have always been part of the ecosystem in Nigeria. Nigerians, regardless of political affiliation, race, creed or class, have always found solace and courage in civil society organisations. This was the case even during the authoritarian rule of General Abacha in that country. The study also found that there are fairly less stringent restrictions governing the sector in Nigeria, just like in South Africa, hence many organizations are established by citizens. The study further compared the history of the sector in South Africa with the rise of civil society in South Korea. The interest in studying the rise of the sector in South Korea was largely motivated by existing similarities in the two countries. South Korea, like South Africa, underwent a long period of dictatorship characterized by repressive regimes that didn't allow citizens to enjoy civil liberties. This led to the proliferation of civil society organizations who coalesced into an umbrella body of civil society organizations. A similar body called the Citizens Coalition for Economic Justice (CCEJ) was established to mobilize the sector and to create a strong anti-establishment movement. This movement, like in South Africa, finally culminated in the dethroning of the dictatorial regime of Kim Dae-jung and led to the establishment of a democratic government in South Korea. The objective of the current study was therefore achieved in so far as the extensive comparison on the evolution of civil society in various regions that were studied is concerned.

### Research objective three

One of the research objectives was an examination of the extent to which funding of civil society has contributed in consolidating democracy in South Africa. The study reiterated the importance of funding in ensure that the sector remains in good health. A comprehensive study of the politics influencing funding was undertaken. This included the discussions on the theoretical perspectives on the role of the state in society to the reasons why governments do not just willy nilly decide to contribute to the civil society without political motives. While there have been debates about the decline of the sector, especially after the ANC government took over in 1994, the converse reality was however shown, which was that the sector grew exponentially both in terms of numbers and impact during the same period. This growth was largely attributed to the discord in society which was caused by the adoption of the neo-liberal macro-economic policy called GEAR. This, along with the negative impact of the 2008/2009 global economic recession, were critiqued in relation to their impact on funding of civil society. The demise of IDASA which was a prominent CSO was discussed as an example of the negative impact created by the funding crunch on the sector. In the same vein an organization such as Equal Education was shown to have made an invaluable contribution to the lives of the downtrodden owing largely to its ability to access financial resources from a variety of international donors. Figures and Tables were provided as practical evidence of the impact of the recession on the sector in South Africa. The differences in the amounts received by the sector pre- and post-1994 were emphasised. Reasons behind the discrepancy in the quantity of funds were also provided in this regard.

Funding for civil society before 1994 was relatively substantial. This enabled the sector to undertake a lot of activities such as the countless anti-apartheid government demonstrations. There was a shift in funding post 1994 with donors channelling funding directly to the democratic government. The study has ably demonstrated that when faced with a challenge of lack of financial resources, the sector is able to adapt their behaviours to the new reality and is able to also tap into new sources of internal and external funding to ensure that it continues to be lively, active and effective and that it continues to hold the state accountable in discharging its Constitutional mandate. The sector was also assisted by the creation, through legislation, of the Directorate of Non-Profit Organization. The body developed regulations that made it mandatory for NGOs, as part of civil society, to be able to access funding from the Department of Social Development. This invigorated and encouraged the establishment of thousands of organizations who were able to get necessary funding to undertake their activities.

Over and above its dependence on external funding Equal Education, as an example, was able to engage in internal strategic programmes which sought to increase its funds. The organisation was also encouraged to be self-sufficient and not to be overly reliant of foreign donors.

#### Research objective four

In an effort to understand why the civil society sector has largely been besotted with public interest litigation as a popular strategy, the researcher examined the history, politics and literature on public interest litigation. The study found out that the sector did not necessarily abandon other popular methods of confronting the State such mass mobilization, marches, sit-ins, boycotts etc. These strategies were still pursued to create awareness of and to show discontent with policies of the government. The new regulatory environment occasioned by the adoption of the new Constitution with the Bill of Rights, promulgation of equality legislation and the general institutionalization of democratic ethos, provided fertile ground for the sector to now pursue public interest litigation as another terrain of struggle. Alongside public litigation, the concept of *amicus curiae* also grew in popularity. Organizations such as Equal Education were able to provide their expertise, insights and information to assist other litigants. This support provided by them as ‘friends of the court’ often had a direct bearing on the outcome of cases in favour of the litigant who happen to be fellow civil society organizations or individuals who sought relief from the suppression of socio-economic rights by the State. The objective to corroborate reasons behind the growth of public interest litigation was achieved in the discussions.

#### Research objective five

To contribute towards the successful achievement of the developmental goals of the State, the study developed a matrix for the harmonization of relations between all key stakeholders who are central to the realization of the set developmental goals. These stakeholders include the state, civil society organizations, labour and the private sector. If the letter and spirit of the proposed model is adopted unconditionally, the public affairs environment which is largely characterized by confrontations and conflicts of different players, will experience an environment of collegiality, cooperation, collaboration, consultation and inclusivity in policy making and decision making.

## **7.5 Summary of the Findings**

The study's main thrust was to analyse civil society and democracy in post-apartheid South Africa and to assess the role, impact and contribution that the sector has made and continues to make since the dawn of democracy. The researcher has therefore developed a model that is congruent with the study as a form of scholarly contribution on the sector going forward. This model, which is referred to as the partnership model of civil society, seeks to highlight the importance of partnerships and collaboration between civil society organizations themselves and between the sector, government, labour and the private sector as important social partners in approaching the challenges faced by the post-apartheid state. An extensive examination pertaining to the prevailing theories on civil society was conducted by the researcher in chapter two. Among the theories dissected herein include social capital theory, radical type, sociological type liberalism, multiculturalism, cosmopolitanism and good governance. These theories have contributed greatly in enhancing the researcher's theoretical grasp and understanding of the dominant literature and theories relating to civil society. Government cannot be the sole panacea to the problems that confront South Africa. The challenges of unemployment, poverty, inequality and other related challenges are of such a massive nature that no institution can singularly succeed in solving them. It should be noted that these problems are structural, historical and are enmeshed in the entrenched role of South Africa as a global political player which attracts millions of immigrants to its shores. It therefore stands to reason that a multi-thronged approach is required in approaching these massive problems. The proposed partnership model should therefore be understood as making a much-needed contribution in this regard.

Having broadly looked at civil society organizations such as EE, SADTU, SACC and AfriForum the study was able to demonstrate that in the main, relations between the state and the sector is largely confrontation, combative and adversarial. The frequency by which civil society organisations make use of the courts to settle their socio-economic disputes is testimony of this hostility. The approach by civil society of always using the courts as a strategy might not be sustainable as it has its limits. Zibi (2023) argues that the public interest litigation approach in the long run is likely to politicize the courts and create discord between political actors and voters. The researcher does not in any way suggest that the courts are not an integral or constituent part of democracy neither does he suggest that they should not be used when there are disputes between the two parties (state and civil society). However, going to court for the sector should be a last resort.

It should be employed in instances where no common ground with the state on issues which the sector is passionate about could be reached. It is in that context that the study developed the partnership model as a method that can be employed to solve the challenges and problems referred to earlier. The model is thus a response to the research question that requires information on how civil society and other social partners can help each other in improving Constitutional democracy in the post-apartheid South Africa. According to the Indeed Editorial Team (2021) a theoretical model is a framework that researchers create to structure a study process and to plan how to approach a specific research inquiry. A theoretical model also allows the researcher to define the purpose of the research and develop an informed perspective. The theoretical model in this context places this research pertaining to civil society and democracy in a broader context by enabling this researcher to review the work already done by other scholars and to make use of that work to form own ideas. This is exactly what this study has attempted to do.

## **7.6 Recommendations**

The study has made extensive efforts to locate the role, contribution, and impact of civil society organizations in enhancing and deepening democracy in South Africa. Noteworthy progress in achieving the deepening of democracy is noted, however significantly more still needs to be done to ensure that the building of a capable state as a central pillar of the developmental goals of the country as encapsulated in the National Development Plan is carried through. The study has demonstrated that within civil society, the active participation of citizens which is referred to as civic engagement, has a positive effect in assuring citizens that their views do matter and that they can make a fundamental difference in policy processes. The history of civil society in South Africa provides irrefutable evidence that the sector cannot be ignored in any processes especially those relating to the socio-economic activities of the citizens. The comparison of the experiences of the sector in South Africa with other regions in the world like countries in Sub-Saharan Africa, South Korea, Brazil and others has shown that for any state to function effectively and realize its Constitutional mandate it cannot ignore civil society organizations as important social partners.

Equally important is that the research has demonstrated the pertinence of funding as playing a pivotal role in enabling civil society organizations to exist not only as bystanders but rather as active participants in the country's political process. To mitigate unilateralism as an approach favoured by governments which goes against the grain of the Constitution of the Republic of South Africa (1996), it is critically important that the civil society sector be capacitated in many ways, including funding, to strengthen their ability to make positive contributions to the developmental goals of the state. The research on the role of the following civil society organizations: Equal Education, South African Democratic Teachers Union, AfriForum and the South African Council of Churches has significantly highlighted the positive effects of the sector in enhancing participatory democracy and in holding the government accountable. This has been shown to assist in enhancing consultation and civic participation as pillars of any democratic society. To further acknowledge and improve the role of civil society in South Africa the following recommendations are presented:

- ❖ Civil society organizations in South Africa need to clearly define their role. They need to decide whether they want to play their role as an extension of the state in being co-providers of service delivery or as watchdogs of violation of the Constitution lauded throughout the world for its humane character. Studies done on certain formations like SANCO have proved that “sitting on the fence” kind of approach sends mixed signals to both their primary constituencies and the general public. It is always important to ‘to nail your colours on the mast’ and to clearly define the purpose behind your existence as exemplified by Equal Education’s approach, character and posture in their relations with the government. This does not necessarily imply that the sector should always adopt an antagonistic or confrontational posture in their dealings with the state. It is a given fact that governments by their very nature are averse to any form of opposition, consequently they will try every trick in the book to influence, bully and/or swallow the sector to be an extension of its institutions. This will unfortunately negate the activist role and character of civil society organizations as formations that are there to help citizens in holding the government accountable.
- ❖ A popular call by most researchers which still finds expression in this study is the dire need for the government to increase funding for the civil society sector. The need to support liberal democracy is the reality that in the main it is a guarantor of stability. For the government to guarantee stability requires massive investment in the sector. Of course, the researcher does not advocate endless pouring of resources into the sector

without visible results and accountability. Accountability mechanisms should be built into the system to ensure value for money for the citizens and the government respectively. Only those organizations that are able to demonstrate tangible evidence of programmes undertaken, the impact thereof and the ability to provide audited financials in line with the requirements of the DSD should be considered for further and additional funding. Owing to capacity challenges, some civil society organizations are unaware of available funding sources from both the government and the private sector. It is important that communication methods are improved so as to help make information available to such organizations. The researcher hopes that this study on civil society funding (or lack thereof) will act as a catalyst for the state to enact broader and better regulations on funding of the sector. This should be done in order to forestall a situation where funding pledges are just academic and not real commitments that are seen to be bringing meaningful change to the sector.

- ❖ The partnership model alluded to earlier may, if taken seriously, contribute a great deal to alleviating some of the developmental challenges faced by the state. These partnerships should be tailored to ensure a deliberate biasness to mainly women-led civil society organizations in South Africa. The proposed deliberate predisposition to mainly women-based and women-led CSOs is informed by the historical realities of South Africa where women, despite challenges in legislation to effect equality on paper and being in the majority in terms of demographics, still find themselves in the margins of society, facing challenges of patriarchy, cultural stereotypes, discrimination in the workplace, prejudice in almost all facets of life. For this partnership to be effective, it is also incumbent among women-led CSOs themselves to deal with the problem of fragmented nature of women's organizations. This fragmentation of the sector is not unique to women-led CSOs but is a problem that affects the sector in general. For the unity of the sector to be effective, it is important that large civil society organizations should not undermine the small CSOs. Efforts should be made, especially by the bigger CSOs, to strive as much as they can to solidify the sector without any regard to the shape, size or strength of the smaller partners. The ethnic, religious, social and structural cleavages that seem to characterize much of civil society will need to be radically uprooted so as to build a united sector strong enough to confront the prevailing socio-economic challenges as a united front and to contribute greatly to the consolidation of the democratic project in South Africa.

- ❖ The unity of the sector must be extended further with the consolidation of relations between the sector domestically and its counterparts in the international arena. This is important since the prevailing socio-economic challenges are not unique to South Africa but rather, they are faced by mainly former colonies of the global north. This unity of purpose will greatly help in keeping issues of poverty and education, among others, consistently on top of the agenda of the government. The global civil society defined by Keane (2003, 234) as the vast assemblage of groups operating across borders and beyond the reach of governments “is important as a counterforce to empower the poor and work towards achieving equality”. This is important in solidifying a global approach against corporate globalization and its vestiges like privatization, outsourcing and liberalization. Collaboration is also found to present an opportunity to pool resources and invest in broader mission-led initiatives that could strengthen the social impact the sector has on communities.
- ❖ The government needs to recognize the reality that civil society is the most credible intermediary agency between itself and the citizens. To this end, to underscore this undeniable truth, the state needs to cease paying lip service to the mantra of consultation. The state needs to proactively acknowledge and respect the role of the sector in both policy making and decision-making processes. This entails the need to give credence to consultation by consistently involving the sector in decisions that impact the socio-economic conditions of the citizens. This should be the approach especially in the local government sphere where there is a tendency by political parties in charge of municipal wards to always seek to take decisions on behalf of communities despite lacking the technical knowhow in responding to challenges that civil society has expertise on. It is precisely for this reason that the partnership model proposed in this study talks to a sectoral approach wherein civil society should have a sector created where all the social partners will then have an opportunity to discuss the approaches to be taken to respond to challenges of poverty in those areas in question.
- ❖ The creation of sectoral forums emanating from the latter recommendation will be a practical demonstration in giving effect to the principle of consultation as suggested earlier. The forums/sectors will consist of experts and leaders of communities whose lived realities make them perfect candidates to lead discussions on pertinent issues of focus in the sectoral meetings. This is one way in which democracy will be a lived reality and not just a theoretical construct for the citizens. For instance, it defies logic that government can make sweeping changes in basic education for instance, without

involving stakeholders in education such as EE, Section 27, SGBs, teacher unions and other relevant parties. Attempts should be made to pioneer collaborative projects at a miniature level of these networked strategic partnerships involving all the parties. Lessons gleaned from the successes and challenges from the case studies will be used to build and strengthen future models on how to reorient and structure the cooperative alliances.

- ❖ Civil society organizations should dedicate a considerable portion of their budgets by investing in capacity training of members. The sector should identify key capacity gaps and identify relevant training providers who will offer the necessary training in the areas of need. The importance of capacity building is that it empowers and fosters ownership of the organization by members. It is also important that capacity training programmes should also be biased towards contemporary challenges like using new technologies, law, computers, strategic planning, fundraising etc. This is important in view of the massive expertise that the government possess in their dealings and interactions with civil society. Some of the decisions taken by government department could have a detrimental and negative impact of communities, but because they are of such a technical nature, it requires civil society organizations with highly skilled members to be able to understand and create counter arguments and programmes that will uphold the interests and needs of the affected communities. Informed, educated and capacitated members are easily able to overcome some of the protracted bureaucratic processes and red tape synonymous with government when they, for an example, need to apply for funding.

## **7.7 Areas for further research**

Civil society organizations are an essential part of the ecosystem of public life in any society, South Africa included. A functional, vibrant, and active civil society is an important ingredient in enhancing democracy. This is the reason why the sector needs to be capacitated to play a meaningful role as watchdogs and at times a conveyor belt of service delivery to vulnerable sectors of society. The dynamism and flux of the environment of public administration is such that civil society organizations should always seek new ways, approaches and technologies necessary to help them in discharging their activities and role effectively.

Owing to the strategic importance of the sector particularly in developing countries like South Africa whose democratic institutions are still not strong, it is imperative to note that there will continue to be further studies undertaken by researchers and scholars on the sector and its efficacy to in building a democratic culture. Some of the areas which require further study are as follows:

7.7.1 The accurate number of registered civil society organizations - those that are still active and those that are defunct. This information will provide a picture of their strength, quantitatively speaking. Although numbers do not provide an accurate and reliable picture of the impact of the sector, further studies can still be undertaken to review the impact and efficacy of the sector particularly with regards to their impact in enforcing socio-economic rights.

7.7.2 Undertaking a quantitative and qualitative study regarding sectoral determination can also enrich studies on civil society, for an example, the percentage of CSOs involved in basic education issues, poverty alleviation, environment etc. This will enable government, public sector and even international donors to have an idea of what informs the confluence of these movements in particular areas. This could probably also assist the sector itself to consider collaboration with like-minded organizations and where possible even amalgamate organizations to increase efficiencies in those sectors.

7.7.3 The fundamental reasons why a lot of civil society organizations are dying and what can be done to retain the combativeness, efficiency and relevance of the sector.

7.7.4 What could be the underlying reasons which discourages SCOs not to collaborate and adopt a "go it alone" type of approach when it is proven that there is strength in unity.

## **7.8 Limitations of the study**

The study adopted a case study approach which was limited to four civil society organizations. Whilst offering a nuanced, rich and holistic account of these units of analysis, namely: EE, AfriForum, SACC and SADTU, it could however potentially make it difficult to generalize the findings on the basis of the limited number of civil society organizations under review. Often policy makers prefer to give low credibility and serious attention to results and findings from studies that followed a qualitative approach. The study also made comparative analysis of civil society organizations in South Africa and other parts of the world.

Whilst this analysis is important, given that South Africa is now part of the global world, the following should also be taken into account: the differences in historical, political and cultural contexts which then encourages the researcher to make broad generalizations that could be interpreted differently by others. An attempt to access information valuable to the study from Equal Education and AfriForum on their funding was not successful thus constraining important insights that could have greatly enriched to the study. Despite these limitations, the study was an honest attempt by the researcher to contribute to the scientific community valuable insights on the theoretical and conceptual underpinnings of civil society and democracy in post-apartheid South Africa.

## **7.9 Conclusion**

For democracy to be more than just a theoretical construct but a lived reality, it is imperative for civil society organizations to play a meaningful role in building and strengthening the democratic institutions in South Africa. To undo the legacy of apartheid, preserve civil liberties and socio-economic rights, and maintain the Constitutional edifice, requires the government to acknowledge the key contribution of social partners such as civil society organizations. This is the essence of what the study has attempted to examine. Respect for the rule of law, good governance and accountability which are some of the attributes of democracy can only be realized with an active citizenry that take its public participation mandate seriously. Civil society thus help in shaping the citizens into various sectors so as to enhance their public participation mandate in a much more organized and refined way. The realization of the United Nations Millennium Development Goals requires this strong partnership approach by all stakeholders.

Civil society provides the embryonic link between the government, private sector and the citizens hence its role is very important. Studies have shown that there is a growing gap between the decision makers and the citizens which inadvertently has a consequent effect of creating apathy among the citizens. This apathy has been evident in, among others, the declining number of voters in the various regular parliamentary elections in South Africa. Therising number of public protests which was given prominence in chapter five of the study and growth in unemployment levels among the poor, poor living conditions and rising poverty levels are just some of the challenges that point to the need for South Africa to continue having a vibrant and active civil society sector that will continue to hold the government accountable.

Most of the vulnerable sectors of society, apart from exercising their right to vote which only happens once every five years, only have civil society organizations as their ultimate rescuer and conduit for exercising their democratic rights. The promotion of general welfare and the improvement of the quality of life which is the foundational value of government and public administration can only be achieved with a partnership approach. This is in stark contrast with the current neo liberal approach of government which in the main rides roughshod over civil liberties by taking crucial decisions without due regards to constitutional imperatives of public participation and Batho Pele principle of consultation.

Sustainability challenges of civil society is an area that the study took a keen interest in. This relates to the need to enable massive investment in the sector as a form of empowerment so that they continue to maintain their pro-poor posture. Much as the sector relies on funding from government, the private sector and international donors, it is important for the sector to be careful that resource dependency from others should not have an unintended consequence of jeopardizing the autonomy of the sector and thus softening its militant stance in tackling issues of a socio-economic nature. It is against this background that the self-funding drives and programmes undertaken by organizations such as Equal Education, despite having a horde of international donors, should be used as a model to encourage the sector to become self-sufficient. Transitioning funding to governments as has been the norm by global donors is not a solution. This approach by donor institutions will force CSOs to scale back on their operations and will reduce the effectiveness of their advocacy since they will be forced to rely on the very government that is a source of the socio-economic malaise in the country. Rather what should be encouraged is for the sector to drastically improve in accounting for the funds channelled to them. This requires managerial, technical and financial capacity training to ensure that the CSOs are able to comply with the institutionalized accounting reporting standards.

As a contribution to public administration, the study has developed a two-pronged partnership model which underscores the inalienable need for civil society to engage in unity of the sector as the springboard to engaging the government and private sector from a position of strength. The model is not a silver bullet but is rather restating a historical fact that unity, collaboration and partnership have always been the bedrock for civil society to score decisive victories against vestiges of neo-liberalism and their attendant ills in South Africa. The partnership model is meant to encourage the building of networked coalitions between various civil society organizations, particularly around shared interests.

Much as partnerships should be encouraged, they should not be forced at the expense of the unique, particular and heterogenic nature of organizations. The diversity among sectoral organizations should be embraced and encouraged whilst simultaneously nurturing the strategic partnership among CSOs in the sector.

The research also acknowledges that an ivory tower approach to dealing with challenges of communities will not do much to solve the problems, hence the necessity to devolve power and establish forums and structures of governance and consultation ala the NEPAD approach between government, labour, the private sector, labour and civil society at local government level. Local government is the sphere which is in close proximity to the people and where communities are able to most meaningfully engage with all social partners in a language that the ordinary citizen can understand. The horizontal approach to partnership building which denotes that social partners must interact from an equal footing will help to sustain this type of partnership model. This requires the baseline understanding by all the partners that all the social partners despite their differences, are important stakeholders that have to work together to improve the quality of life of the people.

In conclusion, civil society organizations remain central in helping the government to strengthen democracy and to achieve an ethical and capable state. Post-apartheid South Africa is faced with enormous challenges to undo decades of injustice and discriminatory legislation which has created a society of vast cleavage in terms of access to resources, information, and wealth. Government alone cannot provide solutions to this gigantic task of building a democratic rights-based culture. This is a noble ideal that requires the involvement of all stakeholders. Civil society organizations should openly display their commitment to enhancing and deepening democracy without losing their independent voice as critical advocates for a just society. The sector should maintain its robustness, alertness, watchdog, and monitoring role in ensuring that the state is always held accountable in enforcing the ideals of democracy and equity among the people. Ordinary citizens depend a great deal on civil society to educate them about their rights and obligations, to inculcate a culture of tolerance for opposing views and to encourage citizens to participate in policy making processes of the state. Democracy can only be enriched in an environment where the expression of contending ideas is allowed to blossom, where plurality of different voices is allowed to thrive and where equality is the basis of decision making. These are the primary obligations that civil society should promote if the sector is to remain relevant as an important stakeholder that can be relied upon in broadening, consolidating and strengthening democracy.

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**Annexure A**  
**Language Editing certificate**

**Mhlongo Goodfriday** writer's box  
Independently contracted editing work  
11/07/2023

**TO WHOM IT MAY CONCERN**

**EDITING CERTIFICATE LETTER**

This serves to confirm that the academic work in a form of a Ph.D. Thesis belonging to:

Peter Motwa Mampane

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